



UPPER TRIBUNAL

Neutral Citation No. [2025] UKUT 00367 (TCC)

TAX AND CHANCERY CHAMBER

Applicant: Convergence Management Consultants Limited

Tribunal Ref: UT-2025-000041

Respondents: The Commissioners for His Majesty's Revenue and Customs

**RECONSIDERATION OF APPLICATION FOR PERMISSION TO APPEAL
FOLLOWING ORAL HEARING**

DECISION NOTICE

JUDGE RUPERT JONES

Introduction

1. The Applicant (Convergence Management Consultants Ltd or “CMC”) applies to the Upper Tribunal (Tax and Chancery) (“UT”) for permission to appeal the decision of the First-tier Tribunal (Tax Chamber) (“the FTT”), released on 9 January 2025 (“the Decision”). The Decision was made by the FTT following a hearing conducted on 12 December 2024.
2. The FTT dismissed the Applicant’s appeal against HMRC’s decisions that CMC had to repay Coronavirus Job Retention Scheme (“CJRS”). HMRC made four assessments that the Applicant should repay a total of £46,619.48 representing amounts paid to the Applicant in respect of various claims made between April 2020 and September 2021.
3. By a decision dated 3 April 2025 (“the PTA Decision”), the FTT refused the Applicant permission to appeal the FTT’s Decision to the Upper Tribunal (“UT”) on the grounds of appeal pursued. The Applicant renewed its application to the UT for permission to appeal in-time on 28 April 2025 within a month thereafter.
4. I refused permission to appeal to the UT on the papers on 23 June 2025. The Applicant renewed its application which was reconsidered at a video hearing on 27 October 2025. The Applicant was represented by its director and representative, Mr Mahmood. He relied on a bundle of documents and skeleton argument dated 7 October 2025 which he supplemented with oral submissions. HMRC were represented by Officers McCabe and Ramsay, the former who made brief oral submissions in reply. I am grateful to all parties for their assistance.

UT's jurisdiction in relation to appeals from the FTT

5. An appeal to the Upper Tribunal from a decision of the FTT can only be made on a point of law (section 11 of the Tribunals, Courts and Enforcement Act 2007). The Upper Tribunal has a discretion whether to give permission to appeal. It will be exercised to grant permission if there is a realistic (as opposed to fanciful) prospect of an appeal succeeding, or if there is, exceptionally, some other good reason to do so: Lord Woolf MR in *Smith v Cosworth Casting Processes Ltd* [1997] 1 WLR 1538.

6. It is therefore the practice of this Chamber of the Upper Tribunal to grant permission to appeal where the grounds of appeal disclose an arguable error of law in the FTT's decision which is material to the outcome of the case or if there is some other compelling reason to do so.

Grounds of Appeal

7. The Applicant's submitted grounds of appeal in the application to the UT for permission to appeal and notice of appeal dated 28 April 2025. The grounds relied upon at the hearing were contained in the skeleton argument dated 7 October 2025. They include the following submissions:

"II. GROUNDS OF APPEAL

4. The Appellant contends that the Tribunal erred in law in its interpretation and application of the Coronavirus Job Retention Scheme ("CJRS") Treasury Directions, specifically:

- a. Misinterpreting paragraph 8(1) of the First CJRS Direction, particularly the phrase "reasonably expected to be paid";
- b. Failing to apply a purposive construction to the CJRS scheme, which was designed to provide emergency support to employers during the COVID-19 pandemic.
- c. Overlooking the broader legislative intent and context of the CJRS, which should inform the interpretation of eligibility criteria. Impact of BT Group Plc's Delay

5 The employer's financial prudence is further evidenced by the impact of BT Group Plc's failure to comply with a High Court judgment. In 2007, the High Court ruled in favour of the employer in a copyright dispute against BT Group Plc. After years of correspondence, BT conceded in April 2025, yet has failed to make payment. The matter has now been referred to the Attorney General, Rt Hon Lord Richard Hermer KC and Rt Hon Liz Kendall MP Secretary of State for Science Innovation & Technology. This unresolved liability has placed significant strain on the employer's financial resources, directly affecting its ability to meet payroll obligations. The employer's decision to submit £0.00 RTI returns was a protective and legally sound response to this uncertainty, not a reflection of ineligibility or bad faith.

III. LEGAL FRAMEWORK AND AUTHORITIES

Interpretation of the CJRS Treasury Directions

6 The CJRS Treasury Directions must be interpreted as a unified and purposive scheme. Paragraph 5 sets out the gateway eligibility conditions for employees, while paragraph 8(1) imposes a substantive requirement that the employer must have a "reasonable expectation" of paying the amount claimed to the furloughed employee. These provisions are not discrete; they are complementary and must be read together in light of the scheme's overarching objective—to support the retention of employment during periods of economic disruption.

Paragraphs 2.1 to 2.5 of the Directions reinforce that paragraph 8(1) is integral to the scheme's purpose, which is to reimburse employers for employment costs that are either actually incurred or reasonably expected to be incurred as a result of furlough. Accordingly, paragraph 5 determines eligibility, while paragraph 8(1) ensures that claims are grounded in genuine financial obligations. A harmonious reading of these provisions is essential to give proper effect to the legislative intent underpinning the CJRS.

7 The Appellant acted in good faith and with financial prudence. RTI submissions of £0.00 were a protective measure, not indicative of ineligibility. The employer had a genuine expectation of payment, supported by:

- a. Contractual obligations from a key debtor.
- b. Correspondence confirming anticipated payment.

IV. LEGAL PRECEDENTS

Purposive Interpretation of Statutory Schemes

8. *KNR Flooring Ltd v HMRC* [2025] UKFTT 526 (TC): The Tribunal accepted that salary adjustments made for operational reasons, and supported by contemporaneous records, could satisfy the 'reasonably expected to be paid' condition under paragraph 8(1).

9. *Josoemag Services Ltd v HMRC* [2024] UKFTT 744 (TC): The Tribunal upheld claims where employers demonstrated a reasonable expectation of payment, even if actual payment was delayed due to external factors such as debtor non-performance
....”

Discussion, Analysis and Decision

8. I refuse permission to appeal in respect of the Applicant's grounds of appeal as they hold no realistic prospects of success and do not raise any arguably material errors of law in the FTT's Decision.

The FTT Decision

9. The FTT explained, without arguable error, in its Decision at [28]–[33] that the Applicant did not meet the qualifying condition for entitlement to CJRS payments set out in paragraph 5 to the Schedule to the First Direction:

“28. Paragraph 3 of the Schedule to the First Direction specified the employers to which it applied: essentially any employer with a PAYE scheme registered on HMRC's RTI system on 19 March 2020. It was common ground that CMC met this requirement.

29. Paragraph 5 was headed “Qualifying costs”, and read:

“The costs of employment in respect of which an employer may make a claim for payment under CJRS are costs which –

(a) relate to an employee –

(i) to whom the employer made a payment of earnings in the tax year 2019-20 which is shown in a return under Schedule A1 to the PAYE Regulations that is made on or before a day that is a relevant CJRS day,

(ii) in relation to whom the employer has not reported a date of cessation of employment on or before that date, and

(iii) who is a furloughed employee (see paragraph 6), and

(b) meets the relevant conditions in paragraphs 7.1 to 7.15 in relation to the furloughed employee.”

30. Paragraph 13.1 defined “relevant CJRS day” as follows:

“For the purposes of CJRS –

(a) a day is a relevant CJRS day if that day is –

(i) 28 February 2020, or

(ii) 19 March 2020.”

31. It was also common ground that CMC satisfied paragraphs 5(a)(ii) and (iii) and 5(b). With regard to paragraph 5(a)(i), there was no dispute that CMC had not made a payment of earnings in the tax year 2019-20.

32. HMRC’s position was that CMC was not entitled to CJRS because it had not made a payment of earnings in the tax year 2019-20 which was shown in an RTI return (being a “return under Schedule A1 to the PAYE Regulations”) which had been made on or before either of the two relevant CJRS days.

33. Although Mr Mahmood accepted that CMC did not meet the conditions in paragraph 5, he relied on paragraph 8(1)...”

10. The FTT’s reasons at [8]-[14] of the PTA Decision explain that it made no arguable error of law in the Decision because paragraph 8 of the Schedule to the First Direction deals with the amount of payment but not the entitlement to the payment:

“8. Mr Mahmood’s argument at the hearing was that the relevant provision was not paragraph 5 but paragraph 8(1). This was headed “Expenditure to be reimbursed” and read (his emphasis): “Subject as follows, on a claim by an employer for a payment under CJRS, the payment may reimburse-

(a) the gross amount of earnings paid or reasonably expected to be paid by the employer to an employee;

(b) any employer national insurance contributions liable to be paid by the employer arising from the payment of the gross amount;

(c) the amount allowable as a CJRS claimable pension contribution.”

9. Mr Mahmood submitted that the words “reasonably expected to be paid” allowed CMC to make a claim for the amount of money which he reasonably expected to be paid on a monthly basis, given his previous employment in that tax year by a different employer, Ocean Network Express (Europe) Limited.

10. The Tribunal dismissed that argument, on the basis that it is paragraph 5 which prescribes gateway conditions for a CJRS claim to be made. The purpose of paragraph 8 is to set out the amount of money to be reimbursed to those employers who have already met that gateway condition, as further explained at [36] of the Decision.

...

13. Mr Mahmood has misunderstood the basis for the Tribunal’s decision. CMC’s appeal was dismissed not because the Tribunal took a different view from Mr Mahmood about what was meant by “reasonably expected”, but because the law is constructed so that:

(1) The first step (paragraph 5) is to identify those employees of a given employer (here, CMC) who were paid a salary reported via RTI in 2019-20. This is the “gateway” condition for applying for CJRS.

(2) It is only if an employer and an employee satisfies that gateway condition, that the employer can pay the earnings “reasonably expected to be paid” in accordance with paragraph 8(1).

14. CMC and Mr Mahmood did not satisfy the gateway condition, and so CMC could not pay him under the CJRS scheme.”

Ground a. misinterpretation of paragraph 8

11. The first ground of appeal is not arguable. The FTT did not arguably err in law by misinterpreting paragraph 8(1) of the Schedule to the First Direction and the meaning of the phrase “reasonably expected to be paid”. There is nothing within the CJRS Treasury Directions that requires paragraphs 5, on entitlement, and paragraph 8, on the amount of payment to be paid, to be elided. The provisions are logically discrete and rationally sustainable.

12. The FTT did not arguably err at [34]-[36] of the Decision in finding that whatever the Applicant’s reasonable expectation of payment to be received, he did not satisfy the gateway condition in paragraph 5:

“34. Mr Mahmood submitted that the words “reasonably expected to be paid” allowed CMC to make a claim for the amount of money which he reasonably expected to be paid on a monthly basis, given his previous employment by Ocean Network.

35. We disagree. As Mr McCabe said, it is paragraph 5 which sets out “The costs of employment in respect of which an employer may make a claim for payment”, in other words, this is the paragraph which prescribes gateway conditions for a CJRS claim to be made.

36. The purpose of paragraph 8 is to set out the money to be reimbursed to employers who have already met the gateway conditions in the Direction. This can be seen from the following (our emphasis):

(1) Paragraph 5 begins “The costs of employment in respect of which an employer may make a claim for payment under CJRS” are those defined in that section. The conditions in that paragraph therefore have to be met for a valid claim to be made.

(2) Paragraph 8 begins “...on a claim by an employer for a payment under CJRS, the payment may reimburse”. This paragraph therefore set out the amount which can be claimed once the conditions in paragraph 5 have been met.”

12. It is noteworthy that in his submissions to the UT Mr Mahmood focussed on his reasonable expectation of the Applicant receiving payment of invoices from BT Group Plc (due to an ongoing legal dispute). This was in contrast to the expectation of relying on £40,000 from his previously employment with Ocean Network which the FTT recorded at [4] and [34]. He accepted that the evidence he put forward to the UT regarding the dispute with BT had not been placed before the FTT so was new evidence on appeal. However, he submitted that he had always relied on the BT dispute as the basis of the Applicant’s reasonable expectation of payment in his discussions with HMRC prior to his appeal to the FTT and this basis was mentioned during the FTT hearing. However, he also did accept that the FTT had correctly recorded that he had also relied on the reasonable expectation of payment from his previous employment. Regardless of whether there has been any change of approach by the Applicant between the FTT and UT, the basis of the expectation is all immaterial to the question of whether the FTT arguably erred in construing paragraph 8(1). I am satisfied that it did not because the provision regarding expectation of payment in paragraph 8 only relates to the amount of the payment to be reimbursed and not the eligibility to the payment.

Grounds b. and c. – purposive interpretation

13. The second and third grounds of appeal are not arguable. There is no arguable error of law by the FTT in its construction of the Schedule to the First Direction. A purposive reading of paragraph 8 does not require disapplying paragraph 5. The requirements of each paragraph are logically distinct and for good reason – to separate eligibility and the amount of any payment. I do not disagree with any of the Applicant’s arguments that the CJRS Treasury Directions must be interpreted as a unified and purposive scheme in light of the scheme’s overarching objective—to support the retention of employment during the periods of economic disruption caused by the pandemic. I do not disagree that paragraph 8(1) is integral to the scheme’s purpose, which includes the reimbursement of employers for employment costs that are either actually incurred or reasonably expected to be incurred as a result of furlough.

14. However, paragraph 5 determines eligibility to the payment and requires, that an employer may only be reimbursed in respect of any actual or reasonably expected payments if payments of earnings have been made by the employer in respect of employees for the relevant year and declared in a return. Specifically, the purpose of the Schedule to the First Direction includes a requirement that the costs of employment in respect of which an employer may make a claim for payment under CJRS are costs which relate to an employee to whom the employer has made a payment of earnings in the tax year 2019-20 which is shown in a RTI return. A purposive reading of these provisions does not require the disapplication of the eligibility requirement in paragraph 5(a)(i) in order to give proper effect to the legislative intent underpinning the CJRS.

14. The two FTT decisions on which the Applicant relies do not lend any support for the proposition that paragraph 5(a)(i) should be disappplied. They only concern the interpretation of a what a reasonable expectation of payment for the purposes of paragraph 8 may be on the facts of a given case. Paragraph 5 is plain in its meaning and does not permit of the suggested ‘purposive’ but contrary interpretation by virtue of Regulation 8.

Conclusion on grounds

15. I refuse permission on the grounds of appeal because they do not raise arguably material errors of law in the FTT’s Decision. I am not satisfied that these grounds hold realistic prospects of success and there is no other compelling reason to grant permission to appeal.

Conclusion

16. Permission to appeal to the Upper Tribunal is refused.

Signed:

Date: 28 October 2025

JUDGE RUPERT JONES

JUDGE OF THE UPPER TRIBUNAL