



**UPPER TRIBUNAL
(TAX AND CHANCERY CHAMBER)**

**Neutral Citation Number:
[2026] UKUT 00213 (TCC)**

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| Applicant: Top-Notch Accountants Limited | Tribunal Ref: UT 2025-000137 |
| Respondents: The Commissioners for His Majesty's Revenue and Customs | |

APPLICATION FOR PERMISSION TO APPEAL

DECISION NOTICE FOLLOWING HEARING ON 20 MAY 2026

JUDGE VIMAL TILAKAPALA

1. Top Notch Accountants Limited (the “Applicant”) applies to the Upper Tribunal (Tax and Chancery) for permission to appeal against the decision of the First-tier Tribunal (Tax Chamber) (the “FTT”) released on 17 July 2025. I refer to this decision as the “2025 Decision” for ease of identification.
2. The Applicant applied on 24 August 2025 to the FTT for permission to appeal to the Upper Tribunal (the 2025 FTT Application) but the FTT refused permission in a decision dated 26 November 2025.
3. The Applicant renewed its application for permission to appeal within the applicable time limit (the “Application”). I refused permission to appeal on the papers (the “UT Papers Decision”) and the Applicant applied for that decision to be reconsidered at a hearing.
4. The hearing was held on 20 May 2026 at which I heard from Mr Nazrul Islam for the Appellant and from Ms Kim Johnson for HMRC.

The Application

5. To understand the Application it is necessary to outline the complex procedural history of this matter. To avoid confusion I refer to Top-Notch Accountants Limited as the “Applicant” throughout this decision, notwithstanding the various appeals it has made.

6. The 2025 Decision relates to an “application for review” of an earlier FTT decision also involving the Applicant (the “2023 Decision”). The 2023 Decision followed a hearing on 30 May 2023 and was dated 2 June 2023 with the reference *Top-Notch Accountants Limited v HMRC* [2023] UKFTT 00473.

7. The 2023 Decision related to an amount of Coronavirus Support Payment received under the Coronavirus Job Retention Scheme (the “CJRS”) for a particular employee.

8. On 4 November 2024 the Applicant lodged a notice of appeal against the 2023 Decision. This appeal was allocated reference TC 2024/05851. The notice stated that it was a “formal request for a review” of the 2023 Decision. When the Tribunal recognised that it was not a new appeal, the appeal was closed and the notice sent to the FTT judge who gave the 2023 Decision (Judge Anne Scott) asking for it to be dealt with as an application for review of that decision.

9. On 8 January 2025 Judge Scott issued directions which treated the application in effect as a late application for permission to appeal the 2023 Decision to the Upper Tribunal. Those directions included a requirement for the Applicant to explain the delay in seeking leave to appeal.

10. The Applicant duly lodged a document outlining its reason for the delay in seeking leave to appeal. Although not mentioned by the Applicant, It became apparent to Judge Scott that the Applicant had in fact previously made an in-time application to appeal the 2023 Decision and Judge Scott had on 12 July 2023 refused permission for that appeal.

11. Following that refusal the Applicant had then applied on 7 August 2023 to the Upper Tribunal for permission to appeal the 2023 Decision. That application was refused on the papers by the Upper Tribunal (Judge Rupert Jones) and refused again by Judge Jones following an oral hearing requested by the Applicant which took place on 17 October 2023.

12. In his decision issued following the Upper Tribunal oral hearing, Judge Jones concluded that there was no arguable error of law in the 2023 Decision and that any appeal would, therefore, have no reasonable prospect of success.

13. On 20 March 2025 having taken into account the Applicant’s earlier application for permission to appeal the 2023 Decision and the FTT and Upper Tribunal refusals, Judge Scott issued directions reflecting her conclusion that the Applicant had exhausted its rights of appeal and that no further review was possible. The March 2025 directions stated that the appeal was to be struck out on the basis of Rules 8(2) (no jurisdiction) and 8(3)(c) (no reasonable prospect of success) of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009 (the “FTT Rules”), giving the Applicant the opportunity to make representations which it duly provided.

14. The 2025 Decision subsequently issued on 17 July 2025 refused the Applicant’s Application for late permission to appeal the 2023 Decision and stated that “for the avoidance of doubt” the notice of appeal lodged by the Applicant on 4 November 2024 was struck out.

When does an appeal lie?

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

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

17. The Applicant provided two comprehensive bundles of documentation to support its Application. The first headed "supporting documents", the second headed "authorities". The supporting documents bundle included two documents, the first headed "Grounds for Appealing for Permission to Appeal to the Upper Tribunal" (the "Grounds Document") and the second headed "Argument for Appealing for Permission to Appeal to the Upper Tribunal" (the "Argument Document").

The Grounds of appeal

18. The Grounds Document rehearsed the chronology of the matter – much of which I have summarised above.

19. The majority of that document contained a summary of purported errors of law made by the FTT in the 2023 Decision. Seven errors of law were identified, each referred to as a "Ground" and then expanded upon.

20. The genesis of the appeal appeared to be another appeal by the Applicant to the FTT in respect of CJRS payments made to the same employee (I shall refer to this as the "2024 Appeal").

21. The 2024 Appeal related to assessments issued in July 2023 and the Applicant appealed to the FTT under reference TC 2024/0032. HMRC applied to strike out the 2024 Appeal on the basis that the evidence provided and the grounds of appeal were the same as those considered by the Tribunal in May 2023 and given the 2023 Decision and subsequent refusal of permission to appeal by the FTT and Upper Tribunal there was (a) no outstanding litigation in respect of the matter in dispute, and (b) there was no reasonable prospect of success for the Applicant.

22. The Applicant submitted representations against HMRC's strike out application (in a document headed "Revised Grounds of Appeal") asserting that it had a strong and reasonable prospect of success. Rather than continuing with the strike out application HMRC took the decision to not defend the appeal. The 2024 Appeal was subsequently allowed.

23. In his representations for the 2024 Appeal the Applicant had contended that the 2023 Decision was erroneous and biased and that the decisions (including the refusals to permit his appeal to the Upper Tribunal) should be revisited as they did not take into account the additional representations that he was now making. He went on to identify several purported errors made

by the FTT in the 2023 Decision. Those representations were not addressed judicially given HMRC's decision to withdraw from the 2024 Appeal.

24. The Applicant sought to rely on the outcome of the 2024 Appeal as "illuminating the legal and evidential errors already present in the [2023 Decision]".

Discussion

25. Although the Applicant's focus was on the 2023 Decision, the decision that it seeks to appeal in the Application is the 2025 Decision.

26. The 2025 Decision concluded at [20] that:

"For the reasons given in the Direction of 20 March 2025, the Tribunal has no jurisdiction whatsoever in relation to the [2023] Decision and there is no live matter before the Tribunal where the Tribunal has jurisdiction"

27. The Direction referred to is set out at [14] of the 2025 Decision and is as follows:

"10. The appellant has exhausted all possible rights of appeal to the Upper Tribunal. No review of a Decision is possible since both I and Judge Jones have found that there is no error of law."

28. The FTT Rules provide at Rule 41 that:

- (1) The Tribunal may only undertake a review of a decision-
 - (a) pursuant to rule 40(1) (review on an application for permission to appeal); and
 - (b) if it is satisfied that there was an error of law in the decision.

29. It is accordingly clear that the FTT must be satisfied that a decision contains an error of law in order to be able to review it. As the FTT is a "creature of statute", its jurisdiction is limited strictly to that provided by the Tribunal Rules.

30. In this case the FTT and the Upper Tribunal had each determined previously that there was no error of law in the 2023 Decision.

31. The FTT was accordingly entitled to determine that it had no jurisdiction to review the 2023 Decision. The 2024 Appeal and the Applicant's submissions made in the course of that appeal have no bearing on that determination.

32. Where the FTT has no jurisdiction in respect of proceedings it is obliged to strike out those proceedings having given the appellant the opportunity to make representations. This is provided for in Rule 8(2).

33. The FTT is also entitled, under Rule 8(3)(c) to strike out proceedings where it considers that there is no reasonable prospect of the appellants case (or part of it) succeeding. Again it must first give the appellant the opportunity to make representations.

34. The Applicant was given the ability to make representations following the issue of Directions in March 2025 - and those representations were made by it.

35. I considered therefore that the FTT was entitled to strike out the appeal under Rule 8(2) (lack of jurisdiction) and to determine as it did that the Applicant had no reasonable prospect of success in its appeal so entitling it to strike out the appeal under Rule 8(3)(c). I also considered that the FTT was entitled to refuse permission to appeal the 2023 Decision irrespective of striking out the application for review on the basis that it had no jurisdiction as there was no live appeal.

Renewal of the Application

36. Mr Islam’s submissions at the hearing (which he subsequently sent to the Tribunal in written form) covered in detail the errors of law that he asserted had been made by the FTT in the 2023 Decision. I remain of the view that those submissions are of little significance as the focus of the Applicant’s permission to appeal application is the 2025 Decision.

37. Mr Islam also submitted that the 2025 Decision as to lack of jurisdiction was incorrect. His jurisdictional submission, which was divided into headings “the FTT Error” and “the correct position”, is set out below:

“The FTT Error

The FTT concluded that it lacked jurisdiction to consider the application without engaging with its statutory review powers under the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009

The Correct Position

Rule 41 of the FTT Tax Chamber Rules provides the FTT with powers of review. Under Schedule 16 FA 2020 paragraph 15, the FTT has jurisdiction to hear CJRS appeals and may exercise all associated review/procedural powers. A tribunal cannot decline jurisdiction it is conferred by statute”

The FTT Error

The FTT did not identify which jurisdictional provision it considered precluded it from acting, nor why its statutory review powers could not be invoked.

The Correct Position

Where a tribunal finds against jurisdiction it must identify the specific provision that limits its powers and explain why the review powers do not apply. A bare conclusion of no jurisdiction on a statutory question is an error of law.”

38. Mr Islam’s key submission was that the 2025 Decision failed to identify the statutory provisions supporting the FTT’s determination that it had no jurisdiction to consider the Applicant’s appeal and that such failure amounted to an error of law. Underpinning that submission was Mr Islam’s belief that there was no statutory basis for the decision.

39. Mr Islam also re-asserted his contention that the 2024 Appeal should have been taken into account in the decision on jurisdiction as:

“The allowance of the 2024 Appeal, on the same factual and evidential foundation concerning the same employee and CJRS payments for the second CJRS scheme, at least arguably undermines the reasoning in the 2023 FTT decision or renders it inconsistent in a way that engages the Tribunal’s powers to prevent an abuse of process and to secure that appeals are disposed of fairly and justly ...”

The statutory basis for concluding no jurisdiction

40. The 2025 Decision reflects the effect of the statutory scheme provided by s 11 of the Tribunals, Courts and Enforcement Act 2007.

41. S 11(1) confers a right of appeal to the Upper Tribunal on a point of law. S 11(3) provides that such a right “may be exercised only with permission”.

42. S 11(4) provides that permission may be given by (a) the FTT, or (b) the Upper Tribunal. This is given procedural effect by Rule 39 of the FTT Rules and Rule 21 of the Tribunal Procedure (Upper Tribunal) Rules 2008 which permit a single renewal to the Upper Tribunal where the FTT has refused permission. The structure is therefore: application for appeal to the FTT and, if refused, one appeal to the Upper Tribunal.

43. There is no statutory provision for any return to the FTT once the Upper Tribunal has determined the application. The refusal is therefore jurisdictional in effect for the FTT.

Failure by the FTT to set out the statutory provisions

44. It is well established that a tribunal is under a duty to give reasons for its decision. However, that duty is one of adequate explanation, not exhaustive exposition. There is no general requirement that a tribunal must set out the statutory framework for its decision.

45. In the 2025 Decision the FTT addressed the question of whether it had jurisdiction to entertain the Applicant’s appeal. It concluded in substance that: the statutory appeal process had been invoked and exhausted, and that no further right of appeal or jurisdiction existed (see [27] and [28] above).

46. Although the decision did not set out the statutory provisions, it is clear that read fairly and as a whole the decision (a) identifies the determinative issue (absence of jurisdiction), (b) explains the basis for that conclusion (the fact that permission to appeal the 2023 Decision had been refused by the FTT and the Upper Tribunal), and (c) makes clear why the Applicant’s appeal could not proceed (it had exhausted its appeal rights).

The 2024 Appeal

47. Mr Islam’s contention as to the significance of the 2024 Appeal is misconceived. For the reasons given in relation to jurisdiction there is simply no live matter before the tribunal.

48. On that basis I am not persuaded that the Applicant has identified an arguable error of law.

Decision

49. For the reasons given above permission to appeal is REFUSED.

Signed:

Vimal Tilakapala

Judge of the Upper Tribunal

Issued to the parties on: 08th June 2026

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