

Powers of the First Tier Tribunal

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CATEGORY:

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This involves not merely determining whether an amount of tax is owed to the taxpayer under taxation law, but also looking at HMRC conduct and determining whether an amount analogous to tax should also be paid to the taxpayer on the basis that the conduct of HMRC requires compensation (or, as appropriate, an assessment to tax should be effectively waived on those grounds). This is a quasi judicial review power.

The High Court, in the case of *Oxfam*, decided (possibly obiter) that the powers of the Tribunal were framed such that it could consider in certain limited circumstances the question of 'legitimate expectation'. However, upon appeal to the Upper Tribunal in a case where the First Tier Tribunal had exercised that power more recently (*Abdul Noor*) the Upper Tribunal decided that this was not true. The High Court had misunderstood a binding precedent from the House of Lords (in the Upper Tribunal's view), and had also interpreted the Tribunal's powers too widely on the face of the legislation.

It is unfortunate, however, that the appellant was not represented and therefore the Upper Tribunal had one sided representation.


For fuller details concerning the circumstances [click here](#) to access a post on our tax blog.

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