

Neutral Citation Number: [2026] EWCA Civ 1494

Case No: CA-2026-000015

IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE UPPER TRIBUNAL (TAX AND CHANCERY CHAMBER)
MR JUSTICE FOXTON AND JUDGE ANNE REDSTON
[2025] UKUT 00374 (TCC)

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 27/11/2026

Before:

LADY JUSTICE KING
LORD JUSTICE NUGEE
and
LADY JUSTICE FALK

- -

Between :

MICHAEL SAUNDERS	**Appellant**
- and –	
THE COMMISSIONERS FOR HIS MAJESTY'S REVENUE AND CUSTOMS	**Respondents**

- -
- -

Michael Firth KC for the **Appellant**
Georgia Hicks (instructed by **HMRC Legal Group**) for the **Respondents**

Hearing date: 27 October 2026

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Approved Judgment

This judgment was handed down remotely at 10.00am on 27 November 2026 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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Lady Justice Falk:

Introduction

1. The appellant, Mr Michael Saunders, seeks to challenge a closure notice under which HMRC determined that a sum of £1,236,956 received by him in January 2017 pursuant to a stock appreciation rights ("SARs") arrangement was subject to tax as employment income. Mr Saunders maintains that, following *Abbott v Philbin (Inspector of Taxes)* [1961] AC 352 ("*Abbott v Philbin*"), the chargeable event for employment income tax purposes was the "vesting" of the SARs between 2013 and 2015 rather than the receipt of the payment. Mr Saunders argues that the ratio of *Abbott v Philbin* mandates the conclusion that the payment derived from his rights under the SARs arrangement and not from employment.

2. Mr Saunders' challenge failed in the First-tier Tribunal ("FTT") and Upper Tribunal ("UT"), and he now appeals with the permission of the UT.

3. We heard submissions from Mr Michael Firth KC for Mr Saunders and Ms Georgia Hicks for HMRC. We are grateful for their assistance.

4. For the reasons that follow, I would dismiss the appeal.

The facts

5. Mr Saunders was employed by a company called Hibernia Atlantic UK Limited ("HAUKL") from 2008 until 31 July 2016. HAUKL was part of the Hibernia group of companies (the "Group").

6. In March 2013 the parent company of the Group (the "Parent"), at the time an Icelandic company called Hibernia Group ehf, adopted an incentive arrangement called the Hibernia Group ehf 2013 Long Term Incentive Plan (the "LTIP"). Its stated purpose was to "promote the long-term success of the [Group] and the creation of shareholder value" by offering individuals an "opportunity to share in such long-term success".

7. The LTIP worked as follows:

    a) Participants would be awarded SARs through the entry into of a SARs agreement between the individual employee and the Parent.

    b) SARs amounted to a promise to pay a sum to the participant in the event of a transaction involving either i) a sale or exchange of all of the Parent's shares (a "Sale"), or ii) a sale of at least 43% but less than 100% of its shares (a "Liquidity Event").

    c) The amount to be paid was determined by reference to the amount by which the fair market value of the shares at the date of the Sale or Liquidity Event exceeded a stipulated base amount (or "grant price") determined by the Parent's board at the time of the award, as well as, for a Liquidity Event, by reference to the proportion of the shares sold. The obligation was to pay in cash or such other form of consideration as the shareholders received.

d) A SARs holder was said to have "no rights other than as a general creditor" of the Parent, and the SARs were stated to "represent an unfunded and unsecured obligation" of that company. (Similar wording was also included in the agreement with Mr Saunders referred to in the next paragraph, together with a right of set-off against debts owed by Mr Saunders to any member of the Group.) More generally, it was also made clear that a SARs holder would obtain no rights as a shareholder, such as voting rights.

e) SARs would "vest" in 25% tranches on the completion of years of service following the award, subject to provision being made in the individual SARs agreement for earlier vesting.

f) "Good leavers" would benefit from accelerated vesting of SARs with respect to the year of service in which they left, but otherwise unvested rights would be forfeited at the point of termination. For other leavers, all unvested SARs would be forfeited on termination. (I note that the FTT indicated that "bad" leavers would lose their vested as well as unvested SARs, but that is not my reading of the arrangements.)

g) For all leavers, the entitlement to payment in respect of vested rights was conditional upon a Sale or Liquidity Event happening within 2 years of termination of employment. If no such event occurred, the rights would expire.

h) Subject to the early termination position for leavers, SARs ordinarily had a 15-year term.

i) SARs were stated to be non-assignable other than through inheritance or (broadly, and in certain circumstances) to immediate family members.

8. On 4 April 2013 Mr Saunders entered into a SARs agreement with the Parent (the "SARs Agreement"). Pursuant to the SARs Agreement he was granted 157,887 SARs at a grant price of US$1.32 and 291,667 SARs at a grant price of $1.38. Some of these SARs were stated to vest immediately. The SARs Agreement provided for the remainder to vest in three instalments on 1 July 2013, 1 July 2014 and 1 July 2015.

9. It follows that, when Mr Saunders left his employment on 31 July 2016, all his SARs had vested. So far as relevant, he also departed as a "good leaver". The following day, Mr Saunders left the UK and ceased to be UK tax resident.

10. On 9 January 2017 Mr Saunders received notice that Hibernia NSG, an Irish incorporated company that had by then replaced Hibernia Group ehf as the Parent, had been sold to a third party. This was a "Sale" that triggered an entitlement to be paid under the SARs Agreement. The sum of £1,236,956 already referred to (the "Payment") was made by HAUKL in satisfaction of that entitlement. The Payment was made subject to deduction of tax. The tax deducted was initially repaid based on Mr Saunders' status as a non-resident, but following an enquiry into his tax return for the year ended 5 April 2017 HMRC determined that the Payment was subject to income tax.

The decisions below and this appeal

11. The FTT (Judge Jeanette Zaman and Mohammed Farooq, [2024] UKFTT 300 (TC)) and the UT (Foxton J and Judge Anne Redston, [2025] UKUT 374 (TCC)) had to consider

two issues. The first was whether the Payment comprised earnings from Mr Saunders' employment. The second was whether, even if it did, it was attributable to the part of the tax year after Mr Saunders became non-UK tax resident, such that he could benefit from so-called "split year" treatment, or whether it was instead earned for services performed while he was UK resident. Mr Saunders lost on both issues in the FTT and in the UT, and did not seek to maintain his challenge on the second issue in this court.

12. The FTT's core reasoning on the first issue is at [51]-[56] of its decision. The FTT decided that *Abbott v Philbin* could not have the effect that any right to a deferred payment was taxable, rather than the payment itself being subject to tax. Instead, both the entitlement to the Payment and its receipt arose from the employment relationship. The conditions in the SARs arrangement did not break the causal relationship between the Payment and employment. The Payment was a reward for services, and that fact was not changed because the quantum and conditions for payment were not directly linked to the performance of Mr Saunders' duties. The FTT reached these conclusions notwithstanding the fact that it did not accept HMRC's argument that nothing could be realised from the SARs either on grant or vesting, albeit that it recognised that there would be "considerable difficulties" in trying to place a value on them ([52]).

13. On the "split year" issue, the FTT concluded that the Payment was part of Mr Saunders' reward for services for the period between 2013 and his departure in July 2016.

14. The UT agreed with the FTT's conclusion on both issues. On the first issue it applied a test of whether, on a realistic analysis, Mr Saunders' earnings were the value of the SARs when granted or the value of the Payment when received (UT decision at [61]). The UT referred to a number of features that distinguished the right Mr Saunders received from the option considered in *Abbott v Philbin*, including the nature of options as an asset class, the difficulty in valuing the SARs, the nature of the contingencies to which the SARs were subject and Mr Saunders' lack of control over whether he would receive anything, or its timing or amount ([63]).

15. The single ground of appeal to this court is that, on a correct interpretation of the law and the authorities, the chargeable event for employment income tax purposes was the vesting of the SARs, rather than any later payment. Mr Saunders contends that the Payment was derived from his rights under the SARs Agreement, and not from his employment with HAUKL.

16. HMRC have filed a Respondent's notice which raises various alternative arguments that I will address to the extent required.

The statutory framework and case law background

17. In order to address the issue raised by the appeal it will be necessary to consider the relevant case law in some detail. I will do so after first summarising the statutory framework.

18. Part 2 of the Income Tax (Earnings and Pensions) Act 2003 ("ITEPA") imposes the charge to income tax on employment income. Relevantly for present purposes, section 6 of ITEPA charges tax on "general earnings", which is in turn defined in section 7 to include earnings within Chapter 1 of Part 3 of ITEPA.

19. Chapter 1 of Part 3 comprises section 62, which provides:

> "**62. Earnings**
> (1) This section explains what is meant by "earnings" in the employment income Parts.
>
> (2) In those Parts "earnings", in relation to an employment, means –
> (a) any salary, wages or fee,
> (b) any gratuity or other profit or incidental benefit of any kind obtained by the employee if it is money or money's worth, or
> (c) anything else that constitutes an emolument of the employment.
>
> (3) For the purposes of subsection (2) "money's worth" means something that is –
> (a) of direct monetary value to the employee, or
> (b) capable of being converted into money or something of direct monetary value to the employee…"

20. It is clear from the Explanatory Notes to the Bill that became ITEPA that section 62 was intended to reflect earlier case law, including *Tennant v Smith (Surveyor of Taxes)* [1892] AC 150 ("*Tennant v Smith*"), discussed below.

21. It is also convenient to set out here relevant parts of sections 18 and 19 of ITEPA, which govern timing of receipt:

> "**18. Receipt of money earnings**
> (1) General earnings consisting of money are to be treated for the purposes of this Chapter as received at the earliest of the following times—
> *Rule 1*
> The time when payment is made of or on account of the earnings.
> *Rule 2*
> The time when a person becomes entitled to payment of or on account of the earnings…
>
> **19. Receipt of non-money earnings**
> (1) General earnings not consisting of money are to be treated for the purposes of this Chapter as received at the following times.
> [Subsections (2) and (3) refer to specific provisions not in issue in this case.]
> (4) If subsection (2) or (3) does not apply, the earnings are to be treated as received at the time when the benefit is provided."

22. There is a helpful starting point for a consideration of the case law in the judgment of Lord Hodge (with whom Lord Neuberger, Baroness Hale, Lord Reed and Lord Carnwath agreed) in *RFC 2012 plc (in liquidation) (formerly The Rangers Football Club plc) v Advocate General for Scotland* [2017] UKSC 45, [2017] 1 WLR 2767 ("*Rangers*"). The central issue in *Rangers* was whether the charge to tax on employment income required the remuneration in question to be received by the employee. In reaching the conclusion that this was not the case, and instead that the general rule is that the charge to tax extends to money paid to a third party, Lord Hodge identified three exceptions at [41]. The first was that section 62(2)(b), unlike the other provisions of section 62(2), specifies receipt by the employee. The second is a case where a benefit is provided that is not earnings

because it cannot be converted into money (see at [46]). The third is an arrangement where the payment "does not give the intended recipient an immediate vested beneficial interest but only a contingent interest".

23. The first and third exceptions are considered below. The second exception, which is now affected by separate statutory rules that tax specified types of benefit, is not relevant and I will make no further reference to it.

24. As to the first exception, Lord Hodge explained at [42]-[45] that section 62(2)(b) was intended to be the modern equivalent of the prior statutory reference (under what was then Schedule E) to "perquisites and profits", and that the reference to money or money's worth was intended to be the statutory expression of case law that made taxation of any perquisite (colloquially, a "perk") dependent on it being capable of being converted into money.

25. The House of Lords authorities referred to by Lord Hodge in support of the first exception were *Tennant v Smith*, *Abbott v Philbin* and *Heaton (Inspector of Taxes) v Bell* [1970] AC 728 ("*Heaton v Bell*"). I will consider these and two further authorities, *Weight (Inspector of Taxes) v Salmon* (1935) 19 TC 174 ("*Weight v Salmon*") and *Wilkins (Inspector of Taxes) v Rogerson* [1961] Ch 133 ("*Wilkins v Rogerson*"), in chronological order.

26. In *Tennant v Smith*, the House of Lords held that a bank manager, Mr Tennant, who was required to occupy banking premises under the terms of his employment, and who could not sublet or use the premises for other purposes, was not taxable on the value of his occupation. Any benefit obtained was not a "perquisite or profit". It could not be "turned" or "converted" into money (Lord Halsbury LC at pp.156 and 157, Lord Macnaghten at p.163, Lord Field at p.164 and Lord Hannen at p.165). As Lord Watson said at p.159 it was not:

> "something acquired which the acquirer becomes possessed of and can dispose of to his advantage—in other words, money—or that which can be turned to pecuniary account."

27. In *Weight v Salmon* a director of a company who had been allowed to subscribe for shares at their par value was held to be taxable on the difference between their market value when acquired and the price paid. The only substantive speech in the House of Lords was by Lord Atkin, who explained at pp.193-194 that it was not necessary to consider whether there was a perquisite because the statutory alternative of any "profit whatsoever" was satisfied. There had been no prior right to acquire the shares but, once acquired, they could be realised immediately.

28. Turning now to *Abbott v Philbin*, Mr Abbott was a company secretary who, for a price of £20, was granted an option to acquire 2,000 shares in the company. The option was granted in October 1954. It was non-transferable and had a 10-year life, but would also expire on earlier termination of Mr Abbott's employment (see the UT's decision at [27] clarifying that last point by reference to the House of Lords case papers). Mr Abbott exercised the option in respect of 250 shares in March 1956, at a time when the market price of the shares exceeded the option exercise price. He was assessed to income tax for the tax year ended 5 April 1956 on the basis that he had received an emolument of his

employment in the form of his profit, namely the difference between the exercise price and the market value of the shares acquired (with an allowance for the cost of the option).

29. By a majority of three to two (Viscount Simonds, Lord Reid and Lord Radcliffe, Lord Keith and Lord Denning dissenting), it was held that Mr Abbott was assessable on the grant of the option in the tax year ended 5 April 1955, since the relevant perquisite or profit comprised the monetary value of the grant of the option.

30. Their Lordships' focus on the year of grant reflected the Crown's case, which reasoned from the grant of the option not being taxable as an emolument to a conclusion that the later profit was taxable, it not being contended that both events gave rise to charges to tax (see Viscount Simonds' speech at p.365 and that of Lord Radcliffe at p.377). For his part, Mr Abbott accepted that he had received a perquisite when the option was granted but maintained that he was not taxable on the subsequent increase in value (see Lord Reid's speech at p.370). It is for that reason that, rather oddly, the ratio of *Abbott v Philbin* is that the taxable event occurred in the year of grant, despite that tax year not actually being the subject of the appeal.

31. Viscount Simonds observed as follows at p.365:

> "My Lords, I cannot entertain any doubt that, when the company granted the option to [Mr Abbott], he acquired something of potential value. I do not think that it matters whether it falls into the category of proprietary or contractual right, or into some dim twilight that divides those juristic conceptions. We are concerned with a taxing statute whose language is to be reconciled with the law of England and Scotland alike, and the chosen words 'perquisite or profit whatsoever' are as wide and general as they well could be. I can concede no relevant limitation of their meaning except in the oft cited words of Lord Watson in *Tennant v Smith* that they denote 'something acquired which the acquirer becomes possessed of and can dispose of to his advantage – in other words, money – or that which can be turned to pecuniary account'."

32. Viscount Simonds rejected the argument that the bar on transfer of the option made a difference. There was nothing to prevent a sale of the shares as soon as the option was exercised and "there could be no difficulty in the grantee arranging with a third party that he would exercise the option and transfer the shares to him". The test was "whether it is something which is by its nature capable of being turned into money" (p.366). The Crown's argument failed on that basis, but in any event would have been rejected on the basis that, while the value on grant was a reward and/or incentive for past or future services, the value realised on exercise reflected the "adventitious prosperity of the company in later years" (p.367).

33. Lord Reid observed at p.370 that it followed from the Crown's case that Mr Abbott could receive 10 different perquisites if he continued partial exercises over the life of the option, with different taxation treatment depending on the market price on each exercise (even if the shares were retained). After referring to *Tennant v Smith*, Lord Reid agreed that "the question is whether this option was a right of a kind which could be turned to pecuniary account", but added that "the test must be the nature of the right and not whether this particular option could readily have been turned to pecuniary account in October, 1954". That was a question of fact about which there was no finding, but there

was nothing to indicate that it would have been difficult to find "someone who would have paid a substantial sum for an undertaking by [Mr Abbott] to apply for the shares when supplied with the purchase money and called upon to exercise the option and thereupon to transfer the shares" (p.371). (Lord Reid also referred at p.375 to the ability to turn an option to account through exercising it and immediately selling the shares.)

34. As to the Crown's argument that an option did not have the necessary qualities to make it a perquisite, that argument was based on the nature of the right rather than any special difficulty in turning it to account. However, if a right could be turned to pecuniary account then nothing more was needed (p.372).

35. At p.375 Lord Reid addressed an argument that conditionality could make a difference. He considered that it would not do so if the condition was one with which the taxpayer could readily comply, but observed that it could make a difference if the condition could not immediately be complied with. He also contrasted *Weight v Salmon*, saying that in that case there was no enforceable right until the shares were provided.

36. Lord Reid emphasised at p.375-376 that his reasoning did not depend on the terms of the particular option; rather, the question was whether "rights of that class are perquisites and capable of being turned to pecuniary account". Conditions and restrictions might affect value but were only relevant to the question whether the option was a perquisite "if they would in law or in practice effectively prevent the holder of the option from doing anything when he gets it which would turn it to pecuniary account" (p.376).

37. Lord Radcliffe commented on *Tennant v Smith* as follows at pp.378-379:

> "I think that it has been generally assumed that this decision does impose a limitation upon the taxability of benefits in kind which are of a personal nature, in that it is not enough to say that they have a value to which there can be assigned a monetary equivalent. If they are by their nature incapable of being turned into money by the recipient they are not taxable, even though they are in any ordinary sense of the word of value to him. It is obvious that this conception raises many attendant uncertainties which are not, so far as I know, cleared up except where some particular class of benefit in kind has offended the eye of the legislature and has been dealt with by special legislation. Must the inconvertibility arise from the nature of the thing itself, or can it be imposed merely by contractual stipulation? Does it matter that the circumstances are such that conversion into money is a practical, though not a theoretical, impossibility; or, on the other hand, that conversion, though forbidden, is the most probable assumption?
>
> I do not think that the decision of this case can go very far, if any distance, to clear up such points as these. I think that the Revenue are right in saying that a line has to be drawn somewhere between convertible and non-convertible benefits, and that somehow we have to put a general meaning on the not very precise language used in *Tennant v. Smith*. What I do not think, however, is that a non-assignable option to take up freely assignable shares lies on that side of the line which contains the untaxable benefits in kind. The option, when paid for, was thereafter a contractual right enforceable against the company at any time during the next 10 years so long as the holder paid the stipulated price and remained in its service. That right is, in my opinion,

> analogous for this purpose to any other benefit in the form of land, objects of value or legal rights. It was not incapable of being turned into money or of being turned to pecuniary account within the meaning of these phrases in *Tennant v. Smith* merely because the option itself was not assignable. What the option did was to enable the holder at any time, at his choice, to obtain shares from the company which would themselves be pieces of property or property rights of value, freely convertible into money. Being in that position he could also at any time, at his choice, sell or raise money on his right to call for the shares, even though he could not put anyone he dealt with actually into his own position as option holder against the company. I think that the conferring of a right of this kind as an incident of service is a profit or perquisite which is taxable as such in the year of receipt, so long as the right itself can fairly be given a monetary value, and it is no more relevant for this purpose whether the option is exercised or not in that year, than it would be if the advantage received were in the form of some tangible form of commercial property."

38. Lord Radcliffe went on to say that, even if the grant was not taxable, the Crown's claim to tax in the year of exercise would have failed because the advantage was not a "perquisite or profit". It accrued to Mr Abbott as the holder of a legal right which he had obtained in an earlier year, and the profit was obtained from exploitation of that right. It would be "quite wrong to tax whatever advantages the option holder may obtain through the judicious exercise of his option rights in this way as if they were profits or perquisites from his office arising in the year when he calls the shares" (p.379).

39. I should pause at this point to mention that, in the context of share options, *Abbott v Philbin* has largely been reversed by statutory changes. There is a summary of the relevant legislative history of rules now contained in Part 7 of ITEPA in the judgment of Lord Reed in *UBS AG v Revenue and Customs Commissioners* [2016] UKSC 13, [2016] 1 WLR 1005 ("*UBS*") at [3]-[12]. However, it is common ground that these legislative developments do not affect the tax treatment of the SARs.

40. The next authority is the decision of this court in *Wilkins v Rogerson* (a decision I also considered recently in *Revenue and Customs Commissioners v M R Currell Limited* [2026] EWCA Civ 445, [2026] STC 822). As I explained there at [79]-[80], an employer had decided to offer employees an item of clothing, made to the employer's order by a named tailor, as a Christmas present. Mr Rogerson took up the offer and had a suit made at the cost of £14 15s. The employer contracted with and paid the tailor. Mr Rogerson was assessed to tax on £14 15s as income under Schedule E, but the Special Commissioners reduced this to tax on £5, being the second-hand value of the suit. This court agreed. What Mr Rogerson got was a suit, and that was taxable because it could be turned into money by selling it. The position would have been different if Mr Rogerson had incurred a debt to the tailor which the employer discharged.

41. *Heaton v Bell* concerned a voluntary car loan scheme in which the taxpayer, Mr Bell, participated. Participation involved agreeing to give up part of his weekly wage, in an amount which varied depending on the type of car and was reduced as the car aged. He could cancel the arrangement on 14 days' notice. Mr Bell was assessed on the amount by which his wages were reduced. It was held (Lord Reid dissenting) that on a true interpretation of the arrangements Mr Bell's wages remained unaltered, so he was taxable on that basis. However, it was held in the alternative by Lord Reid, Lord Morris and Lord

Diplock (Lord Hodson and Lord Upjohn dissenting) that the free use of the car was a perquisite of a value equal to the wages given up.

42. Lord Reid approved *Wilkins v Rogerson* at p.745, observing that Mr Rogerson could not sell the right to the suit (which would have been worth almost as much as the tailor's price) but only the suit when he got it. He concluded at p.746 that:

> "the recipient of a perquisite other than a sum of money can be assessed, and can only be assessed, on the amount of money which he could have obtained by some lawful means by the use or in place of the perquisite."

On the facts of the instant case, Mr Bell could surrender the right to the car and obtain increased wages, and should be taxed on that basis.

43. Lord Morris similarly approved *Wilkins v Rogerson* at p.755, noting that the opportunity to acquire the suit could not be realised but the suit could be, and explained that the right to use the car could be converted into money by the simple process of giving 14 days' notice.

44. Lord Diplock indicated at pp.763-765 that, without prior authority, he would have regarded the free use of a car as a perquisite without more, but the "judicial gloss" placed by *Tennant v Smith* had been consistently accepted, in particular in *Abbott v Philbin*. As to what that meant:

> "In any such inquiry one must strive to avoid the all too tempting error of construing the actual words used in the speeches of the individual Lords of Appeal to express the concept which they had in mind as if those words formed part of the statute itself. What one is seeking are the characteristics of the taxable benefit in kind which are alluded to by those words. The underlying reason, as I think, for ascribing to the word 'perquisite' in the Income Tax Acts a more restricted meaning than in ordinary speech is the simple notion that since income tax is payable in money, Parliament cannot have intended to exact it from employees in respect of benefits in kind from which the employee cannot himself by dealing with, forgoing or disposing of the benefit raise money to pay the tax."

45. Lord Diplock accepted the Crown's argument that the ability to give up the car for higher wages meant that the benefit could be turned to account, having found nothing in *Tennant v Smith* to suggest that their Lordships "intended to exclude from 'perquisites' chargeable to tax benefits in kind which enable the employee to put money into his pocket by forgoing them even though he cannot otherwise deal with or dispose of them" (p.766).

46. Returning to *Rangers*, Lord Hodge considered the third exception to which he had referred, namely that the employer's payment does not give the intended recipient an immediate vested beneficial interest but only a contingent interest, at [47] and [48] by reference to the cases of *Edwards (Inspector of Taxes) v Roberts* (1935) 19 TC 618 ("*Edwards v Roberts*") and *Forde and McHugh Ltd v Revenue and Customs Commissioners* [2014] UKSC 14, [2014] 1 WLR 810 ("*Forde and McHugh*").

47. In *Edwards v Roberts*, this court considered a "conditional fund" into which an employer had made annual payments for the benefit of an employee, with the amounts being

invested in shares or debentures stock of the employer. The employee, Mr Roberts, obtained an immediate right to the income of the fund but could in most circumstances benefit from capital only after five years (in practice six), and could lose any right to it in some circumstances, including dismissal for misconduct or an attempt to assign his interest in the fund. Mr Roberts resigned with consent and received a transfer of the shares held by the trustees. His argument that he was taxable at the point of the annual contributions rather than when he received the benefit of the fund was rejected.

48. The Court of Appeal treated the question as one answered by the correct interpretation of the arrangements, and distinguished the earlier case of *Smyth v Stretton* (1904) 5 TC 36 on that basis. Lord Hanworth MR posed the question as being whether the sums in question were emoluments that had accrued in the earlier years but were deferred, or (as the court concluded) amounts which accrued and became payable only after the five year period had elapsed (pp.637-638). As he put it at p.638, "there could not be said to have accrued to this employee a vested interest in these successive sums placed to his credit, but only that he had a chance of being paid a sum at the end of six years if all went well". Romer LJ reached the same conclusion, observing at p.640 that:

> "If an employer agrees to pay his employee a salary of so much a year and agrees that when the employee leaves the service or is dismissed he shall receive, say, a lump sum of £500 in addition, it is impossible to say that that £500 is an emolument in respect of any year other than the last year of service."

49. Maugham LJ also concluded that the true nature of the arrangement was that Mr Roberts had an entitlement to the investments only in the events specified in the agreement. That was a conditional right.

50. *Forde and McHugh* concerned whether the charge to national insurance contributions (NICs) on earnings applied to sums paid into a trust to secure contingent benefits. As Lord Hodge noted in *Rangers*, the conclusion that NICs did not arise before the contingency was met prevented NICs arising on both the payment into and out of the trust. That was the main reason for rejecting HMRC's case that payments into the trust were subject to NICs. However, it is worth noting that a subordinate reason given for the conclusion was that Mr McHugh received only a contingent interest in the fund, which would not have been simple to value, and that the revenue's focus on the payment into the trust fund failed to address that point.

Mr Saunders' case in summary

51. In summary, Mr Saunders' case is that the ratio of *Abbott v Philbin* has the effect that he was taxable on his SARs when they vested, and not on the receipt of the Payment. At the point that they vested, the SARs were "earned". No more was required. The taxable amount was to be determined by reference to the value that could have been realised by turning the SARs to account.

52. Mr Firth submitted that the legislation and case law confirms that a benefit of any kind from employment is taxable if it is convertible. The legislation is intended to cast a broad net. Convertibility is the only requirement. The ratio of *Abbott v Philbin* is that if a right can be turned to pecuniary account, that is sufficient to make it a profit or perquisite, in which case (if it is from employment) the chargeable event is the year of its receipt. That

ratio directly covers this case. The wording of section 62(2)(b) of ITEPA ("any gratuity or other profit or incidental benefit of any kind obtained by the employee if it is money or money's worth") is extremely wide, and any emolument not caught by that provision would fall within section 62(2)(c). The explanatory notes to ITEPA confirm that section 62 reflected the previous legislation and case law. While the effect of *Abbott v Philbin* in relation to options has been substantially altered by statutory changes, the principle remains binding in respect of other rights.

Discussion

53. In my judgement, the FTT reached the correct conclusion and the UT correctly dismissed Mr Saunders' appeal.

54. Ms Hicks, for HMRC, correctly reminded us that this appeal concerns the tax treatment of a payment of £1,236,956 to Mr Saunders by his ex-employer (the Payment). The FTT concluded that the Payment was employment income and the UT agreed. Mr Saunders is seeking to escape tax on the Payment by asserting that what should have been taxed was the value of his contingent right under the SARs arrangement at some earlier point in time. He does so on the grounds that it would, he says, have been possible to monetise the value of that right by an arrangement with a third party. The means by which that would be done is not spelt out, but nonetheless Mr Saunders maintains that it was the conferring of the right that constituted taxable income, rather than the Payment.

55. It is important to bear in mind what the SARs arrangement actually comprised. Despite the references to "stock appreciation rights", "grant price" and the like, this was a purely financial arrangement. Mr Saunders obtained a contingent right to receive a sum in certain eventualities, calculated by reference to an increase in value of the Parent's shares over a specified amount. This was, in effect, a deferred and contingent bonus. If certain things occurred, Mr Saunders would receive some cash or, potentially, some other consideration[1]. "Vesting" removed one element of contingency but did not mean that Mr Saunders' entitlement was no longer contingent. Mr Saunders' entitlement remained contingent on a Sale or Liquidity Event occurring within a certain period.

56. Cases such as *Tennant v Smith*, *Abbott v Philbin* and *Heaton v Bell* all concerned rights to benefits in kind. The issues that arose were whether, when and by reference to what measure those benefits should be taxed. *Tennant v Smith* decided that (under the legislation then in force) a benefit in kind could not be taxed at all unless it could be turned to pecuniary account. *Abbott v Philbin* confirmed that a non-assignable option to acquire shares could be turned to account and so was taxable at the time of grant, such that the Inland Revenue's attempt to tax the benefit conferred by the option at the point of exercise failed. In *Heaton v Bell* the majority concluded that the benefit of the use of a car could be turned to account by reference to the amount of additional salary which could have been obtained if the car had been given up.

[1] As previously noted, the SARs arrangement contemplated that non-cash consideration would be payable if that was received by selling shareholders. However, it was not suggested that anything turns on that point and it is in any event difficult to see how it would be achieved, given that the arrangement was with the company being sold rather than its shareholders. As the terms recognised, SARs holders had, at most, rights as creditors.

57. None of these cases were dealing with a contingent right to the payment of a bonus or other amount. Mr Firth's reliance on some of the statements made in them illustrates the danger of taking comments out of their proper context and applying them in very different situations.

58. The real point of *Tennant v Smith* was that it determined that benefits in kind could not be taxed unless they were convertible into money. It did not determine that the conferring of a deferred, contingent, right to be paid an amount was itself taxable because that right could be turned to account. An employee would be astonished to learn, for example, that they must pay tax on the value of a contingent bonus before the contingency is satisfied (and even if it is never satisfied), because they might be able to do something to monetise their entitlement. If the employee were aware of Lord Macnaghten's well-known statement in *London County Council v Attorney General* [1901] AC 26, 35, they might point out that income tax "is a tax on income. It is not meant to be a tax on anything else".

59. Fortunately for that employee, that is not the law. Instead, the basic rule is that bonuses, like salary, are taxable when they are received. Section 18 of ITEPA (see [21] above) contains timing rules for monetary receipts which (ignoring some special rules for directors) will trigger taxation at the time that payment is made (rule 1), or at an earlier time when the individual becomes entitled to the payment (rule 2). That second rule will obviously not be engaged if the entitlement remains genuinely contingent. If Mr Saunders were correct, then the application of these rules would be frustrated. Rather than being taxed on sums when they are received or there is a legal entitlement to them, employees would become taxable earlier, and on an inherently uncertain amount.

60. So far I have referred to contingent bonuses. But a similar point applies to benefits in kind that will only be made available if a condition is met. Section 19 of ITEPA, also set out at [21] above, contains timing rules for the taxation of earnings not consisting of money. For benefits in kind that are not subject to specific statutory rules, section 19(4) of ITEPA provides that the "earnings are to be treated as received at the time when the benefit is provided".

61. On the face of it, therefore, such benefits are to be taxed when they are actually provided, and not earlier. Thus, for example, if an employment contract confers an entitlement to a benefit in kind in the future subject to a contingency being satisfied (such as remaining in employment, or a certain level of profit being made by the business), then the employee will not be taxed on the contingent right, but only on the actual benefit when received. Such an approach is consistent with cases such as *Edwards v Roberts*. In that case Mr Roberts was found to have obtained an entitlement to the investments only once he had resigned: see above.

62. I agree with Ms Hicks that Mr Saunders' approach is not consistent with *Edwards v Roberts*. The logical consequence of Mr Firth's argument is that the contingencies to which Mr Roberts' entitlement to the fund were subject would not have prevented taxation of his rights to the fund as they arose. The point is not addressed by arguing that Mr Saunders was taxable not on the initial creation of the SARs but only when the SARs vested, at which point the rights had been "earned". Vesting removed one element of contingency but it did not eliminate the existence of contingency: see [55] above.

63. What, then, is the principled basis on which to distinguish Mr Saunders' SARs from the option granted to Mr Abbott? In my judgement, it lies in the now well-established general

approach to the interpretation and application of tax legislation, namely that the definition of "earnings" in section 62 of ITEPA must be construed purposively and in the light of its context and the case law it was intended to reflect, and applied to the facts, viewed realistically. (For a summary of that approach, see for example *Rossendale Borough Council v Hurstwood Properties (A) Ltd* [2021] UKSC 16, [2022] AC 690 at [13].)

64. The SARs are clearly not themselves salary, wages or a fee within paragraph (a) of section 62(2), so the question is whether, on a realistic approach, they comprise a "gratuity or other profit or incidental benefit of any kind obtained by the employee" in money or money's worth (noting the definition of that concept in section 62(3)), or some other form of emolument. I do not consider that they do. The position might be tested by asking the notional reasonable person for his common-sense view. I do not consider that such a person would regard the grant or even vesting of Mr Saunders' SARs as a profit or benefit received by him. Rather, the reasonable person would regard the Payment itself as the relevant profit, or benefit. Before that, Mr Saunders obtained no real benefit at all.

65. Mr Firth criticised the way in which the UT distinguished the facts of this case from those in *Abbott v Philbin* and adopted a test of applying a realistic analysis of the facts. However, a realistic analysis of the facts is always required when applying tax legislation. The UT was entitled to consider the factual differences in concluding that the FTT had not erred in deciding that the Payment comprised employment income.

66. Options are indeed a recognised asset class (as the UT observed), and it was that asset class that was considered in *Abbott v Philbin*. As Lord Radcliffe emphasised, Mr Abbott's option conferred a right to acquire property in the form of shares. The creation of such a right can sensibly be regarded as itself comprising a benefit obtained by Mr Abbott, in the form of an asset which he acquired. In the words of Lord Watson in *Tennant v Smith*, it was something "possessed" by him. While another lawyer would agree with Mr Firth that Mr Saunders' rights under the SARs Agreement also comprised an asset, in the form of a chose in action, it is much less obviously a benefit acquired or obtained by him in commercial or lay terms. It is not a right to acquire property such as shares which (within limits) can be exercised at a time of the holder's choosing. It is just a contingent right to receive a payment of an uncertain amount if certain events occur. The profit, benefit or emolument lies in any payment that might ultimately be received under the arrangement, not in the creation of the right.

67. Further, the means by which the SARs could be turned to account (otherwise than by waiting for any payment) are far less obvious. The UT was entitled to observe that the majority in *Abbott v Philbin* saw little difficulty in the way of Mr Abbott's ability to turn his option to account. In contrast, and as I have said, the SARs were no more than a contingent right to be paid an uncertain amount if certain contingencies were met. Mr Saunders' ability to turn his SARs to account was not only hypothetical, but the mechanism for doing so was uncertain and the amount that could be realised from doing so was wholly unclear. Difficulties of valuation would be of a different order to those applying to Mr Abbott's option or Mr Rogerson's suit.

68. I have set out in some detail how the majority expressed themselves in *Abbott v Philbin*. Viscount Simonds and Lord Radcliffe both stressed the ease with which Mr Abbott could turn his option to account, including through exercising it and selling the shares. Lord Radcliffe clearly considered that point to be highly relevant to his conclusion as to which side of the line between convertible and non-convertible benefits the option fell (see [37]

above), a line which he obviously recognised as not being an easy one to draw. Lord Reid expressed his conclusions more generically in respect of the nature of option rights as a class, as opposed to the particular option in issue, and he suggested that the only criterion was the ability to turn a right to account. However, he also made clear that there was nothing to indicate that there was any difficulty in turning Mr Abbott's option to account ([33] above), and indicated that conditionality could make a difference, at least if it would either legally or in practice prevent the right being turned to account ([35] and [36] above). I can detect nothing in the speeches of the majority that compels the conclusion that the grant (or vesting) of something that is not an option, but instead a very different kind of contingent right, should be treated as a taxable event merely because it might theoretically be possible for Mr Saunders to realise some value from it.

69. Similarly, in *Heaton v Bell* the House of Lords' decision that Mr Bell had received a taxable perquisite was based on his ready ability to give up his car for higher wages: see [41]-[45] above.

70. I acknowledge that some cases involving options to acquire shares will be closer to the line referred to by Lord Radcliffe than others. This is illustrated by the decision of Vinelott J in *Williamson (Inspector of Taxes) v Dalton* [1981] STC 753, where exercise of the option in issue was not possible for seven years and was also subject to contingencies. Vinelott J was nonetheless persuaded, on balance, that the grant of the option was a perquisite, relying on Lord Reid's focus in *Abbott v Philbin* on the nature of the right (an option) and observing that value could have been realised by an arrangement with a third party of the kind referred to by Lord Reid and Lord Radcliffe (pp. 759-760). Another illustration (albeit in the context of the statutory rules that now govern options) can be seen in the decision of this court in *Charman v Revenue and Customs Commissioners* [2021] EWCA Civ 1804, [2022] 1 WLR 2277. However, this case does not involve an option, so those authorities are of limited assistance to Mr Saunders.

71. I am also not persuaded by Mr Firth's comparison between the SARs and the right to get a suit in *Wilkins v Rogerson*. In that case the suit could readily have been turned to account by selling it, and that was the basis of taxation. There was no need to consider whether any earlier right to the suit could have been taxed on a different basis, because as Lord Reid observed in *Heaton v Bell* such a right could not have been sold.

72. Mr Firth also relied on the discussions of *Abbott v Philbin* in *Grays Timber Products Ltd v Revenue and Customs Commissioners* [2010] UKSC 4, [2010] 1 WLR 497 ("*Grays*") and *UBS* (a decision referred to at [39] above) by Lord Walker and Lord Reed respectively. Both of these cases concerned Part 7 of ITEPA, the statutory code governing the taxation of benefits in kind in the form of shares or other securities. *Grays* concerned charging provisions in Chapter 3D of Part 7 relating to disposals of securities for a consideration in excess of market value, and *UBS* concerned whether the shares in question fell within special rules for so-called restricted securities in Chapter 2 of Part 7.

73. In an introductory passage in his judgment in *Grays*, Lord Walker referred to conflicting legislative purposes in taxing share incentive arrangements, namely 1) their economic and social value, 2) the need for contingency for such arrangements to be effective, and 3) the need to prevent unacceptable tax avoidance. Lord Walker commented at [5] that the second of these purposes "creates a problem because it runs counter to the general principle that employee benefits are taxable as emoluments only if they can be converted

into money, but that if convertible they should be taxed when first acquired", citing the last sentence of the extract from Lord Radcliffe's speech in *Abbott v Philbin* set out at [37] above. Lord Walker went on to explain at [6] that this principle of "taxing an employee as soon as he received a right or opportunity which might or might not prove valuable to him, depending on future events" was an uncertain and potentially unfair exercise (both for the employee and the exchequer) which was initially eased by concession and later by the adoption in many cases of a statutory "wait and see" approach.

74. *UBS* concerned the allocation of shares to employees in lieu of a cash bonus, and the question whether forfeiture provisions which did not have a business or commercial rationale (and which were offset by hedging arrangements) enabled the shares to qualify as restricted securities. In an introductory section addressing the background and context of the restricted securities rules, Lord Reed referred at [4] to *Abbott v Philbin* and cited a short passage from Lord Reid's speech at p.376 that I have summarised at [36] above (in the second sentence of that paragraph). Lord Reed also set out at [12] the passage from Lord Walker's judgment in *Grays* to which I have just referred. Further, *Abbott v Philbin* was of some relevance to the ultimate decision in *UBS* that the shares acquired by the employees in that case did not fall within the restricted securities rules and were instead taxable on receipt under general principles. This was because the Supreme Court concluded that, in valuing the shares for those purposes, a modest adjustment should be made to reflect the fact that they were subject to some restrictions. In reaching that conclusion at [94], Lord Reed referred again to *Abbott v Philbin*.

75. In my judgement, neither *Grays* nor *UBS* compels the conclusion that the receipt of the SARs by Mr Saunders was taxable merely because his right could theoretically be converted into money. The passage cited by Lord Walker from Lord Radcliffe's judgment in *Abbott v Philbin* immediately followed the observations Lord Radcliffe had made about the ways in which Mr Abbott could have turned his option to account, and referred to a "right of this kind" (that is, a right of the kind held by Mr Abbott). In any event, this part of Lord Walker's judgment was part of an introduction to Chapter 3D rather than part of the reasoning as to why Chapter 3D was engaged, reasoning which had nothing to do with contingencies or rights that were of uncertain value when granted.

76. Similarly, in the first part of his judgment in *UBS* Lord Reed was describing the historical context for the dispute in that case, a dispute which is of very limited relevance to the facts of this case. Although Lord Reed returned to *Abbott v Philbin* at [94], once the issue of whether the shares were restricted securities was determined there was no doubt that they comprised a taxable benefit in kind when received. What Lord Reed was rejecting in that paragraph was HMRC's contention that, because the forfeiture provisions had no commercial rationale, they should also be ignored in valuing the shares. The conclusion that they should not be ignored provides no indication that this case must be decided in Mr Saunders' favour.

77. Ms Hicks was quite right to point out some of the practical consequences of Mr Saunders' arguments being correct. Employees would presumably be required to self-assess on some, inherently uncertain, basis by reference to the value of their SARs. The method of valuation would be wholly unclear. They would also be subject to tax on that value irrespective of whether the relevant contingencies were ever satisfied. Further, the same reasoning could apply to any contingent right to a bonus or other amount derived from employment. Even a right to future salary could be regarded as a right that could be

turned to account in some way, and it is a right that clearly derives from employment. And, of course, if Mr Saunders was right then employees would escape tax on the actual receipt of an amount which would otherwise be taxable as employment income.

78. I am far less persuaded by Mr Firth's submissions about difficulties that could arise if HMRC's approach were correct. Those related to problems that could arise if an employee did manage to convert his SARs into money, in which case he might still be fully taxable on any payment that was ultimately made in satisfaction of the right. As I have said, conversion is hypothetical and the mechanism for it is unclear. The difficulties are, in truth, theoretical ones which are of far less practical significance than those raised by HMRC.

79. There is a final, important, point related to the assumption in Mr Saunders' case that if the receipt or vesting of the SARs was taxable then it would necessarily follow that the Payment was not. In my judgement that misunderstands what *Abbott v Philbin* decided.

80. As I have explained, the Crown's case that Mr Abbott's profit on exercise of his option was taxable was founded on the grant of the option not being taxable, and the fact that the Crown made no claim to tax both events. The ratio addressed the Crown's case by deciding that the grant was taxable. As a result of that, the Crown's case failed because it did not seek to tax the profit on exercise in those circumstances. The majority decision therefore reflected the Crown's position that only one of the two events could be taxable, but did not determine whether that point was correct because it was not put in issue. The argument that the later profit did not arise from employment but from Mr Abbott's right as an option holder was addressed by the majority only in obiter remarks by Viscount Simonds and Lord Radcliffe: see [32] and [38] above. (In contrast, both Lord Keith and Lord Denning concluded in their dissenting speeches that the later profit was taxable.)

81. Mr Saunders' case is that, if the granting or vesting of the SARs is chargeable as he says it is, then the Payment must necessarily not be. But *Abbott v Philbin* is not authority for that, as I have just explained. In this case the FTT made clear findings that the Payment arose from the employment relationship and was a reward for services, and that the conditions in the SARs did not break the causal relationship with employment. As such, the Payment was taxable in its own right. Mr Saunders could only succeed if he could show that the Payment was not derived from employment. I cannot see how that point must necessarily be determined in his favour if the earlier grant or vesting of the SARs itself gives rise to taxation. Whether it was so determined would depend most obviously on the double taxation point that persuaded the Supreme Court in *Forde and McHugh* (see [50] above), rather than on the decision in *Abbott v Philbin*.

82. In contrast to this case, what the Crown was seeking to tax in *Abbott v Philbin* was the profit derived from an exercise of the option. Effectively, it was being said that the relevant benefit in kind was that later profit (realised, unlike the SARs, at a time of Mr Abbott's choosing), rather than the grant of the option. Both Viscount Simonds and Lord Radcliffe recognised the independent difficulties to which that gave rise in terms of whether the profit was derived from employment. It was not a case where what was sought to be taxed was itself a payment by the employer which is clearly from employment, and the employee was maintaining that the payment could not be taxed simply because he had a prior contingent entitlement to it.

83. In any event, however, I am satisfied that Mr Saunders is wrong to contend that the earlier grant or vesting of the SARs was taxable.

Conclusion

84. In conclusion, I would dismiss the appeal. The FTT correctly concluded that the Payment was taxable as employment income.

Lord Justice Nugee:

85. I agree.

Lady Justice King:

86. I also agree.