Neutral Citation: [2026] UKUT 00034 (TCC)

Case Number: UT/2024/000147

UPPER TRIBUNAL
(Tax and Chancery Chamber)

Rolls Building, London

VAT – appeal against FTT Decision - whether supplies of hair loss replacement system qualified for zero rating under Schedule 8 Group 12 Value Added Tax Act 1994 in particular as a supply under Item 3 to a disabled person of services of adapting goods to suit his condition - grounds based on inadequacy of reasoning and interpretation of Item 3 upheld – grounds based on fiscal neutrality and argument that FTTs' conclusion not reasonably open to it under Edwards v Bairstow dismissed – FTT Decision set aside and remade – appeal allowed

Heard on: 21 October 2025
Judgment date: 23 January 2026

Before

JUDGE SWAMI RAGHAVAN
JUDGE KEVIN POOLE

Between

MARK GLENN LTD

Appellant

and

THE COMMISSIONERS FOR HIS MAJESTY'S REVENUE AND CUSTOMS

Respondents

Representation:

For the Appellant: Harriet Brown and Rebecca Sheldon, Counsel, instructed by Croner-i Ltd.

For the Respondents: Laura Inglis, Counsel, instructed by the General Counsel and Solicitor to His Majesty's Revenue and Customs

DECISION

INTRODUCTION

1. This is an appeal against a decision of the First-tier Tribunal (Tax Chamber) ("FTT") in *Mark Glenn Ltd v HMRC* [2024] UKFTT 715 (TC) ("FTT Decision"). The FTT Decision concerned the issue of whether the hair replacement system ("the Kinsey system") which the Appellant offered to women suffering from baldness (in the form of severe and patchy hair loss) qualified for zero rating under Schedule 8 Group 12 (Drugs, medicines, aids for the disabled etc.) to VATA 1994 or whether the supply should be standard-rated. The amount of VAT at issue in the periods including those from 01/18 to 01/24 comes to £277,083.10. The FTT concluded the hair replacement system did not qualify for zero-rating and dismissed the Appellant's appeal.

2. With the permission of the FTT, the Appellant, Mark Glenn Ltd, now appeals on the grounds that the FTT erred in law in that its reasoning was inadequate or else otherwise flawed in various respects.

LAW

3. Under Section 30 (Zero-rating) of VATA 1994 supplies of goods or services are zero-rated if the goods or services are of a description specified in Schedule 8 or the supply is of a description specified there.

4. Schedule 8, Group 12 (Drugs, medicines, aids for the disabled, etc) of VATA 1994 specified as relevant:

> "2. The supply to a disabled person for domestic or his personal use, or to a charity for making available to disabled persons by sale or otherwise, for domestic or their personal use, of-
>
> (a) medical or surgical appliances designed solely for the relief of a severe abnormality or severe injury;
>
> …
>
> (g) equipment and appliances not included in paragraphs (a) to (f) above designed solely for use by a disabled person
>
> (h) parts and accessories designed solely for use in or with goods described in paragraphs (a) to (g) above;
>
> …
>
> 3. The supply to a disabled person of services of adapting goods to suit his condition.
>
> …
>
> 5. The supply to a disabled person or to a charity of a service of repair or maintenance of any goods specified in item 2, 2A, 6, 18 or 19 and supplied as described in that item.

5. The Notes to the Schedule include the following:

> "Notes
>
> …
>
> (3) Any person who is chronically sick or disabled is "disabled" for the purposes of this Group.

(4) Item 2 shall not include aids (except hearing aids designed for auditory training of deaf children), dentures, spectacles and contact lenses but shall be deemed to include –

(a) clothing, footwear and wigs".

6. HMRC's guidance as set out in VAT Notice 701/7 (Reliefs from VAT for disabled and older people) states as follows:

"**3.2.1 What 'chronically sick or disabled' means:**

A person is 'chronically sick or disabled' if they are a person with a:

- physical or mental impairment which has a long-term and substantial adverse effect on their ability to carry out everyday activities
- condition which the medical profession treats as a chronic sickness, such as diabetes.

It does not include an elderly person who is not disabled or chronically sick or any person who's only temporarily disabled or incapacitated, such as with a broken limb".

BACKGROUND AND FTT DECISION

7. On behalf of the Appellant, the FTT heard evidence from Mr Glenn Kinsey and on behalf of HMRC, evidence from HMRC Officer John Edward Gibbard. It also received various documentary evidence including referral letters from doctors and NHS invoices.

8. The FTT briefly set out some background on how Mr Mark Sharp of the Appellant, who had previously worked as a hair extension technician, had created a system for hair loss, the Kinsey system, named after his friend Mr Glenn Kinsey.

9. The FTT set out some background on the set up of the Appellant's trade and HMRC's compliance checks noting the Appellant's confirmation that none of its staff were medical practitioners but that referrals were received from medical practitioners with the NHS sometime paying for the services provided by the Appellant ([19]). (The Appellant offered separately a hair extension product, which offering was standard-rated for VAT purposes ([37]). Mr Kinsey's evidence explained these were provided for women whose hair was thinning (in other words non-patchy hair loss).

10. At [31], the FTT framed a single issue for its decision namely "whether the Appellant's "Kinsey System" qualifies for zero-rating under Schedule 8 Group 12 VATA 1994, or is standard-rated".

11. The FTT considered first whether the Kinsey system was a taxable supply of a good or taxable supply of service (recording that the Appellant's argument in the first instance was that it was a supply of services falling under Item 3 but that in the alternative it was a supply of a good under Item 2(g) (goods designed solely for use by a disabled person) or else 2(a) (medical or surgical appliances designed solely for the relief of severe abnormality or severe injury)).

12. At [36], the FTT noted that "At the hearing, it was agreed by the parties at the point of submission that the Kinsey System is the supply of a service and not the supply of a good". (As will be seen, this finding is particularly relevant to a dispute between the parties regarding the scope of the appeal before the Upper Tribunal.)

13. The FTT went on to summarise Mr Kinsey's evidence of the "client journey". That started with a consultation to establish if the client was suitable for the hair loss treatment procedure. If they were, the pricing was then explained. (As regards suitability Mr Kinsey's evidence explained the Kinsey system was designed for women with severe, patchy or

widespread hair loss and that it was only clients with the most serious types of hair loss who were suitable for the system. It was not suitable for those with merely thinning hair as the product worked to bridge patchy areas of loss and could not work over an area of significant hair.) The next step involved a swatch of colour-matched hair being sent to the Appellant's wigmaker to manufacture the initial wig. The FTT then described the detail of the next stage (described in Mr Kinsey's statement as "Fitting and Adaptation of the Wig") as being where the wig was placed over the area of hair loss alongside additional wig mesh where necessary. The FTT excerpted Mr Kinsey's statement describing how:

> "Any existing strands of human hair underneath the mesh are pulled through the mesh using a crotchet needle. The wig then sits in place like a "second skin" with native hair poking through the mesh alongside the wig hair. The wig is held in place at various anchor points using baby-fine connections whereby human hair surrounding the loss is attached to colour-matched fibre hair using a four-stem braid technique. Whilst a traditional adhesive could be used, this technique means that healthy hair doesn't need to be shaved or hidden away and is instead integrated into the style".

14. The FTT continued:

> "Additionally, it is stated that where necessary the wig is then adapted by filling it out with additional fibre hair that is attached to the mesh itself using a needle. The statement of Mr Kinsey details that: "In this instance, we're effectively turning "half a wig" into a full wig by the addition of more colour-matched hair". The hair is then styled and cut to complete the look and the client typically returns every 6 weeks for maintenance of the system which involves re-attachment of the wig mesh and any ongoing styling necessary. It is stated that without this maintenance of re-anchoring, the mesh would become loose and put stress on the existing stable hair causing breakage.

15. The FTT concluded at [41]:

> "It is clear to us that the Kinsey System consists of several parts which are all connected. The 'Fitting and Adaptation of the Wig' part of the Kinsey System takes two people working at the same time approximately 8 hours to complete after which there is a process of ongoing maintenance that takes place every 6 weeks where significant input from the Appellant's staff is again required. The typical cost to the client of the Kinsey System is approximately £2389 which excludes the maintenance cost every 6 weeks. The maintenance cost, in total, amounts to in the region of £2400 annually.

16. Reiterating what it had said earlier, the FTT concluded the above paragraph ([41]) by stating: "We agree with the parties and find that the Kinsey System is the supply of a service and not the supply of a good."

17. The FTT then moved on to consider Item 3 of Schedule 8 Group 12 and firstly the meaning of "disabled person" noting the Notes to Schedule 8 (at [5] above) and VAT Notice 701/7 [6]. It also noted the definition of disability in s6 of the Equality Act 2010 stating that a person had a disability if they had "a)… a physical or mental impairment, and b) the impairment has a substantial and long-term adverse effect on [the person'] ability to carry out normal day-to-day activities". (The FTT did not consider there was any material difference between the wordings in that respect).

18. The FTT summarised the Appellant's evidence (letters from a surgeon, Mr Kelly, a GP, Dr Riley, and the "Lucy Perkins case study") (FTT[51]–[54]).

(1) The letter from Mr Kelly, a consultant craniofacial and plastic surgeon, referred to a patient who as a result of a surgery that had gone wrong had lost part of her skull and

overlying hair. The letter referred to the "remaining piece of the puzzle that is missing is to afford [the patient] a hairpiece that will cover her disfiguring alopecia".

(2) The letter from Dr Riley, stated to be a GP at Putney Mead Medical Centre, London referred to endorsement of the appellant's treatment for patients suffering from hair loss due to a number of causes (alopecia, Trichotillomania, genetic thinning, accidental damage etc.) and patients having been referred and the doctor continuing to do so "because I have seen [the patients] return with improved confidence and self-esteem". The doctor expressed the view that the treatment should be available to NHS patients as a treatment for the many causes of hair loss.

(3) The Lucy Perkins case study appeared in an article from the magazine Wedding Ideas and described how following hair loss as a result of chemotherapy for leukaemia, the use of the Kinsey System had transformed her look.

19. The FTT then recorded how HMRC's submissions distinguished hair loss from the underlying cause (e.g., cancer), contending that alopecia or accidental hair loss does not itself limit everyday activities (FTT[55]–[56]).

20. The FTT noted the paucity of case law directly on baldness as disability, but mentioned two employment tribunal cases (FTT[57]–[60]). In *Campbell v Falkirk* [2008] Case S/136261/07 a decision of the Employment Tribunal (Scotland) the tribunal rejected the male claimant's argument that baldness was an impairment explaining that it was an "aspect of physical appearance, in effect, when unrelated to any other illness". The employment tribunal there went on to say that if baldness were to be regarded as an impairment then "then perhaps a physical feature such as a big nose, big ears or being smaller than average height might of the themselves be regarded as an impairment under the [Disability Discrimination Act 1995]" (legislation which had preceded the Equality Act 2010). In *Finn v The British Bung Manufacturing Company* [2022] Case 1803764/2021 the employment tribunal, in the context of a harassment complaint considered there was a connection between the word "bald" and the protected characteristic of sex as they found that baldness was much more prevalent in men than women.

21. After discussing these cases the FTT went on to note (at [60]) that neither party had provided information or statistical evidence relating to the actual incidence of baldness but that it had "no hesitation in finding that baldness is more prevalent in men than in women".

22. The FTT recorded the parties' lack of submissions on the precise meaning of "impairment" or "chronic illness" (FTT[62]) but noted that under the Equality Act 2010, certain medical conditions (cancer, HIV infection and multiple sclerosis) ([61]) were expressly stated to be a disability and that in *Campbell* there had been set out a non-exhaustive list of impairments covering sensory impairments, those with fluctuating or recurring effects, progressive, organ specific, and learning difficulties ([64]).

23. The FTT found that significant hair loss/baldness in women is not treated as a chronic illness by the medical profession and that neither of Mr Kelly's or Dr Riley's letters made statements to that effect (FTT[63]).

24. The FTT then concluded

> "65. Based upon the evidence available to us, and on a balance of probabilities, we are not inclined to find that significant hair loss or baldness in women is an impairment. In any event, if we had found that significant hair loss or baldness in women is an impairment, we do not find that it has a long-term and substantial adverse effect on the ability of women to carry out everyday activities. In reaching that conclusion, we understand fully and have taken into

> account the instructive and helpful comments that Mr Kinsey made at the hearing about the transformative impact that the Kinsey System can have.
>
> 66. In summary, having considered carefully the submissions of the parties on this point, we find that significant hair loss or baldness in women is not, in itself, a disability. We find that significant hair loss or baldness in women does not fall within the wording of Note 3 to Schedule 8 of Group 12 VATA94 or VAT Notice 701/7 (or of section 6 of the Equality Act 2010)."

25. The FTT went on to accept that some users of the Kinsey system may be "disabled" on other grounds (e.g., cancer is expressly a disability), but maintained that hair loss per se was not a disability (FTT[68]–[69]).

26. The FTT then proceeded to consider whether the Kinsey system came within the meaning of Item 3 Group 8 Schedule 12 which referred to "services of adapting goods to suit his condition".

27. It started by setting out the parties' contentions ([70] to [71]). The Appellant's contention was that there was a supply of services of adapting the individual fibres into the mesh to specifically address the individual hair loss suffered which was unique to each client's hair loss and that this included a team of two people individually working to thread the fibres together. At the hearing, Mr Kinsey had given evidence that the wig received from the wigmaker was adapted to the size of the client's head and to the position where it should be on the head and then areas of the mesh would need to be filled.

28. HMRC contended it was not adaptation of a wig but a hair integration technique that allowed for semi-permanent transformation and which required regular ongoing maintenance.

29. The FTT concluded at [76]

> "Having considered the arguments of both parties, we do not accept that the Kinsey System can be considered as the supply to a disabled person of services of adapting goods to suit his condition. We do not find that the Kinsey System can be seen as the adaptation of a wig. We find that the Kinsey System is a labour-intensive system which allows for a semi-permanent transformation. We find that it requires ongoing, regular maintenance a number of times on a six-weekly basis after fitting. We find also that maintenance is an essential part of the Kinsey System. We find that to consider the Kinsey System as one of services of adapting goods to suit his condition would be to dissect artificially what the Kinsey System does. We find that the Kinsey System is a single supply of services and that it does not, therefore, fall within Item 3 of Schedule 8 of Group 12 VATA94."

30. The FTT's concern about artificial dissection reflected a submission HMRC made in reliance on the House of Lords' decision in *Beynon and Partners v HMCE* [2004] UKHL53 where it was considered that the transaction there (a visit to the doctor for treatment) should not be "artificially dissected" into smaller units (such that it could be viewed as being, in part, a zero-rated supply of drugs).

31. Finally, the FTT rejected the Appellant's argument on fiscal neutrality (the Appellant's supply and the supply of wigs were to be viewed the same from the viewpoint of the average consumer) holding that wigs (zero-rated as medical/surgical appliances designed solely for relief of severe impairment/injury) were distinct from the Kinsey system. The FTT found that "the Kinsey System is not a wig" and that it was "not designed solely for relief of a severe impairment or injury" (FTT[77]–[80]).

32. The FTT concluded that the Kinsey system did not qualify for zero-rating under Group 12 and was standard-rated (FTT[81]).

GROUNDS OF APPEAL

33. The Appellant raised a number of grounds of appeal, certain aspects of which (due to the newness of the point entailed and the late stage at which they were brought) we ruled were out of scope. The grounds which remain in scope (following our ruling) were in summary as follows (we retain the numbering of the original grounds):

> **Ground 1: Failure to give reasons:** The FTT did not explain why baldness in women was not a physical or mental impairment which had a long-term and substantial adverse effect on their ability to carry out everyday activities.
>
> **Ground 2: Fiscal neutrality**: The FTT erred in not properly considering that a wig being treated as zero rated for VAT purposes, where the wig was in effect a less safe version of the Kinsey system, conflicted with the principle of fiscal neutrality.
>
> **Ground 3: Adapting goods to suit his condition:** The FTT erred in finding that the adapting of individual fibres into the mesh to specifically address the individual hair loss suffered, which was unique to each client's hair loss, was not a supply to disabled person of services of adapting goods to suit the disabled person's condition.
>
> **Ground 5: *Edwards v Bairstow***: The FTT's conclusion that baldness in women was not a disability was one that no reasonable tribunal could have reached on the evidence.

GROUND 1: FAILURE TO GIVE REASONS

34. Under this ground the Appellant argues that the FTT's reasoning for concluding that female baldness was not a disability lacked reasoning, or at least any adequate reasoning.

35. There is no real dispute between the parties as to the applicable principles on adequacy of reasons.

36. In *Flannery v Halifax Estate Agencies Ltd* [2000] 1 WLR 377 the duty to give reasons was explained as "a function of due process, and therefore justice". Part of the rationale is that:

> "fairness…requires that parties especially the losing party should be left in in no doubt why they have won or lost. This is especially so since without reasons the losing party will not know…whether the court has misdirected itself, and thus whether he may have an available appeal on the substance of the case."

37. The extent of the duty depends on the subject matter, the Court of Appeal explaining however that:

> "…where the dispute involves something in the nature of an intellectual exchange, with reasons and analysis advanced on either side, " the judge must enter into the issues canvassed before him and explain why he prefers one case over the other."

38. In the subsequent case of *English v Emery Reimbold & Strick Ltd* [2002] EWCA Civ 605 it was explained at [19] that:

> "…if the appellate process is to work satisfactorily, the judgment must enable the appellate court to understand why the judge reached his decision. This does not mean that every factor which weighed with the judge in his appraisal of the evidence has to be identified and explained. But the issues the resolution of which were vital to the judge's conclusion should be identified and the

> manner in which he resolved them explained. It is not possible to provide a template for this process. It need not involve a lengthy judgment. It does require the judge to identify and record those matters which were critical to his decision."

39. The Appellant's principal complaint is that the FTT did not explain at FTT[64] *why* the Appellant's medical and other evidence summarised at FTT[51]–[54] failed to meet the condition that significant hair loss in women was an impairment with a long-term and substantial adverse effect on the ability to carry out everyday activities. The FTT overlooked or unreasonably discounted evidence in the form of letters from Dr Riley and Mr Kelly and the NHS invoices, showing that hair loss conditions were medically treated and long-term. It did not explain why this evidence failed the impairment test.

40. At FTT[65] the FTT simply stated:

> "Based upon the evidence… on a balance of probabilities, we are not inclined to find that significant hair loss or baldness in women is an impairment. In any event, if we had found that significant hair loss or baldness in women is an impairment, we do not find that it has a long-term and substantial adverse effect…"

41. That amounted to a conclusion not reasons as such.

42. The Appellant also criticises the FTT for failing to take judicial notice of the social reality: the rarity and stigma of female baldness compared to male baldness. That omission, it says, undermines the adequacy of reasons.

43. Ms Brown submitted that an FTT simply saying "we considered the evidence" without showing the path of reasoning fails the transparency required by *Flannery*. The court is left to "invent the reasoning itself".

44. The Appellant also criticised the FTT in particular for failing to mention and deal with a piece of evidence, a letter relating to a person (CB) in respect of whom NHS treatment funding was contemplated being removed. That was dated 5 July 2011 and addressed "to whom it may concern". It mentioned how CB had suffered bullying, depression, and physical ill-effects from wearing a wig (bleeding scabs sore patches, raw areas tender and painful to the touch) and went on to describe the transformative positive effect after CB used the Kinsey system.

45. HMRC contend that sufficient reasons were given. The FTT distinguished hair loss from its cause (e.g., cancer), cited Dr Riley's letter noting diverse causes (alopecia, accidental), which do not necessarily limit everyday activities, and concluded, after a multi-factorial assessment, that significant female hair loss is not an impairment. That, HMRC say, is adequate and understandable. Referring to *English v Emery,* Ms Inglis argued the FTT need not address every document individually (e.g., the CB letter). Saying it considered all documentation and then giving its key reasons was sufficient for appellate review. HMRC also cite *Fage v Chobani* [2014] EWCA Civ 5, emphasising the restraint appellate courts should take to evaluative findings.

Discussion

46. We begin with the well-established principles in *Flannery* and *English.* In summary the duty to give reasons requires the decision-maker to expose reasoning sufficient to allow the parties and an appellate court to understand *why* the case was decided as it was. While a tribunal need not address every piece of evidence, it must confront the central submissions and key evidence that bear materially on the outcome.

47. Against that standard, we consider Ms Brown is correct to identify that FTT's findings at FTT[65]–[66] (that significant hair loss or baldness in women is not an impairment, and in

any event does not have long-term substantial adverse effects on everyday activities) were simply conclusions, not reasons. The text reads: "Based upon the evidence… on a balance of probabilities, we are not inclined to find…" and then adds a second limb (even if impairment, no long-term substantial effect). This formulation does not explain *why* the evidence summarised earlier at FTT[51]–[54] did not satisfy either limb. There is no analysis of the medical letters (Dr Riley; Mr Kelly), the NHS referral/funding context, the Lucy Perkins case, or the CB letter and its account of physical injury from adhesive wigs and psychological distress. In short, the FTT stated its destination but did not show the route it took to get there.

48. HMRC's position is that FTT[53]–[66] supply "good and sufficient reasons" and that the tribunal weighed Mr Kinsey's oral evidence (the transformative effect of the system) but concluded that impairment was not made out.

49. There is no doubt as to the FTT's conclusion, the issue is the adequacy of the reasoning given. In particular it is apparent that the FTT did not confront the central point of contention between the parties with respect to whether the severe hair loss at issue on the facts amounted to disability *in and of itself*. In particular, there were clearly two competing views on the approach to that issue regarding whether any consideration of impact on everyday activities was limited to physical limitation, as advanced by HMRC, or whether it should take account of the wider social context, as the Appellant's case entailed. The FTT Decision does not show how the FTT engaged with that issue.

50. We reject HMRC's further submissions that the fact the FTT pointed out that, in some cases the causes of hair loss arose from conditions amounting to a disability, or that it drew from Dr Riley's letter that hair loss might have diverse origins such alopecia or accident, amounted to reasoning. Neither point was relevant to addressing the Appellant's central argument severe hair loss in women, in and of itself was a disability. The fact that hair loss can be a consequence of other conditions (or conversely that it might lead to mental conditions such as depression constituting a disability) does not, without more, answer the separate question whether the severe hair loss in women in question is, of itself, an impairment producing long-term substantial adverse effects. The two propositions, that another disabling condition amounting to a disability might have caused, or be caused by hair loss *and* that hair loss in itself is a disability might both be true. A person may have more than one disability. The FTT did not engage with that possibility. Any observation that can be taken from the FTT Decision that other disabilities might manifest as causes of hair loss could not have been a reason for explaining why hair loss in and of itself was not a disability.

51. Also even to the extent, when reading the decision as a whole, it is possible to infer the FTT had agreed with HMRC's submission that hair loss did not stop the person carrying out everyday activities, it was not, crucially, explained why that submission was accepted and the Appellant's competing submission was rejected. That was in essence that the carrying on of everyday activities was significantly impacted when the social context around the significance of severe hair loss in women was taken into account.

52. The omission of explanation on this key point of contention was all the more conspicuous given the FTT itself acknowledged Mr Kinsey's evidence that "hair loss affects women's lives in so many different ways and that it impacted every area of their lives." It might be expected that the FTT would test whether those "many different ways" spoke to day-to-day activities, for example, social interaction, professional conduct, public mobility, personal care, but the decision does not expose what the FTT analysis in that respect was.

53. While we agree with HMRC that the decision of the FTT on whether the condition advanced constituted a disability (to the extent that decision involved a multi-factorial evaluation) would be accorded deference on appeal, that does not assist on the question of

whether the reasons given by the FTT were adequate. The deference on such decisions presupposes that there are discernible reasons for them. It is not evident, in any case, from the FTT's recording of its analysis that the FTT had undertaken a multi-factorial analysis as that term is conventionally understood (in other words where multiple factors pointing for and against the proposition were described and weighed).

54. As to the omission of mention of the CB letter, HMRC are correct to point out that mere adequate reasoning does not entail mentioning every piece of evidence. We do not regard the mere fact it of its omission as giving rise to inadequacy. Similarly we do not regard the FTT's omission to mention what judicial notice it was taking as regards the impact of the comparative rarity of female baldness as an inadequacy in it itself. There is nothing to suggest the panel were explicitly invited to take judicial notice of the social impact of female baldness as we were. Having said that, the cumulative effect of these omissions, together with the omission to mention any other basis means there is nothing that can really be pointed to by way of reasoning to explain the conclusion reached in the FTT Decision.

55. While the FTT placed weight on the absence of evidence that the medical profession treats hair loss as a "chronic sickness" (FTT[63]), which relates to one limb of Note (3), the Appellant's case was not confined to that limb; it relied primarily on the "disability" limb, connoting a physical impairment with a long-term substantial adverse effect. (The reference to the concept of impairment did not, it will be recalled, arise from the VAT legislation but from HMRC's interpretation of the statutory words in VAT Notice 701/7). The FTT did not explain why this limb failed in light of the Appellant's materials (including NHS referral/funding, clinical narrative, and Mr Kinsey's evidence of day-to-day limitations).

56. Finally, HMRC submit that having mentioned the list of impairments referred to in the *Campbell* case the FTT was entitled to conclude that baldness was not of a similar character. It was suggested that the FTT must be taken to have been guided by the reasoning in these employment tribunal decisions. While we cannot rule out that that is what the FTT thought, attributing such reasoning would amount to speculation on our part. The key point for the purposes of this ground is that we do not know what the FTT made of those decisions as it did not say.

57. For these reasons, we conclude that Ground 1 is made out. The FTT's reasoning for its conclusion that hair loss of the type treated with the Kinsey system in and of itself was not a disability did not constitute adequate reasoning that enable the parties or this Tribunal to understand why the Appellant's evidence did not make good the proposition that the recipients of the Kinsey system, who in each case were women who suffered from baldness (in the form of severe and patchy hair loss), were disabled as a result of such hair loss for the purposes of the Item 3 Group 8 Schedule 12 provision.

58. In reaching this conclusion we emphasise that for the reasoning to be adequate it did not need to be lengthy. It simply needed to explain, perhaps in no more than a paragraph or so, why the Appellant's case (that hair loss of the type involved was a disability in and of itself) was being rejected.

59. Accordingly, Ground 1 is allowed. We will consider what if any action to take as regards set aside of the FTT decision and remitting it or remaking it after considering the remaining grounds.

GROUND 2: FISCAL NEUTRALITY

60. Under this Ground the Appellant argues the FTT erred in law by failing to apply the principle of fiscal neutrality correctly in response to the Appellant's argument that the Appellant's supply was similar to the supply of a wig. It argues that wigs, which are zero-rated

under Group 12 of Schedule 8 VATA 1994, and the Kinsey system, which the FTT found to be standard-rated, are similar supplies meeting the same consumer need namely concealing hair loss. Differences in method did not alter that essential similarity. Treating these differently for VAT purposes, the Appellant submits, infringes fiscal neutrality.

61. The principle of fiscal neutrality precludes treating similar goods and supplies of services, which are thus in competition with each other, differently for VAT purposes. The CJEU in *Rank Group plc v HMRC* [2012] STC 23 explained that two supplies are similar:

> "…where they have similar characteristics and meet the same needs from the point of view of consumers, the test being whether their use is comparable, and where the differences between them do not have a significant influence on the decision of the average consumer to use one such service or the other"

62. The FTT addressed the Appellant's case on fiscal neutrality at [80]:

> "We recognise the point made by Ms Sheldon although we find that wigs which fall within the definition of a medical or surgical device designed solely for the relief of a severe impairment or severe injury are distinct to the Kinsey System. We find that the Kinsey System is not a wig. We find also that the Kinsey System is not designed solely for the relief of a severe impairment or severe injury."

63. HMRC argue the Kinsey system and wigs are not interchangeable for the average consumer. The Appellant's own evidence shows that most consumers seeking concealment cannot use the Kinsey System. Material differences namely semi-permanent integration, specialist fitting, ongoing maintenance, significantly influence consumer choice. The Kinsey System was sought precisely because it is different from wigs.

64. In agreement with HMRC we consider there was no error in the FTT's treatment of fiscal neutrality. The FTT correctly identified that while both products address hair loss, the evidence demonstrated that the Kinsey System was chosen precisely because it is different from a wig. These differences in terms of method of attachment, maintenance, and suitability, were decisive for the typical consumer. There was ample evidence provided on behalf of the Appellant which indicated the Kinsey system was different from wigs. As HMRC point out, Mr Kinsey's evidence explained the pre-treatment consultation was important because for 8 out of 10 clients the system was not suitable. The semi-permanent attachment, involving the use of existing natural hair (rather than for instance adhesive), meant it performed differently in regard to activities such as swimming, cycle helmet wearing, hair washing and was such that it would not give rise to concerns regarding the security of attachment that would otherwise apply to normal wigs in strong winds.

65. The FTT correctly considered whether the supplies were sufficiently similar so as to require equivalent VAT treatment but found they were not. Ground 2 therefore must be dismissed.

GROUND 3 – FTT ERRED IN APPLICATION OF ITEM 3 OF GROUP 8 SCHEDULE 12 VATA 1994

66. Under this ground it is argued the FTT erred in finding that the adapting of the hair fibres into a mesh to specifically address the individual hair loss was not a supply to a disabled person of services of adapting goods to suit the disabled person's condition for the purpose of Item of Group 8 Schedule 12 VATA 1994.

67. The FTT did not find that hair loss in itself was a disability but considered that, in any case, to view the Kinsey system as a service of adapting goods would "dissect artificially" what the system was (at [76] – see [29] above). It went on to conclude in that paragraph that the supply of the Kinsey system was a single supply of services and that it did not therefore fall

within Item 3. HMRC emphasise this linkage in the reasoning to there being a single supply of services and submit that it shows the FTT had taken account of its earlier unchallenged finding that there was a single supply of *services.* They argue the FTT was correct to consider that that finding on single supply of services prevented the Kinsey system from being a service of adapting *goods* under Item 3.

68. The FTT's recourse to the principle that supplies should not be artificially dissected arose from HMRC's submissions on the House of Lords' decision in *Dr Beynon and Partners v CCE* [2004] UKHL 53. That case considered the familiar question of single and multiple supplies and the approach set out in *Card Protection Plan Ltd v CCE* Case C-349/96 *("CPP")* in the context of patient visits to doctors who, in addition to prescribing, could both dispense and administer pharmaceutical services to patients (in contrast to the normal division between doctors prescribing medicine and pharmacists dispensing/administering it) because the patients did not have a pharmacy nearby. The doctors argued that when administering drugs to such patients e.g. injecting a vaccine, that was a supply of medical care and a separate supply of goods (drugs). Customs argued that the supply of drugs was ancillary to the single exempt supply of medical services. The House of Lords allowed Customs' appeal from the Court of Appeal which had divided the transaction into various different stages such as consultation, diagnosis, drug dispensing and administration. The Court of Appeal's approach was considered by the House of Lords to involve just "the kind of artificial dissection" of the transaction which the European Court had warned against in *CPP*.

69. The point being made in that case was that it was artificial to split a patient visit to a doctor for treatment into different constituent parts when that did not reflect the reality.

70. While the FTT considered the Appellant's case was trying to do the same here, namely artificially splitting a composite supply of service into a component that involved the adaptation of goods (when it had already been determined by the FTT in agreement with the parties that this was a supply of services rather than goods) we consider that criticism was mis-directed.

71. The Appellant was not seeking to split the overall service so as to constitute separate supplies of goods and supplies of adaptation services in relation to such goods but simply arguing that the essential features of the composite service (the provision of hair loss treatment) corresponded to the description set out in Item 3 Group 8 Schedule 12.

72. The fact there was a single service did not preclude that service being viewed as one of adaptation of goods. That was not artificial dissection but merely looking at the service to see whether it fulfilled the relevant description.

73. We do not accept HMRC's argument that, once the FTT found the overall supply to be one of services rather than goods, it was precluded from considering whether Item 3 applied on the basis that there was no supply of goods to which adaptation services could relate. A composite supply classified as a service may still involve goods as part of that supply. The case law illustrates this principle: for example, a restaurant transaction (often cited in decisions such as *Faaborg-Gelting Linien v Finanzamt Flensburg* (Case C-231/94) and referred to in *CPP* at [21]) is treated as a supply of services overall, yet it plainly includes a goods component (the food). *Beynon* itself was also such a case. Similarly, the fact that the Kinsey system was characterised as a single supply of services does not negate the presence of goods within that supply.

74. To the extent the FTT's reasoning was as HMRC suggested (that its conclusion on services meant Item 3 (which referred to adaptation of goods) was incapable of applying) then that was incorrect.

75. If, on the other hand what the FTT meant was that it was artificial to take out the installation stage from the overall service which also included further maintenance visits then it is not clear what the factual basis for that distinction was. Both installation and maintenance processes essentially concerned the attachment and anchoring of the hairpiece with natural hair, the maintenance being a continuation of that same process.

76. In conclusion we consider the FTT fell into error in its application of Item 3 by ruling out that Item's application on the misconceived basis that because it had found the overall supply was one of services that Item 3 could not therefore apply.

77. We consider the error was clearly material and that the FTT Decision should accordingly be set aside in relation to this point because it excluded the service from consideration under Item 3, when if it had been considered, it was possible on the facts for Item 3 to be considered satisfied.

78. We consider whether to remit the matter to the FTT or to remake the decision in the UT in the following section.

79. HMRC's other point in their response as to why Item 3 was not applicable was that the FTT had in any case not found any disability to which the adaptation related (having concluded that severe and patchy hair loss in and of itself was not a disability). However given we have identified an error in the adequacy of the reasoning of the FTT's conclusion in that respect, HMRC's point will be dependent on the outcome of the remitted or remade decision on the question of whether the severe and patchy hair loss in the female patients treated by the Appellant amounted to a disability within the meaning of the VAT provisions.

GROUND 5: EDWARDS V BAIRSTOW

80. The Appellant contends that the FTT's conclusion that significant hair loss or baldness in women is not a disability was perverse. It argues that no reasonable tribunal could have reached that conclusion on the evidence. The evidence, the medical letters, NHS invoices, and the letter written in respect of the client CB, show the severe physical and psychological impact of female baldness. The FTT ignored or misread this evidence and failed to take judicial notice of the social reality of female baldness. No reasonable tribunal could conclude otherwise than that it constituted a disability.

81. HMRC argue the FTT's conclusion was within the reasonable bounds of what the FTT could decide on the evidence before it. It found no evidence that the medical profession treats hair loss as a chronic illness and concluded that hair loss does not substantially limit everyday activities.

82. Under *Edwards v Bairstow* [1956] AC 14, an appellate court may interfere with findings of fact where they are such that no reasonable tribunal, properly instructed, could have reached them. The threshold is high; as explained by the Court of Appeal in *Fage* appellate courts should not re-evaluate evidence unless compelled to do so.

83. We acknowledge that the question of whether a given set of facts relating to a condition advanced as a disability do amount to a disability involves a question of evaluative judgment. Even to the extent there can be taken to be a consensus view on the adverse social impact of hair loss in women there might be differing views on the severity and duration of that impact and ultimately of whether it can be described as falling within the ordinary meaning of "disability". None of the evidence in terms of the letters and case studies, which by their nature spoke to individual cases, would have necessarily *required* the FTT to have extrapolated from them that all women suffering from similar hair loss were disabled. It is true Mr Kinsey's evidence covered the impact on women, but given he was put forward as a witness of fact and his evidence was given in general terms it would have been open to the FTT to not necessarily

ascribe that evidence significant weight, or only as much weight as corresponded to the FTT's own knowledge of the social impact of severe hair loss. We acknowledge the issue before the FTT was one which differently constituted tribunals might reasonably arrive at different outcomes. While we have, under the above ground, concluded the FTTs' *reasoning* was inadequate, we cannot say that its *conclusion* that severe baldness in women was not of itself a disability was a conclusion that was one that no reasonable tribunal could have reached and therefore perverse. We therefore reject this ground of appeal.

OTHER GROUNDS RULED INADMISSIBLE

84. As indicated above, the Appellant sought, unsuccessfully, in the light of the ruling we made in the hearing, to raise various other points. In particular the Appellant's grounds had raised an adequacy of reasons point under Ground 1 in relation to the finding in [80] of the FTT Decision (that the Kinsey system was not designed solely for the relief of severe impairment or severe injury). It also raised under Ground 4 that the FTT erred in law in interpretation of the meaning of the phrase "designed solely for the relief of a severe abnormality" under Item (2)(a) of Group 8 Schedule 12. As HMRC point out, for these grounds to lead to the Appellant succeeding in his overall appeal, reliance must be placed on other parts of Group 8 Schedule 12 (items 2(a) and (g) and Item 5) which were predicated on there being a supply of goods (see legislation at [4] and [5] above). The difficulty however with these aspects of the Appellant's case was that they each assumed the FTT had kept open the question of whether the supply was one of goods rather than services when in fact the FTT had clearly ruled (reflecting its understanding of the parties' agreement) that the overall supply was a supply of services.

85. As we ruled at the hearing, after considering the party's further written and oral submissions, these grounds were in our view a new and late challenge to the FTT's finding that there was a supply of services rather than goods. In this section we briefly set out the background and our reasons for refusing to allow the Appellant to argue these points.

86. The procedural background was as follows. The issue arose from the fact the FTT had recorded at paragraphs [36] and [41] that it was agreed by the parties at the hearing below that the Kinsey System was a supply of services and not a supply of goods. The Appellant's Application for Permission to Appeal endorsed that finding, stating at paragraph 10.1 that the supply was one of services and citing those paragraphs. The FTT had granted permission to appeal to the Upper Tribunal "on the basis sought in the application". HMRC's Rule 24 response in the UT proceedings highlighted that the FTT had made a finding the supply was one of services. No reply was then filed by the Appellant. The Appellant's first positive assertion that the Kinsey system was also a supply of goods appeared in its Upper Tribunal skeleton (filed 8 October 2025) and, more explicitly, in its reply skeleton (16 October 2025), accompanied by an application for permission to argue the point. HMRC objected to the raising of that point, noting that until then they had prepared their case on the basis of the agreement recorded in the FTT decision and repeated in the Appellant's permission to appeal application.

87. The Appellant argues firstly that the point is not new (in that the Permission to Appeal application implicitly challenged the classification by referring to Item 2 (which applies only to goods). Alternatively, even if the point is new, the Appellant submits that permission should be granted under the principles in *Rhine Shipping DMCC v Vital SA* [2024] EWCA Civ 580, where the Court of Appeal emphasised that fairness and efficiency govern whether new points may be raised on appeal, and that exceptional cases may justify departure from the general rule (at [24]–[31]). The Appellant argues that HMRC would suffer no real prejudice and that the overriding objective favours allowing the point to be argued.

88. We disagree with the Appellants' submission that it was implicit in the Appellant's Permission application that the fact of the parties' agreement was subject to challenge. The FTT had made clear findings (twice, at [36] and again at [41]) confirming the supply was one of services. If that was disputed then the grounds needed to raise that specifically. On the contrary the finding was mentioned at 10.1 of the Appellant's own permission application but without any indication the point was being disputed.

89. As to the question of whether the Appellant should be given permission to run such arguments now, we consider there is prejudice in bringing the point at such a late stage. We see force in HMRC's concern that it was too late now to get the judge's note of the hearing to see what had been agreed. Ms Brown sought to argue that sort of resolution only applied to factual findings, or where there was a dispute that involved factual findings in relation to the substantive matter (rather than what went on at the hearing) or where there was a litigant in person. It was not, in her submission, an appropriate means of resolution where it was disputed what a representative had agreed. We disagree. The question of what was communicated by way of representation or agreement at the hearing is equally a matter of factual dispute capable of resolution by reference to the relevant evidence (a transcript if available), or in this case the judge's note of hearing.

90. Such indications as there are suggest that the FTT did not consider the other "supply of goods" related arguments to be a live issue given, as HMRC point out, the structure of the FTT Decision involves consideration principally of Item 3 (which concerns services). However without the judge's note we can throw no further light on whether the FTT was right to consider the case was so limited.

91. Allowing the new point would in our view cause real prejudice to HMRC. As mentioned, at this late stage, it is not feasible to obtain the judge's note to establish what exactly was agreed. The efficient resolution of that dispute is therefore compromised. HMRC also prepared their case on the footing of a services-only supply. In addition the agreement recorded on classification meant the FTT had no reason to make detailed findings on Items 2 and 5. If the point had been contested below, the FTT might have been invited to make alternative findings but it does not appear that it was, and it did not.

92. The Appellant had ample opportunity, on receipt of the permission grant in November 2024, and again on HMRC's Respondents' Notice in January 2025, to seek permission to raise a challenge to the FTT finding that the supply was one of services. It did not do so however until mid-October 2025. To allow the new point now would not in our view be consistent with fairness and justice as it would undermine procedural certainty and impose an unfair burden on HMRC to meet a case that was raised at such a late stage.

SET ASIDE AND REMAKING OF THE FTT DECISION

93. The errors of law under Ground 1 and Ground 3, which we consider material errors of law, mean the FTT Decision must be set aside at least in respect of the analysis (or more accurately in respect of Ground 1 on inadequacy of reasoning) covered by those grounds.

94. Both parties invited the UT to remake the decision if an error of law was found rather than to remit it. We have the benefit of the same documentary evidence before the FTT, it does not appear there was any dispute around the oral evidence that was given. We consider we are able to remake the decision in the Upper Tribunal.

95. We see no reason not to adopt the FTT's findings regarding the clients to whom the treatment was provided, the severity of their hair loss, and the nature of the treatment provided. These are summarised at [13] to [15] and [27] above. We have also considered Mr Kinsey's witness statement and accept the evidence of fact contained there (there being no indication his

evidence of fact was subject to challenge) together with the documentary evidence before the FTT. We have also considered Officer Gibbard's statement but note that simply details and attaches the correspondence between the parties in relation to the HMRC decisions and VAT adjustments made and rehearses HMRC's submissions that the supply, whether of services or goods, would not qualify for zero-rating.

96. We also see no reason not to adopt the FTT's conclusion that the supply was a supply of services rather than of goods. For the reasons discussed under Ground 3 that is not to say that goods in the form of the wig piece and hair strands were not supplied as a matter of fact.

97. The term "disability" is not statutorily defined. The only additional assistance given in the legislation is that it includes someone who is chronically sick. The term is used as an ordinary language term and should, we consider, bear its ordinary meaning. HMRC's guidance echoes in substance the Equalities Act 2006 definition stating that it is an impairment with substantial long-term adverse impact on everyday activities. We acknowledge that guidance may be a helpful framework (and we use it as a starting point) but it cannot be definitive. The ultimate question remains whether the condition advanced is a disability in the ordinary sense of that word.

98. In respect of the parties' competing views on how to approach the question of whether a disability impacts on the carrying out of everyday activities, as we have noted, HMRC's submission makes the point that hair loss does not *per se* prevent a person from carrying out the activity. By contrast, the Appellant's approach assesses the impact of the condition by reference not only to its physical impact but also the impact when the social context is taken into account. It is impossible to ignore that every day activity does not take place in the abstract but within a social context. The question is the nature and impact of the condition and that will depend on the particular facts and circumstances. The question of whether a condition amounts to a disability should in our view recognise that the impact of the condition may arise from the background social reality of how people with the condition are treated. We accordingly consider HMRC's purely physically based approach as too narrow when considering the impact of the condition. The assessment of the impact of disability should take full account of any real-world social context. To ignore the very real impacts a disfiguring condition might have on the everyday activity of someone seeking to go about the daily business of life, which will inevitably involve activity where one is visible to and required to interact with others, is to deny social reality.

99. Ms Inglis's submissions for HMRC also sought to adopt the kernel of the reasoning in *Campbell* that it did not make sense to view hair loss, a mere matter of physical appearance, as a disability. If it were treated as a disability the question was raised as to why other matters of physical appearance, such as unusual height or freckles should not also be viewed as a disability. We are not persuaded by this argument. We see no principled reason why a condition which affects physical appearance, might not through its social impact have a long term and adverse effect on the ability of the person to carry on everyday activities. Whether it does to a sufficient degree to constitute a disability would need to be assessed on the particular facts. *Campbell* is a decision of the employment tribunal and not binding and in any case considered the more prescriptive provisions of the Disability Discrimination Act 1995 as applied to the very different situation of male rather than female baldness.

100. Turning then to the facts and circumstances of this case and the particular evidence advanced, Ms Brown's submissions invited us to take judicial notice of the following:

(1) The very deep impact of hair loss on women.

(2) The cultural focus on women's hair.

(3) The rarity of women in the community with visible hair loss or baldness; Ms Brown's point was that one does not generally see in public women with baldness or hair loss that is not concealed in some way.

101. We agree the above are matters of which we should take judicial notice.

102. Mr Kinsey's evidence set out similar views: "Society expects women to have a full head of hair and a large proportion of a woman's femininity is attached to their hair". At [51] the FTT referred to the evidence of Mr Kinsey who stated that hair loss affects women's lives in so many ways and that it impacted every area of their lives.

103. As to the various doctors' letters and case study (described at [18] above) although these are in relation to individual cases they are consistent with the proposition that the type of severe hair loss suffered by the relevant person impacted adversely on the ability of the person to get on with everyday activities. It is also notable in our view that the surgeon's letter referred to the hair loss in the particular patient's case as "disfiguring" illustrating the severe impact of the hair loss.

104. Similarly we agree with Ms Brown in relation to the letter referring to CB and the lengths outlined that CB was prepared to endure, in terms of the pain caused by extended periods of CB's wig-wearing, is also consistent with the adverse impact of severe hair loss in women in terms of an ability to participate in society and carry out every day activities.

105. On the other side, there is no countervailing evidence (and HMRC did not suggest there was) to suggest that severe hair loss in women did not impact everyday activities insofar as these required visibility to others. HMRC's case as mentioned was that hair loss did not in itself physically prevent everyday activities being carried out and that a matter of physical appearance was incapable of being a disability. We were not persuaded by these arguments for the reasons already discussed.

106. Taking into account the matters of judicial notice and the evidence before us, we conclude that severe hair loss in women constitutes an impairment that adversely affects the ability to carry out everyday activities. These activities include work, leisure, socialising, self-care, and caring for others; activities which, at least to some degree, involve being visible to others in public. This is not because hair loss physically prevents participation in such activities, but because of the distress that would ordinarily be experienced by a woman with severe hair loss if no steps were taken to conceal it. That distress arises from the cultural significance of hair to female identity, societal expectations regarding appearance, and the different standards applied to women. The women treated by the Appellant, those with baldness or patchy hair loss rather than mere thinning, were, by virtue of that condition, "disabled" within the meaning of the legislation (and some, as the FTT acknowledged, were disabled on other grounds as well).

107. We recognise that some may dispute whether hair should have the cultural significance to identity we have mentioned or reject the notion that societal perceptions ought to determine whether a condition amounts to a disability. The point is that , taking account of the evidence and matters of judicial notice described at [100] to [104] above, the general factual reality for women who have baldness in the form of severe and patchy hair loss is that the baldness does have a serious adverse impact on their ability to engage in everyday activities. We emphasise that our acceptance of the evidence and judicial notice on these matters does not imply any value judgment that the social reality should remain unchallenged or that it is immutable. It may change over time. For present purposes, however, severe hair loss in women of the type relevant to this case is, in our view, disabling.

108. Standing back, and applying the ordinary meaning of "disability," we have no difficulty in concluding that the severe hair loss suffered by the service recipients in this case constitutes a disability. It is therefore unnecessary to decide whether such hair loss could also be described as "chronic sickness."

109. We stress that our decision is confined to the facts of this case and to women who experienced baldness in the form of severe and patchy hair loss.

110. The question that then arises is whether the service the Appellant provided can be described as that of adapting goods to suit the condition of the disabled person.

111. The goods in question are the hairpiece and the strands of hair.

112. The findings as to the process by which the hairpiece is constructed and anchored and then maintained is described at [13] to [15] and [27] above.

113. We see no difficulty in describing the process, whereby the hairpiece and strands of hair are fitted and maintained, as one of adapting those goods so as to suit the condition of the disabled person in circumstances where the condition is the lack of hair. The way in which the hairpiece is constructed and it and the artificial hair strands are fixed will vary according to the particular individual pattern of hair loss of the woman. The maintenance process included within the overall supply similarly involves adjusting the anchor points of the goods to make sure they fit with the woman's remaining hair and can similarly be described as adapting the goods.

114. Each of the supplies in question were therefore supplies which fell within the terms of Item 3 of Group 12 and were therefore zero-rated.

Conclusion

115. The Appellant's appeal is therefore allowed.

JUDGE SWAMI RAGHAVAN
JUDGE KEVIN POOLE

Release date: 27 January 2026