UPPER TRIBUNAL
TAX AND CHANCERY CHAMBER

Neutral Citation Number: [2026] UKUT 00442 (TCC)

Applicant: Jill Barlow	**Tribunal Ref: UT/2026/000067**
Respondents: The Commissioners for His Majesty's Revenue and Customs	

APPLICATION FOR PERMISSION TO APPEAL

DECISION NOTICE

JUDGE JONATHAN CANNAN

Introduction

1. The Applicant, Jill Barlow, seeks permission to appeal a decision of the First-tier Tribunal (Tax Chamber) ("the FTT") released on 25 September 2025 ("the Decision"). The FTT refused permission to appeal in a decision notice released on 3 March 2025. The Applicant applied to the Upper Tribunal, and I refused permission to appeal on paper. An oral renewal took place on 9 November 2026 at which the Applicant was represented by Mr Hirsch Sharma. Ms Nicola Shardlow attended on behalf of the Respondents.

2. *Section 11(1) Tribunals, Courts and Enforcement Act 2007* provides for a right of appeal to the Upper Tribunal "… on any point of law arising from a decision made by the First-tier Tribunal…". I should only grant permission to appeal on a particular ground if I am satisfied that it is arguable, with a realistic prospect of success, that there is a material error of law in the Decision.

3. The FTT refused the Applicant's application for permission to make a late appeal against penalties for late payment of capital gains tax. The penalties totalled £7,366. In the same Decision, the FTT also held that if it had given permission for a late appeal it would have dismissed that appeal.

Grounds of appeal

4. Mr Sharma confirmed that the application seeks permission to appeal on five grounds which may be summarised as follows:

(1) The FTT misapplied the legal test for determining whether permission should be given for a late appeal.

(2) The FTT failed to recognise that there was a good explanation for the delay in lodging an appeal.

(3) There was procedural unfairness at the hearing.

(4) The FTT failed to recognise that justice and fairness strongly supported granting permission for a late appeal and the Applicant had a legitimate expectation that a late appeal would be accepted by HMRC.

(5) The FTT failed to take into account that HMRC had waived penalties imposed on the Appellant's son, Mr Michael Barlow, in identical circumstances.

The Decision

5. The FTT made various findings of fact at [26] – [44] of the Decision as to the circumstances in which the Applicant realised a chargeable gain on the disposal of shares. The chargeable gain was included on her self-assessment return for 2012-13 and the capital gains tax due to be paid by the Applicant on 31 January 2014 amounted to £81,314. The Applicant made a payment of tax of £5,095 on 10 February 2014. The FTT made findings in relation to an application by the Applicant pursuant to section 280 Taxation of Chargeable Gains Act 1992 made on 30 January 2014 to pay the tax due in instalments. That application was refused in a letter from HMRC dated 10 June 2014. The Applicant then made an application for time to pay. Thereafter, the Applicant made two further payments of tax of £5,095 on 5 July 2014 and 2 September 2014. A time to pay arrangement was agreed on 25 September 2014. The tax outstanding was to be paid by monthly instalments of £1,500 over 51 months.

6. The FTT found that late payment penalty notices had been issued by HMRC on or around 18 March 2014 and 18 August 2014. It is these notices which the Applicant was seeking to appeal. The time for appealing was 30 days from the date when the notices were given. However, there was an issue as to whether the notices had in fact been issued to the Applicant. The FTT found that the notices had been issued for reasons set out at [74] – [82].

7. The FTT recorded at [75] that the Applicant appealed against the penalty notices on 28 June 2023. It recorded at [83] that the appeals were therefore between 8 and 9 years out of time. That is a reference to the periods between April and September 2014 when the appeals ought to have been lodged with HMRC and June 2023 when they were lodged.

8. The FTT outlined the parties' submissions at [45] – [50]. It set out the law on late appeals at [53] – [58]. It set out the law on late payment penalties at [59] – [62], including provisions in Schedule 56 Finance Act 2009 to the effect that a penalty does not arise if a taxpayer has a

reasonable excuse for late payment of the tax and provisions in relation to HMRC's discretion to reduce a penalty where there are special circumstances.

9. The FTT set out its reasons for refusing permission to make a late appeal at [84] – [101]. It then went on to consider the substantive appeal and at [102] and [103] concluded that even if it had granted permission for a late appeal it would have dismissed that appeal.

10. Against that background, I turn to the Applicant's grounds of appeal.

Ground 1

11. Ground 1 is that the FTT misapplied the legal test for determining whether permission should be given for a late appeal. In particular, it is said that the FTT treated the length of delay as determinative and failed to apply the structural approach required by the authorities. As a result, the FTT failed to consider HMRC's delays, the fact that the Applicant acted in good faith and the overall fairness of the case.

12. The FTT clearly set out the approach to late appeals required by the authorities at [53] – [58]. In particular the 3-stage approach required by *Martland v HM Revenue & Customs* [2018] UKUT 0178 (TCC):

(1) Identify and assess the seriousness and significance of the breach;

(2) Consider why the failure or default occurred; and

(3) Consider all the circumstances of the case.

13. At the time of the Decision, there was Upper Tribunal authority in *Medpro Healthcare Ltd v HM Revenue and Customs* [2025] UKUT 00255 (TCC) to the effect that at the third stage it was not necessary to give particular weight to the importance of the need for litigation to be conducted efficiently and at proportionate cost and for statutory time limits to be respected. Subsequently, *Medpro* was overturned on this point. The Court of Appeal held that particular weight should be given to those factors at the third stage. When the FTT considered the third stage, it therefore took an approach which was more favourable to the Applicant than the approach subsequently endorsed by the Court of Appeal.

14. It is clear when the FTT came to consider whether to grant permission for a late appeal that it applied the relevant three-stage test. It found at [84] that the delay of between 8 and 9 years was plainly serious and significant. It found at [86] – [93] that there was no good reason for the delay. At [94], the FTT then stated that it was "[t]urning to all the circumstances of the case". There was a very significant delay for which it had found there was no good reason. However, it is plain that the FTT did not treat that delay as determinative. It went on to consider prejudice to the parties, including the merits of the Applicant's case on the substantive appeal which it regarded as arguable but not strong.

15. It was not necessary for the FTT to refer specifically to every aspect of its findings at this stage of the decision. The FTT said that it was considering all the circumstances of the case and there is no reason to think that it did not do so. The FTT had not found that there was any culpable delay by HMRC. Even if it had done so, that was unlikely to be a significant factor.

As the FTT noted at [85], there was a period of delay by the Applicant of some 3 years between 31 March 2020 and 28 June 2023 for which HMRC could not on any view have been culpable.

16. During the oral hearing, Mr Sharma indicated on instructions that part of the reasons for this 3-year delay was the covid pandemic. There was no evidence of that before the FTT and on any view it could not justify a delay of 3 years.

17. In the circumstances, I do not consider that Ground 1 identifies any arguable error of law.

Ground 2

18. Ground 2 is that the FTT failed to recognise that there was a good explanation for the delay in lodging an appeal. In particular, it is said that the following delays were caused by HMRC:

(1) A delay of 8 months from 31 January 2014 to 25 September 2014 in agreeing to the time to pay arrangement.

(2) Failing to respond to correspondence from the Applicant in 2016, seeking to reduce the monthly payments due under the time to pay arrangement.

(3) Informing the Applicant that any appeal against the penalties should only be made after the underlying tax had been paid in full.

19. The FTT found that there was no good explanation for the Applicant's delay between 2014 and 2023. I am satisfied that the FTT was entitled to reach that conclusion on the evidence before it. The FTT made no finding that HMRC was culpable for the period of 8 months between 31 January 2014 and 25 September 2014. Some 4 months of that period related to the application pursuant to section 280 and the remaining 4 months related to the time to pay application. The appeal against the first penalty notice was not due until 17 April 2014. Even if HMRC was culpable for the delay, the relevant delay was from 17 April 2014 to 25 September 2014, a period of some 5 months. That is such a small part of the overall delay that it would not have been material, even if the FTT had found that HMRC was culpable.

20. It does not appear to have been part of the Applicant's case that delay on the part of HMRC in dealing with correspondence in 2016, even if there was any delay, caused the Applicant to defer appealing against the penalty notices. The only explanation offered by the Applicant for her delay in appealing was that an HMRC officer had informed her that any appeal against the penalties should only be made after the underlying tax had been paid in full.

21. The FTT considered that explanation and rejected it at [88] – [93] of the Decision. It was not satisfied on the evidence that an HMRC officer had advised the Applicant not to appeal until the tax was paid. There is no realistic basis on which the Applicant can challenge the FTT's finding in that regard.

22. In the circumstances, I do not consider that Ground 2 identifies any arguable error of law.

Ground 3

23. Ground 3 alleges procedural unfairness in the way the FTT conducted the hearing. It is said that the Applicant was not given a fair opportunity to respond to material relied upon by HMRC.

24. No further particulars are given of this ground, and the Applicant does not identify which material it is said she did not have an opportunity to respond to. I do note from the Decision that the Applicant's representative had difficulties accessing HMRC's bundle of documents during the FTT hearing, even though it had been served prior to the hearing. However, the FTT records at [11] – [19] the great lengths it went to in seeking to ensure that the hearing was conducted fairly. The FTT also records that the Applicant's representative was permitted to rely on further written submissions and new evidence following the hearing. In the oral hearing before me, Mr Sharma acknowledged that he only had a vague recollection of how the bundles were dealt with before the FTT and the opportunity the Applicant he was given after the hearing to produce written submissions and further evidence.

25. I can see no realistic basis on which the FTT's conduct of the hearing can be criticised. In the circumstances, I am not satisfied that Ground 3 discloses any arguable error of law.

Ground 4

26. Ground 4 is that the FTT failed to recognise that justice and fairness strongly supported granting permission for a late appeal and the Applicant had a legitimate expectation that a late appeal would be accepted by HMRC.

27. This is a challenge to the FTT's overall evaluative judgment that permission for a late appeal should not be granted.

28. It is well established that in an appeal against an evaluative judgment, the question is not whether the appellate court or tribunal would have reached the same conclusion. The position is similar to challenges to findings of fact. Newey LJ described the limited jurisdiction in challenges to findings of fact in *Carey Street Investments Limited (in liquidation) v Brown* [2024] EWCA Civ 571. He then said as follows:

> 25. The position is comparable with evaluative assessments. An appellate Court will not interfere merely because it might have arrived at a different conclusion. It will do so only if it considers the decision under appeal to have been an unreasonable one or wrong as a result of some identifiable flaw in reasoning, "such as a gap in logic, a lack of consistency, or a failure to take account of some material factor, which undermines the cogency of the conclusion" (see e.g. *R (R) v Chief Constable of Greater Manchester* [2018] 1 WLR 4079, at paragraph 64, and also *In re Sprintroom Ltd* [2019] 2 BCLC 617, at paragraphs 76 and 77).

29. It is not realistically arguable that the FTT's decision to refuse permission for a late appeal was unreasonable or that there was any identifiable flaw in the FTT's reasoning. There were factors in favour of granting permission for a late appeal and factors in favour of refusing permission. Overall, the FTT was entitled to conclude that permission should not be granted.

30. As to the Applicant's legitimate expectation that a late appeal would be permitted, that appears to be based on the Applicant's case that she was advised by an HMRC officer not to

appeal the penalty notices until the underlying tax had been paid. As stated above, the FTT did not accept the Applicant's evidence in that regard and there is no realistic basis on which the Applicant can challenge that finding.

31. In the circumstances, I do not consider that Ground 4 identifies any arguable error of law.

Ground 5

32. Ground 5 is that the FTT failed to take into account that HMRC had waived penalties imposed on the Applicant's son in identical circumstances.

33. The FTT considered the significance of HMRC's treatment of the Applicant's son in the context of the substantive appeal. In particular, as to whether that treatment might support an argument that the Applicant had a reasonable excuse for non-payment of the tax or an argument that a reduction in the penalties was justified by special circumstances. In the event, the FTT had little evidence as to the penalties notified to the Applicant's son and why they were withdrawn by HMRC. It was not satisfied that the Applicant and her son were in identical circumstances.

34. At the oral hearing, Mr Sharma put before me evidence that the Applicant's capital gain arose from the disposal of her 50% shareholding in a family company and that her son held the other 50% of the shares. Their chargeable gains were therefore identical. However, there was no evidence before the FTT or before me as to the circumstances in which penalties were assessed on Michael Barlow and subsequently withdraw.

35. In any event, it is difficult to see how HMRC's treatment of the Applicant's son would be a relevant factor in determining whether the Applicant should be granted permission to make a late appeal. If it is said that this factor meant that the merits of the Applicant's substantive appeal were strong, I do not consider that is a realistic argument.

36. In the circumstances, I do not consider that Ground 5 identifies any arguable error of law.

Conclusion

37. For the reasons given above, I refuse permission to appeal.

Signed: Jonathan Cannan **Upper Tribunal Judge**
Issued to the parties on: 11 November 2026