Upper Tribunal for Scotland

2026UT80
Ref: UTS/AP/26/0090

DECISION OF

Mr N S Taylor

ON AN APPLICATION FOR PERMISSION TO APPEAL
(DECISION OF FIRST-TIER TRIBUNAL FOR SCOTLAND)
IN THE CASE OF

Miss Morag MacRae

Appellant

- and -

Scottish Borders Council

Respondent

FTS Case Reference: FTS/LTC/CR/26/00074

22 October 2026

Decision

The application for permission to appeal by the appellant against the decision of the First-tier Tribunal for Scotland dated 4 June 2026 (corrected 9 June 2026) is refused.

Background

[1] This application for permission to appeal to the Upper Tribunal is in respect of a decision dated 4 June 2026 (corrected 9 June 2026) of the First-tier Tribunal for Scotland concerning an application for a Council Tax Reduction.

[2] The appellant sought permission from the First-tier Tribunal to appeal that decision to this Tribunal.

[3] The First-tier Tribunal refused permission to appeal to the Upper Tribunal by a decision dated 15 July 2026. That decision of the Chamber President narrated the grounds of appeal presented to it and the reasons for refusal of permission.

Application for permission from the Upper Tribunal to appeal to the Upper Tribunal

[4] The application for permission directly from the Upper Tribunal to appeal to the Upper Tribunal was made on 16 July 2026. The grounds of appeal lodged with the application to the Upper Tribunal were in the following terms—

'Error of Law: Permission to appeal is sought on the ground that the First-tier Tribunal (FTT) made a clear error of law in its application of Regulation 93 of the Council Tax Reduction (Scotland) Regulations 2021 regarding its discretionary power to hear a late appeal. Crucially, in a letter dated 15 July 2026, the Chamber President explicitly identified that the FTT made an error of law in its handling and evaluation of the case. Despite identifying this error, permission was refused at the First-tier level.

Failure to Correctly Exercise Discretion: The FTT failed to properly weigh the standard for exercising discretion under Regulation 93. The delay was caused by a genuine, reasonable misunderstanding regarding the automatic exchange of data between the DWP and the Local Authority concerning LCW health status.

Severe Material Injustice: By rigidly refusing to hear the late appeal despite the clear, uncontradicted fact that the household met all substantive criteria for the 25% rebate since June 2021, the decision inflicts an ongoing, severe financial injustice on a vulnerable household.'

[5] It was agreed, at the request of the appellant, that the Upper Tribunal should consider this matter on written representations only. The respondent did not submit any representations in relation to the grounds of appeal presented to this Tribunal.

[6] It is not the purpose of this Tribunal to assess whether the First-tier Tribunal erred in law when making its decision on permission (decision dated 15 July 2026). A refusal by the First-tier Tribunal to give permission required by section 46(3) is not appealable (section 55(2) of the Tribunals (Scotland) Act 2014).

[7] The task of this Tribunal is to make its own assessment of whether there are arguable points of law presented to it in relation to the original decision (dated 4 June 2026).

[8] An appeal to the Upper Tribunal can only be made on a point of law: section 46(2)(b) of the Tribunals (Scotland) Act 2014. Permission to appeal is required under section 46(3) which must be sought first from the tribunal below, and if there refused, must be sought directly from this Tribunal. Permission will only be granted if there are arguable grounds for the appeal (section 46(4)).

[9] The meaning of an appeal on a point of law in the context of appeals against a tribunal decision was set out in Advocate General for Scotland v Murray Group Holdings Ltd 2016 SC 201, [2015] CSIH 77 at paragraphs 41 to 43. There are four categories: general law (being the content or interpretation of the law); application of the law to the facts; a finding for which there is no evidence or which is inconsistent with the evidence and contradictory of it; fundamental error in the tribunal's approach or a decision which no reasonable tribunal could have reached.

Factual background

[10] The local authority made a decision about council tax reduction on 13 September 2024. On 2 February 2026 the appellant requested that the local authority review that decision. The local



authority decided that the review request was out of time (that is, requested 223 days after the decision complained of). The First-tier Tribunal, in its decision of 4 June 2026, agreed that the review request was out of time. At paragraph 5.4 of its decision, the First-tier Tribunal decided it was not open to the local authority or the Tribunal to exercise its discretion for the review to be heard late given the two-month period for requesting a review set out in regulation 93 of the Council Tax Reduction (Scotland) Regulations 2021 (S.S.I 2021/249) (the '2021 Regulations') had expired and was expressed in mandatory terms.

Decision and Reasons

[11] Statutory time limits (including those expressed in a mandatory manner) are there for a reason: adherence to time limits is an important part of tribunals conducting business fairly and efficiently. However, this Tribunal acknowledges that the First-tier Tribunal erred in law in directing itself in the manner narrated at paragraph 5.4 of its decision. Nothwithstanding the mandatory language attached to the two-month limit in the 2021 Regulations it is still possible, in certain limited circumstances, to exercise discretion so that a review could take place out of time (as discussed in MacPhail's *Sheriff Court Practice* (4th edition, chapter 27.13-16)).

[12] There is not a finite list of considerations which may be relevant to justify departure from time limits. However, it is possible to identify some obvious ones (as discussed in MacPhail's *Sheriff Court Practice)*: such as reasonable excuse; where the circumstances leading to the late lodging of an appeal were beyond the control of the appellant; or where there are exceptional circumstances of such a nature that it would appear to be grossly unfair to enforce the time limit strictly, or that no prejudice has resulted to the other party from the late lodging of the appeal. The length of any delay in appealing (or in this case requesting a review) would also be relevant when considering those factors.

[13] Albeit in the context of discussing provisions which were specifically designed to permit late applications, Lord Drummond Young made the following observation in HMRC, Petitioners 2005 SLT 1061 at paragraph 22—

'The central feature of such provisions is that they are exceptional in nature; the normal case is covered by the time limit, and particular reasons must be shown for disregarding that limit.'

The possibility (either by virtue of an explicit provision or otherwise) of proffering a reasonable excuse for missing a statutory time limit must not obscure that character of exceptionality identified by Lord Drummond Young.

[14] It is accepted in this case that the First-tier Tribunal did not apply its mind to the reasons behind the delay in applying for a review of the decision of 13 September 2024. It took the view that such a discretion was not open to it.

[15] However, this Tribunal must consider the expediency of granting permission to appeal the decision of the First-tier Tribunal, even if an error of law is identified.

[16] There are no compelling reasons before this Tribunal to suggest that the delay in requesting a review of the decision of 13 September 2024 falls into an exceptional category having regard to the factors discussed above.

[17] The decision of the First-tier Tribunal refusing permission to appeal notes, at paragraph 2.10.1, that the appellant did not provide the original tribunal with any exceptional circumstances behind the delay, and that the grounds of appeal detailed by the appellant stated that the reason was because the applicant misunderstood the rules.

[18] In the grounds attached to the application to this Tribunal, the appellant asserts that the delay was caused by a '*genuine, reasonable misunderstanding regarding the automatic exchange of data between the DWP and the Local Authority concerning LCW health status'*. It is not obvious that any of those reasons suggest exceptionality. Had the First-tier Tribunal not erred in law and applied its mind to whether it could justify exercising its discretion to allow the review to be considered despite it being requested substantially beyond the two-month period, it is highly unlikely to have affected the outcome of the appeal. Accordingly, it cannot be said in these circumstances that the point of law identified is a material one for which permission should be granted.

[19] The claim that refusal to allow the review results in severe material injustice does not go beyond mere assertion.

[20] **I refuse permission to appeal.**

[21] **There is no appeal against this decision or right of review: section 48 and 55(2) of the Tribunals (Scotland) Act 2014.**

Mr N S Taylor
Legal member of the Upper Tribunal for Scotland