

Neutral Citation Number **[2026] UKUT 00430 (TCC)**

UPPER TRIBUNAL
TAX AND CHANCERY CHAMBER

Applicant: Malcom Oreain Robinson	**Tribunal Ref: UT-2026-000077**
Respondents: The Commissioners for His Majesty's Revenue and Customs	

RECONSIDERATION OF APPLICATION FOR PERMISSION TO APPEAL

DECISION NOTICE

JUDGE ANNE REDSTON

BACKGROUND

1. On 18 July 2023, HM Revenue & Customs ("HMRC") issued Mr Robinson ("the Appellant") with discovery assessments for the tax years 2007-08 to 2016-17 inclusive. The Appellant appealed to the First-tier Tribunal ("FTT"), and on 19 February 2026, the FTT refused the appeal by a decision published under reference [2026] UKFTT 00270 (TC) ("the Decision"). References in this PTA judgment to the paragraphs of the Decision are shown by [XX].

2. On 14 April 2026, the Appellant made an in-time application to appeal the Decision, and on 18 June 2026, Judge Blackwell refused that application. On 1 July 2026, the Appellant made an in-time application to the Upper Tribunal (Tax and Chancery) Chamber ("the UT") for permission to appeal against the Decision ("the PTA Application"). On 2 August 2026, I refused permission to appeal on the papers.

3. The Appellant applied for that decision to be reconsidered at a hearing. This took place on 22 October 2026 by video. The Appellant attended, as did Mr Sisimayi of L Wilson & Co, who had represented the Appellant before the FTT. HMRC was invited to attend and/or make submissions but did not do so. Before the hearing, the Appellant provided four documents to support the PTA Application; I consider these below.

4. An appeal to the UT from a decision of the FTT can only be made on a point of law (section 11 of the Tribunals, Courts and Enforcement Act 2007). The UT has a discretion whether to give permission to appeal. It will be exercised if an application for permission to appeal demonstrates that it is arguable that the FTT made an error of law which was material to its decision. "Arguable" means an argument that carries a realistic as opposed to fanciful

prospect of success. The discretion will also be exercised, exceptionally, if there is some other good reason to do so, such as if the appeal raises a point of law of general public importance.

5. The Appellant provided two written grounds of appeal, while at the hearing, Mr Sisimayi asked for two further grounds to be considered. For the reasons explained below, permission to appeal on all grounds is **refused.**

Ground One

6. Ground One is headed "Inadequate reasons for rejecting the documentary evidence", and it reads:

> "The Tribunal accepted that contemporaneous NatWest statements evidenced payments to Oakwood Homeloans and that mortgage statements existed for at least one flat, but concluded that no adjustment should be made because the records were incomplete and it was 'not appropriate to assume that those documents we have are a random representative sample'. (Decision [70]). The Tribunal did not explain why the evidence that was available was insufficient to establish that HMRC's 20% expense deduction materially understated the actual mortgage interest expenditure. The absence of complete records does not by itself answer the question whether the existing evidence demonstrated that the assessments were excessive."

7. Contrary to that submission, the FTT did give clear reasons why it did not reduce the assessments based on the mortgage information, see [70]:

> "We acknowledge that the NatWest statements provided to the tribunal do evidence some payments to Oakwood Homeloans, the mortgage provider. However, it is unclear which flat these payments relate to. Whilst we have evidence that the mortgage on Flat 1 was interest only, there is no such evidence in relation to any of the other flats. In this case where documents have been only partially provided, despite a statutory notice to provide them, we consider it not appropriate to assume that those documents we have are a random representative sample. Thus we do not know whether and to what extent the payments to Oakwood Homeloans is interest or capital in respect of Flats 2-5. Nor do we know in respect of which flats the payments to Oakwood Homeloans were made."

8. Slightly earlier in the Decision, the FTT said:

> "65. We also consider the deduction of 20% for expenses reasonable. We consider such a deduction normal for a property business. We acknowledge that the properties were mortgaged, but in the absence of particularised information regarding payments, we do not consider that anything more than a global deduction of 20% to cover all expenses is warranted.
>
> 66. We consider that the appellant could have obtained and provided HMRC documentation showing any actual payments for interest. No good explanation was provided as to why this was not done. At one stage the appellant suggested there were difficulties because the properties were repossessed. We do not consider that would prevent the appellant obtaining such information from the lenders. In any event he did not even suggest he had tried and certainly no documentary evidence of such attempts were provided."

9. It is thus not arguable that the FTT did not explain why it was putting no weight on the mortgage interest statements: on the contrary, the reasons are clearly set out in the above passages.

Ground 2

10. Ground 2 is headed "Failure to engage with evidence capable of affecting the outcome", and it reads:

> "HMRC's methodology assumed a flat 20% deduction for all expenses (Decision [58]–[65]). The Tribunal accepted that mortgage interest was a substantial expense and had before it mortgage statements and bank evidence of mortgage payments (Decision [47], [70]). The Tribunal failed to analyse whether that evidence was capable of showing that HMRC's estimates were materially excessive. Instead, it moved directly from acknowledging the evidence to refusing any adjustment. That failure to engage with potentially outcome-determinative evidence is an arguable error of law."

11. This Ground thus overlaps with Ground 1, because both criticise the FTT's approach to the mortgage interest issue. To the extent that Ground 2 raises a new point, it is a challenge to the weight placed by the FTT on the evidence before it.

12. As Lewison LJ said in *Volpi v Volpi* [2022] EWCA Civ 464 at [2(iv)] (emphasis added):

> "The trial judge must of course consider all the material evidence (although it need not all be discussed in his judgment). The weight which he gives to it is however **pre-eminently a matter for him**."

13. Lewison LJ continued in the next subparagraph (again. emphasis added):

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

14. In *Fage v Chobani* [2014] EWCA Civ 5 ("*Fage*"), Lewison LJ similarly said:

> "In making his decisions the trial judge will have regard to the whole of the sea of evidence presented to him, whereas an appellate court will only be island hopping."

15. It is not arguable that the FTT's approach to assessing the evidence, including the mortgage interest, was rationally insupportable. On the contrary, the FTT carefully assessed all the evidence before coming to its conclusions.

NEW GROUND THREE

16. At the hearing, Mr Sisimayi said that he and the Appellant had not realised that the hearing would decide the appeals; he had wanted the opportunity to negotiate with HMRC after the hearing, particularly in the light of the Appellant's current financial position.

17. As Lewison LJ also said in *Fage* at [114(ii)] "The trial is not a dress rehearsal. It is the first and last night of the show". It is not an error of law for the FTT to make its decision having considered the evidence and the submissions; rather, that is the normal approach of all courts and tribunals. This Ground does not identify any arguable error of law and permission to appeal is refused

NEW GROUND FOUR

18. Mr Sisimayi submitted that the Bundle provided for the hearing did not include all the documents which had been provided by the Appellant, and the Decision should be set aside for that reason. He relied on the documents filed for this oral permission hearing, but did not provide a copy of the FTT Bundle. The documents were:

> (1) Pages from the Appellant's NatWest bank account for the year 2007. These included some payments to Oakwood Homeloans, but there was no indication as to which flat these payments related.

(2) A tenancy agreement for Flat 1, Babington Road between the Appellant and two individuals for the year beginning 1 September 2012, of which only four pages were supplied; in particular, there was no signature page.

(3) A tenancy agreement for Flat 4 Babington Road between the Appellant and a different individual, dated 14 May 2007 of which only the first page was provided, containing only clauses 1-3 of the agreement and no signature page.

(4) Mortgage statements for Flat 1, Babington Road from 2007 to 2018 inclusive. The pages do not identify the lender but do say that the mortgage was interest only.

(5) Three letters relating to mortgage arrears, all dated 2019.

19. The last of these were not relevant, as the assessments under appeal were from 2007-08 through to 2016-17. All the other documents were noted at [47] of the Decision. The FTT went on to assess those documents, as can be seen from the following:

(1) At [70], the FTT said "the Tribunal accepted that contemporaneous NatWest statements evidenced payments to Oakwood Homeloans".

(2) At [62]-[64], the FTT compared the evidence in the tenancy agreements with the market rents as shown by Zoopla, and made related findings.

(3) At [70], the FTT said "Whilst we have evidence that the mortgage on Flat 1 was interest only, there is no such evidence in relation to any of the other flats".

20. It is thus clear from the Decision that these documents *were* considered by the FTT and I make the reasonable inference that they were therefore in the Bundle.

21. I add that the tenancy agreements provided for this hearing were incomplete; the bank statements do not link the expenditure to any particular flat, and the mortgage information related to only one of the flats. Thus, the new documents only serve to support the FTT conclusion that the information required was "only partially provided", see [70] cited above. The FTT said that, as a result "we consider it not appropriate to assume that those documents we have are a random representative sample". That was plainly a rational approach.

22. This Ground does not identify any arguable error of law and permission to appeal is refused.

CONCLUSION

23. For the reasons set out above, the Grounds of Appeal are not arguable and permission to appeal to the UT is refused.

Signed: Judge Anne Redston **Judge of the Upper Tribunal**	**Date: 4 November 2026**