



UPPER TRIBUNAL TAX AND CHANCERY CHAMBER

Neutral Citation Number: [2026] UKUT 00100 (TCC)

Applicant: KNR Flooring Ltd	Tribunal Ref: UT-2025-000080
Respondents: The Commissioners for His Majesty's Revenue and Customs	

APPLICATION FOR PERMISSION TO APPEAL

DECISION NOTICE FOLLOWING HEARING ON 16 FEBRUARY 2026

JUDGE JEANETTE ZAMAN

1. The applicant, KNR Flooring Ltd (“KNR”), applies to the Upper Tribunal (Tax and Chancery Chamber) for permission to appeal against the decision (the “Decision”) of the First-tier Tribunal (Tax Chamber) (“FTT”) released on 9 May 2025 (TC/2023/08106). KNR applied to the FTT for permission to appeal against the Decision on five grounds. In a decision notice released on 10 July 2025, the FTT refused permission on all grounds (the “FTT PTA Decision”). On 10 August 2025 KNR renewed its application for permission to appeal for all five grounds, within the applicable time limit (the “Application”). I refused permission to appeal on the papers (the “UT Papers Decision”) and KNR applied for that decision to be reconsidered at a hearing.

2. The hearing was held on 16 February 2026, at which I heard from Robert Mitchell for KNR and Lucy Lawrence for HMRC, both of whom had appeared before the FTT.

3. References below in the form FTT[x] are to paragraphs of the Decision.

4. Pursuant to s11(1) Tribunals Courts and Enforcement Act 2007 an appeal to the Upper Tribunal may only be made on a point of law. An application for permission to appeal must demonstrate that it is arguable that the FTT made an error of law in reaching its decision which was material to that decision. “Arguable” means an argument that carries a realistic as opposed to fanciful prospect of success.

THE DECISION OF THE FTT

5. As set out at FTT[24] the issue in dispute was the quantum of the CJRS payments that KNR was entitled to claim in respect of payments to its two directors. KNR had made claims on the basis that the reference pay was £2,952 per month for each director, submitting that this was the gross pay for each of the directors for month 11, ie the month ending on 5 March 2020

and reported to HMRC by 19 March 2020. HMRC concluded that KNR should have used the reference pay figure of £512 per month for each director and issued assessments on this basis.

6. The FTT concluded that KNR had not shown, on the balance of probabilities, that they were overcharged by the assessments. The FTT concluded that the assessments were based on the information submitted by KNR in an RTI return made to HMRC on 19 March 2020, as required by the relevant legislation.

THE APPLICATION

7. The Application seeks permission to appeal on the five grounds for which permission was sought from the FTT, in each case setting out the ground of appeal, explaining KNR's position and stating the error of law alleged to have been made by the FTT.

8. The five grounds of appeal, and the alleged error of law, are set out in the Application as being:

- (1) misapplication of the law on burden and standard of proof – the FTT failed to apply the burden of proof fairly by treating HMRC's RTI data as conclusive, thereby reversing the burden in practice;
- (2) misapplication of the CJRS Directions – contradictory RTI data – the FTT misapplied the CJRS Directions by failing to resolve a material internal conflict within the RTI data, thereby undermining the integrity of its reference salary finding;
- (3) failure to properly consider material evidence – Business Objects Report and RTI discrepancy – the FTT failed to properly evaluate material evidence that directly contradicted HMRC's assessment and failed to resolve a factual conflict between two RTI submissions made on the same day;
- (4) procedural irregularity – failure to resolve evidential conflict and engage with NIC significance – the FTT failed to resolve a material evidential conflict and did not engage with the technical significance of NIC RTI data, thereby breaching its duty to conduct a procedurally fair and informed hearing; and
- (5) procedural irregularity – failure to properly consider accounting and bookkeeping evidence – the FTT failed to properly consider material accounting and bookkeeping evidence and gave insufficient reasons for rejecting contemporaneous records that supported KNR's case.

9. In the UT Papers Decision I explained my conclusion that whilst these grounds, and the further explanations thereof, include references to the burden of proof, and misapplication of the law, they were largely *Edwards v Bairstow* challenges to the FTT's finding on the facts. As has been repeatedly emphasised by the courts, the bar to establishing an error of law based on challenges to findings of fact is deliberately set high.

10. I addressed the reasons relied upon by KNR in support of each of the five grounds, concluding that I was not satisfied that any of these grounds disclosed an arguable error of law.

RENEWAL OF THE APPLICATION

11. At the hearing Mr Mitchell reiterated the grounds of appeal which were set out in the Application, but in his oral submissions he dealt with all of KNR's grounds together. Those submissions focused on what he submitted was the evidence that contradicted or cast doubt on the Business Objects Report which had been compiled by HMRC and was relied upon by the FTT.

12. Mr Mitchell's submissions included:

(1) It has been held by other Tribunals that RTI returns are not determinative in circumstances where the contemporaneous documents show the actual payments that were made (eg *Forshad v HMRC* [2023] UKFTT 541 (TC)) and that defects in RTI returns do not automatically invalidate genuine claims (eg *Zoe Shisha Events Ltd v HMRC* [2023] UKFTT 398 (TC)).

(2) HMRC have succeeded in other cases where it has been established that payroll data had been manipulated by the taxpayer (eg *Top Notch Accountants Ltd v HMRC* [2023] UKFTT 473 (TC)). This should apply equally if a taxpayer can establish that the data has been manipulated by HMRC. Responding to submissions by Ms Lawrence, Mr Mitchell submitted that KNR was complaining of systemic failures between what he described as the official PAYE records and the data that was used for compliance purposes.

(3) Where HMRC are relying on data from RTI returns and the taxpayer is able to show mismatches or that the data is unexplained, HMRC's evidence becomes unsafe and the assessments cannot stand.

(4) HMRC are wrong to say that the data on NICs is not relevant, as the NICs were calculated by reference to the actual payments that were made to the directors, and not the RTI returns.

(5) It is important to consider all of the contemporaneous records, including bank data.

13. At the beginning of the hearing I was provided with a copy of the court bundle (of 544 pages) that had been provided to the FTT, and Mr Mitchell took me to the pages of that bundle which he relied upon. I refer to those below.

DECISION

14. As was re-iterated by Lewison LJ in *Volpi v Volpi* [2022] EWCA Civ 464, an appeal court should not interfere with the trial judge's conclusions on primary facts unless it is satisfied that he was plainly wrong; and the weight to be given to evidence is pre-eminently a matter for the trial judge.

15. Reading the Decision as a whole, it is clear that the FTT considered the evidence put forward on behalf of KNR as to salary and NICs – the submissions made by the parties were recorded throughout the Decision, including at FTT[43], [44] and [47]. The evidence and submissions in relation to the Business Objects Report are set out, including the evidence from Officer Barrett, eg at FTT[55]. The FTT recorded the evidence from the directors as to their salary, including that it was intended that salaries would increase (at FTT[58]) and that they agreed the salary increase in around February 2020 (at FTT[60]). The FTT referred to the bookkeeping software relied upon by Mr Mitchell at FTT[62], as well as the absence of bank statements at FTT[64], and Mr Mitchell's submissions in relation to the NICs position at FTT[67] and [68]. The FTT clearly identified the challenges which were made to the RTI data, and in particular the data for month 11, at FTT[78]. The FTT then, at FTT[80] to [85], explained its reasoning, which included that there was "no proof of the actual date" of the informal discussion about increasing salaries. The FTT then concluded at FTT[84] that the evidence was insufficient to prove, on the balance of probabilities, that a salary increase did take place during February 2020 and that the information held by HMRC was incorrect.

16. I am not persuaded that the other FTT decisions to which Mr Mitchell referred assist in showing that it is arguable that the FTT made an error of law when making its decision in relation to the reference salary; the FTT did not treat HMRC's RTI data as conclusive, it addressed the competing submissions and evidence and then reached its conclusions.

17. I have considered each of the documents in the court bundle to which I was expressly referred during the hearing. I have done so with a considerable amount of trepidation, as (unlike the FTT) I have not heard evidence from Officer Barrett or the directors, and on any view this is a clear illustration of the sport of island hopping which appellate tribunals are warned against.

18. Against that backdrop, I have considered:

(1) the Business Objects Report compiled by HMRC – this shows £512 reported for each director on 19 March 2020 (and prior months) and £2,952 for 19 April 2020 and subsequent months. The first payments of £512 were shown as payable the previous year on 30 April 2019, but there were several months during the summer of 2019 where no taxable pay was declared. Mr Mitchell submitted it was dubious that this report was genuine, as it appeared to have been compiled inhouse rather than being based on the actual meta data that was filed online;

(2) HMRC's record of NICs submissions received from KNR for month 11 (received on 19 March 2020) and month 12 (received on 19 April 2020) – the month 11 submission was filed on the basis that no employer NICs were payable, and the month 12 submission declared employer NICs due of £94.94 for each director. Mr Mitchell submitted that these NICs could only have been due in April 2020 if the directors had also received the higher (£2,952) amount of pay in March 2020 (for the month to 5 March 2020) as well as in April 2020;

(3) copy of the month 12 PAYE statement from HMRC's business tax account system – this showed employer's NICs due of £94.94 for each director;

(4) employer's end of year summary for 2019/20 for each of the directors – this records total pay for each director of £8,976;

(5) RTI full payment submission for February 2020 – this shows payments for each director of £2,952 for that month, ie the month ending on 5 March 2020, which Mr Mitchell submitted would have been filed on 19 March 2020. Ms Lawrence submitted that the data on this submission does not reflect what HMRC had recorded as being received from the agent in that RTI submission, and that it is from the agent's software. Ms Lawrence drew attention to the note on the same document on the following page which states that "The figures in this report are based on the data contained in your payroll file NOW. If you have made changes to your data since submitting the RTI return for this period then the figures in this report may be different from those sent to HMRC originally"; and

(6) payslips for each director for February 2020 with a pay date of 5 March 2020 showing pay of £2,952.

19. I also asked Mr Mitchell about the RTI payment record information document for each director for the payment date of 5 March 2020, which shows taxable pay in the period of £512, and Mr Mitchell submitted that these figures were produced by HMRC during the compliance exercise and were not the amounts submitted by Mr Mitchell.

20. Each of these documents were before the FTT (as I was provided with the same court bundle) and, as noted above, the FTT had the benefit of hearing evidence from witnesses from both HMRC and KNR.

21. I recognise that there was some evidence before the FTT which potentially supported KNR's submissions, in particular the payslips and the RTI full payment submission. However, I did not have evidence as to how these documents were produced, or if amendments had been

made. I was not persuaded that the NICs data bore the weight which Mr Mitchell submitted; I was not shown how the amounts of employer' NICs calculated as due in April 2020 could only have been correct if the higher amount had been paid in March 2020, these returns were filed in April 2020 and I did not hear evidence as to the circumstances in which they were completed and filed. In any event, there was also some evidence before the FTT which supported HMRC's position. This was in circumstances where, notwithstanding Mr Mitchell's submission that contemporaneous documents, eg bank data, may be preferred to RTI data, there were no bank statements (whether of KNR or the directors) before the FTT, with this having been explained by Mr Mitchell to the FTT as being because Office Barrett had confirmed during his enquiries that he had received enough information (FTT[64]).

22. Overall, the Decision shows that the FTT considered the conflicting evidence before it (including the evidence in relation to payments of salaries and NICs) in the light of all of the evidence and the parties' submissions, and decided what weight to give to the evidence that was before it (recognising that there were apparent inconsistencies). The weight to be given to competing evidence should properly be assessed by the FTT as the fact-finding tribunal.

23. I am not persuaded that it is arguable that the decision of the FTT on this question of fact was plainly wrong; it was not a decision that no reasonable judge could have reached.

24. Having considered all five grounds of appeal for which permission was sought by reference to Mr Mitchell's submissions at the hearing, I am not persuaded that it is arguable that the FTT made an error of law in making its decision on the basis of any of the five grounds of appeal.

DECISION

25. Permission to appeal is REFUSED on all grounds.

Signed:

Jeanette Zaman

Issued to the parties on: 03.03.26