



**UPPER TRIBUNAL
TAX AND CHANCERY CHAMBER**

Neutral Citation Number:

[2026] UKUT 00383 (TCC)

Appellant/Applicant: Tyler Security Limited	Tribunal Ref: UT-2026-000020
Respondents: The Commissioners for His Majesty's Revenue and Customs	

APPLICATION FOR PERMISSION TO APPEAL

DECISION NOTICE

INTRODUCTION

1. The Applicant applies (“the Application”) to the Upper Tribunal (Tax and Chancery Chamber) (“UT”) for permission to appeal the decision (“the Decision”) of the First-tier Tribunal (Tax Chamber) (“the FTT”), released on 16 October 2025 with neutral citation [2025] UKFTT 1250 (TC). The Decision was made by the FTT following an in-person hearing (“the Hearing”) on 15-17 July 2025.
2. The Applicant appealed against a determination (“**the Determination**”) made under regulation 80 of the Income Tax (Pay As You Earn) Regulations 2003 (“**the PAYE Regulations**”) on 11 March 2022. The sum assessed was £133,615.60 (reduced to £88,503.70 following review) and related to the 2017-18 tax year.
3. The basis of the Determination was that the agency legislation (sections 44 to 47 of the Income Tax (Earnings and Pensions) Act 2003 (“**ITEPA**”)) applied in respect of specialist dog-handlers (whom I refer to as “contractors”) supplied by the Applicant to its end-clients. HMRC estimated the Determination to the “best of their judgment”, as referred to in regulation 80(2) of the PAYE Regulations. The appeal was dismissed.
4. On 10 December 2025, the Applicant made an in-time application to the FTT for permission to appeal the Decision.
5. By a decision dated 6 February 2026, the FTT refused the Applicant permission to appeal the Decision.
6. The Applicant renewed its application to the UT for permission to appeal in time on 5 March 2026.

7. In a decision notice dated 22 June 2026 and issued to the parties on 23 June 2026 (“the UT Refusal”) the UT refused the Applicant permission to appeal the Decision.

8. In time on 7 July 2026, the Applicant applied under rule 22(4) and (5) of the Tribunal Procedure (Upper Tribunal) Rules 2008 (“the UT Rules”) for the UT Refusal to be reconsidered at an oral hearing, which took place on 21 September 2026.

UT’s jurisdiction in relation to appeals from the FTT

8. An appeal to the UT from a decision of the FTT can only be made on a point of law (section 11 of the Tribunals, Courts and Enforcement Act 2007). The UT has a discretion whether to give permission to appeal. That discretion 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.

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

Grounds of Appeal

10. In its Application, the Applicant identified six grounds of appeal, as follows:

(1) The FTT erred in law in both its construction and application of section 44 ITEPA. In particular:

(a) It misdirected itself that the contractors were individuals within the meaning of section 44(1)(a).

(b) It misdirected itself that the contractors’ services fell within the meaning of services within the meaning of section 44(1)(c).

(c) Had the FTT been correct in its construction of section 44(1), then it ought properly to have found that the manner in which the services were provided excluded the application of section 44 pursuant to section 44(2)(a) in that the evidence before the FTT was that not even the Applicant could supervise, direct or control a contractor in the way it carried out its dog detection services.

(d) The FTT arrived at a finding of fact that it could not reasonably have made in finding there was a hierarchical command structure at the venues. HMRC did not provide any evidence as to the roles and responsibilities of employees at the venues. The only evidence before the FTT was that “supervision” at venues was restricted to allocation of search areas between search dog teams. There was no evidence of any supervision as to the manner in which searches were carried out.

(e) In so far as the FTT applied section 44(2)(a), when considering the issues of supervision, direction and control, the FTT ought properly as a matter of law to have confined its considerations to the contractors’ performance of their service of dog detection and therefore misdirected itself by applying the test too widely to take account of irrelevant circumstances.

(2) The FTT ought properly to have found on the evidence before it that the contractors did not have a view to personally providing services of a worker to another person within the meaning of section 45(1)(a).

(3) The remuneration income received by a contractor included compensation for the transport, training and welfare of a dedicated search dog which would not constitute employment income and therefore does not fall within section 47(3) remuneration.

(4) The FTT erred in law by failing to consider the issue of best judgment and recognise that HMRC who had assumed the burden of proof in their pleadings had failed to discharge the burden and found the Determination was not to best judgment.

(5) HMRC when exercising best judgment have an obligation akin to *Wednesbury* reasonableness to take account of the materials before them as set out in *Van Boeckel v Commissioners for Customs and Excise* [1981] 2 ALL ER 505.

(6) The FTT failed to take account of the unchallenged evidence before it that the contractors had properly accounted for taxes and there was no tax avoidance, and so the Determination was excessive.

11. In addition to the Applicant's detailed grounds of appeal, Mr Young (who represented the Applicant before me, as he did before the FTT) provided me with a note of submissions, focusing on the question whether the contractors were providing personal services and the question whether they were subject to supervision, direction or control. I was also given a copy of a transcript of the Hearing.

THE LAW

9. Section 44 ITEPA provides as follows:

“(1) This section applies if—

(a) an individual (“the worker”) personally provides services (which are not excluded services) to another person (“the client”),

(b) there is a contract between—

(i) the client or a person connected with the client, and

(ii) a person other than the worker, the client or a person connected with the client (“the agency”), and

(c) under or in consequence of that contract—

(i) the services are provided, or

(ii) the client or any person connected with the client pays, or otherwise provides consideration, for the services.

(2) But this section does not apply if—

(a) it is shown that the manner in which the worker provides the services is not subject to (or to the right of) supervision, direction or control by any person, or

(b) remuneration receivable by the worker in consequence of providing the services constitutes employment income of the worker apart from this Chapter.

(3) If this section applies—

(a) the worker is to be treated for income tax purposes as holding an employment with the agency, the duties of which consist of the services the worker provides to the client, and

(b) all remuneration receivable by the worker (from any person) in consequence of providing the services is to be treated for income tax purposes as earnings from that employment,

but this is subject to subsections (4) to (6).

(4) Subsection (5) applies if (whether before or after the worker begins to provide the services)—

(a) the client provides the agency with a fraudulent document which is intended to constitute evidence that, by virtue of subsection (2)(a), this section does not or will not apply, ...

(b).

(5) In relation to services the worker provides to the client after the fraudulent document is provided—

(a) subsection (3) does not apply,

(b) the worker is to be treated for income tax purposes as holding an employment with the client ..., the duties of which consist of the services, and

(c) all remuneration receivable by the worker (from any person) in consequence of providing the services is to be treated for income tax purposes as earnings from that employment.”

10. Section 44 ITEPA in its current form is the result of substantial amendments made in 2014.

DISCUSSION

11. As Mr Young presented his grounds and we discussed them in the hearing, they coalesced into 3 main issues:

- (1) Were the contractors personally providing services?
- (2) Were the contractors subject to supervision, direction or control?
- (3) Was the FTT right not to have considered whether the Determination was made to best judgment?

I have grouped the principal grounds as pleaded under these 3 headings. I address these questions in turn and then deal with the remaining grounds of appeal.

Were the contractors “personally provid[ing] services”? [Grounds (1)(a), (b)]

12. At Application [22], the Applicant submits that “The FTT ought properly to have recognised that the issue before it was to determine what was being supplied”. The FTT rejected this submission, holding (at Decision [90]) that this is not the statutory question. The question the statute asks at section 44(1)(a) is whether an individual personally provides services to another person (the “client”).

13. Mr Young submits that it is necessary to consider the nature of what the various individuals were doing and not simply take it that because there is a human present the supply received by another person is one of personal services of an individual worker. He describes the Applicant as “supplying dog detection services” (Application [29]) and says (at Application [20]) that, because this amounts to more than merely supplying workers, this precondition to liability is not met.

14. Mr Young says that the evidence before the FTT was that a search dog and its handler were jointly certified and came as an indivisible unit. Nobody but the handler was permitted to control a specific search dog. Nobody else was qualified to do so. The regulatory framework created a very different set of circumstances to say a driver who could drive different vehicles. The operation of a vehicle would be merely incidental to a supply of labour by a worker.

15. The FTT rejected that approach, pointing out that section 44 does not ask what type of service was supplied. The question the law asks in section 44(1)(a) is simply whether an individual is personally supplying services to someone else, which the FTT found the dog handlers clearly were. As the FTT concluded at Decision [109]-[110], the contractors were on-site operating a very specialised piece of equipment (their dog) and they were indispensable (see Decision [98]).

16. Subject to a point I will address at [46] et seq, that approach is clearly correct. The nature of the supplies the worker provides is irrelevant as long as they are not “excluded services” (clearly not relevant here). All that matters for section 44(1)(a) is that “an individual (“the worker”) personally provides services”. The facts that the dogs were also doing things (sniffing and tracking, presumably), which the contractors could not do themselves, and that the contractors could not deliver the detection services without their dogs do not alter the fact that the contractors/workers were on site providing services, carrying out detection services using their dogs. As the FTT put it at Decision [110]:

“In order to realise an effective search, it is not enough to deploy the dog alone. This is because the dog’s reactions and findings must be interpreted and communicated. This is an essential part of the detection service, which can only be done by the dog-handler. The dog handler’s personal judgment, and analysis, are critical to determining whether a genuine threat has been detected.”

17. Mr Young also says that the evidence before the FTT was that the Applicant’s sub-contractors (which could be a company) were treated by HMRC for both direct and indirect tax purposes as businesses supplying dog detection services. He goes on to submit that the FTT erred in law in failing to recognise that the supplies made by the contractors to the Applicant were taxable supplies of dog detection services which was incompatible with characterising the supplies as labour. The FTT made an error of law in not construing section 44 in the light of the way the VAT legislation applied.

18. At Application [40], the Applicant says that the FTT should have found “that there was no supply of “worker” services for the purposes of that sub section” (i.e. section 44(1)(c)). It says that this error flows from its (wrong, it says) conclusion that “there was a supply of a worker within section 44(1)(a)”. This is not what the FTT found in relation to section 44(1)(a). As discussed above, it found that the contractors personally provided services to another person.

19. At section 44(1)(c) the law is simply asking whether the services within section 44(1)(a) are provided under a contract between the client and another person (not the worker) or the client pays for those services under such a contract. Section 44(1)(c) has nothing to say about the nature of the services supplied (“worker services” as the Applicant calls them). This point does not add anything to the point the Applicant raised in Ground (1)(a). The services the dog handlers provide are clearly supplied and paid for under the contracts between the Applicant and their clients, which is a straightforward precondition to liability under section 44.

20. Mr Young also submits that the dog-handlers “were individual businesses of a type inconsistent with PAYE employment”. In particular, the dog-handlers were VAT registered. Also, after the Hearing, but before it released its Decision, the Applicant sent the FTT copies of employment status certifications by HMRC, where HMRC confirm that particular contractors were not employed by the Applicant. Mr Young says that the Determination is inconsistent with these certifications and the VAT treatment of the contractors and “The FTT misdirected itself that it could classify the VAT supply as a taxable supply of labour.”

21. There is nothing in this point. The fact that a person may be in business on their own account will not prevent section 44 applying in relation to engagement/s if the statutory preconditions are met in relation to them. We can see that most clearly from section 44(2)(b), which excludes from section 44 cases where the individual's remuneration for providing the services is otherwise taxed as employment income. It is employment, not self-employment, which stops section 44 applying. The whole point of section 44 is to bring into the employment tax regime people who are not already within it.

22. The way contractors are treated for VAT purposes is similarly irrelevant. The two regimes (income tax and VAT) are separate. VAT is chargeable on supplies (including supplies of labour) made by a supplier which makes supplies over the registration threshold, and VAT is not chargeable on remuneration paid to employees, but it does not follow from contractors being VAT registered and charging VAT on payments made to them by the Applicant that the agency legislation cannot apply in respect of particular arrangements involving the Applicant.

23. Where the preconditions for its application are met, section 44(3) treats the worker "for income tax purposes" as holding an employment with the agency, the duties of which consist of the services the worker provides to the client. There is no employment relationship between the Applicant and its contractors, the agency legislation does not create one (it deems there to be one for income tax purposes only) and so it has no effect on the VAT treatment of the arrangements.

24. This ground discloses no error of law.

Were the contractors subject to supervision, direction or control ("SDC")? [Grounds (1) (c), (d) and (e)]

25. Having discussed what was meant by "supervision" and "control" at Decision [112]-[125], the FTT reviewed the evidence on SDC in detail starting at [126].

26. The Applicant does not challenge the FTT's analysis of these concepts.

27. At Application [30]-[38] the Applicant criticises several findings by the FTT. The FTT's conclusion on SDC was, however, based on numerous (largely unchallenged – Mr Young was very clear that he was not launching an "*Edwards v Bairstow*" challenge to any aspect of the Decision) findings of fact, including:

(1) If the dog-handlers failed to follow the Appellant's standard operating procedures, failed to follow a protocol given by the client, or failed to do the searches that they were told to, this would be picked up by the Appellant later. Decision [126];

(2) The obligations in the Fulham contract required the Appellant to ensure that the search dog operatives complied with Health & Safety, complied with the directions of Fulham, or complied with industry best practice. The only way that the Appellant could warrant those things is if it has an element of control over the worker (i.e., dog-handler) to ensure that the worker is using industry best practice. Decision [130]

(3) Workers followed a dress code – the Applicant's or the client's; Decision [131]

(4) Workers attended inductions (some quite lengthy) and were tested on their understanding of expected behaviours. Decision [133]

(5) Dog-handlers were part of a larger security operation which was run by the end-clients. Decision [134]

(6) The decision as to how many dogs were needed, and how long searches would take, was made by the clients in conjunction with the search adviser (provided by the Applicant). The search adviser would issue directions to the handlers at the venue by

giving them the ‘tasking sheets’, telling them what they needed to do. The dog handlers followed the directions of the end-client as to what kinds of searches to carry out and where to do them, provided those directions were safe and not unreasonable. The handlers would be required to follow client protocols, insofar as they were safe and reasonable. For example, they were required to follow Wimbledon’s protocols upon making a find. It was the client’s prerogative to create assignment instructions for their venues, within reason. The dog-handlers were expected to follow these instructions. The search advisers directed the individual handlers as to the tasks they specifically were to perform. Decision [135]

(7) The dog handlers followed the directions of the end-client as to the manner of the searches, again providing those directions were reasonable. Decision [137]

(8) The search manager (or the equivalent role in the client’s security set-up) was able to supervise and check that the searches were being done as they are meant to be done, in liaison with the search advisor. Upon making a find, but before starting a search, the handlers would have to call the site control room and inform them of the find. Decision [139]

(9) Whilst nobody interfered with the searches in this appeal, the searches were decided and dictated to the dog-handlers. The dog-handlers were told the order in which the searches are to be done. The client can, and does, dictate the type of search, the protocols that must be adhered to, and the dress code. The Applicant had standard operating procedures, which had to be followed by the dog-handlers; and which are to do with the actual work that is being performed. Clients were able to supervise how the work was done. For instance, in relation to Wimbledon, the security manager has “feet on the ground” and observes how the searches are being performed. That is supervision. Decision [146]

28. Mr Young stressed that it is “the manner in which the worker provides the services” which must be subject to SDC by another person, and (he submitted) some of the features identified by the FTT (where/when a contractor was required to work and the need to wear a uniform were his examples). I accept that a contractor being required at a particular place/time (Craven Cottage between 12-4pm on a particular Saturday, for example) does not go to the “manner” in which services are provided once he gets there, nor does the need to wear a uniform or adhere to a particular dress code. But there are lots of other features picked out by the FTT (and summarised above) which very much do go to the “manner” in which the contractors performed their services.

29. The Applicant’s suggestions that not even it could control the dog-handlers and that “The only evidence before the FTT was that the sub-contractors in performing their search dog duties were neither supervised, nor controlled in the way they performed their services” (see Application [38]-[39]) are wholly at odds with the FTT’s findings. At Decision [126] the FTT said that the Applicant would pick up failures to follow its standard operating procedures or protocols given by the client or to do the searches contractors were told to. All that points to SDC over contractors’ work, as do many of the other findings of fact by the FTT summarised above.

30. The FTT’s conclusion on SDC is entirely justified by the facts it found.

31. This ground discloses no error of law.

Was the FTT right not to have considered whether the Determination was made to best judgment? [Grounds (4) and (5)]

32. The FTT noted at Decision [52] and [53] that HMRC had written to it and the Applicant “stating, inter alia, that the Grounds of Appeal do not make any reference to best judgement, or indicate an intention to challenge HMRC’s use of best judgement under reg. 80(2) of the PAYE Regulations in respect of the Determination.” Later HMRC wrote asking the Applicant to amend its Grounds of Appeal, if it wished to raise these issues, which the Applicant did not do.

33. I have not seen the Grounds of Appeal, but I have read the correspondence around the question whether “best judgment” was before the Tribunal, and the need for the Applicant to amend its Grounds of Appeal and fully plead out the issue was very clearly flagged to the Applicant. For example, on 10 July 2025 Hannah Cormack of HMRC wrote to the Applicant’s solicitors, making (inter alia) the following comments:

“For the reasons set out in our skeleton and expanded upon below, we disagree with you that best judgment is properly before the Tribunal.

Before going further, we should be clear about what is meant by the issue of ‘best judgment’. Reg 80(2) of the 2003 Regulations provides, “HMRC may determine the amount of that tax to the best of their judgment, and serve notice of their determination on the employer”. The requirement for HMRC to use “the best of their judgment” is therefore concerned only with the determination of the amount of tax to be included in a Reg 80 assessment.

To the best of our knowledge, the appellant has never contested the quantum of the Reg 80 determination for 2017/18 (whether as originally assessed or in the new lower figure following a review). Its challenge has been to the question of whether it was liable for any income tax. Indeed, you stated this expressly in your letter of 24 April 2024 [B/147], saying, “Equally, the offer of mediation in the present circumstances would not resolve matters. If the issue was purely one of quantum of assessment, this might be different, the issue here is a question of law without any middle ground.

[She then set out the chronology of pleadings and relevant inter partes correspondence]

As far as we are aware, you did not respond to those last two communications from HMRC concerning the grounds of appeal, and nor did you seek to amend the grounds of appeal. You did not seek a judicial determination of whether best judgment was in issue in this appeal.

It is accepted that the burden of proof to determine the validity of an assessment is on HMRC. That is why HMRC’s positive case was set out in their Statement of Case. However, binding authorities have repeatedly made the point that it is not sufficient for the party without the burden simply to put the other party to proof.

[She then referred to relevant authorities]

We repeat that no positive case has been advanced in the appellant’s grounds of appeal and no application has been made to amend those grounds to include that positive case. It is now too late to do so. HMRC would be potentially prejudiced by a lack of witness evidence if you were allowed to advance such a case now (albeit that we repeat the following points: ‘best judgment’ is concerned with quantum; there has never been any challenge to quantum; and the basis upon which quantum was calculated is the information provided by your client as to the invoices paid to individual dog handlers in 2017/18).

As to your suggestion that the determination of quantum was ‘capricious’, this is a serious allegation which is unparticularised.”

34. As well as the Decision, I have read the transcript of the Hearing and note that there was a lengthy and full discussion of this issue on the morning of the first day of the Hearing.

35. The FTT dealt with this topic at Decision [71]-[76]. At Decision [75] it recorded its conclusion that the Applicant did not seek (in its Notice of Appeal or Grounds of Appeal) to challenge the Determination on “best judgment” grounds and (at [76]) it recorded its finding that “HMRC satisfied the obligation in reg. 80(2) to determine the amount of tax due to the best of their judgment”.

36. At Decision [65] the FTT noted that Mr Young sought to advance the argument that the Determination had been raised capriciously, but went on to say that he could not gainsay the fact that the Applicant’s Grounds of Appeal did not raise the issue of whether the Determination was to ‘best judgment’.

37. Even though the burden of proof is on HMRC to show that it satisfied the best judgment criteria, and even though it addressed the issue in its statement of case (which Mr Young wrongly equates with HMRC putting the point into play), an appellant who wishes to put “best judgment” in issue must clearly flag that point in its Grounds of Appeal or apply for permission to amend its Grounds of Appeal to include that ground if not originally included. HMRC can be taken to have discharged its burden if an appellant does not raise the best judgment issue before the FTT. Authority for this approach can be found in *Kingston Maurward College v HMRC*, [2023] UKUT 00069 (TCC), where the UT (at [13]) approved these comments by Judge Mosedale in *Allpay Ltd v HMRC*, [2018] UKFTT 273 (TC) at [18]:

“If the person with the burden of proof was required to prove everything, even those matters which the other party had not clearly disputed, then preparation for, and hearings of, appeals would be much longer and a great deal of time and money would be wasted. Moreover, trial by ambush is not justice: each party should be able to prepare to meet the other party’s case in advance of the hearing to increase the likelihood that the outcome of the appeal will be in accordance with the true facts of the case. Each party must therefore state in advance in summary terms what is in dispute and why.”

38. There is also this proposition from the UT’s decision in *Fairford Group plc v HMRC* [2014] UKUT 329 (TCC):

“[20] ... it is not procedurally fair for the party without the burden of proof to do no more than say the other party must prove every part of their case. Both parties should set out the key parts of their legal and factual case in advance.”

39. The approach the FTT took to this issue is entirely consistent with the approach endorsed in these cases, and the need to plead out allegations of capriciousness or lack of best judgement was clearly flagged to the Applicant’s advisers.

40. This ground discloses no error of law.

Ground (2)

41. The Applicant raises a point on section 45 ITEPA. This section is addressing situations where a worker receives a retainer or similar payment in relation to the actual or potential supply of services in the future. It does not introduce any new condition for liability under section 44 where services have been provided, which is all we are concerned with.

42. This ground discloses no error of law.

Ground (3)

43. The Applicant says that the amount HMRC has calculated as due includes amounts which are not “remuneration” as defined by section 47(3)(a), as it includes amounts which would not constitute employment income. The Applicant does not say why this is the case, but presumably (looking at the costs it identifies) its point is that the contractors have incurred expenses, which would be deductible in calculating earnings if incurred by an employed dog-handler, and “remuneration” should be construed as a reference to earnings net of expenses.

44. I cannot see in the Decision any discussion of whether the quantum of HMRC’s assessment is correct, as opposed to the question of principle, whether the agency legislation applied. Indeed, the FTT said (at Decision [3]) that the “sole issue” was whether the agency legislation applied and the letter from Ms Cormack (reproduced in part at [32] above) suggests that quantum was never raised as an issue.

45. As a result, the FTT did not address secondary questions such as whether the PAYE regime applied to the full amount of the payments made by the Applicant or whether the regime might only apply to part of the payments and, if so, how (given the other engagements the dog-handlers had) the amount from which the Applicant should deduct PAYE should be calculated. In context (a self-employed contractor where one or more engagements are within section 44) I cannot see how “remuneration receivable” can be a reference to anything other than the total amount paid to the contractor (excluding, HMRC say (see [50] below), any amount charged in respect of VAT). Any other reading strikes me as completely unworkable.

46. None of that matters because, given the single issue before it, the FTT was clearly correct not to address the quantum of the Determination and there is no error of law here.

47. Discussing this point during the oral reconsideration led me to ask Mr Young how a contractor’s income tax liability would be calculated and which expenses a contractor incurred would be deductible. Mr Young was unable to address me in detail on that issue and, whilst HMRC had sent observers, there was no one representing HMRC. As a result, I asked Mr Young and HMRC to provide brief submissions on this issue.

48. The reason for this is that I became concerned that a self-employed dog-handler who had a significant number of engagements with the Applicant (or similar agencies) might end up in a materially worse income tax position than a dog handler who was self-employed (with no such engagements) or who had a single full-time employment. I wondered whether Parliament would have wanted that result and, if my concern about deductibility of expenses was well-founded, whether that might suggest that the provision we are concerned with is restricted to arrangements which are little more than the provision of individuals’ time/labour/effort and do not extend to arrangements which involve a material element of cost/provision of something else.

49. My concern arose because of the relatively narrow scope of section 336 ITEPA (the general rule for deductions of employment expenses) and my wondering whether the contractors’ dog-related costs (food/training/vet/insurance etc) might not be deductible, for example because it was no part of any individual engagement to maintain (as opposed to just to turn up with) a dog and/or because no part/traceable proportion of any of these costs is linked to a particular engagement – their main purpose being presumably to keep the dog alive, well and ready for whatever the contractor wants it to do; cf the commentary in EIM31653 and EIM31661.

50. The parties provided submissions, for which I am grateful, but nothing they said allayed my concern on this point or really addressed it in any detail. HMRC did helpfully confirm that the VAT element of any payment “is not earnings and therefore is not included in the above

calculations” (the “above calculations” refers to a simple worked example I asked the parties to think about) and also confirmed that the contractors’ costs for home-to-work travel and associated subsistence would generally not be deductible because they would constitute ordinary commuting as a result of section 339A ITEPA expressly treating each engagement as a separate employment for the purposes of the travel expenses rules. That might indicate an acceptance on Parliament’s part that someone providing services under an arrangement within section 44 ITEPA might end up in a worse tax position than an individual providing similar services who was self-employed (with no such engagements) or who had a single full-time employment.

51. It is not the role of a permission to appeal application to seek to resolve issues such as this. It is enough that there are unresolved issues around the deduction of expenses by the contractors (and, by extension, others in analogous situations) which, if resolved against them, might suggest that the scope of section 44 should be restricted in the way suggested at [48] above.

52. I consider that a ground of appeal that the FTT erred in law by not deciding (for those reasons) that the services provided by the contractors did not amount to the personal provision of services within section 44(1)(a) ITEPA has a reasonable (more than a fanciful) chance of success.

53. I am prepared to grant permission to appeal on this basis only. To be completely clear, this does not extend to the fact that the dog handlers are self-employed or within the VAT regime; it is confined to this single narrow issue, which requires an examination of the extent to which the dog handlers’ costs are deductible and then a consideration of whether that might point to a narrower interpretation of section 44(1)(a).

54. As far as I can see, this point was not explored fully before the FTT (indeed it was not explored in detail in these terms before me until I asked Mr Young about it) but I can see hints of the point in the papers and HMRC did not object to this as being a new point.

Ground (5)

55. I agree with the Applicant that “best judgment” requires HMRC to consider all the material before it.

56. But, for the reasons discussed above, the question of “best judgment” was not before the FTT and so this issue was not one the FTT needed to consider.

57. This ground discloses no error of law.

Ground (6)

58. The Determination was raised because HMRC considered that the Applicant had not discharged its obligations under the PAYE Regulations in consequence of the agency legislation applying. The FTT concluded that there were amounts due under the PAYE Regulations which the Applicant had not accounted for.

59. Even though the contractors have fully discharged their own tax liabilities (albeit, presumably, they have paid self-employed income tax rather than income tax on employment remuneration), it remains the case that the Applicant has failed to discharge its obligations under the PAYE Regulations. I assume that there will be primary and secondary NIC liabilities too, but these do not seem to have been in issue and certainly nothing was said to me about them.

60. There are circumstances (regulations 72 and 81 of the PAYE Regulations) where HMRC may direct that an employer is not to be liable to make a payment otherwise due under the PAYE Regulations, but these were not raised before the FTT or before me.

61. In consequence of the Decision, there may need to be some “unravelling” of the tax paid previously by the contractors, but nothing was said (that I can see) in the FTT (it certainly was not before me) about that. In any event, none of this goes to the single question the FTT was concerned with: whether the Applicant has failed to discharge its obligations under the PAYE Regulations, which the FTT found it clearly had.

62. This ground discloses no error of law.

Disposition

63. I refuse permission on all grounds of appeal as originally advanced by the Applicant because they do not raise arguably material errors of law in the Decision. I am not satisfied that any of these grounds hold realistic prospects of success and there is no other compelling reason to grant permission to appeal on those grounds.

64. I grant permission to appeal on the single ground that the FTT made an error of law when it failed to address the points discussed at [48-49] above and in consequence decided that the services provided by the contractors amounted to the personal provision of services within section 44(1)(a) ITEPA.

Signed: MARK BALDWIN

JUDGE OF THE UPPER TRIBUNAL

Date: 10 October 2026

Issued to the parties on: 13th October 2026