

UPPER TRIBUNAL
TAX AND CHANCERY CHAMBER

Neutral Citation Number: [2026] UKUT 00422 (TCC)

Applicant: Arif Abidi	**Tribunal Ref: UT/2026/000024**
Respondents: The Commissioners for His Majesty's Revenue and Customs	

APPLICATION FOR PERMISSION TO APPEAL

DECISION NOTICE
Oral renewal of permission to appeal

Background

1. The applicant, Mr Arif Abidi, applies to the Upper Tribunal (Tax and Chancery) for permission to appeal against the decision setting out the full findings and reasons of the First-tier Tribunal ("FTT") released on 17 July 2025 and published as *Arif Abidi v HMRC* [2025] UKFTT 00863 (TC) ("the FTT Decision") following a hearing which took place as a remote video hearing on 17 January 2025[1]. The Applicant applied to the FTT in-time for permission to appeal which the FTT refused in its decision of 6 February 2026. Mr Abidi renewed his application for permission to appeal to the UT. I had previously refused permission to appeal in my decision of 22 April 2026 ("the paper refusal decision"). In the light of the parties' disputed accounts of what happened at the FTT hearing (and there being no recording or transcript available of that) directions were subsequently made to establish the record of that hearing by reference to the FTT judge's note and any matters agreed between the parties, in accordance with the procedure described in *Dexine Rubber Co v Alker* [1977] ICR 434 and applied in this Chamber in *Fiander v HMRC* [2021] UKUT 156 (TCC). An oral hearing took place on 14 October 2026. Mr Abidi represented himself and Thomas Pearson of HMRC Legal Group appeared on behalf of HMRC.

2. The FTT Decision concerned HMRC's application to strike out Mr Abidi's consolidated appeals against HMRC closure notices and penalty assessments pursuant to rule 8(3)(c) of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009 in relation to income tax for 2011/12 and 2013/14, with amounts in issue on the closure notices of approximately

[1] The summary decision was released on 13 February 2025.

£31,520 and £2,349 respectively, together with penalties assessed in the sums of £16,548 (for 2011/12) and £370 (for 2013/14) ([4]–[6]).

3. The substantive issues raised by the appeals included whether payments received by Mr Abidi from companies of which he was a director and shareholder fell to be treated as taxable income or as reimbursed employment expenses, and, if tax was properly due, whether the statutory conditions for the penalties imposed were satisfied ([3], [8]–[11]).

4. The FTT noted the repeated failures by the Appellant to comply with directions requiring the service of lists of documents, witness statements and a documentary bundle ([72]–[83]). Shortly before the strike-out hearing, Mr Abidi served a witness statement and a substantial body of documentary material, including zipped files. The FTT found that the material was not presented or explained in a form which enabled its contents and relevance to be adequately identified, and declined to admit it as late evidence ([84], [108] and [113].

5. After setting out the legal approach to Rule 8(3)(c) by reference to authorities including *HMRC v Fairford Group* [2014] UKUT 329 (TCC) and *First De Sales LP v HMRC* [2018] UKUT 396 (TCC) ([89]–[101]), and considering the material it considered admissible, the FTT concluded that, viewed cumulatively, the appeal did not disclose a reasonable prospect of success and should be struck out ([123]–[124]).

Upper Tribunal's jurisdiction on appeal

6. An appeal to the Upper Tribunal from a decision of the First-tier Tribunal can only be made on a point of law (s11 of the Tribunals, Courts and Enforcement Act 2007). It is therefore the practice of the Upper Tribunal in this Chamber only to grant permission to appeal where the grounds of appeal disclose an arguable error of law on the part of the FTT.

Grounds of appeal

7. Mr Abidi's original application to the Upper Tribunal raised a number of overlapping complaints, which I grouped under four headings in the paper refusal decision. They concerned the FTT's approach to the admission of late evidence, its application of rule 8(3)(c), its treatment of representative default, and the adequacy of its reasons for striking out the appeals rather than adopting a less final procedural course. Following the paper refusal decision, and after the record of the FTT hearing had been established, Mr Abidi filed expanded grounds for the oral renewal. Those grounds took account of the hearing record and advanced nine grounds. Some were developments of the original grounds while others, including the challenge to the treatment of the penalty appeals were new and had not therefore been addressed in the paper refusal decision. At the oral hearing I explained that there was considerable overlap between the nine grounds and invited Mr Abidi to address them under five thematic headings. I have retained that thematic ordering below.

Grounds 1, 2, 7 and 8: late evidence, strike-out and adjournment

8. These grounds concern the FTT's refusal to admit the late evidence, its subsequent determination of HMRC's strike-out application, and its treatment of counsel's application for an adjournment. **Ground 1** is that the FTT gave disproportionate weight to the lateness and

presentation of the evidence without adequately considering its relevance, the explanation for the default, the prejudice to each party and whether any difficulties could be cured through an adjournment or directions. Mr Abidi disputes the FTT's conclusion that neither he nor counsel could adequately explain the contents or relevance of the late material. He relies on the structure of the documents, the files uploaded through the Document Upload Centre, counsel's skeleton and the references in the hearing note to the panel having "seen" the files. **Ground 2** is that the FTT failed to consider the combined effect of excluding the evidence, refusing the adjournment and then determining the strike-out application on only the more limited evidence that then remained. **Ground 7** is that the FTT failed adequately to explain why it proceeded to strike out the appeals rather than adopting the less final course actually proposed by counsel, namely an adjournment to allow the evidence and grounds to be regularised and HMRC time to consider the material. Mr Abidi also relies on other possible case-management measures, although those were developed more fully after the hearing. **Ground 8** concerns the incorrect statement in the FTT's later permission decision that no adjournment application had been made. Mr Abidi does not seek to appeal that decision separately, but relies on the mistake in support of Grounds 2 and 7.

Ground 1: refusal to admit the late evidence

9. The decision whether to admit the late evidence involved the exercise of the FTT's case-management discretion. The question is whether it is arguable that the FTT misdirected itself, omitted a relevant consideration, took account of an irrelevant consideration or reached a conclusion outside the generous ambit of its discretion[2]. The FTT found at [108] and [113] that the late material comprised unpaginated and unexplained documents in zipped files and that neither Mr Abidi nor counsel could adequately explain their contents or relevance. Mr Abidi challenges that evaluation on several grounds. For the reasons below, none discloses an arguable error of law.

10. First, Mr Abidi relies on the organisation and accessibility of the material. The Document List identified 133 documents, the Exhibit List identified 15 exhibits, the witness statement cross-referenced those documents and exhibits, and counsel's skeleton identified the principal tax and penalty issues. Those features provided some objective organisation. They did not, however, remove the need for the party seeking admission to identify which documents mattered, what they were said to establish and how they related to the issues. The FTT was not required to investigate a substantial body of late material for itself.

11. Mr Abidi also relies on the 167 individual files uploaded through the Document Upload Centre. The hearing note records that those files corresponded with the contents of the zipped files and that the panel was satisfied that it had "seen" them. Those entries do not contradict the FTT's evaluation. The panel could identify the relationship between the individual files and the zipped archives by their number, names or electronic structure without understanding the evidential significance of each document. As I put to Mr Abidi at the oral renewal, establishing that two electronic transmissions contain the same files is different from understanding what

[2]As explained in the paper refusal decision, applying *Walbrook Trustee (Jersey) Ltd v Fattal* \[2008] EWCA Civ 427 at [33].

those files prove and how they relate to the issues. Nor does the fact that the files had been received and could be opened establish that they had been sufficiently explained for the admission application. The separate DUC upload did not remove the need for the party seeking admission to identify the documents relied upon and explain how they supported the appeals. The later working bundle demonstrates that the material could subsequently be organised and explained more clearly. It does not show that it was presented or explained to the FTT in that form.

12. Secondly, Mr Abidi says that counsel explained the evidence. The hearing note records that counsel advanced the positive case that the payments represented reimbursed expenses and referred to documents in HMRC's bundle. The skeleton also identified the broad factual and legal case. That shows that some explanation was given. It does not establish that the numerous documents within the late files were adequately identified or mapped to the issues. Counsel's ability to prepare a skeleton likewise does not demonstrate that the late evidence as a whole had been sufficiently explained for the purpose of admission.

13. Mr Abidi further submits that counsel's inability, at short notice, to identify every item duplicated in HMRC's separate bundle did not mean that his own documents were unidentified. I accept that identification of his documents and comparison with HMRC's bundle were distinct exercises, and that some duplication was inevitable. The FTT's concern did not, however, relate to duplication alone. Its evaluation was that the contents and relevance of the material had not been adequately explained. Although counsel's recent instruction and the compressed preparation timetable explained the practical difficulty in comparing the bundles, they did not make the FTT's evaluation arguably unsustainable.

14. Thirdly, Mr Abidi says that the account of the identification problem changed between the FTT's summary and final decisions. The summary decision referred to counsel's inability to identify duplication or relevance. The final decision stated more broadly that counsel could not explain what the zipped files comprised and that Mr Abidi could shed no further light on them. Those formulations are not materially inconsistent. An inability to explain relevance or duplication was capable of supporting the broader conclusion that the contents and proposed use of the files had not been adequately explained.

15. The absence of a focused exchange from the hearing note also does not establish that the concern was not raised. The note was not a verbatim transcript. Following the *Dexine Rubber* procedure, Mr Abidi cannot supplement the settled record by relying on his disputed recollection of a fuller explanation by counsel. Nor was the FTT required to identify every deficiency and invite counsel to cure it before ruling. The burden lay on the party seeking admission to identify and explain the evidence. The FTT's conclusion that this had not been done adequately was an evaluative judgment open to it.

16. Finally, Mr Abidi submits that the FTT considered the prejudice to HMRC if the evidence were admitted but failed to weigh the prejudice to him if it were excluded. I accept that the FTT Decision does not identify that prejudice in a separate balancing section. The consequence for Mr Abidi was nevertheless clear: exclusion prevented him from relying on his witness statement and supporting documents when resisting strike-out. The FTT was aware of that consequence, having heard counsel's submissions on admission, adjournment and the evidential basis of the appeals before ruling on strike-out. Read as a whole, the Decision shows

that the FTT weighed that prejudice against the lateness and volume of the material, the history of non-compliance, the inadequate identification and explanation of the documents, the need to amend or regularise the grounds, and the prejudice to HMRC in having to review the material at that stage. The FTT was not required to set out each side of the balance under separate headings. Its reasons sufficiently show why it concluded that the prejudice to Mr Abidi did not outweigh the factors supporting exclusion. That assessment was open to the FTT and discloses no arguable error of law.

17. Mr Abidi's written submissions also referred to *HMRC v Atlantic Electronics Ltd* [2012] UKUT 423 (TCC), *Data Select Ltd v HMRC* [2012] UKUT 187 (TCC), *Mobile Export 365 Ltd and Shelford IT Ltd v HMRC* [2007] EWHC 1737 (Ch), *First Class Communications Ltd v HMRC* [2014] UKUT 244 (TCC) and *HMRC v Healthspan Ltd* [2026] UKUT 194 (TCC). He relies on those authorities for the general relevance of the nature and significance of the evidence, the length and explanation of the delay, the competing prejudice to the parties and the availability of alternative case-management measures. They do not prescribe a single outcome or establish that late evidence must be admitted whenever its exclusion may contribute to a subsequent strike-out. Nor does the record show that the FTT treated HMRC's objection as determinative. The hearing note records discussion of lateness, prejudice, overlap, possible new material and the state of the grounds. The fact that HMRC objected and the FTT then refused admission does not show that the FTT delegated its decision to HMRC.

18. I therefore refuse permission on Ground 1.

Ground 2: the combined effect of exclusion and strike-out

19. Ground 2 discloses no independent arguable error. The FTT first had to determine what evidence could properly be admitted and then decide HMRC's strike-out application on the admissible material. Once the late evidence had been excluded, it was neither illogical nor unfair to apply rule 8(3)(c) by reference to the evidence properly before the FTT. Indeed, it would have been inconsistent with the evidential ruling to take the excluded material into account when assessing the appeals' prospects. Mr Abidi's point that exclusion created the "no evidence" position relied upon on strike-out explains the importance and consequences of the evidential ruling, but does not establish a separate error in the sequence adopted by the FTT.

20. Mr Abidi also relies on the wider circumstances, including the timing of the postponement decision, the recent instruction of counsel, the defaults attributed to the former advisers and his expectation that the substantive appeal would proceed. Those matters were relevant to the applications to admit the evidence and adjourn the hearing. They did not prevent the FTT from determining the strike-out application once those earlier applications had been refused.

21. Mr Abidi relies on *R (Osborn) v Parole Board* [2013] UKSC 61, [2014] AC 1115 at [67]–[71]. The Supreme Court explained that procedural fairness promotes accurate decision-making by ensuring that relevant material is received and properly tested, and respects the dignity of the person affected by affording a meaningful opportunity to participate and explain their position. Mr Abidi submits that the combined sequence of excluding his evidence, refusing an adjournment and then relying on the absence of admitted evidence denied him that opportunity. Those principles do not, however, establish an independent error under Ground 2. Mr Abidi attended with counsel, sought admission of the evidence, applied for an adjournment

and resisted strike-out. Whether he had a fair opportunity to address the identification concern, and whether the FTT adequately explained its refusal of an adjournment, are addressed under Grounds 1 and 7 respectively.

22. I therefore refuse permission on Ground 2.

Ground 7: inadequacy of reasons regarding lesser procedural alternatives

23. Ground 7 is that the FTT failed to explain why it struck out the appeals rather than adopting a less final procedural course. Mr Abidi relies principally on counsel's application for an adjournment to regularise the evidence and grounds and allow HMRC time to consider the material. He also identifies possible measures including conditional admission, an indexed bundle, an overlap schedule, further particulars, focused directions and separate progression of the penalty appeals.

24. The hearing record establishes that counsel applied for an adjournment, HMRC opposed the application and the FTT refused it. The FTT Decision does not record the application or give reasons expressly directed to its refusal.

25. The FTT was required to determine the applications made to it. It was not required to address every procedural alternative subsequently identified by Mr Abidi. Measures such as an overlap matrix, an issues-to-documents schedule, an unless order and separate progression of particular issues were not shown to have been proposed to the FTT in that form.

26. Nor did rule 8(3)(c), once the FTT had concluded that the appeals had no reasonable prospect of success, impose a separate requirement to demonstrate that strike-out was the least severe procedural course available. The question was whether the FTT lawfully reached its conclusion on the prospects of the appeals.

27. The adjournment actually sought requires separate consideration. Its purpose was to enable the late evidence and grounds to be regularised and to allow HMRC time to consider the material. Although the FTT Decision did not separately explain why that application was refused, the basis for the refusal is sufficiently apparent when the Decision is read as a whole.

28. The FTT referred to the prolonged history of non-compliance, repeated opportunities to provide the required evidence, the lateness and volume of the material, the failure adequately to explain its contents and relevance, and the need to amend or regularise the grounds. Those matters sufficiently explain why the FTT was not prepared to allow further time before determining HMRC's strike-out application.

29. Mr Abidi relies on *English v Emery Reimbold & Strick Ltd* [2002] EWCA Civ 605 at [19] and *HMRC v Healthspan Ltd* [2026] UKUT 194 (TCC) at [57] to [61]. Those authorities require reasons sufficient to enable the parties to understand why an issue material to the outcome was decided as it was. They do not require every submission or procedural alternative to be addressed expressly. Read as a whole, the FTT Decision sufficiently explains why it regarded further case management as unlikely to cure the central deficiencies.

30. Mr Abidi also refers to *Mediability Ltd v HMRC* [2023] UKFTT 315 (TC) and *Qureshi and Igen Distribution Ltd (in liquidation) v HMRC* [2020] UKFTT 328 (TC). Those first-instance

decisions illustrate the availability of adjournments, directions and final opportunities to comply. They did not bind the FTT or require it to adopt the same course on the materially different circumstances before it.

31. The subsequent FTT permission decision incorrectly stated that no adjournment application had been made and observed that it was unclear what lesser sanction Mr Abidi said should have been imposed. The later hearing record establishes that at least one concrete alternative had been sought, namely an adjournment to regularise the evidence and grounds and allow HMRC time to consider the material. I have therefore assessed this ground on that basis. It does not alter my conclusion that the reasons for refusing further case management are sufficiently apparent from the substantive FTT Decision read as a whole.

32. Ground 7 therefore does not disclose an arguable error of law. Permission is refused on Ground 7.

Ground 8: the error in the FTT permission decision

33. At [12] of its decision refusing permission to appeal, the FTT incorrectly stated that no adjournment application had been made during the hearing. The hearing record establishes that counsel made an oral application and that the FTT refused it. My paper refusal proceeded on the same mistaken factual basis. I have therefore reconsidered Grounds 1, 2 and 7 on the correct basis that an adjournment was sought and refused.

34. Mr Abidi relies on *G B Fleet Hire Ltd v HMRC* [2021] UKUT 225 (TCC) at [49] to [51] and *Czerwionka v HMRC* [2026] UKUT 76 (TCC) at [19] to [21] for the proposition that a material misapprehension of the record may vitiate the decision affected by it. The mistake occurred in the later permission decision, not in the substantive FTT Decision under appeal. Its significance is that the adjournment complaint cannot be rejected on the basis that no application was made. I have accordingly considered that complaint on the correct facts under Ground 7.

35. For the reasons given under Ground 7, the FTT's reasons for proceeding without a further adjournment are sufficiently apparent from the substantive Decision read as a whole. The factual error in the later permission decision does not create a separate error of law in the substantive FTT Decision.

36. Permission is therefore refused on Ground 8.

Grounds 3 and 4: application of rule 8(3)(c) and evidence available at a substantive hearing

37. Ground 3 is that the FTT misapplied rule 8(3)(c) by going beyond an assessment of whether the appeals had a realistic prospect of success and resolving disputed factual and evidential matters which should have been left for a substantive hearing. Mr Abidi challenges, in particular, the FTT's conclusions about what records should have existed, whether duplicates or electronic copies could have been obtained, and whether his explanation for the absence of records was credible. He also disputes the FTT's statements that he had unequivocally said he no longer had any receipts and that only jewellery at the property was insured.

38. Ground 4 is that the FTT failed to consider evidence which was already available or could reasonably have been expected to be available at a substantive hearing. Mr Abidi relies on documents in HMRC's bundle, the files uploaded through the Document Upload Centre, and further identified material which he says could have been produced following an adjournment or directions. His case is that this was not a situation in which it was merely hoped that unspecified evidence might later emerge. He says that defined evidence already existed concerning the reimbursed-expenses case, the loss of records and the separate 2013/14 receipts claim.

Ground 3: alleged mini-trial and disputed factual findings

39. The FTT correctly directed itself that the question was whether the appeals had a realistic rather than fanciful prospect of success and that it should avoid conducting a mini-trial. The issue is whether it arguably departed from those principles in applying them.

40. A tribunal applying rule 8(3)(c) need not accept every factual assertion at face value. It may consider whether the case has real substance, whether its central assertions are supported by identifiable evidence and whether evidence capable of curing an apparent deficiency is realistically likely to become available. The FTT's observations at [110] to [114] about electronic backups, duplicate records and credit-card statements were made in that context. Some evaluation of Mr Abidi's explanation for the missing records was unavoidable. The FTT was assessing whether that explanation provided a realistic basis for expecting the evidential gaps to be filled. Its reasoning did not purport finally to determine whether particular historic records existed or whether the substantive tax appeals should succeed.

41. Mr Abidi also says that the FTT misunderstood the 2011/12 case by treating the whole sum of approximately £132,480 as expenditure incurred in that year. He says that £62,980.46 received from Blue Chip IT related to earlier periods and that the relevant Trading Systems reimbursement claim was approximately £53,000.

42. The central difficulty identified by the FTT did not, however, depend on when each underlying expense was incurred. It was the absence of evidence linking the payments received by Mr Abidi to particular qualifying expenditure incurred personally by him. The bank references and the analysis of Trading Systems' VAT purchases provided some support for his description of the payments, but did not establish that necessary link.

43. Mr Abidi separately challenges the statement at [123] that he had "unequivocally stated that he no longer had any receipts to corroborate his claim to reimbursement expenses". He denies making that statement and relies on its absence from the FTT judge's note.

44. The note was not a verbatim transcript. The absence of those words from the note does not establish that they were not said. Nor does their absence from Mr Abidi's witness statement exclude the possibility that something further was said orally.

45. There is nevertheless an important distinction between the two tax years. Receipts relating to the 2013/14 expenses claim had been supplied to HMRC and analysed. If [123] were read as stating that no receipts existed for either year, it would be too broadly expressed. Read in context, however, the FTT's central point was that Mr Abidi had not presented an adequately

explained evidential case capable of substantiating the appeals. Any overstatement was not material to the 2011/12 appeal. The separate significance of the 2013/14 receipts is considered under Ground 4.

46. Mr Abidi also challenges the statement at [110] that his explanation was that only jewellery at the property had been insured. He denies giving that explanation. The statement appears in the FTT's account of the background concerning the burglary and the missing records, rather than in its dispositive reasoning at [123] and [124]. The absence of the alleged statement from the hearing note or witness statement does not establish that it was not made. In any event, the precise scope of the insurance cover did not provide the missing evidential link between the payments received by Mr Abidi and the expenditure said to have been reimbursed. Even if the account at [110] was inaccurate, the error was not arguably material to the strike-out decision.

47. Mr Abidi relies on *Fairford Group plc v HMRC* [2014] UKUT 329 (TCC), *First De Sales*, *HMRC v Tasca Tankers Ltd* [2022] UKUT 88 (TCC) and *G B Fleet Hire Ltd v HMRC* [2021] UKUT 225 (TCC). Those decisions confirm the rule 8(3)(c) test to be applied to the actual case and evidence without finally resolving factual disputes which require trial. They did not prevent the FTT from evaluating whether Mr Abidi's case had real substance or whether supporting evidence was realistically likely to become available. The FTT's approach did not arguably cross the line into a final determination of the disputed tax liabilities.

48. Permission is refused on Ground 3.

Ground 4: evidence available or reasonably expected at trial

49. Ground 4 requires a distinction between the late material which the FTT excluded and documents already contained in HMRC's hearing bundle.

50. *First De Sales LP v HMRC* required the FTT to consider evidence which could reasonably be expected to be available at a substantive hearing. It did not require the FTT to assume that excluded evidence would later become admissible, adequately explained and capable of substantiating the appeals.

51. The question is whether documents already in HMRC's bundle, and specifically identified by counsel, provided a realistic evidential foundation for either tax appeal.

52. For 2011/12, counsel referred to correspondence at pages 147 to 157 and 331 to 337 of HMRC's bundle. That correspondence showed that Mr Abidi had advanced the reimbursement explanation consistently over several years and recorded his explanation for the loss of company records. It therefore demonstrated that the explanation had not first been devised for the FTT hearing. It did not independently establish that the explanation was correct, identify the underlying expenses or link particular payments to qualifying expenditure incurred by him.

53. Some Trading Systems payments bore references to expenses or accommodation. Those references provided limited contemporaneous support for Mr Abidi's case. Other payments were described as dividends or salary or carried no explanatory reference. The references did not establish the nature or deductibility of the expenditure said to have been reimbursed.

54. Mr Abidi also relies on Exhibit 10, an analysis of Trading Systems' VAT records which he says showed approximately £64,131 of VATable purchases, compared with approximately £53,000 which he says he received as reimbursement of expenses. The VAT material provided some objective support for the existence of substantial business expenditure by the company. It did not show that Mr Abidi personally incurred those costs, identify which expenditure he funded or link the payments made to him with the purchases recorded for VAT purposes. The broad numerical comparison was not a reconciliation of the underlying transactions. Nor does the settled hearing record show that the detailed analysis now advanced was presented to the FTT in that form.

55. The VAT material therefore did not remedy the central gap in the 2011/12 case. The identified documents did not connect the payments received by Mr Abidi with qualifying expenditure incurred by him. The FTT was entitled to conclude that the appeal lacked the necessary evidential foundation.

56. The position for 2013/14 requires closer consideration. HMRC's bundle contained its analysis of the receipts which Mr Abidi had supplied in support of his employment-expenses claim. HMRC accepted £2,074 of the expenditure as allowable and disputed the balance by reference to matters including the dates of the expenditure, duplicated or undated receipts and the apparent private character of items such as supermarket purchases, local travel, weekend and restaurant expenditure and holidays.

57. The 2013/14 appeal was therefore not wholly unsupported by documentary material. If the FTT's references to bare assertions or an absence of evidence were intended to suggest otherwise, they were too broadly expressed.

58. The relevant question was whether there was a reasonable prospect of Mr Abidi establishing materially greater relief than HMRC had already allowed. The material identified to the FTT did not explain how the residual disputed expenditure satisfied the applicable statutory conditions for deduction.

59. HMRC had sought such an explanation over a prolonged period. Neither Mr Abidi nor his accountants had provided a complete receipt-by-receipt reconciliation addressing HMRC's objections. The existence of receipts did not itself establish that the residual expenditure satisfied the statutory test.

60. The 167 files uploaded through the Document Upload Centre do not alter that conclusion. They formed part of the material which the FTT declined to admit. The principle concerning evidence reasonably expected at trial did not require the FTT to assume that the excluded material would later become admissible or remedy the substantive evidential gaps.

61. Nor did the correspondence concerning Mr Abidi's former advisers support the merits of the reimbursement case. Its principal relevance was to the explanation for procedural default and the application for an adjournment, not to whether the disputed payments were taxable.

62. Mr Abidi relies on *Powar v HMRC* [2026] UKUT 356 (TCC), *Tasca Tankers Ltd*, *G B Fleet Hire Ltd v HMRC* [2021] UKUT 225 (TCC), *Czerwionka v HMRC* [2026] UKUT 76 (TCC) and *Mediability Ltd v HMRC* [2023] UKFTT 315 (TC). He draws from those cases the

distinction between an unspecified hope that evidence might emerge and identified evidence capable of further investigation.

63. I accept that Mr Abidi identified more than a general possibility that evidence might later turn up. The question remained whether those identified categories could realistically remedy the substantive evidential deficiencies. For the reasons given, they did not arguably do so.

64. Any insufficient differentiation in the FTT's language between the two tax years was not arguably material. For 2011/12, the identified documents did not establish the link between the payments and qualifying expenditure. For 2013/14, receipts existed, but the evidence required to answer HMRC's itemised objections and show that the residual expenditure satisfied the statutory test for deduction remained absent. It was therefore open to the FTT to conclude that the tax appeals had no reasonable prospect of success.

65. Permission is refused on Ground 4.

Ground 5: separate assessment of the penalty appeals

66. Ground 5 is that the FTT failed to assess the penalty appeals separately from the appeals against the closure notices. Mr Abidi submits that failure of his case on the tax liabilities did not necessarily determine whether HMRC could establish deliberate conduct for 2011/12 or carelessness for 2013/14. Those issues involved distinct statutory conditions and burdens. The penalty issues were before the FTT. The hearing note records HMRC's acceptance that it bore the burden of establishing the statutory basis for the penalties together with Mr Abidi's contentions that there was no underlying tax liability, that he had taken reasonable care and that his conduct was neither deliberate nor careless. The FTT identified those grounds at [106], described them at [107] as bare assertions, and struck out the tax and penalty appeals together at [124].

67. It is not clear that the FTT separately applied rule 8(3)(c) to the penalty appeals or explained why they had no reasonable prospect of success. That raises an arguable error of law which could have affected the outcome. I say no more about its merits, which will be for the tribunal determining the substantive appeal.

68. Permission is granted on Ground 5, only to the following extent:

> "Whether the FTT erred in law by failing separately to apply rule 8(3)(c) to the Applicant's appeals against the penalties for 2011/12 and 2013/14, having regard to the distinct statutory conditions and burdens applicable to each, and by failing adequately to explain why each penalty appeal had no reasonable prospect of success."

69. This formulation defines the scope of the permission granted. It encompasses Mr Abidi's contentions that the penalty appeals did not necessarily stand or fall with the appeals against the closure notices; that HMRC bore the relevant burden in relation to the statutory penalty conditions; and that the FTT was required separately to consider the alleged deliberate conduct for 2011/12, the alleged carelessness for 2013/14 and the reasonable-care case advanced by Mr Abidi.

70. The grant does not encompass separate challenges concerning the calculation or amount of the penalties, potential lost revenue, reductions, suspension or Article 6. Nor does it grant permission on a separate case that the FTT was required to adjourn the hearing or permit amendment of the penalty grounds. Those matters were not shown to have been advanced before the FTT as distinct grounds requiring determination and are outside the arguable error identified above.

71. Permission is therefore refused on those wider aspects of Ground 5. The grant is limited to the question set out above.

Ground 6: representative default

72. Ground 6 concerns the FTT's treatment of the procedural defaults which Mr Abidi attributed to his former professional advisers. He says their alleged failures contributed to defective grounds, missed directions, late evidence and the late instruction of counsel. He submits that, although a party is ordinarily responsible for its representative's conduct, the explanation remained relevant to the applications to admit the evidence and adjourn the hearing. He also challenges the weight placed on the absence of a regulatory complaint or professional negligence claim (FTT Decision [112]).

73. The hearing record confirms that representative default was raised before the FTT. The evidence filed for the oral renewal provides a fuller account, but was not before the FTT. The former advisers have not had an opportunity to respond, and it is neither necessary nor appropriate to determine whether the allegations are established.

74. The FTT was entitled to apply the ordinary principle that a represented party is generally responsible for the conduct of its chosen representative. *HMRC v Katib* [2019] UKUT 189 (TCC) does not make representative default irrelevant, but nor does an allegation of such default necessarily excuse non-compliance. The circumstances must be considered in context.

75. The FTT did consider the explanation advanced. It regarded the available evidence as insufficient and noted the absence of correspondence capable of substantiating the allegations. Its reference to the absence of a regulatory complaint or professional negligence claim was not a legal precondition. Even if that consideration carried limited weight, it was not arguably material. The central difficulties remained the prolonged non-compliance and the position reached by the hearing. The alleged representative default might explain how that position arose, but did not identify the late documents, explain their relevance or provide the missing evidential foundation for the tax appeals. Nor did correspondence concerning the former advisers establish that the disputed payments were non-taxable reimbursements.

76. Mr Abidi relies on authorities including *BMW Shipping Agents Ltd v HMRC* [2021] UKUT 91 (TCC), *Medpro Healthcare Ltd v HMRC* [2025] UKUT 255 (TCC), *D X Lingajothy v HMRC* [2023] UKUT 63 (TCC), *Phipps v Priory Education Services Ltd* [2023] EWCA Civ 652 and *Mirza v HMRC* [2022] UKUT 291 (TCC). Those authorities support a contextual assessment rather than an inflexible attribution rule. They do not establish that the FTT was required to excuse the defaults or grant an adjournment in the circumstances of this case.

77. The principal relevance of the alleged representative default was to the applications concerning admission and adjournment. It formed part of the explanation for the late evidence and the condition in which the case reached the hearing, but did not remove the need for Mr Abidi and counsel to identify the material relied upon and explain its relevance. Nor did it require the FTT to admit the material or grant an adjournment. The FTT remained entitled to consider the full procedural history, the position reached by the hearing, the need to regularise the evidence and grounds, and the time HMRC would require. For the reasons given under Grounds 1 and 7, its treatment of those applications discloses no arguable error of law.

78. The later FTT permission decision (at [11]) stated that Mr Abidi had not indicated that he was dissatisfied with his representative. That was inconsistent with both the hearing record and [112] of the substantive FTT Decision, which recorded his case that the defaults arose because he had been let down by his former advisers. The mistake occurred in the later permission decision and does not establish an error in the substantive decision under appeal.

79. Permission is refused on Ground 6.

Ground 9: cumulative fairness and Article 6

80. Ground 9 is that the procedure, viewed as a whole, denied Mr Abidi a fair opportunity to present and regularise his case before the tax and penalty appeals were finally determined.

81. Mr Abidi relies on the combined effect of the defaults attributed to his former professional advisers, the timing of the postponement decision, the urgent preparation of his evidence, the late instruction of counsel, the exclusion of the evidence, the refusal of an adjournment and the subsequent reliance on the absence of admitted evidence when striking out the appeals. He submits that, if the FTT remained unable to identify or understand the relevance of the documents after hearing counsel's explanation, fairness required that concern to be put clearly to counsel before admission was refused. He places particular emphasis on the penalty appeals, which involved statutory conditions and burdens distinct from the underlying tax liabilities. Mr Abidi relies on common-law procedural fairness generally and on Article 6 of the European Convention on Human Rights in relation to the penalties. He refers principally to *R (Osborn) v Parole Board* [2013] UKSC 61, [2014] AC 1115 at [67]–[71], *Jussila v Finland* (2006) 45 EHRR 39 at [43]–[45], and *Phipps v Priory Education Services Ltd* [2023] EWCA Civ 652.

82. While procedural fairness must be assessed by considering the proceedings as a whole, a cumulative argument nevertheless requires identification of some feature, or combination of features, which arguably deprived the party of a fair opportunity to present the case. The serious combined consequences of lawful case-management decisions do not, without more, establish unfairness.

83. Mr Abidi attended the hearing and was represented by counsel. Counsel sought admission of the evidence, applied for an adjournment and made submissions opposing strike-out. The appeals were not determined without hearing from him. The argument that the FTT failed to give counsel a further opportunity to explain the documents substantially repeats Ground 1. For the reasons already given, the burden lay on Mr Abidi to identify and explain the material for which admission was sought. The FTT was not required to identify every residual deficiency and invite counsel to remedy it before ruling. The argument that the FTT excluded

the evidence and then relied on its absence substantially repeats Ground 2. Once the evidence had lawfully not been admitted, the FTT was entitled to determine the strike-out application on the admissible material. The fact that exclusion made strike-out more likely did not itself render the sequence unfair.

84. The reliance on the alleged defaults of the former advisers substantially repeats Ground 6. Those matters were relevant to the explanation for the procedural position and to the adjournment application. They did not remove Mr Abidi's procedural responsibility or provide the missing evidential foundation for the tax appeals.

85. The complaint concerning the refusal of an adjournment substantially repeats Ground 7. Although the FTT Decision did not give reasons expressly directed to that application, the basis on which the FTT declined further case management was sufficiently apparent from the Decision read as a whole.

86. Mr Abidi relies on *Osborn*. The Supreme Court explained that procedural fairness promotes accurate decision-making by ensuring that relevant material is received and properly tested, and respects the dignity of the person affected by affording a meaningful opportunity to participate and explain their position. Those principles do not establish that the procedure here was arguably unfair. Mr Abidi participated through counsel and was able to make the applications and submissions on which he relied.

87. *Phipps* arose in a different procedural setting and on materially different facts. It illustrates that representative default may be important where a party has not had a fair opportunity to present the case. It does not establish that a tribunal must relieve a represented party from the consequences of procedural default whenever former advisers are blamed.

88. Article 6 does not provide a separate arguable ground in relation to the tax assessments. *Jussila v Finland* (2006) 45 EHRR 39 confirms that the criminal limb of Article 6 may apply to tax penalties. Mr Abidi submits that HMRC was therefore required to prove the penalty case beyond reasonable doubt. That is not correct: the engagement of the criminal limb does not displace the civil standard of proof applicable in these proceedings.

89. The relevant requirement was that Mr Abidi should have a fair opportunity to answer the penalty case. The arguable issue is not a wider failure of procedural fairness, but whether the FTT separately applied rule 8(3)(c) to the penalty appeals. That issue is more precisely captured by the confined grant of permission on Ground 5. Mr Abidi distinguishes *Powar v HMRC* [2026] UKUT 356 (TCC) at [54]–[63] (a non-binding decision on permission) in which the applicant's Article 6 challenge failed because it had been given a fair opportunity to serve evidence and oppose strike-out. *Powar* illustrates that the loss of a substantive hearing does not itself make the procedure unfair. Mr Abidi likewise had opportunities to provide evidence, attended with counsel, sought admission of the late material, applied for an adjournment and resisted strike-out. The fact that evidence was produced late and not admitted does not, without more, establish a breach of Article 6.

90. Ground 9 identifies no arguable error beyond the separate treatment of the penalty appeals under Ground 5. Permission is therefore refused on Ground 9.

Next steps and points for the Applicant to be aware of

91. Under rule 23(1)(c) of the Tribunal Procedure (Upper Tribunal) Rules 2008, an application for permission to appeal will ordinarily stand as the notice of appeal unless the Tribunal directs otherwise.

92. The permission granted in this case is substantially narrower than the appeal which Mr Abidi sought to pursue. Permission has been refused on all grounds except the confined aspect of Ground 5 identified above. The permitted ground is also expressed differently from Ground 5 in the renewal application. **I therefore direct that Mr Abidi's application for permission to appeal will stand as his notice of appeal only if he provides the confirmation required below within 28 days after this decision is sent to the parties.** Subject to that confirmation, the ground set out at [68] above will stand as the sole ground in his notice of appeal. This ground replaces, for the purposes of the notice of appeal, the wider formulation of Ground 5 in the renewal application. In support of it, Mr Abidi may rely on the distinct statutory tests and burdens concerning deliberate conduct for 2011/12, carelessness for 2013/14 and reasonable care. He may not use the appeal to advance separate grounds concerning the underlying tax liabilities, the calculation or amount of the penalties, potential lost revenue, penalty reductions, suspension or Article 6.

93. The grant of permission does not mean that the appeal will succeed. It means only that the appeal may proceed to a substantive hearing on the confined ground set out above. Even if Mr Abidi establishes an error of law, the Upper Tribunal will still need to determine whether that error was material and what consequence should follow. It should not be assumed that success in establishing an error would result in either penalty being cancelled or reduced.

94. The Upper Tribunal has power in appropriate cases to make an order for costs. Depending on the applicable costs jurisdiction and the exercise of the Tribunal's discretion, an unsuccessful party may be ordered to pay some or all of the successful party's costs. Mr Abidi should therefore be aware that, if he proceeds and is unsuccessful, HMRC may seek an order for costs against him.

95. **Mr Abidi is directed, within 28 days after this decision is sent to the parties, to confirm in writing to the Upper Tribunal and HMRC whether he wishes to pursue the appeal on the confined ground set out above.**

96. If Mr Abidi provides that confirmation, his application for permission to appeal will stand as his notice of appeal on that ground alone. The confirmation is not an opportunity to amend, expand or supplement the permitted ground, or to revive any ground on which permission has been refused.

97. The time for HMRC to provide its response under rule 24 of the Tribunal Procedure (Upper Tribunal) Rules 2008 will run from the date of Mr Abidi's confirmation, unless the Tribunal directs otherwise.

98. If Mr Abidi does not provide the required confirmation within 28 days, no notice of appeal will take effect and the Upper Tribunal proceedings will come to an end.

Conclusion

99. Permission to appeal is **refused** on Grounds 1, 2, 3, 4, 6, 7, 8 and 9.

100. Permission to appeal is **granted** only on the confined aspect of Ground 5 set out above.

101. Mr Abidi must confirm within 28 days whether he wishes to pursue the appeal on that confined ground, in accordance with the direction above.

Signed: **SWAMI RAGHAVAN** **JUDGE OF THE UPPER TRIBUNAL**	**Date: 28 October 2026**
Issued to the parties on: 28 October 2026	