Neutral Citation Number: [2013] EWHC 1583 (Ch)

Case No 9510 of 2012

IN THE HIGH COURT OF JUSTICE
CHANCERY DIVISION
COMPANIES COURT

The Rolls Building
7 Rolls Buildings
Fetter Lane
London EC4A 1NL
Date: Friday 14 June 2013

B e f o r e:
MR JOHN RANDALL QC
(Sitting as a Deputy High Court Judge)

**IN THE MATTER OF SED ESSEX LIMITED**
**AND IN THE MATTER OF THE INSOLVENCY ACT 1986**

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**B E T W E E N:**
**HM REVENUE & CUSTOMS**
**Petitioner and Applicant**
**and**

**SED ESSEX LIMITED**
**Respondent**

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**Mr Mark Cunningham QC and Mr Christopher Brockman (**instructed by Kennedys Law LLP Solicitors, 35 Newhall Street, Birmingham B3 3PU) appeared on behalf of the Petitioner and Applicant

**Mr David Berkley QC and Mr Rizwan Ashiq** (instructed by Lexlaw Solicitors, 4 Middle Temple Lane, London EC4Y 9AA) appeared on behalf of the Respondent

Hearing Dates 21-23 May and 14 June 2013

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# J U D G M E N T

**THE DEPUTY JUDGE:**

1. The petition herein, which was presented on 13 December 2012, seeks a compulsory winding-up order in respect of the Respondent company SED Essex Ltd ("the Company"). It is founded on an alleged indebtedness of just over £3 million, based on 4 assessments for VAT raised by the Petitioner and Applicant, HM Revenue & Customs ("HMRC") which deny the Company's claims to input tax in respect of purchases it made or purportedly made from 6 suppliers during the 4 VAT quarters between 1st October 2011 and 30 September 2012, brief details of which are listed in the Schedule to the petition [A/1/4]. On 11 January 2013 the Company instituted an appeal against them to the Tax Chamber of the First Tier Tribunal, which is currently the subject of a stay until 21 June 2013. The petition is listed for hearing in this Court on 1 July 2013.

2. On 13 December 2012, on an application made by HMRC, Mr Justice Henderson made a without notice order appointing provisional liquidators of the Company. That Order was served, and the provisional liquidators took up their appointment, the next day. It was not practicable for the Company to be ready to present its case against the making and continuation of that Order within a week or so of being served, and accordingly, following hearings at which both parties were represented on 19 and 21 December 2012, again before Henderson J, orders were made by consent, one of which gave the company the opportunity to apply to discharge the order appointing provisional liquidators by a specified date. It did so, and its application has now come on for effective hearing before me. This is, therefore, the equivalent of a first opposed hearing, and the burden and standard of proof are as if it were such; further, the Respondent does not have any additional burden of proving a material change of circumstances since the original order was made or anything of that nature.

The law

3. So far as the petition itself is concerned, it is founded on the familiar provisions of ss.122(1)(e) and 123 of the Insolvency Act 1986 ("the Act"). It is a creditor's petition, not a public interest petition under s.124A, a point which Mr David Berkley QC, appearing with Mr Rizwan Ashiq for the Company, emphasised to me.

*Disputed debts, in the present context*

4. It is of course well established, and is common ground in this case, that on a creditor's winding-up petition, where the whole debt is disputed in good faith and on substantial grounds, it cannot ordinarily found the basis for the making of

a winding-up order, and the petition will ordinarily be dismissed. I consider that rule to be best explained, as it was by Rimer LJ in Re Rochdale Drinks Distributors Ltd, HMRC v Rochdale Drinks Distributors Ltd [2011] EWCA Civ 1116, [2012] STC 186 ("Rochdale Drinks") at [79] and again at [80], as a rule of "settled practice". Much the same approach may be found in the statements of Buckley LJ in Stonegate Securities Ltd v Gregory [1980] Ch 576 at 579H that "a winding up petition is not a legitimate means of seeking to enforce payment of a debt which is bona fide disputed", and of Ungoed-Thomas J in Mann v Goldstein [1968] 1 WLR 1091 at 1099B that "to invoke the winding up jurisdiction when the debt is disputed (that is on substantial grounds) or after it has become clear that it is so disputed is an abuse of the process of the court."

5. Although Mr Berkley sought particularly to rely on a later statement in the same judgment of Buckley LJ (at 580B-C) indicating that where the debt relied on is so disputed the petitioner lacks *locus standi*, notwithstanding the considerable authority of that learned judge in this field of law I find that a more difficult proposition, at least in a case where the evidence discloses that both the petitioner's assertion of the debt and the respondent company's denial of it are made in good faith and on substantial grounds.

6. As Rimer LJ went on to state (at [80]):

> *… the rule does not, however, entitle a company to do no more than assert that it disputes the debt and then expect the petition to be struck out or, if the hearing is the substantive one, dismissed. It is not sufficient for the company merely to raise a cloud of objections. It has, in the old-fashioned phrase, to condescend to particulars by properly explaining the basis of the claimed dispute and showing that it is a substantial one. If, despite the company's protestations, the alleged dispute can be seen on the papers to be no dispute at all, or to be no dispute as to part of the debt, the petition will ordinarily be allowed to proceed. If, however, the dispute is shown to be one whose resolution will require the sort of investigation that is normally within the province of a conventional trial, the settled practice is for the petition to be struck out or dismissed so that the parties can contest their differences before whichever other forum may be appropriate.*

7. In contested winding-up proceedings, as in most if not all types of contested litigation, the party on whom the burden of proof initially lies (here clearly HMRC, cf per Moses LJ in Mobilx v HMRC and 2 other cases [2010] EWCA Civ 1517, [2010] STC 1436 ("Mobilx") at [81]), may adduce sufficient evidence in chief that, were it to go wholly unanswered, the court would be satisfied that s/he had discharged that burden to the requisite standard. Where that occurs, it is sometimes said that the 'evidential burden' shifts. In my view, it was to this that Rimer LJ was referring in certain passages from his judgment in Rochdale Drinks on which both parties' counsel addressed me. Omitting 3 sentences in the

middle of [84] where the learned judge was expressly addressing the position concerning an appeal to the First Tier Tribunal, he said this:

> *84 … What HMRC were asserting was that they did not accept that any of [the company's] input tax repayment claims were genuine. Their protracted investigations had revealed what appear to me to have been ample grounds for adopting that stance. Their VAT assessment served on 25 February 2011 proceeded on the basis that the tax repayment claims were false... The substantive reality is that HMRC had raised a case in respect of the disputed invoices that was sufficient to cast upon [the company] the burden of proving their genuineness.*
>
> *86 There is no doubt that HMRC's evidence raised serious questions as to the genuineness of the invoices. If [the company] was to challenge the basis of the petition, and therefore the appointment of the provisional liquidator, the burden was therefore upon it to show that it at least had a good arguable case that its claimed trade with all the disputed traders was genuine…*
>
> *87 In my judgment, the real question before the judge on the 'missing traders' issue was whether [the company] had shown by its evidence that, upon the hearing of the petition, it was likely to be able to show that in relation to all the alleged trades it claimed to have carried out it had a good arguable case that they were genuine…*

8. In this forensic context, I do not find it particularly helpful to evaluate the standard referred to by Rimer LJ in paras. [86] and [87] of Rochdale Drinks as "a good arguable case" by reference to the test applied to applicants for Freezing Orders in cases such as The Niedersachsen [1983] 2 Lloyd's Rep 600 (at 605) and the other cases cited in Gee's *Commercial Injunctions* (5th edn) at paras. 12.023*ff*, as submitted by Mr Mark Cunningham QC, appearing with Mr Christopher Brockman for HMRC. To my mind, in this context, where Rimer LJ (as I shall explain below) had already specifically found the standard to which HMRC had to make out its case on such an application to be demonstrating a *likelihood* that it would obtain a winding-up order on the hearing of the petition, all that he can have meant in these two references to the respondent being under a burden to show a good arguable case is that, where the evidential burden has switched to the respondent, the respondent then has to make out a sufficiently strong case to negate such likelihood.

9. The need for a company to show, following a shifting of the evidential burden, that its disputing of a petition debt founded on a VAT assessment is based on 'substantial grounds' negates any suggestion that the bare fact that the company has a statutory right of appeal against the assessment, and has exercised it, is sufficient to defeat the petition per se. As Rimer LJ said in Rochdale Drinks at [85]:

> *The fact, however, that the assessment raised by HMRC was one that could be the subject of an appeal by [the company] (and it has now launched an appeal, although it had not done so at the time of the hearing before the judge) does not mean that the*

*assessment could not found the basis for a petition for the winding up of [the company]. Put another way, it was not open to [the company] to challenge and defeat the petition merely on the basis that it had a statutory right of appeal against the assessment before another forum. The existence of a right of appeal says nothing as to whether any appeal will have merit; and it was open to HMRC, as they did, to present their petition against [the company] on the basis that their claimed debt, or at least a material part of it, was not capable of serious dispute and so could properly found the basis for a winding up order.*

*Appointing provisional liquidators*

10. The appointment of provisional liquidators is provided for by s.135 of the Act, and confers a discretion on the court to make such an appointment ("*… may … appoint a liquidator provisionally …*") at any time after a winding-up petition has been presented. In considering whether to exercise this discretion, however, the Court must bear in mind that such an appointment is "*a most serious step for a court to take … is not an order to be made lightly and … requires the giving by the court of the most anxious consideration*" (per Rimer LJ in Rochdale Drinks at [76]), and is "*one of the most intrusive remedies in the court's armoury*" (per Lewison LJ also in Rochdale Drinks at [109]).

11. In Rochdale Drinks (see at [77], [108] and [116]), the Court of Appeal modified in one important respect the two-fold approach to applications for the appointment of provisional liquidators previously formulated by Plowman J in Re Union Accident Assurance [1972] 1 All ER 1105 at 1110. Building that modification into the otherwise approved dictum of Plowman J, the law now is that a judge dealing with such an application should consider it in 2 stages. The first and threshold stage is to consider whether the petitioner and applicant has demonstrated that it is *likely* to obtain a winding-up order on the hearing of the petition. Any views the judge may express about that will of course be provisional, because the petition itself is not being tried at the time of the application. If such likelihood is not demonstrated, it would not, at least ordinarily, be right to appoint a provisional liquidator. If on the other hand it is demonstrated, and the threshold thus crossed, then the second stage is to consider whether in the circumstances of the particular case, it is – as a matter of judicial discretion – right that a provisional liquidator should be appointed (or, where as here one has already been appointed, should be maintained in office) pending the hearing of the petition. That two stage approach was duly adopted in Rimer LJ's judgment in Rochdale Drinks (see at [78] and [96]).

*VAT assessments of the present nature*

12. As to the first and threshold stage, the assessments on which the present petition is based are entirely founded on the law as laid down by the European Court of

Justice in Axel Kittel v Belgium, Belgium v Recolta Recycling SPRL, Cases C-439/04 and C-440/04, [2008] STC 1537 ("Kittel"), and explained by the Court of Appeal in Mobilx. Taking it as shortly as I can, in Kittel, the ECJ (Third Chamber) reasoned as follows:

> *41 … an analysis of the terms 'supply of goods effected by a taxable person acting as such' and 'economic activities' shows that those terms, which define taxable transactions for the purposes of the Sixth Directive, are objective in nature and apply without regard to the purpose or results of the transactions concerned (see, to that effect, Joined Cases C-354/03, C-355/03 and C-484/03 Optigen [2006] Ch 218, paras. 43 and 44).*
> *51 … traders who take every precaution which could reasonably be required of them to ensure that their transactions are not connected with fraud … must be able to rely on the legality of those transactions without the risk of losing their right to deduct the input VAT (see, to that effect, Case C-384/04 Federation of Technological Industries [2006] STC 1483, para. 33).*
> *53 By contrast, the objective criteria which form the basis of the concepts of 'supply of goods effected by a taxable person acting as such' and 'economic activity' are not met where tax is evaded by the taxable person himself (see Case C-255/02 Halifax and Others [2006] Ch 387, paras. 59–).*
> *55 Where the tax authorities find that the right to deduct has been exercised fraudulently, they are permitted to claim repayment of the deducted sums retroactively (see, inter alia, Case 268/83 Rompelman [1985] 2 CMLR 202, para. 24; Case C-110/94 INZO [1996] STC 569, para. 24; and Joined Cases C-110/98 to C-147/98 Gabalfrisa [2002] STC 535, para. 46)…*
> *56. … a taxable person who knew or should have known that, by his purchase, he was taking part in a transaction connected with fraudulent evasion of VAT must, for the purposes of the Sixth Directive, be regarded as a participant in that fraud, irrespective of whether or not he profited by the resale of the goods.*
> *57. That is because in such a situation the taxable person aids the perpetrators of the fraud and becomes their accomplice.*
> *58. In addition, such an interpretation, by making it more difficult to carry out fraudulent transactions, is apt to prevent them.*
> *59. Therefore, it is for the referring court to refuse entitlement to the right to deduct where it is ascertained, having regard to objective factors, that the taxable person knew or should have known that, by his purchase, he was participating in a transaction connected with fraudulent evasion of VAT, and to do so even where the transaction in question meets the objective criteria which form the basis of the concepts of 'supply of goods effected by a taxable person acting as such' and 'economic activity',*

and therefore held that where it is ascertained, having regard to objective factors, that a recipient of a supply of goods is a taxable person who knew or should have known that, by his purchase, he was participating in a transaction connected with fraudulent evasion of VAT, it is for the national court to refuse that taxable person entitlement to the right to deduct VAT he has paid (see at [60] and [61]).

13. In Mobilx the Court of Appeal, after setting out and analysing the decision in Kittel, went on to expand on what is sufficient to satisfy the 'should have known', or as it might be expressed the 'deemed knowledge', limb of the Kittel test. Moses LJ, with whom Sir John Chadwick and Carnwath LJ (as he then was) agreed, expressed the position thus:

> *52 If a taxpayer has the means at his disposal of knowing that by his purchase he is participating in a transaction connected with fraudulent evasion of VAT he loses his right to deduct, not as a penalty for negligence, but because the objective criteria for the scope of that right are not met. It profits nothing to contend that, in domestic law, complicity in fraud denotes a more culpable state of mind than carelessness, in the light of the principle in Kittel. A trader who fails to deploy means of knowledge available to him does not satisfy the objective criteria which must be met before his right to deduct arises.*
> *58 As I have endeavoured to emphasise, the essence of the approach of the court in Kittel was to provide a means of depriving those who participate in a transaction connected with fraudulent evasion of VAT by extending the category of participants and, thus, of those whose transactions do not meet the objective criteria which determine the scope of the right to deduct. The court preserved the principle of legal certainty; it did not trump it.*
> *59 The test in Kittel is simple and should not be over-refined. It embraces not only those who know of the connection but those who "should have known". Thus it includes those who should have known from the circumstances which surround their transactions that they were connected to fraudulent evasion. If a trader should have known that the only reasonable explanation for the transaction in which he was involved was that it was connected with fraud and if it turns out that the transaction was connected with fraudulent evasion of VAT then he should have known of that fact. He may properly be regarded as a participant for the reasons explained in Kittel.*
> *60 The true principle to be derived from Kittel does not extend to circumstances in which a taxable person should have known that by his purchase it was more likely than not that his transaction was connected with fraudulent evasion. But a trader may be regarded as a participant where he should have known that the only reasonable explanation for the circumstances in which his purchase took place was that it was a transaction connected with such fraudulent evasion...*
> *61 Such an approach does not infringe the principle of legal certainty. It is difficult to see how an argument to the contrary can be mounted in the light of the decision of the court in Kittel. The route it adopted was designed to avoid any such infringement. A trader who decides to participate in a transaction connected to fraudulent evasion, despite knowledge of that connection, is making an informed choice; he knows where he stands and knows before he enters into the transaction that if found out, he will not be entitled to deduct input tax. The extension of that principle to a taxable person who has the means of knowledge but chooses not to deploy it, similarly, does not infringe that principle. If he has the means of knowledge available and chooses not to deploy it he knows that, if found out, he will not be entitled to deduct. If he chooses to ignore obvious inferences from the facts and circumstances in which he has been trading, he will not be entitled to deduct.*

*62 The principle of legal certainty provides no warrant for restricting the connection, which must be established, to a fraudulent evasion which immediately precedes a trader's purchase. If the circumstances of that purchase are such that a person knows or should know that his purchase is or will be connected with fraudulent evasion, it cannot matter a jot that that evasion precedes or follows that purchase. That trader's knowledge brings him within the category of participant. He is a participant whatever the stage at which the evasion occurs.*

*What HMRC has to demonstrate*

14. Accordingly, HMRC have to demonstrate to me that it is likely that they will be able to satisfy this Court, at the hearing of the petition, both that the Company's purchases during the 12 month period in question were connected with the fraudulent evasion of VAT (at whatever stage it occurred), and that the Company, in the person of its sole director Holly Sawyer, either knew that its purchases were so connected or should have known that the only reasonable explanation for the circumstances in which they took place was that they were so connected or ignored obvious inferences to that effect from the facts and circumstances in which it had been trading. When I make findings, or refer to findings which I have made, in the course of this judgment, unless otherwise stated those are findings to the foregoing standard, i.e. as to what it is *likely* that HMRC will be able to make out at the hearing of the petition.

15. As, therefore, I have to consider on this application the likely outcome of the hearing of the petition, what the correct legal approach will be at that hearing is itself relevant. In Re Autotech Design Ltd, HMRC v Autotech Design Ltd [2006] EWHC 1596 (Ch), Mr Michael Briggs QC (as he then was) sitting as a deputy judge summarised the approach to be adopted by this court at the hearing of petitions of the present kind which he gleaned from the judgments in Re Anglo German Breweries Ltd [2002] EWHC 2458 (Ch), [2003] BTC 5021 (Lawrence Collins J), Re The Arena Corporation Ltd [2003] EWHC 3032 (Ch), [2004] BPIR 375 (Lawrence Collins J) and [2004] EWCA Civ 371, [2004] BPIR 415 (the Court of Appeal), Customs & Excise Commissioners v Jack Barrs Wholesale [2004] EWHC 18 (Ch), [2004] BPIR 543 (Lindsay J), and Customs & Excise Commissioners v Anglo Overseas Ltd [2004] EWHC 2198 (Ch), [2005] BPIR 137 (Lewison J) as follows (at [5]):

*Although the formulations of the approach to be adopted by the Court differ slightly, their effect is substantially the same and is as follows:*

*(1) These are not disputed debt cases. This is because the excise duty, and here the VAT, is due as provided for in the relevant assessment notwithstanding a pending appeal.*

*(2) Nonetheless the question whether the appeal has a real prospect of success or (which is the same thing) whether the debt created by the assessment is bona fide disputed on substantial grounds, is of central importance to the discretion whether*

*to make a winding up order. In that respect Sir Andrew Morritt in the Arena case in the Court of Appeal said this at para.52:*

*"If there is a real doubt as to the propriety of the assessments then the issue should be resolved by the tribunal not only because the tribunal is the forum prescribed by Parliament but also because it is not the function of the Companies Court in the exercise of its winding up jurisdiction to adjudicate in respect of a genuinely disputed debt. By contrast, a company which is unable to pay its debts is not to be permitted to delay its winding up by advancing spurious excuses for non payment of the petitioner's debt".*

*(3) Even if the material before the Companies Court does not lead to an affirmative answer to that question there is still a discretion to adjourn or even to dismiss the petition. Prominent in that analysis will be the question whether the company has had a fair opportunity to understand and to answer Customs' case and to challenge the propriety of the assessment, and again I read from the judgment of Sir Andrew Morritt in Arena in the Court of Appeal at para.92:*

*"In circumstances such as these it is essential that the procedure is fair. I understand that there is no prescribed form of assessment and no complaint was made about the form used in this case. Nevertheless it is important that the Commissioners should specify either in the assessment or a letter accompanying it what irregularity they rely on and the facts said to support the contention that the person assessed caused it. This would enable a person in receipt of such an assessment to challenge its propriety. If no such information is given, and the person assessed merely appeals, then the onus is on him to disprove causation without knowing what he is alleged to have caused. This could be oppressive, the more so as he is required to pay the assessed duty before appealing unless the Commissioners agree or the tribunal orders otherwise".*

*Anglo Overseas would have been a case for the exercise of a discretion to dismiss or adjourn the petition rather than to make a winding up order had not Mr. Justice Lewison already concluded that there was a real prospect of success on appeal against the assessment.*

*(4) The Companies Court will not readily or lightly reject without cross-examination evidence tendered by the company in support of an allegation that it has a real prospect of success on appeal. The procedure for hearing of winding up petitions is not appropriate for the weighing of the relative strength or credibility of competing evidence. Furthermore, in cases such as the present, Customs has the additional burden of proving a serious fraud.*

*(5) But there may be cases, and Arena was confirmed, after some hesitation, in the Court of Appeal to be just such a case, where the company's case is so completely at variance with the documents, or internally inconsistent, as to be capable of being branded "incredible" without any form of trial. Alternatively, it may be possible for the Companies Court to see (as it did in Arena) that it will simply be impossible for the company to advance any case on appeal with any real credibility.*

16. At the second, discretionary stage (if reached), when considering whether, in the circumstances of this case, it is right that the provisional liquidators should be maintained in office pending the hearing of the petition, factors that the Court should consider include whether there are real questions as to the integrity of the Company's management and/or as to the quality of the Company's accounting

and record keeping function, whether there is any real risk of dissipation of the Company's assets and/or any real need to take steps to preserve the same, whether there is any real risk that the company's books and records will be destroyed and/ or any real need for steps to be taken to ensure that they are properly preserved and maintained (which may be so where, for example, there is clear evidence of fraud or almost irrefutable evidence of chaos), whether there is any real need for steps to be taken to facilitate immediate inquiries into the conduct of the Company's management and affairs and/or to investigate and consider possible claims against directors (e.g. for fraudulent or wrongful trading), whether or not the Company has a realistic prospect of obtaining a validation order under s.127 of the Act (because if it has no such prospect, it may well not be realistically able to trade in any event), and generally which course "seems likely to cause the least irremediable prejudice to one party or the other": see Rochdale Drinks at [97]-[100] per Rimer LJ and [109] & [113] per Lewison LJ.

The factual background

17. Particularly as this is an application in respect of an interim remedy in a petition which is listed for hearing in a few weeks' time, and it is important that the parties have as early a decision on this application as is practicable, I do not propose to lengthen this judgment with an extended recitation of the facts. They appear from the relevant affidavits and witness statements, of which there are at least 15, and are to some extent summarised (from their respective viewpoints) in the parties' skeleton arguments. Put very shortly, the Company is the creature of one person, its sole director Ms Holly Sawyer. She is a relatively young woman, who at 25 - after working for her step-brother's company for 9 months or so - set up on her own in a similar line of business. The Company's business was or purportedly was the buying and selling of relatively high volumes of goods such as toiletries, confectionery and soft drinks, although it has become clear that alcohol was also traded, at very low profit margins. During 2012, while it employed a long-standing friend of Ms Sawyer's father named Kevin Chapman, apparently consideration was given to expanding the Company's business so as to encompass a 'Cash & Carry' operation, although in the event that did not come to fruition before the Provisional Liquidators were appointed. I shall during the course of this judgment introduce further matters of fact, in particular with regard to the Company's pattern of trading, at the point where they appear to be of principal relevance.

18. As is now notorious, the VAT system across the European Union - administered in this country by HMRC – is a target for what might be called concerted, commercial fraud. A particular type of that is so-called MTIC (Missing Trader Intra Community) fraud, although even that may be regarded as something of an

umbrella term, as it manifests itself in a number of ways at varying stages of actual or purported supply chains. What they have in common is a role in the large scale fraudulent evasion of VAT, or attempts at the same.

The first and threshold question

19. As I have indicated, there are two limbs to this, each of which HMRC has to demonstrate to the standard of likelihood as spelt out above.

*Is it likely to be found that there was fraudulent evasion of VAT connected (at whatever stage) to the Company's purchases during the relevant 12 months?*

20. In his reply Mr Berkley observed, correctly, that Mr Cunningham had spent a high proportion of his oral submissions addressing the second limb of this first question, and submitted with particular emphasis that in doing so he had failed to make out HMRC's case to the requisite standard on the first limb. Absent a likelihood of fraudulent evasion of VAT in dealings connected with the Company, there is nothing in respect of which HMRC can establish deemed knowledge under the second limb. It is therefore appropriate to examine the evidence closely, to see whether it does support this first aspect of HMRC's case on this threshold question. In fairness to Mr Cunningham, I should add that he did deal with this first limb, albeit relatively economically, and provided his points make out HMRC's case, there would have been no virtue in his having done so at greater but avoidable length.

21. Mr Cunningham acknowledges, as do certain of HMRC's witnesses, that HMRC is not at this stage able to prove exactly what form the fraudulent evasion of VAT took in each of the Company's impugned chains of supply (to which I will shortly come). He submits that provided HMRC can demonstrate to the required standard that such fraudulent evasion did take place within those supply chains, that inability is not fatal to HMRC's case. He cites an apposite passage in the judgment of Mann J in Payless Cash & Carry Ltd v Patel [2011] EWHC 2112 (Ch) ("Payless"). In that case, a company in liquidation was suing a director for wrongfully and fraudulently causing that company to incur liability to HMRC for wrongfully claimed input tax on various purchases of liquor. Towards the end of his judgment, Mann J said this:

> *118 It was no part of the liquidator's case that there was no trade at all in beer and wine. It was not necessarily part of her case that there was no trade at all with the missing traders. Her case was, whatever trade there may or may not have been, it was not the trade reflected in the disputed input tax claims. There are various possibilities, including different trade with the missing traders at a different level and not involving VAT; trading with other completely different entities, free of VAT, for which the documentary trade with the missing traders is a cover; or no trade at all. There are doubtless other possibilities. The liquidator does not seek to*

*prove any of them. She is entitled to adopt that stance of saying that the purported trade with the missing traders did not take place as documented, and does not have to go further and work out what was actually going on in Payless. As I have observed, in many cases the proof of a fraud will, in practice, require it to be demonstrated what the context of the fraud was – otherwise the fraud is less plausible – but it is not an absolute necessity and in the present case the evidence that the purported trades were not genuine is sufficiently strong that the inability to complete the actual trading picture does not detract from the inferences that are to be drawn from the primary facts as I have found them to be.*

22. I accept Mr Cunningham's submission so far as it goes, but also bear in mind that, as Mann J had observed much earlier in the same judgment (at [12]), where a party alleging fraud is not able to establish the reason or commercial context of the alleged fraud (there, the liquidator advanced no positive case as to what was happening other than the generation and submission of inaccurate VAT returns), and such reason or context is not obvious from the nature of the fraud itself, the court must approach the allegation of fraud with "even more care" than such allegations ordinarily attract in any event.

23. The Company dealt or purported to deal with 6 suppliers over the 12 month period covered by the four assessments (Bold Silverback Ltd, Doro Trades Ltd, Shaqak Ltd, CoCo Trades Ltd, Michael Fontaine t/a Luvtosave.com, and Coastline Cash & Carry Ltd).

24. Bold Silverback Ltd is what HMRC refer to as a 'Defaulting Acquirer'. This is a trader who acquires zero rated goods from another country within the EU and then sells them as VAT standard rated goods to a UK trader. With no input tax to offset against the output tax it has charged, all that output tax is payable to HMRC. However the trader then goes missing without making any such payment to HMRC.

25. Each of Doro, Shaqak, and CoCo are what HMRC calls a 'Missing Defaulter'. This is a trader who fails to pay what it owes in VAT not by reason of insolvency or the like, but deliberately. The trader then goes missing, leaving the sum effectively irrecoverable by HMRC.

26. The evidence in respect of Michael Fontaine t/a Luvtosave.com indicates that he told HMRC that he had one customer, namely the Company, and one supplier, DCP (which had two, both unsatisfactory, manifestations, as noted below). He made payments, allegedly at the direction of DCP, to third parties (in other EU countries) rather than DCP itself. His sales documentation was fundamentally unsatisfactory (in particular, not using one series of sequentially numbered invoices), and he (to put it kindly) allowed there to be confusion between himself trading as Luvtosave.com (being registered for VAT initially) and a limited

company Luvotsave Ltd (which was not). There are some clear indications of likely VAT fraud here, but Mr Fontaine's business does not fit comfortably into any of the categories which HMRC have used to analyse the roles of the various other entities with significant roles in this case. His role is, in that sense, sui generis.

27. The Company only made one purchase from Coastline (as Ms Sawyer acknowledged in her second witness statement, having previously described them as a "back up supplier who I never needed or was required to use" – see para. 7 [A/30/412] and para. 66 [A/21/274] respectively), and Coastline in turn made its purchases from Doro. All but Coastline have been de-registered for VAT, and none of those five have appealed against that. Four of them have been subject to substantial (and at least by inference unsatisfied) VAT assessments for a total of a little over £10.7 million:

| | |
|---|---|
| Bold Silverback (3 assessments) | £9,483,227.07 |
| Doro | £148,855.46 |
| Shaqak | £695,588.88 |
| CoCo | £395,422.86 |
| | £10,723,094.27 |

Fuller details of these and other assessments appear on Schedule 2 to this judgment, which I introduce below.

28. Furthermore, HMRC have examined documentation evidencing 641 of the Company's purchases over this 12 month period, and found:

(a) that tracing back through the supply chains (so including indirect suppliers, as well as those with whom the Company dealt directly) every single one leads to a trader which has been involved in the fraudulent evasion of VAT. A number of examples are in evidence; and

(b) that dates on some of the Company's purchase orders and/or some of its suppliers invoices to it are inaccurate, (by inference) in order to enable SED to recover VAT on purchases from a supplier which were in truth made after its de-registration. For the evidence of this see the witness statement of Ms Kinman at paras. 170-174, 178-181 (dealings with Coco), 182-183 (dealings with Mr Fontaine t/a Luvtosave.com), 184-187 (dealings with Doro) and 188 & 191-192 (dealings with Ramsideal), and the respective documentary exhibits there referred to. Ms Sawyer's second witness statement does not attempt to deal with any of those paragraphs other than 170-173, and what she says about those is materially inconsistent with a number of the related documentary exhibits.

29. During its trading life, but outside the said 12 month period, the Company also made or purported to make purchases from a further five suppliers, making a total of eleven suppliers in all. The further five were Ramisdeal Ltd, Universe Drinks Ltd, TP Drinks Ltd, SPP Wholesale Ltd and Shaxstar Ltd. All of the eleven bar Shaxstar appear on a flow diagram provided by Ms Kinman, a Higher Officer of HMRC, at exhibit MEK2 ("the diagram"). Shaxstar is omitted from the diagram because HMRC have seen no documentary evidence of trading between the Company and Shaxstar, and have therefore not dealt with it in their principal body of evidence; it is however known to have been de-registered for VAT (Affidavit of Bennett, para. 56 [A/4/30]).

30. The colour coding on the diagram suggests that Ramisdeal was a 'fictitious trader'. That suggestion is supported by the witnesses' evidence not in the sense that the company and its purported principals did not exist, but in the sense that there were serious grounds to doubt whether it had entered into the transactions which it purported to have done. Whilst Ramsideal was purportedly both a customer of and supplier to SED, whose supplies to SED were or were purportedly sourced from Starswood (itself a Missing Defaulter - see below), its sole director and her husband did not attempt to refute the conclusion reached by HMRC Officers that there was insufficient evidence to demonstrate that supplies to/from Ramsideal had in fact taken place, and instead concurred in the cancellation of Ramsideal's VAT registration, agreed to repay in full monies which had been paid by HMRC to Ramsideal by way of VAT repayments, and expressed an intention to file 'dormant company' accounts with Companies House.

31. Universe Drinks is another Missing Defaulter. TP Drinks was a 'Buffer', which I take to mean a trader whose presence in a chain of supply provides an intermediate link separating other traders who would otherwise be dealing with one another directly, and perhaps adds to the appearance of commerciality in their dealings. I note that there are ongoing issues between the provisional liquidators and TP Drinks (see second witness statement of Reed at paras. 9 & 11 [A/28/355]), but these do not materially affect the decision which I have to make on the present application. SPP was another Buffer. Its sole director informed HMRC Officers that its only customer was the Company (to which it invoiced no less than 23 supplies in their first 13 days of trading), and its only suppliers were Manningham Concrete and Green Horizon (respectively a Hijacked Trader and a Missing Defaulter – see below).

32. Four of these further five (all but Shaxstar) have been de-registered for VAT by HMRC, in one case (Ramsideal) by means of a cancellation consented to by the supplier's management. In none of these cases is there any evidence of an appeal

having been brought against this, and in most there is evidence directly to the contrary.

33. As is largely apparent from the diagram (though unhelpfully, the colour coding on occasions appears to diverge from the underlying witness evidence, to which I must of course primarily look), the Company's supply chains – i.e. those starting with each of the eleven suppliers named above bar Shaxstar – also included:

    (a) a further 5 Defaulting Acquirers - AKSP Ltd, Turello Ltd (as to which see the witness statement of Kinman, paras. 75-78 [A/29/381]), Fuget Ltd, Dentile Ltd and DCP Derby Ltd (in one of its two manifestations);

    (b) 3 Hijacked Traders (the term used by HMRC for VAT registered traders whose identity is 'adopted' by other persons or entities ("hijackers"), usually (but not always) without their knowledge, who then use their VAT registration numbers when acquiring goods from registered traders in the UK or from other EU states, and then become missing traders, neither submitting VAT returns nor making any payment to HMRC in respect of the input tax which they have received) - Demas Engineers Ltd, DCP Derby Ltd (in its other manifestation), and Manningham Concrete Ltd;

    (c) A further Fictitious Trader – Bekko Ltd Ltd (see the Affidavit of Bennett at para.161(d) [A/4/52], and the witness statements of Bennett at paras. 21-22 [A/27/335-6] and of Kinman at paras. 60.1 & 70-71 [A/29/377 & 380]). It may be noted that Bekko was de-registered for VAT just 3 months after it was first registered;

    (d) a further 8 Missing Defaulters - Acmer Ltd, Kenwood Ltd, Starswood Ltd (as to whom see the witness statement of Kinman at paras. 189-193 [A/29/403]), Green Horizon Solutions Ltd (witness statements of Bennett at paras. 53, 61-63 & 66-68 [A/27/348-50], and of Kinman at paras. 165-166 [A/29/397-8]), Adnan Trading Company Ltd (witness statement of Kinman at paras. 134-136 [A/29/393]), Nisa (Int) Ltd (witness statement of Kinman at paras. 137-148 [A/29/393-5]), Fun Fluid Ltd (witness statement of Kinman at paras. 149-156 [A/29/395-6]), and Chelsea Wine & Whiskey Ltd (witness statement of Kinman at paras. 157-162 [A/29/396-7]).

34. In summary, therefore, the Company's supply chains included:

    (a) 6 Defaulting Acquirers, 5 of whom have been subject to substantial (and at least by inference unsatisfied) assessments, totalling just over £12.4 million;

    (b) 3 Hijacked Traders, 1 of whom has been subject to a substantial (and at least by inference unsatisfied) assessment for almost £1.6 million;

(c) 2 Fictitious Traders (in the case of Ramisdeal, in the sense explained above);

(d) 12 Missing Defaulters, 5 of whom have been subject to substantial (and at least by inference unsatisfied) assessments, totalling something over £7.5 million; and

(e) Mr Fontaine trading as Luvotsave.com.

35. That being so, I do not consider it necessary for me to undertake any further analysis of the role of the others in those supply chains (e.g. Coastline and Mezax Ltd), regarded by HMRC as either Buffers (including the two companies which HMRC has satisfied me to the requisite standard were 'Buffers' - TP Drinks and SPP) or 'Blocking Buffers' (the term used by HMRC for traders who fail to comply with their requests to name their suppliers and provide documentary evidence of their supplies, and then becoming missing traders, thereby blocking attempts by HMRC to trace their suppliers), in order to determine this application. I should perhaps record here that, in practice, the role of either Buffer or Blocking Buffer can also be played by a trader who then becomes a Missing Defaulter.

36. In order to keep the length of this judgment within reasonable bounds, I set out in two tabular schedules to this judgment short details of and references to evidence of which I have taken particular note concerning (Schedule 1) the Company's 11 suppliers, including in respect of the de-registrations of 9 of them, and (Schedule 2) 11 direct or indirect suppliers to the Company (4 of whom also appear on Schedule 1) who the evidence strongly suggests are Defaulting Acquirers (5), Hijacked Traders (1) or Missing Defaulters (5), including in respect of the VAT assessments which have been issued against them and which they have not appealed. This evidence supports the various findings which I have sought to summarise in paragraphs 23 - 34 above, where I have not set out the source after the finding. From Schedule 2 it can be seen that the assessments issued against those 11 suppliers total c.£21.5M. It is also noteworthy that, of that very sizeable total, some £10,723,094.27 (as totalled in paragraph 27 above) was assessed on 4 companies with whom the Company dealt directly, including substantial sums in respect of sales or purported sales by them to the Company itself.

37. In my judgment this evidence taken in combination, and when read in the factual context of this case (including in particular, but without limitation, the pattern of trading of the Company and its suppliers as summarised under my next side-heading), raises a powerful inference that during the relevant 12 months fraudulent evasion of VAT has occurred in actual or purported supplies either directly to the Company, or to the Company's immediate suppliers and thus

indirectly to the Company, and hence in either case connected to the Company's purchases.

38. Now that the names are familiar and their apparent status within the overall picture has been explained, this is a convenient point at which to note that the 6 suppliers in respect of whom HMRC denied the Company's claims to input tax in making and quantifying the assessments on which the petition debt is based are Bold Silverback, Doro, Shaqak, Coco, Mr Fontaine t/a Luvtosave.com and Coastline (Affidavit of Bennett, paras. 146-147; see also witness statement of Bennett para. 14).

39. Mr Cunningham makes the point, echoing observations made by Rimer LJ in Rochdale Drinks as to the (inevitably somewhat different) evidential position in that case ("*… evidence of breathtaking inadequacy … no evidence supporting the trades from any of the five missing traders … the evidence supporting their genuineness was, overall, lamentable…*" - see at [86]-[87]), that it is noteworthy that the Company has not adduced evidence from even one of its suppliers to assist it in rebutting that powerful inference. Though there are some similarities in the observations concerning witnesses who were not called made by Mann J in Payless at [32]-[36], I find that citation of less help here, given that Mann J was speaking in the context of weighing the credibility of witnesses at a final trial. The Company here relies on what amounts to little more than a series of broad assertions from Holly Sawyer herself, who barely begins to 'condescend to particularity' in addressing many of the specific points put against the Company by HMRC. Given that Ms Sawyer herself has made clear in evidence that she has the names of the individuals with whom she dealt at a number of her suppliers, and that she is "still in contact" with Sandeep Patel of Doro (who HMRC cannot trace) and with Havva Husein of Shaqak, who she states "*can be contacted easily*", Mr Cunningham's criticism of the absence of evidence from even one of them is, in my judgment, legitimate. This is so notwithstanding that there is, as Mr Berkley points out, some distinction on the facts from those which Rimer LJ was considering, in that the company Rochdale Drinks, which adduced no evidence from any of its suppliers, relied on the evidence of a forensic accountant rather than a director.

40. Oscar Wilde famously wrote that to lose one parent may be regarded as a misfortune; to lose both looks like carelessness (The Importance of Being Earnest, Act I, Lady Bracknell). To accept that there is any realistic prospect that the Company might succeed in explaining away all the indications of likely VAT fraud connected to its purchases which I have sought to summarise as a series of unfortunate coincidences would require a level of judicial credulity to which I do

not aspire, and into which even Mr Berkley's calm and careful advocacy has not lured me.

*Is it likely to be found that the Company, in the person of Holly Sawyer, either knew that its purchases during the relevant 12 months were connected with the fraudulent evasion of VAT, or should have known that the only reasonable explanation for the circumstances in which they took place was that they were so connected or ignored obvious inferences to that effect from the facts and circumstances in which it had been trading?*

41. Ms Sawyer has family connections with 3 other companies which the evidence suggests were all involved in trading connected to the fraudulent evasion of VAT. Most relevantly, she was for some time (which she variously describes as being between November 2009 and August 2010 and a "*period of two years*") an employee of Fox's Ltd, which was run by her step-brother Marc Brown, and made regular payments to her father, Mark Sawyer. She was employed as a senior administrator and office manager, and responsible for invoicing, banking, credit control and generating management reports for Mr Brown. She also had daily contact with its customers and suppliers. Mr Berkley told me, on instructions, that the relationship between Ms Sawyer and her step-brother deteriorated during the time she was employed by Fox's. Her first witness statement alludes to this, and indicates that their relationship has subsequently worsened (paras. 4 and 60 [A/21/260 & 273]). Fox's was taken over by Mr Brown in September 2008, shortly after applying for voluntary VAT registration. It raised its first sales invoice including VAT in January 2009, was de-registered in December 2010, and was compulsorily wound-up on HMRC's petition in August 2011. A fuller account of its unhappy history as a VAT registered trader appears in Ms Bennett's affidavit at paras. 38-48 [A/4/26-28]. For present purposes, it is relevant to note that although early in its life Fox's was supposedly going to trade in soft drinks and confectionery but not alcohol, in due course it did trade in alcohol, that it received numerous visits from HMRC officers during its period of trading, and that of its 13 suppliers, 9 came to be de-registered for VAT.

42. Mr Brown was also in due course a director of ATE Consultancy Ltd ("ATEC"). This company began trading in alcohol and other commodities in September 2010, and at some point between then and February 2011 the company was sold to Mr Brown. In mid February 2011 HMRC Officers made contact with Mr Brown, who identified 3 suppliers; 2 of these were already de-registered for VAT and the third followed shortly thereafter. 2 subsequent suppliers who were identified (one being Shaxstar) were also de-registered, a fate which befell ATEC itself on 8 July 2011. ATEC did not challenge a letter sent to it by HMRC in November 2011 asserting that 319 of its transactions had involved MTIC fraud causing a loss to the public revenue of over £2.1 million, and ATEC was

compulsorily wound-up on HMRC's petition by order dated 5 March 2012. A fuller account of ATEC's unhappy history as a VAT registered trader appears in Ms Bennett's affidavit at paras. 49-58 [A/4/28-30]. Ms Sawyer would no doubt wish to repeat the above point that by the time ATEC's period of relevant trading commenced, she was not on as good terms with Mr Brown as she had been when she went to work with him in Fox's.

43. No such point, however, is made about her relationship with her father Mark Sawyer, who was himself a director of C&C Brands Ltd. Indeed, according to their accountants they were together in Spain as recently as July 2012, when Ms Sawyer says she was taking a holiday to assist in recuperation after medical treatment. Mr Sawyer was appointed sole director of C&C Brands in December 2010, it already being VAT registered. When interviewed by HMRC officers in September 2011 he identified Dentile as C&C Brands' sole supplier (as to Dentile see paragraph 33(a) above and Schedule 2 hereto). Shaqak (as to which see paragraphs 25, 27 and 38 above and Schedules 1 and 2 hereto) subsequently became its sole supplier. All C&C Brands' suppliers ended up being de-registered for VAT. A fuller account of its unhappy history as a VAT registered trader and ultimate indebtedness to HMRC appears in Ms Bennett's affidavit at paras. 59-96 [A/4/31-38]. A winding-up petition and application for the appointment of provisional liquidators were brought by HMRC against C&C Brands more or less concurrently with these proceedings. Provisional liquidators were appointed by Henderson J on 13 December 2012, and a winding-up order was made on 28 January 2013 unopposed.

44. Fox's, ATEC, C&C Brands Ltd and the Company all used the same accountant (a Mr Tile of Tile & Co), and when required the same VAT advisors (Vincent Curley & Co), and VAT 'due diligence' consultants (The Due Diligence Exchange Ltd ("DDEL") – apparently run by Mr Vincent Curley's son Mark). That in itself is unsurprising where, as here, members of one family are involved in several businesses, but would not sit easily with any suggestion that the proprietor of one such family business was unaware of systemic problems being encountered in other such family businesses. Although the evidence (including his own) makes clear that Mr Tile did have a number of dealings with Ms Sawyer/the Company, I should perhaps add that Mr Vincent Curley's evidence is that his firm only "provided some very limited services for SED over a very short period of time, including attending one meeting with HMRC" (being on 25 October 2012), and "never examined any of SED's business records."

45. In any event, the evidence does not suggest that these family companies traded in ignorance of each others' trading activities and VAT problems. When interviewed by Ms Goulding, a Higher Officer of HMRC, by telephone on 22

February 2011 in connection with the Company's business, Ms Sawyer told her that she would be using some of the contacts she had made at Fox's. Mr Tile rang Ms Goulding himself only 10 minutes later (by inference, prompted by a call to him from Ms Sawyer), and added that he had "learned his lessons" with Fox's, that Ms Sawyer "had assured him that she would be trading in a proper manner", and that he understood why HMRC would be monitoring the Company's VAT registration [C1/266]. It may also be noted that at least 2 of C&C Brands' suppliers (Dentile and Shaqak) were also suppliers to the Company, and that the supplier Doro (as to which see paragraphs 25, 27 and 38 above and Schedules 1 and 2 hereto) was introduced to Ms Sawyer by her father. Ms Sawyer's own evidence is that her suppliers (or some of them) knew that she was "my father's daughter", and were more inclined to place trust in her and give her credit because of it.

46. Ms Sawyer commenced taking steps to set up her own company from June 2010 (so before she left Fox's employment). Mr Tile assisted her, including with the incorporation of the Company.

47. From February 2011 onwards, the Company received numerous visits and considerable attention from officers of HMRC, which on any view must have drawn Ms Sawyer's attention very clearly to the potential for trading such as that which she was or was purportedly undertaking to be connected with fraudulent evasion of VAT further up her supply chains. In December 2011 Ms Sawyer was informed in writing that the Company was to be included in HMRC's "Continuous Monitoring Project" designed to identify and tackle MTIC VAT fraud. In the summer of 2012 the Company's VAT registration was first suspended and then cancelled, before being reinstated in response to representations made on its behalf by Vincent Curley & Co. I shall not further lengthen this judgment with a narrative as to Ms Sawyer's dealings with HMRC from 2011 onwards, but the same may be found in paras. 102-141 of Ms Bennett's Affidavit [A/4/39-47].

48. In March 2011 and December 2011 the Company was sent HMRC warning letters about MTIC fraud. Both (and the first came before the commencement of the immediately relevant 12 month period) drew Ms Sawyer's attention to HMRC's Notice 726, which contains a number of warnings about MTIC VAT fraud and its nature, points out steps which traders are advised to take to avoid becoming involved in the same, and indicates the sort of steps to establish the credibility, legitimacy and integrity of a trader's customers, suppliers and supplies which might be regarded as reasonable. Mr Berkley correctly submitted that this Notice is directed to the rules concerning joint and several liability for unpaid VAT under s.77A Value Added Tax Act 1994 (which is not in issue in the present

application), and focusses on certain 'specified goods' such as mobile phones, computer drives and so forth. Whilst that is true, the advice to traders it contains is of broader application, and crucially Ms Sawyer's evidence is not that she considered this notice irrelevant to her business and therefore ignored it. On the contrary, she asserts that some of the 'due diligence' she undertook in respect of customers was undertaken to demonstrate her awareness of Notice 726 and (by inference) the advice about undertaking such due diligence which it contains (first witness statement, para. 58 [A/21/273]).

49. There are a number of aspects of the Company's pattern of trading which are significant, particularly given Ms Sawyer's knowledge derived from the facts and matters summarised in paragraphs 41 - 48 above:

    (a) When the Company's trading started it did not build up its turnover progressively, but almost immediately started dealings at a very substantial level. Its turnover was c.£5.76 million in the first 6 months, c.£16 million in the first year, and c.£30 million in the first 2 years;

    (b) The profit margins at which the Company traded were very small. As Mr Berkley rightly submitted, there is nothing wrong with that in itself, but it is a relevant consideration to bear in mind as soon as any material commercial risk is taken either by the Company or by a supplier who is also an intermediary trading at narrow margins (e.g. "encountering problems with chasing unpaid invoices" or allowing goods to go uninsured);

    (c) Despite the high turnover, the Company generally traded with only one significant supplier at any one time (see Reed's second witness statement at para. 21 [A/28/358], and Ms Sawyer's interview with HMRC officers on 8 September 2011 [C1/280]). That trading relationship would last for a relatively short time, generally ending abruptly when the supplier was de-registered for VAT because it could not provide satisfactory evidence that it was making taxable supplies (which de-registration was not the subject of any appeal). The Company would then move on to its next supplier, again trading with them at high volumes from the start;

    (d) The Company's principal suppliers (Doro, Shaqak, Coco and Mr Fontaine t/a Luvotsave.com) were themselves also intermediaries of no recognised commercial reputation, with a short trading lifespan. Each came to be de-registered for VAT. None of the Company's suppliers were established businesses with a recognised or established commercial reputation;

    (e) The goods purchased or purportedly purchased were almost always ordered for delivery direct to the Company's own customer. Thus the Company only had goods in its physical possession rarely if at all, did not store/ warehouse

them save rarely if at all, performed no aggregation or segregation of the goods sold into different volumes from those in which it purchased them, nor any repackaging thereof, and thus – to adopt the now commonly used phrase – 'added no value' in its transactions. It simply negotiated for itself a narrow profit margin between its buying and selling price, and a favourable differential in the timing of its receipts and payments (requiring immediate payment by its customer, but obtaining some credit from its supplier);

(f) On six occasions, the latter three during the immediately relevant 12 months, the Company made payments totalling c.£417,000 not directly to its suppliers but, actually or purportedly at their request (which lacked any obvious commercial justification), to one of five third parties located in other EU countries (see [D1/2/37, 39 & 41] & [D7/14/1798]). These emerged from an examination of the Company's bank statements. Of the three recipients during the immediately relevant 12 months, all had a UK resident director, in two cases a Mr Dildar Singh, in the third Havva Husein (a director of Shaqak while it was supplying the Company). Normal commercial conduct would, of course, require payment to be made by the purchaser to the seller, leaving it up to the seller to discharge any genuine liabilities it may have to others, whether or not related to that particular sale. The fact that the countries concerned, including Cyprus and Malta, are within the EU does not persuade me, as Mr Berkley submitted, that such payments were "innocuous";

(g) The Company built up significant levels of indebtedness to some of its suppliers, although those suppliers' willingness to bear and ability to absorb that funding cost is inherently surprising given that they, like the Company, appear to have been intermediaries with no established trading record who were (ostensibly) seeking to make a 'turn' on rapid resales of high volumes of goods at very low margins;

(h) The Company never inspected the goods, nor took any steps to insure them. In the absence of any contrary express contractual terms or other expression of the parties' intention, under the Sale of Goods Act 1979 (to which neither party referred me, despite my indicating its potential relevance to this point) title to the goods would have passed on the making of the contract (s.18 rule 1), or once ascertained and/or put in a deliverable state, if later (s.16 and s.18 rule 2) – see for a short summary *Chitty on Contracts*, 31st edn (2012), vol. II at paras. 43-166*ff*. Accordingly, absent any particular factual evidence to the contrary, there would have been some period of time during which the goods in question are likely to have been at the Company's risk (as between it and its supplier). During the hearing Mr Cunningham raised the question of the Company's terms of trading imposing a retention of title clause on its

customers, but given the Company's evidence that it required payment more or less straightaway, and the fact that the point was raised late, giving Mr Berkley no proper opportunity to give a considered answer to it, I shall not assume that the presence of such a clause materially extended the period during which goods would have been at the Company's risk.

50. It is noteworthy that a number of these features of the Company's trading, and how its suppliers dealt with it, correspond to the indicia of possible VAT fraud set out in Notice 726 (see in particular at 6.1) of which Ms Sawyer was admittedly aware, namely suppliers requiring the Company to make payments to third parties rather than themselves, the goods not being insured (adequately or at all), high value deals being made without any formal contractual arrangements, high value deals being offered by newly established suppliers with minimal trading history and so forth. It is also noteworthy that in many of the above respects, this pattern of trading followed those of Fox's, ATEC and C&C Brands.

51. Turning to other factors, the nature of such 'due diligence' enquiries as the Company made about, in particular, its suppliers was variable at best, whether made to protect the Company's own interests, or those of the public revenue. Appropriate checks were not always undertaken, and when they were the material obtained was seldom more than desultory, with basic omissions such as credit references and/or trade references. Furthermore, a number of 'due diligence' checks were only made after the start of trading (including those in respect of Coco, Mr Fontaine t/a Luvtosave.com, Coastline and Ramsideal). As Mann J observed in Payless at [90](viii), the making of such checks ex post facto supports the idea that they were made for reasons of form, not substance. The fact that some checks were undertaken on the Company's behalf by DDEL does not per se enhance their quality or negate the deemed knowledge with which the Company would otherwise be fixed (any more than making them through HMRC's own free facility based at Wigan, which the Company chose not to, would have meant that the Company was thereby free to ignore either the results or all the other commercial circumstances). Nor did the fact that at least some of DDEL's covering letters referred (somewhat surprisingly) to the result of its checks as being satisfactory, whereas even the briefest skim read of the report itself would have indicated to the reader that crucial elements were missing, entitle the Company to treat the results of such a check as being satisfactory, absent receipt of the missing elements. In any event, the quality of such 'due diligence' checks as were undertaken is but one factor in the overall commercial picture. As Moses LJ pointed out in Mobilx at [82]:

> *… Tribunals should not unduly focus on the question whether a trader has acted with due diligence. Even if a trader has asked appropriate questions, he is not entitled to ignore the circumstances in which his transactions take place if the only*

*reasonable explanation for them is that his transactions have been or will be connected to fraud. The danger in focussing on the question of due diligence is that it may deflect a Tribunal from asking the essential question posed in Kittel, namely, whether the trader should have known that by his purchase he was taking part in a transaction connected with fraudulent evasion of VAT. The circumstances may well establish that he was.*

52. I have also taken note here of a number of respects in which the reliability of Ms Saywer's evidence is called into question, which I deal with at paragraph 62 below when looking at the second, discretionary question.

53. Clearly, in looking at what inferences can properly be drawn from the evidence on this second or 'knowledge' aspect of the first question, I must look at the evidence as a whole, rather than looking at each individual element of it separately. In a passage cited with approval by Moses LJ in Mobilx at [83], in Red 12 Trading Ltd v HMRC [2009] EWHC 2563 (Ch), [2010] STC 589 Christopher Clarke J put it thus:

*109 Examining individual transactions on their merits does not, however, require them to be regarded in isolation without regard to their attendant circumstances and context. Nor does it require the tribunal to ignore compelling similarities between one transaction and another or preclude the drawing of inferences, where appropriate, from a pattern of transactions of which the individual transaction in question forms part, as to its true nature e.g. that it is part of a fraudulent scheme. The character of an individual transaction may be discerned from material other than the bare facts of the transaction itself, including circumstantial and "similar fact" evidence. That is not to alter its character by reference to earlier or later transactions but to discern it.*

*110 To look only at the purchase in respect of which input tax was sought to be deducted would be wholly artificial. A sale of 1,000 mobile telephones may be entirely regular, or entirely regular so far as the taxpayer is (or ought to be) aware. If so, the fact that there is fraud somewhere else in the chain cannot disentitle the taxpayer to a return of input tax. The same transaction may be viewed differently if it is the fourth in line of a chain of transactions all of which have identical percentage mark ups, made by a trader who has practically no capital as part of a huge and unexplained turnover with no left over stock, and mirrored by over 40 other similar chains in all of which the taxpayer has participated and in each of which there has been a defaulting trader. A tribunal could legitimately think it unlikely that the fact that all 46 of the transactions in issue can be traced to tax losses to HMRC is a result of innocent coincidence. Similarly, three suspicious involvements may pale into insignificance if the trader has been obviously honest in thousands.*

*111 Further in determining what it was that the taxpayer knew or ought to have known the tribunal is entitled to look at the totality of the deals effected by the taxpayer (and their characteristics), and at what the taxpayer did or omitted to do, and what it could have done, together with the surrounding circumstances in respect of all of them.*

*Conclusion on the first and threshold question*

54. HMRC has satisfied me that it is likely that on the hearing of the petition herein they will satisfy the Court that both:

    (a) there was fraudulent evasion of VAT connected (at whatever stage) to the Company's purchases during the relevant 12 months, and

    (b) the Company, in the person of Holly Sawyer, either knew that its purchases during that period were connected with the fraudulent evasion of VAT, or should have known that the only reasonable explanation for the circumstances in which they took place was that they were so connected or ignored obvious inferences to that effect from the facts and circumstances in which the Company had been trading.

55. Indeed, just as Lewison LJ found to be the position on the somewhat different facts of Rochdale Drinks (at [114]), I conclude that there is a very strong case that a winding-up order will be made.

56. The fact that, as Mr Berkley pointed out, there is far less evidence indicating any likelihood of the fraudulent evasion of VAT on the sales side of the Company's business, i.e. by or amongst its customers, does not negate my finding at paragraph 54(a) above. Nor do his points that HMRC has not sought to show that all or any particular consignments of goods purportedly purchased and sold by the Company were fictitious, and that in the case of some consignments there is evidence of detail (e.g. returns) tending to support their existence.

57. Mr Berkley also submitted that, absent the 4 assessments relied on in this petition, such accountancy evidence as is before the court suggests that the Company is solvent, if relatively narrowly. The reality is, however, that for all practical purposes the Company's solvency entirely depends on the validity of those 4 assessments. If, as follows from what I have just held, HMRC is likely to establish their validity at the hearing of the petition, it follows that HMRC will thereby also establish that the Company is massively insolvent.

The second, discretionary question

58. I can take this question much more shortly, having already set out in paragraph 16 above a number of examples taken from the judgments in Rochdale Drinks of the sort of factors which may be relevant on this question. For the reasons set out above, and under the side heading 'More Generally' below, I consider that the evidence in this case does raise real questions as to the integrity of the Company's management, and the quality of the Company's business documentation, and accounting and record keeping functions. It is also

significant to note that the various matters occurring during the Company's trading life which I record above all took place when the Company knew that it was being closely scrutinised by HMRC, indeed it may be said despite that. Against that backdrop, the factors which I consider principally relevant on the facts of this case are as follows.

*Preservation/Dissipation of assets*

59. The Provisional Liquidators hold c.£139,000 in cash. I consider there to be real grounds for doubt as to whether this sum would remain available for the Company and its creditors if a winding-up order is made, but control of the Company and its assets has been returned to its own management in the meantime. I note Mr Berkley's somewhat belated offer, made in reply, of a formulated undertaking in this regard, namely to operate the business such that the only payments out of its account would be made in the ordinary course of business, but firstly that appears to me to be a question begging formula, given that real doubts have been raised as to the propriety of the conduct of the Company's business throughout its trading life, and secondly the Court's confidence in the absolute reliability of an undertaking offered by a litigant is inevitably affected by the existence of unresolved questions as to what attitude that litigant took to complying with the terms of a previous court order when she was first notified of it (as to which see paragraph 63 below).

*Ensuring that records are preserved and maintained*

60. Mr Berkley, seeking to make a virtue of necessity, submitted that since the provisional liquidators may be assumed now to have complete copies of all the Company's books and records, both paper and electronic, the usual risks are not now present in this case. That point, however, looks to the past not the future. If a short period of renewed trading were now to take place, given the considerable questions which the evidence raises about the reliability and accuracy of the Company's business documentation, accounting and record keeping prior to the appointment of the Provisional Liquidators, I consider there to be real grounds for doubt as to whether any such renewed trading would be accurately and reliably documented.

*Prospects of an application for a s.127 validation order*

61. For like reasons to those set out under the preceding two side-headings, which are only reinforced by the further factors considered under the next side-heading, I cannot envisage the court feeling able to accede to an application for a s.127 order prospectively validating trading transactions entered into before the hearing of the petition in this case, even taking into account Mr Berkley's broad offer made in chief of (otherwise unformulated) suitable undertakings in respect

of trading records, provision of information and preservation of assets to support such an order.

*More Generally*

62. This application has, of course, been argued on the written evidence and documentary exhibits filed, without cross-examination (as would also ordinarily be the case on the substantive hearing of a winding-up petition). However even on this basis, there are a number of respects in which the reliability of (i) Ms Saywer's evidence and (ii) her statements to officers of HMRC is properly to be called into question. I need only mention three of the clearer instances of this.

    (a) Her statements with regard to when the Company commenced trading - see in particular (i) paras. 7-9 of her first witness statement and para. 9 of her second, respectively at [A/21/261] and [A/30/412], and (ii) what she said to HMRC officers on 22 February 2011 ("*she wasn't yet trading … she hadn't done anything yet*") [C1/266], when contrasted with the related documentary exhibits, including the director's report at [C8/1/91] and the bank statement at [D1/2/37];

    (b) Her statements with regard to when she first placed an order with Bold Silverback - see in particular (i) her first witness statement at para. 24 [A/21/265], when contrasted with documentary exhibits, in particular the purchase orders at [D4/13/1184 & 1181];

    (c) Her statements with regard to whether or not the Company traded in alcohol – see in particular (ii) what she said to HMRC officers on 8 September 2011 [see the clear note in the contemporaneous record at C1/280 that "*The Company does not trade in alcohol*"] (and note (i) the absence of any response to para. 109(b) in the affidavit of Ms Bennett in Ms Sawyer's first witness statement) when contrasted with documentary exhibits (in particular evidencing purchases from Bold Silverback in July and August 2011 [D4/13/1184 & 1181] and sales to "Direct Booze" in May and June 2011 (witness statement of Ms Bennett para. 46.4 [A/27/346] and the related exhibits in D3)), and with her own evidence in her second witness statement at para. 45 [A/27/346].

63. There is then the very concerning question of whether Ms Sawyer breached this Court's Without Notice Order within an hour or so of first being notified of it. The independent supervising solicitor, whose role was provided for by that order, was a Ms Jane Wessel of the firm Crowell & Moring. Her witness statement describes the notification of the order given to Ms Sawyer by telephone by her and Mr Hussain, one of the Provisional Liquidators, at 14:35 on 14 December 2012 (para. 14 [A/12/169]), and its context in the events of that day.

Within an hour thereafter, at 15:19, a transfer out of the Company's funds held with HSBC was made to 3 persons, from one of whom (TP Drinks - as to which see paragraph 31 above and Schedule 1 hereto) it has not (at least yet) proved possible to recover it (see further the second witness statement of Mr Reed at paras. 9 & 11 [A/28/355]). Ms Sawyer's explanation in her second witness statement (para. 46 [A/30/421]) is that by 14:35 she "had already authorised payments using the mobile banking system" to SPP, DDEL and TP Drinks; she adds that "At no point did Jane Wessel explain to me that I should cancel my banking transactions for that day." During the hearing Mr Cunningham produced a copy of an e-mail from HSBC which (in answer to a composite question seeking inter alia details of "when the instructions came in, how the instruction was made and by whom") states "Instructed by customer: HSBC Online banking on the 14th December at 3.19pm" [A/14/190B & A respectively]. That e-mail, Mr Cunningham explained, was the basis for the slightly less specific evidence on the point, confused by a reference to what is now agreed to be the wrong date, given by Mr Reed, another of the provisional liquidators (first witness statement, para. 13 [A/14/190]). If that e-mail proves to be correct, and I do not consider its language to admit of any material ambiguity with regard to when the customer's instructions were given (there may be questions as to whether the "mobile banking system" is to be equated with "Online banking"), Ms Sawyer's explanation of how the 15:19 transfer came to be made is simply false. However given the potential seriousness for her of such a finding, and the fact that HMRC for whatever reason did not produce the e-mail itself until during the hearing, thereby depriving the Company and its representatives of sufficient time for proper consideration of and possible checking of its contents, I have concluded that it would not be right for me to proceed on the basis that a breach of the order has been established. For present purposes, therefore, I shall proceed on the basis that there are unresolved questions as to what attitude Ms Sawyer took to complying with this court's Order when first notified of it.

64. Looking at the second question in terms of which course seems likely to cause the least irremediable prejudice to one party or the other, taking into account the various factors I have now mentioned, and what would seem to be, realistically, the very limited prospects for any effective resumption of profitable trading over the next few weeks, I am satisfied that here that course is to maintain the provisional liquidators in office. The alternative of returning the Company to the control of its own management for the next few weeks would not be a safe or sensible course to take.

*Conclusion on the second, discretionary question*

65. For the above reasons, I have no hesitation in concluding that I should exercise the court's discretion so as to maintain the provisional liquidators in office.

Conclusions and disposal

66. As stated above, I resolve each of the two legally relevant questions which the Court must address in HMRC's favour.

67. The scope of the evidence filed in this case has been considerable, and Mr Berkley urged me not to be lured into "trying the case", which he submitted was properly the task of the First Tier Tribunal on another day (or perhaps I should say on a considerable number of other days). I have not attempted to review all the evidence, nor even separately to deal with every point about the evidence which counsel made to me in their skeleton arguments and during two and a half days of oral argument (though I have of course reviewed all those points when preparing this judgment). In a case of this nature, I recognise that HMRC and those representing them have to make difficult judgments as to how much evidence to adduce. Some of the arguments raised before me illustrate how they may be damned if they do file large volumes of documentary evidence, and damned if they do not. I shall not, therefore, make any broad statements on that topic, although the *comparatively* limited scope of this judgment and the exhibits to which I have found it necessary to refer may be thought to speak for itself.

68. Nor, having answered the two legally relevant questions, am I persuaded by Mr Berkley either that the present application is the appropriate occasion on which the Company's 54 page letter of complaint about HMRC "harassment", put forward on its behalf by Vincent Curley & Co, should be addressed as such, or that it ought to be dismissed in order to enable that to be undertaken by the Companies Court on some other occasion (presumably, the hearing of the petition). It is neither necessary nor appropriate for me to make any finding on Mr Berkley's assertions that this extended complaint is "not paranoia" and "needs to be heard".

69. I am however entirely satisfied in reaching the conclusions which I have on the grounds that I have, that the Company has had a full, fair and proper opportunity to persuade the Court to the contrary with both evidence and submissions.

70. For the reasons I have given, the Company's application to discharge the provisional liquidators prior to the hearing of the petition is dismissed.

[SCHEDULES 1 AND 2 FOLLOW]

| Schedule 1- The Company's Eleven Direct Suppliers | | | |
|---|---|---|---|
| **Supplier (* = during the 12 months covered by the 4 assessments)** | **Date of any de-registration** | **Notes and witness reference(s)** | **Copy document(s) in bundle** |
| Bold Silverback* | 30 January 2012† | Aff. of Bennett paras. 156(n) & 161(f) [A/4/50 & 53]; wit. stat. of Kinman paras. 87-93 and 97 [A/29/383-86]. N.B. Dissolved 12 June 2012. | E1/76 |
| Doro* | 15 September 2011† | Aff. of Bennett para. 161(d) [A/4/52]; wit. stat. of Bennett paras. 17-32.7 [A/27/334-42]; wit.stat. of Kinman paras. 58-70, 82, 86 & 184-87 [A/29/377-82 & 402]. Vincent Curley & Co, who had first been instructed by Doro in August 2011, indicated a proposed appeal against the de-registration, but in the event were unable to make contact with or obtain instructions from Doro, and no appeal was brought. N.B. Dissolved 4 December 2012; sole director missing. | C5/52-74 (various) |
| Shaqak* | 9 February 2012† | Aff. of Bennett paras. 160(f) and 162-64 [A/4/53]; wit.stat. of Bennett paras. 33-40 [A/27/342-44]; wit.stat. of Kinman paras.45-51 [A/29/373-75]. | C6 – HMRC letter (unpaginated) towards the end of the bundle |
| Coco* | 13 June 2012† | Aff. of Bennett para. 161(g) [A/4/53]; wit. stat. of Kinman paras. 98-106 & 175-81 [A/29/386-88 & 400-1]. | E1/139 refers |
| Michael Fontaine t/a Luvtosave.com* | 28 August 2012† | Aff. of Bennett para. 161(j) [A/4/54];<br><br>wit. stat. of Kinman paras. 112-19 & 182-83 [A/29/389-90 & 401-2]. | |
| Coastline* | n/a | None - still registered and trading. The Company made only one purchase from Coastline. | |
| Ramsideal | 10 December 2012 [effective from 1 | Aff. of Bennett para. 161(e) [A/4/53] referred; wit. stat. of Kinman paras. 188-93 [A/29/402-3]. Subsequently cancelled with the consent of the | |

| | | | |
|---|---|---|---|
| | August 2010] | management: wit. stat. of Bennett paras. 69-74 [A/27/350-52]. | |
| Universe Drinks | 28 June 2012†<br><br>(prev. 2 March 2012) | Aff. of Bennett para. 161(h) [A/4/54]; wit. stat. of Kinman paras. 124-33 [A/29/391-3]. | |
| TP Drinks | 4 December 2012† | Wit. stat. of Kinman paras. 167-69 [A/29/398]. | |
| SPP Wholesale | 19 December 2012 | Wit. stat. of Bennett paras. 53-63 [A/27/348-49]; wit. stat. of Kinman paras. 164-65 [A/29/397-8]. | |
| Shaxstar | n/a | No evidence of trading with the Company seen by HMRC, so not dealt with in their evidence. | |
| † = witness evidence specifically confirms that no appeal was brought against this de-registration | | | |

| Schedule 2 – Unappealed Assessments on Direct and Indirect Suppliers to the Company | | | | | | |
|---|---|---|---|---|---|---|
| | | | | | | |
| **Date** | **Company** | **Notes / witness refs. re company** | **Assessment amount(s)** | **Kinman para. re asst.** | **Copy in Bundle** | **Notes re assessment** |
| **Defaulting Acquirers - direct supplier** | | | | | | |
| 7 July 2012 | Bold Silverback | Aff. of Bennett paras. 156(n) & 161(f) [A/4/50 & 53]; wit. stat. of Kinman paras. 87-93 & 97 [A/29/383-86] | £5,885,438.07 | 91 | E1/77 | Sales 27.10.10-29.1.12 |
| 16 January 2013 | Bold Silverback | | £3,433,057.00 | 91 | - | Penalty charge |
| 21 March 2013 | Bold Silverback | | £164,732.00 | 91 | E1/81 | Undeclared sales to SED Essex 1.7.11-19.12.11 |
| **Defaulting Acquirers – indirect suppliers** | | | | | | |
| 7 February 2013 | AKSP | Aff. of Bennett paras. 156(c),160(b) & 161(g) [A/4/50 & 53]; wit. stat. of Kinman paras. 102, 105 & 107-11 [A/29/386-88] | £170,090.00 | 111 | E1/276 | Undeclared sales to Coco (onward sold to SED Essex) 9.11.11-8.2.12 |
| 10 February 2012 | Fuget | Aff. of Bennett paras. 156(b) & 161(b) [A/4/50 & 52]; wit. stat. of Kinman paras. 84-85 [A/29/382] | £120,039.00 | 85 | E1/73 | Undeclared sales to Dentile 14.2.11-13.3.11 |
| 18 April 2012 | Dentile | Aff. of Bennett paras. 156(h) & 161(a) [A/4/50 & 52]; wit. stat. of Kinman paras. 79-83 [A/29/381-82] | £1,900,000.00 | 83 | - | [No sales declared 1.4.11-13.9.11] |

| | | | | | | |
|---|---|---|---|---|---|---|
| 8 March 2013 | DCP Derby Ltd | Wit. stat. of Kinman paras. 120-23 [A/29/390] | £71,758.71 | 121 | E1/292-94 | Sales 30.7.12-13.8.12 |
| 20 March 2013 | DCP Derby Ltd | | £674,355.39 | 121 | E1/295-300 | Sales 10.7.12-17.8.12 |
| **Total assessments on Defaulting Acquirers** | | | **£12,419,470.17** | | | |
| | | | | | | |
| **Hijacked Trader – indirect supplier** | | | | | | |
| 19 November 2012 | Demas | Wit. stat. of Kinman para. 94 [A/29/384-85] | £1,593,615.00 | 94 | E1/112 | Undeclared sales to Bold Silverback1.7.11-19.11.11 |
| **Total assessments on Hijacked Trader** | | | **£1,593,615.00** | | | |
| **Missing Defaulters – direct suppliers** | | | | | | |
| 18 February 2013 | Doro | Aff. of Bennett para. 161(d) [A/4/52]; wit. stat. of Bennett paras. 17-32.7 [A/27/334-42]; wit. stat. of Kinman paras. 58-70, 82, 86 & 184-87 [A/29/377-82 & 402]. N.B. Dissolved 4 December 2012. | £148,855.46 | 69 | E1/42 | Undeclared sales to SED Essex |
| 19 March 2013 | Shaqak | Aff. of Bennett paras. 160(f) & 162-64 [A/4/53]; wit.stat. of Bennett paras. 33-40 [A/27/342-44]; wit.stat. of Kinman paras. 45-51 [A/29/373-75]. N.B. Also set up by use of identity theft. | £695,588.88 | 49 | E1/30 | Undeclared sales to SED Essex 1/11/11-9/2/12 |

| | | | | | | |
|---|---|---|---|---|---|---|
| 22 March 2013 | Coco | Aff. of Bennett para. 161(g) [A/4/53]; wit. stat. of Kinman paras. 98-106 & 175-81 [A/29/386-88 & 400-1]. | £395,422.86 | 99 | E1/139-41 | Undeclared sales to SED Essex 1/5/12-13/6/12 |
| **Missing Defaulters - indirect suppliers** | | | | | | |
| 30 May 2012 | Acmer | Wit. stat. of Kinman paras. 95-96 [A/29/385]. N.B. Compulsory winding-up order made 11 March 2013. | £1,024,577.00 | 96 | E1/124 | Undeclared sales |
| 30 May 2012 | Acmer | | £4,883,753.00 | 96 | - | Penalty charge |
| 17 April 2013 | Kenwood | Aff. of Bennett para. 161(c) [A/4/53]; wit.stat. of Kinman paras. 52-53 [A/29/375-76]. | £397,109.12 | 53 | E1/32 | Undeclared sales 1.10.11-19.11.11 (inc. to Shaqak) |
| **Total assessments on Missing Defaulters** | | | **£7,545,306.32** | | | |
| **TOTAL UNAPPEALED ASSESSMENTS ON DEFAULTING ACQUIRERS, HIJACKED TRADERS AND MISSING DEFAULTERS IN SED ESSEX**<br><br>**SUPPLY CHAINS** | | | **£21,558,391.49** | | | |