



**UPPER TRIBUNAL
TAX AND CHANCERY CHAMBER**

Neutral Citation Number: [2026] UKUT 00377 (TCC)

Applicant: John Smith	Tribunal Ref: UT-2026-000096
Respondents: The Commissioners for His Majesty's Revenue and Customs	

APPLICATION FOR PERMISSION TO APPEAL

DECISION NOTICE

JUDGE JEANETTE ZAMAN

1. The applicant, John Smith, applies 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 6 May 2026 (TC/2015/06427). Mr Smith applied to the FTT for permission to appeal against the Decision on 20 grounds on 17 June 2026 and also made supplementary submissions on 13 July 2026. In a decision notice released on 23 July 2026, the FTT refused permission on all grounds and addressed the matters raised in the supplementary submissions (the “FTT PTA Decision”).
2. On 22 August 2026 the Applicant applied to the Upper Tribunal for permission to appeal (the “Application”).
3. The Applicant has since sent further submissions, witness statements and evidence to the Upper Tribunal – supplementary submissions dated 4 September 2026, a supplementary witness statement of the Applicant dated 4 September 2026, an application dated 10 September 2026 to adduce further evidence in the form of bank account statements from Barclays Bank (accompanied by a supplementary witness statement of the Applicant dated 9 September 2026 and some of the further banking evidence), supplementary submissions dated 10 September 2026, an application to introduce further evidence (the “Loan Documents”) dated 10 September 2026 and supplementary submissions dated 15 September 2026.
4. In response to Directions from the Upper Tribunal dated 16 September 2026, the Applicant then provided on 24 September 2026 a copy of his application to the FTT dated 28 February 2026 for the March 2026 hearing to be postponed, a medical report and the Barclays Bank statements which he had applied to be admitted as new evidence.

5. I refer to all of the submissions, witness statements, applications and reports sent to the Upper Tribunal since the date of the Application (other than the documents applied to be admitted as new evidence) as “Supplementary Documents”.

6. References below in the form FTT[x] and A[x] are to paragraphs of the FTT Decision and the Application respectively.

WHEN DOES AN APPEAL LIE TO THE UPPER TRIBUNAL

7. 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.

8. 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.

SUMMARY OF MY DECISION

9. I have decided to admit the Loan Documents for the purpose of considering whether the Application or the Supplementary Documents disclose an arguable error of law in the FTT Decision which was material to that decision.

10. I refuse to admit the bank statements from Barclays Bank for account number 6645 for the period 1998 to 2003 (the “account 6645 statements”).

11. I have decided that none of the grounds of appeal or other matters raised in the Application or Supplementary Documents disclose an arguable error of law which was material to the FTT Decision.

12. Furthermore, I have decided that all of the grounds of appeal, including the further submissions and other matters made or relied upon in the Supplementary Documents, would be bound to fail. I have refused permission to appeal on all of these grounds and am also satisfied that they are totally without merit. I certify this for the purposes of Rule 22(4A) of The Tribunal Procedure (Upper Tribunal) Rules 2008 (the “Upper Tribunal Rules”). The Applicant may not request that this decision be reconsidered at a hearing.

THE APPLICATION

13. The Application seeks permission to appeal on 21 grounds.

14. The Applicant sent to the Upper Tribunal with the Form FTC1 his grounds of appeal (in the body of an email which amounts to 42 pages), the FTT Decision, his application to the FTT dated 17 June 2026 and the FTT PTA Decision (which included by way of appendices various directions and decisions which have been issued by the FTT in this appeal).

15. In a section of the Application headed “Documents relied upon”, the Applicant states as follows:

“203. The Applicant relies upon: the First-tier Tribunal decision released 6 May 2026; the application for permission dated 17 June 2026; the supplementary submission dated 13 July 2026; the permission refusal released 23 July 2026; Officer Sarah Harris's witness statement and the contemporaneous documents relied upon at [359]-[373]; the process-server statement considered at [464]-[468]; the relevant hearing-bundle extracts identified above; the directions of 26 November 2025; the expert report of Dr Nigel Young dated September 2025 and the directions released 9 December 2025 admitting his statement and determining his status; the application to adduce evidence dated 26 April 2026; the Barclays letter dated 27 April 2026; the evidence ruling served on 20 July 2026 and its covering correspondence; and the relevant correspondence concerning access to the hearing bundle and the conduct of the hearings.”

16. I have read and considered all of the documents which have been provided by the Applicant carefully and in their entirety (including the multiple Supplementary Documents). I have not considered additional documents which have not been sent to me.

17. The Application refers to the application for permission to appeal made to the FTT and states at A[12] that his application to the Upper Tribunal is intended to be self-contained. However, at A[200] the Applicant applies for permission on “any further properly arguable ground contained in the application dated 17 June 2026, as corrected and supplemented on 13 July 2026” and states that no earlier ground is abandoned. On the basis that the Application sets out 21 grounds of appeal, the majority of which are those for which permission was sought from the FTT, and has made further submissions in the Supplementary Documents, and having read the application which was made to the FTT, it is not clear to me what any such further grounds could be said to be.

18. I have addressed below each of the identified grounds of appeal in the Application. I have followed the numbering of the grounds as used by the Applicant in the Application and have taken all of the submissions into account (whether in the Application or in any of the Supplementary Documents) when reaching a decision on each ground.

19. There is a considerable amount of repetition in the reasons put forward by the Applicant. I have generally dealt with the substantive reasons being put forward just once, eg the March 2026 hearing of closing submissions in Ground 6, the provision of the bundle in Ground 9 and the approach to the evidence of the Applicant and the other witnesses in Ground 15. All of these submissions have been taken into account in considering what are described by the Applicant as the cumulative grounds, namely cumulative procedural unfairness in Ground 16 and actual or apparent bias in Ground 21.

20. The Application includes an urgent application for suspension of the effect of the FTT Decision. The FTT has stayed the Applicant’s appeal before the FTT.

21. The Application also seeks directions “preserving the complete electronic case file, the recordings of the hearings held on 8-19 December 2025 and 18-19 March 2026, and all records relating to the service and handling of the Applicant’s applications”. Any such application should be made to the FTT.

SUPPLEMENTARY DOCUMENTS AND NEW EVIDENCE

22. The Application, which was made in time, has since been followed by:

- (1) supplementary submissions on 4 September 2026 in relation to the discovery made by Officer Harris which is said to add a single, narrow point to Ground 1 of the Application (although from its substance it relates to Ground 2 and not Ground 1);
- (2) a supplementary witness statement of the Applicant dated 4 September 2026. The purpose of the statement is said to be to address matters including procedural unfairness, apparent predetermination and bias, although the statement then also deals with the reasoning in relation to the finding of fraud, the treatment of Dr Young’s evidence, and the Applicant’s health and personal circumstances;
- (3) an application dated 10 September 2026 to adduce further evidence, namely the account 6645 statements, accompanied by a supplementary witness statement of the Applicant dated 9 September 2026 in support and two of those bank account statements, the remainder of which were then provided with a schedule on 24 September 2026;
- (4) supplementary submissions on 10 September 2026 submitting that the FTT erred in stating at FTT[390] that there was no independent evidence of his mental health

difficulties, with the Applicant then providing a copy of a medical report on 24 September 2026;

(5) an application dated 10 September 2026 to introduce further evidence relating to the fraud that was committed against him in 2000, namely the Loan Documents; and

(6) supplementary submissions dated 15 September 2026 in relation to the FTT's treatment of the Applicant's evidence.

23. The applications to adduce further evidence do include the Applicant's explanation of the reasons why the evidence was not produced before the FTT hearings. There is no explanation as to why the remaining submissions and witness statements were not made at the time of the Application. Some of these raise new points; many of the other submissions or statements are repetitive of points already made in the detailed and lengthy Application.

24. The making of an in-time application for permission to appeal should not be regarded by an applicant as the start of a rolling opportunity to provide subsequent further submissions. This is inefficient and time-consuming for the Upper Tribunal.

25. I have nevertheless decided to admit and take account of all of the Supplementary Documents for the purpose of deciding whether to grant permission to appeal. In particular:

(1) The supplementary application dated 4 September 2026 in relation to the discovery made by Officer Harris is addressed at Ground 2.

(2) The witness statement dated 4 September 2026 is relevant to several of the grounds of appeal. I have taken the contents of this statement into account as submissions throughout this decision.

(3) The supplementary submissions dated 10 September 2026 in relation to evidence of his mental health difficulties, the Loan Documents and the supplementary submissions dated 15 September 2026 in relation to memory are addressed at Ground 1, Ground 10 and Ground 15.

26. The applications to admit new evidence are determined below.

WHETHER TO ADMIT NEW EVIDENCE

27. The Applicant has applied for permission to admit new evidence, the Loan Documents and the account 6645 statements.

28. In *Ladd v Marshall*, Denning LJ set out three conditions that should be fulfilled to justify the admission of new evidence when he said (at page 1491):

“...first, it must be shown that the evidence could not have been obtained with reasonable diligence for use at the trial; secondly, the evidence must be such that, if given, it would probably have an important influence on the result of the case, though it need not be decisive; thirdly, the evidence must be such as is presumably to be believed, or in other words, it must be apparently credible, though it need not be incontrovertible.”

29. In *Bramley Ferry Supplies v HMRC* [2017] UKUT 214 (TCC) the Upper Tribunal said it should not apply the criteria in *Ladd v Marshall* as strict rules as the overriding objective requires the Upper Tribunal to take into account all of the circumstances of the case; but the *Ladd v Marshall* criteria are not irrelevant. These criteria are “persuasive authority as to how to give effect to the overriding objective” ([23]).

30. I have considered the *Ladd v Marshall* conditions and the overriding objective when deciding whether to admit the Loan Documents and/or the account 6645 statements.

Loan Documents

31. The Loan Documents comprise:

- (1) a personal loan agreement from Egg Banking plc dated 23 May 2000 for a loan of £15,000 repayable in 60 monthly instalments of £317.15. The loan is in the name of Bradley Strauss, ie the Applicant's former name;
- (2) a notice of arrears of £8,836.21 from Arrow Global dated 14 November 2011;
- (3) a letter from Rockwell Debt Collection Agency dated 7 October 2013; and
- (4) a letter from Rockwell Debt Collection Agency dated 17 October 2014.

32. The Applicant submits that these were relevant to the FTT's conclusion at FTT[50] that it was inherently unlikely that a fraud discovered in 2001 was still continuing in 2006, and to the FTT's finding at FTT[469] that his claim to have lived in Dublin was "uncorroborated".

33. The Applicant appears to have had ready access to these documents and could have produced them with his list of documents, or in any event ahead of the December 2025 hearing. If the Applicant only sought to rely on them in support of his claim that he had lived in Dublin I would have no hesitation in refusing to admit the Loan Documents – he has been well aware throughout that HMRC do not accept his claims to non-residence and these documents were available to him to produce ahead of the hearing. Furthermore, whilst the Loan Documents are apparently credible, I am not persuaded that they would probably have had an important influence on the outcome of the case as regards this issue.

34. However, it is clear from the application to admit these documents and the reasons put forward in support that the Applicant primarily seeks to rely on them in the context of his challenge to the FTT's conclusions on his credibility. One of the examples relied upon by the FTT related to his response to being asked about a payment of £308.26 to Egg that is shown on one of the bank statements that was in evidence. The Applicant submits that the particular payment had not been raised by HMRC before the hearing, and emerged for the first time when he was cross-examined on this entry. Accordingly, he had no prior notice that the Egg payment would become a matter of significance and had no opportunity to prepare supporting documentation in response.

35. The Egg payment itself is not of any particular significance to the substantive issues in the appeal; it is, however, relied upon by the FTT in the context of its assessment of the Applicant's credibility.

36. In all the circumstances, I am minded to accept that the Applicant could not reasonably have been expected to realise that he would want or need to present evidence which he submits is relevant to the Egg payment until after he had been cross-examined on this payment at the December 2025 hearing. I do have some concerns as to why he did not then apply for this evidence to be admitted before the March 2026 hearing, and he has not provided any explanation for this delay. Nevertheless, the FTT's conclusions on the Applicant's credibility were of significance throughout the FTT Decision, and whilst I am not necessarily persuaded that the Loan Documents would probably have an important influence on the outcome of the appeal as a whole, I have concluded that it is in accordance with the overriding objective to admit the Loan Documents for the purpose of considering whether to grant permission to appeal.

Bank account statements for account number 6645

37. The Applicant explains that the account 6645 statements only came to light on 7 September 2026 when he received a call from someone named Paula who explained that she had been asked to clear some offices and archives for Strauss Phillips & Co, informing him

that the firm's London office had closed and she had found two boxes bearing his name. The account 6645 statements were in one of them.

38. The Applicant submits that they would have an important influence on the outcome – they relate to the periods under assessment in this appeal, covering the years 1998 to 2003 (whereas HMRC had only obtained bank statements for 2006 to 2011), and he submits that account 6645 was the only trading account in existence for these years. Account 2653 did not exist until February 2005; and the only other accounts held by the Applicant were a client premium account 7983 and a joint personal account with his wife, account 8789, neither of which received business trading income. He submits that the continuity basis assumed a level of pre-sale income that the account 6645 statements show never existed – the bank statements represent the very evidence that he was unable to produce at the hearing despite his sustained efforts to obtain them.

39. The Applicant has provided a copy of all of the account 6645 statements, as well as a schedule which he has prepared setting out what he says are the private and non-trading credits into the account.

40. The account 6645 statements are a large amount of new evidence. However, I am not satisfied that the Applicant has shown that these bank account statements could not have been obtained with reasonable diligence for use at the hearing. No contemporaneous documentary evidence has been produced of any efforts which have previously made by the Applicant to obtain these bank statements.

41. The Applicant says he has been attempting to obtain these bank statements from Barclays for 11 years and that on each occasion Barclays advised him that statements for the period in question were no longer available. I have not been provided with any documentary evidence of these exchanges with Barclays. The statement that he had been trying for 11 years is inconsistent with his overall approach to obtaining evidence and providing it to HMRC: his own evidence was that in his view the investigation into his tax affairs was driven by malicious and improper motives arising from his success in annulling the bankruptcy in 2008, this coloured his attitude towards HMRC's investigation and it was the reason why he did not supply information to HMRC when it was requested (FTT[229]). Following the assessments in 2015 he thought that there was little point in providing HMRC with further information at that stage (FTT[232]). His relationship with HMRC changed when Officer Wright became involved, and he felt able to supply HMRC with further information concerning the sale of the business which he did in March 2022 (FTT[233]).

42. The timing of the Applicant's attempts to obtain copies of these statements from Barclays Bank is likely to have affected whether or not Barclays Bank was able to produce such statements – there is a clear difference between asking for bank statements for 1998 to 2003 in 2008 or 2009 (after the enquiries were opened), 2015 (after the assessments were issued) and 2022 (after Officer Wright became involved).

43. Furthermore, the Applicant's own account is that the account 6645 statements were contained in a box with his name on it at the offices or archives of Strauss Phillips & Co. The Applicant has not provided any evidence that he had previously contacted the firm to check if they held any copies of these bank statements for the periods in issue, and this would have been an obvious and straightforward step to take given that account 6645 is in the name of the firm.

44. I regard this as sufficient reason to refuse to admit the account 6645 statements.

45. I have, however, also considered the second and third *Ladd v Marshall* conditions having regard to the statements themselves and taking into account the conclusions in the FTT Decision about the banking arrangements.

46. The account 6645 statements are clearly relevant evidence – they are for a bank account operated by the Applicant in 1998 to 2003, which are years for which HMRC have issued discovery and VAT assessments, and where HMRC have done so by reference to evidence from bank statements for subsequent years applying the principle of continuity. They are also apparently credible, in that I have no reason to doubt that they are copies of what they purport to be, namely bank statements issued by Barclays Bank for account number 6645 in the name of Strauss Phillips & Co.

47. However, I have significant concerns as to the influence that they would have had on the result of the case. As stated above, they are relevant; and it is agreed that account number 2653 was not opened until 2005, ie after the period covered by these bank statements. My concerns arise from:

(1) whilst the Applicant submits that account 6645 was the only trading account in existence for the relevant years and that other accounts he held did not receive business trading income, the FTT Decision did not make such a finding. It is not therefore established that all business income for this period was only received in this account; and

(2) the Applicant has produced a schedule identifying those credits in these statements which he submits were not connected with the Applicant's trading activities. Those credits total £587,145.50. Bearing in mind that account 6645 is in the name of the business, and that the Applicant held a joint bank account with his wife, it cannot be assumed that these "private or non-trading funds" would be accepted as such, either by HMRC or the FTT. They include mortgage funds, credit card cheques, loans and what are said to be private funds of £196,756.38 (some of which are transfers from the joint bank account).

48. These matters illustrate the potential unfairness and prejudice to HMRC of deciding to admit new evidence at such a very late stage. They are not the reason for my refusing to admit. They do, however, reinforce my conclusion that it is in accordance with the overriding objective to refuse to admit the account 6645 statements.

GROUND OF APPEAL

49. The headings which I use below in relation to each ground of appeal are those used by the Applicant.

50. Many of the reasons advanced focus on individual paragraphs, numbers and cross-references in the FTT Decision. The Applicant relies, eg, in Ground 8 on an inaccurate cross-reference and in Ground 19 on an arithmetical error. The FTT Decision is a total of 94 pages. When considering whether it is arguable that the FTT made an error of law which was material to its decision I have considered the FTT Decision in its entirety.

51. The grounds on which the Applicant relies involve wide-ranging challenges to case management decisions which have been made by the FTT and challenges to findings of fact made by the FTT. The approach which is to be taken by appellate courts or tribunals to such challenges is well-established.

Appeals regarding case management decisions

52. In *HMRC v Ingenious Games LLP* [2014] UKUT 0062 (TCC), Sales J (as he then was) stated at [56]:

“The proper approach for the Upper Tribunal on an appeal regarding a case management decision of the FTT is familiar and is common ground. The Upper Tribunal should not interfere with case management decisions of the FTT when it has applied the correct principles and has taken into account matters which should be taken into account and left out of account matters

which are irrelevant, unless the Upper Tribunal is satisfied that the decision is so plainly wrong that it must be regarded as outside the generous ambit of discretion entrusted to the FTT: *Walbrook Trustees v Fattal* [2008] EWCA Civ 427, [33]; *Atlantic Electronics Ltd v HM Revenue and Customs Commissioners* [2013] EWCA Civ 651, [18]. The Upper Tribunal should exercise extreme caution before allowing appeals from the FTT on case management decisions: *Goldman Sachs International v HM Revenue and Customs Commissioners* [2009] UKUT 290 (TCC), [23]-[24].

53. In *BPP Holdings & ors v HMRC* [2017] UKSC 55, the Supreme Court had to consider whether a barring order made by the FTT against HMRC for a failure to comply with directions was justified. Lord Neuberger stated at [33]:

“...the issue whether to make a debarring order on certain facts is very much one for the tribunal making that decision, and an appellate judge should only interfere where the decision is not merely different from that which the appellate judge would have made, but is a decision which the appellate judge considers cannot be justified. In the words of Lawrence Collins LJ in *Walbrook Trustee (Jersey) Ltd v Fattal* [2008] EWCA Civ 427, para 33:

“[A]n appellate court should not interfere with case management decisions by a judge who has applied the correct principles and who has taken into account matters which should be taken into account and left out of account matters which are irrelevant, unless the court is satisfied that the decision is so plainly wrong that it must be regarded as outside the generous ambit of the discretion entrusted to the judge.”

In other words, before they can interfere, appellate judges must not merely disagree with the decision: they must consider that is unjustifiable.”

Challenges to findings of fact and evaluation of those facts

54. In *FAGE UK Ltd v Chobani UK Ltd* [2014] EWCA Civ 5 Lewison LJ stated at [114]:

“Appellate courts have been repeatedly warned, by recent cases at the highest level, not to interfere with findings of fact by trial judges, unless compelled to do so. This applies not only to findings of primary fact, but also to the evaluation of those facts and to inferences to be drawn from them... The reasons for this approach are many. They include:

- i) The expertise of a trial judge is in determining what facts are relevant to the legal issues to be decided, and what those facts are if they are disputed.
- ii) The trial is not a dress rehearsal. It is the first and last night of the show.
- iii) Duplication of the trial judge’s role on appeal is a disproportionate use of the limited resources of an appellate court, and will seldom lead to a different outcome in an individual case.
- iv) In making his decisions the trial judge will have regard to the whole of the sea of evidence presented to him, whereas the appellate court will only be island hopping.
- v) The atmosphere of the courtroom cannot, in any event, be recreated by reference to documents (including transcripts of evidence).
- vi) Thus even if it were possible to duplicate the role of the trial judge, it cannot in practice be done.”

55. That the weight to be given to particular evidence is a matter for the first instance decision-maker was emphasised by Lord Millett in *Begum v London Borough of Tower Hamlets* [2003] UKHL 5, [2003] 2 AC 430 at [99]:

“The court cannot substitute its own findings of fact for those of the decision-making authority if there was evidence to support them; and questions as to the weight to be given to a particular piece of evidence ... are for the decision-making authority and not the court.”

56. In *Volpi v Volpi* [2022] EWCA Civ 464, [2022] 4 W.L.R. 48, in dismissing an appeal against findings of fact, the Court of Appeal emphasised that it was not for an appeal court to come to an independent conclusion as a result of its own consideration of the evidence; the question is whether the trial judge's conclusion was rationally insupportable. Lewison LJ said:

“2. The appeal is therefore an appeal on a pure question of fact. The approach of an appeal court to that kind of appeal is a well-trodden path. It is unnecessary to refer in detail to the many cases that have discussed it; but the following principles are well-settled:

i) An appeal court should not interfere with the trial judge's conclusions on primary facts unless it is satisfied that he was plainly wrong.

ii) The adverb "plainly" does not refer to the degree of confidence felt by the appeal court that it would not have reached the same conclusion as the trial judge. It does not matter, with whatever degree of certainty, that the appeal court considers that it would have reached a different conclusion. What matters is whether the decision under appeal is one that no reasonable judge could have reached.

iii) An appeal court is bound, unless there is compelling reason to the contrary, to assume that the trial judge has taken the whole of the evidence into his consideration. The mere fact that a judge does not mention a specific piece of evidence does not mean that he overlooked it.

iv) The validity of the findings of fact made by a trial judge is not aptly tested by considering whether the judgment presents a balanced account of the evidence. The trial judge must of course consider all the material evidence (although it need not all be discussed in his judgment). The weight which he gives to it is however pre-eminently a matter for him.

v) An appeal court can therefore set aside a judgment on the basis that the judge failed to give the evidence a balanced consideration only if the judge's conclusion was rationally insupportable.

vi) Reasons for judgment will always be capable of having been better expressed. An appeal court should not subject a judgment to narrow textual analysis. Nor should it be picked over or construed as though it was a piece of legislation or a contract.”

57. I have followed this approach when making my decision.

Ground 1 - Inadequate and internally inconsistent reasoning from involvement to beneficial ownership

58. The Applicant identifies that the FTT had concluded at FTT[476] that he had remained in operational and strategic control after 1 March 2003 and was the beneficial owner of all income generated by the business. He submits that the FTT's findings did not point uniformly to ownership, and that the matters relied upon at FTT[473] could support operational involvement but the FTT “was required to explain the inferential route from involvement or control to beneficial entitlement to every receipt and profit” (A[22]). He submits that rejecting his explanation was not, without more, positive proof of HMRC's case and that the contemporaneous evidence required express engagement, referring at A[25] to “Wage slips recorded employment by companies associated with Mr Dunne; Bangkok bank statements recorded withdrawals abroad; the bankruptcy material determined status in bankruptcy rather

than beneficial ownership of the business; VAT deregistration was consistent with the Applicant ceasing to trade as principal; and emails were capable of reflecting transition, employment or contractor activity. None of those matters was logically equivalent to proof that the Applicant beneficially owned every receipt.”

59. This ground of appeal involves wide-ranging challenges to findings of fact made by the FTT, inferences drawn from those findings and its evaluation of those findings.

60. The Applicant submits that the FTT was “required to explain the inferential route from involvement or control to beneficial entitlement to every receipt and profit” (A[22]) and failed to give “document-specific reasons” for rejecting the sale agreement (A[28]).

61. These criticisms misstate the exercise which is to be undertaken by a fact-finding tribunal. The FTT was required to make findings of fact on the basis of its assessment of all of the evidence before it, taking account of all of the submissions of the parties. The FTT should then, when making those findings, explain its reasons for its findings. This does not involve expressly addressing every page of evidence, but the FTT should explain how it has reached its conclusions, the evidence on which it relies and its reasons for not accepting or relying upon evidence which may support a different conclusion.

62. Here, the FTT has more than fulfilled this task.

63. At FTT[272] the FTT identified that it would consider the Applicant’s involvement with the business after May [*sic*] 2003 (which from the context and from the exercise subsequently undertaken should have referred to March 2003) and it did this from FTT[377] to [480]. The FTT set out at FTT[385] its approach to the Applicant’s evidence, and also HMRC’s submissions (which the FTT considered to be accurate) that the Applicant had ample opportunity to provide information regarding the sale of the business to HMRC since 2008 yet substantive information was not submitted until 18 March 2022, rejecting the Applicant’s reasons for this state of affairs. The FTT then considered the relevant evidence at FTT[398] to [470], and this included setting out whether its findings or conclusions were consistent with both parties’ submissions or whether they weighed in one party’s favour. The FTT identified at FTT[471] that there was “no single piece of evidence which conclusively resolves the degree of involvement by the appellant in the business after 1 March 2003”; it considered the proven and relevant facts, factored in matters including the Applicant’s failure to provide timely information to HMRC, his confused evidence and his attempt to mislead HMRC in the letter of 18 March 2022.

64. The FTT’s conclusion on the entitlement to income and profits of the business was then that the Applicant “was, essentially, in operational and strategic control of the business after 1 March 2003 notwithstanding its purported sale. In practical terms, little had changed, and we find as a fact that he was the beneficial owner of the income generated by the business after that date” (FTT[476]).

65. It is not arguable that this conclusion is one that no reasonable tribunal could have reached.

66. Addressing the particular reasons relied upon by the Applicant, including his submission that the FTT’s findings did not point uniformly to ownership:

(1) Wage slips which recorded employment by companies associated with Mr Dunne – They were addressed at FTT[417] to [423], with the FTT identifying that they are “very modest amounts”, and inconsistent with the Applicant’s lifestyle; and that the Applicant would have needed to have additional income to support that lifestyle (FTT[421]). Further, he would have had time to undertake other paid work, including returning to the UK and operating the business (FTT[423]).

(2) Barclays bank accounts – The FTT accepted at FTT[407] that operation of account 2653 by the Applicant was not conclusive of ownership of that income. However, the FTT then stated at FTT[408] that the fact that the Applicant was identified in the letter of 10 October 2011 as being sole signatory to the account weighed slightly in favour of HMRC’s narrative that the money in the account was beneficially his, that this was the simpler explanation and entirely consistent with his continuing involvement as owner and controller.

(3) VAT deregistration – The FTT made findings in relation to the VAT numbers, applications to deregister and cancellation of VAT numbers at FTT[87] to [96]. They included that the Applicant had made a request for the deregistration of the 584 VAT number on 27 February 2003 on the basis that he was emigrating from the UK. Whilst at A[21] the Applicant submits that at FTT[415] the FTT found that VAT deregistration was consistent with the Applicant no longer being principal, the FTT’s conclusion in that paragraph was that VAT deregistration told them nothing about his involvement in the business after March 2003, referring to HMRC’s case as including that the Applicant was de facto reaping the benefits of the business after that date as if he had remained as principal and “Deregistration tells us nothing about that”.

(4) Existence of Eposis and negative digital footprint – The FTT accepted that the Eposis accounts demonstrated the existence of that entity (FTT[425] to [426]) and Dr Young’s evidence (which was effectively accepted by Officer Doherty and Mx Lunt) that the lack of digital footprint did not mean that the relevant entities did not exist (FTT[427] to [428]).

(5) Client correspondence – The FTT accepted at FTT[452] that the client letters were consistent with the Applicant’s version of events; and that they are equally consistent with HMRC’s narrative.

(6) Bangkok bank statements recording withdrawals abroad – At FTT[424] the FTT found that these statements simply show that on certain dates money was extracted abroad, and that the FTT did not know whether this was by the Applicant or someone to whom he had lent his card (referring to him being reasonably comfortable allowing others to operate the 2653 bank account). The FTT found they do not show that he was so consistently present outside the UK that he was unable to come back to the UK to run the business

(7) Bankruptcy material – The FTT made findings in relation to the bankruptcy at FTT[137] to [146], and then at FTT[430] to [431] explained why it rejected the Applicant’s assertions that the judge had confirmed that the figures in his tax returns were correct and that he was non-UK tax resident. The FTT did not find that the various bankruptcy proceedings supported the Applicant being the beneficial owner. At A[25] the Applicant refers to the bankruptcy material as determining status in bankruptcy rather than beneficial ownership of the business. The FTT Decision does not state otherwise.

67. These paragraphs are part of the overall weighing of the evidence by the FTT.

68. The Applicant submits that there is “internal tension” within the FTT Decision, submitting that the FTT does not explain how the findings at FTT[407], [415], [418], [425] to [426], [427] to [428] and [452] were overcome by evidence establishing beneficial entitlement. But this is exactly what the FTT Decision does – having identified the relevant issue, the FTT considered the relevant evidence, and these paragraphs all form part of that consideration and overall assessment. Moreover, some of the paragraphs to which the Applicant refers, when read in context, are themselves not entirely supportive of his position, notably FTT[407] which is immediately followed by consideration of other evidence in relation to the bank accounts and

FTT[415] where VAT deregistration was said to tell the FTT nothing about the Applicant's involvement in the business or whether he was entitled to reap the benefits of the business.

69. The Applicant submits that the FTT's finding at FTT[408] that the Applicant's signatory status weighed in favour of continued ownership is unsafe for reasons set out in Ground 4. That finding is said to rest on a finding at FTT[403] that there was "no independent corroboration" of the reason for that arrangement, whereas the FTT had at FTT[127] quoted an email from Mr McDonald independently confirming that point. This "internal inconsistency" is said to be material to this ground. The reasons for this were set out more fully in the context of Ground 4 and I address them there. At this stage it is sufficient to record that I have concluded that Ground 4 does not disclose an arguable error of law.

70. The Applicant submits that the factors summarised at FTT[473] principally established involvement, access, signatory status and client work and that such matters could support operational involvement. That paragraph of the decision is a summary of a detailed analysis conducted by the FTT; and included at FTT[473(4)] that evidence showed the Applicant was regularly in the UK and working in the business and at FTT[473(7)] that he was held out as principal long after 1 March 2003. The FTT was looking at all of the evidence in the round; and it not arguable that, just because some matters could be consistent with operational involvement in the business rather than ownership, the conclusion reached by the FTT was rationally insupportable. It is very clear that the weight to be given to various evidence is a matter for the FTT.

71. In his application dated 10 September 2026 to introduce the Loan Documents as additional evidence (which is primarily said to be relevant to the FTT's assessment of the Applicant's credibility), the Applicant submits that this new evidence is also relevant to the FTT's finding at FTT[469] that the Applicant's claim to have lived in Dublin was uncorroborated. The Loan Documents include a letter from Arrow Global dated 14 November 2011 addressed to the Applicant at an address in Dublin.

72. The FTT's finding was as follows:

"469. The Dublin phase. We accept that the appellant used a Dublin address for correspondence after 1 March 2003. We do not accept his oral testimony, which is uncorroborated, that he lived in Dublin. Nor do we accept that this phase of his life went anywhere close to establishing that he was non-UK tax resident."

73. The FTT thus expressly accepted that the Applicant used a Dublin address for correspondence; it did not accept that he lived in Dublin. The Applicant has now produced four documents, three of which are correspondence addressed to the Applicant after 1 March 2003. One letter, that of 14 November 2011, is addressed to a property in Dublin. The other two, letters of 7 October 2013 and 17 October 2014, are addressed to him at a London address. It is not arguable that this letter of 14 November 2011 discloses an arguable error of law in the FTT Decision. The FTT accepted that he used a Dublin address for correspondence; a letter from Arrow Global does not tell us anything about where the Applicant was living.

74. It is clear from the authorities to which I have referred above that appellate courts should not interfere with findings of fact by trial judges (including the evaluation of those facts and inferences to be drawn from them) unless compelled to do so. The reasons for this approach include not only the expertise of the trial judge, but also that the trial judge, here the FTT, will have regard to the whole of the sea of evidence, whereas an appellate tribunal would only be island hopping.

75. The Applicant's challenges on Ground 1 are inviting me to island hop amongst the sea of evidence. The FTT recognised that its findings did not point uniformly to ownership and

that there was no single determinative piece of evidence; the FTT then engaged with the evidence and reached its conclusions, finding that the matters relied upon by the Applicant were outweighed by other evidence.

76. It is not arguable that the conclusions which the FTT reached were not reasonably open to it; nor is it arguable that the FTT's conclusions were not adequately reasoned.

77. Finally, the Application states that the FTT PTA Decision does not resolve who the purchaser and subsequent operator was. That was not the function of the FTT PTA Decision; and in any event the appealable decision is the FTT Decision (not the FTT PTA Decision) and the FTT Decision makes clear the FTT's conclusions on the Applicant's operation of the business and his beneficial ownership of the income generated from the business.

78. This ground of appeal not only raises no arguable error of law but in my judgment would be bound to fail. I not only refuse permission for this ground but am satisfied that it is totally without merit. I certify this for the purposes of Rule 22(4A) of the Upper Tribunal Rules such that the Applicant may not request that this decision be reconsidered at a hearing.

Ground 2 - Failure to determine who carried on the trade after March 2003 and failure adequately to determine discovery

79. On the basis of the reasons advanced by the Applicant under this ground, I consider that Ground 2 involves two different grounds of appeal:

(1) Ground 2a – The ownership conclusion reached by the FTT did not answer the separate and anterior question of who in fact carried on the trade after March 2003, in what legal capacity that trade was carried on, and why the profits generated by that trade accrued beneficially to the Applicant rather than to the purchaser or operating entities (A[30] to [33]); and

(2) Ground 2b – The FTT erred in law in its conclusions on the validity of the discovery assessments. There are two alternative challenges:

(a) the FTT's findings as to what Officer Harris believed and why rest on the same category of untested material, Officer Harris' own account, that the FTT had expressly declined to treat as primary evidence of her process, and this tension is inadequately explained on the face of the FTT Decision (based on the supplementary submissions dated 4 September 2026); and

(b) the FTT's approach to and conclusions on the discovery issue required "a distinct temporal analysis" which included asking what the assessing officer knew at the time and what new information subsequently appeared, and whether a bare handover of a file from Officer Dyce to Officer Harris was capable of generating a fresh appearance of insufficiency (A[34] to [36]).

Ground 2a

80. Having considered the reasons advanced in support of Ground 2a, I consider that they have been addressed in my decision on Ground 1.

81. The FTT concluded that the Applicant was in operational and strategic control of the business after 1 March 2003, and was the beneficial owner of the income generated by the business (FTT[476]). The FTT was not required to address why arrangements were entered into in a particular way, or the relevant legal capacity.

82. The conclusion reached by the FTT answered the relevant issue and it is not arguable that the FTT made an error of law.

Ground 2b

83. Ground 2b involves a challenge to the FTT's decision on the validity of the discovery assessments and the VAT assessments.

84. The Applicant's supplementary submissions of 4 September 2026 are said to add to the reasons for Ground 1. However, the reasoning in those submissions, and the cross-references to A[34] to [36], make it clear that these further submissions relate to Ground 2, and to what I have termed Ground 2b. The supplementary submissions relate to the evidential basis on which the FTT found that Officer Harris held the requisite belief, referring to the fact that Officer Harris did not attend the hearing and was not cross-examined and challenging the basis on which the FTT concluded that the subjective test for making a discovery was met.

85. The FTT made findings in relation to the issuing of the assessments at FTT[161] to [196]; and at FTT[264(31)], in its summary of the Applicant's submissions, the FTT identified that the Applicant was arguing that Office Dyce had all the information available to Officer Harris sometime before the assessments were made and should have assessed at that time.

86. The FTT addressed the discovery assessments at FTT[277] to [339] and correctly identified that the concept of an officer discovering something involves an actual officer having a particular state of mind in relation to the relevant matter which involves the application of a subjective test; and it also involves that officer's state of mind satisfying an objective test (FTT[281]). The FTT considered the case law on what was required to satisfy the subjective test and the objective test; and this included *Charlton* (endorsed by the Supreme Court in *Tooth*) that all that is required is that it has newly appeared to an officer, acting honestly and reasonably, that there is an insufficiency in an assessment, and that "can be for any reason" (FTT[283], citing *Charlton* at [37]).

87. The FTT then considered the basis of the discovery assessments issued by Officer Harris, recorded the information which she had available to her and relied upon, and concluded that both the subjective test and the objective test were met in relation to Officer Harris (FTT[301] to [312]).

88. The alternative submissions relied upon by the Applicant are not arguable.

89. In the supplementary submissions the Applicant referred to the FTT having concluded at FTT[301] that "Officer Harris clearly believed that the information available to her pointed in the direction of there being an insufficiency of tax. That is for all the reasons set out in her letter of 11 March 2015." The Applicant submits that there was no note, minute or other contemporaneous record of Officer Harris's internal reasoning at the time the belief is said to have formed, and that the sole evidential source was the letter written by Officer Harris to explain a decision already reached. He submits that the FTT's finding rests on untested material that the FTT (at FTT[54]) had expressly declined to treat as primary evidence of her process.

90. The FTT's approach to the witness statement of Officer Harris was recorded at FTT[54] in the following terms:

"54. As regards Officer Harris, we have considered the contents of her statement only where it has been submitted to us that it is consistent with contemporary documentary evidence. We have not used it as primary evidence of the process through which the officer went when coming to her discovery and best judgment assessments."

91. The FTT was not, however, deciding that it would not place weight on or consider letters which had been written by Officer Harris.

92. The FTT set out Officer Harris' involvement as assessing officer for both income tax and VAT at FTT[161] to [196]. The FTT referred in detail to the correspondence from Officer

Harris, and this included her letter of 11 March 2015 to the Applicant setting out the evidence on which HMRC's suspicions of fraud were based, and the conclusions reached, including the conclusions in relation to the under-assessment of income tax and VAT for all years from 1994/95 to 2013/14. Her analysis of the payments to and from various bank accounts was included with that letter.

93. In its consideration of whether Officer Harris had made a discovery the FTT:

- (1) summarised the information which Officer Harris had and relied upon at FTT[292];
- (2) found it was clear from the letter of 11 March 2015 that Officer Harris took this information into account when reaching her conclusions; and
- (3) identified her misgivings, eg that there was little or no evidence of the assertions made by the Applicant or the firm to verify the statements made in correspondence.

94. The FTT then reached its conclusion at FTT[301] that the subjective test was met in relation to Officer Harris.

95. The Applicant states he recognises that a contemporaneous letter may in principle be treated differently from a later witness statement prepared for litigation but that he is advancing a narrower point; that the FTT's finding as to what Officer Harris believed and why rest on the same category of untested material, Officer Harris' own account, that the FTT had expressly declined to treat as primary evidence of her process, and this tension is inadequately explained on the face of the FTT Decision.

96. I do not accept these submissions. The conclusion reached by the FTT as to the actual state of mind of Officer Harris is a conclusion which the FTT was entitled to reach based on the evidence before it. The FTT had identified that Officer Harris had not attended the hearing and was not able to be cross-examined, such that it did not treat any explanation in her witness statement as primary evidence of her process. This does not, however, require it to disregard contemporaneous correspondence; here, the letter by Officer Harris was written on 11 March 2015. The FTT did test the conclusions set out by reference to information available when considering whether the objective test was met, and was entitled to conclude that the letter written by Officer Harris was evidence of her subjective belief.

97. It is not arguable that the FTT made an error of law in its conclusions as to the actual state of mind of Officer Harris. This conclusion responds to the supplementary submissions.

98. The reasons put forward by the Applicant in the Application relate to the handover of the file from Officer Dyce to Officer Harris.

99. The FTT confirmed that there was a discovery by Officer Harris even if the information was also available at an earlier date to Office Dyce (FTT[310]).

100. The Applicant submits that a "genuine discovery" requires that it newly appeared to the officer concerned, acting honestly and reasonably, that there was an insufficiency; and it is a different question whether a "bare administrative handover" of a file without any change in the underlying material is capable of generating a fresh appearance of insufficiency at all; and that the FTT did not engage with what he submits is the narrower distinction between a bare administrative handover of a file and a formal reassignment of an unaltered position.

101. It is not arguable that the FTT made an error of law. The issue before the FTT was whether the discovery assessments were validly issued by Officer Harris, and the FTT concluded that they were. This was sufficient to deal with this aspect of the appeal in HMRC's favour. The Applicant's submissions in relation to Officer Dyce are not relevant to the objective

and subjective questions in relation to Officer Harris; and the authorities make it clear that it is the state of mind of Officer Harris that is relevant.

102. The FTT did not make a finding that Officer Dyce had made a discovery; or that he had refrained from assessing because responsibility for the file was administratively reassigned to Officer Harris. Even if it had made such a finding or findings, this would not assist the Applicant in relation to the validity of the discovery assessments. In *Tooth* the Supreme Court rejected the taxpayer's submission that once a discovery is made by one person it cannot be made again by another (at [78]), and agreed with HMRC's submissions that there is no good reason in principle to distinguish between various situations in which a first officer, who is allocated the self-assessment return to review, does not see or realise that it contains an under-assessment of tax; and one of these circumstances is described as the situation where the first officer reads the self-assessment carefully and finds the error but then goes on holiday, moves jobs or retires without issuing an assessment – when the file is reviewed by a second officer, that officer makes their own discovery of the error of assessment in the return and accordingly also has power to issue an assessment (at [81]).

103. It is not arguable that the FTT made an error of law in concluding that Officer Harris had made a valid discovery.

104. The Applicant submits that these submissions (as to the handover from Officer Dyce) were also material to the validity of the VAT assessments. No additional reasons are provided in support of this submission.

105. The FTT considered whether the VAT assessments were issued to the best of HMRC's judgement and whether they were issued in time at FTT[340] to [376]. The FTT recorded at FTT[358] that the Applicant challenged the assessments on the basis that the information on which they were based was available to Officer Dyce some time before the assessments were actually made. HMRC's submission was that the one-year period started in or around May 2014.

106. The burden of establishing that the assessments were made outside the one-year time limit was on the Applicant (FTT[362]).

107. The VAT assessments were issued on 17 April 2015. The FTT found that the firm had indicated in a letter of 17 April 2014 that it would make further representations in respect of the entities which had been sent information notices, that response was then received in June 2015, and that by May 2014 a number of substantive responses had been received from third party clients in response to information notices.

108. The FTT referred to the fact that Officer Harris had set out in the letter of 11 March 2015 a summary of HMRC's position, which included a summary of the reasons why HMRC believed that the Applicant was continuing to run the business after 2003. These reasons included that they had information that he was collecting fees from clients. This information had been obtained pursuant to the information notices issued on 20 March 2014.

109. The FTT concluded it was reasonable for the assessing officer to await the information sought by these notices before coming to a conclusion regarding the making of an assessment, and, having been told by the business on 17 April 2014 that they would write separately in relation to the entities that had been the subject of the notices, for her to await that response (FTT[367] and [368]). A variety of responses were received by clients or former clients between 28 March and 17 July 2014.

110. The FTT found that there was no single item of correspondence which attracted a hard deadline – the information “was dribbling in during March, April, May, June and July 2014”. The FTT accepted that it was Officer Harris' opinion that sufficient evidence had been gathered

by May 2014, and that it was not until then that there was sufficient weight of evidence from the accumulated information (FTT[373]. The FTT added:

“374. We also observe that given the onus is on the appellant to establish that the assessments were made outside the one-year time limit, he provided nothing other than a bald submission that the information was available to Officer Dyce well before the assessment was made. He did not take us to any of the foregoing information and make a detailed challenge to the assertion made by Officer Harris that it was not until May 2014 that she had sufficient information on which to base an assessment. He did not take us through any of the evidence that we have mentioned above.”

111. The FTT had correctly identified the one-year time limit, the burden of proof, the dates relied upon by HMRC and the information available to HMRC before and after the start of the relevant time period. The FTT then concluded that the Applicant had not established that the VAT assessments were made out of time.

112. The submissions relied upon by the Applicant in respect of the validity of the VAT assessments and the time limits do not disclose an arguable error of law.

113. Ground 2b does not raise an arguable error of law and permission to appeal is refused.

114. I have concluded that neither Ground 2a nor Ground 2b raise an arguable error of law, and permission to appeal on both limbs is refused. However, these grounds not only raise no arguable error of law but in my judgment would be bound to fail. I not only refuse permission for these grounds but am satisfied that they are totally without merit. I certify this for the purposes of Rule 22(4A) of the Upper Tribunal Rules such that the Applicant may not request that this decision be reconsidered at a hearing.

Ground 3 - Inadequately reasoned displacement of the contemporaneous sale and transfer evidence

115. The Applicant relies on the sale agreement dated 26 March 2003 and supporting contemporaneous transfer documents and communications. The Applicant submits that without a clearer statement of the mechanism by which a “genuine, unchallenged transfer of the business” gave way to continued beneficial entitlement in the Applicant to the whole of its income, the parties cannot understand the legal basis on which the documentary sale, though accepted as genuine, was treated as not determinative of ownership.

116. This is not arguable. The FTT did address both the sale agreement and the contemporaneous documentation/correspondence in the FTT Decision in the context of its analysis of the Applicant’s involvement in the business.

117. Having referred to its conclusions on the unreliability of the Applicant's evidence and having set out its approach to his evidence, the FTT then turned to what it considered to be the “relevant evidence”, and the first such evidence to which it turned was the sale agreement:

“398. The sale agreement. We accept that the sale agreement purports to sell the business to Mr Dunne. However, we also accept, as submitted by Mx Lunt that it has not been fully carried out in accordance with its terms, given that the business was not automatically transferred back to the appellant following Mr Dunne’s death. Furthermore, we also agree with HMRC’s case that simply because the business was sold does not automatically mean that the appellant was no longer involved in running it and enjoying the economic fruits generated by it. We too need to look at the operational reality rather than words on paper.”

118. The FTT thus said it needed to look at the operational reality, and it proceeded to do so. The FTT then considered the emails with Mr Dunne’s people (at FTT[399] to [413]),

recognising that they were contemporaneous documents and that the Applicant was discussing the business bank accounts and the VAT registration number with them in 2005 and 2006.

119. The FTT expressly and clearly took account of the evidence on which the Applicant relies. The weight it gave to this evidence was pre-eminently a matter for the FTT.

120. The Applicant submits that the FTT's reasoning does not identify "a legal basis on which a documentary transfer accepted as genuine can be displaced" (A[39]), and that the FTT did not find that the agreement was a sham. The Applicant further submits at A[40] that "Without a clearer statement of the mechanism by which a genuine, unchallenged transfer of the business gave way to continued beneficial entitlement in the Applicant to the whole of its income, the parties cannot understand the legal basis on which the documentary sale, though accepted as genuine, was treated as not determinative of ownership."

121. As to these submissions:

(1) HMRC did not plead that the sale agreement was a sham. Accordingly, it would not have been procedurally fair for the FTT to engage in consideration of whether the sale agreement was a sham and it did not do so.

(2) It is not the case that there was a "genuine, unchallenged transfer of the business". HMRC did challenge whether there had been an actual transfer of the operation of the business and the entitlement to the economic benefits of that business. This was at the heart of their case, and the summary of HMRC's submissions include:

"265. ... (15) ... As far as HMRC are concerned, the business continued to be operated by the appellant in the same way after 2003 as it had been operated, by him, before that date. In reality nothing changed.

...

(18) Even if ... the business was sold to Mr Dunne in March 2003, HMRC's view is that the appellant continued to operate and enjoy the economic benefits of it."

(3) The FTT was not required to determine an applicable legal mechanism. The issue was whether the income from the business was, beneficially, the income of the Applicant and that is the issue which was determined by the FTT.

122. The Application criticises the FTT PTA Decision for not having explained why the reasoning in the FTT Decision answered what the Applicant described as his "document-specific challenge". But the FTT agreed with HMRC there is no single piece of evidence which demonstrated the Applicant's ownership; and took account of the sale agreement alongside all of the other evidence.

123. As addressed fully in the context of Ground 1, the parties' submissions in relation to the Applicant's role in the business and his entitlement to income from the business were fully considered by the FTT. Appellate courts have been warned not to interfere with findings of fact made by fact-finding tribunals or the evaluation of those findings of fact unless compelled to do so. Here, it is not arguable that there can be any such compulsion. The FTT heard all of the evidence, made its findings, and then reached its conclusions having considered the relevant evidence and submissions, explaining its reasoning. There is no arguable basis on which these conclusions should be disturbed.

124. This ground of appeal not only raises no arguable error of law but in my judgment would be bound to fail. I not only refuse permission for this ground but am satisfied that it is totally without merit. I certify this for the purposes of Rule 22(4A) of the Upper Tribunal Rules such that the Applicant may not request that this decision be reconsidered at a hearing.

Ground 4 - Account 1089 2653, the Barclays evidence and the procedurally irregular non-service of the ruling

125. This ground of appeal relates to the FTT's refusal of an application made on 26 April 2026, after the submissions hearing in March 2026, to admit further evidence. The application was made to admit a letter from Barclays (which the Applicant had not received at that time) that confirmed that account 2653 was opened on 15 February 2005 and that its first transaction was on 24 February 2005 (the "Barclays letter").

126. On the basis of the reasons advanced in the Application, this ground is said by the Applicant to involve a connected procedural sequence:

(1) The Applicant submits that the chronology is significant, that the delays in sending to him the FTT's decision refusing his application (the "FTT Evidence Decision") meant he could not address any defect or seek an extension or review, and filed his application to the FTT for PTA against the FTT Decision without the ruling or the reasons. The Applicant submits the Barclays letter was relevant as it was independent confirmation of a precise opening date of which the FTT was not aware.

(2) Account 2653 was opened at the same bank, Barclays Bank, nearly two years after the sale, in a name which remained tied to the Applicant personally ("Mr Bradley Strauss T/As Strauss Phillips & Co"), while the Applicant's pre-sale bank accounts, 6645 and 7983, also remained open. He submits that if the business had genuinely passed to an independent purchaser, the natural expectation is that the purchaser would either continue to use existing arrangements or establish its own separate banking relationship, not that a further account would appear at the same bank under the seller's own name. He submits that the FTT does not address, still less explain, that distinguishing feature. This is said to be a free-standing reasons challenge.

(3) There is an internal inconsistency between the FTT's own findings of fact and its later reasoning. At FTT[127] the FTT quotes an email from Mr McDonald dated 14 January 2005 explaining that Eposix could not obtain its own UK bank account because none of its principals were UK tax resident, and recording that he had told the bank "we were using yours (personal)". That email is a contemporaneous, independent, third-party document, authored by the purchaser's own representative, which directly explains and corroborates the Applicant's account of why business bank accounts remained in his name after the sale. Yet at FTT[403], when assessing the significance of the Applicant's continuing signatory status, including on bank account 2653, the FTT states that there is no independent corroboration that the accounts were used for the purchaser's benefit. Those two findings cannot both be right. He submits that this inconsistency directly undermines the finding at FTT[408] that the Applicant's status as signatory "weighs slightly in favour of" the FTT's narrative of continued ownership, since that finding rests in part on the absence of independent corroboration which the FTT own facts section shows did in fact exist.

127. It is not arguable that, individually or as a connected procedural sequence, this ground identifies an error of law.

128. I need first set out the relevant chronology. From the FTT Decision, the FTT PTA Decision and the Application, the chronology was as follows:

(1) The substantive hearing of the evidence took place in December 2025 (the "December 2025 hearing") and closing submissions were heard in March 2026 (the "March 2026 hearing").

- (2) On 4 and 6 April 2026 the Applicant made applications in relation to account 2653 applying to make further submissions on this issue, and then sending those written submissions.
- (3) On 20 April 2026 Judge Popplewell decided that the application for permission to make those further submissions should be rejected (the “FTT Submissions Decision”).
- (4) That same day, the Applicant applied to the FTT for permission to appeal the FTT Submissions Decision.
- (5) On 26 April 2026 the Applicant applied to adduce further evidence from Barclays concerning accounts 2653 and 6645 (the “Barclays Evidence Application”). He did not at that time have, and thus send to the FTT, the further evidence.
- (6) On 29 April 2026 Judge Popplewell refused permission to appeal the FTT Submissions Decision.
- (7) On 2 May 2026 Judge Popplewell sent his decision refusing the Barclays Evidence Application (the “FTT Evidence Decision”) to the Tribunal for release to the parties. That decision was not in fact released to the parties until 20 July 2026.
- (8) On 3 May 2026, the Barclays letter was made available to the Applicant through online banking and he provided it to the Tribunal. It is not clear when this was provided to Judge Popplewell.
- (9) The FTT Decision was released on 6 May 2026.
- (10) The Applicant applied to the FTT for permission to appeal against the FTT Decision on 17 June 2026.
- (11) The Applicant made further representations to the FTT on 13 July 2026.
- (12) The FTT Evidence Decision was released to the parties on 20 July 2026.
- (13) The FTT released the FTT PTA Decision on 23 July 2026.

129. The Application states that the Barclays letter confirms that account 2653 was opened on 15 February 2005, and its first transaction was on 24 February 2005. The Applicant submits that there is nothing which indicates that the Barclays letter was considered before the FTT Decision was released and that the result of the delay in releasing the FTT Evidence Decision is that he did not know the Barclays Evidence Application had been refused, could not address any defect, and filed his application for permission to appeal without the ruling or its reasons.

130. There was clearly an administrative delay at the Tribunal, the result of which was that a decision made by the FTT before the release of the FTT Decision was not released until more than two months after that decision was released, by which time the Applicant had submitted his application for permission to appeal. This delay is unfortunate and (as Judge Popplewell stated in the FTT PTA Decision) regrettable, but I am not persuaded that it is arguable that this delay, or (if this was indeed the case) the Barclays letter not being sent to the FTT before it released the FTT Decision, resulted in or involved an error of law in the making of the FTT Decision, let alone that any error was material to that decision.

131. I have summarised below the reasons given by the FTT for the FTT Evidence Decision (which was attached as Appendix 9 to the FTT PTA Decision), the approach of the FTT and the potential relevance (or otherwise) of the Barclays letter.

132. In the FTT Evidence Decision Judge Popplewell followed the approach in *Denton v White* when deciding whether to give permission for new evidence to be admitted late. In the course of his decision:

(1) Judge Popplewell stated that the Applicant had the opportunity to obtain and produce these around December 2018, and in any event any introduction of new evidence should have been made before the date on which the hearing was listed to start; the application was made four and a half months after the commencement of the hearing. The delay was serious and significant.

(2) He considered the reasons for the delay, the relevance of the bank statements and all the circumstances of the case, including the prejudice to the parties.

(3) No corroboration has been provided of the allegations made by the Applicant concerning the bank ([22]), or of his formal requests for documentation or that the bank had failed to properly process his request ([23]).

(4) The decision refers at [25] to the Applicant stating that recent clarification from the bank indicates that the account 2653 was opened in or around February 2005, but that no documentary evidence of that clarification was provided. The Applicant was already on notice that applications must contain documentary evidence.

(5) At [31] the FTT placed significant weight on the unfairness of leaving this open ended and deferring production of the decision in the appeal to an unknown date in the future.

(6) The FTT rejected the submission that it was only at the end of the March 2026 hearing that the Applicant understood the relevance of the date of opening of account 2653; he was on notice that the account was being used as the basis for the assessments from March 2015; “the importance of that bank account was obvious”. He had only requested the evidence from the bank very recently when he should have requested it many years ago.

(7) The Applicant had provided no evidence to support his assertions that the bank would provide the information requested. By seeking to introduce this now, it will prejudice HMRC ([39]).

(8) On relevance, the FTT said at [41] that there is evidence in the bundle of the dates of opening, and the FTT had taken that into account when reaching its decision; there was no need to wait for further information from the bank. The dates of closing were wholly irrelevant to the presumption of continuity.

(9) The FTT considered the particular importance of the need for litigation to be conducted efficiently and at proportionate cost and for the statutory time limits to be respected. It would not be efficient to allow the Applicant an open-ended time within which to bring further evidence which is of merely peripheral relevance and which may further delay the decision.

(10) The balance of prejudice weighs overwhelmingly in favour of rejecting the application.

133. The Applicant submits that the relevance of the Barclays letter must be assessed against what the FTT had before it, and sets out the evidence and findings of the FTT.

134. In particular, the FTT referred at FTT[401] to it being the Applicant’s evidence that account 2653 was not set up until after he had left the firm, stating that this was corroborated by a bank statement which appeared to show that it was set up “sometime between December 2004 and 10 March”, by an exchange of emails with Mr McDonald and by the first entry into the account on 24 February 2005. At FTT[520] the FTT rejected the argument that this late opening undermined the presumption of continuity methodology. The Applicant accepts that the Barclays letter does not establish a fact that the FTT was unaware of; its contribution is

narrower, being independent confirmation of a precise opening date whereas the FTT's finding had been expressed only as a range.

135. It is not arguable that the FTT's refusal of the application or the delay in the release of the FTT Evidence Decision involved the making of an error of law in the FTT Decision which was material to that decision.

136. The Application is an application for permission to appeal the FTT Decision itself, not the FTT Evidence Decision. The FTT did not expressly address the *Ladd v Marshall* conditions which are relevant to the consideration of whether to admit new evidence, instead focusing on the lateness, the reasons for that lateness, prejudice, relevance and the need for litigation to be conducted efficiently. However, it is very clear from the FTT Evidence Decision that the Applicant had not provided any corroboration of his formal requests for documentation, and that he had only requested the evidence recently whereas it should have been requested many years ago. Whilst not expressed in these terms, it is clear that the FTT was not satisfied that the Barclays letter could not have been obtained with reasonable diligence for use at the trial. The result of this decision was that the Barclays letter was not taken into account in the making of the FTT Decision. However, it is not arguable that any error of law in the approach to deciding whether to admit the Barclays letter was material to the FTT Decision, ie the decision to which the Application relates.

137. The FTT accepted that the evidence which was before it appeared to show that account 2653 was set up sometime between December 2004 and 10 March 2005, ie on a date after the date of the sale agreement. The Applicant has now produced evidence (late) of a particular date; but there is no significance to the difference between the account being opened in, say, December 2004 or March 2005 for this purpose and it is immaterial that the Barclays letter would support the account having been opened on 15 February 2005.

138. In the FTT Decision the relevance is not the particular date, but by whom the bank account was operated (FTT[403]). The FTT found that the business was "beholden to the appellant to operate the account" (FTT[404]), the Applicant was the signatory and he actively signed cheques and operated the account (FTT[406]).

139. Whilst therefore the Barclays letter is independent evidence that the date of opening was 15 February 2005, a date which Officer Harris had referred to in correspondence but the source for which the FTT had not been able to identify, I am not persuaded that this particular date (which was within the range found by the FTT) is of any material relevance to the decision.

140. This limb of Ground 4 does not disclose an arguable error of law in the decision, let alone one that was material to that decision.

141. The second limb, described by the Applicant as a further, distinct point, is largely made by reference to the FTT Evidence Decision, although the Application states that this submission does not depend on the admission of the Barclays letter itself. The Applicant challenges the FTT's reasoning at FTT[520], and submits that if a business had passed to an independent purchaser, the natural expectation is that the purchaser would continue to use existing banking arrangements or establish its own separate banking relationship, not that a further account would appear at the same bank under the seller's own name.

142. I am not persuaded that this identifies any arguable error of law.

143. FTT[520] is within the section of the FTT Decision which addresses the parties' submissions on quantum, and in particular in relation to the tax years 2005/6 and 2006/7:

"516. For these two years therefore, we are prepared to reduce the 2006/2007 income by £132,000 (for Focus) and £11,202.61 (verifiable contras) and the

2005/2006 income by £1,937 (verifiable contras) and £242.18 (already conceded by HMRC as an opening balance).

517. This means that for those two years, the income/turnover is £312,702.39 for 2006/2007, and £286,436.82 for 2005/2006.

518. Like HMRC, we have used the average of these two figures, rounded down to £299,000, for the income/turnover for the previous tax years i.e. those between 1994/1995 to 2003/2004, further scaled back by RPI.

519. Like HMRC, we consider the presumption of continuity to be a reasonable way of assessing the income for those periods given the finding that the business had continued after 2003 in the same way in which it had been carried on before.

520. The appellant suggest that this is an inappropriate method of calculation given there had been a discontinuance in 2003. However, we do not think that there was. He also suggests that given that the bank account into which most of the money was paid was not opened until after he reportedly sold the business, it could not be used as the basis for income which was generated before it was opened. We disagree. It is clear, even on the appellant's case, that business income was paid into this account. The issue is the extent of that income. The appellant has not shown to us that it was not business income generated at the time when he was effectively acting as principal of the business. In those circumstances reducing the known amounts for 2005/2006 and 2006/2007, by RPI, for previous years, on the basis of the presumption of continuity is a reasonable and rational basis for computing the amounts for the years where there is no primary independent evidence of the appellant's income/turnover."

144. The Applicant's submission was that he had set up this bank account for the benefit of the purchaser as Mr Dunne's companies were not able to open a UK bank account. At FTT[520] the FTT addresses the Applicant's submission that given that the bank account into which most of the money was paid was not opened until after he sold the business, it could not be used as the basis for income which was generated before it was opened. The FTT disagreed, stating "It is clear, even on the appellant's case, that business income was paid into this account. The issue is the extent of that income. The appellant has not shown to us that it was not business income generated at the time when he was effectively acting as principal of the business."

145. The Applicant describes this second limb as a free-standing reasons challenge, with a gap in that the FTT does not explain the distinguishing feature of this account being opened by the Applicant at the same bank as other accounts which were held by him. This is not arguable. There was no need for the FTT to offer an explanation as to why the Applicant had decided to open a further account at Barclays Bank. It was the Applicant's evidence that he had in fact opened this bank account, and that it was being used for the income of the business. The FTT did not need to explain why the Applicant had not used a different bank. There is no gap in the reasoning.

146. The third limb arises from what is said to be an internal inconsistency between the FTT's findings of fact and its later reasoning. A[49] refers to FTT[127] which quotes an email from Mr McDonald dated 14 January 2005 explaining that Eposix could not obtain its own UK bank account, and then FTT[403] where the FTT says that there is no independent corroboration that the accounts were used for the purchaser's benefit. The Applicant submits that the email from Mr McDonald is independent corroboration, and that this inconsistency undermines the subsequent finding at FTT[408] that the Applicant's status as signatory weighs slightly in favour of the FTT's narrative of continued ownership.

147. I am not persuaded that it is arguable that there is any such inconsistency.

148. The emails from Mr McDonald (who was described by the FTT, with others, as being one of Mr Dunne's people (FTT[210])) were described by the FTT:

"124. It [email from Mr McDonald on 22 March 2003] specifically records "I know you aren't happy with us using your banking facilities but there's nothing wrong in us doing so and the reality is that they aren't your banking facilities now they are ours. ... I will let you know when we have set up a bank account so that you can close the one we are using.

...

127. The email reply from Mr McDonald also dated 14 January 2005 states that "The situation is that John [Dunne] has tried to set up a bank account in many ways in the UK but as nobody from Epinos is resident in the UK for tax purposes they always get rejected. I appreciate the difficulties here but we really do have some issues with respect to setting up a company bank account in the UK... When we asked our bank to help us they go along to their UK affiliate bank and come back and tell us that the UK bank won't do it and there's nothing they can do about that. I even had an idiotic conversation with them when they asked how we were trading without a bank account and I told them we were using yours (personal) they just said why don't we just continue doing that so I said but it's wrong to do that and they just said whatever works..."

128. The appellant responded by way of an email dated 14 January 2005 in which he expresses exasperation regarding bank account issue and his concern about how long it is taking to sort. He goes on to say that "You are still using the same bank account that I set up in 1993, that can't be right. Just so that you are aware and to provide some differentiation between you guys and me, I am setting up a new bank account to replace the old one, but I don't want that to be an excuse not to be setting up your own bank account, this is [another] **short term** measure that I am implementing so let's all understand this isn't the way it should be done and you need to get something sorted on it." (Emphasis in the original).

129. In response, Mr McDonald re-emphasised the difficulties that they were having with the bank but that he would do his best to get things sorted."

149. The FTT's conclusions were then expressed as follows:

"401. It was the appellant's evidence that the account 1089 2653 (Bradley Strauss T/A Strauss Phillips & Co) was not set up until after he had left the firm. This oral testimony is corroborated by the bank statement to which we refer above, which appears to show that it was set up sometime between December 2004 and 10 March 2005. It is also corroborated by the exchange of emails with Mr McDonald in January 2014 in which the appellant says that he was proposing to set up a bank account. The first entry into the account on 24 February 2005 is consistent with this timeframe.

402. He also told us that he had set up Internet banking for this account which anyone could operate provided they had the appropriate pass code, and that pass code had been given by the appellant to Mr Dunne's people.

403. This too is consistent with the appellant's narrative that the bank account was set up for the benefit of the purchaser. But equally, there is no independent corroboration that this is indeed what happened. We know that a bank account was set up. We do not conclusively know by whom it was operated."

150. Mr McDonald's emails of 22 March 2003 and 14 January 2005 related to the existing use (at that time) of the Applicant's bank account(s). From the dates of these emails, they cannot have related to account 2653. The FTT accepted that this exchange of emails corroborated the Applicant's evidence that account 2653 was not set up until after he had left the firm. The FTT also said that the set-up arrangements were consistent with the Applicant's narrative that the account was set up for the benefit of the purchaser. However, the issue on which there was said to be no independent corroboration was whether this was indeed what happened. Emails from March 2003 and January 2005 cannot provide any corroboration of what happened in relation to an account that was not opened until February 2005.

151. It is not arguable that there is any inconsistency in the decision.

152. This ground of appeal not only raises no arguable error of law but in my judgment would be bound to fail. I not only refuse permission for this ground but am satisfied that it is totally without merit. I certify this for the purposes of Rule 22(4A) of the Upper Tribunal Rules such that the Applicant may not request that this decision be reconsidered at a hearing.

Ground 5 - Contradictory refusal of the application to obtain and adduce independent Barclays evidence

153. Ground 5 is that the FTT Evidence Decision stated that the Applicant was required to come forward with evidence capable of supporting his account, he sought the opportunity to do that in his application of 26 April 2026 by obtaining the information from Barclays but that application was refused because the independent documents had not yet been attached and because of finality; and the absence of evidence was then relied upon as an answer to the ground. The Applicant submits this was circular and procedurally prejudicial. This ground is said to be distinct from both Ground 4 and from the Applicant's separate application for permission to appeal against the FTT Evidence Decision (that is not before me). It is said to rely on the connected sequence only insofar as it affected the fairness and safety of the substantive decision, and to concern "the contradiction between demanding independent evidence and refusing, without timely notification, the procedural opportunity sought to obtain and adduce it".

154. This ground of appeal is largely an appeal against the FTT Evidence Decision, but that is not the application which is before me. I have considered whether this ground discloses an arguable error of law in the FTT Decision.

155. The chronology in relation to the application to adduce new evidence is set out in the context of Ground 4 above. Whilst it is unfortunate that the FTT Evidence Decision was not released to the parties shortly after it was sent by Judge Popplewell to the Tribunal, it is not arguable that there is any error of law in the FTT Decision in this respect. It is not arguable that there was any procedural unfairness or contradiction relevant to the FTT Decision.

156. Judge Popplewell's reasons for refusing the Barclays Evidence Application are summarised above; and that summary is just that. Whilst the absence of the evidence for which permission was sought (ie the Barclays letter itself) was relevant to the FTT Evidence Decision, it was not the reason for the refusal of the application. The FTT took account of the Applicant's failure to provide evidence of his requests to Barclays, or the responses previously received, and his failure to have taken steps to obtain this information several years previously. These reasons were not an invitation to the Applicant to provide more evidence at this stage. There is no circularity or unfairness.

157. Furthermore, for the reasons set out in Ground 4 in relation to relevance, it is not arguable that the refusal to admit the Barclays letter affected the fairness or the safety of the FTT Decision.

158. This ground of appeal not only raises no arguable error of law but in my judgment would be bound to fail. I not only refuse permission for this ground but am satisfied that it is totally without merit. I certify this for the purposes of Rule 22(4A) of the Upper Tribunal Rules such that the Applicant may not request that this decision be reconsidered at a hearing.

Ground 6 - Procedural unfairness in the conduct and restriction of final submissions

159. The Applicant submits that the late provision of the operative bundle was compounded by the conduct of the March 2026 hearing. He submits that the procedure did not give him a fair and effective opportunity to identify, organise and deploy the documents and arguments which he had been unable to prepare before the December 2025 hearing. The FTT had indicated that it would not necessarily consider documentary evidence unless it was taken to it and that the parties were required to take it to the material relied upon.

160. The Applicant submits that his contemporaneous account records that HMRC spoke for approximately six and a quarter hours and had approximately one and a half hours to prepare its response, whereas the Applicant spoke for approximately three and a half hours and had approximately fifteen minutes to prepare his reply, which was curtailed.

161. The Applicant submits that the start time of 10am UK time, which was 5 am from where he was dialling in (Peru), meant he was significantly fatigued and impaired and challenged the FTT's refusal of his application dated 28 February 2026 to postpone the hearing to July 2026 (to dates on which HMRC had confirmed they were available) (the "February Postponement Application").

162. The Applicant's reasons in support of this ground of appeal were also set out in the context of Ground 16 and his statement of 4 September 2026.

163. I am not persuaded that it is arguable that there was any procedural unfairness in the conduct of the March 2026 hearing or in the approach to final submissions.

164. The conduct of the hearing is primarily a matter for the FTT, albeit that this must be in accordance with the overriding objective. The Applicant sought permission to appeal from the FTT on this ground (relying on the reasons in the Application but not putting forward of all the reasons which have since been set out in the statement of 4 September 2026) and the FTT PTA Decision records the following:

"54. In simple terms, the appellant was entitled to provide his closing submissions, in oral form, at the March hearing. He was first on, and could have taken as long as he wanted. He had provided, by the start of that hearing, two tranches of written submissions. The second of these included a review of the closing submissions made by HMRC. He had ample opportunity (indeed more of an opportunity than HMRC) to make comprehensive oral submissions."

165. Given that the evidence had been heard in December 2025, and the Applicant had the hearing bundles in their final form since then, and had not only provided comprehensive witness statements and opening written submissions before the December 2025 hearing but had also provided written closing submissions, as well as speaking first at the March 2026 hearing, I am not persuaded that this ground of appeal discloses any procedural unfairness in the conduct of the presentation of final submissions (written or oral). It is not arguable that he did not have the full and fair opportunity to present his case. Further, I am not persuaded that it arguable that the matters now raised as to the start time of the hearing or the refusal of the February Postponement Application identify any error of law.

166. Dealing in more detail with the specific points made:

Access to the bundle

167. The timing of the provision of the bundle is dealt with at Ground 9.

168. As explained there, it is not a fair or accurate reflection of the background to the December 2025 hearing to assert that he was not able to prepare for that hearing (whether his own evidence or for cross-examination of HMRC's witnesses); and he had ample opportunity to draw to the FTT's attention any documents in the hearing bundle on which he wished to rely at the March 2026 hearing.

Start time

169. The March 2026 hearing started at 10am UK time, which was 5am in Peru, from where the Applicant was dialling in.

170. This is, on any view, very early. However, he had been informed of this start time when the Tribunal confirmed the hearing dates in the notice of hearing, and had weeks to prepare accordingly, which could include adjusting his routine for a day or two beforehand.

171. Furthermore, contrary to the submissions now made, I am not satisfied that the Applicant had applied in advance to the FTT for the hearing to start at a later time to accommodate his participation from Peru.

172. Judge Sinfield had previously directed that the December 2026 hearing should start at 12 midday to accommodate the Applicant's participation from Peru. He in fact dialled in from the UK and the hearing was able to start at 10am.

173. The submissions hearing was then listed for March 2026, in line with the Applicant's stated availability. The notice of hearing stated a start time of 10am. In the FTT PTA Decision Judge Popplewell stated:

“100. ... The appellant failed to provide any response to the tribunal's suggested listing. The appellant could readily have made an application for the start time for the March hearing to be 12 noon. He did not do so. Indeed, this is the first time that this matter has been raised.”

174. In the Application the Applicant stated that the February Postponement Application, which applied for the submissions hearing to be postponed to July 2026 and to start at 12 midday on those July 2026 dates “did not expressly address his location if that request were refused and the March dates retained” and that the FTT “arguably ought to have sought clarification of that ambiguity before proceeding on the less favourable reading” (A[147]). By the time the Applicant then provided his statement of 4 September 2026 the Applicant said his request for a later start time was “clear and unambiguous” (at [21]) and that a request for a later start time was made “expressly” in the February Postponement Application (at [21A]).

175. I requested a copy of the February Postponement Application from the Applicant. Having read that application in full, it is completely clear that it was an application to postpone the hearing to July 2026 and for the proposed relisted hearing to start at 12 midday. The reasons given for requesting postponement refer to “unavoidable professional commitments” on the dates of the March 2026 hearing. No reference is made to the fact that he would be in Peru in March 2026, or applying for the March 2026 hearing, if the postponement were refused, to start at midday.

176. I accept that the FTT was made aware during the March 2026 hearing, once it commenced, that the Applicant was in Peru and that it was very early. However, it is not arguable that there was any procedural unfairness in the present instance.

Allocation of time

177. The Applicant submits that formal permission to speak did not answer whether the practical allocation of time, preparation and reply was fair, particularly for an ill litigant in person dealing with a 3,540 page bundle.

178. This submission is not made out by the Applicant's conduct throughout the proceedings. Not only has he provided his own witness statements and written submissions, but he has made multiple applications and supplementary submissions/applications to both the FTT and the Upper Tribunal. He has repeatedly shown that he is more than able to put forward his own case clearly and thoroughly.

179. I accept the Applicant's record of the time spent by each party making oral submissions at the March 2026 hearing, but his speaking first did give him every opportunity to make his submissions, including taking the FTT to the documents in the hearing bundle on which he wished to reply, explaining his position on other documents and drawing attention to issues, questions or documents he would have put to Officer Harris as the officer who had issued the assessments.

180. The Applicant describes his reply as having been curtailed, but a reply is generally a brief opportunity to respond to points which have been made in the other party's oral submissions. He was able to respond to HMRC's longer written submissions orally at the beginning of the hearing. Limiting time for an oral reply is entirely in accordance with the need to conduct litigation efficiently.

181. In his statement dated 4 September 2026 the Applicant submits that the hearing could readily have been extended to the following day and that there was no practical impediment to doing so. I have no information as to whether the FTT panel would have been able to sit for an additional day beyond the listed dates, or whether HMRC would have been able to attend. In any event, such an extension of the hearing would have been inefficient and put pressure on the work of the Tribunal and the need to deal with appeals brought by other taxpayers.

182. It is not arguable that there was any unfairness in the conduct of the hearing of submissions.

Refused postponement

183. In his statement dated 4 September 2026 the Applicant refers to the February Postponement Application and states that HMRC had confirmed they were available on the proposed revised dates in July 2026 and would have suffered no material prejudice from the short postponement.

184. The February Postponement Application states that "The Respondents have confirmed that, in the event of a postponement, they would be available on 22 and 23 July 2026, although they do not consent to the adjournment".

185. That application was rejected by the FTT on 11 March 2026. The postponement of the hearing was not consented to by HMRC, would have resulted in further delays, in the context of a hearing where the evidence had been heard in December 2025. The FTT gave its reasons for refusing postponement, and recorded that it was "a very late application made for no good reason".

186. It is not arguable that this resulted in any procedural unfairness in the conduct of the submissions hearing.

187. This ground of appeal not only raises no arguable error of law but in my judgment would be bound to fail. I not only refuse permission for this ground but am satisfied that it is totally

without merit. I certify this for the purposes of Rule 22(4A) of the Upper Tribunal Rules such that the Applicant may not request that this decision be reconsidered at a hearing.

Ground 7 - Misdirection as to burden, historical records, the sale agreement and the annual £30,000 expenses figure

188. This ground of appeal includes various challenges to the FTT Decision on the validity of the assessments and quantum. From the description of this ground and the reasons at A[63] to [69] I treat this ground as involving the following submissions:

- (1) Ground 7a – The FTT misdirected itself as to the burden of proof.
- (2) Ground 7b – The late production of the sale agreement was capable of affecting weight but its production meant that the merits decision could not proceed as though no agreement existed.
- (3) Ground 7c – An adverse inference in relation to the absence of historical bank statements required realistic consideration of age, possession, control and availability rather than an assumption that every historical record should still exist in the Applicant's hands.
- (4) Ground 7d – The assessment and merits questions required separation. Whether an assessment was validly made to best judgment on the information then available was not identical to what amount the FTT might later determine after receiving additional evidence.
- (5) Ground 7e – The FTT's observations on the annual £30,000 expense allowance did not explain why precisely £30,000 was objectively reasonable for every relevant year, why the same nominal figure was appropriate despite changing trading levels and prices, or why figures contained in prior returns were displaced by suspicion rather than reasoned findings.

Ground 7a

189. It is not arguable that the FTT misdirected itself on the burden of proof.

190. The FTT considered the relevant principles applicable to discovery assessments based on the authorities at FTT[277] to [289]; at the outset of its consideration of the basis of the discovery assessment which were actually made, the FTT then at FTT[290] stated "All HMRC have to show is that Officer Harris believed that the information available to her pointed in the direction of there being an insufficiency of tax. And that her belief that there was that insufficiency is objectively reasonable."

191. This was then applied throughout an extensive consideration of the evidence when reaching the conclusion that is then expressed at FTT[339].

192. The FTT then set out the relevant principles in relation to best judgment assessments by reference to *Van Boeckel* and *Pegasus*, and that the burden of establishing that the assessments were made outside the one-year time limit is on the taxpayer.

193. The FTT then identified at FTT[481] to [482] that the effect of s50(6) TMA 1970 and s83 VATA 1994 is that if the FTT finds that HMRC have made valid discovery and best judgment assessments then the burden of showing that those assessments overcharged the Applicant rests with him.

Ground 7b

194. The Applicant submits that he produced the sale agreement at the hearing and its late production was capable of affecting weight, but the decision could not proceed as though no agreement existed.

195. This ground does not disclose an arguable error of law.

196. It does not appear to be the case that the sale agreement was produced for the first time at the hearing; that may well have been when the Applicant produced a copy for the FTT, but he provided a copy to HMRC in 2022, I infer it was in the hearing bundle, and both parties made submissions in relation to that agreement. In any event, it is not arguable that the FTT proceeded as though no agreement existed.

197. The FTT made findings in relation to the sale agreement at FTT[59] and referred to his evidence in relation to meeting Mr Dunne and the sale price for the business of \$1 at FTT[72] and [73].

198. The FTT identified at FTT[377] that the issue between the parties was the extent of the Applicant's involvement in the business after 1 March 2003. The FTT considered the approach to take to inferences from relevant and proven facts, reminded itself of the conclusions it had reached as to the unreliability of the Applicant's evidence and that it was not prepared to accept his evidence unless it is corroborated by independent documentary evidence. At FTT[386] to [396] the FTT addressed what it described as HMRC's accurate submission that the Applicant had had ample opportunity to provide information regarding the sale of the business to HMRC ever since they opened their enquiry in 2008 and yet substantive information was not submitted until 18 March 2022.

199. The FTT then turned to what it considered to be the relevant evidence. The first such evidence it considered was the sale agreement at FTT[398].

200. It is not arguable that the FTT had failed to take it into account, or that the FTT proceeded as though no agreement existed. Instead, the FTT accepted HMRC's submission that it had not been fully carried out in accordance with its terms, and said that they needed to look at the operational reality. They then proceeded to do that, as they sought to assess who was running the business and entitled to the income of the business.

Ground 7c

201. The Applicant submits that an adverse inference in relation to historical bank statements (which were approximately 23 years old by the time of the hearing) required realistic consideration of age, possession, control and availability. There should not be an assumption that every historical record should still exist in his hands.

202. This does not identify an arguable error of law..

203. The FTT identified that HMRC had opened enquiries into the Applicant's returns for 2003 and 2004 on 3 November 2008 and in their letter of that date they had asked for all the books and records of the business for the years ended 31 August 2002 and for the period to 28 February 2003 (FTT[82]). Barclays Bank then supplied copies of the Applicant's bank statements for the period 2005/06 to 2011/12 to HMRC in the early part of 2012 in response to information notices (FTT[83]). HMRC then issued the discovery assessments and the VAT assessments in April 2015.

204. The FTT drew attention to the fact that the Applicant had not provided information at these earlier stages – whether when the enquiries were opened in 2008 or in 2015. The FTT said:

“305. The appellant provided no information about that sale, let alone provided any primary evidence to verify his assertions that the money was beneficially owned by someone else. Similarly, having been given ample opportunity to do so, the appellant provided no primary evidence to support the figures set out in his tax returns, or his assertion that he had become non-UK tax resident after 2003.

...

331. The appellant criticises her for this but to be honest, he is the author of his own misfortune. He had ample opportunity to provide primary records to justify his assertions as to income and expenditure in the tax returns which he had submitted. He failed to do so. He had ample opportunity to provide primary records to justify his assertions concerning non residence, the transfer of the business, the identity of the new owner and their difficulties concerning the new bank account and VAT.

332. He has never provided primary records regarding the tax returns nor non residence, and only provided information about the transfer of the business in March 2022, long after the discovery assessments had been issued.

...

387. It is clear from the correspondence that HMRC asked for information concerning, for example, the appellant's assertion that he was non-resident, and details of the circumstances in which the business either ceased to trade, or changed hands, following notification to that effect by the appellant on 9 April 2009."

205. The FTT then considered and rejected the reasons given by the Applicant for his failure to provide information in a timely manner. The FTT referred to his letters of 12 November 2007 and 27 April 2008, saying he had "ample opportunity" to explain details and provide documents at that time but he did not do so (FTT[393]).

206. It is correct to say that the FTT was critical of the Applicant's failure to provide relevant information and documents to HMRC; but this was not on the basis that these records should have been available to him in 2025. It was on the basis that he should have provided them in 2008, or even in 2015. At that time, the relevant records would not have been quite so historic.

207. Judge Popplewell did state in the FTT PTA Decision at [69] that the Applicant "should have had business records to support his tax returns, and the other documentation (for example the sale contract) could readily have been provided". The FTT PTA Decision is not the appealable decision. However, in any event these observations are entirely justifiable as they relate to the specific documents which the Applicant used to complete his tax returns and the sale agreement which he did eventually produce in 2022. Even these statements fall far short of being an assumption that all historical records should still exist in his hands.

208. It is not arguable that the FTT made an error of law in its approach to the Applicant's failure to provide documentary evidence.

Ground 7d

209. The Applicant submits that the FTT PTA Decision did not adequately maintain the distinction between the validity of the assessment and the merits.

210. The appealable decision is the FTT Decision; and that decision is completely clear as to the separation. When explaining how it would deal with the various issues at FTT[270] to [276] the FTT identified separately the issue of the validity of the discovery and VAT assessments and then whether the Applicant had established that the assessments overcharged him, recognising at FTT[276] that if at the first stage of considering the validity of the assessments they concluded that Officer Harris did not make best judgment assessments, then there would be no need to consider the remaining matters.

211. The FTT considered the basis on which the discovery and VAT assessments were made by reference to the information that was available to Officer Harris at FTT[290] to [339] and

FTT[352] to [376]. This included at FTT[292] a summary of the information which Officer Harris had and relied upon for this purpose.

212. The FTT then considered whether the Applicant had met the burden of showing that these assessments overcharged him at FTT[481] to [548].

213. The FTT clearly addressed the different issues, applying the correct burden of proof in each case. It is not arguable that the FTT did not separate these issues.

Ground 7e

214. The Applicant submits that the FTT did not explain why precisely £30,000 was objectively reasonable as an expense for every relevant year, why the same figure was appropriate despite changing trading levels, or why figures in prior returns were displaced by suspicion rather than reasoned findings. He refers to the FTT Decision having described this expense as a “guess” (made by Officer Harris).

215. The paragraphs in the FTT Decision cited by the Applicant (FTT[326] to [330]) are part of the FTT’s consideration of Officer Harris’ determination of the amount which needed to be assessed to make good to the Crown the loss of tax. That decision by Officer Harris needed to meet an objective criterion, and the emphasis in *Van Boeckel* is that the officer must “fairly consider all material placed before them and, on that material, come to a decision which is one which is reasonable and not arbitrary as to the amount of tax which is due”.

216. The FTT recognised that RPI had been used when applying the presumption of continuity in relation to the taxable income for April 1995 to 2004; and its summary at FTT[315(7)] states that Officer Harris had little information about expenses (rent, rates, utilities, insurance, staff and consumables) and so used a flat rate of £30,000 for each of the years.

217. The FTT did (at FTT[327]) state “It is not clear to us why this was a flat rate when the income figures have been adjusted by RPI. Why did she not adjust the expenses in a similar fashion for the earlier years.”

218. Having identified this question, the FTT then took the following position:

(1) The requirement for objectivity does not preclude making a guess (FTT[329]). Officer Harris’ letter of 11 March 2015 made clear that this was in her view a reasonable estimate and she stated she would consider further expenditure if the Applicant would like to provide her with further information.

(2) Officer Harris considered the background information that she had (FTT[329]). She made an honest guess on materials as were available, and those materials were limited (FTT[330]).

(3) The Applicant had ample opportunity to provide primary records to justify his assertions as to income and expenditure in the tax returns he submitted and failed to do so. He had never provided primary records regarding his tax returns (FTT[331] to [332]). The FTT described the figures in the tax returns as “self-made evidence by the appellant without any independent primary records” (FTT[337]). The FTT considered it was reasonable for the officer to conclude that these figures could not be seen as a reliable basis for the actual expenditure incurred by the business for the years in question.

(4) The FTT rejected the Applicant’s submission that it would have been apparent to Officer Newman when he visited the premises on 24 February 2011 that the business was incurring considerable overheads (FTT[334]).

219. The FTT subsequently made its own assessment of quantum, during the course of which it recorded at FTT[527] “In our experience it is very unlikely that turnover of £300,000 could

be generated from outgoings of £30,000.” The FTT then calculated increased amounts of expenses, but it did this using information which Officer Harris did not have, namely the Applicant’s oral testimony, his letter of 18 March 2022 and the witness statement of Rosina Harris.

220. The Applicant recognises at A[69] that the FTT was not required to perform the Applicant’s evidential work for him but submits the FTT was required to give intelligible reasons for the annual figure ultimately adopted.

221. The exercise undertaken by the FTT in concluding that the VAT assessments were made to the best of Officer Harris’ judgment, including satisfying the objective test, was more than sufficient. There is a clear emphasis, both in the authorities and in the approach of the FTT, on the material which was actually before the assessing officer. The question is not whether a different approach might also reasonably have been adopted, but whether the assessment which was made was reasonable and the FTT explained its reasons for concluding that it was.

222. This ground of appeal is not arguable.

223. This ground of appeal (including for this purpose all of Grounds 7a to 7e) not only raises no arguable error of law but in my judgment would be bound to fail. I not only refuse permission for this ground but am satisfied that it is totally without merit. I certify this for the purposes of Rule 22(4A) of the Upper Tribunal Rules such that the Applicant may not request that this decision be reconsidered at a hearing.

Ground 8 - Failure to determine actual knowledge or belief before finding deliberate conduct, dishonesty and fraud

224. The Applicant submits that the FTT did not determine the first stage of the test in *Ivey v Genting* and that an objective ownership finding does not automatically prove the taxpayer’s subjective knowledge of that ownership. In his statement dated 4 September 2026 he submits that this is not a case where the evidence of dishonesty was so overwhelming that it spoke for itself; even where the FTT was not satisfied by the evidence relied upon by the Applicant, the question of whether he believed it to be true required separate consideration and separate reasoning.

225. The Applicant also submits that the deliberate behaviour reasoning at FTT[554] to [565] does not keep separate the distinct legal questions of dishonesty and deliberate behaviour and that the FTT did not separately identify, for each relevant return, omission, period and statutory regime, the evidence establishing the required state of mind and the causal connection to the loss of tax. Further, the Applicant submits that an erroneous cross-reference in the FTT Decision was material.

226. When addressing culpability (which was relevant to the technical validity of the discovery assessments, the extended time period for the discovery assessments and the VAT assessments and the penalties) the FTT identified and applied the correct legal tests and set out its reasoning and conclusions.

227. It is not arguable that the FTT made an error of law.

228. The FTT explained the legal test for deliberate behaviour at FTT[551] by reference to *Tooth* and *CF Booth*, namely that HMRC need to show an intention to mislead HMRC on the part of the Applicant as to the truth of the relevant statement. The FTT identified how this was to be applied in different periods according to whether or not the Applicant had filed tax returns at FTT[552] to [553].

229. The FTT concluded that the Applicant’s behaviour was deliberate in both the periods for which he submitted tax returns and those in which he did not (FTT[554] to [557]). This was

the relevant test for the purposes of the validity of the discovery assessments and the extended time period for the discovery assessments. It is not arguable that this involved any error of law.

230. The FTT addressed the Applicant's behaviour in relation to his VAT obligations at FTT[558] to [565] and concluded that his behaviour in relation to the various acts, namely submitting VAT returns which understated turnover, applying to deregister the business and failing to account for VAT, was deliberate. The FTT found that he had the required knowledge and intention. It is not arguable this this involved any error of law.

231. The FTT then set out the test for dishonesty at FTT[566], which is relevant to the civil evasion penalties. The first stage of the test in *Ivey v Genting* is to ascertain (subjectively) the actual state of the individual's knowledge or belief as to the facts.

232. The Applicant submits that the FTT moved from its objective finding that the Applicant was the beneficial owner of the income to the statement that "it follows" that he knew the income was his. The Applicant submits in his statement dated 4 September 2026 that his entire case was that he genuinely believed he was not the beneficial owner of the business after March 2003; and that even if the FTT was entitled to find, as a matter of fact, that he was the beneficial owner, that finding does not answer the separate question of whether he knew he was the beneficial owner and deliberately misrepresented the position.

233. The FTT's reasoning was as follows:

"568. We have found as a fact that following the purported sale of the business in March 2003, the appellant continued to operate the business, effectively as principal, and the income generated by the business after that date was beneficially owned by him.

569. As set out at [56] above, this means that there is no room for finding that this might not have been the case. And it follows from this that the appellant knew full well that the income generated by the business was his, and, given his experience and status as a chartered accountant, he also knew full well that he had to account for both income tax on income and VAT on the taxable outputs. This is our finding of fact regarding the appellant's knowledge or belief of the facts.

570. The matters recorded at [550] demonstrate to us that in light of that knowledge, the appellant's failure to file the appropriate returns and pay the appropriate tax was dishonest applying the standard of the ordinary decent person. That person, in the appellant's position, would have made the appropriate filings and payments."

234. This section followed the FTT's detailed consideration of the relevant evidence which had led to its conclusion, referred to in FTT[568], that the Applicant continued to operate the business and the income generated by the business after that date was beneficially owned by him. The FTT had made findings as to what had happened, including the Applicant's role in the business, including that "In practical terms, little had changed ..." (FTT[476]). The FTT had rejected the Applicant's evidence. It does indeed follow from this that the Applicant had the requisite subjective knowledge as the decision reached by the FTT was as to his ownership and entitlement to profits; and the FTT's conclusions were sufficiently explained. The FTT did not need to deal separately at this stage with any submissions as to the Applicant's belief given the findings which they had made and the conclusions which they had already reached. It is not arguable that the FTT made an error of law.

235. The FTT then proceeded to deal with penalties.

236. I do not need to address the penalties for failing to comply with notices to file income tax returns, as the FTT allowed the Applicant's appeal against those penalties.

237. As to the remaining groups of penalties:

(1) Penalties for failure to notify chargeability to income tax and VAT – the FTT set out that HMRC had imposed penalties on the basis that the behaviour was deliberate (FTT[610]) and referred to its finding that the behaviour was deliberate (FTT[612]).

(2) Penalties for filing fraudulently incorrect income tax and VAT returns – the FTT stated at FTT[619] “In view of our finding that the appellant has acted dishonestly, we have no hesitation in saying that he has also acted fraudulently for the purposes of these provisions. We see no reason why we should disturb HMRC’s 5% mitigation, and so we dismiss the appeals against these penalties.” The Applicant submits that the FTT did not sufficiently distinguish between the different legal tests. However, whilst it has recently been confirmed (by the Upper Tribunal in *New Claire Wine Ltd v HMRC* [2026] UKUT 116) that deliberate conduct requires at least an intention to mislead HMRC, but that a deliberate inaccuracy does not necessarily involve dishonesty, here the FTT had found that the Applicant had acted dishonestly and the Applicant has not made any submissions as to how the finding of dishonesty does not also support a conclusion that he had acted fraudulently. I am not persuaded that it is arguable that the FTT made an error of law in reaching this conclusion.

(3) Civil evasion penalties for dishonestly evading VAT – at FTT[622] the FTT stated “For the reasons given at [540]-[544] above, our view is that the appellant has acted dishonestly towards his obligations to file VAT returns and to account for VAT on his business income in the proper amounts.” The FTT was applying the correct test.

238. The Applicant refers to the fact that there is, as acknowledged by the FTT in the FTT PTA Decision, an incorrect cross-reference in FTT[622]: it should refer to the reasoning in FTT[558] to [565] and not FTT[540] to [544]. The Applicant submits that the procedural problem concerning this incorrect cross-reference is material, and he could not be expected to guess the intended cross-reference in a 94 page decision. In his statement dated 10 September 2026 he says at [6] that “the significance of this error should not be understated” as the decision directs the reader to the wrong paragraphs for its reasoning.

239. I do not accept these submissions. The FTT Decision needs to be read as a whole and in that light:

(1) the clear use of headings throughout the FTT Decision makes it apparent to a reader that the reasoning of the FTT in relation to dishonesty can be found at FTT[558] to [565]; and

(2) in any event, the conclusion is clearly and correctly stated in FTT[622] and the incorrect cross-reference is not material.

240. It is not arguable that the FTT needed to separately identify, for each individual return or omission, the particular evidence establishing the required state of mind and the causal connection to the loss of tax.

241. I agree with the FTT in the FTT PTA Decision that the decision must be read as a whole, and the reasons why the FTT concluded that the Applicant’s behaviour was deliberate, dishonest and fraudulent were set out at FTT[549] to [623].

242. This ground of appeal not only raises no arguable error of law but in my judgment would be bound to fail. I not only refuse permission for this ground but am satisfied that it is totally without merit. I certify this for the purposes of Rule 22(4A) of the Upper Tribunal Rules such that the Applicant may not request that this decision be reconsidered at a hearing.

Ground 9 - Material mistake concerning the late bundle and concrete prejudice to preparation and cross-examination

243. The Applicant submits that the fact that he did not receive a working copy of the hearing bundle (which was 3,540 pages in six files) until 8 December 2025, the first date of the evidence hearing, prejudiced him as he was deprived of the opportunity to review it and cross-reference the integrated bundle, prepare cross-examination and respond to documents put to him; and that possession for several months before the submissions hearing in March 2026 could not restore the lost opportunity to question witnesses in December 2025.

244. In his statement dated 4 September 2026 he expands on this as follows:

“32. HMRC failed to comply with Judge Sinfield's directions regarding the preparation and service of the hearing bundle. Despite this non-compliance, Judge Popplewell took no action against HMRC and imposed no sanction.

33. I made repeated attempts to download the bundle from the SDES system. Those attempts failed. I have email correspondence to the Tribunal documenting each failed attempt. HMRC did not confirm in writing that the bundle had been dispatched until early December 2025, shortly before the hearing was due to commence on 8 December 2025.

34. The physical bundle, comprising approximately 3,540 pages, was delivered to my PO Box address. It was not delivered to me until the first day of the hearing, 8 December 2025. I had no authority to collect it from the PO Box; I was dependent on it being forwarded to me. I therefore had no opportunity to review a 3,540-page bundle before the hearing commenced. My application for a postponement on this basis was refused.

35. Judge Popplewell states at paragraph 25 of Appendix 8 to the PTA decision that the bank account evidence "had been in the appellant's possession since Autumn 2025." This is inconsistent with the documented correspondence. Appendix 2 to the PTA decision itself records that on 26 November 2025, directions were still being issued regarding access to the SDES system and the bundle. The assertion that I had the bundle since Autumn 2025 is a factual error. To the extent that the tribunal relied upon this assertion in dismissing my procedural fairness arguments, it proceeded on a mistaken factual basis.

36. I acknowledge that by the time of the March hearing, I had been in possession of the bundle for some months. However, the prejudice caused by non-receipt of the bundle prior to the December hearing was not cured by later possession. The December hearing was the evidence hearing at which HMRC's witnesses gave oral testimony and were cross-examined. My ability to prepare effective cross-examination, identify relevant documents, and challenge HMRC's evidence was fundamentally compromised by not having the bundle. That prejudice could not be retrospectively remedied.”

245. In considering this ground, I start by identifying that HMRC had prepared an electronic copy of the bundle. The FTT was able to download this (as is clear from the FTT's directions of 26 November 2025) but the Applicant was unable to do so. I do not know why this was. The Applicant was provided with a hard copy of the bundle on 8 December 2025. Following two adjournments on medical grounds, the hearing did not start until 2.30pm on 12 December 2025. This was when HMRC were to make their opening submissions, and the hearing of the evidence then commenced on 15 December 2025.

246. The bundle had been the subject of various applications before the commencement of the hearing, and in directions released on 26 November 2025 Judge Popplewell, who at this time had a copy of the hearing bundle, recorded that he had reviewed the bundle to check HMRC's

contention that much of the information in that bundle was known to the Applicant. Judge Popplewell confirmed he agreed; the Applicant had responded to the five witness statements of HMRC which between them contained most of the relevant documents by way of exhibits. In an email of that same date the Applicant confirmed that he had seen all or almost all of the documents.

247. In the FTT Decision, the FTT said:

“642. Prior to, and over the course of the hearing, the appellant has had ample time to consider the documents in the bundle. Many of them were documents which he had been sent (for example the assessments and the letter of 11 March 2015). It was clear from the way in which the appellant managed his case during the hearing that, notwithstanding that he was a litigant in person, he was familiar with the documents in the bundle.”

248. The FTT PTA Decision set out the following in relation to the hearing bundle:

“58. Nor has the appellant identified any single instance where the failure of the hearing bundle to be (in his view) supplied on time and his inability to analyse it within the time required before the December hearing, resulted in his being unable to put a document to an HMRC witness at the December hearing.

...

81. Correspondence and documents relating to the submission of the hearing bundle can be seen at Documents 1, 2, 3 and 5.

82. It is clear from these that the issue and the timing of the service of the hearing bundle was considered by the tribunal before and at the December hearing.

83. The December hearing was restricted to a consideration of the evidence.

84. HMRC’s witness statements had been submitted well before the due date for submission of the hearing bundle, and the appellant had dealt, comprehensively, with those witness statements in his witness statements and opening submissions which were made well in advance of the December hearing.

85. Any late filing of the hearing bundle did not, therefore, ambush the appellant.

86. He had been fighting this appeal since 2015. He knew his case. He provided much of the documentation which went into the bundle. He set out his case in the aforesaid witness statements and opening submissions. Notwithstanding that he is a litigant in person, I would have expected him to be able to be fully conversant with the documents which were relevant to his case well in advance of the production of the hearing bundle. The hearing bundle simply put those documents into a coherent form so they could be referred to, conveniently, at the hearing. As we said at the relevant time, the issue was not substantive but secretarial.

87. The December hearing dealt with evidence. As mentioned above, the appellant has not suggested a single document that he was unable to put to HMRC’s witness, because of any lateness in the submission of the hearing bundle.

88. As mentioned above, the appellant was in possession of the hearing bundle three months or more before the March hearing and at the time that he was required to make his closing submissions. There could be no possible prejudice, therefore, to the appellant for any late submission of the bundle, in

respect of his ability to participate fully in the March hearing or in respect of his ability to make comprehensive written closing submissions which drew the tribunal's attention to any documentary evidence on which he wished to rely as part of his case."

249. I agree with these reasons and am not persuaded that it is arguable that there was any procedural unfairness in relation to the provision of the bundle, or the timing, to the Applicant.

250. The Applicant submits that HMRC had failed to comply with Judge Sinfield's directions regarding preparation and service of the hearing bundle, and that Judge Popplewell took no action against HMRC and imposed no sanction. The Applicant has not specified how HMRC had failed to comply with directions. I can see from the various decisions and directions attached to the FTT PTA Decision that the Applicant had applied to debar HMRC from taking any further part in the proceedings and that application was refused by Judge Popplewell on 26 November 2025. I am not aware of any in-time application to the FTT for permission to appeal against that case management decision, and in any event the Application is for permission to appeal against the FTT Decision.

251. In his statement dated 4 September 2026 the Applicant refers to Judge Popplewell having stated that the Applicant had the bank account evidence "since Autumn 2025". This reference is in the FTT's decision refusing the Applicant permission to appeal the FTT Submissions Decision. Unless it can be said that December 2025 could still be regarded as Autumn 2025, I would accept that this is inaccurate. However, it is wholly immaterial to the issue before me. The FTT was evidently well aware at the time of the December 2025 hearing of the issues which had been experienced in relation to the Applicant's ability to access or obtain a copy of the bundle. The FTT turned its mind to the contents of the bundle and whether the Applicant had seen most of the documents before. It is not arguable that a seasonal reference in a different decision some months later involved an error of law that was material to the FTT Decision.

252. The Applicant submits:

"82. The directions and conduct of the hearing required the parties to identify the documents on which they relied. The Applicant's final oral presentation was later restricted, yet the decision and permission refusal criticised him for not taking the Tribunal through detailed material. It was procedurally inconsistent to deny the preparation time needed to identify and deploy the documents, restrict the later opportunity to do so, and then treat the resulting lack of detailed deployment as a weakness in his case."

253. These directions were entirely sensible case management directions in the context of an appeal with a large hearing bundle. It would not be efficient to expect the FTT to read it in its entirety after the hearing; and by raising this at the hearing the FTT put the parties on notice of the approach that they would need to take, this being particularly relevant for the (written and oral) submissions in March 2026.

254. In response to [58] of the FTT PTA Decision, the Applicant has identified what he describes as concrete examples of documents in the bundle where his lack of access to the bundle in advance of the hearing prejudiced him. He identified:

- (1) A letter (HB page 862) dated 17 April 2014 which stated that he was not the owner and a letter (HB page 1278) dated 10 October 2011 which set out the asserted ownership position – The Applicant submits that timely access would have enabled focused questions to Officer Wright about investigations undertaken by HMRC after receiving these ownership assertions. I am not persuaded that it is arguable that there was any procedural unfairness resulting from the Applicant's inability to locate these letters in the bundle when preparing his cross-examination of Officer Wright. These were both letters

from the business to HMRC. The FTT decided that the representations in the letters of 2014 were based on information from the Applicant and were self-serving, according them little weight (FTT[416])). The Applicant was able to put to Officer Wright questions about the actions or steps which were undertaken by HMRC upon being told by the Applicant or the business that the Applicant had sold the business; a specific page reference in the bundle was not necessary for this purpose. He could have made further specific points by reference to these letters in closing.

(2) Invoices (HB pages 1776 to 1864) were put to him although he had not previously seen them and they contained material errors – The Applicant submits that timely access would have enabled a properly prepared response to these invoices. I am not persuaded it is arguable that there was any procedural unfairness. Parties are not expected to “learn” the documents in the bundle. On his own account, the Applicant was shown these invoices in cross-examination and could give his explanation at that time. If, upon subsequent consideration, he considered there was further explanation to put forward by reference to other documentary evidence in the bundle he could have shown that to the FTT in the March 2026 hearing. He would not have been able to give new witness evidence at that time, but the documentary evidence was all before the FTT.

255. The Applicant submits that the prejudice was intensified because Officer Harris did not attend and could not be cross-examined. He could only cross-examine Officer Harris’ successor, Officer Wright. I have addressed the submissions in relation to the FTT’s approach to Officer Harris’ witness statement in Ground 15.

256. This ground of appeal not only raises no arguable error of law but in my judgment would be bound to fail. I not only refuse permission for this ground but am satisfied that it is totally without merit. I certify this for the purposes of Rule 22(4A) of the Upper Tribunal Rules such that the Applicant may not request that this decision be reconsidered at a hearing.

Ground 10 - Failure to distinguish physical attendance from fitness and ability to prepare and participate effectively

257. The Applicant submits that serious illness materially impaired his ability to prepare, review the bundle, question witnesses, give evidence and present submissions effectively. He explains his presence in the UK at the time of the December 2025 hearing being a result of a family emergency, with his own illness (of which he informed the FTT and on the basis of which he applied to postpone the hearing) affecting his overall capacity to prepare and participate effectively. The Applicant submits that the FTT failed adequately to evaluate the combined effect of illness, late disclosure, the size of the case, litigant in person status and the tasks required of the Applicant before deciding that proceeding caused no material prejudice.

258. In his statement dated 4 September 2026 the Applicant explained:

“27. In the period immediately preceding the December hearing, I had been required to travel to the United Kingdom because my mother had been admitted to Northwick Park Hospital, Harrow ... with a serious illness. Attending her in hospital in that condition had a profound effect on my emotional state. ...

28. As a result of travelling to and remaining in the UK during a period of very cold weather, I developed a severe chest infection. I obtained medical evidence in the form of a doctor's note and the results of medical tests, which I provided to the Tribunal. Judge Popplewell dismissed this evidence as insufficient medical documentation. My application for a postponement to allow recovery was refused. I note that the medical evidence was the best I could reasonably obtain in the circumstances: I was in the UK temporarily,

unwell, and unable to attend a specialist. Judge Popplewell acknowledged at paragraph 1 of Appendix 4 that the GP letter was "frankly, weak" but proceeded at paragraph 4 to accept that I was "currently suffering from some sort of respiratory condition" and that he was "not satisfied that he can participate in the proceedings even at a minimal level." The tribunal therefore itself found I was unfit to participate, yet ultimately required me to do so.

29. I was visibly unwell on the opening day of the hearing (8 December 2025), to the point where Judge Popplewell himself postponed the hearing until 11 December 2025, and then further to 12 December 2025. I spent those intervening days in bed and was unable to undertake any preparation. I remained unwell throughout the resumed hearing.

30. In total, I lost approximately three weeks of preparation time through the combination of travelling to see my mother, my illness, and the failure to receive the bundle. None of these factors appear to have been given any or any adequate weight by Judge Popplewell in his conduct of the hearing or in the Decision.

31. I had previously provided evidence to the Tribunal regarding the effect of these matters on my mental health. There is no indication in the Decision that this evidence was considered."

259. The Applicant has since provided a copy of a medical report (that had been sent to the Tribunal and placed on file in 2024) to the Upper Tribunal.

260. There were several applications by the Applicant for postponement of the December 2025 hearing. The Applicant's written application shortly before the hearing had been refused on the papers, and he renewed it orally at the beginning of the hearing on 8 December 2025. That renewed application was granted in part, and the FTT's decision is recorded in Judge Popplewell's directions released on 9 December 2025 (the "9 December Directions").

261. The 9 December Directions refer to the fact that on 3 December 2025 Judge Popplewell had rejected an earlier application for postponement. The reasons for the decision which was made on 8 December 2025, namely to postpone the start of the hearing until 11 December 2025, were then recorded as follows:

"1. We have concluded that the medical evidence is, frankly, weak. Whilst we have a letter dated 5 December 2025 from the appellant's GP, it does not contain a medical opinion that the appellant cannot participate. It simply states that the appellant does not feel well enough to attend.

2. The appellant claims to have had blood tests (on 1 December 2025) yet the results of those tests, are not before us, nor are they referred to in the GPs letter.

3. The letter simply refers to the appellants self-diagnosis of his condition (namely ongoing exhaustion, cough, and losing his voice) and that he has been given antibiotics. This was not a diagnosis following a physical examination. It was a result of a telephone appointment.

4. However, it is clear to us from the way in which the appellant addressed us that he is currently suffering from some sort of respiratory condition. And at present we are not satisfied that he can participate in the proceedings even at a minimal level (see later)

5. ... We agree that, given his past and current medical issues, the appellant's health position is unlikely to improve and any hearing is bound to cause stress whenever it takes place, which will exacerbate those issues. So, there is no

guarantee that at any postponed hearing, the appellant will be in a better condition.

6. We are also alive to the issues raised by Mx Lunt concerning the interests of justice ... and of the impact that any further delay to this hearing will have both on HMRC and other Tribunal users. We are also conscious that this case has been going on for some 15 years and it is high time that it is resolved.

...

8. We have considered the issues in this appeal. As regards income tax, the burden of establishing that a valid subjective and objective discovery has been made, rests with HMRC, as, too, does the burden of proving deliberate behaviour. The same is essentially true in relation to VAT.

9. This means that they need to lead evidence to prove these points. We are not sure how they will do this in the absence of the assessing officer, but in her absence, it means that the HMRC witnesses whose evidence is being tendered (and do not have first hand knowledge of the discovery process) are less likely to require an in-depth forensic cross-examination.

10. It is important, however, that the appellant is able to present his evidence and is in sufficient health to deal with questions in cross-examination.

11. In our view both of these can be accommodated within the existing timetable by adjourning the hearing and recommencing it at 10 am on 11 December 2025.

12. The appellant is physically present in England. We can start the hearing each day at 10 am. We can be flexible about the detailed timing each day. If, for example, the appellant having participated for an hour or so, needs to have a lie down, then we will seek to accommodate him.

13. On the first morning, HMRC will open its case and call their witnesses. By then the appellant will have had a further 2.5 days to recover and to allow the antibiotics to work their magic.

14. HMRC's witnesses will then continue their evidence on Friday, and we suspect that the appellant will be sufficiently recovered to cross examine them. Having said that, however, the witnesses need to convince us of the matters set out above, and our experience in these cases is that that does not depend on detailed forensic cross examination by an appellant or their representative. Many litigants in person are not equipped with the forensic skills to undertake such cross examination, and the tribunal is used to dealing with the validity of discovery assessments in such circumstances.

15. The appellant will then have the weekend for further recovery. ...

...

17. By adapting the hearing time in this way, we are confident that we will be able to complete the evidence by the end of the scheduled hearing window (Friday 19 December 2025) even if we cannot deal with closing submissions. We are happy for those submissions to be made after the hearing, in writing, and a further date arranged for their oral presentation."

262. The 9 December Directions show that the FTT had carefully considered the submissions of the Applicant, its own assessment of his current health, the medical evidence which was provided in support of his postponement application and reached a decision as to the Applicant's ability to participate effectively in the hearing. The decision to postpone until 11 December 2025 took account of what would be expected of the parties during the hearing of the evidence.

263. The Applicant then made a further application to postpone on 10 December 2025, which was granted in part by the FTT in directions released on 11 December 2025 and the hearing was directed to recommence at 2.30pm on 12 December 2025 (the “11 December Directions”). In the 11 December Directions the FTT referred to the fact that the Applicant said in his application that he was intending to attend a physiotherapy appointment at 12.45pm on 12 December 2025 and expected approximately 20 minutes travel each way. The FTT’s view was that if he was well enough to consider travelling to a physiotherapist appointment on 12 December, he was well enough to participate in the hearing on that date to the extent that it involves the presentation of HMRC’s opening submissions. No witness evidence was to be called that afternoon. The FTT recorded its view that the Applicant seemed to be in more robust health than he had been on Monday.

264. In addressing this in the FTT PTA Decision, Judge Popplewell said as follows:

“92. As far as the appellant’s ill health was concerned, this was considered on a number of occasions by the tribunal prior to the December hearing (see Documents 4 and 6). The timetable for the hearing was adjusted accordingly. The appellant was able to participate fully at the December hearing. He cross-examined HMRC’s witnesses and gave his oral evidence (on which he was cross examined at length) without apparent difficulty (subject to breaks to cater for his cough).”

265. This ground of appeal does not disclose an arguable error of law.

266. The FTT was well placed throughout to assess the Applicant’s ability to attend and participate in the hearing. The FTT had the benefit of hearing from the Applicant on 8 and 11 December 2025, as well as the medical evidence that was submitted with the postponement application, and reached its own conclusions as to his ability to participate. They took account of what was required of the Applicant for the December 2025 hearing, including that he would be giving evidence himself.

267. The Applicant submits that the FTT’s observations recorded in the 11 December Directions that he appeared in more robust health and that the medical evidence was weak do not displace or explain away the FTT’s own finding of an inability to participate at the point the evidence hearing began in the 9 December Directions. That is not arguable – these were observations on different days.

268. The Applicant submits that delaying the hearing to 11 December 2025 did not cure the preparation already lost to illness and non-receipt of the bundle, nor did any subsequent recovery supply the preparation time that had been lost.

269. These submissions as to preparation time fail to reflect the fact that HMRC had opened enquiries in 2008, been asking for information since 2008 and 2009, the discovery assessments had been issued in 2015, and since then the matter had been referred to ADR, the Applicant had sent detailed correspondence to HMRC (eg in March 2022), he had received HMRC’s witness statements, made written submissions and provided his own witness statement(s). Preparation had clearly been an ongoing process.

270. I consider in this context the Applicant’s submissions in relation to his mental health. The Applicant has provided a copy of a medical report from 2022. That report was sent to the Tribunal in May 2024 and placed on the Tribunal’s file. It was not disclosed to HMRC. It was not therefore in the hearing bundle and I infer was not seen by Judge Popplewell or Tribunal Member Shillaker. The Applicant submits that this report shows that the FTT erred in law when it said at FTT[390] that “there is no independent corroboration of these alleged mental health difficulties”.

271. That statement by the FTT was made in the context of the FTT having said at FTT[387] that it was clear from the correspondence that HMRC had asked for information concerning, eg, non-residence and the details of the business changing hands, following notification to that effect by the Applicant on 9 April 2009. One of the reasons relied upon by the Applicant for having not provided this information was that he was then suffering considerable mental health problems (FTT[388]). The medical report was obtained in March 2022. It is very short, expressed in general terms and lacking in detail. Whilst I accept it is independent, it does not support a conclusion that his mental health difficulties had been ongoing since 2009 or that they would have prevented him from dealing with HMRC's questions. I am not persuaded that the FTT made an error of law at FTT[390] that was material to its decision.

272. This ground of appeal is not arguable. The FTT had repeatedly assessed the Applicant's ability to attend and participate in the hearing, and had granted adjournments when it decided it was appropriate to do so.

273. The Applicant also submits that he was not able to participate effectively at the submissions hearing in March 2026. These submissions in relation to the March 2026 hearing are addressed in Ground 6.

274. This ground of appeal not only raises no arguable error of law but in my judgment would be bound to fail. I not only refuse permission for this ground but am satisfied that it is totally without merit. I certify this for the purposes of Rule 22(4A) of the Upper Tribunal Rules such that the Applicant may not request that this decision be reconsidered at a hearing.

Ground 11 - Failure to engage with material evidence and inequality of arms

275. The Applicant submits that material evidence supporting his case was presented but was ignored, misunderstood or rejected without adequate reasons, and that his complaint is not answered by observing that he knew his own case, attended the hearing and gave evidence.

276. This ground does not raise an arguable error of law.

277. The FTT is not required, when giving its reasons for its decision, to refer expressly to every document to which it was taken by either party during the hearing. The FTT Decision does set out, clearly and at some considerable length, the FTT's findings of fact and conclusions on the evidence that was presented to it and the reasons why it rejected the Applicant's submissions.

278. The Applicant submits that the FTT did not engage with the evidence, and submits at A[105].

“105. The Tribunal was not obliged to mention every document or submission. It was required, however, to address evidence central to the principal controversial issues sufficiently to show why it was accepted, rejected or outweighed. The sale documents, employment records, banking chronology, Eposis material, Dr Young's evidence and communications concerning the post-sale arrangements were central rather than peripheral.”

279. This submission is not arguable. The FTT did engage with the evidence, including the evidence which is said by the Applicant to be central to the principal controversial issues:

- (1) Sale documents – At FTT[398] the FTT accepted this purported to sell the business, also accepted that it had not been fully carried out in accordance with its terms, agreed with HMRC that the sale did not automatically mean that the Applicant was no longer enjoying the economic fruits generated by it and that it needed to look at the operational reality.

(2) Employment records – These were discussed at FTT[417] to [423]. The FTT agreed they support the Applicant’s position that he was employed by Mr Dunne’s companies, concluded that they are modest amount and inconsistent with the lifestyle identified by Officer Harris and concluded that not only would the Applicant have needed to undertake other paid work but would have had time to do so.

(3) Banking chronology – The FTT had set out the evidence in relation to the bank statements and use of the bank accounts and then considered this at FTT[399] to [413].

(4) Eposis material – The FTT addressed the Eposis accounts at FTT[425] to [426], accepting they demonstrate the existence of the entity.

(5) Dr Young’s evidence – This was addressed by the FTT at FTT[218] and FTT[427] to [428].

(6) Communications concerning post-sale arrangements – These were set out at FTT[115] to [136] and addressed at FTT[399] to [413]. The FTT also addressed the evidence provided by clients and former clients in relation to post-sale activity.

280. The reasons given by the FTT to explain its conclusions on the Applicant’s involvement in the business after March 2003 at FTT[377] to [476] were more than sufficient.

281. The Applicant submits that the inequality was intensified by the absence of Officer Harris, reliance on her untested opinion, and the blanket corroboration condition imposed upon the Applicant’s tested evidence. He submits that the combined process placed materially different practical and evidential demands on the parties without adequate explanation (A[106]). I address the FTT’s approach to the evidence of Officer Harris and the Applicant at Ground 15.

282. This ground of appeal not only raises no arguable error of law but in my judgment would be bound to fail. I not only refuse permission for this ground but am satisfied that it is totally without merit. I certify this for the purposes of Rule 22(4A) of the Upper Tribunal Rules such that the Applicant may not request that this decision be reconsidered at a hearing.

Ground 12 - Material mistake concerning the Applicant's father's accountancy practice and refusal to permit corrective evidence

283. This ground of appeal is based on the Applicant’s submission that the statement at FTT[16] that he “took over his father’s chartered accountancy practice in the late 1990’s” is mistaken. The Applicant refers to later findings of fact in the FTT Decision, stating that they do not support this broad statement at FTT[16]. The Applicant submits that whilst FTT[16] is not formally a finding of fact, this does not resolve the ground, as a synopsis is nevertheless capable of framing the narrative within which the detailed findings that follow are read, and an inaccurate synopsis on a point going to the continuity and provenance of the client base – squarely relevant to the ownership and involvement issues at the heart of this appeal – is not rendered immaterial merely by a disclaimer that it does not itself constitute a finding.

284. The Applicant states that his primary case is that the synopsis did not reflect the evidence or case advanced at the hearing, and that its inaccuracy is demonstrated by the FTT’s own later and more limited findings rather than by any need for further evidence. To the extent independent documents are nevertheless required, the Applicant seeks permission to rely upon them under the appropriate appellate procedure rather than assuming their automatic admission. The Applicant states that the ground is material only if the finding contributed to the reasoning on continuity, ownership, client relationships or credibility. If it was no more than immaterial background, that status must be reconciled with its inclusion and use in the decision, as addressed in Ground 13.

285. In the FTT PTA Decision Judge Popplewell gave the following reasons for rejecting this ground of appeal:

“107. [16] of the Decision follows [15] of the Decision. [15] states that what follows is a brief synopsis and at that time the tribunal was making no findings of fact. [16] is not, therefore, a finding of fact.

108. The position regarding the appellant’s father’s practice is set out in the facts section of the Decision, and dealt with, in particular, at [154], [155] and [235] of that section.

109. From this it is clear that the tribunal did not find as a fact, that the appellant had taken over his father’s practice. Instead, it proceeded on the basis that the appellant had simply been concerned about various aspects of his father’s practice and had wanted to ensure that clients of that practice were properly looked after (see [443]-[452] of the Decision).

110. The tribunal concluded that the evidence was consistent with both parties’ narratives ([452]).

111. The tribunal therefore had not misdirected itself on this point. It did not proceed on the basis that the appellant had taken over his father’s accountancy practice. It proceeded on the basis that the appellant’s evidence and submissions were that he dealt with his father’s former clients for a number of professional and personal reasons.”

286. I accept the Applicant’s submission that FTT[16] does not reflect the findings of fact which appear later in the FTT Decision. The actual findings of fact made by the FTT are very clear, eg at FTT[154] and [155]. However, the reasons in the FTT PTA Decision are a complete answer to this ground of appeal. The structure of the FTT Decision and the findings made are clear. The statement at FTT[16] was immaterial to the FTT Decision.

287. The Application includes an application to rely on independent documents if required to address the inaccuracy of FTT[16]. It is not said what they might be. In any event, there is no need for further documents.

288. The Applicant also challenges the inclusion and use of FTT[16] in the FTT Decision if it is no more than immaterial background. This does not identify an arguable error of law; the FTT set out the findings of fact it made, and expressly stated that FTT[16] to [20] were not findings and were a broad overview.

289. This ground of appeal not only raises no arguable error of law but in my judgment would be bound to fail. I not only refuse permission for this ground but am satisfied that it is totally without merit. I certify this for the purposes of Rule 22(4A) of the Upper Tribunal Rules such that the Applicant may not request that this decision be reconsidered at a hearing.

Ground 13 - Failure to explain whether disputed factual statements were material findings or immaterial background

290. This ground of appeal is said to need to be considered alongside Ground 12. The Applicant submits that the FTT PTA Decision answered certain factual challenges by stating, in substance, that the disputed statement did not form part of the Tribunal's understanding or the basis of its decision. He submits that such response creates an unresolved reasons issue: if a disputed statement was included merely as background and played no role in any inference, the decision or refusal should make that clear. If it contributed to continuity, credibility, ownership or the history of the trade, its accuracy and evidential foundation were material and required engagement.

291. This submission does not identify an arguable error of law.

292. The Applicant has raised FTT[16] in the context of Ground 12 and I have set out my reasons above for concluding that Ground 12 is not arguable.

293. The Applicant has not provided any specific example other than that of FTT[16] which is addressed above. I have re-read the FTT PTA Decision to try to discern to what statements in the FTT Decision or the FTT PTA Decision the Applicant refers to when he submits at A[115] that the permission refusal answered “certain factual challenges” by stating that the disputed statement did not form part of the FTT’s understanding or the basis of its decision. I have not identified any further statements in the FTT PTA Decision to this effect.

294. This ground of appeal not only raises no arguable error of law but in my judgment would be bound to fail. I not only refuse permission for this ground but am satisfied that it is totally without merit. I certify this for the purposes of Rule 22(4A) of the Upper Tribunal Rules such that the Applicant may not request that this decision be reconsidered at a hearing.

Ground 14 - Failure to distinguish unanswered questions from answers which the Tribunal rejected

295. The reasons given by the Applicant in the Application in support of this ground are as follows:

“120. The Applicant's case is that he answered the questions put to him but the Tribunal rejected those answers because it did not accept his account. A rejected answer is not the same as a failure to answer.

121. The distinction matters because describing a witness as evasive, non-responsive or unable to explain a matter may contribute materially to a global credibility assessment. If the witness gave a responsive explanation, the Tribunal was entitled to disbelieve it but was required to record the substance accurately and explain the evidential reason for rejection.

122. The refusal did not adequately engage with that distinction where it relied upon the proposition that the Applicant had failed to answer or explain matters. Reaffirming that his account was not accepted does not establish that no answer was given.

123. This ground does not allege a predetermined outcome merely because answers were rejected. The legal complaint is narrower: material evidence was mischaracterised as absent or non-responsive, and that characterisation then supported the adverse credibility finding and the blanket corroboration approach.

124. The recording should be compared with each material example relied upon by the Tribunal. If the recording shows that a responsive answer was given, the appellate question is whether the misrecording or failure to address it was material to credibility, ownership or dishonesty.”

296. I have addressed at Ground 15 the detailed submissions which are made by the Applicant in relation to the FTT’s decision on his credibility.

297. This Ground 14 purports to be separate. The Applicant relies on what is said to be a distinction between a failure to answer and a rejected answer; and submits that describing a witness as evasive, non-responsive or unable to explain a matter may contribute to a credibility assessment.

298. This ground of appeal does not disclose an arguable error of law.

299. The FTT is entitled to take into account the totality of a witness’ evidence when reaching conclusions on credibility and it is wholly artificial and a hindrance to the efficient conduct of litigation (including decision-writing) to suppose that a fact-finding tribunal should, having

heard from a witness, go through that evidence line by line to record the substance of each sentence, record whether it was an answer to a question and whether that answer was accepted, disbelieved or regarded as evading the question.

300. I add for completeness that it does not in any event appear to be the case that the FTT described the Applicant as being “evasive” or “non-responsive”. I did identify, when re-reading the FTT Decision with this ground of appeal in mind, that HMRC had submitted that, when taken to expenses in his tax returns, the Applicant was unable to explain why, given the number of employees or members of staff which he had agreed were active in the business in 2003, the costs of those members of staff were so low (FTT[265(11)]). The FTT did not, however, say he was unable to explain. This observation does not form any part of my reasons for refusing permission on this ground.

301. I am not persuaded that this ground discloses an arguable error of law.

302. This ground of appeal not only raises no arguable error of law but in my judgment would be bound to fail. I not only refuse permission for this ground but am satisfied that it is totally without merit. I certify this for the purposes of Rule 22(4A) of the Upper Tribunal Rules such that the Applicant may not request that this decision be reconsidered at a hearing.

Ground 15 - Misdirection through a categorical corroboration requirement and unequal treatment of evidence

303. This ground of appeal relates to the FTT’s approach to the evidence of the Applicant, Officer Harris and the process server. The Applicant gave evidence at the hearing and was cross-examined but the FTT said at FTT[487] it was “not prepared to accept” his evidence unless it was unchallenged or corroborated by independent sources; Officer Harris did not attend; the process server did not attend.

304. The Applicant submits that the approach to the Applicant’s evidence was not applied symmetrically.

305. I agree that the FTT took a different approach to the evidence of each of the Applicant, Officer Harris and the process server. However, it is not arguable that a lack of symmetry in the approach to each witness constitutes an error of law, or that the approach actually taken to any of these witnesses involves an error of law. It is for the FTT to consider each witness and reach its conclusion as to the weight it places on their evidence, and this is a decision that will be made based on a variety of factors including whether they attended and were cross-examined, the relevance of their evidence to the matters in issue, the apparent reliability of their evidence by reference to other evidence available and the FTT’s conclusions on the credibility of the relevant witness.

306. Here, the FTT explained the approach it was taking to the evidence of these witnesses, and gave detailed reasons for its approach to the Applicant’s evidence.

Evidence of the Applicant

307. At the heart of this ground of appeal is the Applicant’s challenge to the FTT’s refusal to accept his evidence (which the FTT described as broadly unreliable at FTT[52]), or what the Applicant refers to as the “blanket corroboration requirement”.

308. The FTT gave five examples or reasons to explain its conclusion at FTT[28] to [50], and the Applicant disputes each of these. The Applicant’s challenges to the FTT’s conclusions were set out both in the Application and in his subsequent statement dated 4 September 2026. I have taken account of all of the reasons now relied upon by the Applicant.

309. I have assessed the FTT’s approach to the Applicant’s evidence, bearing in mind that as fact-finding tribunal the FTT had the benefit of hearing the entirety of that evidence. The FTT

recognised at the outset that the Applicant's evidence was sworn testimony and that they should give reasons for any misgivings. The reasons given by the FTT were based on its comparison with the documentary position (FTT[28]).

310. In the FTT PTA Decision Judge Popplewell responded to this ground of appeal as follows:

“119. Generally, the tribunal's approach towards the appellant's credibility, and the reliability of his oral evidence, was fully explained in the Decision at [21]-[52]. The tribunal explained the reasons for their approach towards the appellant's oral evidence and any uncorroborated documentary evidence (i.e. documentary evidence authored by someone other than the appellant or someone acting on his behalf). Reasons given for the tribunal's approach were given. The tribunal was fully entitled to adopt this approach since it saw and heard the way in which the appellant gave evidence. It explained at [52] that it adopted the same approach towards his evidence as the judge had done in the case of Singh. This is an entirely rational and justifiable approach and the reasons for it were fully explained in the Decision

120. The appellant's credibility and reliability did not depend on whether he was represented. His representative would not have been given the evidence. The evidence of fact was given by him.

121. The appellant was taken to the inconsistencies in his evidence raised by the tribunal in the Decision, by Mx Lunt in cross examination. The tribunal therefore had the benefit of hearing the appellant addressing those inconsistencies. The appellant provided no coherent explanations for some of those inconsistencies which are recorded in the Decision. There were, the tribunal's review, unsatisfactory elements of the circumstances surrounding the witness statements of Rosina Harris and David Nathan. The tribunal was entitled to conclude, as it did, taking into account these unsatisfactory aspects, that it was not prepared to rely on the appellant's independently uncorroborated oral testimony. It explained why this was in the aforesaid provisions of the Decision.

122. The tribunal approached the witness statement of the discovering officer, who did not give oral evidence, in much the same way (see [54] of the Decision).

123. The tribunal concluded that the appellant was serially uncooperative on the basis of the evidence before it (see [385]-[396] of the Decision). Reasons for reaching that conclusion are set out in those paragraphs.”

311. I address below the Applicant's challenges to each of the examples given by the FTT to explain its misgivings about the Applicant's evidence. I then consider the further challenges which have been made in supplemental submissions. I have concluded that this ground does not identify an arguable error of law.

Witness statement of Rosina Harris (not Officer Harris)

312. The FTT set out this example as follows:

“29. The first of these relates to the witness statement of Rosina Harris. That witness statement is dated 1 September 2017. The appellant's evidence is that he did not draft this statement for her but had asked her to write it which she had done. She then sent it to the appellant (his evidence was that he assumed it was sent by email) who printed it off and then asked her to sign it. In that statement she says that “I am very clear in what was said, my memory of this is very good, and I wrote a note about it”. This was in relation to a meeting attended by HMRC officers in 2011. An email dated 18 October 2017 from

the appellant to Ms Harris does not refer to her statement. It is headed HMRC visit and says that “I know we have discussed this numerous times but now that you have decided to retire from the firm, I think it is best for me to have something in writing about this. Can you therefore, before you leave, send me details of exactly what occurred on the day that HMRC visited...”.

30. In response Rosina Harris, on the same date, in an email, says “as you know, the visit was a few years ago and my memory isn’t what it was but I will set out what my understanding of what occurred was”.

31. We find it very strange that, given that the witness statement was ostensibly compiled a little over a month before this exchange of emails, no mention is made either of that statement, nor of the information provided in it about that meeting. Furthermore, what Rosina Harris says in her email “my memory isn’t what it was”, contradicts what she said in a statement; “I am very clear in what was said, my memory of this is very good, and I wrote a note about it...”

32. We think it is inconceivable that if Rosina Harris had made a note about it, she would have said in her email that her memory isn’t what it was.

33. Furthermore, Mr Nathan in his witness statement said that “I have only recently given Rosina[s] statement to Bradley, he wasn’t even aware it existed...”. Mr Nathan’s statement was dated 20 November 2023. When this was put to the appellant, his evidence was that he knew it existed but he had lost it as a result of a computer failure.”

313. The Applicant submits that a person may have diminished unaided recollection yet give a clear account by reference to an earlier note. He submits that the conclusion at FTT[32] that this was “inconceivable” was an assumption, not a conclusion derived from identified evidence. The separate reliance on David Nathan’s later statement did not address whether Mr Nathan was in a position to know that the Applicant had previously known of, possessed or lost access to another copy.

314. I am not persuaded that it is arguable that the FTT made an error of law.

315. The FTT carefully considered the relevant chronology, referring to Ms Harris’ statement as having been dated 1 September 2017 and there then being an exchange of emails on 18 October 2017 which did not refer to that statement or the information provided in it about the meeting (which included that in her statement she had said “my memory of this is very good, and I wrote a note about it”). The FTT was not considering in isolation whether someone with a diminished unaided recollection could give a clear account by reference to an earlier note, but whether this was what Ms Harris had said she had done (the statement said she had a very good memory of the meeting) and the lack of reference to this statement in emails just over a month later where she said her memory isn’t what it was but she would set out her understanding (without referring to any note).

316. The FTT’s reference to Mr Nathan’s witness statement is part of an overall picture in relation to Ms Harris’ witness statement. The FTT was entitled to take account of this, and the Applicant had the opportunity to respond to this statement in cross-examination.

HMRC forms relating to non-domicile and residence

317. The second example in the FTT Decision is as follows:

“35. Secondly, on many occasions, the appellant answered questions with the expression “I would have done...”, Or “I am sure that I...” One example of this related to the HMRC forms relating to non-domicile and residence which, the documentary record shows, were sent to him for completion in, for

example, 2008. In response to a challenge from HMRC that he had never provided these completed forms, his answer was that he didn't know when he had submitted them but remembered filling them out and sending them to HMRC.

36. We think it is inherently unlikely that he did so and prefer the documentary record.”

318. The Applicant submits that the identified documentary position was an absence of a record of receipt by HMRC. That absence was relevant to weight, but he submits it was not affirmative documentary proof that the forms had never been returned. Treating an absence of record as a documentary contradiction materially overstated the evidence relied upon to discredit him.

319. I am not persuaded that this discloses an arguable error of law in the FTT Decision.

320. It is clear from the FTT Decision that HMRC had asked the Applicant to complete these forms when they opened enquiries into the returns for 2003 and 2004 on 3 November 2008 (FTT[82]) and copies of the forms were enclosed with that letter (FTT[108]). Further copies were then sent by HMRC with letters dated 16 February 2009 and 30 July 2010 (FTT[109] and [110]). The FTT was entitled to take account of the documentary record of them being sent to the Applicant (which appears not to have been disputed) and the fact that, in the context of detailed records of correspondence and attendance notes being maintained by HMRC, HMRC had no record that the forms were completed and returned (FTT[111]).

321. This conclusion by the FTT is entirely consistent with its conclusions that whilst “[e]xtensive (and extremely spiky on occasions) correspondence” passed between the Applicant and HMRC following the opening of the enquiries in 2008 (FTT[147], and the Applicant’s own evidence was that he had felt persecuted by HMRC and did not supply information to HMRC when it was requested (FTT[229]), the Applicant had been “serially uncooperative with HMRC and has failed to provide information reasonably requested by HMRC having had ample opportunity to do so and without any good reason for not doing so” (FTT[396]).

VAT position

322. The third example in the FTT Decision is set out as follows:

“37. Thirdly, in relation to the VAT position, HMRC had written to the appellant on 11 March 2015 identifying inconsistencies in the invoices which they had obtained by use of their information notices. In an email dated 8 April 2015, the appellant responded saying “I will draw up my response...” It was put to him that this did not address the VAT issue, but the appellant’s evidence was initially that he was very sure that he had spoken to John Dunne with whom he had a discussion about the VAT numbers and who told him that all the VAT numbers were correct.

38. The appellant had said that this conversation took place before he sent his April email but subsequently revised that to say that it had taken place after he had sent that email. He then went on to say that he had intended, at some stage, to provide the details that he had been given by Mr Dunne but he was not going to put them in an email in April 2015.

39. His evidence was then that having received an email from HMRC on 8 April 2015, he decided he would not tell HMRC what he had been told by Mr Dunne.

40. But if he had had that conversation with Mr Dunne after the email of 8 April 2015, then why did he say that he intended at some stage to provide the

details provided by Mr Dunne, when his subsequent evidence was that on that date he had decided not to tell HMRC of those details.

41. His oral testimony on this was wholly inconsistent.”

323. The Applicant challenges this on the basis that:

- (1) His case throughout the permission application is that this information in fact came from Mr McDonald and not Mr Dunne; and if there was any slip in his oral testimony this is readily explicable as both were closely associated with the post-sale arrangements.
- (2) The chronology relied upon by the FTT and the premise that the Applicant decided on 8 April 2015 not to provide information is inconsistent with its own narrative elsewhere of the correspondence between the parties.

324. These challenges do not identify any arguable error of law in the FTT Decision.

325. The inconsistencies relied upon by the FTT did not relate to any confusion on the Applicant’s part between Mr Dunne and Mr McDonald. It may not have been aware of such confusion at that time (as the Applicant now says that he has referred to Mr McDonald as the source of his information when applying for permission to appeal).

326. It was not the premise of this part of the FTT Decision that the Applicant decided on 8 April 2015 not to provide the information. The FTT had recorded elsewhere (at FTT[190] to [196]) the correspondence between Officer Harris and the Applicant. Here, the FTT was relying on inconsistencies throughout the oral testimony of the Applicant and the documentary evidence (ie the relevant correspondence in this case).

Joint bank account

327. The fourth example in the FTT Decision is as follows:

“42. Fourthly, in an email to HMRC dated 18 March 2022, the appellant said this about the joint bank account which was in the name of himself and his wife (bank account 5035 8789). “I can confirm that NO deposits into that bank account EVER (even when I was running the firm pre-feb 2003) constituted either (1) [income of the business or any associated companies], (2) anything other than gifts from me, my parents and John (none of which constitute untaxed income for me or my wife).”

43. However, when he was taken through a bank account statement for that account and it was apparent that other deposits have been made into that account, he revised his story and said that he did not realise at the time that Mr Dunne was paying salary and bonuses into that joint account. He went on to say that what he should have said and intended to say, to HMRC was that salary and bonuses were indeed being paid into their joint account.

44. In evidence during cross-examination, he said that he had noticed this error, that he knew at the time he made this statement in the letter that it was wrong and that he was planning to tell the tribunal this during his closing submissions.

45. In his own re-examination, he sought to clarify the position by saying that he did not get bank statements for that account, they went only to his wife, and she, having been told by him what to expect by way of deposits into it, would not question an account unless the deposits did not match up to what she had been told by him.

46. Then, in his closing oral submissions, he reverted to his original story and said that the only deposits into that account were gifts from his parents and from Mr Dunne.

47. This is an example of the appellant being caught out. He said one thing to HMRC, but once it became apparent that what was said was incorrect, he sought to revise his story and explain it away by a (not wholly convincing) narrative concerning his wife's control of the joint bank account."

328. The Applicant submits that in or around May/June 2022 he had been told by David Maclean that Mr Maclean thought some funds might have been transferred into the joint account. Mr Maclean and the Applicant did not have the relevant bank statements. The Applicant submits that he relayed this honestly at the hearing. He subsequently obtained the bank statements himself, checked them, found that Mr Maclean's recollection was not borne out and corrected the position in closing. He submits that this was an honest correction following verification. Further, the Applicant denies he knew of Mr Maclean's understanding at the time he wrote the March 2022 letter, contrary to the description of his evidence in FTT[44].

329. This explanation, provided by the Applicant without any supporting contemporaneous documentation, does not assist in showing that it is arguable that the FTT made an error of law.

330. The key aspect of the FTT's misgivings in relation to the joint bank account and explanations which have been provided at different times by the Applicant is that when the Applicant was taken through a bank account statement for that account "it was apparent that other deposits have been made into that account" (FTT[43]) and this has not been convincingly explained.

331. Any error by the FTT in recording the Applicant's evidence as to the timing of his discussion with Mr Maclean is immaterial – on both versions of events, this was in 2022.

Historic fraud

332. The final example given by the FTT in the FTT Decision is as follows:

"48. Fifthly, the appellant's evidence was that one of the reasons he wanted to sell the business in 2002/2003, was that he suffered a mental breakdown in 2002 to which a contributory factor was that he was being defrauded by a boyfriend of one of his employees. This became apparent in 2001 ("it was when I returned to the office approximately four months later, that I found out about the fraud, which in total was over £200,000").

49. However, in his evidence concerning a bank statement relating to the joint account, an entry on 6 April 2006 regarding the payment to Egg of £308.26, he said that this was a credit card payment and was part of the fraud that was being perpetrated on him.

50. We think it is inherently unlikely that this fraud was still continuing some five years or so after it had initially been discovered and reported."

333. The Applicant submits that the FTT erred in inferring that the payment made in 2006 meant that the fraud discovered in 2001 was still continuing. The Applicant submits that his evidence was that the 2006 payment serviced a liability created by the 2001 fraud.

334. The Applicant's application dated 10 September 2026 to introduce the Loan Documents relates to this challenge. As recorded above, I decided to admit this new evidence for the purpose of considering whether it is arguable that the grounds of appeal disclose an arguable error of law in the FTT Decision.

335. The Applicant's evidence, provided with the Loan Documents, is that it is the loan of £10,000 which was obtained fraudulently. The letters from debt collection agency refer to the fact that the Applicant had previously advised them that he believed this account was opened as a result of fraudulent activity and that he had provided a crime reference number; although

the final letter records that they had referred this to their client for investigation and they believed the outstanding balance relates to him. The Applicant submits that these documents show that the matter was still being actively pursued in 2011, 2013 and 2014 and that the FTT's finding at FTT[50] that it was inherently unlikely that the matter was still continuing five years after discovery was demonstrably incorrect.

336. I am not persuaded that it is arguable that the FTT made an error of law.

337. The FTT had referred to the Applicant's evidence in relation to a payment from his joint account to Egg on 6 April 2006 of £308.26 and set out its conclusion that "it is inherently unlikely that this fraud was still continuing some five years or so after it had initially been discovered and reported". The evidence which has now been produced does not indicate that the FTT's conclusion was plainly wrong. For a start, the FTT had not concluded that it was inherently unlikely that the matter as a whole was not ongoing, but that the fraud itself was still being perpetuated. Further, the loan agreement refers to fixed repayments of £317.15 per month (not £308.26 as was paid from the joint account) and for 60 payments to be made. The loan agreement is dated 23 May 2000, and in accordance with its terms the first repayment would be due on 1 July 2000. The final, 60th payment, would be made on 1 June 2005 whereas the payment from the joint account was not until 2006. Further, the letters from Arrow Global and Rockwell Debt Collection Agency show arrears of £8,836.21 in 2011 and subsequently. This is not consistent with repayments having continued to have been made until 2006. I am not persuaded that the £308.26 payment to which the FTT referred was in any way related to this loan agreement which is now provided. In this situation, it is not arguable that the FTT made an error of law.

Evidence acknowledged then rejected and misrepresentation of his evidence

338. In his statement dated 4 September 2026 the Applicant puts forward the following position:

"Evidence acknowledged then rejected

39. Judge Popplewell acknowledged in the Decision that part of my evidence was substantiated by other documentation. He then proceeded to deem that same evidence unsubstantiated and not credible. These two positions are irreconcilable. Where evidence is substantiated by contemporaneous documentation, a tribunal cannot rationally characterise it as unsubstantiated without explaining why the substantiation is insufficient.

Misrepresentation of my evidence

40. On at least two occasions, the Decision recorded a misunderstanding or mischaracterisation of my representations to the tribunal, and then relied upon those mischaracterisations as a basis for rejecting my evidence. A fair tribunal would have sought clarification before drawing adverse inferences from evidence it had misunderstood. The failure to do so was particularly prejudicial given my status as a litigant in person.

41. The Decision also treated answers I gave during the hearing as representing something other than what they plainly stated, without seeking clarification. Where a tribunal intends to interpret a witness's answer in a manner adverse to that witness and different from the apparent meaning, fairness requires that the interpretation be put to the witness for comment. This did not occur."

339. The submission made at [39] does not show it is arguable that the FTT made an error of law.

340. The FTT set out its approach at FTT[51] to [52]:

“51. In keeping with the legal principles set out above and given the human tendency to remember things in a way which might assist one’s own case, we place considerably greater weight on the contemporaneous documents and inherent probabilities than on the appellant’s recollection of events. Where his oral evidence was not corroborated by independent (i.e. compiled by someone other than himself) documentary evidence, or from which reliable inferences could be drawn from such documents, we exercised considerable caution in deciding whether it was reliable or reaching any findings of fact based on it.

52. Furthermore, throughout the hearing of the evidence and the hearing of the oral closing submissions, the appellant was constantly claiming that the correspondence contained mistakes. And that evidence he had given at one point in the proceedings was either incorrect or incomplete, and sought to correct it. He often apologised for the errors. Whilst none of these individually are fatal to his credibility or to the reliability of the underlying evidence, collectively they caused us to view his oral evidence as, broadly, unreliable and the facts that he claimed existed, with considerable suspicion. As the court said in Singh “that the appellant’s evidence may have been confusing, contradictory and patchy was a reason for treating it with real caution (as the judge did)...”. We have done the same.”

341. The FTT did not say that the Applicant’s evidence was never consistent with documentary evidence. The FTT did fairly acknowledge areas where the documentary evidence was consistent with the explanation being put forward by the Applicant (eg at FTT[401]).

342. The FTT’s approach to the Applicant’s evidence was fully and clearly reasoned.

343. The Applicant’s submissions at [40] to [41] above are not supported by any specific references to the misunderstanding or representation which is said to have occurred. Having carefully read the FTT Decision and its detailed reasons for rejecting the Applicant’s oral evidence, I am not persuaded that these generic submissions identify any arguable error of law.

Irreconcilable and self-contradictory reasoning in credibility assessment

344. In his statement dated 15 September 2026 the Applicant puts forward the following:

“A. Cooperation penalised in both directions

2. At [385]–[393] of the Decision, the Tribunal found that the Appellant had been “serially uncooperative” in providing information to HMRC and used this as a basis for drawing adverse inferences against him. The Tribunal’s conclusion at [385] that it would not accept the Appellant’s evidence unless independently corroborated was founded, in part, on this finding of non-cooperation.

3. At [420]–[423] of the Decision, the Tribunal considered wage slips which the Appellant had voluntarily provided to HMRC as part of the ADR process in 2022. He was never asked for these documents. He produced them of his own initiative as evidence that he was employed by Mr Dunne’s companies overseas and was not running the business after March 2003.

4. The Tribunal used these voluntarily produced documents against the Appellant. It characterised the salary recorded in the wage slips as “modest” and drew the inference that the Appellant must have had additional income and therefore the time and the need to continue running the business. The documents which the Appellant had produced to prove he was working elsewhere were thus converted into evidence that he was not.

5. These two positions are irreconcilable. At [385]–[393], the Tribunal penalised the Appellant for not cooperating. At [420]–[423], it penalised him for cooperating. The effect is that the Appellant’s evidence was rejected whether he provided it or not. Non-cooperation was treated as evidence of concealment; cooperation was treated as evidence of guilt. No rational tribunal could adopt both positions in the same decision.

6. Furthermore, the characterisation of a salary of £36,000 per annum as “modest” is unsupported. A salary of £36,000 is a normal income. The inference that it was insufficient to live on and therefore that the Appellant must have had undeclared income from another source is speculation, not a finding based on evidence.

B. Memory criticised in both directions

7. At [23] of the Decision, the Tribunal cited Leggatt J in *Gestmin SGPS SA v Credit Suisse (UK) Ltd & Anor* [2013] EWHC 3560 (Comm) for the proposition that memory is unreliable, particularly over time, and that tribunals should place greater weight on contemporaneous documents than on oral recollection. At [51], the Tribunal stated that it placed “considerably greater weight on the contemporaneous documents and inherent probabilities” than on the Appellant’s oral evidence.

8. At [414] of the Decision, the Tribunal criticised the Appellant for being unable to identify where employee costs were recorded in tax returns for the years 2001–2003. The Tribunal observed that the Appellant had “been living this case since 2015” and should have “got your story straight.”

9. These positions are irreconcilable. The Tribunal cited *Gestmin* to justify distrusting the Appellant’s memory, then at [414] criticised him for not having a perfect memory. The Appellant had not seen the tax returns since 2008. He was being asked during cross-examination to recall from memory where a specific cost category was recorded in tax returns filed over twenty years earlier. That he could not do so is precisely the kind of limitation that *Gestmin* recognises.

10. Moreover, the answer existed in the documents before the Tribunal. The employee costs were recorded within cost of sales in the relevant tax returns. HMRC had these returns. The Tribunal had these returns. The answer was available to anyone who looked at the documents. The Tribunal’s criticism at [414] was therefore directed not at a genuine gap in the evidence but at the Appellant’s inability to recall from memory a fact that the documents in front of the Tribunal could have confirmed.

C. The hearing bundle and ambush cross-examination

11. The significance of the Appellant’s inability to answer the question at [414] is compounded by the circumstances in which it arose. The question was put during cross-examination without prior notice. The Appellant had no advance indication that HMRC would raise employee costs in the tax returns as a matter of significance. The tax returns were contained within the hearing bundle which, as set out in the renewed application, the Appellant did not receive in sufficient time to review before the December hearing.

12. The Tribunal was therefore in the position of criticising the Appellant for being unable to recall the contents of documents he had not seen since 2008, which were contained in a bundle he could not access, in response to a question he had no notice was coming. Every safeguard that should have protected the Appellant from this situation — timely disclosure, advance notice of cross-examination topics, and access to the hearing bundle — had

failed. The Tribunal then used the resulting gap in the Appellant's oral evidence as evidence against his credibility.

D. The cumulative effect

13. The pattern across these findings is consistent. The Tribunal adopted a framework in which the Appellant's credibility was diminished regardless of his conduct. If he did not provide documents, that was non-cooperation. If he provided documents, they were used against him. If he could not recall a detail from memory, that was evidence of unreliability. If the Tribunal preferred documents over memory, that was Gestmin. These positions cannot all be held simultaneously by a rational tribunal.

14. These inconsistencies are not isolated. They form part of the broader pattern identified in the renewed application at paragraphs 128–141, and they are supplementary to the grounds there advanced. The Appellant respectfully submits that they demonstrate that the Tribunal's credibility assessment was not the product of a rational and even-handed evaluation of the evidence, but of a framework which was predisposed to reject the Appellant's case however it was presented.”

345. These further submissions do not identify an arguable error of law:

- (1) The FTT clearly explained the reasons for its conclusion that the Applicant had been “serially uncooperative”.
- (2) The wage slips were produced by the Applicant in support of his own explanation. The FTT accepted that they support his position that he was employed by Mr Dunne's companies during 2006 to 2012 (FTT[418]).
- (3) The FTT was entitled to draw the conclusions that these wages were inconsistent with the lifestyle which Office Harris had identified, that he would have needed additional income to support that lifestyle and that he would have had time to return to the UK and operate the business. The statement that these wages were “modest” was made in the context of the evidence of the Applicant's personal expenditure. The FTT's findings were not speculation but inferences it was entitled to make based on the evidence available.
- (4) The FTT was reaching conclusions based on all of the evidence before it, and identifying areas where no evidence had been provided. There was no inconsistency in its position.
- (5) The FTT addressed the Applicant's tax returns at FTT[414]. The criticisms there have to be read in the context of these being his own tax returns which he had filed for 2003 and 2004 but where he had not provided the underlying records supporting the numbers in those returns when HMRC opened the enquiries in 2008 (or subsequently). It is not that the FTT expected him to be able to remember the details; rather that he had not provided documentary evidence to corroborate the numbers.
- (6) It is disingenuous to say at [10] that the answer existed in the documents before the FTT in the costs of sales in the relevant returns. The issue was that there was no documentary evidence to support those numbers.
- (7) There had been no directions requiring either party to inform the other party in advance of the hearing of the issues that would be explored in cross-examination.

Conclusions

346. Conclusions as to the credibility of a witness are the paradigm example of a matter that is properly for the FTT, who has had the benefit of hearing all of their evidence, unless it can be shown that their conclusions were ones that no reasonable tribunal could have reached.

347. Having considered all of the submissions relied upon by the Applicant, I am not persuaded that it is arguable that the FTT made an error of law in its approach to the evidence of the Applicant. The FTT explained in some detail the reasons for its misgivings, giving specific examples, and the approach it would adopt to his evidence.

Evidence of Officer Harris

348. Officer Harris did not attend the hearing and could not be cross-examined. The Applicant submits that although the FTT said that it would give the three absent witnesses little weight and consider their statements only where consistent with contemporary documents, it later accepted Officer Harris's untested opinion on the critical limitation issue at FTT[373]. Further, he submits that the absence of Officer Harris deprived him of the opportunity to test the case actually relied upon.

349. There is no arguable error of law in the FTT's approach to the evidence of Officer Harris.

350. The FTT's position on Officer Harris' evidence is at FTT[54] where the FTT said:

“54. As regards, Officer Harris we have considered the contents of her statement only where it has been submitted to us that it is consistent with contemporary documentary evidence. We have not used it as primary evidence of the process through which the officer went when coming to her discovery and best judgment assessments.”

351. Throughout the FTT Decision it can then be seen that the FTT refers to the contemporaneous correspondence between the parties.

352. The Applicant submits that despite FTT[54] the FTT nevertheless relied on Officer Harris' untested account and opinion on issues going directly to validity and limitation. He submits as follows:

“87. In particular, at [359] the Tribunal recorded HMRC's case from Officer Harris's witness statement that the one-year VAT period began around May 2014; at [369] it relied on her account of when responses were received; and at [373] it expressly accepted her untested opinion that sufficient evidence had been gathered by around May 2014. That finding was decisive because the decision itself recognised at [371] that, if time ran from 28 March 2014, the VAT assessments were out of time.”

353. This is not made out by the FTT Decision. FTT[359] records as follows:

“359. As far as the one-year time limit is concerned, it was HMRC's submission, as set out in Officer Harris' witness statement, that this one-year period started in or around May 2014 by which time a number of substantive responses had been received from the third party clients of the business in response to the schedule 36 notices. We also observe that information was also obtained from the business in June 2014 as recorded at [133] - [136] above. And, furthermore, in their letter of 17 April 2014, the firm had indicated that it would make further representations in respect of the entities that have been subject to the third party notices. It was those representations which were sent to HMRC in June 2014.”

354. The FTT then set out the approach it would adopt towards the one-year period as being

“360. ...

- (1) To decide what were the facts which, in the opinion of the officer making the assessment on behalf of HMRC, justified the making of the assessment; and
- (2) To determine when the last piece of evidence of these facts of sufficient weight to justify the making of the assessment was communicated to HMRC.”

355. The FTT identified that the one-year period runs from the date in FTT[360(2)]. The FTT then considered time limits at FTT[363] to [375], identifying that the VAT assessments were issued on 17 April 2015 and that the one-year period therefore started on 17 April 2014.

356. The FTT did not accept Officer Harris’ evidence in her witness statement that the one-year period began in or around May 2014 without testing it: the FTT considered the Schedule 36 notices which had been issued to clients on 20 March 2014, considered it was reasonable to await the information sought by these notices, and that it was reasonable, having been told by the business in their letter of 17 April 2014 that they would write separately for her to await that response (which was only forthcoming in June 2014 (FTT[367] to [368])). The FTT referred to Officer Harris’ witness statement where she said she had prepared a spreadsheet to track the responses which were received, and found this was corroborated by the documentary evidence which showed a variety of responses received by HMRC in the specified period. The FTT recognised that if time ran from 28 March 2014 the VAT assessments would be out of time, but referred to the information requested as “dribbling in during March, April, May, June and July 2014” (FTT[372]). Having considered the overall picture, the FTT then decided to accept Officer Harris’ evidence that sufficient evidence had been gathered by around May 2014. It was not accepting her untested opinion; it had tested it itself. The FTT had identified the one-year time limit, the relevant date, Officer Harris’ evidence and the documentary evidence. It then reached its own conclusion.

357. The Applicant submits that he was denied the means of testing Officer Harris’ account through cross-examination. At A[88] he identifies this challenge:

“88. This complaint is not that hearsay evidence was automatically inadmissible. It is that the Tribunal accepted a decisive and partly subjective account from the assessment-maker, who could not be questioned about when she considered the evidential threshold satisfied, the source and use of the account-opening date, her methodology, the treatment of transfers and expenses, or the documents said to justify her conclusions. The Applicant was denied the ordinary means of testing that account.

89. The inconsistency is material. The Tribunal made findings about whether Officer Harris acted honestly, reasonably and to best judgment at [320]-[339] and [352]-[357], and accepted her opinion on timing at [373], while the Applicant's own evidence - tested through extensive cross-examination - was subjected to the categorical corroboration condition at [487] and [509]. The decision did not explain why the untested evidence of the assessment-maker could support those findings while the Applicant's tested evidence was rejected unless independently corroborated.

358. It was the fact that Officer Harris did not attend and could not be cross-examined which meant that the FTT took the approach as set out in FTT[54]. The FTT was aware that the absence of Officer Harris meant that she could not be cross-examined.

359. To the extent that the Applicant wanted to question or challenge the exercise undertaken by HMRC and the conclusions reached by HMRC, he had the opportunity to do this by putting questions to Officer Wright and making submissions at the March 2026 hearing as to the questions he was not able to put to Officer Harris.

360. It is not arguable that there was any error of law in the FTT's approach to the evidence of Officer Harris.

Evidence of process server

361. The Applicant submits that the same evidential asymmetry is demonstrated by the process-server material at FTT[464] to [468]. The process server did not see or speak to the Applicant. The critical assertions did not originate from the process server's own observation. They were attributed to an unidentified neighbour who provided no statement, whose basis of knowledge was unknown and who was also unavailable for questioning. Even taken at its highest, the material did not establish the propositions for which it was used. The visits occurred on 28 December 2007 and 9 January 2008; the Applicant's case was not that he was never present in England, but that he returned periodically, including for family visits and holidays. Possible presence at the family home on an isolated occasion did not establish UK residence, operation of the business, beneficial ownership or regular work from that address.

362. The FTT described the evidence from the process server as follows

“105. A statement by a process server dated 10 January 2008 records that the process server attending on 16 Uphill Grove the previous day spoke to a neighbour who told him that the appellant lived at that premises with his wife and that he was seen at the address most days as he worked from home as an accountant.”

363. This was then considered further at FTT[464] to [468], where the FTT recorded his evidence which it said supported HMRC's version of events, and decided that it was “contemporaneous evidence from a wholly independent source” and gave it “some weight”.

364. I accept that the FTT was thus accepting hearsay evidence; but it identified that the process server was not cross-examined, and decided that the independence of the witness supported “some” weight being placed on this evidence. This was then one of the matters that it weighed in its overall evaluation. It cannot be said that this is an approach or conclusion which no reasonable tribunal could have reached. It is not arguable that the FTT made an error of law.

Decision on Ground 15

365. This ground of appeal not only raises no arguable error of law but in my judgment would be bound to fail. I not only refuse permission for this ground but am satisfied that it is totally without merit. I certify this for the purposes of Rule 22(4A) of the Upper Tribunal Rules such that the Applicant may not request that this decision be reconsidered at a hearing.

Ground 16 - Cumulative procedural unfairness and failure to assess the combined effect of the errors

366. The Applicant submits that a collection of procedural or evidential defects may be cumulatively unfair even where no individual defect, viewed in isolation, would necessarily justify setting aside the decision. The combined matters relied upon are said to include:

- (1) first-day receipt of a 3,540-page evidential bundle;
- (2) down-grading of the expert witness on irrational reasoning;
- (3) serious illness, including the FTT's own finding on 9 December 2025 that it was not satisfied the Applicant could participate even at a minimal level at the outset of the evidential hearing;
- (4) refusal of an adjournment;
- (5) lost preparation and cross-examination;

- (6) the absence of the assessment-maker;
- (7) reliance on her untested opinion;
- (8) refusal to postpone the March 2026 hearing when HMRC had confirmed availability for the proposed alternative dates;
- (9) restricted closing preparation and reply;
- (10) timing and conditions of the March 2026 hearing;
- (11) non-service of the FTT Evidence Decision;
- (12) factual inaccuracies in the treatment of applications and evidence;
- (13) the categorical corroboration requirement; and
- (14) findings of dishonesty built upon the disputed ownership inference.

367. The Applicant submits that each matter intensified the effect of the others. The FTT's reasons for refusing permission did not demonstrate an assessment of whether the procedure as a whole afforded an effective opportunity to meet HMRC's case. The conclusion that each individual complaint did not alter the result was not equivalent to determining their cumulative effect.

368. In his statement dated 4 September 2026 (much of which has been specifically addressed elsewhere in this decision), the Applicant provides further reasons in support of the above, and in particular stated:

- (1) HMRC failed to comply with directions regarding the hearing bundle, and this was not sanctioned whereas "By contrast, every application I made — for postponement, for admission of evidence, for additional time — was refused. The disparity in treatment between the parties is itself a relevant factor in the cumulative assessment of fairness" ([44]); and
- (2) he had been denied the opportunity to rely on HMRC's national insurance data to challenge their own case.

369. I am not persuaded that it is arguable that there was any procedural unfairness in the decisions made by the FTT, whether they are considered individually or cumulatively.

370. I have addressed many of the specific matters relied upon above elsewhere in this decision. I record here that in many ways the Applicant's description of the matters relied upon is not fair or accurate, eg as explained elsewhere there was no reliance on the untested opinion of Officer Harris, any "down-grading" of an expert witness is irrelevant where their evidence is essentially agreed between the parties and accepted by the FTT. However, I recognise that by this ground of appeal the Applicant is relying upon the cumulative effect of all that happened.

371. Considering the whole picture before me:

- (1) In terms of preparation for the hearing, enquiries had been opened in 2008 and the appeal had been ongoing since HMRC issued the assessments in 2015.
- (2) In 2022, following the ADR meeting, the Applicant sent a considerable volume of information to Officer Wright relating to the issues relevant to his appeal.
- (3) The Applicant had submitted witness statements and opening written submissions to the FTT. HMRC's witness statements had been submitted before the due date for submission of the hearing bundle and the Applicant had dealt with those witness statements in his witness statements and opening written submissions.

(4) The issue and timing of the service of the hearing bundle was considered several times by the FTT, before and at the December 2025 hearing. The FTT identified that much of the documentation within the bundle had been seen by him before production of the hearing bundle – whether this was HMRC’s witness statements, or documentation which he had provided.

(5) The Applicant’s health was considered on a number of occasions by the FTT, taking account of the evidence which was provided.

(6) The Applicant made several applications to the FTT during November and December 2025, some of which were for the hearing listed to start on 8 December 2025 to be postponed. Some were refused on the basis of the information available at that time; but by the time the start date arrived the FTT did grant two postponements, the result of which was that the hearing did not start until the afternoon of 12 December 2025. In the FTT PTA Decision Judge Popplewell says at [92] “The appellant was able to participate fully at the December hearing. He cross-examined HMRC’s witnesses and gave his oral evidence (on which he was cross-examined at length) without apparent difficulty (subject to breaks to cater for his cough).”

(7) The consequence of the various postponements was that the hearing was not completed within the listing window in December 2025 and it was necessary to list a further hearing for submissions. The submissions hearing was listed for 18 and 19 March 2026. The Applicant did not provide any response to that notice of hearing.

(8) When the Applicant applied on 28 February 2026 to postpone the submissions hearing listed for 10am on 18 and 19 March 2026 he did not apply for a later start time. There was no obligation on the FTT to pro-actively check with the Applicant if he wanted to apply for a later start time if the postponement application was refused. The start time was clear on the notice of hearing. The first time the start time was raised was in the application to the FTT for permission to appeal.

(9) The FTT identified that by the time of the March 2026 hearing the Applicant had the hearing bundle for several months.

(10) The Applicant provided written closing submissions and had the opportunity to speak first at the submissions hearing. The Applicant had the opportunity in these written and oral submissions to take the FTT to the documentary evidence in the hearing bundle which, in his view, supported his case.

372. The Applicant relies here on the FTT’s treatment of the evidence of Dr Young, which I address in Ground 20. He also relied on the refusal to admit the national insurance record; that case management decision released on 9 December 2025 (which referred to Judge Sinfield’s earlier decision refusing a similar application) explained that the national insurance record is a record of NICs credited to a person and says nothing about a person’s taxable earnings. I agree. Neither of these points come close to identifying matters which could contribute to an arguable error of law.

373. The FTT is responsible for case managing the appeals before the Tribunal and must give effect to the overriding objective of dealing with cases fairly and justly. This includes dealing with the case in ways which are proportionate, avoiding unnecessary formality and seeking flexibility and avoiding delay so far as compatible with proper consideration of the issues.

374. Here, it is not arguable that there was any procedural unfairness in the case management of the appeal or in the substantive decisions made by the FTT. The FTT did not prioritise completing the hearing within the December 2025 listing window irrespective of whether this was in accordance with the overriding objective, and recognised that it would only be able to

hear the evidence within this window. It re-visited its own decisions on the date on which the hearing would resume. And the substantive matters relied upon (eg as regards the finding of dishonesty and the approach to witness evidence) were fully explained in the FTT Decision.

375. This ground of appeal not only raises no arguable error of law but in my judgment would be bound to fail. I not only refuse permission for this ground but am satisfied that it is totally without merit. I certify this for the purposes of Rule 22(4A) of the Upper Tribunal Rules such that the Applicant may not request that this decision be reconsidered at a hearing.

Ground 17 - Incomplete determination of liability and quantum and mischaracterisation of directed calculations as agreement

376. The Applicant submits that, having revised the central figures but stated it could not itself determine the replacement income tax and VAT assessments and penalties, with directions to be released, the FTT PTA Decision then erred in characterising the process in those directions as an invitation to the parties to agree the numerical consequences. The Applicant's case is that the FTT directed HMRC to apply its figures, produce amended assessments, put those calculations to the Applicant and seek agreement: that was not an unstructured consensual invitation. The Applicant submits that agreement cannot be assumed; and the process demonstrates that the FTT Decision did not provide a sufficiently precise and reliable basis for liabilities said to exceed £1 million.

377. This ground of appeal does not disclose an arguable error of law.

378. The appealable decision here is the FTT Decision and not the FTT PTA Decision.

379. The FTT addressed quantum at FTT[481] to [548]. Within this section the FTT considered the evidence and submissions and then at FTT[542] set out a table showing the “combined effect of these adjustments to turnover and expenses and the revised profit figures” for the tax years 1994/1995 to 2013/2014. (Ground 19 relates to one of those figures.) The FTT then set out the adjusted VAT turnover at FTT[547]. The FTT then decided:

“REVISED ASSESSMENTS AND PENALTY ASSESSMENTS

651. Although we have been able to revise the income and VAT turnover figures for the years in question, we have not been able to compute replacement income tax or VAT assessments from those figures. Nor have we been able to revise the penalty amounts for those penalties for which the appellant remains liable.

652. We shall provide directions in relation to these matters under separate cover.

DECISION

653. We dismiss the appeals against the discovery assessments and the VAT assessments.

654. We allow the appeal against the penalties under section 93 TMA 1970 and schedule 55 FA 2008 for failure to comply with notices to file but dismiss the appeals against the other penalties.”

380. The FTT thus reached a decision on the revised income tax and VAT turnover figures for each year, but was not able to translate that into a computation of the income tax or VAT assessments, or the resulting penalties. That is entirely understandable.

381. The FTT has subsequently issued directions (as referred to by the Applicant) for the computation and agreement of the income tax assessment, VAT assessment and penalties. It is envisaged that this would be an arithmetical exercise which can be agreed by the parties, using the numbers which have been determined by the FTT. If the parties are unable to agree in

accordance with those directions, they may re-apply to the FTT for determination of any outstanding issues.

382. It is not arguable that the FTT made an error of law.

383. This ground of appeal not only raises no arguable error of law but in my judgment would be bound to fail. I not only refuse permission for this ground but am satisfied that it is totally without merit. I certify this for the purposes of Rule 22(4A) of the Upper Tribunal Rules such that the Applicant may not request that this decision be reconsidered at a hearing.

Ground 18 - Failure properly to address the Applicant's fair-trial and abuse-of-process case

384. The Applicant submits that the FTT erred in its treatment at FTT[624] to [645] of the Applicant's abuse- of-process and fair-trial arguments; the FTT did not adequately engage with the cumulative case actually advanced. Had the cumulative case been properly addressed, the FTT could have concluded that the Applicant had not received an effective opportunity to present and test his case.

385. The matters relied upon include the timing and size of the bundle, the FTT's approach that it would not search the evidence for points not specifically identified, the Applicant's illness, status as a litigant in person, alleged disclosure and investigation failures, inability to analyse and deploy documents before evidence, refusal of subsequent submissions and the combined prejudice caused.

386. This ground of appeal does not disclose an arguable error of law.

387. The FTT addressed at FTT[624] to [645] the matters which the Applicant had identified as procedural irregularities by HMRC which he submitted amount to an abuse of process. The FTT recorded at FTT[625] that the Applicant had set these out in his skeleton but said little about them in his closing oral or written submissions. Reading that part of the FTT Decision, I cannot discern any arguable error of law.

388. The Applicant's submissions on this ground appear to be largely based on what the FTT did not set out expressly. I have addressed matters relating to what is said to be the cumulative case advanced in Ground 16.

389. The Applicant refers to the FTT's conclusion at FTT[639] that they cannot see that the Applicant has made out any, or any convincing, case that HMRC have failed in their duty of candour, with the FTT recording that HMRC had clearly provided a substantial bundle of documents. The Applicant submits that the FTT relied upon the volume of HMRC disclosure without answering the distinct allegation that relevant or potentially exculpatory material had not been pursued or disclosed. This challenge does not identify an arguable error of law in the FTT Decision as no further explanation has been provided to the Upper Tribunal of what it was that HMRC was said to have not pursued or not disclosed or how it is that the FTT's conclusion on this arguably involved an error of law.

390. The focus of this part of the FTT Decision was on the Applicant's submissions that he had suffered such prejudice as a result of HMRC's behaviour that he could not have, and had not had, a fair trial. The FTT explained its reasons for rejecting these submissions. Nothing that the Applicant now relies upon comes close to establishing it is arguable that the FTT made an error of law.

391. This ground of appeal not only raises no arguable error of law but in my judgment would be bound to fail. I not only refuse permission for this ground but am satisfied that it is totally without merit. I certify this for the purposes of Rule 22(4A) of the Upper Tribunal Rules such that the Applicant may not request that this decision be reconsidered at a hearing.

Ground 19 - Objective arithmetical error and consequentially unsafe quantum

392. Based on the reasons put forward by the Applicant in support of this ground, I have proceeded on the basis that it involves two separate grounds:

(1) Ground 19a – At FTT[542] the FTT sets out its determination of adjusted turnover of £80,037 and adjusted expenses of £116,746 for the 2008/09 tax year. That table records the result as a profit of £36,709, whereas in fact it is a loss of this amount. The Applicant submits that this is an objective error on the face of the decision and affects the income tax computation and any consequent interest or penalty computation and that the quantum problem is wider than one slip.

(2) Ground 19b – At FTT[518] to [520], the FTT averaged figures from 2005/06 and 2006/07 and extrapolated them backwards to years beginning in 1994/95. The FTT Decision records that account 2653 did not begin operating until February 2005. The Applicant submits that the FTT was required to explain why post-February 2005 receipts were a reliable proxy for materially earlier years and how the opening of that account affected the asserted continuity.

Ground 19a

393. This ground is said to identify an objective £73,418 error.

394. I accept that there is a typo in the FTT Decision in that the number in the column headed “Profit” should either have shown a minus sign in front of the £36,709 or that number should have been put in brackets.

395. The Applicant submits that permission to appeal is required so that this “objective £73,418 error” can be corrected. I do not agree that it is arguable that this mistake was material to the FTT Decision. The table clearly shows the FTT’s determination of the adjusted turnover and adjusted expenses. The typo is obvious.

396. The FTT Decision, in its decision at FTT[651], refers to its revisions of income and VAT turnover figures for the years in question and that they have not been able to compute the replacement assessments. Directions have been issued in relation to these matters. The parties can use the adjusted turnover and adjusted expenses numbers for this purpose.

Ground 19b

397. This ground does not disclose an arguable error of law.

398. The FTT had identified the various bank accounts and made findings as to whose name they were in, who operated them and, in the case of account 2653, that it was not opened until after the date of the sale agreement. The FTT addressed at FTT[520] the Applicant’s submission that this could not be used as the basis for income which was generated before it was opened, explaining that the Applicant had not shown that it was not business income generated at the time when he was effectively acting as principal of the business. The issue was not into which bank account was business income received but the amount of that income in each of the years in issue. The FTT had explained its reasoning throughout FTT[481] to [549].

399. These grounds of appeal not only raise no arguable error of law but in my judgment would be bound to fail. I not only refuse permission for these grounds but am satisfied that they are totally without merit. I certify this for the purposes of Rule 22(4A) of the Upper Tribunal Rules such that the Applicant may not request that this decision be reconsidered at a hearing.

Ground 20 - Erroneous characterisation of Dr Young's evidence as fact rather than opinion, and failure to apply the accepted effect of that evidence

400. Dr Young was instructed by the Applicant to prepare an expert report. That report complied with the formalities required of expert evidence. The Applicant applied in October 2025 for that report to be admitted as expert evidence. In directions released on 9 December 2025 the FTT decided to admit the report but as evidence of fact not that of an expert. The Applicant criticised the reasons given by the FTT for making this decision and submits that Dr Young's professional assessment of the results of Officer Doherty's digital searches were material and within his area of expertise.

401. The Applicant submits that the FTT's own conclusion on Eposis and the Greek search results were not then carried through to an evaluation of what affirmative evidence remained to disprove the relevant entity once this negative-footprint inference had been rejected.

402. This is not arguable; and the position adopted by the FTT in relation to the admission of Dr Young's report as evidence of fact rather than expert evidence is in any event immaterial to the FTT Decision.

403. The Applicant needed to apply for permission to rely on expert evidence. The directions for the hearing had been released in January 2025 and made no provision for either party to rely on expert evidence. The Applicant only applied to do so in October 2025. The issue for the FTT was therefore whether to give permission for expert evidence to be introduced late, with the FTT decision on 9 December 2025 identifying that the application was seriously and substantially late. Judge Popplewell considered the contents of the report and the potential prejudice to the parties in making his decision. It is not arguable that this involved the making of an error of law.

404. The reason why this ground of appeal is wholly unarguable is apparent from the reasoning in the FTT Decision on the substantive issue.

405. Officer Wright had asked Officer Doherty to undertake a digital investigation into the digital footprint of the entities identified in the information provided by the Applicant. Dr Young's evidence concerned the investigation undertaken by Officer Doherty. The FTT records:

"14. Oral evidence on his behalf was also given by Dr Nigel Young ("Dr Young"). The focus of his evidence was on the results of the research undertaken by Officer Doherty. This evidence was tendered late in the proceedings by the appellant who asked for it to be admitted as expert evidence. We allowed the application, but on the basis that we would not treat Dr Young as an expert but as a witness of fact. We gave reasons for this decision at the time. Following the evidence given by Dr Young, the appellant renewed his application that he be treated as an expert. We reject that application for the reasons given in our original decision. Furthermore, given that his evidence was largely of fact rather than of opinion, in our view his status is largely irrelevant."

406. The evidence of Officer Doherty and Dr Young was recorded by the FTT as follows

"215. Officer Doherty's evidence was that he was asked to conduct open source enquiries to ascertain any digital footprint and links on Eposis Group, Eposis Financial, Eposis Properties, John Dunne, Terry Dunn, Simon Bradley, John McDonald and Bradley Strauss.

216. His evidence was that he could find no digital footprint for any of these entities or individuals. He frankly accepted however that this did not mean

that they did not exist. It simply meant that he could not find digital evidence of that existence.

217. He fed this information back to Officer Wright. He did not use that information to come to any conclusions himself.

218. Dr Young's evidence, in essence, was that Officer Doherty's methodology gave rise to results from which it was not possible to conclude that the entities for which he searched did not exist. All that it was possible to say was that there was no evidence of that existence. "Absence of evidence is not evidence of absence". In his view Officer Wright had come to a conclusion that there was no evidence that these entities existed when all that could be concluded was, as indicated by Officer Doherty, that the officer could find no digital footprint of them."

407. The FTT then set out its conclusions on the negative digital footprint in the following terms:

"427. Dr Young's evidence. Similarly, we are prepared to accept Dr Young's evidence (which is effectively accepted by both Officer Doherty and Mx Lunt) that the fact that Officer Doherty's searches did not reveal the digital footprint of the Eposis entities or of David Nathan, does not mean that those entities or that individual ever [sic] existed.

428. We are also prepared to accept that the letter from the Greek authority does not conclusively demonstrate the nonexistence of these entities."

408. The FTT accepted the evidence of Dr Young, and recorded that by this stage that evidence was effectively accepted by both Officer Doherty and Mx Lunt. In this situation, I am not persuaded that it is arguable that the characterisation of Dr Young's evidence was material or indeed relevant.

409. The Applicant submits that the FTT had failed to carry this conclusion through to its evaluation of HMRC's challenge or the applicable burden. This is not arguable. FTT[427] to [428] (as well as the immediately prior consideration of Eposis' accounts) are set out in the FTT's consideration of the relevant evidence on the extent of the Applicant's involvement in the business after March 2003 (which section is from FTT[377] to [476]). The FTT weighed all of the evidence, recording that there was no conclusive single piece of evidence and reached its conclusion on the basis of the proven and relevant facts.

410. This ground of appeal not only raises no arguable error of law but in my judgment would be bound to fail. I not only refuse permission for this ground but am satisfied that it is totally without merit. I certify this for the purposes of Rule 22(4A) of the Upper Tribunal Rules such that the Applicant may not request that this decision be reconsidered at a hearing.

Ground 21 - Actual bias allegation and apparent bias, supported by the particularised cumulative sequence

411. I have set out the Applicant's submissions in the Application on this ground below:

"184. The Applicant recognises that adverse rulings, even repeated adverse rulings, do not without more establish bias. His primary case is cumulative procedural unfairness: the first-day delivery of a 3,540-page evidential bundle, illness, inability to prepare effective cross-examination, the absence of the assessment-maker, reliance on her untested opinion, the categorical corroboration rule applied to the Applicant, restrictions on closing presentation, non-service of the 2 May ruling, and serious findings of dishonesty founded on the disputed ownership inference.

185. The permission refusal at [151]-[171] largely cross-referred to its treatment of individual matters. It did not adequately address whether their combined operation deprived the Applicant of a fair and effective opportunity to present his case. A series of defects may be cumulatively unfair even if no single defect would independently require the decision to be set aside.

186. The sequence includes the bundle and illness issues, repeated refusals of procedural relief, restrictions on presentation, the treatment of Dr Young's evidence, the unequal approach to untested HMRC evidence and the Applicant's tested evidence, reliance on an unidentified neighbour through an absent process server, the treatment of the VAT-number evidence discussed at [37]-[41] and fully addressed at Ground 15 above, findings of dishonesty and fraud, and the non- service of the evidence ruling. The pattern, tone and cumulative evidential and procedural effect require independent appellate scrutiny.

187. There is also an objectively impossible date in the permission refusal: at [172] it refers to a supplementary submission dated 30 July 2026 even though the actual supplementary submission was dated 13 July 2026 and the refusal was released on 23 July 2026. That error does not establish bias by itself, but it reinforces the need for independent scrutiny of whether the Applicant's submissions and chronology were accurately considered.

188. A further, and directly evidenced, illustration of prejudgment arises from Judge Popplewell's own ruling of 3 December 2025, refusing the Applicant's application of the previous day to postpone the hearing then listed to commence on 8 December 2025. That application explained that the Applicant's 90-year-old mother had been admitted to hospital with a serious infection approximately two weeks earlier; ... ; and that he had himself become seriously unwell during that period, supported by a doctor's certificate. Judge Popplewell's ruling addressed only the sufficiency of the medical certificate. It did not engage at all with the mother's hospitalisation or the circumstances of the Applicant's presence in the United Kingdom. Having drawn an analogy with an unrelated comment recorded by a different judge in a different context, Judge Popplewell recorded at paragraph 9 of that ruling his view that the application was 'similarly a deliberate tactic to avoid the matter being heard next week'. The analogy does not withstand scrutiny: the earlier comment relied upon concerned an unparticularised assertion of illness with no supporting evidence of any kind, whereas the Applicant's application was supported by a dated doctor's certificate and specific, checkable circumstances concerning his mother's hospitalisation, and was never suggested to be false. Treating the two as equivalent, without acknowledging that distinction, is itself indicative of a predisposition against the Applicant rather than a reasoned assessment of the evidence before the Tribunal. That characterisation of an application grounded in a parent's hospitalisation, made before the evidential hearing had even begun and before any of the matters later relied upon in the substantive decision had been heard, is relied upon as a concrete, dated illustration of the prejudgment underlying both the actual and apparent bias allegations in this ground.

189. A further sequence of dates concerning the Barclays evidence ruling is relied upon as part of the same cumulative pattern, and is set out fully at Ground 4 above. In outline: the ruling refusing the Applicant's application of 26 April 2026 records that it was sent to the Tribunal administration on 2 May 2026; the Barclays letter which the ruling found to be missing was, on the Applicant's evidence, obtained and sent to the Tribunal the following day, 3 May 2026, before the substantive decision was released on 6 May 2026; and

the ruling itself was not served on the parties until 20 July 2026, attributed to an administrative error. The Applicant does not allege that the 2 May date is false, and does not rely on this sequence as free-standing proof of bias. It is relied upon, together with the other matters in this ground, as part of the cumulative pattern which the Applicant submits warrants independent scrutiny.

190. The allegation is not that every factual or procedural error proves bias. The Applicant relies on the cumulative and consistently adverse direction of the identified matters: uncertainty in his tested evidence was converted into a reason for general rejection; a correction following further enquiry was treated as proof that he had been 'caught out'; an absence of an HMRC record was elevated into contrary documentary proof; a single-name discrepancy in a decade-old recollection was treated as demonstrating wholly inconsistent testimony; while material HMRC evidence and opinion from the absent assessment-maker, and assertions attributed to an unidentified neighbour through an absent process server, were accepted without equivalent testing. That asymmetry is relied upon both as cumulative procedural unfairness and as part of the evidential basis for the bias grounds.

191. The Applicant has made a formal and unequivocal allegation to the First-tier Tribunal that Judge Popplewell was actually biased against him and, in the alternative, that the cumulative circumstances give rise to apparent bias. He has requested that Judge Popplewell have no further involvement and that the relevant decisions and procedural handling be considered independently. That allegation is serious, remains live and is neither withdrawn nor abandoned by this renewed application.

192. The Applicant recognises that actual bias is a grave allegation which must be established by evidence and is not proved merely because it has been asserted. He relies on the particularised chronology and cumulative pattern identified above. He maintains the allegation of actual bias to the extent that the evidence ultimately establishes that Judge Popplewell allowed hostility or an extraneous consideration to affect his treatment of the case. In any event, and as a distinct alternative ground, the objective test for apparent bias is whether a fair-minded and informed observer, considering the circumstances as a whole, would conclude that there was a real possibility of bias: *Porter v Magill* [2001] UKHL 67 at [103]. The ground is not based merely on the outcome or on the existence of adverse rulings.

193. Whether analysed as procedural unfairness, actual bias or apparent bias, the nature of the grounds means that any remittal should be to a differently constituted tribunal. A panel required to reconsider credibility, ownership and dishonesty should not include a decision-maker whose handling of the process and impartiality are themselves in issue.”

412. This was supplemented by the Applicant’s statement dated 4 September 2026 (much of which has been referred to above). That also includes:

“G. INDICATION OF PREDETERMINED OUTCOME

37. During the hearing, and before it had concluded, Judge Popplewell made a comment to the effect that I could appeal the decision. The hearing had not yet concluded. No decision had been formally made. An observation of this nature, made during a live hearing, is capable of indicating that the judge had already reached a conclusion adverse to me before hearing all of the evidence and submissions.

...

J. THE CUMULATIVE PICTURE

48. I invite the Upper Tribunal to consider the matters set out above not only individually but cumulatively. Applying the *Porter v Magill* test, a fair-minded and informed observer would note the following pattern:

- (a) A finding of fraud based on circular reasoning and an incorrect cross-reference, without adequate analysis of whether I genuinely believed what I stated;
- (b) The downgrading of a highly qualified expert witness (Dr Young, PhD Cantab, former Chairman of the Academy of Experts) on reasoning that was irrational, with the practical effect of diminishing evidence that undermined HMRC's case;
- (c) The tribunal's own finding that I was unfit to participate "even at a minimal level," followed by a requirement that I participate nonetheless;
- (d) The refusal of every postponement application I made, each supported by documented reasons, whilst HMRC's non-compliance with directions was overlooked;
- (e) The refusal to postpone the closing submissions hearing when HMRC confirmed availability for the proposed alternative dates and would have suffered no material prejudice;
- (f) The requirement that I make my closing submissions at 5:00am in my time zone, contrary to Judge Sinfield's earlier direction and my explicit request of 28 February 2026, with my time restricted when I was actually alert;
- (g) A comment during the hearing about appealing, made before the hearing had concluded, capable of indicating predetermination;
- (h) Internally contradictory findings — acknowledging Mr McDonald's email at [127] then stating there was "no independent corroboration" at [403];
- (i) Evidence acknowledged as substantiated then deemed unsubstantiated;
- (j) Mischaracterisation of my evidence on at least two occasions, relied upon to draw adverse conclusions;
- (k) A factual error regarding when I had access to the bundle;
- (l) Acceptance of the evidence of an absent HMRC witness whilst subjecting my evidence to a heightened corroboration standard;
- (m) Exclusion of HMRC's own NI records which supported my case;
- (n) Failure to consider the evidence I had provided regarding the effect on my mental health.

49. Each of these matters, individually, is capable of amounting to an arguable error of law. Taken cumulatively, the fair-minded observer would conclude that there was a real possibility that the proceedings were not conducted fairly and that the outcome was predetermined.

50. I further draw attention to the fact that I am a litigant in person. The tribunal has a recognised duty to ensure that unrepresented parties are not placed at a material disadvantage. In this case, far from accommodating my position, the cumulative effect of the procedural decisions made by Judge Popplewell was to render it impossible for me to present my case on equal terms. The extreme difficulties I encountered — in my personal life, my health, my mental wellbeing, and the failure to receive the bundle — were not given adequate or any weight."

413. As recognised by the Applicant, these are very serious allegations. All judicial office holders swear or affirm the judicial oath, and allegations of bias (whether actual or apparent) risk undermining confidence in the judiciary, principles of open justice and the right to have a case dealt with fairly and justly.

414. The Applicant has not specified any pecuniary or non-pecuniary interest that Judge Popplewell could be said to have in relation to the proceedings. Accordingly, I consider that the allegations are primarily that there is an appearance of bias rather than actual bias. I have nevertheless kept both in mind when considering this ground of appeal.

415. I have considered all of the evidence before me (including in relation to the procedural history of the appeal as well as the FTT Decision) carefully in the light of all of the Applicant's submissions. I am not persuaded that this ground of appeal identifies an arguable error of law.

416. I start by observing that the FTT Decision itself was a decision of a panel comprising both Judge Popplewell and Tribunal Member Shillaker. In the event of any disagreement between them, Judge Popplewell would have had the casting vote. However, there is no indication at any point in the FTT Decision that the decision was anything other than a joint decision of the panel. I do not suggest that it cannot be arguable that a judicial office holder sitting as a member of a panel rather than on their own held or displayed actual or apparent bias; but I consider that sitting as a panel is not an irrelevant factor, as it would be expected that their fellow panel member would identify and raise concerns as to actual or apparent bias.

417. Putting that to one side, I nevertheless recognise that many of the case management decisions and directions in this appeal, both before and after the two hearings, were made by Judge Popplewell alone. I have the benefit of being able to consider all of those decisions that were attached to the FTT PTA Decision for this purpose. I have not referred below to every single point made by the Applicant, but have reflected on all of his submissions when considering this ground of appeal.

418. Viewed overall the picture before me shows:

(1) Judge Popplewell actively considered the position in relation to the hearing bundle, assessing its contents before deciding to accept HMRC's contention that much of the information was known to the Applicant, and the Applicant had responded to the five witness statements of HMRC which between them contained most of the relevant documents by way of exhibits (in his directions of 26 November 2025). Judge Popplewell's decision as to the Applicant's ability to prepare for and participate in the hearing was made having considered the actual bundle.

(2) Judge Popplewell considered the submissions and evidence as to the Applicant's health and his ability to participate in the hearing. He refused an adjournment on 3 December 2025 on the papers; and in so doing there was no need to refer to every submission which had been made, in particular in relation to the illness of the Applicant's mother. When the application was renewed at the hearing, the 9 December 2025 Directions show that Judge Popplewell considered the Applicant's health and what would be required of him during the hearing. He granted adjournments, which involved re-considering case management decisions which he had previously made. It is incorrect for the Applicant to state that Judge Popplewell refused every postponement application he made – it is demonstrably the case that the hearing was listed to start on 8 December 2025 but did not in fact start until 12 December 2025.

(3) Judge Popplewell did not proceed on the basis that the hearing must proceed and be completed within the listing window in December 2025 irrespective of whether this was in accordance with the overriding objective. Indeed, the result of the adjournments

was that the hearing could not be completed within that listing window and a further hearing had to be listed for March 2026 for the parties to deliver their closing submissions (which would typically have been expected to have been delivered straight after the evidence was heard, potentially with a gap of a day or half a day if time permitted).

(4) The requirement that the Applicant make closing submissions at 5am local time in Peru was not contrary to Judge Sinfield’s earlier directions. Those directions had related to the December 2025 hearing. The start time of 10am was communicated to both parties in the notice of hearing and no application was made by the Applicant for a later start time. The February Postponement Application did not include any such application.

419. The Applicant submits that HMRC’s non-compliance with directions “was overlooked”. Yet he has not said what that non-compliance was; and if it relates to matters that he relied upon in applying for HMRC to be debarred from taking any further part in the proceedings, then that was considered in Judge Popplewell’s decision of 26 November 2025 rejecting that application. It is correct that no further reference was made to these matters in the FTT Decision, but the FTT stated at FTT[8] that various case management applications had been made by both parties and that they had been dealt with at the time and the FTT did “not propose to rehearse the reasons for the decisions that we reached in those applications”.

420. This ground of appeal comprises allegations against Judge Popplewell, yet some of the matters relied upon by the Applicant were not actions or omissions of Judge Popplewell, such that it is not arguable that they can be said to show any actual or apparent bias. This is most obviously the case in respect of the absence of Officer Harris as a witness (particularly in circumstances where no application had been made for a witness summons to be issued) and the delay in the release of the FTT Evidence Decision (which the Applicant refers to as “non-service”).

421. Some of the matters relied upon by the Applicant relate to the making of the FTT Decision itself. However, I have found that these allegations were not made out, or were fully explained by the FTT:

- (1) Reliance on the untested opinion of Officer Harris – this is addressed at Ground 15. The FTT did not rely on her untested opinion; it tested the position by reference to the documentary evidence and reached its own conclusion.
- (2) Approach to the Applicant’s evidence – this is addressed at Ground 15. The approach to the Applicant’s evidence, and reasons for this approach, were fully explained by reference to specific examples.
- (3) Treatment of Dr Young’s evidence – this is addressed at Ground 20. The FTT had accepted Dr Young’s evidence.
- (4) Internally contradictory findings, namely acknowledging Mr McDonald’s email at FTT[127] and stating there was no independent corroboration at FTT[403] – this is addressed at Ground 4; there was no internal contradiction or inconsistency.
- (5) Findings of dishonesty and the incorrect cross-reference – this is addressed at Ground 8. The FTT made sufficient findings and the incorrect cross-reference was immaterial.

422. The Applicant relies on what he submits is an “objectively impossible date” in the FTT PTA Decision, where at [172] it refers to the Applicant’s supplementary submissions dated 30 July 2026 whereas they were dated 13 July 2026 and the FTT PTA Decision was itself released on 23 July 2026. This is clearly just a typo – at [1] of the FTT PTA Decision Judge Popplewell

correctly records that the supplementary submissions were made on 13 July 2026; and he then addressed the submissions made, notwithstanding that they were made out of time.

423. The Applicant submits that Judge Popplewell had pre-judged the outcome. He relies on the following specific matters:

(1) The Applicant relies on a statement in a decision refusing postponement on 3 December 2025 that the application was “a deliberate tactic to avoid the matter being heard next week”. He says Judge Popplewell only referred to the medical evidence in respect of the Applicant not his mother’s illness and that the reference to his mother’s illness was “specific, checkable circumstances”. I agree that the language used here is somewhat intemperate. However, the decision itself cannot be impugned: it is important to recognise that the illness of the Applicant’s mother may well be “checkable” but it is not for the FTT to conduct checks themselves, it is for a party making an application to provide evidence, a fact of which the Applicant was well-aware. Further, Judge Popplewell did then re-visit this decision when the Applicant renewed his application for postponement at the beginning of the hearing on 8 December 2025 and the FTT did grant an adjournment until 11 December (which was subsequently extended to 12 December).

(2) The Applicant relies on a comment from Judge Popplewell during the hearing that he could appeal the decision. Informing parties that they may apply for permission to appeal does not indicate that Judge Popplewell had already reached a conclusion adverse to the Applicant. Here, both parties have the right to apply for permission to appeal; HMRC have the right to apply for permission to appeal against the FTT Decision so far as it allowed the Applicant’s appeal against the penalties for failure to comply with notices to file and (although I would typically expect such application to be made by way of Respondent’s Notice) the FTT’s decisions on quantum given that, whilst the assessments have not been recalculated by the FTT it is clear that the recalculated amounts will be for a lower amount than had been assessed by HMRC.

424. The Applicant refers to the fact that he is a litigant in person, submitting that the FTT has a recognised duty to ensure that unrepresented parties are not placed at a material disadvantage, and that here the cumulative effect of the procedural decisions was to render it impossible for him to present his case on equal terms. I do not accept that this is arguable. The FTT is required to deal with cases fairly and justly, and this includes ensuring, so far as practicable, that the parties are able to participate fully in the proceedings. The Applicant has represented himself throughout the proceedings before the FTT (and in making the Application to the Upper Tribunal) and has shown that he is clearly able to make applications relating to the conduct of the case and to present his case both orally and in writing. It is not arguable that the case management of the appeal before the FTT (recognising that I only have sight of the case management decisions by Judge Popplewell and not the procedural history from the time he notified his appeal to the FTT) has prevented him from being able to put forward his case; and nor is it arguable that it has been procedurally unfair.

425. The Applicant submits that Judge Popplewell “allowed hostility or an extraneous consideration to affect his treatment of the case”. There is no further explanation of what any such extraneous consideration may have been.

426. I am not persuaded that it is arguable that Judge Popplewell displayed or held actual bias. Further, I am not persuaded that it is arguable that a fair-minded and informed observer, considering the circumstances as a whole, would conclude that there was a real possibility of bias.

427. This ground of appeal not only raises no arguable error of law but in my judgment would be bound to fail. I not only refuse permission for this ground but am satisfied that it is totally

without merit. I certify this for the purposes of Rule 22(4A) of the Upper Tribunal Rules such that the Applicant may not request that this decision be reconsidered at a hearing.

DECISION

428. Permission to appeal is REFUSED on all grounds.

429. I have certified that all of the grounds of appeal are totally without merit for the purposes of Rule 22(4A) of the Upper Tribunal Rules. The Applicant may not request that this decision is reconsidered at a hearing.

Signed: Jeanette Zaman
Issued to the parties on: 29th September 2026