



UPPER TRIBUNAL

TAX AND CHANCERY CHAMBER

Neutral Citation Number: [2026] UKUT 00381 (TCC)

Applicant: Strauss Phillips & Co Ltd (from substantive appeal and costs decision in the name of the taxpayer Gary Elden)	Tribunal Ref: UT-2026-000089
Respondents: The Commissioners for His Majesty's Revenue and Customs	

**RECONSIDERATION OF APPLICATION FOR PERMISSION TO APPEAL
FOLLOWING ORAL HEARING**

DECISION NOTICE

JUDGE RUPERT JONES

Introduction

1. The Applicant (or “the firm”), Strauss Phillips & Co Ltd, a firm of accountants, applies to the Upper Tribunal (Tax and Chancery) (“UT”) for permission to appeal the decision of the First-tier Tribunal (Tax Chamber) (“the FTT”), released on 15 April 2026 (*Gary Elden v Revenue and Customs* TC/2023/09420, - “the Costs Decision”).

2. References in square brackets [] below are to paragraphs in the Costs Decision unless context requires a different interpretation. Given the Costs Decision is unpublished, I have included most of its contents within this decision.

3. The Costs Decision states that it was heard by the FTT on 7 April 2026 but it is clear from [4], as confirmed by the parties at the hearing before me, that it was decided on the papers without a hearing on that date.

1. In its Costs Decision, the FTT decided that the Applicant firm had acted unreasonably in representing Gary Elden, an Appellant before the FTT. The FTT decided that the Applicant should pay HMRC’s costs in the sum of £13,068.42.

2. In the Costs Decision the FTT refused HMRC’s application for costs against Mr Elden under Rule 10(1)(b) of the FTT rules but granted it against the Applicant under Rules 10(1)(a) - wasted costs - and Rule 10(1)(b) - unreasonable conduct - on the basis of the Applicant’s

unreasonable acts in conducting the proceedings, specifically conducting Mr Elden's appeal prior to the strike out hearing.

The strike out proceedings

3. Mr Elden's appeal proceedings concerned closure notices ("the Closure Notices") that were issued to him by HMRC on 15th February 2021 under Section 28A(1B) and (2) of the Taxes Management Act 1970 for the tax years 2013-14 and 2014-15.

4. In its strike out decision dated 8 January 2026, *Mr Gary Elden v Revenue and Customs* [2026] UKFTT 41 (TC), ("the strike out decision"), the FTT refused HMRC's application to strike out Mr Elden's appeal under rule 8(3)(b) of the Tribunal Procedure (First-tier Tribunal)(Tax Chamber) Rules 2020 ("the FTT Rules"). Rule 8(3)(b) of the FTT Rules permits the FTT to strike out an appeal if the appellant has failed to co-operate with the Tribunal to such an extent that the Tribunal cannot deal with the proceedings fairly and justly. Nonetheless the FTT criticised the Applicant's conduct in representing Mr Elden in the appeal proceedings.

5. It is clear from the strike out decision that Mr Elden had represented himself at the strike out hearing on 22 September 2025 but that the FTT had given the Applicant, as Mr Elden's representative in the appeal, an opportunity to make representations in writing through various sets of correspondence after the hearing as to its conduct in the management of his appeal - see [76] - [129].

6. The strike out decision was never appealed by either party: HMRC had been unsuccessful in its strike out application and therefore Mr Elden's substantive appeal is ongoing.

7. It is also clear from the face of the Costs Decision that it must be read in the context of and together with the strike out decision. At [5] of the Costs Decision the FTT stated:

"BACKGROUND

5. The relevant background to this case is set out in the earlier judgment, *Elden v HMRC* [2026] UKFTT 41 (TC). It is the procedural background, set out in detail in that case, that is the basis on which HMRC are making this claim."

The application for permission to appeal the Costs Decision

8. By a decision dated 2 July 2026 ("the PTA Decision"), the FTT refused the Applicant permission to appeal the FTT's Costs Decision to the Upper Tribunal ('UT') on the grounds of appeal pursued.

9. The Applicant renewed the application to the UT for permission to appeal in-time within a month thereafter on 10 July 2026.

10. On 24 August 2026 I refused the Applicant permission to appeal to the UT on the papers on all eight grounds of appeal then pursued.

11. The Applicant, acting through its representative, Mr Josh Marsh, renewed its application for permission to be reconsidered at an oral hearing before the UT making written submissions in support dated 3 September 2026. The Applicant relies on the same eight grounds of appeal.

The background to the hearing of the renewed application for permission to appeal to the UT

12. Prior to the renewed permission hearing before me on 2 October 2026, the Applicant stated, in correspondence dated 29 September 2026, that Mr Josh Marsh would be its representative for the purpose of Rule 11 of The Tribunal Procedure (Upper Tribunal) Rules 2008 (“the UT Rules”). It also stated that Mr Marsh’s internet connection ‘has on occasion been unreliable’ and that he might need to turn off his camera or dial in by telephone but the Applicant was content to proceed with the hearing on that basis.

13. In reply, in correspondence dated 30 September 2026, Mr Pearson of HMRC wrote to the UT concerning the Applicant’s request that Mr Marsh attend and participate in the video hearing by telephone or if necessary, by having his camera switched off. HMRC reserved the right to object to the possibility of the Applicant’s representative not having his camera on so that they could see him and reserved the right to apply for an adjournment. Mr Pearson submitted that HMRC had concerns about the identity of the individual who might attend the hearing on behalf of the Applicant and wanted the cameras on so as to be able to verify the identity of that individual. He stated, “The attendance form identifies Mr Joshua Marsh as the proposed attendee. However, the Respondents consider there to be material which raises questions as to whether another individual connected with Strauss Phillips & Co may instead seek to conduct the hearing.” The letter gave three reasons for this. Mr Pearson’s email also set out some of a background in relation to the representation of Mr Elden, queried the involvement of both Mr Bradley Strauss, the principal of the Applicant, and Mr Josh Marsh as its representative. The email also noted and attached the FTT decision in *John Smith v The Commissioners for HMRC* [2026] UKFTT 663, stating that the Tribunal recorded at paragraph [58] therein that: “*the Appellant had recently changed his name from Bradley Strauss to John Smith*”. I have paid no regard to that decision, nor read the relevant passages cited.

14. On 30 September 2026, the Tribunal did invite the Applicant to provide Mr Marsh’s address prior to the hearing, as is required by Rule 11(2) of the UT Rules on the appointment of representatives. The address was provided by Mr Marsh on the same date and was that of the Applicant. Later that day HMRC then replied by email querying whether Mr Marsh had given proper notice of appearing as representative for the Applicant on the basis that the address provided to the Tribunal, pursuant to Rule 11(2) of the UT Rules was not Mr Marsh’s own UK address but a PO Box correspondence address for the firm itself in Edgware, Middlesex. HMRC queried whether Mr Marsh was resident in the UK.

15. I was satisfied that it was just and fair for Mr Marsh to represent the Applicant – he had provided an address as required by the Rules. I was not required to investigate the nature of the address when the Rules did not require this. Further, even if Mr Marsh was based abroad or even appearing at the hearing from a foreign address, he was only making submissions as to the law and not giving evidence. I conducted no further investigation into the matter. I was satisfied that it was in the interests of justice, just and fair, and in accordance with the overriding objective that the firm be represented and the hearing proceed without unnecessary delay.

The hearing on 2 October 2026

16. The hearing of the Applicant’s renewed application for permission to appeal to the UT took place by video before me on 2 October 2026. Mr Josh Marsh appeared for the Applicant at the hearing, making oral submissions. Mr Pearson, litigator of HMRC, who had appeared in the FTT for the Respondents attended and made the short submissions summarised below but did

not make any substantive oral submissions in reply to the application and Mx Cleo Lunt of HMRC also attended in part. I am grateful to them all for their assistance.

17. At the outset of the hearing, at 10.30am, no one from or on behalf of the Applicant had yet joined or appeared on the online video connection. However, at around 10.35am Mr Marsh joined by telephone confirming he was the representative for the Applicant. He also confirmed that his internet reception was not working, hence joining by telephone. He also stated that he was working offline and his emails were not working. Mr Pearson for HMRC asserted that Mr Marsh was not who he said was: Mr Pearson said he recognised Mr Marsh's voice as being that of Mr Smith (or Mr Strauss). Mr Pearson stated that he himself had represented HMRC in the FTT proceedings in the appeal of *John Smith* hence he was able to recognise the voice of Mr Smith (or Strauss) and Mr Marsh as being the same person who had appeared as the appellant in those proceedings.

18. Mr Marsh confirmed in answer to questions from the Tribunal that he was Mr Marsh and not Mr Strauss nor Mr Smith and he was the duly appointed representative of the Applicant. He later also confirmed that he was a manager for the firm. HMRC began an objection to the representative identifying as Mr Marsh appearing by starting to explain the background to the case of Mr Smith.

19. I did not permit HMRC to go any further with this objection. I decided that the circumstances of any other case or history were irrelevant to the proceedings before me and the application I had to determine following the hearing. I was only concerned with the application for permission to appeal in relation to the Costs Decision. It was not appropriate or fair for me to conduct any investigation into the identity of the Applicant's representative once Mr Marsh had confirmed his identity to me and that he was the duly appointed representative of the firm. I decided it was just and fair to proceed in determining the permission application only on the basis of the arguments I had received in writing and orally as to whether there was an arguable error of law in the FTT Costs Decision such that I should grant permission to appeal on any ground.

UT's jurisdiction in relation to appeals from the FTT

20. An appeal to the Upper Tribunal from a decision of the FTT can only be made on a point of law (section 11 of the Tribunals, Courts and Enforcement Act 2007). The Upper Tribunal has a discretion whether to give permission to appeal. It will be exercised to grant permission if there is a realistic (as opposed to fanciful) prospect of an appeal succeeding, or if there is, exceptionally, some other good reason to do so: Lord Woolf MR in *Smith v Cosworth Casting Processes Ltd* [1997] 1 WLR 1538.

21. It is therefore the practice of this Chamber of the Upper Tribunal to grant permission to appeal where the grounds of appeal disclose an arguable error of law in the FTT's decision which is material to the outcome of the case or if there is some other compelling reason to do so.

The FTT Costs Decision

22. The FTT set out the relevant law at [7]-[13] of its Costs Decision. No complaint is made as to the FTT misinterpreting the relevant law (the only question is whether it was properly applied on the facts of the case). The Costs Decision stated at [8]-[13]:

“8. The discretion afforded to the Tribunal is subject to Rule 10 of the Tribunal Rules:

10(1) The Tribunal may only make an order in respect of costs (or, in Scotland, expenses)—

(a) under section 29(4) of the 2007 Act (wasted costs) and costs incurred in applying for such costs;

(b) if the Tribunal considers that a party or their representative has acted unreasonably in bringing, defending or conducting the proceedings;

9. HMRC are claiming costs under Rule 10(1)(a) – ‘wasted costs’, against Strauss Phillips & Co, and under Rule 10(1)(b) – ‘unreasonable behaviour’, on the part of the Appellant and Strauss Phillips & Co.

10. The parties agree that the relevant cases in this area are *Distinctive Care Ltd v HMRC* [2018] UKUT 155 (TC) (‘*Distinctive Care*’), *Market & Opinion Research International Ltd v Revenue and Customs Commissioners* [2015] UKUT 0012 (TCC) (‘*MORI*’), *Bedale Golf Club v HMRC* [2014] UKUT 0099 (TCC) (‘*Bedale*’) and *Ridehalgh v Horsefield* [1994] Ch205 (‘*Ridehalgh*’).

11. *Bedale* confirmed that *Ridehalgh* gives guidance on the meaning of the expressions “improper”, “unreasonable” and “negligent” for the purpose of identifying conduct that justifies a wasted costs order.

"Improper, unreasonable or negligent"

A number of different submissions were made on the correct construction of these crucial words in the new section 51(7) of the Supreme Court Act 1981. In our view the meaning of these expressions is not open to serious doubt.

"Improper" means what it has been understood to mean in this context for at least half a century. The adjective covers, but is not confined to, conduct which would ordinarily be held to justify disbarment, striking off, suspension from practice or other serious professional penalty. It covers any significant breach of a substantial duty imposed by a relevant code of professional conduct. But it is not in our judgment limited to that. Conduct which would be regarded as improper according to the consensus of professional (including judicial) opinion can be fairly stigmatised as such whether or not it violates the letter of a professional code.

"Unreasonable" also means what it has been understood to mean in this context for at least half a century. The expression aptly describes conduct which is vexatious, designed to harass the other side rather than advance the resolution of the case, and it makes no difference that the conduct is the product of excessive zeal and not improper motive. But conduct cannot be described as unreasonable simply because it leads in the event to an unsuccessful result or because other more cautious legal representatives would have acted differently. The acid test is whether the conduct permits of a reasonable explanation. If so, the course adopted may be regarded as "optimistic and as reflecting on a practitioner's judgment, but it is not unreasonable.

The term "negligent" was the most controversial of the three...

...

...But for whatever importance it may have, we are clear that "negligent" should be understood in an untechnical way to denote failure to act with the competence reasonably to be expected of ordinary members of the profession.

In adopting an untechnical approach to the meaning of negligence in this context, we would however wish firmly to discountenance any suggestion that an applicant for a wasted costs order under this head need prove anything less than he would have to prove in an action for negligence : "advice, acts or omissions in the course of their professional work which no member of the profession who was reasonably well-informed and competent would have given or done or omitted to do"; an error "such as no reasonably well-informed and competent member of that profession could have made" (*Saif Ali v Sydney Mitchell & Co*, at pages 218 D, 220 D, per Lord Diplock).

We were invited to give the three adjectives (improper, unreasonable and negligent) specific, self-contained meanings, so as to avoid overlap between the three. We do not read these very familiar expressions in that way. Conduct which is unreasonable may also be improper, and conduct which is negligent will very frequently be (if it is not by definition) unreasonable. We do not think any sharp differentiation between these expressions is useful or necessary or intended.

....

Causation

As emphasised in *Re a Barrister (Wasted Costs Order) (No 1 of 1991)* , above, the court has jurisdiction to make a wasted costs order only where the improper, unreasonable or negligent conduct complained of has caused a waste of costs and only to the extent of such wasted costs. Demonstration of a causal link is essential. Where the conduct is proved but no waste of costs is shown to have resulted, the case may be one to be referred to the appropriate disciplinary body or the Legal Aid authorities, but it is not one for exercise of the wasted costs jurisdiction.

....

"Show cause"

Although Order 62 rule 11(4) in its present form requires that in the ordinary way the court should not make a wasted costs order without giving the legal representative "a reasonable opportunity to appear and show cause why an order should not be made", this should not be understood to mean that the burden is on the legal representative to exculpate himself. A wasted costs order should not be made unless the applicant satisfies the court, or the court itself is satisfied, that an order should be made. The representative is not obliged to prove that it should not. But the rule clearly envisages that the representative will not be called on to reply unless an apparently strong prima facie case has been made against him and the language of the rule recognises a shift in the evidential burden.

12. In *Distinctive Care*, the test for 'unreasonable behaviour' was set out as follows:

How is conduct to be assessed?

44. In *Market & Opinion Research International Limited v HMRC* [2015] UKUT 0012 (TCC) ("*MORI*") at [22] and [23], the Upper Tribunal endorsed the approach set out by the FTT in that case to the question of whether a party had acted unreasonably. That approach could be summarised as follows:

(1) the threshold implied by the words “acted unreasonably” is lower than the threshold of acting “wholly unreasonably” which had previously applied in relation to proceedings before the Special Commissioners;

(2) it is possible for a single piece of conduct to amount to acting unreasonably;

(3) actions include omissions;

(4) a failure to undertake a rigorous review of the subject matter of the appeal when proceedings are commenced can amount to unreasonable conduct;

(5) there is no single way of acting reasonably, there may well be a range of reasonable conduct;

(6) the focus should be on the standard of handling the case (which we understand to refer to the proceedings before the FTT rather than to the wider dispute between the parties) rather than the quality of the original decision;

(7) the fact that an argument fails before the FTT does not necessarily mean that the party running that argument was acting unreasonably in doing so; to reach that threshold, the party must generally persist in an argument in the face of an unbeatable argument to the contrary; and

(8) the power to award costs under Rule 10 should not become a “backdoor method of costs shifting”.

45. We would wish to add one small gloss to the above summary, namely that (as suggested by the FTT in *Invicta Foods Limited v HMRC* [2014] UKFTT 456 (TC) at [13]), questions of reasonableness should be assessed by reference to the facts and circumstances at the time or times of the acts (or omissions) in question, and not with the benefit of hindsight.

13. I also note the comments made in *Peter Woodstock Harris v The Commissioners for HMRC* [2022] UKFTT 447 (TC), setting out what is meant by a summary assessment of costs.

By reference to rule 44.1(1) CPR, summary assessment is the procedure by which a court may, having made an order for a party to pay costs of a case, determine the amount of such costs. It is usually carried out by the judge hearing the matter. It is not intended to involve a lengthy consideration of each item of costs claimed but, rather, represents a proportionate means of justly, fairly and swiftly resolving the question of costs without the need for further costly proceedings regarding the costs themselves. In colloquial terms it is a somewhat rough and ready means of dealing with costs; its roughness is justified on the grounds of proportionality.”

23. The Costs Decision contained a section summarising the respective submissions of HMRC and the Applicant at [14]-[21] including:

“14. HMRC’s case was detailed in the 32 page application, including their schedule of costs. Some of the detail was irrelevant to the case at hand, such as details of internal staffing at Strauss Phillips. A great deal of the application was repeating the procedural history of the case, with minimal detail as to actual causation of specific costs other than the detail in the cost schedule itself.

15. Their main submission is that Strauss Phillips & Co and the Appellant have caused

‘wasted costs’ and have engaged in ‘unreasonable behaviour’ through their improper conduct and negligent actions in the course of these proceedings. They say this unreasonable approach has resulted in unnecessary expenditure for HMRC, due to the fact that Strauss Phillips & Co’s conduct throughout the life of the appeal represents a catalogue of repeated, persistent and, in several instances, plainly deliberate non-compliance with Tribunal directions.

...

19. Furthermore, HMRC point out that the Tribunal found, as a matter of fact, that the Appellant’s Skeleton Argument contained case summaries which were generated using artificial intelligence and were not checked with the level of accuracy or professional care required of a regulated ICAEW adviser.

20. HMRC submit that the submissions remain essentially the same for whether the behaviour by either the Appellant or Strauss Phillips was ‘unreasonable behaviour’ within the meaning of Rule 10(1)(b) of the Tribunal Rules. They point out that the Appellant was copied in to virtually every piece of correspondence between the Tribunal and Strauss Phillips, and was therefore aware of all the missed deadlines, and yet took no steps to improve matters.

21. Strauss Phillips in their submissions say that HMRC have failed to show causation between any specific act and any specific cost, and in addition the schedule attempts to recover ordinary costs of litigation.”

24. The discussion section of the Costs Decision, applying the law to the facts, states the following at [22]-[43]:

“DISCUSSION

22. The first question to answer is whether I agree with HMRC that any acts specified by them are ‘improper, unreasonable or negligent’ by Strauss Phillips or ‘acting unreasonably’ in conducting proceedings by either the Appellant or Strauss Phillips.

23. If I find that any acts do meet that test, I then need to consider whether HMRC directly incurred any costs as a result of that behaviour.

24. I bear in mind that I should not use hindsight when judging actions. The substantive appeal has yet to be determined. I also bear in mind that the omission to do an act can be unreasonable or negligent.

25. HMRC are not alleging that the Appellant or Strauss Phillips acted unreasonably in bringing the claim. In any case, the substantive hearing has not yet happened. So the focus is on the conducting of the claim before the strike out hearing.

26. HMRC claims costs of £16,686.50 and have set this out in a schedule of costs. The costs they are claiming for were incurred from November 2024 onwards, that is, in relation to the second Unless Order application onwards.

27. There are two distinct aspects to the behaviour in relation to the conducting of proceedings that are relevant.

28. I will deal first with the inclusion, in the skeleton argument, of case summaries that were inaccurate and misleading. In the judgment [the strike out decision] I wrote ‘I find that the case summaries were produced using AI and that they have not been verified for accuracy with sufficient care as should be used when producing submissions for a Tribunal hearing. As

mentioned in *Ayinde*, there are serious implications for the administration of justice and public confidence in the justice system if artificial intelligence is misused.’

29. I find that this behaviour meets the test for negligence as set out in *Ridehalgh* quoted above ‘advice, acts or omissions in the course of their professional work which no member of the profession who was reasonably well- informed and competent would have given or done or omitted to do’;

30. As HMRC had submitted their skeleton argument already, I consider the costs incurred by HMRC in reviewing and making further submissions on the Appellant’s skeleton argument to be directly caused by the inaccurate summaries.

31. Accordingly, I make a wasted costs order against Strauss Phillips for the costs HMRC incurred in relation to review of the skeleton argument and making further submissions to the Tribunal in that regard. These costs are £2,043.30.

32. In relation to the rest of the claim, there is no one act that has, by itself, caused all the other costs to be incurred. Instead, the unreasonable behaviour is a collection of acts that, cumulatively, meant that HMRC applied for unless orders and the strike out order as a means of moving the appeal along.

33. I consider the following acts unreasonable in themselves and directly causing HMRC to incur costs:

(a) The letter from the Appellant of 2 December 2024. This provided a list of documents, but not the documents themselves, with an assertion that all the documents in it had either been previously provided to HMRC, or had been provided by HMRC. This assertion was subsequently admitted to be untrue. In addition, the letter contained an application, to which HMRC needed to respond, for information that had already been provided by HMRC. Furthermore, the application applied for an unless order to the effect that non-compliance by HMRC would lead to the appeals automatically being allowed. This is ‘unreasonable’ behaviour as any adviser familiar with appeal procedures would know that the Appellant in this case bears the burden of proof in the appeal.

(b) The continued assertion that certain documents had been provided from the List of Documents when this was not true (in at least one case) or not relevant, in the other cases, as they had not been provided during the course of the Appeal despite being requested.

(c) The various changing positions on the witness statement from ‘to be provided’ to ‘has not prepared one but will apply for permission [later]’, to ‘has not prepared one but will give evidence at the hearing’.

34. I consider a number of actions to be collectively unreasonable, and collectively directly causing HMRC to incur costs in relation to the unless orders and strike out application.

35. Examples of this behaviour are:

(a) a letter of 30 October 2023 claiming ‘Therefore, we do not understand why HMRC cannot accept, under the tenets of the Taxpayers Charter (now enshrined in law) that, without any reasonable reason to reject a representation, HMRC are duty bound to accept a representation. Can you therefore please explain why our subsequent confirmations and evidence were not accepted and under which Statute such is being claimed and would also ask that you confirm whether you intend to continue to challenge this area, when taking into account the circumstances.

(b) The Application for further and better particulars by the Appellant on 13 November 2023, containing requests for HMRC to ‘confirm the basis of their legal argument’ despite the fact that it was the Appellant bringing the Appeal in relation to a PPR claim (among others) where

the Appellant/his representative must have known the legal argument to be made in this regard was his.

(c) The multiple failures to adhere to deadlines given by the Tribunal, resulting in HMRC applying for Unless Orders to enforce compliance, and the protracted way in which eventual compliance was achieved.

36. I will therefore make a summary costs assessment on the basis of ‘unreasonably conducting the proceedings’.

37. I also keep in mind that a summary assessment of costs must not be a cost shifting regime by the back door. I exclude from the costs assessment £861.80 incurred by HMRC on preparing the bundle for the substantive appeal hearing, notwithstanding that this may have been made slightly more difficult by the lack of documents from the Appellant.

38. Of the remaining £13,781.40, it is not necessary, as explained above, to undergo a consideration line by line of each cost. I consider that every Appeal necessitates some degree of ‘Case Management’ by both parties, and therefore although I have found unreasonable behaviour on the part of the Appellant/Strauss Phillips, I consider it still reasonable that HMRC bears some of these costs as expected in the ordinary management of an appeal.

39. The Appellant contends that these ‘ordinary’ costs include HMRC’s own strike out case, skeleton argument and hearing preparation in relation to the strike out application. I disagree. A properly conducted appeal by both parties should never require a strike out application in relation to conduct of the appeal.

40. I therefore make a summary assessment that 80% of the remaining £13,781.40 should be paid to HMRC.

41. I have considered whether to apportion these costs between the Appellant and Strauss Phillips, and I have decided against that. Quite properly, Strauss Phillips, in their response to the costs application on behalf of themselves and the Appellant, point out on the Appellant’s behalf that ‘represented parties routinely rely on their representatives to handle procedural compliance. Reliance on professional advisers is not, without more, unreasonable behaviour’.

42. Whilst I consider, as I found in the earlier judgement, that the Appellant, being copied into most correspondence between HMRC, Strauss Phillips and the Tribunal, should have realised deadlines were being missed, I do not find a specific causal link between the Appellant’s actions (or inaction) and significant costs incurred by HMRC. The costs incurred were due to specific actions by the Representatives and not mere inaction by the Appellant.

43. I therefore make this costs award against Strauss Phillips only.”

Grounds of Appeal

25. In challenging the Costs Decision as made in error of law, the Applicant continues to rely on the eight grounds of appeal contained in submissions provided with the notice of appeal dated 10 July 2026 and titled ‘Renewed applications for permission to appeal’. The document was 25 pages long. By comparison, the Costs Decision was only 9 pages long and the strike out decision was 24 pages long.

26. The Applicant also relies on the grounds and submissions in support of reconsideration dated 3 September 2026 and the oral submissions of Mr Marsh made at the hearing on 2 October 2026.

27. I address the Applicant’s eight grounds of appeal in turn below.

Discussion

Ground 1- Failure to identify an adequate evidential foundation for serious findings

Submissions on behalf of the Applicant

28. Mr Marsh, for the Applicant, submits that the FTT's findings may have identified the evidential material relied upon. However, identifying the subject matter of findings is not the same as identifying an adequate evidential foundation for those findings. He argues that the FTT made serious findings of professional negligence and incompetence against a regulated professional firm. The gravity of such findings demands a correspondingly rigorous evidential basis (*Re H (Minors)* [1996] AC 563; *Re B (Children)* [2008] UKHL 35). He submits that no such basis was identified and that this is an arguable error of law.

29. He contends that the evidential foundation point is not abstract. The FTT's Costs Decision at paragraph 33 identified three categories of individually unreasonable conduct. The Applicant argues that, when the underlying documents are examined, the FTT's characterisation of them is not supported by their actual content:

(a) At paragraph 33(a), the FTT criticised the Appellant's application of 2 December 2024 on three bases:

that the assertion that documents had been provided was untrue;
that the application sought information already provided; and
that the unless order application demonstrated ignorance of the burden of proof.

He argues that the underlying document shows that the unless order was not directed at the substantive burden of proof at all. It was an application for HMRC to reconcile their assessments with amendments HMRC had already agreed to make. The FTT's characterisation that "any adviser familiar with appeal procedures would know that the Appellant bears the burden of proof" misreads the application and attributes to it a purpose it did not have.

(b) At paragraph 33(b), the FTT found "continued assertion that certain documents had been provided when this was not true."

Mr Marsh points out that the List of Documents contained 14 items: 13 items of correspondence between the parties and a witness statement marked "To be provided." Of those 13 items, one was a letter that had not in fact been sent due to a system error, and two further documents were provided later than they should have been. The Applicant accepts that these were procedural failings.

However, Mr Marsh submits that the failings related to 3 items on a 14-item list of routine correspondence. The two documents provided late were inconsequential to the substantive appeal, and none of the failings affected the substance of the case or prejudiced HMRC's ability to conduct their defence. Procedural lapses of this nature, while regrettable, do not constitute the kind of conduct that *Ridehalgh* contemplates as

warranting a costs order. The threshold for unreasonable conduct requires something beyond procedural error; as *Distinctive Care* confirms, the conduct must be such that no reasonable party would have acted in that way.

(c) At paragraph 35(a), the FTT quoted from a letter of 30 October 2023 as an example of collectively unreasonable behaviour.

Mr Marsh contends that the letter in question was routine pre-hearing correspondence from the Appellant's representative asking HMRC to explain the basis for rejecting the dividend treatment and to provide a copy of the technical advice underpinning the PPR decision. Asking the opposing party to explain their position and disclose the basis for their technical conclusions is standard practice. The FTT took a single paragraph out of context and characterised it as unreasonable.

30. Mr Marsh argues that the FTT's findings of unreasonable conduct, when tested against the underlying documents, disclose an arguable error of law in that the evidential material does not support the characterisation placed upon it. This is properly a matter for a substantive appeal.

Analysis and Decision

31. This ground of appeal does not hold a realistic prospect of success. There is no arguable error of law in the Costs Decision on this basis and I refuse permission to appeal on this ground.

32. The FTT did not arguably fail to identify the evidential material upon which its findings were based.

33. The findings at paragraphs [28]-[31] of the Costs Decision in support of the wasted costs order under Rule 10(1)(a) of the FTT Rules of £2,040.30, and those at paragraphs [89]-[129] and [139] of the strike out decision, identify the evidential material relied upon, namely the case summaries cited by the Applicant which the FTT found to be wholly inaccurate.

34. In the strike out decision, the FTT, having received written representations from the Applicant, found that the cases relied upon by Mr Elden in his skeleton argument were prepared by the Applicant. It went on to find that those cases, when properly described, bore no relevance to the strike out proceedings. It made findings such as these at [108]-[110] of the strike out decision:

“108. I find that the case summaries were produced using AI and that they have not been verified for accuracy with sufficient care as should be used when producing submissions for a Tribunal hearing. As mentioned in *Ayinde*, there are serious implications for the administration of justice and public confidence in the justice system if artificial intelligence is misused.

109. This case provides an example of the harm that will come to the judicial system if AI is used uncritically, particularly by professionals on whom the court ought to be able to rely to act with due skill and competence.

110. Tribunal time, both in case management by judges and others, and in hearing cases, is a public resource. In this case, as in others such as *Harber* and *Zzaman*, a considerable amount

of time has been taken up by the consideration of cited cases which have no relevance to the case at hand.”

35. The FTT therefore provided evidential support and gave sufficient reasons for its conclusions at [28]-[31] of the Costs Decision and [89]-[129] of the strike out decision.

36. In relation to the rest of the claim for costs on the basis of the Applicant’s unreasonable conduct under Rule 10(1)(b) of the FTT Rules, the FTT gave reasons at [32]-[40] of the Costs Decision. Mr Marsh relies on three examples of the FTT’s failure to identify adequate evidential foundation at [33] and [35] of the Costs Decision. However, I consider that these submissions made on behalf of the Applicant, consist of no more than a disagreement with the FTT’s fact finding and evaluative assessments or conclusions.

37. In relation to [33(a)] of the Costs Decision, the Applicant appears to accept, or does not challenge, the first two adverse sub-findings made by the FTT in relation to the Applicant’s letter of December 2024: that the assertion contained therein that documents had been provided was untrue and that the application sought information already provided. The FTT was reasonably entitled to find that these two matters constituted unreasonable acts causing HMRC to incur costs and these findings alone were sufficient to reach the conclusion that it did.

38. In relation to the third sub-finding in [33(a)], Mr Marsh submits that the Applicant was simply applying for a sanction that the rules provide for and failed to identify an adequate evidential foundation for its finding. I reject this as unarguable. The FTT evaluated whether the making of an application for information from HMRC with an unless order for non-compliance was reasonable conduct in the circumstances of the case. The FTT was entitled to rely on a conclusion that the Applicant’s unless order application that the appeals would automatically be allowed if HMRC failed to comply entailed a basic misunderstanding of the burden of proof being on the taxpayer in the appeal: i.e. barring HMRC from taking part in proceedings pursuant to Rule 8(7) and (8) of the FTT Rules would not necessarily lead to the allowing of the appeals as the burden remained upon the taxpayer. That is not a ‘misreading’ of the application. The FTT explained the contents of the Applicant’s letter and application in more detail at [32]-[36] of the strike out decision. In any event, this conclusion is not material to the basic and clear adverse findings in relation to the Appellant’s letter of 2 December 2024 and application.

39. In relation to [33(b)], again Mr Marsh accepts that there were clear procedural failings on the Applicant’s part and the factual premise of the FTT’s conclusion: “The continued assertion that certain documents had been provided from the List of Documents when this was not true (in at least one case) or not relevant, in the other cases, as they had not been provided during the course of the Appeal despite being requested.” Mr Marsh submits that none of the failings, which he submits only applied to 3 out of 14 items, affected the substance of the case or prejudiced HMRC’s ability to conduct their defence. Nonetheless, that does not mean that the Applicant’s failings were not unreasonable and caused HMRC to incur costs. The FTT was entitled to find so.

40. Mr Marsh does not challenge the FTT's adverse finding in [33(c)] that the Applicant's changes of position on the witness statement were unreasonable. The strike out decision at [32]-[58] sets out the full underlying factual basis for this conclusion.

41. In relation to [35(a)], the FTT quoted from the Applicant's letter of 30 October 2023 as an example of an unreasonable demand for a representative to make of HMRC [HMRC are obviously not duty bound to accept representations made by taxpayers]. The Applicant says that this is an isolated instance from the letter which is taken out of context and the purpose of the letter was to narrow the issues in accordance with the overriding objective but Mr Marsh has not put the whole letter before the UT or pointed to any other part of the letter which would demonstrate that the part of the letter which the FTT criticised contained a reasonable statement. This letter was also addressed at [9] of the strike out decision.

42. Further, the Applicant has not challenged any of the other adverse findings of the FTT at [35(b) and (c)] as examples of unreasonable conduct. These findings alone constituted serious and repeated failings on the part of the Applicant: for example, at [35(c)]: "The multiple failures to adhere to deadlines given by the Tribunal, resulting in HMRC applying for Unless Orders to enforce compliance, and the protracted way in which eventual compliance was achieved." Far greater detail regarding the underlying facts supporting this conclusion is set out at [8] to [59] and [140]-[147] of the strike out decision where the FTT examines and make findings about the procedural time and chronology of Mr Elden's appeal proceedings between August 2023 and September 2025 during which the Applicant was his representative and conducted litigation.

43. In making the findings at [33] to [35] of the Costs Decision in relation to the Applicant's unreasonable conduct for the purposes of 10(1)(b) of the FTT Rules causing HMRC to incur costs, the FTT made no arguable error in the sense described in *Edwards v Bairstow* [1956] AC 14 (HL). The FTT: took into account all the relevant evidence, it did not fail to take into account relevant or take into account irrelevant evidence; it came to rational, reasonable conclusions which were not perverse; and made findings of fact and came to conclusions that a properly instructed tribunal could arrive at based upon the evidence before it. The FTT gave sufficient reasons for its findings and conclusions.

44. If a finding of fact or evaluative conclusion is to be challenged as made in error of law, the onus is on the Appellant to identify all the evidence which was relevant to each finding of fact and show that it was one the tribunal was not entitled to make— see *Georgiou v Customs and Excise Commissioners* [1996] STC 463, at 476:

“... for a question of law to arise in the circumstances, the appellant must first identify the finding which is challenged;

secondly, show that it is significant in relation to the conclusion;

thirdly, identify the evidence, if any, which was relevant to that finding; and

fourthly, show that that finding, on the basis of that evidence, was one which the tribunal was not entitled to make.

What is not permitted, in my view, is a roving selection of evidence coupled with a general assertion that the tribunal's conclusion was against the weight of the evidence and was therefore wrong. A failure to appreciate what is the correct approach accounts for much of the time and expense that was occasioned by this appeal to the High Court.”

45. In essence this ground consisted of a disagreement with the factual findings and evaluations of the FTT as to the conduct of the Applicant and it causing HMRC to incur costs rather than raising any arguable error of law. The test in *Edwards v Bairstow* for when an error of law may be established in relation to a finding of fact is that: “*no person acting judicially and properly instructed as to the relevant law could have come to the determination under appeal*”. The FTT identified and relied upon sufficient evidence to support its factual findings and there was a reasonable basis in the evidence for those findings: they were not perverse or unreasonable.

46. This ground is dismissed.

Ground 2 – Failure to apply the correct legal threshold for negligence and professional incompetence

Submissions on behalf of the Applicant

47. Mr Marsh submits that in refusing permission to appeal on the papers I stated that the FTT “identified and described the proper tests” in relation to negligence or professional incompetence for the wasted costs order under rule 10(1)(a) of the FTT Rules and unreasonable conduct order under rule 10(1)(b).

48. However, he argues that identifying a test and correctly applying it are distinct matters. The Applicant’s ground was that the FTT failed to apply the distinction between professional error, negligence, and unreasonable conduct as defined by the authorities. The conduct identified by the FTT — one letter incorrectly included on a list of documents, two documents provided late which were inconsequential to the substantive appeal, an evolving position on a witness statement which was ultimately provided in compliance with directions, and missed deadlines subsequently rectified — amounts at its highest to professional error. None of it affected the substance of the appeal or prejudiced HMRC.

49. Mr Marsh argued that the FTT did not explain why this conduct crossed the threshold from error into negligence or unreasonable conduct as those terms are defined in *Ridehalgh and Distinctive Care*. The FTT merely reciting the test does not demonstrate correct application. A mere mistake or error of judgments is not enough to satisfy the threshold.

Analysis and Decision

50. This ground is unarguable and I refuse permission to appeal upon it.

51. The FTT did not arguably fail to apply the correct legal threshold for wasted costs – improper, unreasonable or negligent acts – nor for acting unreasonably in the conduct of proceedings.

52. It is accepted that the FTT identified and described the proper tests to be applied in relation to wasted costs at [11] of the Costs Decision and unreasonable behaviour at [12] (see also [22] above). There is no dispute that the tests were properly identified. The Applicant’s challenge is to whether the thresholds were properly applied.

53. I am satisfied that they were applied without arguable error. The FTT expressly and properly applied the tests of negligence at [29] in relation to wasted costs and [32] & [34] in relation to unreasonable conduct to the facts of the case.

54. The application of the legal thresholds to the facts of the case was a matter for the FTT to justify by first finding those facts and second, evaluating whether they satisfied the relevant threshold. I have addressed the reasons given at [28]-[31] and [32]-[35] of the Costs Decision and [89]-[129] of the strike out decision. The strike out decision provides further examples of the FTT's findings and justification of its evaluative conclusions at [76]-[86] and [130]-[147]:

“76. A common thread running throughout the communication between HMRC, the Tribunal, and the Appellant's Representative in the management of this appeal is that the Representative appears to be either unfamiliar with Tribunal case management, or deliberately choosing to apply tactical delays at every point, or both.

77. In addition, some positions taken by the Appellant's representative are at best evidence of a significant lack of care in dealing with matters relating to their client.

78. For example, as pointed out by Judge Bailey, the starting point for the Appellant's case should be the basis on which he filed the original returns. His appeal relies on him being able to advance a positive case that that is the correct basis on which to file. At the point that the matter reaches the Tribunal, asking for copies of technical advice received within HMRC, or qualifications of the person giving the advice, is irrelevant to the matter. In addition, saying ‘the Appellant has made it clear that this matter reaching the Tribunal is clearly a premature position’ makes no sense when it is the Appellant who has made the appeal to the Tribunal.

...

83. In relation to the missing documents 2, 9 and 13 of the list of documents, the Appellant firstly appears not to understand that even if, at some point in time, HMRC had these documents, once it has confirmed to the Appellant in the course of the case management of the hearing that it does not have these documents, the onus is on the Appellant to provide them. The position of the Appellant's Representative has variously been that there are no missing documents (email on 25 February 2025), despite having been told what they were on 23 January 2025, that the Respondents had confirmed that there weren't any (25 February 2025), that they have supplied them previously on more than one occasion (email on 9 April 2025), that they are supplied within the email of 9 April (when they weren't) and finally, that one of them was a draft document that was never sent to HMRC (15 September).

84. Neither the Appellant nor his Representative have provided any evidence that they have previously supplied the missing documents.

...

DISCUSSION (INVOLVEMENT OF THE APPELLANT)

130. As can be seen from the procedural background, the Appellant, up to the point of the hearing, had not involved himself in the management of this appeal. His explanation at the hearing was that he had left everything in the hands of his advisers.

...

139. The case summaries were produced using AI and they have not been verified for accuracy with sufficient care as should be used when producing submissions for a Tribunal hearing. This lack of sufficient care amounts to professional incompetence on the part of any regulated individual or firm involved in the production of the skeleton argument.

DECISION

140. The decision I have to make is whether the Appellant has ‘failed to co-operate with the Tribunal to such an extent that the Tribunal cannot deal with the proceedings fairly and justly.’

141. The failures catalogued are summarised as follows:

(1) Repeated failures to comply with Tribunal directions in relation to production of documents and respecting directed timelines.

(2) Carelessness in answers to Tribunal directions such that case management becomes significantly delayed. Multiple different answers to the question ‘Is a witness statement to be produced by the Appellant’ have been given.

(3) Obfuscation in relation to answering the question about the use of AI in the production of the skeleton argument. It is not ‘co-operating with the Tribunal’ to neither confirm nor deny the use of AI. A straightforward answer detailing the use of anything that could amount to the use of AI would not be difficult.

...

146. I consider that the conduct of the Appellant/his Representative up to the point of the hearing is such that a strike out would be fully justified. If a direction is not complied with at the due date, that is non-compliance. If at a later date, the information is provided, there may or may not be an adequate reason for this.

147. There has been no adequate reason provided for the late provision of information, or the non-provision of information...”

55. This ground amounts to no more than a disagreement with the evaluative conclusions reached by the FTT as to the Applicant’s level of culpability – whether the mistakes made were sufficiently serious made to fall within the negligent or unreasonable brackets. The Applicant challenges these evaluative conclusions - but I have rejected them for the same reasons as set out above – there was sufficient evidence in support of the findings made and conclusions reached such that they were not unreasonable. This ground does not reveal any arguable misapplication of the correct legal thresholds.

56. This ground is dismissed.

Ground 3 – failure to apply the correct approach to causation

Submissions on behalf of the Applicant

60. Mr Marsh submits that in refusing permission to appeal on the papers I stated at paragraph 18 that the FTT “correctly identified and correctly applied the proper approach to causation.” He argued that this conclusory statement does not engage with the Applicant’s submissions. The causation failures in the Costs Decision are specific and identifiable:

(a) The wasted costs order of £2,043.30 (paragraph 31 of the Costs Decision) relates to 14.7 hours of HMRC’s time on 18–19 September 2025, spent researching “use of AI cases in litigation” and “reviewing case law on use of incorrect authorities.” The negligence found by the FTT was the failure to check the accuracy of case summaries. The inaccuracy of those summaries was apparent on the face of the documents. HMRC did not need to spend 14.7 hours investigating the mechanism by which the inaccuracies

arose in order to identify that they were inaccurate. The costs of pursuing the AI theory were caused by HMRC's own litigation choice, not by the Applicant's negligence.

(b) The remaining costs of £11,025.12 were assessed by applying a blanket 80% to the sum of £13,781.40 (paragraph 40 of the Costs Decision). The FTT did not attribute specific costs to specific acts of unreasonable conduct. A summary assessment still requires a rational basis for the figure arrived at. Applying an unexplained percentage without any reasoned analysis of the causal link between specific acts and specific costs is arguably an error of law, not a permissible exercise of the summary assessment jurisdiction.

Analysis and Decision

61. This ground raises no arguable error of law in the Costs Decision and I refuse permission to appeal upon it.

62. The FTT correctly identified and expressly applied the proper approach to causation – at [23], [30] and [32]-[35] of the Costs Decision.

63. In relation to the costs of £2,043.30 determined at [31] there was a detailed basis for supporting the causation of the time and costs spent by HMRC in checking the accuracy of the AI case summaries provided. The specific time incurred by HMRC in addressing the AI cases summaries was set out in Respondents' (HMRC's) statement of costs, a seven page schedule of costs provided in support of the costs application which consisted of 25 pages of submissions. The relevant entries are three items on 18 and 19 September 2025 totalling the £2,043.30 awarded:

18-Sep-25 Reviewing Appellant's Skeleton Argument, use of AI cases in litigation and preparation for Hearing	D2 £139.00 6.8 945.20
19-Sep-25 Preparation for Hearing and reviewing case law on use of incorrect authorities	D2 £139.00 5.4 750.60
19-Sep-25 Long email to Tribunal (not otherwise charged)	D2 £139.00 2.5 347.50

64. The time taken by HMRC in addressing, investigating and responding to inaccurate case summaries set out in the Appellant's skeleton argument, set out by HMRC and assessed at just under 15 hours, is justified at length in the strike out decision (see [89]-[129] and [139]), to which the FTT refers to at [28] of the Costs decision. I do not accept Mr Marsh's submission that HMRC's costs incurred were arguably excessive and any inaccuracies would be apparent on the face of the document. The time taken by HMRC to respond was considered by the FTT as reasonable with sufficient reasons given. This includes the FTT's recitation of the long chronology of correspondence at [89] onwards of the strike out decision which provides sufficient reasons for the costs incurred by HMRC (because of the correspondence outlined). The FTT concluded thus:

“DISCUSSION (USE OF AI AND/OR INACCURATE SUMMARIES OF CASES)

89. The Appellant's skeleton argument contained summaries of, but no direct quotes from, 5 cases that were put forward in support of the view that I should not strike out this case.

90. HMRC contend these are inaccurate summaries produced with the help of AI.

91. The Appellant's position is that he did not produce the skeleton argument, which he says was prepared by his representatives.

92. Through the Appellant at the hearing, the representative neither confirmed nor denied the use of AI, and said they stood by the summaries and it didn't matter whether AI was used or not.

93. In further submissions, the Representative said 'The suggestion that citing a published authority amounts to providing false material is misconceived. A court decision is a matter of public record. Whether a case applies is a matter of legal argument and opinion, not misrepresentation. It is entirely proper for parties to put forward different interpretations for the Tribunal to consider. To characterise this as "false material" is both unfounded and inappropriate.' It is not clear who the representative is quoting as saying false material was used. The wording used by HMRC was 'inaccurate use of AI/inaccurate authorities'.

...

108. I find that the case summaries were produced using AI and that they have not been verified for accuracy with sufficient care as should be used when producing submissions for a Tribunal hearing. As mentioned in *Ayinde*, there are serious implications for the administration of justice and public confidence in the justice system if artificial intelligence is misused.

109. This case provides an example of the harm that will come to the judicial system if AI is used uncritically, particularly by professionals on whom the court ought to be able to rely to act with due skill and competence.

110. Tribunal time, both in case management by judges and others, and in hearing cases, is a public resource. In this case, as in others such as *Harber* and *Zzaman*, a considerable amount of time has been taken up by the consideration of cited cases which have no relevance to the case at hand.

111. A draft decision, containing all the paragraphs above, and paragraphs 130 to 160 below, was sent to both parties on 11 November 2025. The Tribunal then entered into correspondence with the Appellant's representative about the summaries of the cases *Hok*, *Atlantic* and *Leeds City Council* contained within the skeleton argument.

112. The Tribunal requested reasons as to why the misleading and materially incorrect summaries were contained within the skeleton argument.

113. The Representative confirmed that AI had been used in the preparation of the skeleton argument. 'to aid conciseness and consistency' and accepted that 'references to those cases required better explanation as to their inclusion in the skeleton argument and their relevance'.

...

TRIBUNAL COMMENT ON THE FINAL POSITION OF THE APPELLANT'S REPRESENTATIVE

125. The Tribunal welcomes the eventual full engagement of the Appellant's representative in this matter and the fact that the summaries of *Hok* and *Atlantic* are now withdrawn.

126. The Tribunal is disappointed that, given that this is now the position of the representative, it took protracted correspondence to get to that point and, despite the clear articulation in this judgement (see paras 106 and 107) the initial position of the representative, after seeing the draft judgement, was still (para 115) that the summaries were accurate summaries of the propositions extracted from the authorities.

127. Given the decision in this case, which remains identical to that set out in the draft judgement, it is not necessary for the Tribunal to undertake a detailed analysis of the decision in *Biguzzi*.

128. However the Tribunal would comment that given that *Biguzzi* is not a case involving HMRC, it seems surprising that human error could lead the case, attributed in the skeleton to *Hok*, to be summarised as 'HMRC had applied for strike-out due to procedural failings, but the Tribunal emphasised that striking out an otherwise arguable appeal should not be done lightly'. This is clearly more than a simple insertion error. The explanation 'accompanying paraphrasing

was edited to align with the substituted case names' is presumably intended to cover what happened here, but this is an explanation that lacks full coherence.

129. The Tribunal would also comment that the Representative had been copied into the correspondence in paragraph 55 outlining that the hearing would be for the Strike Out Application. The Representative had replied (on behalf of the Appellant) giving dates to avoid. The Representative should therefore have been aware (even if the Appellant did not understand) that the hearing would be in relation to the Strike Out application, rather than a substantive hearing."

65. In relation to the remaining costs of £13,781.40, after deducting the bundle preparation and AI costs from the total costs incurred of £16,685.50 it awarded 80% equating to £11,025.12. In coming to this conclusion the FTT again had the benefit of HMRC's statement of costs (which sets out the costs incurred by each of 8 fee earners for the period from November 2024 to September 2025 and in drafting the costs schedule in January 2026). The FTT made no arguable error of law and gave sufficient reasons at [38]-[40] for finding these to have resulted from the Applicant's unreasonable conduct. It explained the law correctly at [13] and [38] that in conducting a summary assessment, which was proportionate to the level of costs sought, it was not conducting a line by line assessment of each item but evaluating the costs at 80% of those claimed by HMRC:

38. Of the remaining £13,781.40, it is not necessary, as explained above, to undergo a consideration line by line of each cost. I consider that every Appeal necessitates some degree of 'Case Management' by both parties, and therefore although I have found unreasonable behaviour on the part of the Appellant/Strauss Phillips, I consider it still reasonable that HMRC bears some of these costs as expected in the ordinary management of an appeal.

39. The Appellant contends that these 'ordinary' costs include HMRC's own strike out case, skeleton argument and hearing preparation in relation to the strike out application. I disagree. A properly conducted appeal by both parties should never require a strike out application in relation to conduct of the appeal.

40. I therefore make a summary assessment that 80% of the remaining £13,781.40 should be paid to HMRC.

66. The FTT had made findings at [32]-[35] of the Costs Decision which were of consistent and repeated failings and unreasonable behaviour by the Applicant throughout its conduct of the litigation during the period for which costs were sought (again, these were supported at [9]-[56], [76]-[77] and [139]-[147] of the strike out decision). The FTT set out the extent of the Applicant's failures as a representative in Mr Elden's proceedings and justified both the finding of unreasonable conduct and the extent to which HMRC accrued costs in responding to it.

67. The FTT accepted that 20% of HMRC's remaining costs set out in the statement of costs were incurred in the ordinary course of litigation together with £861.80 in preparing the bundle (see [37] of the Costs Decision). Therefore, the figure of 80% arrived at by the FTT was not unreasonable nor unexplained – it was based upon an assessment of the earlier findings as to how much of HMRC's costs were caused by the unreasonable conduct of the Applicant as opposed to the necessary conduct of the litigation. This was a reasonable and proportionate assessment of costs claimed when they were of a relatively moderate amount (under £15,000). The FTT did not apply "an unexplained percentage without any reasoned analysis of the causal link between specific acts and specific costs..., not a permissible exercise of the summary assessment jurisdiction".

68. There was no arguable error of law and this ground is dismissed.

Ground 4 – failure to identify the recoverable loss

Submissions on behalf of the Applicant

69. Mr Marsh submits that in refusing permission to appeal on the papers I stated at paragraph 20 that the Costs Decision identifies which elements of HMRC's costs were additional to the ordinary costs. The Applicant submits that the FTT's analysis does not carry out this exercise with sufficient rigour. In particular:

(a) HMRC's costs schedule claims over 90 hours of paralegal time across 8 different fee earners. The conduct criticised by the FTT amounts to: one letter incorrectly included on a 14-item list of documents, two documents provided late which were inconsequential to the substantive appeal, an evolving position on a witness statement which was ultimately provided in compliance with directions, and missed deadlines which were subsequently rectified. The volume of costs claimed is grossly disproportionate to the conduct in question and the FTT failed to interrogate this.

(b) The FTT excluded only £861.80 for bundle preparation (paragraph 37) and then applied 80% to the remainder without distinguishing between costs HMRC would have incurred in any event in managing the appeal and costs genuinely caused by the Applicant's conduct. The 20% deduction for "ordinary case management" is arbitrary and unexplained.

70. Mr Marsh submits that HMRC's costs in relation to 120 hours was not reasonable nor proportionate nor caused by the conduct found. The amount awarded of 80% was not explained nor rationally justified nor proportionate and bore no relationship to the conduct found. HMRC applied for the strike out and over half their costs refer to that application – yet that application failed. HMRC were seeking costs in relation to their own action which failed. The FTT stated at [39] that a properly conducted appeal by both parties should not require a strike out application.

Analysis and Decision

71. This ground raises no arguable error of law and I refuse permission to appeal upon it.

72. The Costs Decision does identify which elements of HMRC's costs were additional to their ordinary costs of defending the appeal / pursuing the strike out and which arose directly from the conduct of the Applicant criticised – it does so at [31] and [37]-[40].

73. The conduct of the Applicant found to be unreasonable in the findings at [33]-[35] was substantial, repeated and ran throughout proceedings. Again, the amount of correspondence and applications involved and their evaluation as unreasonable is set out in more detail in the strike out decision itself at [9]-[59], [76]-[77] and [139]-[147]. The fact that HMRC did not succeed in the strike out application against Mr Elden (and only an unless order was made against him) does not undermine the findings of negligent or unreasonable conduct against the Applicant and the costs were not based on the success or otherwise of a party in the application or proceedings (which can only arise under rule 10(1)(c) of the FTT Rules).

Ground 5 – failure to explain the rejection of the Applicant’s explanation and the basis for findings of professional negligence

Submissions on behalf of the Applicant

74. Mr Marsh submits that in refusing permission to appeal on the papers I stated at paragraph 22 that the FTT “correctly identified and rejected the Applicant’s explanation.” The Applicant’s case is that the FTT failed to explain why the Applicant’s account of its working methods was rejected, particularly in circumstances where the Applicant accepted partial use of AI but maintained that the errors were attributable to human oversight failures rather than wholesale AI fabrication. The distinction is material because a finding that a professional representative submitted AI-generated content without any review engages a qualitatively different standard of conduct than a finding that human-produced work contained errors which AI tools failed to catch.

Analysis and Decision

75. There is no arguable error in the Costs Decision in respect of this ground and I refuse permission to appeal upon it.

76. The FTT correctly identified and rejected the Applicant’s explanation for its conduct – at [111] to [129] of the strike out decision (referred to in the Costs Decision at [28]) and gave sufficient reasons. The FTT afforded the Applicant procedural fairness throughout. In relation to the strike out decision, the Applicant, as representative of Mr Edlen, was given multiple opportunities in correspondence after the hearing to address the criticisms before the FTT made its findings.

77. In relation to the Costs Decision, the FTT also gave the Applicant the opportunity to make submissions in reply to HMRC’s costs application which the Applicant availed itself of when making written submission in reply in February 2026. The FTT noted and summarised the Applicant’s representations in reply to HMRC’s application for costs at [3] and [21] of the Costs Decision. This is not a case where an adverse finding has been made against a party or representative without it having the opportunity to make fair and full representations.

78. In the Costs Decision and the strike out the Decision, the FTT identified the evidential material upon which it concluded that AI had been used. Indeed, the Applicant accepted, in part, that AI had been used to some extent in documents it prepared. The FTT found that the Applicant’s failure to check the inaccurate product of AI and reliance thereupon fell below the requisite standard of a reasonable professional representative. That was a finding that was open to the FTT and available to it on the evidence, it was rationally justified and sufficient reasons were given.

Ground 6 – failure to distinguish between professional error, negligence and unreasonable conduct

Submissions on behalf of the Applicant

79. Mr Marsh criticised my Decision refusing permission to appeal on the papers as characterising Grounds 6 and 7 as mere reformulations of earlier grounds 1 and 2. He argues that Ground 6 is distinct from Ground 1 and concerns the FTT's failure to distinguish between the different legal standards applicable to professional error, negligence, and unreasonable conduct – a matter of legal categorisation, not evidence.

Analysis and Decision

80. This ground raises no arguable error of law and I refuse permission to appeal upon it.

81. The FTT correctly identified the correct and separate tests of professional error, negligence, professional incompetence and unreasonable conduct – at [11] and [12] of the Costs Decision. The Applicant accepts that the differing thresholds were identified but submits that they were not then applied or justified by the FTT. I reject this.

82. The FTT demonstrated that it then properly applied these differing tests at [22], [29] and [32]-[35]. The FTT provided sufficient and rational reasons for concluding that each threshold was satisfied. These were evaluative conclusions it was entitled to reach.

Ground 7 – positive findings of fact not supported by identified evidence

Submissions on behalf of the Applicant

83. Ground 7 identifies specific positive findings of fact which are not supported by identified evidence, including the mischaracterisation of the 2 December 2024 application and the 30 October 2023 letter discussed above. Mr Marsh submits that these distinct points which he addressed at the oral hearing.

Analysis and Decision

84. This ground raises no arguable error of law in the Costs Decision and I refuse permission to appeal upon it.

85. This ground is rejected for the reasons given above. The FTT made positive findings, identifying the evidence and its reasons in the strike out decision at [9] and [32]-[36] as well as [33] and [35] of the Costs Decision. It made positive findings of fact which were well within a reasonable range available to it. It gave sufficient reasons in support of its findings.

Ground 8 – the refusal of permission did not engage with the grounds advanced.

86. Mr Marsh accepts that the permission refusal decisions made by the FTT and me on the papers are not the subject matter of the permission application but he must demonstrate the arguable errors of law in the FTT's original Costs Decision.

87. Nonetheless, he submits that the findings made by the FTT are hard on the Applicant and have serious consequences – a professional firm of accountants has been found to have acted negligently, incompetently or unreasonably and ordered to pay £13,000 without the

opportunity to be heard. He argues that there are other serious consequences such as the ICAEW relying on the Costs Decision in bringing the disciplinary proceedings against the Applicant. The hearing before the UT of the renewed permission application was the first opportunity for the Applicant to be heard orally.

Analysis and Decision

88. This ground raises no arguable error in the Costs Decision and I refuse permission to appeal upon it.

89. The renewed permission application is made in respect of the Costs decision. The FTT's PTA decision and my decision refusing permission on the papers are not the subject matter of the appeal to the UT. The Applicant has had a fresh opportunity to seek permission from the UT and persuade it that there are grounds of appeal with arguable merit. It has failed to do so.

90. The Applicant has had the opportunity to make repeated submissions as to its conduct in correspondence and in writing to the FTT before the strike out decision and the Costs Decision were made. As noted above, the FTT stated at [3]-[4] of the Costs Decision:

“3. On 5 February HMRC made an application for costs against the Appellant [Mr Elden] and his representatives, Strauss Phillips & Co ('Strauss Phillips'). The representatives made representations in relation to this application also on 5 February 2026.

4. The Tribunal offered each party a further period of time in which to make representations, and then decided the application on the papers on 7 April 2026.”

91. It does not appear that either party requested an oral hearing of the costs application and most costs decisions are made on the papers (whether by the FTT or UT) in accordance with the overriding objective under Rule 2 of the FTT or UT Rules.

92. The Applicant has also had the opportunity to address the UT orally at the hearing, through its representative, in addition to the submissions made in writing. The Costs Decision of the FTT only concerns whether the requisite thresholds were satisfied for the imposition of costs and it is not a finding for the purpose of other proceedings whether they be disciplinary or otherwise.

93. The Applicant has had a fair opportunity to make its case and argue before the FTT and UT that the Costs Decision should not have been made or that it was made in error of law. The costs and strike out proceedings afforded procedural fairness to the Applicant giving it a fair and full opportunity to make submissions or representations.

94. Other consequences of or issues arising from the Costs Decision (or the strike out decision) are beyond the remit of the UT's jurisdiction. Mr Marsh asserts that there may be ICAEW disciplinary proceedings involving the Applicant. In the written submissions dated 3 September 2026 the renewed application for permission, Mr Marsh noted: the Applicant “is now the subject of a regulatory investigation by ICAEW arising directly from these

proceedings”. In the written submissions to the UT enclosed with the original grounds of appeal in July 2026 Mr Marsh argued:

“164...Following the Costs Decision, the Tribunal considered whether the matter should be referred to the ICAEW but ultimately decided not to make a formal complaint. Whilst that decision does not determine whether the findings challenged in this appeal were legally correct, it demonstrates that the Tribunal ultimately decided not to refer the matter to the Applicant's professional regulator. Given the seriousness of the findings nevertheless made, that decision reinforces the need for those findings to be supported by clearly identified evidence and legally adequate reasoning.”

95. Whether there are any ICAEW proceedings and if so, their substance, are not matters for the UT and, if so, the Applicant will likely have its own right to respond to in the relevant setting.

96. Finally, I am satisfied that the issues raised in this application do not give rise to any novel point, matter of public importance nor point of principle. They consist of grounds relating to the application of well-established principles of law in relation to the award of costs. There is no other compelling reason to grant permission to appeal.

Conclusion

97. Permission to appeal to the Upper Tribunal is **refused on all grounds of appeal as they do not hold realistic prospects and do no raise arguable errors of law in the Costs Decision.**

Signed:

Date: 9 October 2026

JUDGE RUPERT JONES

JUDGE OF THE UPPER TRIBUNAL