

GUIDANCE ON THE PUBLICATION OF DECISIONS IN THE UPPER TRIBUNAL (TAX AND CHANCERY CHAMBER)

1. The following guidance sets out the Upper Tribunal's practice on the publication of decisions. It applies to appeals, references in financial services cases, and all other proceedings in the Tax and Chancery Chamber of the Upper Tribunal (hereinafter the **Upper Tribunal**).
2. The Upper Tribunal is a superior court of record (s. 3(5) Tribunal Courts and Enforcement Act 2007). Its decisions are authoritative on points of law and therefore binding on the First-tier Tribunal.

Substantive and interlocutory decisions

3. Hearings, whether in-person, remote or hybrid, **take place in public** (unless the Upper Tribunal has directed that the matter be heard in private).
4. The final decision issued following any **substantive oral hearing** heard in public, or in a **judicial review case**, where permission is refused, **will be published** including by the Upper Tribunal decision website [Tax and Chancery tribunal decisions - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/collections/tax-and-chancery-tribunal-decisions). Decisions granting permission to bring a judicial review claim are not normally published.
5. The Upper Tribunal will also generally publish its decisions following any **interlocutory oral hearing** unless the decision is of a sort described in 6. below. If the interlocutory matter is decided on the papers the decision will only normally be published if the judge considers the matter to be of wider interest.
6. The following sorts of interlocutory decisions will not normally be published:
 - (a) Decisions on matters of routine case management e.g. extensions of time, case-management directions, stays behind other cases, joining of proceedings.
 - (b) Decisions on costs applications.

Decisions on applications for permission to appeal ("PTA")

7. Decisions **granting** PTA, whether from a decision of the First-tier Tribunal to the Upper Tribunal, or, in relation to an Upper Tribunal decision, from the Upper Tribunal to the Court of Appeal/Court of Session will not normally be published. Under the relevant rules, decisions granting permission do not need to specify reasons. Grants of permission typically therefore simply record that the relevant ground is considered arguable.
8. Decisions **refusing** permission have to date not been published. That will remain the case in relation to **refusals by the Upper Tribunal of permission on the papers**, whether in relation to PTA in relation to an FTT decision or in relation to an Upper Tribunal decision.

9. But where permission to appeal from the First-tier Tribunal (Tax Chamber) to the Upper Tribunal has been **refused by the Upper Tribunal following an oral renewal hearing** (and including where the Upper Tribunal has granted some grounds but refused others) the Upper Tribunal's practice will now be to **publish the oral renewal PTA decision**.
10. This change in practice reflects (1) that the decision has been made following a public hearing; (2) that it represents the final stage in the appeal process in relation to a decision in respect of which permission is sought; and (3) the imbalance in access to PTA refusals that occurs because the public authority party (usually HMRC) will be aware of the wider body of PTA decisions, whereas private parties and those advising them will not.
11. This guidance on publication does not address the separate question of whether any published PTA decision may be cited as authority. In that regard the applicability of and, as appropriate, the compliance with Practice Direction (Citation of Authorities) [2000] 1 WLR 1001 will need to be considered.

The Hon. Mrs Justice Bacon DBE

President of the Upper Tribunal, Tax and Chancery Chamber

22 July 2024