



UPPER TRIBUNAL TAX AND CHANCERY CHAMBER

UT Neutral Citation Number: [2025] UKUT 00407 (TCC)

Applicant: Bradbury Harper Limited	Tribunal Ref: UT-2024-000152
Respondents: The Commissioners for His Majesty's Revenue and Customs	

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

DECISION NOTICE

JUDGE ASHLEY GREENBANK

Introduction

1. This Decision Notice concerns an application by the Applicant, Bradbury Harper Limited (“BHL”), for permission to appeal the decision of the First-tier Tribunal (“FTT”) released on 15 August 2023 (the “FTT Decision”)¹. In the FTT Decision, the FTT dismissed appeals by BHL against two penalty notices charging BHL with penalties for failure to comply with an information notice issued to BHL on 10 August 2021 pursuant to paragraph 1 of Schedule 36 to the Finance Act 2008 (“FA 2008”).

2. Before the FTT, BHL argued, inter alia, that it did not have the information requested by the information notice because BHL had provided the relevant information to HMRC in response to an earlier informal request. In the FTT Decision, the FTT confirmed that BHL had not satisfied the FTT, on the balance of probabilities, that certain bundles of documents had been delivered to HMRC (FTT [34]). Accordingly, the FTT found, as a fact, that the information requested by the information notice was at all relevant times in the possession or power of BHL and so BHL had failed to comply with the notice (FTT [34]).

¹ In this decision notice, I refer to paragraphs in the FTT Decision in the form “FTT [xx]”.

3. BHL applied to the FTT on 5 December 2023 for permission to appeal the FTT Decision. The FTT admitted the application notwithstanding its lateness, but refused permission to appeal for the reasons set out in its decision dated 27 November 2024 (the “FTT PTA Decision”)².
4. On 24 December 2024, BHL made an in-time application to the Upper Tribunal (Tax & Chancery Chamber) (the “UT”) for permission to appeal the FTT Decision. In a decision dated 12 May 2025, the UT (Judge Poole) also refused permission to appeal (the “UT PTA Decision”).
5. On 25 May 2025, BHL made an in-time application for the UT PTA Decision to be reconsidered at a hearing. The application set out revised grounds of appeal. On 13 November 2025, BHL filed written submissions in support of those grounds of appeal.
6. On 17 November 2025, I held a video hearing of the application by CVP. Mr Zafer Iqbal, a consultant to BHL, appeared for BHL and Mrs Anne-Laure Raggatt, litigator of the HMRC Legal Group, appeared for HMRC. I am grateful to them both for their submissions.
7. In advance of the hearing, BHL made an application to the UT for certain reasonable adjustments to be made. The UT made those adjustments. In addition, as requested, I allowed BHL to make written representations following the hearing on certain issues, and provided HMRC with the opportunity to respond to them. I have taken into account those written representations in this decision.

The Grounds of Appeal

8. The grounds of appeal on which BHL relied at the hearing differed from those on which BHL relied in its application to the FTT and its initial application to the UT, although the revised grounds of appeal to some extent overlapped with those on which it had previously relied.
9. The grounds of appeal were, expressed differently in the various documents which BHL provided to the UT, however, in summary – and in the order that Mr Iqbal addressed them at the hearing – they were as follows:

- (1) **Ground 1:** the FTT failed to ensure a fair hearing in breach of natural justice.

The primary basis for this ground of appeal was BHL’s assertion that the FTT proceeded on an incorrect premise, namely that Mr Iqbal was a director of the company. As a result, Mr Iqbal submits, the FTT failed to take evidence from the best available source, the sole director of the company, Mrs Fatima Ouassini, who was present at the hearing and available to give evidence.

- (2) **Ground 2:** the FTT failed in its duty under the Equality Act 2010 to make reasonable adjustments to accommodate the disabilities of Mr Iqbal, BHL’s representative, who was under extreme stress during the hearing.

BHL asserts that the FTT failed in its duty by: (i) failing to classify the case correctly as a “standard” case; (ii) failing to adopt an inquisitorial approach and make enquiries about the roles and capacity of those present; (iii) and failing to manage

² In this decision notice, I refer to paragraphs in the FTT PTA Decision in the form “FTT PTA [xx]”.

the proceedings to ensure that BHL through its representative could participate effectively.

(3) **Ground 3:** the FTT erred in law by not considering: (i) whether or not BHL had a reasonable excuse for any failure to provide information pursuant to the information notice within paragraph 45 Schedule 36 FA 2008; and (ii) whether there were any “special circumstances” pursuant to which it should exercise its discretion under paragraph 48 Schedule 36 FA 2008 to substitute another decision for the decision made by HMRC to impose the penalty.

Decision

10. I refuse permission to appeal.

Reasons

11. 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).

12. The UT 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.

13. It is therefore the practice of the UT 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.

Ground 1

14. Ground 1 concerns whether or not the FTT erred by failing in its duty to provide a fair hearing.

15. The substance of this ground is that the FTT proceeded on an incorrect premise namely that Mr Iqbal was a director of BHL rather than an employee or consultant. Mr Iqbal says that this error led the FTT into further error: the FTT failed to obtain the best evidence available to it because it failed to hear evidence from the company’s sole director, Mrs Ouassini, who was present at the hearing and available to give evidence. If Mrs Ouassini had given evidence, she would have been able to provide additional evidence in relation to the delivery of the documents to HMRC which formed the central issue at the hearing.

16. Mr Iqbal presented this issue as an incorrect finding of fact. I do not agree that the FTT made a finding of fact regarding Mr Iqbal’s status as a director. There is no reference to Mr Iqbal’s status as a director in the FTT Decision itself. I would, however, agree that the FTT appears to have proceeded on the incorrect assumption that Mr Iqbal was a director. The FTT refers to Mr Iqbal as a director in its list of the representatives on the first page of the FTT Decision; it also refers to Mr Iqbal as a director in the FTT PTA Decision (FTT PTA [11]).

17. It should have been clear to the FTT that Mr Iqbal was not a director. His witness statement before the FTT clearly states that he was an employee and subsequently a consultant to BHL. There is no reference to his being a director. Furthermore, the transcript of the hearing before

the FTT³ shows that Mr Iqbal explained to the FTT that he was assisting the director of the company⁴.

18. That having been said, I am not satisfied that the FTT's misconception had any bearing on the FTT Decision itself.

(1) Mr Iqbal was BHL's representative at the hearing, not Mrs Ouassini. Notwithstanding the issues to which I refer in relation to Ground 2, the FTT was clearly impressed with the manner in which Mr Iqbal put BHL's case both in relation to his oral and his written submissions (see FTT PTA [11]⁵). There was no reason for the FTT to seek further representations on behalf of BHL from anyone other than Mr Iqbal.

(2) The key question before the FTT, as Mr Iqbal accepted at the hearing before me, was whether or not BHL had delivered the documents to HMRC in response to the earlier informal request.

The evidence that BHL put before the FTT comprised the witness statement of Mr Morchid, who did not appear before the FTT to be cross-examined on his evidence, and a witness statement given by Mr Iqbal himself. Those witness statements contained evidence in support of BHL's case: that Mr Iqbal instructed Mr Morchid to deliver the documents; that Mr Morchid posted the bundles through the letter box at HMRC's premises in Nottingham; that Mr Iqbal enquired of Mr Morchid whether or not the delivery had been made; and that Mr Iqbal subsequently paid a visit to HMRC's premises in Nottingham to check the description that Mr Morchid had provided of the premises to which the bundles had been delivered. The FTT took into account all of that evidence and reached its factual finding having done so.

There was no witness statement from Mrs Ouassini before the FTT. Indeed, there was no evidence before the FTT that Mrs Ouassini played any significant part in the delivery of documents to HMRC other than the reference in Mr Morchid's witness statement that she was present at the subsequent meeting at which Mr Morchid confirmed to Mr Iqbal that he had delivered the bundles to HMRC in Nottingham as requested.

19. In the circumstances, the FTT would quite reasonably have considered that it had heard all relevant representations and seen all the relevant evidence. It came to its view on the basis of that evidence. Even if it had been aware that Mrs Ouassini, the company's sole director was present at the hearing, there was no reason for the FTT to make any further enquiry.

20. In my view, this ground of appeal has no realistic prospect of success. I refuse permission to appeal on Ground 1.

³ References to the transcript in this decision notice are in the form "Tyy/zz", where "yy" is a reference to the page number and "zz" to the relevant line.

⁴ T/27/2-10, T/31/13

⁵ See also T32/32

Ground 2

21. The second ground of appeal is that the FTT erred in law by failing to make reasonable adjustments to reflect Mr Iqbal's mental health conditions.

22. As a starting point, the tribunal is under a duty to make reasonable adjustments to accommodate the needs of participants, who are suffering from some form of disability (see by way of example, *Rackham v NHS Professionals Limited* [2015] 12 WLUK 512, *Anderson v Turning Point Eespro* [2019] EWCA Civ 815). The purpose of making adjustments is to remove barriers to access to justice. The Equal Treatment Bench Book also provides extensive guidance on the steps that tribunals should take in such circumstances.

23. Mr Iqbal, on behalf of BHL, asserted that both he and, the sole director, Mrs Ouassini were "disabled persons" for the purposes of the Equality Act 2010. For the hearing before me, BHL provided witness statements from Mrs Ouassini and Mr Iqbal. The exhibits to those witness statements included schedules setting out details of Mrs Ouassini and Mr Iqbal's health conditions. In the case of Mr Iqbal, this list included details of his diagnosis and the medication and specialist care that he had received for his conditions. These schedules were not supported by any independent evidence from a health professional. However, for the purposes of this decision, I have assumed that BHL would be able to provide evidence to support the statements made in the schedules to the witness statements.

24. Mr Iqbal accepted that this evidence had not been put before the FTT either before the FTT hearing or at the hearing itself. Mr Iqbal submitted, however, that it became apparent during the hearing that that he was suffering from anxiety and stress, and, in the course of the hearing, Mr Iqbal notified the FTT of his medical conditions and the fact that he was on medication for them. Mr Iqbal says that the FTT then failed to make reasonable adjustments to avoid the proceedings giving rise to a disadvantage to BHL.

25. Mr Iqbal submits that the FTT failed to make reasonable adjustments in three ways:

(1) the FTT failed correctly to classify the case as a standard case rather than a basic case, which deprived BHL of the opportunity to make written submissions to the FTT in advance of the hearing, and which would have afforded Mr Iqbal the opportunity to make representations in a more calm and controlled atmosphere;

(2) the FTT failed to take a more inquisitorial approach to the proceedings to assist an appellant that was not represented by a legal professional, which failure resulted in the FTT not enquiring as to whether the sole director was present and available to give evidence at the hearing (see Ground 1); and

(3) the FTT failed to make reasonable adjustments in the conduct the hearing – for example, by allowing for breaks in the proceedings or allowing time for Mr Iqbal to refer to evidence – all of which affected Mr Iqbal's ability to present BHL's case fully.

26. In support of these submissions, Mr Iqbal referred to various passages from the transcript of the hearing involving exchanges between Mr Iqbal and the FTT.

(1) The first of these passages⁶ concerned the discussion of a piece of evidence that was not in the hearing bundle. Mr Iqbal submitted that the exchange between him and the tribunal demonstrated that the FTT prioritized expediency over allowing him to locate the piece of evidence to which he had referred.

(2) The other passages⁷ concerned points in the proceedings where Mr Iqbal communicated to the FTT that he was suffering from stress and anxiety. Mr Iqbal submitted that the passage showed that the FTT was put on direct notice of his distress and ongoing mental health issues. Although an offer was made to have a break in the proceedings, which he turned down, the FTT made no other adjustment to accommodate him.

27. As I have mentioned above, Mr Iqbal's complaints are threefold. I will deal with them in turn.

28. The first is that the administrative procedures adopted by the FTT staff did not characterize the case correctly and this prejudiced his ability to represent BHL. On this point, there was no unfairness to BHL. Notwithstanding the allocation of the case to the basic category, Mr Iqbal produced an extensive statement of case for the FTT, to which the FTT refers with some admiration at T32/32 and FTT PTA [11].

29. Mr Iqbal's second complaint is that the FTT should have adopted a more inquisitorial approach. There is no substance in this submission. It is apparent from the transcript that the members of the FTT did adopt a generally inquisitive approach in seeking to identify and assess the relevant evidence whilst maintaining fairness between the parties. As regards, the assertion that the FTT would, if it had adopted such an approach sought evidence from Mrs Ouassini, for the reasons that I have given in relation to Ground 1, in my view, there was no evidence before the FTT that Mrs Ouassini played any significant part in the delivery of documents to HMRC. There was no reason for the FTT to enquire whether any further evidence might be available.

30. The final complaint is that the FTT was put on notice of Mr Iqbal's medical condition and was aware of his obvious distress, but did not adapt its proceedings to ensure that Mr Iqbal could participate effectively in them, for example, by allowing a break in the proceedings or allowing more time for Mr Iqbal to produce relevant evidence.

31. From the transcript, it is clear that Mr Iqbal was experiencing difficulties at various stages in the proceedings. Mr Iqbal's distress was acknowledged by the FTT⁸. The FTT paused its questioning at various points and, at others, allowed Mr Iqbal time to locate evidence⁹. At one point, it offered Mr Iqbal the opportunity of a break in the proceedings, which Mr Iqbal turned down¹⁰.

32. It would clearly have been preferable if Mr Iqbal's conditions had been identified at an earlier stage in the process, ideally before the FTT hearing itself, so that any adjustments could have been planned in advance. For future cases, the FTT may wish to consider whether any amendments need to be made to its processes to ensure that such disabilities are identified at

⁶ T8/24-35

⁷ T24/24-30, T29/6-17

⁸ See T24/25, T29/8-10, T30/1

⁹ T24/29-30

¹⁰ T29/15-17

any early stage so that appropriate adjustments can be made. However, the question for me in relation to this application for permission to appeal is whether Mr Iqbal's submission – that any failure to make reasonable adjustments calls into the fairness of the proceedings before the FTT – has a reasonable prospect of success. On the facts of the present case, in my view, the realistic argument that the process at the FTT hearing was unfair to BHL has no realistic prospect of success. BHL had an opportunity to advance its case both orally and in writing. The members of the tribunal, who had been given no notice in advance of the hearing, identified that BHL's representative, Mr Iqbal, was suffering some distress and took steps to alleviate it. They offered Mr Iqbal the opportunity of a break, which he turned down. The record of the proceedings does not suggest any unfairness in the proceedings in terms of disadvantaging BHL's access to justice. The FTT clearly regarded Mr Iqbal, notwithstanding his lack of legal training, as an able representative of BHL.

33. In my view, this ground of appeal has no realistic prospect of success. I refuse permission to appeal on Ground 2.

Ground 3

34. The final ground of appeal is that the FTT erred in law by failing to consider whether or not BHL had a reasonable excuse for any failure to provide information and whether there were any special circumstances pursuant to which the FTT should exercise its discretion to substitute another decision for the decision made by HMRC to impose the penalty. Mr Iqbal submitted that the FTT was under a duty to consider these "mitigating factors" in reaching its decision. He pointed out that these issues were before the FTT. They were referred to in BHL's statement of case, which is referred to by the FTT in its decision and in the transcript.

35. In my view, neither of these arguments has any realistic prospect of success. The only mitigating factor advanced by BHL is that it was unable to provide the documents and information required by the information notice because it had already delivered those documents to HMRC in response to the earlier informal request. The FTT found, as a fact, on the basis of the available evidence, that the relevant documents and information remained in the possession or power of BHL at all material times. Having made that finding, there was no reasonable excuse or special circumstances for the FTT to consider. As a result, it did not go on to consider whether, had BHL delivered the information to HMRC, it had a reasonable excuse for failing to comply with the notice (as explained at FTT [35]). For similar reasons, it did not consider whether there were grounds to substitute another decision for the decision made by HMRC.

36. In my view, this ground of appeal has no realistic prospect of success. I refuse permission to appeal on Ground 3.

Conclusion

37. For the reasons that I have given, I refuse permission to appeal.

Signed:

Date: 7 December 2025

ASHLEY GREENBANK

JUDGE OF THE UPPER TRIBUNAL