Neutral Citation Number: [2026] EWHC 1400 (Admin)

Case No: AC-2024-LON-002755

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
ADMINISTRATIVE COURT
SITTING IN LONDON

Tuesday, 9th June 2026

Before:
FORDHAM J

- -

Between:
THE KING (on the application of TIMOTHY LEVY) **Claimant**

- and –

THE COMMISSIONER FOR HIS MAJESTY'S REVENUE AND CUSTOMS **Defendant**

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Julian Hickey (instructed by Levy and Levy) for the **Claimant**
Thomas Chacko and **Arthur Wong** (instructed by HMRC) for the **Defendant**

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Hearing date: 9.6.2026

Judgment as delivered in open court at the hearing

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Approved Judgment

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FORDHAM J

Note: This judgment was produced and approved by the Judge, after authorising the use by the Court of voice-recognition software during an ex tempore judgment.

FORDHAM J:

Introduction

1. The only issue with which I am today concerned is whether to grant permission for judicial review, on the whole or any part of this claim. I am authorising the use by the Court of voice recognition software so that I will be able promptly to provide for the parties a written version of this ex tempore judgment.

Targets

2. The targets for judicial review are a series of statutory notices under s.28B(4)(a) of the Taxes Management Act 1970 – notice of partner amendment – issued by HMRC to the Claimant on 17 May 2024. No statutory appeal rights arises from those notices and the remedy, if there is any available public law error, is judicial review: see R (Amrolia) v HMRC [2020] EWCA Civ 488 [2020] 1 WLR 4058 at §§12, and 51.

Film partnership schemes

3. The 6 partnership schemes in this case, which gave rise to the 10 statutory notices under s.28B(4)(a), are film partnership schemes of the type described in a line of authorities, including several Court of Appeal judgments. The Claimant was involved from the outset and was a partner and participant in several of those schemes. A detailed description of the schemes was given by Bright J in Upham v HSBC UK Bank Plc [2024] EWHC 849 (Comm). The Claimant features at Upham §9 as to his co-ownership of Future Films, and at §13 as to his own £2.3m personal contributions. He also featured as a principal witness when the test case Eclipse Film Partners No.35 LLP v HMRC was determined by the FTT: see [2012] UKFTT 270 (TC) at §§37-38. That test case went on appeal to the UT (see [2013] UKUT 639 (TCC) [2014] STC 1114) and the Court of Appeal (see [2015] EWCA Civ 95 [2015] STC 1429). I was also shown Locke v HMRC [2019] EWCA Civ 1909 [2019] STC 2543 and the parties cited Samarkand Film Partnership v HMRC [2017] EWCA Civ 77 [2017] STC 926 and Good v HMRC [2023] EWCA Civ 114 [2023] 1 WLR 2062. The consequence of the various lines of authorities is that a large number of issues have been ventilated and litigated arising out of these film partnership schemes.

Enquiries and notices

4. HMRC needed to do to two things, in parallel and with an appropriate sequence. One was to undertake appropriate enquiries (s.12AC of the 1970 Act) into partnership returns (s.12AA), leading ultimately to closure of the enquiry by the issuing of a statutory notice (s.28B) making amendments to the partnership return (s.28B(2)(b)). That is a statutory route which requires HMRC to follow through by making consequential amendments to a partner's tax return (s.28B(4)). Another was to undertake appropriate enquiries (s.9A) into personal tax returns, which enquiries would themselves be closed by statutory notice (s.28A) and any appropriate amendments of the personal tax return (s.28A(2A)(b)). The s.28A notice and amendments attract a statutory right of appeal to the FTT on the part of the taxpayer (s.31(1)(b)).

Two types of amendment

5. What is relevant for present purposes is the fact that the s.28B(4)(a) notices made consequential amendments to the Claimant's personal tax returns which (i) took something out and (ii) put something in. As to (i), what was taken out was loan interest tax relief (see Part 8 Chapter 1 of the Income Tax Act 2007). As to (ii), what was put in was – by way of so-called dry tax – the (Claimant's apportioned share of the) partnership income used to pay the loan (see s.609(1) of the Income Tax Trading and Other Income Act 2005; Good at §§.80-81; Upham at §239).

Judicial review grounds

6. There are six pleaded grounds for judicial review. None of them presently have the Court's permission to proceed. They all arise out of the s.28B(4)(a) notices making the amendments to the Claimant's personal returns. Some grounds and aspects of grounds relate to (i) the removed loan interest tax relief. Other grounds and aspects of grounds relate to (ii) the added-in partnership income used to pay the loan.

Subsequent s.28A notices

7. Subsequent to the proceedings being commenced by the Claimant (14.8.24), and foreshadowed in HMRC's summary grounds of resistance (27.9.24), HMRC issued a series of s.28A(2)(b) notices against the Claimant. It would have been known that these were coming, since there were the parallel s.9A enquiries into the Claimant's personal returns and – as the CA explained in Amrolia at §58 – the s.9A enquiries would be "terminated in due course by a closure notice under s.28A". That is what happened.

8. What HMRC did within the s.28A(2)(b) notices was this. (i) HMRC included within those s.28A statutory notices a repeat of the removal of the loan interest tax relief, matching the removal of this in the s.28B(4)(a) notices. But (ii) HMRC did not include within the s.28A statutory notices a repeat of the adding in of the partnership income used to pay the loan, matching the inclusion of this in the s.28B(4)(a) notices. HMRC's position is that it was statutorily precluded from including that dry tax income within these s.28A notices. HMRC explains the distinction in this way. It says there is a strong way in which it is duty bound to include the dry tax income within the s.28B(4)(a) notices "so as to give effect to the amendments of the partnership return", which precludes including it within the s.28A notices. It says there is a softer way in which it is duty bound to remove the loan interest tax relief from the s.28B notices "so as to give effect to the amendments of the partnership return", which allows the same action within the s.28A notices.

FTT appeal

9. The upshot of all of this is that the Claimant has a statutory merits appeal to the FTT on the loan interest tax relief aspects. He is pursuing these, by a notice of appeal dated 29.7.25. This appeal would be the forum for running any points about the 'trading' issue, in the application of s.398(2)(b) of the 2007 Act, which issue was dealt with by the Court of Appeal in Eclipse. The Claimant's FTT appeal raises his point about "purchasing a share in the partnership" as a freestanding basis for the tax relief (s.398(2)(a)). Mr Hickey for the Claimant says that the "purchasing a share in the partnership" claim to tax relief is in substance the same point that the Court of Appeal

recognised in Locke (see §46) as viable for FTT appeal (see §55). Yes, says Mr Chacko for HMRC, but Locke was applying a different threshold (under the "follower notice" statutory scheme) from the one which the judicial review Court would apply at the permission stage.

The loan interest tax relief points

10. Mr Hickey invites the grant of permission for judicial review on all the points in the pleaded grounds for judicial review which are referable to loan interest relief. He essentially advanced two points in favour of adopting that course, notwithstanding what in his skeleton argument is accepted to be in principle "an effective alternative remedy in the FTT". His first point was that there is this peril in the position of the Claimant. The Claimant has the prospect of succeeding by the FTT route, and nevertheless finding HMRC maintaining its position on the application of the relevant law. That peril arises because the s.28B(4)(a)) notices remain extant. They have not been withdrawn. I find it impossible to see a situation where HMRC would be able to maintain a position on the same legal point, by reference to these parallel statutory notices, if that same legal point has been resolved against HMRC and in favour of the Claimant in the FTT proceedings. In these judicial review proceedings, HMRC's summary grounds of resistance (27.9.24) explained, in terms, that the FTT appeal against s.28A notices would "address a number of the substantive issues raised by Mr Levy in these proceedings". Mr Chacko has today expressly repeated that HMRC regards that appeal route as a forum for the resolution – in whatever way – of substantive issues which could otherwise be ventilated on judicial review about the application of the loan interest relief provisions, including the argument about purchasing a share in the partnership (s.398(2)(a) of the 2007 Act). In my judgment, it is very clear that all of the points arising which are related to loan interest tax relief should be pursued in the FTT. In my judgment it is also clear that the FTT appeal is exactly the kind of adequate alternative remedy which will lead the Court to decline permission for judicial review see §6.3.3 of the Administrative Court Judicial Review Guide 2025.

11. To the extent that it is being said that there is some point of principle arising from whether or not loan interest tax relief could be removed by amendment in a s.28B(4)(a) notice, I am unable to accept that there is here a point of principle, still less one which requires to be resolved. I record that Mr Chacko for HMRC conceded the arguability of pleaded Ground 1 in the present case, but maintained that permission should be refused because it is academic and because of the FTT appeal. Ground 1 is that the s.28A notice was the sole permissible route for any removal of loan interest tax relief (essentially because that was never in a partnership return, never being allowable as a partnership expense, and so was not amended in any partnership return). In my judgment, Ground 1 goes nowhere. That is because the remedy on judicial review – if the Court concluded s.28A notices alone can deal with such matters – could be no different from what was already achieved in this present case on 16.1.25, when precisely such a series of appealable s.28A notices were issued by HMRC.

12. That leaves Mr Hickey's second point in support of permission for judicial review in relation to this series of grounds and arguments. He submitted that permission for judicial review is necessary and appropriate, because otherwise the Claimant would be in difficulties in relation to recovering costs. There is some suggestion in the materials filed on behalf of the Claimant that the judicial review Court would not only grant

permission but go on to resolve the legal rights and wrongs of issues relating to loan interest tax relief, all for the purposes of deciding who should pay costs incurred so far in these judicial review proceedings. I have been unpersuaded by the costs points. The judicial review Court will generally not grant permission for judicial review where a claim has become academic, as is explained in §6.3.4 of the JR Guide. It is not correct that permission for judicial review is needed for ventilating a question as to costs. Costs can be sought in judicial review proceedings, where a case is overtaken by events, applying the M v Croydon [2012] EWCA Civ 595 line of authorities: see the JR Guide at §25.5. If the Claimant considered that there was a clear-cut basis for inviting a costs order in relation to costs incurred in these judicial review proceedings, there was the mechanism open to him which has not been utilised: §25.5.3 of the JR Guide. I am putting all questions as to costs and the mechanism for claiming them to one side. The only issue that I am deciding today is permission.

13. I am quite satisfied that there is no proper basis for a grant of permission in relation to any of the points regarding loan interest tax relief. I am not going to make any observations as to any viability of any point which is before the FTT on the Claimant's appeal. There are dangers, for claimants who are pursuing appeal rights, in seeking to interest the High Court in questions about the viability of the legal arguments which will feature in the appeal. There is the obvious risk that the High Court will then say something about the viability of those arguments which may not promote the Claimant's position in that parallel. The Claimant has decided to run the risk, by pursuing permission for judicial review on these points in this forum today. Leaving aside the Ground 1 point, whose arguability has been recognised by HMRC, all of the other points are resisted not just because of the alternative remedy of FTT appeal, but because they are said to lack legal merit. In the end I am satisfied that it is not necessary or appropriate for me to say any more about the arguments in the parts of the case which will be ventilated on appeal in the FTT.

Deductible expenses from partnership income used to pay the loan

14. That leaves the grounds for judicial review insofar as they relate to the second component of the statutory s.28B(4)(a) notices: the inclusion of the dry tax and the taxable partnership income used to pay the loan.

15. If and insofar as it is a question of whether such income does arise as taxable income in the context of the arrangements in this case (2005 Act Part 5 Chapter 3), then I accept that the claim for judicial review is unarguable. That is by reference to the authority of Good in the Court of Appeal (see §§80-81).

16. That, however, leaves a specific and narrow point which has also been advanced. It relates to whether an "expenses" deduction from the income arises (see 2005 Act s.612(2)), by reason of the fees which were described in the Eclipse FTT judgment at §§185-186 and the CA judgment at §§19-21. I was given this indication of scale by Mr Hickey. In the context of the Claimant's £2.3 million contributions (Upham at §13), and the £11.6m said to be at stake in his FTT appeal against the s.28A notices, the scale of the relevant expenses deduction – if it were applicable pursuant to s.612(2) – would be worth £186k. On this part of the case, the Claimant argues – in essence – that the denial of the expenses deduction (s.612(2)) was unlawful or unreasonable or unfair. That includes arguments about legal insufficiency of enquiry and legal inadequacy of

reasons. The grounds for judicial review – as I read them – include dry tax and this non-deduction of s.612(2) expenses.

17. HMRC's position is that there are clean knockout blows to all this and that permission should be refused. That is not because of any alternative remedy: the appealable s.28A notices did not include the partnership income to pay the loan. Nor is it because of a blanket exclusion of judicial review. Mr Chacko accepts that judicial review is not necessarily excluded in its entirety when a statutory s.28B(4)(a) notice includes a component of this kind (partnership income used to pay the loan) and makes no s.612(2) expenses deduction from it. Mr Chacko identified as a possibility a situation in which there is some demonstrable procedural unfairness in the events that have led to the statutory notice being issued. He submits, however, that beyond these narrow parameters, judicial review is unavailable. In particular, he submits that no challenge to the substance of the decision – including by reference to its reasonableness – is open to a claimant taxpayer who has received the s.28B(4)(a) notice. Still less, he says, is there the sort of fact-based evaluation that would be available in the FTT on the application of s.612(2): cf. BlackRock HoldCo 5 LLC v HMRC [2024] EWCA Civ 330 at §124f. A substantive challenge is excluded for this reason. There is a fundamental distinction between the tax position of the partnership and the tax position of an individual partner. The partnership income used to pay the loan concerns the income of the partnership. Any s.612(2) expenses deduction is one which the partnership is entitled to make. Once the position of the partnership, as to income and deductible expenses, has been determined against the partnership, the consequences then cascade down automatically so as to impact the individual partner. That is how partnerships work. It is how the statutory scheme works. Once HMRC has issued the s.28B(2)(b) notice, including any partnership return amendments under s.28B(2)(b) – the question is then whether the partnership takes steps to challenge that notice by way of its statutory appeal (s.31(1)(b)). Where there is no appeal, or an appeal is withdrawn, HMRC's decision becomes legally determinative for the substantive question as to the lawfulness or reasonableness of the application of s.612(2) to any expenses. In the present case, there has been a conclusive determination through the issuing of a statutory s.28B notice against all the relevant partnerships and the decisions of those partnerships – through the nominated partner – was not to appeal (27.3.24). That is the end of it, so far as the substance is concerned. The judicial review Court has no available role, on a challenge to a s.28B(4)(a) notice – to consider the lawfulness or reasonableness of any non-application of s.612(2). So far as fairness is concerned, there is no arguable ground based on unfairness. Nor, for that matter, legal sufficiency of enquiry or reasons.

18. These are powerful submissions and they may well prevail. But what I have been unable to accept, for the purposes of the modest threshold of arguability in judicial review, is that they are a knockout basis for refusing permission for judicial review on this part of the case. I was shown no authority which, as it seemed to me, decisively established the legal correctness of HMRC's position about the restricted availability of judicial review. In my judgment, it is arguable that it is open to a person in the Claimant's position to challenge the public law lawfulness of s.28B(4)(a) notices of this kind by judicial review – including the substance of the decision and its reasonableness – and that this recourse to law has not been excluded by the statutory scheme. I add this. The parallel FTT appeal route will not be dealing with this specific issue about the application of s.612(2) of the 2005 Act. I was shown no decided case – within all of the lines of authority about these film partnerships – which addresses this point. All of

which makes it the more appropriate, in my judgment, that the issues should be permitted to be ventilated. I am sceptical as to whether any enhanced fact-based scrutiny of the this (BlackRock §124f) nature could be appropriate on judicial review. But I have not been persuaded by HMRC that there is no properly arguable basis for the Claimant saying that the reasoned conclusion communicated by HMRC to him – on the s.612(2) expenses point – in a letter dated 6.8.25 was in its substance unlawful or unreasonable. That is the issue which will now need to be determined at a substantive hearing in these judicial review proceedings, at an appropriate time. Finally, although I am sceptical about whether public law procedural unfairness could be made out by the Claimant in the facts and circumstances of the present case, procedural unfairness is also in my judgment an argument which crosses the modest threshold of judicial review arguability.

Outcome

19. The outcome is this. The Claimant will be entitled to a determination at a substantive hearing, limited to the following two narrow and focused questions. In all other respects, permission for judicial review is refused. The questions are as follows: (1) Whether it is open to the judicial review Court to consider the lawfulness, reasonableness and/or fairness of the non-application of a 2005 Act s.612(2) expenses deduction for the fees (Eclipse FTT judgment at §§185-186). (2) If so, whether the application of s.612(2) (described in the HMRC letter dated 6.8.25) was unlawful, unreasonable and/or unfair.

Timing and Transfer

20. The only remaining question is as to the timing and transfer. As I currently see it, I do not have the power to transfer the judicial review claim to the FTT so that these issues can be considered there alongside the issues that already arise in the statutory appeal from the s.28A notices, but I am open to persuasion. My provisional view is that I do have the power to transfer this case to the UT, but that it would not be coherent or appropriate for different issues to be argued at the same time in FTT and UT. What may make much more sense is for this judicial review, on what is now its narrow s.612(2) issue, to be stayed to await the outcome of the FTT appeal, with a view then to considering – if any appeal to the UT is underway – transfer to the UT for all issues to be dealt with there.

Amendment

21. The Claimant will now need to amend the judicial review grounds, to remove all of the challenges that relate to loan interest tax relief and those that relate to income used to pay the loan. What is left is only those challenges as relate to a deduction under s.612(2) for expenses.

Order

22. And so, I grant permission on the narrow basis I have identified, and will look to the parties to assist me with the terms of the Order and any appropriate directions. In all other respects the application for permission for judicial review is dismissed. Having had the assistance of all Counsel, I am asking Counsel to draft an Order which I hope to make later today, to deal with the grant of permission and the refusal of permission. I

will ask the parties to agree a timetable, for inclusion within that Order, for written submissions to be provided to the Court to address any question of a stay or transfer. I will also consider any written submissions inviting directions, though my provisional view is that the rules already make the appropriate provision for what would be required of the parties of this case going forward. Insofar as anyone wishes to argue that there are issues of costs, or permission to appeal, arising out of this hearing they may do so. But they need to do so remembering that this hearing was specifically only to deal with the question of permission for judicial review. I have not extended its ambit and do not intend to do so.