[2018] UKFTT 36 (TC)

TC06316

Appeal numbers:
TC/2016/03839 &
TC/2016/03840

EXCISE DUTY – Duty Suspended alcohol – Registered owner of duty suspended goods – Approval to operate as warehousekeeper – fit and proper persons - Revocation of excise duty approvals under the Warehousekeepers and Owners of Warehoused Goods Regulations (WOWGR) 1999 and sections 92 and 100G Customs and Excise Management Act 1979 (CEMA) – Excise Notice 196 Section 10 – Alcohol Due Diligence (ADD) condition - whether revocation decisions of HMRC could reasonably have been arrived at and proportionate - A1P1 ECHR – proportionality – inevitable same decisions arrived at - appeals dismissed

FIRST-TIER TRIBUNAL
TAX CHAMBER

(1) WHITTALLS WINES LIMITED
(2) EUROPEAN FOOD BROKERS LIMITED

Appellants

- and -

THE COMMISSIONERS FOR HER MAJESTY'S REVENUE & CUSTOMS

Respondents

TRIBUNAL: JUDGE RUPERT JONES

Sitting in private at the Rolls Building, London on 5-6 June 2017 (reading days) 7-9 June 2017, 12-15 June 2017, 19-23 June 2017, 26-30 June 2017, 3-6 July 2017 and 11-14 July 2017

With further written submissions from the Appellants dated 17 and 21 July 2017 and from the Respondents dated 20 and 26 July 2017

Philip Coppel QC and David Bedenham, Counsel for the Appellants

Stephen Nathan QC, Isabel McArdle and Gideon Barth, Counsel instructed by the General Counsel and Solicitor to HM Revenue and Customs, for the Respondents

DECISION

Introduction

1. The Tribunal begins this decision by thanking the parties' advisers and representatives for their preparation and presentation of these appeals. They conducted the case conscientiously and courteously throughout what was, no doubt, a demanding hearing. Their assistance has been invaluable.

2. The Tribunal is mindful that following a trial of this size and length, with serious ramifications for all, it will not be possible within this decision to deal with each point of evidence and argument raised on behalf of the parties. Nonetheless, they can be confident that the material has been considered even if not referred to herein.

The question at the heart of the appeals

3. Putting the voluminous evidence to one side, at the heart of determining these complex appeals lies a simple question:

Were the decisions of Her Majesty's Revenue & Customs ("HMRC")[1], that the Appellants were not fit and proper persons to own and warehouse duty suspended alcohol and therefore to revoke their approvals to do so, ones that could reasonably have been arrived at and proportionate?

4. The identification of this question is an attempt to summarise specific grounds of appeal which are somewhat more complicated. These grounds of appeal are dealt with below.

Answering the question

5. The Tribunal is satisfied that the answer to the question above is 'Yes'. HMRC's decisions, that the Appellants were not fit and proper persons to own and warehouse duty suspended alcohol and therefore to revoke their approvals to do so, were ones that could reasonably have been arrived at and were proportionate. The Tribunal is further satisfied that the facts upon which HMRC rely as reasons in support of their decisions have been established on the balance of probabilities, and to a high degree at that.

6. Each of the specific grounds of appeal fails for the reasons set out below.

7. The appeals are therefore dismissed.

8. The Tribunal's reasons, which follow hereafter, are lengthy.

9. Nonetheless, it is worth noting the following from the outset. The Tribunal has examined a large amount of oral and documentary evidence during the trial in June and July 2017. This took place around one year after the decisions of HMRC of 8 July 2016 which are under challenge. The Tribunal has made findings of fact afresh by which to

[1] Where the Tribunal refers to the decisions being made by 'HMRC', the material decisions were made specifically by HMRC Officer Craig Lewis. In this decision, where the Tribunal refers to the decisions made by 'HMRC', it reviews the reasonableness of the decisions and finds HMRC to have acted reasonably, the term 'HMRC' is to be read as incorporating Officer Craig Lewis.

assess the reasonableness and proportionality of HMRC's decisions and reasons in support.

10. The Tribunal is satisfied that the decisions and reasons relied upon by HMRC have become more powerfully evidenced by the findings of fact it has made. Put another way, the justification for HMRC's ultimate conclusion that the Appellants were not fit and proper persons to hold approvals to trade in duty suspended alcohol was fortified during the course of the evidence presented at trial. More simply, the basis for revocation became stronger as a result of the evidence heard at trial than it was at the time HMRC made the revocation decisions.

11. This is because events that occurred after the revocation decisions, principally the presentation of documentary and oral evidence by the Appellants, have shed light upon them.

The appeals

12. The appeals were brought pursuant to section 16 of the Finance Act 1994 against six decisions of the Respondents, the Commissioners for Her Majesty's Revenue and Customs ("HMRC"), under legislation concerning duty suspended alcohol.

13. Five decisions of HMRC Officer Craig Lewis were communicated to the two Appellants, Whittalls Wines Limited and European Food Brokers Limited (referred to respectively as "WWL" and "EFBL"), reissued in letters dated 8 July 2016. These decisions were:

a. To revoke WWL's approval to operate as a Registered Owner ("RO") of duty suspended goods pursuant to section 100G(5) the Customs and Excise Management Act 1979 ("CEMA");

b. To revoke WWL's approval to operate a General Storage and Distribution Warehouse at Unit A, Dartmouth Industrial Estate, Bracebridge Street, Birmingham B6 4NE ("the Birmingham Warehouse approval") pursuant to section 92(7) CEMA;

c. To revoke WWL's approval to operate a General Storage and Distribution Warehouse at Auckland House, Team Valley Trading Estate, Gateshead NE11 0TB ("the Gateshead Warehouse approval") pursuant to section 92(7) CEMA;

d. To revoke WWL's approval to operate a General Storage and Distribution Warehouse at Wolverhampton No 4 Bond, Chateau Pleck, Darlaston Road, Walsall, West Midlands WS2 9SQ ("the Wolverhampton Warehouse approval") pursuant to section 92(7) CEMA; and

e. To revoke EFBL's approval to operate as a Registered Owner of duty suspended goods pursuant to section 100G(5) of CEMA.

14. A sixth decision was communicated in a letter from HMRC dated 20 October 2016. This was to revoke WWL's approval as an authorised warehousekeeper pursuant

to Regulation 18 (1) of the Warehousekeepers and Owners of Warehoused Goods Regulations 1999 ("WOWGR").

15. At the start of the hearing the Tribunal gave permission for the appeal against the sixth decision to be joined and heard with the other appeals pursuant to Rule 5 of The Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009.

16. In making the sixth decision, HMRC Officer Geoff Germaney relied solely upon the reasons set out in the earlier decision letters, stating: '*you are not fit and proper…for the reasons set out in the letters revoking your other Excise approvals and annexes*.' He also stated: '*HMRC would be willing to agree to consolidate such a further appeal with those matters presently being appealed under TC/2016/3839 and TC/2016/3840. At this stage, I do not, therefore, see that there would be any cause for delay to the timetable in place for the hearing of those appeals*.' The Tribunal relies upon HMRC's own reasoning, notwithstanding that the application to join was opposed by HMRC at the beginning of the hearing.

17. The Tribunal also relies upon the fact that determining the sixth appeal raises no new issues of fact or law: this decision was parasitic upon the earlier five.

The revocation decisions and evaluative conclusions

18. The revocation decisions were reached because HMRC considered that the Appellants were not "fit and proper" persons to hold the abovementioned approvals. Each of the five decision letters of Officer Lewis provided the following reasons:

"The Commissioners consider that you are not a fit and proper person to hold excise approvals because the manner in which you have conducted your duty suspended business activities over a very significant period of time has exposed the Revenue to an unacceptable risk of loss through fraud. The Commissioners reached this decision because:

a. they do not consider your alcohol due diligence to have been sufficiently robust to guard against the risk of tax fraud or to comply with the Appellants' responsibilities pursuant to section 10 of Excise Notice 196;

b. significant tax losses have occurred within your supply chains over a number of years;

c. of irregularities identified in movements of duty suspended goods sold;

d. of the concerns that the Commissioners have as to your behaviour and attitude to the excise approvals regime."

19. Reasons a.-d. were referred to by all parties as the four 'evaluative conclusions'. The Tribunal considers that the four evaluative conclusions must be considered independently, assessing their individual and collective weight when determining the reasonableness of the ultimate conclusion: that the Appellants are not fit and proper persons to hold excise approvals because the manner in which they have conducted their duty suspended businesses over a very significant period of time has exposed the Revenue to an unacceptable risk of loss through fraud.

20. The Tribunal also accepts HMRC's submission that the evaluative conclusions can also be considered in interplay with each other. If each of the four evaluative conclusions is established to be reasonable, then they interact with each other and the reasonableness of each can be considered as it feeds into the others and the ultimate conclusion.

21. For example, if established:

the reasonableness of HMRC's conclusion regarding the behaviour and attitude of the Appellants to the excise approvals regime (d.) can be considered having regard to any failures identified in due diligence (a.), existence of tax losses in supply chains (b.) & irregularities in its movement of loads (c.), particularly those brought to the attention of the Appellants by HMRC;

the reasonableness of HMRC's conclusion regarding the risk to the Revenue created by a failure to comply with the Alcohol Due Diligence (ADD) condition (a.) can be considered in light of any earlier tax losses in the Appellants' supply chains (b); and

the reasonableness of HMRC's conclusion regarding the existence of tax losses in the Appellants' supply chains informs i) the seriousness of the subsequent due diligence failures, ii) the Appellants' failure to take reasonably required further adjustments in light of warnings of the same, and iii) the reasonableness and proportionality of the revocation decisions.

22. It is apparent therefore that the four evaluative conclusions feed into each other, the reasonableness of the ultimate conclusion and the proportionality of the revocation decisions.

Preliminary matters

23. It is important to record at an early opportunity that it was no part of HMRC's grounds for revocation, nor their case during the appeal, that the Appellants have been or are knowingly involved or party to any fraudulent tax loss caused by their trade in duty suspended alcohol. There is no allegation of this type nor any evidence in support.

24. Rather, it is said that there have been many and valuable supplies of duty suspended alcohol to mainland Europe between 2011 and 2014, emanating from the Appellants. These supplies were said to end in missing or defaulting traders in Europe at least two or three traders down the chain from the Appellants' first extra group customer. Thus, it is said that the supplies resulted in a large loss of tax abroad (TVA/VAT), and potential tax losses in the UK (Excise Duty/VAT).

25. HMRC have not sought to prove that the Appellants' conduct caused these foreign or UK tax losses. Nonetheless, it is said that the Appellants' subsequent failure to comply with the ADD condition, and their attitude to warnings regarding earlier tax losses in supply chains, made it reasonable for HMRC to conclude that their conduct exposed the Revenue to an unacceptable risk of loss through fraud.

26. HMRC's decisions that the Appellants were not fit and proper persons and their approvals should be revoked is based upon the ultimate conclusion that the manner in which they have conducted their businesses over a very significant period of time has exposed the Revenue to an unacceptable risk of loss through fraud.

27. The Tribunal has applied a supervisory test as to the reasonableness of this ultimate conclusion, as with the evaluative conclusions, the burden of proof being on the Appellants to prove otherwise.

28. It is worth emphasising that the Tribunal's review does not equate to applying the test in *Axel Kittel v Belgium; Belgium v Recolta Recycling Sprl* [2006] Case C-430/04 ECR 1-6161 for appeals considering the merits of the denial of VAT input tax (where HMRC must prove traders knew or should have known their transactions were involved in the fraudulent evasion of VAT through missing trader or carousel fraud).

29. It may be that any of HMRC's four evaluative conclusions on its own, if established, would be sufficient to justify the ultimate conclusion that the Appellants were not fit and proper persons to hold excise approvals. Nonetheless, HMRC's decisions did not seek to rely upon only one evaluative conclusion.

30. The nature of the Tribunal's jurisdiction is such that its primary task is to consider all the reasons relied upon by HMRC for revocation in order to determine if they are reasonably arrived at, take into account relevant matters and do not take into account irrelevant matters. If any one of the evaluative conclusions, or the reasons in support, fail these tests then the Tribunal can only uphold the decisions if it considers it inevitable that HMRC would have reached the same decisions had it approached them correctly. That is a high hurdle.

31. Nonetheless, it so happens that this is a case where the Tribunal will apply this test relying both on the evidence available at the time of the decisions supporting the four evaluative conclusions and the evidence heard at trial. In addition, the Tribunal will find that it is inevitable that HMRC would have reached the same ultimate conclusion in light of the evidence now heard by the Tribunal and its findings as to the credibility of the Appellants and the manner in which they have attempted to mislead both HMRC and the Tribunal.

32. In light of the evidence now heard, the Tribunal is of the view that not only are the four evaluative conclusions reasonable (with a small exception to the reasons in support of one of the limbs), the conduct of key persons in the Appellants in lying to and attempting to mislead HMRC and the Tribunal, and their purpose in doing so, is such that it is inevitable that HMRC would have concluded that they are not fit and proper persons to hold excise approvals.

33. The Tribunal also separately considers HMRC's decisions that the Appellants are not fit and proper persons from the decisions to revoke their excise approvals. The revocation decisions must be assessed applying principles of both reasonableness and proportionality.

34. Each of these matters is addressed in detail below.

Annex A to the revocation decisions

35. Officer Lewis' decision letters dated 8 July 2016 state, '*I set out in Annex A to this letter an explanation of my conclusions. In this Annex, I use the same broad headings as above and set out in detail the reasons why I have concluded that revocation is justified*.' Annex A to each letter consists of 113 paragraphs over 23 pages that provided detailed reasons which are said to support the evaluative conclusions. Annex A will be considered in much detail below as it is the foundation for the evaluative conclusions and ultimate conclusion.

36. The letters also contained an Annex B – a timeline of events – which provided a summary of discussions which took place between HMRC and the Appellants. It was 25 paragraphs long set out over 7 pages. It is included as Annex 2 to this decision. This will not be considered in any detail but the Tribunal has made more detailed findings in relation to the same time period within an extended chronology set out below. Suffice to say, the timeline did not purport to provide a full examination of those events and HMRC reasonably relied upon this chronology.

Outline of the Appellants' grounds of appeal

37. The Appellants' three grounds of appeal dated 14 July 2016 can be summarised as follows:

1. Each decision was one which the Commissioners could not reasonably have arrived at; that is to say, a decision which was so unreasonable that no Board of Commissioners, properly constituted, could have reached. The Appellants raise the following arguments in support of their position:

(i) much of the factual background underlying the decisions was not founded on evidence or founded on evidence so weak it could not reasonably support the findings of primary facts relied on;

(ii) facts and matters proved do not support the 'Evaluative Conclusions';

(iii) the 'Evaluative Conclusions' do not support the outcome.

They further allege that:

(iv) the Commissioners failed to take into account, or give adequate weight to, relevant matters.

Finally, they allege that:

(v) the Commissioners were pre-disposed to the Evaluative Conclusions using them as an evaluative tool with which to accept, reject, discount, explain and otherwise weigh the material before them.

2. The decisions constitute a disproportionate interference with the Appellants' rights under Article 1 of the First Protocol to the European Convention on Human Rights ("A1P1").

3. The decisions were disproportionate, as imposition of conditions could have addressed any reasonable concerns.

The Law

The regulatory regime and duty suspension

38. Alcoholic liquors are subject to excise duty pursuant to the Alcoholic Liquors Duties Act 1979 ("ALDA") (s1(1)).

39. Council Directive 2008/118/EC of 16/12/08 deals with the general arrangements for excise duty. It replaced Directive 92/12/EEC. For present purposes, the differences between the two are immaterial.

40. Both provide for excise goods, such as alcoholic beverages, to become subject to excise duty at the time of their production in, or importation into, the EU, but for the duty to be suspended where the goods are produced, held or moved under "duty suspension arrangements" and in those circumstances for the duty to become payable when the goods depart from such an arrangement.

41. The Directives spell out a detailed scheme for duty suspension, adherence to which is designed to minimise the opportunity for duty fraud: see 2008/118/EC Arts 8(1)(a), 10, 13, 16, 17, 20, 21 and 38 in particular.

42. Member States can, for example, require that excise goods carry tax markings or national identification marks for fiscal purposes: Art 39. Implementation of 2008/118/EC was required to be achieved by 1/4/10: Art 48.

43. Recitals 15 and 16 of the Excise Directive 2008 explain the perceived need for warehouses, which are subject to authorisation by the competent authorities and for requirements to be complied with by authorised warehousekeepers and traders without authorised warehousekeeper status.

44. The Excise Directive 2008 expressly provides that it is for each Member State to fix its own rules for granting permission to such persons: Excise Directive 2008, Part III.

45. The EU Directive is itself proportionate (Recital 37) and it expressly accords to each Member State a wide margin of appreciation as to how each State is to implement it: see e.g. Articles 11, 15 and 16.

46. HMRC's statutory powers pursuant to the Directive, which assist in combating fraud[2], include instituting a system limiting the approval of owners, duty representatives and warehousekeepers to those who demonstrate (and continue to demonstrate) to HMRC's satisfaction that they are "fit and proper" and permitting the revocation by the Commissioners of approvals for reasonable cause: see Customs and Excise Management Act ("CEMA") Sections 92, 93, 100G, and 100H, Warehousekeepers and Owners of Warehoused Goods Regulations 1999 ("WOWGR" Regulations) and paragraph 2 of Excise Notice PN 196 as set out below.

Risk of fraud within duty suspended holding and movement of goods

47. The Court of Appeal in *CC&C v HMRC* [2014] EWCA Civ 1653 has summarised the risks with trading in duty suspended in the following manner (Underhill LJ at paragraph 1):

"This appeal arises in the context of the regime which permits wholesale trading in alcoholic drinks and other dutiable goods which are held in, or moved between, excise warehouses without giving rise to an "excise duty point" and thus attracting liability for excise duty. Goods so traded are generally described as "duty suspended goods". The regime is governed by both EU and domestic regulations. The Warehousekeepers and Owners of Warehoused Goods Regulations 1999 ("the Regulations" – also known as "WOWGR") provide for persons holding or buying duty suspended goods to be approved and registered by Her Majesty's Revenue & Customs ("HMRC") as "registered owners". The regime is highly prescriptive as regards the procedures and paperwork to be employed, but there is a recognised problem of dishonest traders seeking to manipulate the system in order to evade duty, typically by so-called "duplicate loads" being moved under cover of paperwork generated for legitimate movements. Registered owners are expected to use all due diligence to prevent their legitimate trade being exploited to facilitate fraudulent transactions."

Risk of fraud in duty suspended alcohol market

48. Courts and Tribunals have consistently recognised HMRC's contention that there is a high risk of tax fraud within the trade of duty suspended alcoholic liquors, not least because the UK excise duty on the goods in question is very high compared with their net wholesale purchase cost and also significantly higher than the neighbouring EU States. This has been evidenced by statements served in these appeals. For example, Jatinder Chatha's evidence is that on a load of Bells whisky, costing £184,475.20, the duty totals £162,373.12 (88.02% of the final cost – ie. the duty is eight times the costs of sale of the alcohol). It is to be noted that duty rates vary between different types of alcohol such as spirits, wine and beer.

49. Fraud in this sector is said to cost the UK alone in the region of £1.2 billion per year. Fraud on this scale inevitably distorts competition, allowing undercutting of legitimate trade in the sector. Evidence was served in support of this contention but it is not in dispute.

[2] HMRC is not confined to preventing fraud within the UK; it is also concerned with preventing tax fraud in other EC states.

50. Courts and Tribunals have recognised two forms of fraud as notably affecting the UK alcoholic liquor market.

51. Inward diversion involves the export of duty suspended goods from the UK, usually to the near European continent, from which they are illicitly imported back into the UK, untaxed or only partly tax-paid abroad, and sold on the black market in the UK.

52. Outward diversion consists of duty suspended alcoholic liquor purportedly being exported from the UK to the continent, but in fact being diverted onto the UK black market without ever leaving the UK. Outward diversion is usually dependent on the participation of many people including the lorry driver and/or his employer.

EMCS, ARCs and eADs

53. The frauds exploit the Excise Movement and Control System (EMCS), an EU-wide computer system which is used to record duty suspended movements of excise goods taking place within the EU. This was summarised by Judge Hellier in *Safe Cellars* at paragraphs 25-27 and 57:

"25. Article 21 of the Excise Directive makes it a condition of a movement under a duty suspension arrangement that the movement takes place under the cover of an electronic Administrative Document (an "eAD"). The Article provides for the consignor to submit details of the intended movement to the authorities in the member state of dispatch, for the member state of the consignee to confirm that the consignee is an authorised warehouse keeper, and for the system to assign a unique administrative reference code (an "ARC") and notify it to the consignor. The consignor is required to provide a printed copy of the eAD including the ARC to the haulier.

26. The Computer system which administers this system is called the "EMCS". We understood that (a) status as an approved person (or the equivalent in other member states) permits a warehousekeeper access to the system, (b) the consignee will access the system to record the arrival of the goods at its warehouse, and (c) the consignor will access the system to obtain an ARC and details of the status of the delivery.

27. Whilst this system may provide some comfort for a consignor that, in the absence of fraudulent or incorrect entries into EMCS by the receiving warehouse or fraud by the haulier, the goods despatched have arrived, it does not provide certainty that any particular movement is not connected with fraud. For example:

(i) in relation to a duty suspended movement leaving the UK, it leaves open the possibility that the lorry is emptied before leaving the UK (and its load sold in the UK without payment of duty) and then picks up a matching load (on which lower say French duty has been paid) which it delivers to the warehouse abroad. Such a movement would have to be detected at the port to catch the fraud; and

(ii) in relation to a movement into the UK, the system does not catch the use of duplicate copies of the eAD or other document bearing the ARC. If such copies are made the tractor unit, whose vehicle registration number is given on the eAD, might travel more than once into the UK with trailers (which are not uniquely identified) each with a load matching the details on the eAD. If any one is stopped the documentation will be found to be in order. But those trailers which are not stopped need not be unshipped at the warehouse named on the document; only one need go

there: the other load(s) may go to a "slaughterhouse" site to be unloaded and be sold in the UK without payment of duty.

……

57.In CC&C Ltd v HMRC [2014] EWCA Civ 1653 Underhill LJ at [1] said that there is a recognised problem of dishonest traders manipulating the system typically by so-called duplicate loads moving under the cover of paperwork generated by legitimate movements. We find there are at least two common types of alcohol excise duty fraud:

(i) outward fraud in which a load moves under cover of an ARC created by a UK warehouse, but the goods do not in fact leave the UK (see para 27(i) above), and

(ii) inward fraud (see para 27(ii) above). Inward fraud is particularly prevalent with goods which have previously been exported under duty suspension from the UK: such goods may be particularly suitable for sale in the UK market (having evaded duty)."

54. The frauds operate by exploiting the EU-wide duty-suspension arrangements which allow excise goods to move duty-unpaid between authorised tax warehouses until released for consumption onto the wholesale duty-paid market. HMRC's evidence and submission is not seriously in dispute that, on the continent within the EU, there is also wide-spread diversion of duty suspended alcohol via 'missing traders' and fake consignments resulting in the goods disappearing. These tax frauds are also said to involve a vast amount of money-laundering of the proceeds of the black market sales.

55. HMRC have provided evidence and made submissions that these types of fraud (and others) involve sophisticated and well organised criminals, operating internationally, using complex supply chains which are designed to mask the true point at which diversion occurred. The criminals have a deep understanding of the trade, and are well organised in finance, procurement, logistics, supply chain control and marketing. They may involve legitimate businesses in their purchasing chains, and may masquerade as legitimate businesses (for instance a genuine haulage company details may be used in fraudulent alcohol movement documentation). They make frequent use of 'buffer companies' which contribute no commercial value within the sale-chain, but serve only as the fraudsters' tools to conceal the true nature of tax-evading supply-chains.

56. It appears to be common ground that these matters are very serious risks, against which alcohol traders and warehousekeepers, such as the Appellants, are expected to guard, including by carrying out appropriate due diligence and, after 1 November 2014, by complying with the ADD Condition of their approvals set out below.

The Excise Directive

57. As noted above, the approval in the UK to hold, trade in, or transport, duty suspended alcohol is subject to the Excise Directive 2008. This Directive gives Member States a wide margin of appreciation in respect of the domestic requirements to be

satisfied when such privileges are granted, and retained. For instance, Article 15 provides:

"PRODUCTION, PROCESSING AND HOLDING
Article 15
1. Each Member State shall determine its rules concerning the production, processing and holding of excise goods, subject to this Directive…"

58. Article 16 provides:

"1 The opening and operation of a tax warehouse by an authorised warehousekeeper shall be subject to authorisation by the competent authorities of the Member State where the tax warehouse is situated. Such authorisation shall be subject to the conditions that the authorities are entitled to lay down for the purposes of preventing any possible evasion or abuse." (see also recital (15))

59. The *Marleasing* principle provides that the courts of member states should interpret national law enacted for the purpose of transposing an EU Directive into its law, so far as possible, in light of the wording and the purpose of the Directive in order to achieve the result sought by the Directive: *Marleasing SA v La Comercial Internacional de Alimentación SA* (Case C-106/89) [1990] ECR I-4135; *Lister v Forth Dry Dock & Engineering Co Ltd* [1990] 1 AC 546 at 554, 558, 576-577.

60. Further, the system must be implemented in a way that represents a proportionate derogation from the fundamental freedom of movement of goods: see TFEU Arts 34 - 36 (Prohibition of Quantitative Restrictions Between Member States); *Sociacion Nacional De Expendedores De Tabaco Y Timbre (Anett) v Administracion Del Estado* (C-456/10) [2012] 2 CMLR 1267 at [32]:

"According to settled case-law, all trading rules enacted by Member States which are capable of hindering, directly or indirectly, actually or potentially, trade within the European Union are to be considered as measures having an effect equivalent to quantitative restrictions within the meaning of Article 34 TFEU (see, inter alia, Case 8/74 Dassonville [1974] ECR 837, paragraph 5, and Case C-110/05 Commission v Italy [2009] ECR I-519, paragraph 33)."

61. "Proportionate" in this context depends on whether the national measure is one derogating from fundamental freedoms or one implementing EU measures: see *R (Lumsdon & Ors) v Legal Services Board* [2015] UKSC 41, [2016] AC 697 at [50]-[74]. It is for the national authorities, where they adopt a measure derogating from a principle enshrined by European Union law, to show in each individual case that measure is appropriate for securing the attainment of the objective relied upon and does not go beyond what is necessary to attain it: *Anett* at [50].

62. Specifically, in the context of this appeal, the response must not be disproportionate to the combatting of the risk of fraud.

Domestic requirements for trade in Duty suspended alcohol - CEMA and WOWGR

63. Section 92 of the Customs and Excise Management Act 1979 (CEMA), so far as material, provides for the approval and revocation of approval for warehouses storing and releasing duty suspended alcohol in the following terms:

92 Approval of warehouses

(1) The Commissioners may approve, for such periods and subject to such conditions as they think fit, places of security for the deposit, keeping and securing—

(a) of imported goods chargeable as such with excise duty (whether or not also chargeable with customs duty) without payment of the excise duty;

(b) of goods for exportation or for use as stores, being goods not eligible for home use;

(c) of goods manufactured or produced in the United Kingdom [or the Isle of Man] and permitted by or under the customs and excise Acts to be warehoused without payment of any duty of excise chargeable thereon;

(d) of goods imported into or manufactured or produced in the United Kingdom [or the Isle of Man] and permitted by or under the customs and excise Acts to be warehoused on drawback,

subject to and in accordance with warehousing regulations; and any place of security so approved is referred to in this Act as an "excise warehouse".

[(2) Functions with respect to the approval of warehouses for the purposes of Article 38 of Commission Regulation (EEC) No 3665/87 shall be exercised by the Commissioners; and a warehouse approved by them for such purposes is referred to in this Act as a "victualling warehouse".]

(3) The same place may be approved under this section both as a [victualling] and as an excise warehouse.

(4) Notwithstanding subsection (2) above and the terms of the approval of the warehouse but subject to directions under subsection (5) below, goods of the following descriptions, not being goods chargeable with excise duty which has not been paid, that is to say—

(a) goods originating in member States;

(b) goods which are in free circulation in member States; and

(c) goods placed on importation under a customs procedure (other than warehousing) involving the suspension of, or the giving of relief from, customs duties,

may be kept, without being warehoused, in a [victualling warehouse].

(5) The Commissioners may from time to time give directions—

(a) as to the goods which may or may not be deposited in any particular warehouse or class of warehouse;

(b) as to the part of any warehouse in which any class or description of goods may be kept or secured.

(6) If, after the approval of a warehouse as an excise warehouse, the occupier thereof makes without the previous consent of the Commissioners any alteration therein or addition thereto, [the making of the alteration or addition shall attract a penalty under section 9 of the Finance Act 1994 (civil penalties).]

(7) The Commissioners may at any time for reasonable cause revoke or vary the terms of their approval of any warehouse under this section.

[(8) Where any person contravenes or fails to comply with any condition imposed or direction given by the Commissioners under this section, his contravention or failure to comply shall attract a penalty under section 9 of the Finance Act 1994 (civil penalties).

[Emphasis Added]

64. Section 100G of CEMA, so far as material, provides for the approval and regulation of registered excise dealers in duty suspended alcohol:

"(1) For the purpose of administering, collecting or protecting the revenues derived from duties of excise, the commissioners may by Regulations under this section (in this Act referred to as 'registered excise dealers and shippers Regulations)':
(a) confer or impose such powers, duties, privileges and liabilities as may be prescribed in the Regulations on any person who is or has been a registered excise dealer and shipper; and
(b) impose on persons other than registered excise dealers and shippers, or in respect of any goods of a class or description specified in the Regulations, such requirements or restrictions as may by or under the Regulations be prescribed with respect to registered excise dealers and shippers or any activities carried on by them.
(2) The commissioners may approve, and enter in a register maintained by them for the purpose, any revenue trader who applies for registration under this section and who appears to them to satisfy such requirements for registration as they may think fit to impose.
(3) In the customs and excise Acts 'registered excise dealer and shipper' means a revenue trader approved and registered by the commissioners under this section.
(4) The commissioners may approve and register a person under this section for such periods and subject to such conditions or restrictions as they may think fit or as they may by or under the Regulations prescribe.
(5) The commissioners may at any time for reasonable cause revoke or vary the terms of their approval or registration of any person under this section."

[Emphasis Added]

65. So far as relevant, section 100H(1) of CEMA provides:

"Without prejudice to the generality of section 100G above, registered excise dealers and shippers Regulations may, in particular, make provision:
(a) regulating the approval and registration of persons as registered excise dealers and shippers and the variation or revocation of any such approval or registration"

66. "Revenue trader" is defined in section 1(1) of CEMA and, so far as relevant, includes:

"any person carrying on a trade or business subject to [the Act] or which consists of or includes . . . the buying, selling, importation, exportation, dealing in or handling of [dutiable goods]."

67. The Regulations made under sections 100G-100H of CEMA are the Warehousekeepers and Owners of Warehoused Goods Regulations 1999 ("WOWGR").

68. Parts II—III of the WOWGR give power to HMRC to approve and register warehousekeepers (Part II) and owners and duty representatives (Part III) as registered excise dealers and shippers.

69. Regulation 5 is headed "Registered owners" and provides:

"(1) For the purposes of section 100G of the Act, the commissioners may approve revenue traders who wish to deposit relevant goods that they own in an excise warehouse and register them as registered excise dealers and shippers in accordance with section 100G(2) of the Act.
(2) A revenue trader who has been so approved and registered shall be known as a registered owner."

70. Part VI of the WOWGR is headed 'Privileges'. Regulation 12 sets out the privileges of a registered owner, which are essentially to hold or buy dutiable goods in an excise warehouse.

71. The statute and regulations describe the permission to trade in duty suspended alcohol as a privilege and the House of Lords has held that it is "a privilege which carries obligations" (*Greenalls v HMC&E* [2005] 1 WLR 1754 per Lord Hoffman at paragraph 17).

72. The grant of approval is subject to requirements and conditions.

73. Part VII of the WOWGR is headed:

"Conditions and Restrictions."

74. Regulation 18 is headed "Conditions and restrictions that apply to registered owners." Paragraph (1) provides:

"The approval and registration of every registered owner shall be subject to the conditions and restrictions prescribed in a notice published by the commissioners and not withdrawn by a further notice."

Public Notice EN196

75. The notice published in accordance with regulation 18(1) current at the date of the revocation of the Appellants' registrations is Excise Notice 196 (EN 196 is also referred to as Public Notice (PN) 196). Importantly for present purposes, EN 196 was materially changed on 23 October 2014 with effect from 1 November 2014. It was amended to introduce from 1 November 2014, the Alcohol Due Diligence ("ADD") condition on registered excise businesses.

76. The background and effect of EN196 were explained in this way by Judge Hellier in his decision in *Safe Cellars Ltd v HMRC* [2017] UKFTT 78 (TC) at paragraph 4 onwards*:*

"4. Section 100H provides that such regulations may, inter alia, regulate the approval (and revocation of approval) of persons as excise dealers, and require the keeping of records.

5. The WOWGR regulations put flesh on these bones. Relevantly they provide:

(1) for the approval of authorised warehousekeepers who may receive excise goods at, and consign them from, their warehouses; and

(2) for the approval of duty representatives who may arrange for relevant goods to be held at an excise warehouse and may act as an agent for the buyer of goods held in such a warehouse.

6. Regulation 17 (1) provides that:

"The approval and registration of every authorised warehousekeeper shall be subject to the conditions and restrictions prescribed in a notice published by the Commissioners and not withdrawn by further notice."

7. Regulation 19 (1) makes similar provision in relation to duty representatives.

8. On 1 November 2014 HMRC published a revised Excise Notice "EN196" which set out detailed conditions for approval. Those conditions included one in relation to "due diligence". We shall return to this shortly, but before doing so we should advert to two matters.

9. First, the power given by section 100G to make regulations is for the purpose of "administering, collecting and protecting" excise revenue. The secondary legislation must therefore be interpreted in the light of, but also limited by, that purpose. In this context we note that Mr Kinnear described the purpose of the additional requirements in EN 196 to us as to "ensure that the UK alcohol industry played its part in (i) making it more difficult for criminals to operate, (ii) helping prevent unfair competition from the sale in the UK of diverted or smuggled goods, and (iii) preventing money-laundering". It seems to us that the requirements of EN196 relevant to WOWGR cannot be read as having such a broad scope or purpose. They must be read at least as far as excise approvals are concerned as confined to the purpose of administering, collecting and protecting excise revenue.

10. Second, we have mentioned the authority given by section 100H for making regulations to regulate approval and registration. That section lists, in 14 subparagraphs, particular matters for which the regulations may provide. In relation to some of those matters the relevant subparagraph speaks of matters which may be "prescribed"; section 100H(3) says that "prescribed" means prescribed in the regulations "or as prescribed by the Commissioners under any such regulation". The subparagraph dealing with the regulation of approval does not, however, use "prescribed": it merely says that regulations "may make provision (a) for regulating the approval and registration of persons as registered excise dealers ...". We have, however, taking it as tacit common ground that section 100G and H permit the regulations to delegate the detailed conditions for the continuance of approval to HMRC (by its publication of notices) without the (albeit limited) Parliamentary scrutiny of regulations subject to annulment by either House of Parliament (see section 172 CEMA).

……

13. There is in EN196 a mixture of explanation, advice and conditions or requirements We do not read the passages giving examples of due diligence checks as a requirement that all such checks be conducted or as being exhaustive; the requirements in relation to due diligence are those introduced in paragraphs lettered A, D, E, G, H, I, J, K, L and N above. The central requirement is in paragraph H.

14. The emphasis (by volume of words) in section 10 of EN196 is on the kinds of checks which could be carried out and what concerns might arise from them. However, the words in para H above are in our view sufficient to make clear that the "due diligence" required by the notice consists, not only in making checks and in collecting answers, but in evaluating whether the information received indicates a risk of connection to excise fraud and in taking “mitigating action".

15. This last requirement, to take mitigating action, is, on a quick reading of the notice, obscured by the volume of material in the examples, and it is not elaborated on save as noted in para O. That failure to emphasise that something may need to be done - and that that

something may mean not entering into a potential, and potentially profitable, transaction - is a lamentable presentational defect in the notice; but it does not detract from the fact that taking "mitigating action" where a real risk to the collection of excise duty is apparent, can only be construed as including not entering into a trade.

16. That requirement is part of the conditions for the completion of "due diligence" and therefore a condition for remaining an authorised person.

17. Of course, declining a trade may not be the only reasonable response to a perceived risk: further investigation may be called for and be possible. But there may come a time when further comfort cannot be obtained or the enterprise does not wish to seek it. In that case it may be that the only possible mitigation is not to enter that particular trade."

The ADD condition

77. Subsequent to the implementation of the WOWGR scheme, HMRC became concerned that, despite the system of approvals, there was a considerable trade involving approved businesses entering into transactions giving rise to a high risk of revenue loss. After informal consultation within the alcohol trade, HMRC decided to implement an amendment to Excise Notice 196, by inserting the new section 10, imposing on those who held (and now hold) excise approvals from HMRC the Alcohol Due Diligence Condition ("ADD Condition"), as a condition of retaining their approvals.

78. It is also important to appreciate that, even before the introduction of the ADD Condition through Excise Notice 196, companies trading in and transporting duty suspended alcohol were expected by HMRC to carry out adequate due diligence on their suppliers, customers, hauliers and consignees. The new ADD Condition in Excise Notice 196 made it an express statutory condition as from 1 November 2014 that approval-holders were to carry out proper and sufficient due diligence on those with whom they dealt commercially.

79. The ADD condition is to be found in section 10 of EN196 under the title 'The due diligence condition'. The essence of the ADD condition is to be found within Paragraph 10.1 titled 'General Information' in the following terms:

"From 1 November 2014 it becomes a condition of your approval as an excise warehousekeeper, registered owner, duty representative or registered consignor that you must:

- objectively assess the risks of alcohol duty fraud within the supply chains in which you operate
- put in place reasonable and proportionate checks, in your day to day trading, to identify transactions that may lead to fraud or involve goods on which duty may have been evaded
- have procedures in place to take timely and effective mitigating action where a risk of fraud is identified

- document the checks you intend to carry out and have appropriate management governance in place to make sure that these are, and continue to be, carried out as intended"

80. HMRC submit that the whole of section 10 of the notice constitutes the ADD condition with which a duty suspended trader must comply. The Tribunal is of the view that while the remainder of section 10 provides important guidance upon that condition, the binding condition is encapsulated within the explicit words and four bullet points highlighted above. Section 10 of the notice is set out in full below.

81. Many other parts of EN196 are relevant to this appeal.

Fit and Proper

82. Section 2 of the notice states, inter alia: "Only persons who can demonstrate that they are fit and proper to carry out an excise business will be authorised or registered." Approval of owners, duty representatives and warehousekeepers are subject to this requirement, and approval of premises for use as tax warehouses is limited to those owned or leased by approved warehousekeepers. HMRC have powers to review the suitability of those holding approvals and to revoke them where they find that the holders are not fit and proper persons to retain approvals.

83. As has been observed in *R v Warrington Crown Court, ex parte RBNB (a company)* [2002] UKHL 24, [2002] 1 WLR 1954 at [9] per Lord Bingham:

"...some consideration must be given to the expression 'fit and proper' person. This is a portmanteau expression, widely used in many contexts. It does not lend itself to semantic exegesis or paraphrase and takes its colour from the context in which it is used. It is an expression directed to ensuring that an applicant for permission to do something has the personal qualities and professional qualifications reasonably required of a person doing whatever it is that the applicant seeks permission to do."

84. The Tribunal applies the test of 'fit and proper' in relation to excise approvals set out by Judge Hellier in *Safe Cellars Ltd v HMRC* [2017] UKFTT 78 (TC) at [18]-[22]:

"18. We were taken to nothing in EN196 which dealt expressly with the revocation of approval. It is clear to us, however, that as the notice prescribes conditions for approval, the breach of those conditions may constitute reasonable cause within section 100G(5) for revocation.

19. In para C of EN 196 it is said that only persons who demonstrate that they are fit and proper to carry out excise businesses will be authorised. This "fit and proper" requirement must, in our view, be read in the light of the purposes of the provisions in section 100G: for the administration, collection and protection of the revenue.

20. As a result, 'fit and proper' does not in this context mean fine, upstanding, or well-connected; it means persons who demonstrate behaviours of a type likely to assist, and not to hinder, the proper administration, collection and protection of the revenue.

21. Para C does not expressly make being fit and proper a condition for the holding of an approval, but in our judgement the effect of the paragraph is that if a person cannot demonstrate that he is in this sense fit and proper, that will afford reasonable cause for revocation of an approval."

22. If a person fails to carry out "due diligence" (in the sense described in para H above, rather than merely collecting bits of paper) its actions will generally not assist and may hinder the achievement of that purpose. Thus generally such a person will not be fit and proper. There may however be reasons for the failure which permit such a person to be regarded as fit and proper; and conversely reasons why a person who does carry out required due diligence, may not be fit and proper."
[Emphasis Added]

85. Paragraph 3.2 of EN196 provides that:

"HMRC will assess all applicants (including directors and key personnel) against a number of "fit and proper" criteria to establish:

-there is no evidence that the legal entity or key persons involved in the business have been previously involved in significant revenue non-compliance or fraud, either within excise or any other regime. Some examples of evidence we would consider are:
- penalties for wrongdoing or other civil penalties which suggest a business does not have a responsible outlook on its tax obligations
- previous occasions where approvals have been revoked or refused for this or other regimes
- previous confiscation orders and recovery proceedings under the Proceeds of Crime Act
- key persons have been disqualified as a director under company law
- there are no connections between the business, or key persons involved in the business, and other known non-compliant or fraudulent businesses
- key persons involved in the business have no criminal convictions which are relevant (for example, offences involving any dishonesty or links to organised criminal activity). We will normally disregard convictions that are spent provided there are no wider indications that the person in question continues to pose a serious threat to the revenue. An 'unspent' conviction is one that has not expired under the terms of the Rehabilitation of Offenders Act 1974
- the application is accurate and complete and there has been no attempt to deceive
- there have not been persistent or negligent failures to comply with any HMRC record-keeping requirements (for example, poor record keeping in spite of previous warnings or absence of key business records)
- the applicant, or key persons in the business, have not previously attempted to avoid being approved and traded unapproved
- the business has provided sufficient evidence of its commercial viability and/or credibility. We will not approve applicants where we find that they cannot substantiate that there is a genuine plan to legitimately trade from the proposed date of approval
- there are no outstanding, unmanaged HMRC debts or a history of poor payment
- the business has in place satisfactory due diligence procedures covering its dealings with prospective customers and suppliers to protect it from trading in illicit supply-chains (see section 10 for more information about due diligence)

'Key persons' are those who play a key role in the operation of the business to the extent that they can be seen as one of its 'guiding minds'. For example, they have authority and responsibility for directing and controlling the activities of the business or day to day management. It also includes significant beneficiaries of the business who are not directors or partners etc.

Applicants for authorised excise warehousekeeper status will also need to demonstrate the following before approval can be granted:

- they are able to provide adequate financial security for their warehouse premises as required by HMRC (see section 4.5)
- they have an accounting system that satisfies HMRC requirements
- they have adequate IT infrastructure in place which is sufficient to support the business an HMRC systems such as the Excise Movement and Control System (see section 3.3.1)

The above lists are not exhaustive. If we are not satisfied with the information provided to us, we may refuse to authorise you. In addition, if you fail to provide us with the information requested, we will place your application on hold until the information is received. We will notify you of the reason or reasons for the refusal."

86. The list is stated to be non-exhaustive.

Revocation of Approvals under EN196

87. Paragraph 3.6 of EN196 deals with HMRC imposed cancellation of authorisations:

"We can withdraw or vary your authorisation immediately, at any time, for reasonable cause. If we decide to withdraw your authorisation, as a concession, we may give you a period of notice.
If we withdraw your authorisation we will inform you in writing giving our reasons for our action. We will offer you a review of our decision or you can appeal direct to the independent tribunal (see section 11).
You must destroy your certificate of registration on the day your authorisation ceases.
Unless another authorised excise warehousekeeper agrees to operate the premises with immediate effect, you will be liable for the duty on all the stock in your excise warehouse. Any changes of authorised warehousekeeper must be notified to the EPT within adequate time for the change to be made.
Even if you lodge an appeal against the withdrawal of your authorisation you will cease to be an authorised excise warehousekeeper from the date of the withdrawal."

Section 10 – the Due Diligence Condition

88. Section 10 of EN196 is concerned with due diligence. It is important to this appeal. Taking effect from 1 November 2014, it imposed a due diligence condition on all excise approvals. Prior to that date, that due diligence was not a condition on all approvals. It is necessary to set out section 10.1 to 10.5 of EN196 in full:

"10.1 General information
Due diligence is the appropriate reasonable care a company exercises when entering into business relations or contracts with other companies, and how it responds in a deliberate reflexive manner to trading risks identified.
Without effective safeguards in place, there are considerable risks to all businesses along alcohol supply chains of becoming implicated in illicit trading.
This condition requires that all excise registered businesses operating in the alcohol sector consider the risk of excise duty evasion as well as any commercial and other risks when they are trading. Doing so will help to drive illicit trading out of alcohol supply chains, and reduce the risk to businesses of financial liabilities associated with goods on which duty has been evaded.

From 1 November 2014 it becomes a condition of your approval as an excise warehousekeeper, registered owner, duty representative or registered consignor that you must:
- objectively assess the risks of alcohol duty fraud within the supply chains in which you operate
- put in place reasonable and proportionate checks, in your day to day trading, to identify transactions that may lead to fraud or involve goods on which duty may have been evaded
- have procedures in place to take timely and effective mitigating action where a risk of fraud is identified
- document the checks you intend to carry out and have appropriate management governance in place to make sure that these are, and continue to be, carried out as intended

10.2 Assessing risks and carrying out checks

The fraud risks within a supply chain are unique to each business, and objective assessment of the likelihood of your trading activities contributing to fraud is an essential first step to developing effective due diligence procedures. You will need to consider the full range of trading relationships you have established and the potential for fraud in each.

The main risks within the alcohol sector include:
- involvement in the supply of goods for fraud
- receiving goods that have been smuggled or diverted into the UK
- inadvertently facilitating fraud by providing import or warehousing services

A key feature of the smuggling or diversion of alcohol to the UK market is the ability to source product either where the excise duty has been suspended or it has been refunded under drawback provisions.

To assess your exposure to this risk you will need to objectively assess if there is potential for duty evasion resulting from your trading activity. You will need to know who you are selling to and where the goods are destined for and understand the market for these products. Without this, there is a risk of supplying goods directly or through a third party into illicit supply chains.

Import and warehousing procedures are often exploited to provide cover for the illicit movement of goods. Fraudsters will seek to distribute duty evaded goods as well as counterfeit alcohol into legitimate retail supply chains.

To assess your exposure to this risk you will need to objectively consider whether the supply chain and trading activity is credible which includes knowing who you source goods from and provide a service to.

High level indicators of risk include goods being received from unusually complex or apparently uneconomic supply routes, for example, regular supplies of UK produced goods that have been shipped out to another Member State and then re-imported. If you are sourcing duty paid goods you will also need to consider the credibility of suppliers and the level of evidence you can obtain to demonstrate the provenance and duty status of goods.

Section 10.5 of this notice provides further detail on risk indicators.

Once you have established the main risks of fraud you may be exposed to, your regular checks during trading should be of a type and level sufficient to establish the integrity of the excise transactions and supply chains you are trading in. This level needs to be reasonable and proportionate to the risk.

Depending on the nature of your business and complexity of your transactions, checks will need to be individually tailored. In particular, they must be sufficiently sensitive, yet robust enough, to pick up potential fraud risks. These checks should provide protection from the threat of fraud or you becoming inadvertently involved in fraudulent activity.

As a general rule 'FITTED' checks should normally focus on:
- financial health of the company you intend trading with
- identity of the business you intend trading with
- terms of any contracts, payment and credit agreements
- transport details of the movement of the goods involved whether or not you are directly involved in this
- existence/provenance of goods - where goods are said to be duty paid you should normally seek sufficient detail to satisfy yourself of the status of the goods
- The Deal, understanding the nature of the transaction itself, including:
- how the cost of the goods is built up, for example, whether it includes appropriate taxes, transport etc
- why is it being offered
- whether it is too good to be true
- how the deal compares to the market generally

Section 10.6 of this notice provides more examples.

10.3 Responses to identified risks

It is expected that your due diligence procedures will provide effective control over the risks of fraud within your supply chains. Where your checks indicated real concerns, we would normally expect aspects of your supply chain to be changed to address this, eg the supplier or the destination of the goods. However, a decision of whether or not to trade with another party remains a commercial decision for your business to take.

....

10.4 Review of due diligence procedures

As part of our enforcement and general audit programmes, HMRC will consider whether or not the steps you have taken to embed anti-fraud due diligence into your trading activity are sufficient and timely to address fraud risks in your supply chains. We will aim to establish whether you have objectively assessed the risks in your supply chain, and you must be able to demonstrate that you have put in place reasonable and proportionate checks and effective procedures to respond to fraud risks when they arise.

If your due diligence procedures are considered insufficient to address fraud risks, we will carefully consider the facts of the case before taking further action, but where appropriate we will seek to support you to strengthen your procedures.

In more serious cases such as a failure to consider the risks, undertake due diligence checks or respond to clear indications of fraud, we will apply appropriate and proportionate sanctions. For serious non compliance, such as ignoring warnings or knowingly entering into high risk transactions, we may revoke excise approvals and licences.

You are also reminded that handling goods liable to excise duty held outside a duty suspension arrangement may cause you to become liable for any excise duty due on those goods and an excise wrongdoing penalty. Any of those goods you currently hold could also be liable to forfeiture.

Sections 10.5 and 10.6 of this notice provide further details on risk indicators and outline some of the checks that you may carry out to identify high risk transactions. Please note these are not intended to be prescriptive or exhaustive. Once you have established the most appropriate due diligence tests for your business, these should be used to test both new and existing transactions and supply chains linked to your business. Some checks may be more appropriate to your business than others.

10.5 Examples of due diligence risk indicators

You should be concerned about a prospective transaction where you identify one or more of the following indicators in both suppliers and customers, the presence of which may lead you to make further inquiries. Please note, this list is not exhaustive:

Financial health of the company you intend trading with

- there is no, or poor, credit ratings but it is still able to finance substantial deals
- there are high levels of debt
- they are buying high value goods on extended credit
- they are a new company with little or no trading history
- there are little or no fixed assets

Identity of the business

- there is a lack of detail about the business' identity, eg no address details, or HMRC approval number
- they do not appear to be on Companies House records as originally described
- they are dealing in high value goods from short term lease accommodation and/or residential addresses
- there is no general visibility of the company you intend trading with, for example, they do not appear to advertise or have a website
- they have returned only partly completed application or trading forms
- if you are a warehousekeeper, receiving duty suspension goods on behalf of a third party who is not WOWGR registered where they would otherwise be required to be registered

Terms of contract, payment and credit agreements

- an insistence on dealing in cash, especially where the deal is a high value one
- cash payments made using money couriers
- offers of credit appear to be outside normal business practice. Payment terms are normally 21, 31 or 45 days but high risk transactions may have short payment terms eg 48hrs
- you are asked to make payment to an account or person which does not appear to be linked to the seller, or other unusual payment arrangements requested by the seller. The same applies to customers
- a valid pro-forma or purchase invoice is not/will not be provided
- the circumstances of the trading arrangement seem false or contrived. For example, a supplier provides you with the details of a customer for the goods he is selling to you, or offers you a contract with no financial loss to you

Transport

The goods are to be received from an unusual source or supply route, for example, UK produced goods are sourced from another country and directly compete with those from a more direct supply route.

Existence or provenance of goods

- the goods are claimed to be duty paid but your supplier (or person on whose behalf you are storing the goods) cannot provide reasonable evidence of duty payment to support the status of the goods. (For further detail about what constitutes evidence of duty payment please refer to our Drawback Notice 207)
- individuals in the company have little knowledge of your trade sector
- where samples are provided or the goods have been received
- for spirits there is no duty stamp in circumstances where there should be one or the duty stamp does not fluoresce (refer to guidance)

- the goods appear counterfeit, in that, the quality of labels and or packaging is poor when compared to the genuine article
- the supporting paperwork seems false
- the goods are older than supporting evidence (such as documents demonstrating duty payment) suggest, for example, the best before dates indicate an earlier production date whereas documentation gives the impression you were buying newer stock
- the company has only been trading for a very short period of time but has managed to achieve a large income in that short period of time

The deal
- customer demand for specific brands in other countries exceeds expected levels of consumption there
- The goods are to be moved in an unusual supply route that in itself would add significant logistic costs and bring into question the economics of that trade (unless duty was to be evaded)
- supplies are offered via unsolicited emails or flyers received out of the blue
- goods are offered at incredibly low prices which seem too good to be true
- free gifts of similar or other excise goods not fully documented and in themselves would place a question over the deal as a whole
- there are other incentives such as contingency discounts which overall make the deal sound too good to be true."

[Emphasis Added]

89. Paragraph 10.6 of Section 10 then goes on to give examples of potential due diligence checks:

"Examples of due diligence checks

Financial health

- obtain, undertake credit checks or other background checks on the business you intend trading with
- where a poor credit rating is identified, establish how the transactions will be funded, what security can be offered that you will be paid?
- where credit is offered by the business, who is providing the credit facility?
- what payment terms are offered and are they commercially viable?

Identity

- check company details provided to you against other sources, eg website, letterheads, telephone directories etc
- ask whether your customer or supplier is a member of a relevant trade association
- obtain copies of certificates of incorporation, VAT registration certificates and excise registration certificates where appropriate and where a trade class is quoted on these check whether or not it relates to the type of trade you are engaging in
- verify VAT and excise registration details with HMRC (we recommend that these checks are undertaken regularly for new trading arrangements and proportionately longer for trusted ones, unless you suspect a problem)
- if you are a warehousekeeper receiving duty suspended goods into your warehouse then you should be satisfied that the owner of the goods is registered under WOWGR where required

- obtain signed letters of introduction on headed letter paper and references from other customers or suppliers
- insist on personal contact with a senior official of the prospective supplier and where necessary, make an initial visit to their premises. You should use this opportunity to confirm the identity of the person you intend doing business with and keep a record of your meeting.
- establish what your customer's or supplier's history in the trade is. Can this be evidenced?
- Obtain the prospective customer's or supplier's bank details. In the case of an import or export, does the supplier or recipient share the same country of residence as their bank?
- establish who you will be paying. Is this the same company as the one you are directly dealing with?
- if you are providing a service who will be paying for it?

Terms of any contracts, payments and credit agreements

- carefully consider the terms of any contracts and credit agreements before entering into these and challenge elements which appear unusual
- what recourse is there if the goods are not as described?
- if payment is to be made to or from a third party, is there a sound commercial reason for this?
- if payment is to be made to or from a third party, is it to or from an off shore account?
- are there normal commercial arrangements in place for the financing of the goods?
- where payment is made from an overseas business how is it to be made?
- has your supplier referred you to a customer who is willing to buy goods of the same quantity and brand as being offered by the supplier?
- does your supplier offer deals that carry no commercial risk for you, for example, no requirement to pay for goods until the payment is received?
- are the goods adequately insured?
- are high value deals offered with no formal contractual arrangements?
- where you are buying from a broker:
    - what overall value does this link in the supply chain add?
    - is it possible to source more directly?
    - how competitive is the broker's pricing to those from a more direct route?
    - how are the savings made in a longer supply chain to make it viable?
- where transactions are being financed by a third party, is this person a regulated financial body such as a bank?

Transport

- establish where the goods will be sourced from. Is this the country of production? If not why are the goods being routed in this way?
- who is responsible for the transport? Is the cost of the goods inclusive of transport? If so, does this mean that the potential logistical costs make the unit price unrealistic?
- details of delivery vehicles should be retained and if necessary any variations to expected transport arrangements recorded.

Existence or provenance

- how has the trader contacted you?

- do the goods exist?
- can you inspect the goods before purchasing them?
- are they in good condition and not damaged?
- do the quantities on offer seem credible for the type of business you intend trading with?
- where goods are said to be duty paid, seek sufficient detail to satisfy yourself that they are. This will be easier the closer you are in the supply chain to production. This point is also important where you intend holding goods on behalf of a third party.

The deal

- the nature of the transaction, including
    - does it just look too good to be true?
    - Is the demand for the type of alcohol credible? If the demand is purportedly from abroad what is the real market (consumption) for them in that country?
    - if the alcohol has come from abroad but is of UK origin, how did this occur and why?
    - where incentives are offered, when these are taken into consideration does this make the overall deal seem too good to be true?
    - why is it being offered?
    - have normal commercial practices been adopted in negotiating prices?
    - how does the price compete with that offered by competitors?
    - what is the age of the goods? If the stock is old you should seek an explanation as to its provenance.
    - does the price seem realistic? You should be aware of unit cost when duty and VAT values are removed.
- if you are already established in a trading agreement we would also recommend that you continue to monitor correspondence and business paperwork to identify changes in those arrangements and take any follow up action as necessary."

90. The Tribunal accepts HMRC's evidence and submission that the risk assessment guidance contained in section 10 is, deliberately, not prescriptive. There is no definitive list of ADD checks to be performed, because to do so would potentially impose unnecessary burdens on businesses (when particular checks are not required) or would be ineffective (because the checks required are liable to vary significantly and be incapable of confining to a definitive, workable list).

The nature of the Tribunal's jurisdiction in the appeals

91. Sections 13A-16 of the Finance Act 1994 (FA 94) give rights of review and appeal to persons affected by "relevant decisions." That term is defined in section 13A(2) FA 94. Section 13A(2)(j) incorporates Schedule 5 to FA 94, which covers a wide variety of types of decision. These are described in s 16(8) as decisions relating to "ancillary matters." Paragraph 2 of the Schedule lists decisions arising in connection with CEMA. These are again very various in character, but they include:

"(n) any decision for the purposes of section 92….(approval of warehouses) - (iii) for the withdrawal of any such approval or consent;
(p) any decision for the purposes of section 100G. . . as to whether or not . . . any person is to be, or to continue to be, approved and registered."

92. A person affected by a relevant decision is entitled to both (a) a "review" of the decision in question, under sections 15A—15F of FA 94, and (b) an appeal to this Tribunal, under section 16 FA 94. It is not necessary for present purposes to consider the review power.

93. An appeal against a relevant decision must be brought within 30 days of the notification (s 16(1B)) or, if a review has been sought, within 30 days of the conclusion of the review: s 16(1C).

94. The powers of the tribunal in relation to an "ancillary matter" such as the present are as set out at section 16(4) FA 94:

"In relation to any decision as to an ancillary matter, or any decision on the review of such a decision, the powers of an appeal tribunal on an appeal under this section shall be confined to a power, where the tribunal are satisfied that the commissioners or other person making that decision could not reasonably have arrived at it, to do one or more of the following, that is to say:

(a) to direct that the decision, so far as it remains in force, is to cease to have effect from such time as the tribunal may direct;
(b) to require the commissioners to conduct, in accordance with the directions of the tribunal, a review or further review as appropriate of the original decision; and
(c) in the case of a decision which has already been acted on or taken effect and cannot be remedied by a review or further review as appropriate, to declare the decision to have been unreasonable and to give directions to the commissioners as to the steps to be taken for securing that repetitions of the unreasonableness do not occur when comparable circumstances arise in future."
[Emphasis Added]

95. The Court of Appeal in *CC&C* (above) emphasised that the First Tier Tribunal's 'reasonableness' jurisdiction reflects the nature of the Commissioners' role and discretion in making these types of decisions, and that the management of the excise system is a matter for the administrative discretion of HMRC. Underhill LJ at paragraph 15 of the judgment observed that:

"First, the Tribunal's powers are only exercisable where the decision is one which could not reasonably have been arrived at. I will refer to this by way of shorthand as the "unreasonableness test". That was described in the submissions before us as providing for a "quasi-judicial review" standard. That may be true in a sense, but it is capable of being misleading for reasons which will become apparent in due course. Whatever label is used, the fact that the criterion for the Tribunal's intervention is formulated in terms of unreasonableness reflects the fact that the management of the excise system is a matter for the administrative discretion of HMRC. The decision whether a registered owner remains a fit and proper person to trade in duty suspended goods is a good example of the kind of decision which the HMRC are peculiarly well-fitted to judge, since it requires what is necessarily to some extent a subjective – albeit evidence-based – assessment of such matters as the attitude of the trader and its principal employees to due diligence issues and their sensitivity to the risk of becoming involved, albeit unintentionally, in unlawful activities."

96. As it was recently put by this Tribunal in *United Wholesale (Scotland) Ltd v HMRC* [2017] UKFTT 70 (TC) at [25]:

"The test was whether, in the light of UWS' breach of condition 1, Ms Martin's decision was one at which she could not reasonably have arrived; it is not sufficient that we might arrive at a different decision ourselves. The question to be asked was whether Ms Martin had taken into account an irrelevant factor, had ignored or failed to give adequate weight to a relevant factor, or had misdirected herself as a matter of law: see *Customs and Excise Commissioners v J H Corbitt (Numismatists) Ltd* [1980] STC 231 at 239. It was not possible to say that she had committed any such errors, and it followed that her decision should stand."

97. Accordingly, the Tribunal has to ask itself whether HMRC's decision that the Appellants are not fit and proper persons to be approved to trade and store duty suspended goods is one that could not reasonably have been arrived at.

98. The correct approach to determine the question as to whether the decision concerned could not reasonably have been arrived at is that set out in *Customs and Excise Commissioners v J H Corbitt (Numismatists) Ltd* [1980] 2 WLR 753 at 663 which is to address the following questions:

(1) Did the officers reach decisions which no reasonable officer could have reached?

(2) Do the decisions betray an error of law material to the decision?

(3) Did the officers take into account all relevant considerations?

(4) Did the officers leave out of account all irrelevant considerations?

99. Put another way, the questions the Tribunal must ask itself are:

1. Did the decisions a) that the Appellants were not fit and proper persons and b) to revoke their approvals rest on a material error of law?

2. Did HMRC take into account all relevant considerations in deciding a) the Appellants were not fit and proper and b) revoking each of the approvals?

3. Did HMRC leave out of account irrelevant considerations in deciding the Appellants were a) not fit and proper and b) revoking each of the approvals?

4. Even if "no" to both 2 and 3, did HMRC nevertheless reach decisions which no reasonable body of commissioners could have reached?

100. As will become clear from the law below, the Tribunal must also ask itself a fifth question:

5. Were the decisions of HMRC to revoke the Appellants' approvals proportionate?

Burden of Proof

101. By the tailpiece of section 16(6) of the Finance Act 1994 the burden of proof in any such appeal is on the Appellant to show that the grounds on which the appeal are brought have been established.

"(6) On an appeal under this section the burden of proof …… shall otherwise be for the Appellant to show that the grounds on which any such appeal is brought have been established."

Inevitability jurisdiction

102. In *John Dee Ltd v Customs and Excise* [1995] STC 941 at 952(f)-(h) the Court of Appeal outlined the principles in a similar fashion to *J H Corbitt (Numismatists) Ltd* but went on to acknowledge a caveat approved by Neil LJ at 953:

"It was conceded by Mr Engelhart, in my view rightly, that where it is shown that, had the additional material been taken into account, the decision would inevitably have been the same, a tribunal can dismiss an appeal……I cannot equate a finding 'that it is most likely' with a finding of inevitability."

103. The 'inevitability' jurisdiction must be exercised sparingly. The Upper Tribunal in *Behzad Fuels v HMRC* [2017] UKUT 321 (TC) put it this way at [30]-[31]:

"30……. Thus, in *John Dee Ltd v CCE* [1995] STC 941, a case which concerned an appeal originating in the VAT and Duties Tribunal, the Tribunal had concluded that the Commissioners had failed to have regard to additional material relating to the Appellant's financial information. Neill LJ (with whom the other Lords Justices agreed) held that counsel for the company contesting the security requirement in that case had been right to concede that where it is shown that, had the additional material been taken into account the decision would inevitably have been the same, a tribunal can dismiss an appeal.

31. Nevertheless, in our view where the tribunal has found a decision to be unreasonable in the sense outlined at [28] above then unless the circumstances clearly demonstrate that HMRC would be bound to make the same decision the proper course to take is for the Tribunal to direct that the decision concerned should be reviewed again. If there is any doubt on the point, the matter should be determined in favour of directing a further review."

Fact finding jurisdiction and temporal applicability

104. As Underhill LJ observed in *CC&C*, it may not be accurate to characterise the jurisdiction of the Tribunal as that of a 'quasi judicial review'. This is because the Tribunal retains a primary fact finding function when applying section 16(4) of the Finance Act 1994 in relation to appeals against the non-restoration of goods.

105. The Tribunal must decide the issue of 'reasonableness' by reference to the facts as the Tribunal finds them, rather than by the facts as the decision-maker found them: *Gora v HMRC* [2003] EWCA Civ 525, [2004] QB 93 at [38]-[39]; *Safe Cellars Ltd v HMRC* [2017] UKFTT 78 (TC) at [38].

106. Pill LJ sitting in the Court of Appeal in *Gora* stated at [38]-[39]:

"38. In the course of argument, it emerged that the respondents took a broader view of the jurisdiction of the Tribunal than might have at first appeared. They were invited to set out in writing their views upon the jurisdiction of the Tribunal and Mr Parker provided the following written submission:

……

e. Strictly speaking, it appears that under s 16(4) of the 1994 Act, the Tribunal would be limited to considering whether there was sufficient evidence to support the Commissioners' finding of blameworthiness. However, in practice, given the power of the Tribunal to carry out a fact-finding exercise, the Tribunal could decide for itself this primary fact. The Tribunal should then go on to decide whether, in the light of its findings of fact, the decision on restoration was reasonable. The Commissioners would not challenge such an approach and would conduct a further review in accordance with the findings of the Tribunal."

39. I would accept that view of the jurisdiction of the Tribunal subject to doubting whether, its fact-finding jurisdiction having been accepted, it should be limited even on the "strictly speaking" basis mentioned at the beginning of paragraph 3(e). That difference is not, however, of practical importance because of the concession and statement of practice made by the respondents later in the sub-paragraph. As a "tribunal" to which recourse is possible to challenge a refusal to restore goods under section 152(b) of the 1979 Act, the Tribunal in my judgment meets the requirements of the Convention."

107. Judge Hellier in *Safe Cellars*, heard argument and decided that the '*Gora*' jurisdiction applied equally to appeals against excise approval revocation decisions. He also considered the temporal nature of the fact finding jurisdiction as follows (at [38]-[40]):

"38. …….. There is nothing in section 16 to suggest that it confers a different jurisdiction in restoration cases than it does in other appeals to which it applies. The construction of section 16 which ensures its operation satisfies the requirements of Article 6 in the case of restoration cases cannot then be ignored if the circumstances do not fall within Article 6 or if the case is not a restoration case. Further Article 6 applies to a trial of a person's "rights and obligations" which seems to us to encompass rights and obligations in relation to dealings with (or the proscription of dealings with) excise goods, and thus to invite the same construction of section 16 in cases concerning excise approvals as that adopted in *Gora*.

……..

40. We conclude that our obligation is to find the facts on the evidence presented to us and to determine, in the light of those facts, whether the relevant decision was reasonable. That, however, does not require us to assess the review decision in the light of events which occurred after it was made unless those events shed light on matters which were relevant to the decision at the time it was taken."

108. The Upper Tribunal put it this way in its decision in *Behzad Fuels v HMRC* [2017] UKUT 321 (TCC) at [28]:

"As the FTT also correctly identified at [93] of the FTT 2016 Decision, in Balbir Singh Gora v C&E Comrs [2003] EWCA Civ 525, Pill LJ accepted that the Tribunal 20 could decide for itself primary facts and then go on to decide whether, in the light of its findings of fact, the

decision on restoration was reasonable. Thus, the Tribunal exercises a measure of hindsight and a decision which in the light of the information available to the officer making it could well have been quite reasonable may be found to be unreasonable in the light of the facts as found by the Tribunal. In our view, this principle is equally applicable in the case of a decision to revoke a supplier's RDCO status."

109. HMRC submitted that the Tribunal must make its decision on the basis of facts and matters available to the decision maker at the time of the decision under challenge. It can take into account other matters, subject to its own control (i.e. the usual discretion of the Tribunal as to whether to allow evidence to be admitted applies), only:

"(i) if they existed at the date of the refusal, or

(ii) if they did not exist at that date,"

but only in so far as they throw light on the grounds now given for refusal: see *Coppel on Information Rights*, 4th ed (2014), paras 28-022 and 28–024, and *Department for the Environment, Food and Rural Affairs v Information Comr (Birkett) [2012] PTSR 1299*" (*R (Evans) v AG* [2015] UKSC 21, §73 per Lord Neuberger.

110. The Tribunal agrees with the submissions of the Appellants in opening, that the latter category, (ii), essentially encompasses evidence arising after the decision under challenge, which throws light on events upon which the decision was based. Both the Appellants and HMRC rely on this jurisdiction where they invite the Tribunal to take into account matters arising after 8 July 2016, such as the evidence given by witnesses before the Tribunal.

Approach to fact finding

111. It seems to the Tribunal that there is little difference between this formulation and that in *Safe Cellars* and the Tribunal proposes to follow that in *Safe Cellars*. The Tribunal will find facts on the evidence presented to it and determine, in light of those facts, whether the relevant decisions were reasonable. That, however, does not require it to assess the review decisions in light of events which occurred after they were made unless those events shed light on matters which were relevant to the decision at the time it was taken.

112. The Tribunal makes findings of fact in light of all the evidence heard by the conclusion of the appeals in July 2017 and then determines whether the factual conclusions reached in July 2016 were reasonable.

113. This primarily involves making findings of fact in light of all the evidence now heard as to the material available to HMRC, or which reasonably should have been available, at the time it made its five decisions on 8 July 2016 (the sixth decision simply relied on the reasons given at the time of the earlier decisions).

114. Nonetheless, the Tribunal will make factual findings in relation to evidence subsequently produced on behalf of the Appellants, such as: the due diligence material

provided on 21 October 2016; the witness statements and oral evidence of key persons within the Appellants; and assessment of their credibility. These findings do cast significant light on the reasonableness of the decisions made by HMRC and reasons given at the time.

Powers of the Tribunal on a successful appeal

115. Even if the Tribunal finds a decision of HMRC to be unreasonable the Tribunal has no power to substitute its own decision for that of HMRC's. Having found the primary facts, the Tribunal's jurisdiction is to find if the decision under challenge was within the range of reasonableness, failed to take account of relevant facts, took into account irrelevant facts or erred in law. It is not to allow an appeal simply because it may have made a different decision on the basis of the primary facts (section 16(4) of the Finance Act 1994).

116. The Tribunal is limited to the powers set out in the statute under section 16(4) – see *John Dee v C&E Commissioners* [1995] STC at 952(e)-(f) and *Lindsay v C & E Commissioners* [2002] EWCA Civ 267 at paragraph 69:

"69.I do not agree. The Tribunal have done more than direct that Mrs Florence's decision ceased to have effect. They have purported to reverse it. That is something that they had no jurisdiction to do. To make this plain it is only necessary to contrast subsection (4) of section 16 with subsection (5), which provides:

> "In relation to other decisions, the powers of an appeal tribunal on appeal under this section shall also include the power to quash or vary any decision and power to substitute their own decision for any decision quashed on appeal.""

117. In light of the binding authority *Lindsay*, the Tribunal declines to accept the Appellants' invitation to follow the first instance decision in *Boxton Ltd v HMRC* [2008] V&DR 499, in which Chairman Theodore Wallace, sitting in the VAT and Duties Tribunal considered that there were circumstances in which the power under s.16(4)(a) (to direct that a decision should cease to have effect) could be exercised without at the same time ordering another review under s.16(4)(b):

*"*as a minimum the power to direct that a decision shall cease to have effect without a new review must be exercisable where on the facts no real exercise of discretion remains to be exercised by the Commissioners. This would be the case where the decision was literally one which the Commissioners could not reasonably have arrived at because the only possible decision was the reverse. An example would be an appeal against a refusal to restore a vehicle where the Tribunal concludes after hearing the evidence that the owner of the vehicle was wholly unaware that a passenger was smuggling*."*

118. The Tribunal is not satisfied that the comments in *Boxton* are a correct statement of the law in light of *Lindsay*.

119. Therefore, the Tribunal, even if it were to allow the appeals, would effectively be limited to directing a review of the revocation decisions based on the facts it found (see 16(4)(b) FA 94). Directing that the revocations decisions ceased to have effect without

more, would result in quashing the decisions, effectively substituting its own decision that HMRC be directed to uphold the Appellants' approvals to trade in duty suspended goods.

120. If the Tribunal were to conclude that the decisions were unreasonable, it would require HMRC to conduct a review (or further review if applicable) in accordance with the directions of the FTT.

121. As to the approach to be adopted when giving directions pursuant to s.16(4)(b), in *R (OAO Ace Drinks Ltd) v HMRC* [2016] UKUT 0124 (TCC), the First Tier Tribunal stated (as recorded at paragraph 3(f) of the Upper Tribunal decision):

'…the most appropriate order to make is to require a wholly fresh review of the decision by an officer of HMRC unconnected with the previous decision, after giving an indication of all outstanding matters of concern on the application (including as to the suitability of the Appellant) and allowing the Appellant a reasonable opportunity to provide a detailed written response, supported by the fullest documentary evidence available, before HMRC issue a final, fully reasoned decision. We therefore so order, and direct that HMRC shall provide a written indication of all their outstanding matters of concern to the Appellant within 56 days of the date of issue of this Decision, as the first step in that process.'

122. In short, where the Tribunal, having found that the decision was one that no reasonable body of Commissioners could reach, exercises the s.16(4)(b) power to require the Commissioners to conduct a review of the decision, the standpoint of that review is (unless the Tribunal for some reason orders otherwise) the date on which the review takes place, not the date of the original decision.

123. The Upper Tribunal made no criticism of the form of the direction by the First Tier in *Ace Drinks* and went on at paragraph 12 to say as follows:

'it is important that these, essentially regulatory functions of HMRC are conducted on the basis of the fullest available information both for the protection of the taxpayer and of HMRC. In my view, this leads to the principled conclusion that the Tribunal is able to require HMRC to carry out a review in the light of all the circumstances as they stand at the time the decision is carried out. This allows both the taxpayer and HMRC to make a decision, on review, which best reflects the statutory, regulatory, functions involved in any "ancillary decision". In my judgment, the Tribunal is entitled not only to require a review to be carried out on the basis of material, or factors, not taken into account at the time of a decision (such as the original decision in the present case) even though the information could have been made available or ben discovered at the time, but it is also entitled to require a review to be carried out taking account of new material, or factors, which have only arisen on the intervening period.'

124. It is also to be noted that the FA 94 provides the Tribunal with a power but not a duty to exercise the functions under 16(4)(a)-(c) upon a finding of unreasonableness. It is not necessary to determine this point on the facts of this appeal, but it is difficult to see that not exercising one of the statutory powers upon a finding of unreasonableness would be providing an effective remedy to the Appellants for the purposes of the European Convention on Human Rights and / or natural justice.

The Evidence

125. The Tribunal received 81 lever arch files of evidence including witness statements and exhibits.

126. Witness statements (often more than one) were received from the following witnesses on behalf of the Appellants:

Witness	Date of statement(s)
Ayo Akintola	15/7/16
David Ball	1/2/17
Hardeep Chatha	19/10/16, 3/4/17, 31/5/17, 1/6/17
Jatinder Chatha,	15/7/16, 23/10/16, 9/1/17, 3/4/17
Rajinder Chatha	21/10/16, 29/3/17
David Craine	19/10/16, 24/3/17
Philip Eagleton	18/10/16, 3/4/17
Manuel Gluck	3/4/17, 31/5/17
Glyn Davies	31/3/17
Gary Pryke	22/3/17
Philip Rimmer	21/10/16

127. In addition, statements from the Appellants' key witnesses dated February and May 2016 in the High Court proceedings were exhibited to their statements for the appeal proceedings, thus forming evidence before the Tribunal. The evidence necessarily pre-dated the revocation decisions and included statements from: Nicholas Randell head of financial planning function of EFBL (12/5/16), Ayo Akintola (11/5/16), David Craine (7/4/16), Hardeep Chatha (25/2/16, 11/5/16), Jatinder Chatha (25/2/16, 12/5/16), Philip Eagleton (25/2/16) and Philip Rimmer (25/2/16, 12/5/16).

128. Witness statements on behalf of HMRC were received from the following witnesses (all being employees or Officers of HMRC or Isle of Man Customs & Excise ("IOM C&E") other than Michelle Williams and Juliette Medhurst who were employed by two ferry companies):

Tracey Bourne	10/1/17, 19/6/17
Ian Cathie	11/1/17 (x 2)
Graham Dugdale	11/1/17, 2/6/17
Lynne Gibson	18/11/16
Anne-Marie Hammouda	6/1/17
Joanne Jones	12/1/17
Craig Lewis	13/2/17, 15/5/17
Robert Maskew	5/1/17, 5/7/17
Juliette Medhurst	5/1/17
Chris Mountford	14/11/16
Leslie Pitt	18/1/17
Karl Roberts	10/1/17
David Roberts	23/11/16
Jonathan Warburton	12/1/17
Michelle Williams	2/11/16, 21/11/16, 22/12/16
Ryan Martin	9/6/17, 4/7/17

129. The Tribunal heard oral evidence beginning on day three of the trial, on 9 June 2017, up to day 23 of the trial, 12 July 2017. It heard from all the witnesses for both parties who provided statements other than Gary Pryke, Leslie Pitt, Chris Mountford, Ian Cathie, Helen Barnard, Joanne Jones and David Roberts. Each of the 'live' witnesses was cross examined.

130. Where the Tribunal has made no comment upon their evidence below, the Tribunal has found the witnesses' evidence to be reliable and credible. Where the Tribunal has found a witness' evidence to be unreliable or unbelievable the Tribunal makes these findings below together with its reasons in support.

The Facts

131. The Tribunal finds the following facts on the balance of probabilities, in particular indicating its reasons where there is a conflict in the evidence or finds a witness' evidence to be inconsistent, unreliable, unbelievable or otherwise unsatisfactory.

Corporate Structure of the Appellants and related companies and their officers

The EFB 'Group' in the UK

132. EFB Holdings Limited is a company registered in England. The sole shareholder of EFB Holdings Limited is Rajinder Singh Chatha. The directors of the company are Rajinder Chatha's two brothers, Jatinder Chatha and Balbir Chatha, he having resigned from the role in 2010. EFB Holdings Ltd is the sole shareholder of 100% of the shares in the Appellants, EFBL and WWL. Therefore, Rajinder Chatha is the sole beneficial owner of EFBL and WWL through his 100% shareholding in EFB Holdings Ltd, and he is the owner of all the companies in the EFB 'Group'.

133. The Appellants, **Whittalls Wines Limited ("WWL") and European Food Brokers Limited ("EFBL")** are both limited companies registered in England. They are beneficially owned by Rajinder Chatha, who founded both companies, through his ownership of EFB Holdings Ltd. Although he ceased to be a director of both companies in 2010, he continues to control both companies through his ownership of them, through the services contract which his principal Isle of Man (IOM) company, EFB (IOM) Ltd, has with EFBL and through his connection with his two brothers, Jatinder Chatha and Balbir Chatha, who continue to be the directors of WWL and EFBL.

134. WWL and EFBL both operate in the wholesale alcoholic beverages sector, dealing in both duty-paid and duty suspended alcohol. WWL has for 17 years held HMRC approvals to operate as owner and warehousekeeper of such alcohol in three bonded warehouses.

135. WWL is the operator of three bonded warehouses in Birmingham, Gateshead and Wolverhampton. EFBL holds its stocks of alcohol in duty-suspension in WWL's warehouses. WWL is responsible for consigning the sold duty-paid stock to EFBL's UK customers and also for consigning the sold duty suspended stock to tax warehouses

outside the UK to the accounts of the extra-group customers. Save for a negligible amount of vintage wine held for a small number of long standing customers, WWL only stores duty suspended alcohol on behalf of Group companies (ie. It is not a third party bonded warehouse).

136. EFBL trades as a wholesaler in alcohol. It has two distinct parts of its wholesale alcohol business. It sells to the retail duty-paid trade in the UK (both to its UK sister companies who operate chains of retail shops and also to independent retailers and supermarkets). It also is the exclusive supplier of duty suspended alcohol to two associated IOM wholesale companies, Global Beverage Distribution Ltd ("Global") and Bridgewell Ltd ("Bridgewell) which are also beneficially owned by Rajinder Chatha. EFBL has held duty suspended approvals from HMRC for ten years.

137. In broad terms, EFBL is the Group's buying company and WWL is the Group's storage company. They have held duty suspended excise approvals from HMRC for a number of years without incident.

138. EFBL owns two companies: EFB Leisure Ltd which operates pubs and restaurants and EFB Retail Ltd which is the retail arm. EFB Retail Ltd owns various companies including Whittalls Wines Merchants 1 Ltd and Whittalls Wines Merchants 2 Ltd. Some of the companies owned by EFB Retail Ltd operate various shops retailing alcohol, including two retail store chains.

139. The Group is said to have a turnover of approximately £80 million per annum and employ some 831 people at over more than 100 sites located across the UK. Mr Akintola broke it down in this way in his statement in May 2016. EFB Retail Limited is a wholly owned subsidiary of EFBL and is made up of two retail store brands. There are currently 109 retail outlets across the UK and a fully transactional website. A total of 785 people are employed by the two retail store brands. In the financial year ending 31 January 2016 the combined brands generated sales of approximately £50 million.

140. This appeal is concerned with EFBL's duty suspended sales. It is said that while duty suspended trade accounts for approximately 25% of group turnover of around £80 million, therefore being around £20 million, it accounts for approximately 50% of profits. EFBL's business is made up of 51% duty-paid sales and 49% duty suspended sales.

141. As will become clear from the Tribunal's findings of fact below, the EFB Group was re-structured in 2012 in such a way as to enable the Chatha companies and the Chatha family directors to mask from EFBL's suppliers the fact that it was selling into the wholesale alcohol market in Europe and elsewhere in competition against those suppliers.

142. Rajinder Chatha continues to be responsible for negotiating the purchases and sales of alcohol by EFBL and, effectively, also for his two IOM companies, Global and Bridgewell.

143. All shareholdings and directorships of the UK companies in the EFB group are publicly available through searches of Companies House. Thus, the identity of the ownership, structure and officers of the EFB Group in the UK is transparent.

Isle of Man Companies

Companies with Publicly Available directors and shareholders

144. Chatha International Limited is a company registered in the Isle of Man. Its sole shareholder is Rajinder Chatha who is a director, together with Melanie Jacklin.

145. EFB Holdings (IOM) Limited is a company registered in the Isle of Man. Its sole shareholder is Chatha International Limited and it has the same two directors.

146. EFB (IOM) Limited is a company registered in the Isle of Man. Its sole shareholder is EFB (IOM) Holdings Ltd and its directors are Rajinder Chatha, Melanie Jacklin and Allan Bell. Therefore, it is ultimately beneficially owned and managed by Rajinder Chatha. It provides 'head office' services to EFBL, including buying and selling functions. It received £1.8 million per annum for these services. It also provided office accommodation, office services and the services of a manager (Hardeep Chatha) to Global and Bridgewell for an annual charge of £90,000 between both companies.

147. All shareholdings and directorships of these companies in the EFB group are publicly available through Companies House in the Isle of Man. Thus, the identity of the ownership, structure and officers of these IOM companies is transparent.

Isle of Man Companies whose structure and ultimate ownership is not public

148. **Global Beverage Distribution Limited ("Global")** and **Bridgewell Limited ("Bridgewell")** are companies which are registered in the Isle of Man. They were both incorporated on 3 December 2010.

149. Global and Bridgewell have nominee directors who are all chartered accountants and partners in a firm in Douglas called Browne Craine & Co and are both owned by the same nominee shareholder, Burleigh Nominees Limited. The most significant director for the purpose of this appeal is David Craine who retired from this role in 2015.

150. The sole shareholder of both Global and Bridgewell, Burleigh Nominees Ltd, made declarations of trust on 21 March 2014, in favour of Endless Ventures Limited in respect of the shareholdings in Global and Bridgewell. These replaced earlier declarations of trust dated 6 December 2010 by Burleigh Nominees Limited in favour of Chatha International Ltd in respect of the same shareholdings in Global and Bridgewell.

151. Endless Ventures Limited is a company incorporated in the Isle of Man. Its directors are Rajinder Chatha and Melanie Jacklin. On 21 March 2014 its directors agreed to transfer its shareholding from Chatha International Limited to Rajinder Chatha.

152. Thus, Global and Bridgewell are both ultimately beneficially owned by Rajinder Chatha but his ownership is not available nor transparent to the public. A member of the public would only be able to see that Burleigh Nominees was the shareholder of the two companies but not that it had made a declaration of trust in favour of Endless Ventures, the shareholding in which is owned by Rajinder Chatha.

153. The declarations of trust from Burleigh Nominees are not available to the public but the copy documents were produced to the Tribunal during the course of the hearing. Hence the relationship between Rajinder Chatha and Endless Ventures Ltd to Global and Bridgewell is not one that was openly disclosed to the public or the suppliers of EFBL and WWL, albeit Rajinder Chatha states that he had always been transparent about his ownership of Global and Bridgewell with Isle of Man Customs & Excise (IOM C&E). The Tribunal will return to this topic at length below.

154. The first time written confirmation was provided of the precise mechanism and structure for Rajinder Chatha's ownership of Global and Bridgewell was during the hearing of the appeal at the Tribunal's request. Again, the fact of his ownership of the two companies was acknowledged to HMRC in June 2015 and IOM C&E from a much earlier time. The Tribunal will return to this topic below.

155. On 3 October 2011 Global and Bridgewell applied for approvals to own duty suspended goods held in the excise warehouses of WWL in the UK. These were granted by HMRC in January 2012, who retain responsibility for the grant of approvals rather than IOM C&E.

156. Thus, Global and Bridgewell at the relevant times, were associated companies of EFBL and WWL (Global has since ceased trading subsequent to the relevant times with which the evidence is concerned and only Bridgewell continues to trade). These two IOM sister companies were EFBL's only customers for duty suspended alcohol.

157. Global and Bridgewell were established in 2010 and latterly used for the express purpose of enabling EFBL and the Chatha family members to mask from EFBL's suppliers that a large part of the duty suspended goods purchased by EFBL from those suppliers was going to be resold in the wholesale market in England, other countries of the EU and elsewhere, and not in the UK retail market. The Tribunal will return to this topic at length below.

Shareholders, directors and employees of the companies

158. Rajinder Singh Chatha is the sole beneficial owner of, amongst others, WWL, EFBL (the Appellants) & EFB Retail Limited through his sole shareholding in EFB Holdings Limited in the UK.

159. He is the sole beneficial owner EFB (IOM) Limited in the Isle of Man, through his sole shareholding in Chatha International Ltd.

160. He is the sole beneficial owner of Global and Bridgewell in the Isle of Man. This is through his sole shareholding in Endless Ventures Ltd, which is the beneficiary of

the trust from Burleigh Nominees Ltd in respect of the shareholdings in Global and Bridgewell.

161. He provides services to EFBL through EFB (IOM) Limited, including negotiation of all of EFBL's purchases from suppliers of duty suspended alcohol which are then sold to Global and Bridgewell.

162. He was, until 1 March 2010, a director of EFBL and WWL. Since 2010, he has been resident in the Isle of Man.

163. Jatinder Singh Chatha is a current director of WWL and EFBL, and brother of Rajinder and Balbir Chatha.

164. Balbir Singh Chatha is a current director of WWL and EFBL, and brother of Rajinder and Jatinder Chatha. He was not a witness in the appeals.

165. Hardeep Singh Chatha is the son of Balbir and the nephew of Rajinder and Jatinder. He used to be employed by EFBL. He is now an employee of EFB (IOM) Ltd, which provided his services as the manager of Global and Bridgewell.

166. David Craine is a chartered accountant and used to be a principal of Browne, Craine & Co. Alongside other partners at his firm, he was a director of Global and Bridgewell from its establishment by Rajinder Chatha until his planned retirement and resignation on 1 May 2015.

167. Philip Eagleton is the Senior Bond Controller of WWL. One of his functions is to ensure compliance with all of HMRC's requirements and with WWL's obligation to carry out due diligence.

168. Philip Rimmer is a director of M&R Tax Advisers Ltd. M&R Tax were engaged by the Appellants in August 2015 to advise them in respect of their due diligence obligations.

The Chronology

169. In 2011 HMRC began a civil investigation into the Appellants, Operation Cracker 11. The aim of the investigation was to establish whether tax losses were occurring within or close to the Appellants' duty suspended businesses.

170. While this was the initial purpose of the investigation, as a result of their conclusion by 2014 that the Appellants were not knowingly involved in tax fraud, HMRC do not contend that the Appellants were found to have been involved in this fraud. It remains HMRC's position that there is no allegation whatsoever that the Appellants', their associated companies, their directors or shareholders have been knowingly involved in any type of fraudulent tax loss.

171. Nonetheless, of the Appellants' duty suspended alcohol trade between 2011-2014 through EFBL and Global, HMRC were able to trace approximately 15% of the onward transaction chains to their destinations in Europe. In each case, the supply chain ended

in mainland Europe with a missing trader, non-compliant businesses or was supposedly conducted by transport movements which were not credible at all. The tribunal will return to this topic below.

172. On 5 January 2012 Global was granted WOWGR approval by HMRC as a Registered Owner of Duty Suspended Goods held in Excise Warehouses. The specific warehouse in which it was authorised to hold alcohol were specified in the approval and amended at a later date. The warehouses included those of WWL and were all in the UK.

173. On 18 January 2012 Bridgewell was granted WOWGR approval by HMRC as a Registered Owner of Duty Suspended Goods held in Excise Warehouses in similar terms.

174. These were the first ever WOWGR duty suspended approvals in the Isle of Man. They were granted by the authority of HMRC in the UK rather than Isle of Man Customs & Excise (IOM C&E), as this is the nature of the legal and policy arrangement between the two jurisdictions.

175. On 25 March 2013, Officer Graham Dugdale, Senior Executive Officer of IOM C&E telephoned David Craine, a director of Global and Bridgewell to inform him of an upcoming WOWGR post approval visit of IOM C&E on 9 and 10 April 2013. He informed Mr Craine that there would be HMRC officers from the UK supporting them on the visits. He stated to Mr Craine that they would also be looking at both companies' supply chains to ascertain if they had been tainted by excise diversion fraud.

176. Mr Craine stated to Officer Dugdale that his only concern was that as the businesses (Global and Bridgewell) were set up in a manner so that the big supermarkets in the UK were not aware that they were being supplied by the same company (EFBL through WWL) ie. for commercial purposes, he was worried that HMRC would be made aware of this. Mr Dugdale stated that he thought it unlikely that this would concern HMRC as this was a commercial reason.

177. On the same date, Officer Dugdale wrote a letter to Mr Craine in similar terms.

178. On the same date, IOM C&E Officer Dugdale wrote to HMRC Officer Bourne advising her of his conversation with David Craine regarding his concerns about HMRC officers attending the post-WOWGR meeting. There was some discussion whether HMRC or IOM C&E should lead the visit and whether mention should be made of the investigation into the supply chains tainted by alcohol diversion fraud.

179. Earlier proposals were that Tracey Bourne of HMRC should lead the visit with IOM C&E officers simply attending in support. These were the first ever WOWGR post approval visits to be conducted by IOM C&E and so, unlike HMRC, they had no experience of their conduct.

180. On 5 April 2013 IOM C&E Officer Alistair Nash wrote to Rajinder Chatha on behalf of Bridgewell and Global explaining why HMRC officers would be attending meetings in April 2013. He stated that the reason for the invitation of HMRC officers

was that they had significant experience of conducting post approval WOWGR visits and knowledge of the methodology and use of companies involved in alcohol diversion fraud.

181. He went on to state that, 'Their support will benefit the experience of the Isle of Man officer and should give assurance to you that the companies are operating correctly within the WOWGR regulations.' In writing this letter to Rajinder Chatha about Global and Bridgewell, IOM C&E evidenced their awareness that he was the ultimate beneficial owner of Global and Bridgewell about which Mr Chatha appears to have been open with IOM C&E since around 2010.

182. On 5 April 2013 IOM C&E Officer Burrows spoke with David Craine and told him that the IOM C&E's visit was for the first annual WOWGR inspection and two officers from HMRC and two from IOM C&E would attend. Mr Craine mentioned briefly Rajinder Chatha's concerns with the attendance of HMRC officers from a direct taxation point of view. However, Mr Craine accepted that their assistance was required due to their experience dealing with WOWGR matters with which HMRC were more familiar than IOM C&E.

183. Prior to the visit, Tracey Bourne of HMRC had been briefed about Global and Bridgewell. She was told by IOM C&E, and therefore came to suspect, that they were both beneficially owned by Rajinder Chatha but she received no confirmation of this orally or in writing.

IOM meeting with Global and Bridgewell, 9-10 April 2013

184. On 9 April 2013 Officer Bourne accompanied IOM C&E Officers Burrows and Buchanan to the offices of Bridgewell at European House (formerly Publishing House), Peel in the IOM. There they met with Hardeep Chatha, the company administrator and nephew of Rajinder Chatha for the first annual WOWGR meeting. Officer Bourne was intended to be there in an observational capacity.

185. The purpose of the visit was explained by the visiting officers and verbal reassurance was given that all information gained and records lifted would be used for indirect taxation purposes only. The visit was led by IOM C&E using a list of pre-prepared questions regarding all aspects of the business, which had been provided by HMRC.

186. Comprehensive contemporaneous notes were taken by Officer Burrows for the duration of the visit. It was necessary at the time to call on Officer Tracey Bourne of HMRC to answer some of the questions asked by Mr Chatha due to her greater level of experience with WOWGR particularly regarding the records which Bridgewell was required to provide. The records taken at the time of the visit together with those to be provided post visit were passed to HMRC in due course.

187. On 10 April 2013 Officer Bourne accompanied IOM C&E Officers Burrows and Buchanan to the offices of Global (which were the same as for Bridgewell) where they met Hardeep Chatha again. Similar information was provided as the previous day but in respect of Global rather than Bridgewell.

188. On 11 April 2013 material was obtained from Global and Bridgewell by IOM C&E.

189. On 16 April 2013 material relating to Bridgewell was sent by email to IOM C&E which was sent to HMRC on 19 April 2013.

190. On 18 April 2013 IOM C&E contacted David Craine to request purchase and sales day books of Bridgewell, which were provided the following day.

191. On 30 July 2013 IOM C&E Officer Burrows wrote to David Craine requesting information about EFB (IOM) Ltd, Bridgewell and Global.

192. On 30 August 2013 IOM C&E chased a response from David Craine to the letter of 30 July 2013.

193. On 5 September 2013 C Mitchell, of Browne, Craine & Co., the directors of Global and Bridgewell, wrote enclosing responses to queries regarding EFB (IOM) Ltd, Global and Bridgewell. Mr Mitchell was (and is) also a director of Global and Bridgewell.

194. The letter replied to the questions raised in the letter of 30 July 2013. It recorded the fact that Bridgewell had paid £30,000 to EFB (IOM) Ltd for administrative charges year ending 31 January 2013 and Global had paid £60,000 to EFB (IOM) Ltd in respect of the same.

195. The letter also confirmed that Hardeep Chatha managed the day to day trading activities of the businesses with an overview from the directors. The employment costs for staff were not shown in the expenses but were covered within the annual administrative charge made by EFB (IOM) Limited. EFBL (the Appellant) was named as EFB UK within a customer & supplier list for Bridgewell for the period February 2011 through July 2013 but it was not specified whether it was a customer or supplier.

196. On 2 December 2013 IOM C&E wrote to David Craine to organise a meeting. The letter included a request to make available due diligence records of Global and Bridgewell on various companies including those for EFBL.

197. On 15 January 2014, at the request of HMRC Special Investigations, IOM C&E Officers Burrows and Buchanan attended the offices of Global and Bridgewell and met Hardeep Chatha where they discussed due diligence. Hardeep Chatha provided due diligence packs for fourteen Bridgewell and Global customers as requested in IOM C&E's letter dated 2 December 2013. These were subsequently scanned and sent by email to HMRC. The visit was recorded to have taken place in a positive atmosphere and Hardeep Chatha was cooperative throughout.

198. On 21 January 2014 IOM C&E received sample invoices from Global/Bridgewell.

199. By 2014, the focus of HMRC's investigation had turned from examining any involvement by the Appellants in alcohol diversion fraud to the Appellants' due diligence aimed at the reduction of the risk of tax fraud occurring.

3 June 2014 meeting between HMRC and the Appellants

200. On 3 June 2014 HMRC Officers Tracy Bourne and Robotham met Jatinder Chatha (director of the Appellants) and Philip Eagleton (bond manager of WWL) at the Appellants' Walsall premises.

201. Both Officers Bourne and Robotham took contemporaneous handwritten notes of the meeting which the Tribunal finds to be a reliable record of the meeting, the questions asked and answers given by Jatinder Chatha and Philip Eagleton. Officer Bourne gave oral evidence about the meeting which the Tribunal finds to be reliable. Where there was any conflict between her notes and evidence and that of Mr Chatha and Mr Eagleton, the Tribunal prefers Officer Bourne's account. The Tribunal has taken into account the unreliability of Mr Chatha and Mr Eagleton, for the reasons it sets out below, when coming to this conclusion.

202. Officer Bourne explained the purpose of the visit was to gain an understanding of the business activities and processes of the Appellants which traded in alcoholic goods.

203. They discussed the structure and organisation of the Appellant companies. Jatinder Chatha confirmed his role was more head office based in integrating and looking after accounts, sales and the telesales department. Balbir Chatha's role was to audit stock, look after and visit the retail stores and warehouses. Jatinder Chatha said that EFB Holdings Ltd was looked after in the Isle of Man. This was a mistake – it is a UK company. He stated that Rajinder Chatha who was responsible for the sales and purchase price negotiations and marketing for the Appellant companies. He bought from brewers and distilleries and set prices for onward sales.

204. It was confirmed that WWL held no stock of its own and only provided tax warehouse services, with EFBL as its sole customer. EFBL had a WOWGR account with WWL and bought and sold goods within WWL.

205. Officer Bourne asked if there were any associated companies. Jatinder Chatha confirmed that there were. These included EFB Leisure (bars and clubs) and the retail stores. Officer Bourne asked Mr Chatha if he had a business structure chart and he confirmed he did and would provide a copy. No mention was made of any of the Isle of Man companies, Global or Bridgewell.

206. Jatinder Chatha confirmed the directors of EFBL as himself and Balbir Chatha. He was company secretary. The shareholder was EFB Holding Ltd. The roles and responsibilities of directors and shareholders was the same as for WWL.

207. They discussed due diligence.

208. In relation to customers for duty paid alcohol Jatinder Chatha confirmed that he was responsible for making the decision to sign up new customers but it was the field sales team that met the directors / manager of that business. Debt Management and Banking Checks were undertaken consisting of credit checks, the last three years' accounts, County Court Judgments (CCJs) etc, VAT registration Certificate and company details which would be requested from Companies House. Jatinder Chatha stated that he undertook checks on his suppliers but not to the same extent as customers – he had traded for twenty years plus with Heineken and Diageo etc.

209. On the topic of Tax warehouses – Jatinder Chatha confirmed that visits had been undertaken to the likes of IEFW (a bonded warehouse in Belgium) etc by Mr Eagleton and himself.

210. By way of assistance in making due diligence enquiries, HMRC Officers also asked if they had a copy of Public Notice 726 – Joint and Several Liability for unpaid VAT. Jatinder Chatha confirmed he did not have this notice. Officer Bourne advised that the notice provided useful information on due diligence and might be helpful to them and could be accessed on HMRC's website. The Tribunal records that PN 726 was primarily aimed at giving advice to traders at risk of being caught up in missing trader intra-community or carousel VAT fraud and offered advice on due diligence steps that might be undertaken to reduce this risk.

211. In relation to duty suspended sales of alcohol it was stated on behalf of the Appellants that everything was retained including delivery notes input receipt documents, invoices, packing lists, damages/ internal transfer documents to complete the audit trail.

212. Officer Bourne asked what Jatinder Chatha and Mr Eagleton perceived to be the main risks in the alcohol trade sector. Mr Chatha advised not getting paid and generic risks of dealing with suspect companies. Mr Eagleton stated EMCS has helped. Mr Eagleton stated 'who is asking for information and why?'. Officer Bourne stated a major risk was duty suspended good being diverted to home use without payment of VAT or duty. Mr Eagleton and Mr Chatha agreed and felt that their experience in this trade for a considerable number of years mitigated these risks.

Officer Lewis' summary of the meeting

213. Officer Lewis reasonably summarised this meeting at paragraph 2 of Annex B to his revocation decision letters in the following way:

When asked about the due diligence checks completed by the businesses:

a. Mr Chatha stated that it is his decision whether to sign up a new customer, but he doesn't meet with the directors of those businesses personally: this responsibility is held by the field sales team.

b. Mr Chatha stated that EFBL due diligence checks on customers consisted of credit checks, obtaining copies of the last 3 years' accounts, checking for CCJs, obtaining a VAT registration certificate and requesting company details from Companies House.

c. It was stated that both Mr Chatha and Mr Eagleton had made a visit to IEFW, a tax warehouse located in France.

d. Mr Chatha stated that due diligence checks were completed on the suppliers but not to the same extent as for customers.

e. Mr Chatha and Mr Eagleton were advised by HMRC officers to use Public Notice 726 as a guide for completing their checks.

f. Asked what the risks in the alcohol trade were, Mr Chatha stated these were *'not getting paid'* and *'generic risks with suspicious businesses'*. HMRC officers advised of the risk of duty suspended goods being diverted for home use without the payment of duty of VAT. Mr Chatha and Mr Eagleton agreed, but stated that their experience in this trade for a considerable number of years mitigated the risks of duty suspended diversion fraud.

214. Subsequently and as requested, Philip Eagleton and Jatinder Chatha emailed HMRC a list of customers and stockholders and the accounts of EFBL and WWL.

215. On 13 June 2014 Officer Bourne emailed WWL requesting a further meeting and further information.

8 July 2014 meeting

216. On 8 July 2014 HMRC Officers Bourne and Robotham met Jatinder Chatha and Philip Eagleton once more, at WWL's Walsall premises. They took a contemporaneous handwritten note of the meeting from which a typed written note was drawn up.

217. Again, the Tribunal finds this to be a reliable record of the meeting, the questions asked and answers given by Jatinder Chatha and Philip Eagleton. Officer Bourne gave oral evidence about the meeting which the Tribunal finds to be reliable. Where there was any conflict between the notes, her evidence and that of Mr Chatha and Mr Eagleton, the Tribunal prefers Officer Bourne's account. The Tribunal has taken into account the unreliability of Mr Chatha and Mr Eagleton, for the reasons it sets out below, when coming to this conclusion.

218. Among other things, the Officers asked about the relationships between the various businesses. They began by discussing the functions and name of the Head Office company. Jatinder Chatha confirmed it was EFB (IOM) Limited whose director was confirmed to be Rajinder Chatha who had gone to the Isle of Man (IOM) four and a half years before and retained the responsibilities he performed at EFBL when based in the UK and took these functions to the IOM with him.

219. Jatinder Chatha was specifically asked how the Appellants obtained their duty suspended customers. He answered that this was through "word of mouth" and there was a low turnover of new customers. At this stage he made no mention of Global or Bridgewell despite these being the only duty suspended customers of the Appellants and they being related companies through the common ownership of Rajinder Chatha. Later in the meeting, Officer Bourne asked whom were the main customers for EFBL

for duty suspended goods and at this point Jatinder Chatha confirmed that these were Global and Bridgewell.

220. Officer Bourne asked who was responsible for undertaking due diligence on these companies (ie. duty suspended customers). Mr Philip Eagleton, who had arrived part way through the meeting, was confirmed as being responsible for the due diligence on Global and Bridgewell. Officer Bourne asked if this was updated. Mr Eagleton confirmed this had been done recently around February / March 2014. Mr Eagleton said it was done every year or if trade had stopped for any length of time.

221. The typed written note of the 8 July 2014 meeting records: *"Officer Bourne asked who was responsible for the due diligence on these customers* [Global /Bridgewell]*. Mr Eagleton was confirmed as being responsible for the due diligence on these companies. Officer Bourne asked if this was updated. Mr Eagleton confirmed this was done recently around February/March 2014. It is done every year or if trade has stopped for any length of time. Officer Bourne asked who owned these companies. Mr Eagleton confirmed they are IOM companies"*.

222. These answers of Mr Eagleton were actively misleading – the trade had never stopped between the Appellants and Global and Bridgewell – they were being supplied with all of the Appellants' duty suspended alcohol – indeed it was the Appellants' purpose to use the companies in this way. This much is accepted in the witness statements latterly served on behalf of the Appellants. It is not in dispute that Mr Eagleton knew of this at the time.

223. Mr Eagleton had also been asked who owned Global and Bridgewell and stated that they were Isle of Man companies. This was not a direct answer to the question and was actively misleading – Mr Eagleton knew at this time that Global and Bridgewell were both owned by Rajinder Chatha who also owned the Appellants.

224. The Tribunal takes into account the way that HMRC officer Bourne was cross examined and the Appellants put their case.

225. No positive case was put to contradict that, following the direct question as to who owned Global / Bridgewell, Philip Eagleton stated *"they are IOM companies"*. As above, this answer was intended to be misleading, since both Mr Eagleton and Mr Jatinder Chatha knew full well the true answer, namely that these companies were both beneficially owned by Mr Rajinder Chatha, the brother of Jatinder Chatha and former director of EFBL and WWL. Mr Jatinder Chatha stood by and remained silent, whilst Mr Eagleton gave his incomplete and misleading answer at the meeting.

226. During the hearing of the appeals Jatinder Chatha was cross examined about Mr Eagleton's answers at that meeting. When this conversation was put to him, he first insisted that he was talking about other duty suspended customers, before stating:

> "22 **A. All that conversation there was held with Phil Eagleton.**
> 23 **I may have been in the room, I may have popped out, I am**
> 24 **not 100 per cent -- let's say I was in the room, I may**
> 25 **have gone to my desk. In my room I have my desk and**

Page 175
1 **I have a meeting area round about there, and they were**
2 **sat there. I may have gone to my desk for any reason.**
3 **Regardless, from Phil's perspective, because he does the**
4 **duty suspended due diligence, he was best placed to**
answer that."

227. Officer Bourne asked who the contact was at Global and Bridgewell. Mr Eagleton replied "it's someone called David who works for both companies. They are separate e-mail addresses but they may be the same person". As is set out below, it is accepted by the Appellants that Hardeep Chatha, who managed the affairs of Global and Bridgewell on a day-to-day basis through EFB (IOM) Ltd, used a 'pseudonym' 'David' in his emails but Mr Eagleton knew his true identity.

228. Mr Eagleton, while knowing that his contact was Hardeep Chatha using the pseudonym "David", also knew that part of the intention was to hide the relationship between the Appellant companies and Global / Bridgewell. Revelation of the surname 'Chatha' in connection with Global / Bridgewell may have given away to traders at large the connection with the Appellants through Rajinder Chatha.

229. In his oral evidence, Mr Eagleton failed to give any adequate explanation for his answer:

"4 Q…
5 "Mr Eagleton [that's you] replied 'It is someone
6 called David who works for both companies. They are
7 separate email addresses but they may be the same
8 person'. Mr Eagleton was unclear about the contact."
9 Well that's a comment.
10 "Mr Eagleton's contact with these companies is
11 always done by email. It's the same address for both
12 companies."
13 Now, why did you say to HMRC that the person you
14 deal with is called David when you know that that isn't
15 his name?
16 **A. I was referring to my email contacts.**
17 Q. Your email contacts were with a person who was calling
18 himself David but his true name was Hardeep Chatha?
19 **A. And I was referring to my email contact.**
20 Q. But the person who is the contact is not just six
21 letters, the contact is the person and the person was
22 Hardeep Chatha?
23 **A. Yes, but I was referring to my email contact.**
24 Q. And then you said --
25 **A. If it was -- I mean, I'm not trying to evade anything.**
Page 171
1 **HMRC could have asked another question. They didn't.**
2 Q. I see, so they are the ones who are supposed to work out

3 that David was in fact Hardeep Chatha, was it? Is that
4 what you're trying to say?
5 **A. That's not what I'm saying. I am saying if they weren't**
6 **happy with the answer, then if they wanted further**
7 **clarification, then absolutely, it is appropriate to ask**
8 **another question, isn't it?**
9 Q. How were they to know that it was appropriate for
10 another question, because you just said that my contact
11 is David?
12 **A. There's been a few Davids, two to my recollection, at**
13 **Global and Bridgewell.**
14 Q. Yes but the one who was your contact was not anyone
15 other than Hardeep Chatha who was calling himself David.
16 I thought we'd established that.
17 **A. Yes.**
18 Q. Yes. So therefore we can put out of our mind anybody
19 else called David because there was only one person
20 pretending to call themselves David who was in contact
21 with you?
22 **A. Right.**
23 Q. So when you actually answered in this way, I will ask
24 you again, why didn't you come out straight and say to
25 HMRC that "My contact is with Hardeep Chatha; in his
Page 172
1 emails he uses the name David for confidentiality
2 purposes", or something of that kind?
3 **A. That was just the answer I gave. I don't feel I am**
4 **being evasive in any way. If they wanted further**
5 clarification, I am referring to my email contact."

230. No positive case was put to contradict that Philip Eagleton stated his contact with Global / Bridgewell was *"someone called David who works for both companies...they may be the same person"*. As above, at all times Mr Eagleton knew perfectly well that "David" was Hardeep Chatha, the son of Balbir Chatha and nephew of Rajinder and Jatinder Chatha and also a person who had spent 3 years working alongside him in the Walsall warehouse office. Mr Eagleton also knew that the pretence and concealment of Hardeep Chatha's true identity were being carried out as part of masking from EFBL's suppliers the fact that Global and Bridgewell were set up and operating through nominee directors and a nominee shareholder in the Isle of Man in order to execute EFBL's export business of duty suspended alcohol to Europe (a matter which neither of them disclosed to HMRC at the time).

231. The Tribunal finds that the answers Mr Eagleton gave to HMRC and the evidence about it he gave to the Tribunal were deliberately misleading and evasive. It is accepted that Mr Eagleton was not referring to the only other possible 'David' connected to Global / Bridgewell (David Craine, who was a director of both Global and Bridgewell).

232. In addition to Mr Eagleton, Jatinder Chatha gave deliberately misleading answers to the Officers at this meeting and avoided answering questions. It is important to note that Mr Coppel QC for the Appellants did not suggest to Officer Bourne that these answers were not given by them. The Tribunal finds that they were deliberately misleading answers given that it is not in dispute that both individuals knew the full position at the time they gave the answers. They were not suggested to be answers given as mistakes and there could be no reasonable basis on which to misunderstand the questions they were being asked. The Appellants did not suggest so regarding these answers.

233. Their answers fitted within a pattern of trying to mask the true relationship between the Appellants and Global / Bridgewell, in particular motivated by the desire to hide from the Appellants' suppliers, and the world generally, the nature and purpose of the trade they were undertaking.

234. Mr Chatha stated in an answer to a question that duty suspended customers were obtained by *"word of mouth"*. Given that EFBL only had two duty suspended customers who were their own sister companies in the IOM, this was misleading and untrue.

235. At the time of this meeting the HMRC Officers did not know for sure that Global and Bridgewell were sister companies of the Appellants commonly owned by Rajinder Chatha. This was only confirmed to HMRC in June 2015.

236. At the time of the meeting HMRC did not know that the purpose in using Global and Bridgewell was to place them as interposed companies to sell the Appellants' duty suspended alcohol to mainland Europe because the Appellants' suppliers would have declined to trade with them if they had known the true nature of the trade. This much was only disclosed for the first time by the Appellants in February 2016 after HMRC indicated it was minded to revoke the Appellants' approvals.

237. When asked about the due diligence undertaken on Global and Bridgewell, neither Mr Eagleton nor Mr Chatha mentioned that these were sister companies; this being a highly relevant and important issue when considering due diligence in one's supply chains.

Officer Lewis' summary of the meeting

238. Officer Lewis reasonably summarised this meeting in the following way at paragraph 3 of Annex B to his revocation decision letters:

a. Mr Chatha confirmed the name of the Head Office company was European Food Brokers Isle of Man Limited ("EFB (IOM) Ltd"). He stated that Mr Rajinder Chatha was the director of EFB (IOM) Ltd.

b. Mr Chatha advised this relationship had started approximately four and a half years earlier, when Rajinder Chatha had left the UK and gone to the Isle of Man, and that he retained the responsibilities and function he had performed at EFBL when based on the mainland UK. This was a continuation of the prior arrangements.

c. The functions completed by EFB (IOM) Ltd were described as 'purchasing', whereby suppliers were met and deals agreed, negotiation and arrangement of retail and wholesale sales prices and the maintenance of systems for stock retail and wholesale. Officer Bourne asked if EFBL had approached any other company to perform head office functions for them and Mr Chatha confirmed they had not.

d. Asked who in EFB (IOM) Ltd had management responsibility for purchases, Mr Chatha stated that Rajinder Chatha and his team were responsible for the purchasing decisions, as Rajinder Chatha had a direct relationship with 10-12 of the main suppliers; Rajinder Chatha was responsible for both duty paid and duty suspended purchases.

e. As to sales, Mr Chatha confirmed the telesalets function and mobile sales person were based in Walsall along with sales, accounting, HR and payroll. Mr Chatha confirmed that he had management responsibility for sales including the credit function and new customers.

f. Mr Chatha stated that duty suspended customers were obtained by word of mouth.

239. Officer Lewis also reasonably summarised what was said at the meeting as to the due diligence completed by EFBL and WWL, and how often it was updated, at paragraph 4 of Annex B to the revocation decision letters:

a. Mr Chatha stated that the main supplier had been used for many years, and so due diligence was not updated on them.

b. The duty suspended alcohol customers were confirmed to be Global Beverages and Drinks Ltd ("GBDL") and Bridgewell Ltd ("BWL").

c. Mr Eagleton was confirmed to be the bond manager of the EFBL and WWL businesses, and responsible for completing the due diligence checks on GBDL and BWL. Mr Eagleton stated that due diligence on these customers had been completed recently, in around February/March 2014, and was updated every year, or if trade had stopped for any length of time.

d. Officer Bourne asked who owned these companies. Mr Eagleton confirmed they were IOM companies. Mr Eagleton was unclear about who was the contact in these companies, saying *"it's someone called David, who works for both companies. They are separate e-mail addresses but they may be the same person"*.

Follow up correspondence

240. On 11 July 2014 Philip Eagleton emailed Officer Emma Robotham who in turn forwarded the email to Officer Bourne enclosing WWL's due diligence on Bridgewell.

241. The due diligence produced by Mr Eagleton consisted of a poorly photocopied identification page from David Craine's passport and company documents for Bridgewell: a Certificate of Incorporation dated 3 December 2010 from the Isle of Man companies registry; Certificate of registration for VAT issued on 14 December 2010 from the Isle of Man VAT office; and Certificate issued on 7 March 2014 approving Bridgewell as a Registered Owner of Duty Suspended Goods to be held in various warehouses including those of WWL in Walsall, Gateshead and Birmingham.

242. On 7-8 August 2014 following an exchange of emails between Philip Eagleton and Officer Bourne, a further meeting was arranged for 2 September 2014.

243. On 27 August 2014 Philip Eagleton emailed Officer Bourne asking to reschedule the meeting. Officer Bourne agreed to reschedule the meeting for 9 September 2014.

9 September 2014 meeting between the Appellants and HMRC

244. On 9 September 2014 HMRC Officers Bourne, Warburton and Nicholas met Jatinder Chatha and Philip Eagleton, again at the Walsall warehouse of WWL. Each of the three officers prepared contemporaneous handwritten notes of the meeting from which a typed note was prepared. Some of the answers said to have been given by Jatinder Chatha and Philip Eagleton were disputed as set out below.

245. Again, the Tribunal finds HMRC's notes to be a reliable record of the meeting, the questions asked and answers given by Jatinder Chatha and Philip Eagleton. Officers Bourne and Warburton gave oral evidence about the meeting which the Tribunal finds to be reliable. Where there was any conflict between the notes their evidence and that of Mr Chatha and Mr Eagleton, the Tribunal prefers Officer Bourne's account. The Tribunal has taken into account the unreliability of Mr Chatha and Mr Eagleton, for the reasons it sets out below, when coming to this conclusion.

246. Among other things, they discussed due diligence at length; in particular, HMRC Officers advised that they had concerns that their due diligence was insufficient to guard against the risks of tax losses and referred to Public Notice 726 as assistance with how to conduct due diligence in alcohol trade. The Officers also advised that they had identified some light or empty loads at ports and retrospective ARCs in their supply chains.

247. During the meeting, HMRC Officers asked a number of questions of Jatinder Chatha and Philip Eagleton about their duty suspended customers.

248. When asked who did due diligence on the only two duty suspended customers of the Appellants, Global and Bridgewell, Jatinder Chatha answered that his brother, Rajinder Chatha, had visited those businesses, met with their personnel and performed credit checks on them.

249. Officer Warburton specifically asked if there was a connection between Global, Bridgewell and EFBL and EFB (IOM) Ltd. Jatinder Chatha said there was not. He also denied any knowledge of a connection between those companies and Rajinder Chatha.

250. Jatinder Chatha did not deny saying, and it was put to no witness during the hearing that he did not say, in answer to the question as to whether there was any connection between EFBL / EFB (IOM) Ltd and Global / Bridgewell that there was "no connection".

251. The same is true for his answer to the question put to him at the same meeting on whether there was any connection between the abovementioned companies and his brother, Rajinder Chatha.

252. Both of Jatinder Chatha's answers to HMRC at the meeting were untrue and deliberately misleading.

253. Officer Warburton had asked two clear, unambiguous and explicit questions on the relationships between (a) EFBL, one of the Appellants, and Global / Bridgewell and (b) Rajinder Chatha and Global/ Bridgewell to which Jatinder Chatha gave clear, unambiguous and explicit answers: (a) there was no connection between Global/Bridgewell and EFBL / EFB (IOM) Ltd; and (b) he was not aware of any connection between Global/Bridgewell and Rajinder Chatha.

254. In his oral evidence during the hearing, Mr Jatinder Chatha tried to qualify his answer on (a) by suggesting that there were not "corporate connections":

> 9 Q. The next question that Officer Warburton asked was if
> 10 there was any connection between GBDL, BL and EFB (IOM)
> 11 Ltd, and you replied "no"?
> 12 **A. That's right. There are no corporate connections for me**
> 13 **to say.**
> 14 Q. It's not corporate connections, it's any connections.
> 15 **A. For me to say that there's no connections between EFBL**
> 16 **and EFB (Isle of Man) Ltd is nonsensical. There are no**
> 17 **corporate connections.**
> 18 Q. I'm sorry, there are corporate connections because the
> 19 beneficial owner of both your company and the companies
> 20 in the Isle of Man is your brother.
> 21 **A. Like I said, I wanted to make sure and put across the**
> 22 **point that they were third party, arm's-length companies**
> 23 **that we dealt with. There was no common directorships.**
> 24 Q. So the one thing that you were trying to avoid at this
> 25 meeting was actually disclosing any connection between
> Page 36
> 1 these two companies and your brother?
> 2 **A. We were talking about all the companies there --**
> 3 Q. Yes.
> 4 **A. -- not those two in isolation.**
> 5 Q. GBDL and BL.
> 6 **A. Yes. EFBL and EFBL (IOM) Ltd.**
> 7 Q. Okay. The next question you're asked is, is there any
> 8 connection between GBDL, BL and your brother, as they
> 9 were taken on as customers when he was in the Isle of
> 10 Man. And you responded, saying that you were "not aware
> 11 of any connection", that should say.
> 12 **A. My understanding was we were talking then about**
> 13 **beneficial ownership, and I said "I'm not 100 per cent**
> 14 **aware but I can find out for you".**

15 Q. That isn't what you say though, is it, you're not aware
16 of any. You don't say "Well, my brother has got
17 a beneficial share and I don't know quite how much".
18 You simply said you weren't aware of any.
19 **A. I can't remember the context this was asked in.**"

255. This evidence is unbelievable, given the clarity and breadth of the questions asked. It also does not explain his other lie to the Officers that there was no connection between Global/Bridgewell and Rajinder Chatha, this could not reasonably be explained away by the 'corporate connections' and 'common directorships' arguments when Rajinder Chatha was their owner, the fact of which Jatinder Chatha knew.

256. Furthermore, it is worth noting the following exchange between Jatinder Chatha and his own counsel in re-examination, which demonstrates that Jatinder Chatha did not even understand the significance of the difference between beneficial ownership and directorships, which serves to undermine yet further the credibility of his having thought that only directorships were being inquired into:

"25 Q. When you were being asked about the connection, what
Page 61
1 sort of connection did you understand Officer Warburton
2 was talking to you, asking you about?
3 **A. Common directorships.**
4 Q. So far as you can recollect, were you at this meeting
5 asked about beneficial ownership in terms?
6 **A. I think so, yes, I'm not 100 per cent certain. There**
7 **was --**
8 Q. And did you understand what the significance was in
9 terms of the difference between directorships and
10 beneficial ownership?
11 **A. No."**

257. When asked at the meeting on 9 September 2014 what would happen if Global / Bridgewell took their business elsewhere, Jatinder Chatha stated the Appellants received a lot of inquiries about duty suspended trade (which they turned down due to not liking taking risks) and that one of their cash and carry businesses was doing well. Officer Warburton asked whether they heard anything concerning about their customers. Jatinder Chatha stated *"it was hard to tell if a business will go under there are a lot of rumours."*.

258. Having been asked what would happen if Global and Bridgewell took their custom elsewhere, Mr Chatha stated that they get a lot of enquiries about duty suspension but turn them down because they do not like taking risks.

259. No positive case was put that, when asked what would happen if Global / Bridgewell took their trade elsewhere, Jatinder Chatha did not state that "*they have a lot of enquiries about duty suspension but [they] turn these down because they don't like taking risks. Gateshead [cash & carry] does well because there's not much*

competition whereas the Birmingham [cash & carry] was closed as they couldn't remain competitive...". The Tribunal finds that he made the statement as recorded.

260. Again, in his oral evidence during the hearing, in addition to accepting that this answer was "nonsensical", he admitted that the reason he gave it was as follows:

> "8 Q. Again that's why I suggest to you what you were doing
> 9 was giving a deliberately misleading answer. You were
> 10 trying to fudge something, weren't you, because
> 11 otherwise you could see yourself heading for some
> 12 embarrassment?
> 13 **A. Embarrassment in what way? I wanted to make sure that**
> 14 **the third party arm's-length connections was fully**
> 15 **explained so it would not cause my brother any problems."**

261. Jatinder Chatha knew at that the time of giving his answers that Global and Bridgewell were sister companies who would not take their custom elsewhere in any circumstances and there was no risk involved.

262. Asked during the meeting how Rajinder Chatha came to trade with Global and Bridgewell, Jatinder Chatha stated that his brother had integrated himself in the local community and Global / Bridgewell approached Rajinder Chatha.

263. Again, there is no positive case that Jatinder Chatha did not say that Global / Bridgewell *"became customers after approaching his brother Rajinder Chatha"*, the latter having become *"involved in the community in the IoM and [he] had become aware of them"*. The Tribunal finds that he made the statement as recorded.

264. In his oral evidence to the Tribunal regarding these answers, Mr Chatha offered no excuse for this lie:

> "25 **A. That's right. We were talking generally about the Isle**
> Page 34
> 1 **of Man and how my brother went there.**
> 2 Q. And then it went on to say this:
> 3 "[You] stated that GBDL and BL approached your
> 4 brother."
> 5 That can't be true, can it?
> 6 **A. No, it can't be true."**

265. Asked how long they had been trading, Jatinder Chatha stated that he did not know. Again, as to this misleading impression, he stated:

> "5 **A. I want to make sure that it was on an arm's-length basis**

6 **and that was the understanding that they took, just in**
7 **case it may have harmed my brother's direct tax**
8 **investigation."**

266. Having been asked how the Appellants' trade with Global/Bridgewell began, the true answer was that the companies were set up or at least used by Rajinder Chatha to facilitate EFBL's export trade to mainland Europe without the knowledge of their suppliers who would otherwise have declined to trade with them on the basis that the suppliers had their own direct supply chains into this market. This is explored below in Jatinder Chatha's first statement at paragraph 37 and Rajinder Chatha's statement at paragraph 7.

267. Instead, Jatinder Chatha stated that Rajinder Chatha had been approached by Global and Bridgewell having become integrated in the community in the Isle of Man and having become aware of them.

268. Again, the answers were untrue (as Jatinder Chatha knew) and deliberately misleading.

269. Officer Bourne asked about the profit per case when selling to Global / Bridgewell. The honest answer would be that the profit margins were dictated by the fact that these were sister companies. Instead, Jatinder Chatha suggested that *"the profit margin is less with these companies as they deal with whole pallet loads in high volumes"*.

270. No positive case was put that Jatinder Chatha, when asked on 9 September 2014 what was the profit per case when selling to Global /Bridgewell, did not state, *"that profit margin is less with these companies as they deal with whole pallet loads in high volumes so he is happy with fifty pence per case"*. The Tribunal finds that he made the statement as recorded.

271. Again, these answers were intended to be positively misleading so as to give a consistent impression of genuine arm's length trading, when in fact both companies were interposed sister companies carrying on EFBL's own masked export business operated in competition against its suppliers.

272. In his oral evidence, Jatinder Chatha did not dispute saying this but attempted to justify it by lying:

"13. **They are at arm's length.**
14 **EFB has to make a profit doing its duties. Even with**
15 **our own shops, our shops don't get any preferential**
16 **treatment compared to any independent shop. Each arm of**
17 **our business has to stand or fall on its own two feet.**"

273. On 9 September 2014, the handwritten notes of Officer Nicholas and Warburton and typed written notes record that when asked who carried out the due diligence on

Global and Bridgewell, Jatinder Chatha stated that this was carried out by his brother, Rajinder Chatha, who *"visited their premises and met those at the business"*.

274. Officer Bourne asked at the meeting who did the due diligence on Global and Bridgewell in the Isle of Man. Jatinder Chatha stated that his brother, Rajinder Chatha, met with Global and Bridgewell in the IOM and visited their premises and met those at the business. He also carried out credit checks on Global and Bridgewell.

275. Again, no positive case was put that Jatinder Chatha did not say that Rajinder Chatha did credit checks on Global and Bridgewell, and other due diligence on them such as visiting their premises and meeting those at the business. The Tribunal finds that he made the statement as recorded.

276. Again, the statements were positively misleading and Jatinder Chatha intended to convey the impression, consistently with his above statements, that Rajinder Chatha had no personal connection with either Global or Bridgewell and worked at arm's length from them, when in fact he knew Rajinder Chatha beneficially owned both companies and shared an office with both companies and Rajinder Chatha's own company, EFB (IOM) Limited employed / supplied all the staff working for both companies (including Rajinder Chatha's own nephew Hardeep, the manager).

277. There is no mention that Jatinder Chatha carried out checks on Global / Bridgewell's due diligence (ie. on the Appellants' customers' customer). Indeed, Jatinder Chatha went on to state, *"he was aware of supply chain fraud in the alcohol trade sector but he wouldn't be given this information due to commercial sensitivity"*.

278. No positive case was put that Jatinder Chatha did not say on 9 September 2014 that he would not be given the identity of Global / Bridgewell's customers *"due to commercial sensitivity"*. The Tribunal finds that he made the statement as recorded.

279. This was another deliberately untrue statement, as he knew.

280. In his oral evidence on this topic, Jatinder Chatha changed his evidence a number of times. First, he agreed with the meeting note:

> "19 Q. And you responded you were aware of supply chain fraud
> 20 in the alcohol trade duty suspended –
> 21 **A. Yes.**
> 22 Q. -- but you wouldn't be given the information about your
> 23 customer's customer due to commercial sensitivity.
> 24 **A. Yes."**

281. Then, Jatinder Chatha changed his evidence to suggest that the Appellants did not have access but he, Jatinder Chatha, had access:

> "1 In the preceding paragraph you're being asked
> 2 specifically about Global and Bridgewell, and what you
> 3 were conveying to the officers, I suggest, was that your
> 4 two customers, Global and Bridgewell, would not be

5 giving information to your company –
6 **A. That's right.**
7 Q. -- about their customers because of commercial
8 sensitivity.
9 **A. That's right. So their customers -- it all goes back to**
10 **keeping them at arm's length. So their customers, they**
11 **held their information."**
12 Q. So Global and Bridgewell you say held their information,
13 they would regard that as confidential?
14 **A. Yes, so they wouldn't make it available to EFBL.**
15 Q. For due diligence purposes?
16 **A. For due diligence purposes.**
17 Q. They wouldn't?
18 **A. They wouldn't. But when I went over there I could look**
19 **at it, and I looked at it and at that point it seemed to**
20 **be okay, it covered the basics."**
21 Q. But you are EFBL, you are the director of EFBL and here
22 you are saying two things which are completely
23 contradictory, I suggest.
24 **A. No, I don't think they are contradictory. The companies**
25 **themselves, I am not the company, I am a director of the**
Page 50
1 **company. You're right."**

282. Jatinder Chatha admitted in his oral evidence to the Tribunal that he was being intentionally misleading about some of the explicit lies that the Tribunal has found were told to HMRC in this meeting:

"4 Q. And what you were doing was talking about something that
5 actually never happened, but what you were doing was
6 giving them an impression that there was such a credit
7 check which would be consistent with two companies
8 dealing at arm's length with each other?
9 **A. Yes, I understand. So I wanted to make the point that**
10 **they were at arm's length purely because I know that**
11 **there was direct tax investigations on my brother, so if**
12 **I reinforced that then I thought it would be beneficial**
13 **for him**."

283. He subsequently stated, similarly:

"2 Q. And the impression you were giving was that you knew
3 little about them other than they had approached your
4 brother?
5 **A. I want to make sure that it was on an arm's-length basis**
6 **and that was the understanding that they took, just in**
7 **case it may have harmed my brother's direct tax**
8 **investigation**."

284. This type of conduct by key persons of the Appellants, evasion, misleading statements and lies to HMRC, is an important issue to which the Tribunal will return. In addition to being improper and unfit behaviour, and not the conduct of a fit and proper person, this evidence reveals one motivation, or at least part of the many possible motivations, for the Appellants to have lied to HMRC Officers.

285. The only appropriate intention for a fit and proper person, when providing HMRC with information, is to give truthful answers to the best of one's knowledge and belief.

286. At that meeting, the Tribunal has found that Jatinder Chatha lied on several occasions as he and Mr Eagleton had previously done at the meeting on 8 July 2014. Again, the Appellants' counsel did not challenge HMRC officers as to the truth or accuracy of these statements as recorded in their notes.

Supply Chains and Tax losses

287. During the meeting on 9 September 2014 the Appellants were given the first specific warning that there were tax losses occurring in EFBL's supply chains.

288. Officer Bourne explained that from checking EFBL's supply chains it was apparent that EFBL were involved in supply chains leading to significant tax losses. Officer Bourne referred to the first meeting (3 June 2014) where she had told Mr Jatinder Chatha to look at Public Notice 726 which offered useful information as to indicators to look out for when trading with other companies that may be suspect and how to ensure they had sufficient safeguards in place to protect their business. Officer Warburton advised that the level of due diligence referred to in Public Notice 726 and undertaken on the duty paid side of the business could be used as a basis for checks on their duty suspended customers.

289. Jatinder Chatha expressed surprise about this and asked where in the chain the businesses were which occasioned the tax losses. Officer Bourne advised that they were two to three customers on from EFBL.

290. Officer Bourne asked if Mr Chatha looked at his customer's customer. Mr Chatha advised he was aware supply chain fraud in the alcohol trade sector but he would not be given this information due to commercial sensitivity.

291. As has been dealt with above, this latter answer was misleading at best because EFBL's customers' customer would be Global and Bridgewell's customers. The Appellants, through Jatinder Chatha or Philip Eagleton, could have easily requested and have been provided such information from Global and Bridgewell (through Hardeep or Rajinder Chatha) and there would have been no commercial sensitivity in Global or Bridgewell passing such information to the Appellants.

292. There was no danger that once the Appellants had information as to Global and Bridgewell's customers would cut out the middlemen (ie. Global and Bridgewell) and supply directly to their customers. This is because the business was deliberately

designed to interpose Global and Bridgewell in the Isle of Man between the Appellants and their customers receiving wholesale exports in mainland Europe.

293. Officer Warburton also reiterated the point that EFBL's duty suspended supply chains had been looked at and tax losses found. It was stated that HMRC were concerned about this and that the level of due diligence carried out was not sufficient to protect the Appellants from being involved in supply chains with tax losses. He again referred Mr Chatha to the due diligence section in Notice 726 and suggested that they may be familiar with this as it was similar to the due diligence already undertaken in in respect of their duty paid customers. Mr Chatha replied okay.

294. Thus, it is clear that during this meeting, HMRC advised Jatinder Chatha that there were tax losses occurring within the Appellants' duty suspended supply chains and that HMRC was concerned about the level of due diligence the Appellants were carrying out.

Officer Lewis' summary of the meeting

295. Officer Lewis reasonably summarised the meeting in the following way at paragraphs 5 to 6 of Annex B to his revocation decisions:

> 5. Due diligence on GBDL (Global) and BWL (Bridgewell) was again discussed:
>
> a. Mr Chatha stated that his brother, Rajinder Chatha, had completed credit checks on these business had met with them in the IoM, and visited the premises.
>
> b. Officer Warburton noted that he had not seen the credit checks or any documents beyond identification for these companies within the due diligence paperwork that he had seen. Mr Chatha said he could ask for this from EFB (IOM) Ltd.
>
> c. Asked how often the due diligence checks were renewed, Mr Chatha said that it depended upon whether they heard anything about their customers that concerned them.
>
> d. Officer Warburton asked how Mr Rajinder Chatha came to trade with GBDL and BWL. Mr Chatha said that his brother now resided in the IOM, was integrating himself into the local community, and had purchased properties and businesses in the IOM. He said that GBDL and BWL had approached Mr Rajinder Chatha.
>
> e. Mr Chatha did not know how long GBDL and BWL had been trading.
>
> f. Officer Warburton asked whether there was any connection between GBDL, BWL, EFBL and EFB (IOM) Ltd, Mr Chatha stated that "there was not". Officer Warburton asked whether there was any connection between GBDL, BWL and Mr Rajinder Chatha, as GBDL and BWL were taken on as customers of EFBL when Mr Rajinder Chatha was in the IoM. Mr Chatha stated that he was not aware of any connections between his brother and the businesses.
>
> 6. During this meeting, WWL and EFBL were advised by HMRC officers:
>
> a. That the level of due diligence which was being completed by them was not robust enough;

b. That there had been tax losses identified in EFBL's supply chains; and

c. That trailers leaving WWL fully loaded and destined for EU had been weighed by cross Channel operators and found to be travelling across the Channel light or empty. They were formally advised of this irregularity in a letter handed to them at the meeting.

d. For assistance in increasing the level of due diligence completed on traders in the duty suspended sector, it was suggested that the business could use Public Notice 726. Mr Chatha replied *"okay"*.

The Anomalies Letter

296. During the meeting on 9 September 2014, Officer Bourne handed Jatinder Chatha a letter requiring further explanation. She advised Jatinder Chatha that she had looked at some of the transactions for the Appellants and found some anomalies which required further explanation. She ran through the letter with Mr Chatha explaining what was required for the different anomalies, one of which was ARCs discharged after five days. Mr Chatha asked what an ARC was and Officer Bourne explained it was a unique administrative reference code which was given to each movement travelling in duty suspension.

297. HMRC's letter dated 9 September 2014 has been called 'the anomalies letter'. It requested the provision of evidence of travel regarding movements under 38 ARC numbers. It requested information regarding four movements where the ARC had been discharged after 5 days. It requested an explanation regarding four movements under ARC numbers where the Cross Channel operators' information showed the loads travelled light or empty. The Tribunal returns to this topic in detail below.

298. The letter requested an explanation as to two movements where there had been the retrospective issue of an ARC – the ARC had been issued after the goods left WWL's warehouse so were not covered by an ARC at the time of departure.

Post Visit Correspondence

299. On 11 September 2014 Officer Bourne wrote to the Appellants for the attention of Jatinder Chatha requesting clarification as to the connections (*"beneficial or otherwise"*) between the Appellants and Global / Bridgewell and Rajinder Chatha. She also requested further due diligence on Global / Bridgewell.

300. The first numbered paragraph of the letter began as follows:

'*Is my understanding correct in that there is no connection, beneficial or otherwise between Global Beverage Distribution Ltd, Bridgewell Ltd and EFB(IOM) Ltd with European Food Brokers Ltd, Whittalls Wines Ltd or Mr Rajinder Chatha? If not, please set out the correct position for me*.

I understand that EFB (IOM) Ltd is a wholly owned subsidiary of Chatha International Ltd. Please would you please confirm whether there is any connection beneficial or

otherwise between Global Beverage Distribution Ltd, Bridgewell Ltd and Chatha International Ltd.'

301. While, at the time she wrote this letter, Officer Bourne in fact suspected there was such a connection, as she had been told in 2013 that Rajinder Chatha was the common beneficial owner of all the companies, she had also been told at the meeting on 9 September 2014 that there was no connection. She did not know the position for certain at this time.

302. The terms of the letter also support the finding that the answers given by Jatinder Chatha at the meeting on 9 September 2014 were that there was no connection between the Appellant companies and Global / Bridgewell, 'beneficial or otherwise'.

303. The third numbered paragraph of the letter stated: '*Please explain in detail how Global Beverage Distribution Ltd and Bridgewell Ltd approached Mr Rajinder Chatha, who made the decisions to trade and why the decision was made to deal with these companies.*'

304. No reply was received to this letter from Mr Jatinder Chatha or the Appellants. Jatinder Chatha states he never received this letter and the Tribunal is satisfied that this is so. However, the contents of the first numbered paragraph set out above, were repeated in HMRC's letter of 24 September 2014 as set out below.

305. On 16 September 2014 HMRC wrote to the Appellants, as they did to other companies, warning them of the upcoming Alcohol Due Diligence ("ADD") condition coming into force in Section 10 of EN196 and providing generic advice.

The opportunity to inspect the notes of the meeting of 9 September 2014

306. On 17 September 2014 Officer Bourne wrote a letter addressed to Jatinder Chatha and the Appellants stating it enclosed typed notes of the meeting on 9 September 2014 asking that Jatinder Chatha sign and return a copy if he was satisfied with the content.

307. The Tribunal is again satisfied that Jatinder Chatha never received this letter. Rather, what happened was that on the afternoon of 17 September 2014, two HMRC Officers attended his place of work in Walsall without having given him any prior notice and offered him the notes to inspect. The effect of the corrections he made to the notes is dealt with below.

308. In the reception area, the Officers presented Jatinder Chatha with the typed up version of their hand written notes and asked him to sign them. In the presence of the Officers, he did a quick scan-read of the typed-up notes, made two small alterations and signed them.

309. The amendments he made to the handwritten notes are set out below. Mr Chatha states that he did not realise that the typed-up text had additional text added to it which was not present in the contemporaneous hand-written notes: had he done so, he states he would have refused to sign them.

310. On 17 September 2014 Jatinder Chatha only made two amendments to the notes.

311. The first amendment was to read that the 'IOM Office' (EFB(IOM)) had met with Global and Bridgewell in the IOM and visited their premises and met those at the business, rather than his brother, Rajinder Chatha. This, itself, is at best misleading: it is deliberately contrived to suggest that EFB(IOM) (beneficially owned by Rajinder Chatha and employing Hardeep Chatha) met with Global / Bridgewell (beneficially owned by Rajinder Chatha, with Hardeep Chatha running day-to-day operations through the service contract with EFB(IOM)).

312. The second was that 'IOM Office' (EFB(IOM)) had carried out credit checks on Global and Bridgewell, rather than his brother, Rajinder Chatha. The change was to the effect that it was not Rajinder Chatha who conducted due diligence on Global / Bridgewell but EFB(IOM).

313. Indeed, the Tribunal is satisfied that both answers would be untrue because Jatinder Chatha has subsequently asserted, at paragraph 22(m) of his witness statement, that they did **not** conduct any credit checks on Global / Bridgewell. Therefore, Jatinder Chatha has stated in his witness statement that credit checks were not carried out on Global / Bridgewell.

314. Further, Jatinder Chatha stated that he and his brother (presumably Rajinder Chatha) and Phil Eagleton had visited some French tax warehouses about four years prior. They were advised that producing visit reports, with photographs of premises and risks assessed would add more weight to their due diligence processes. Credit checks on Global and Bridgewell were requested.

315. Even if either correction is what Jatinder Chatha did in fact say at the meeting, which is not accepted, the answers remained misleading at very best.

316. Further, the fact that Jatinder Chatha took the time to change these two particular sentences in the typed notes with which he was provided discounts the possibility of some sort of innocent misunderstanding as to what precise matter he was answering, something the Tribunal is satisfied did not occur.

317. Despite Mr Chatha's protestations that he only signed the handwritten notes of the meeting under pressure from HMRC Officers (which the Tribunal does not accept) and that there are *"so many differences between handwritten notes and typed notes"*, his oral evidence and the nature of his counsel's cross-examination of other witnesses demonstrated that the Appellants do not assert that the notes are materially inaccurate.

318. Jatinder Chatha was deliberately misleading the HMRC Officers at the time of the meetings with HMRC and subsequently. He then compounded this by lying to the Tribunal about this in his evidence during the hearing of the appeals.

319. For the reasons set out above in relation to the meeting of 9 September 2014, the Tribunal is satisfied that Jatinder Chatha's corrections to the typed up meeting notes represent the extent to which he disagreed with what was recorded as being said at the meeting.

320. The Tribunal has already found that the typed up notes were accurate as to the answers Jatinder Chatha gave at the time and even if his corrections were accurate, the answers they would produce would be equally unreliable.

321. Jatinder Chatha had very little challenge to what was recorded as having been said. His real disagreement was what he had meant by saying there was no connection between the companies as set out above. For the reasons set out above, the Tribunal is satisfied that Jatinder Chatha lied both to HMRC at the time of the meeting and again to the Tribunal during his oral evidence on this topic.

Subsequent correspondence

322. On 24 September 2014 Officer Nicholas wrote to the Appellants requesting information including evidence of travel, in relation to certain ARCs, light or empty loads – this was a follow up to the queries in the 'anomalies letter of 9 September 2014'. She also repeated the queries set out in Officer Bourne's 11 September 2014 letter regarding the connections and trade with Global/Bridgewell and further due diligence.

323. On 25 September 2014 Officer Nicholas telephoned Philip Eagleton for an update on the paperwork that was requested at the meeting on 9 September 2014. He advised that he had been in Gateshead for the past three days and was still working on the documents.

324. On 26 September 2014 Philip Eagleton attempted to forward an email dated 25 September 2014 (from himself to Jatinder Chatha) to Officer Bourne setting out the Appellants' responses to HMRC's questions of 24 September 2014. This email was also copied to Jatinder Chatha.

325. It read: '*Tracey, please see the below in response to the above named letter faxed to Tinder Chatha earlier this week by Mrs P. Nicholas'*. Mr Eagleton in fact had the wrong email address for Tracey Bourne so that this email of 26 September 2014, including the email of 25 September 2014, was only forwarded to Officer Bourne's correct email address on 2 October 2014.

326. The forwarded email from Mr Eagleton to Jatinder Chatha dated 25 September 2014 is noteworthy. It replied to HMRC's letter of 24 September 2014 and covered every topic requested except it did not answer the questions about the relationship or connection between the Appellants and IOM companies and due diligence. That absence is notable in light of what occurred subsequently.

29 September 2014 emails

327. On 29 September 2014 Philip Eagleton emailed Office Bourne (copying in Jatinder Chatha) stating the following: '*As far as I am aware there is no connection between Global Beverage Distribution Ltd, Bridgewell Ltd and EFB (IOM) Ltd to Whittalls Wines Ltd and European Food Brokers Ltd. I am also unaware as to whether there is any connection beneficial or otherwise between Mr Rajinder Chatha and the above named companies, but I will ask the question*.' This email was in fact sent to

Tracey Bourne's incorrect email address so was forwarded again to her correct email address on 2 October 2014.

328. No positive case was put by the Appellants in relation to this email. Mr Eagleton's email was deliberately untrue. The companies were commonly beneficially owned by Rajinder Chatha and Mr Eagleton does not deny that he knew of this fact at the time.

329. There was no ambiguity in the questions asked and no ambiguity in the responses. One reason why the responses on this topic were included in a separate email from the substantive reply of 25 September 2014 may be that Mr Eagleton was attempting to distance himself from the lie and shift the responsibility for the assertion to Jatinder Chatha. He did this by copying in Mr Chatha and by applying the caveat to his own email '*but I will ask the question*'.

330. Mr Eagleton even used similar wording '*As far as I am aware*' and '*I am also unaware*' to the language that Jatinder Chatha had used at the meeting on 9 September 2014 on this topic. At that meeting Mr Chatha is recorded as saying he '*was not aware*' of any connection between Global, Bridgewell and Mr Rajinder Chatha.

331. In his oral evidence, Mr Eagleton lied to the Tribunal in an attempt to excuse his earlier lies to HMRC – in particular, he suggested that he was referring to shareholding arrangements in the emails. The Tribunal is satisfied that this explanation is untrue and contradicts the clear wording of his email.

332. Jatinder Chatha's evidence to the Tribunal regarding the meeting some three weeks before on 9 September 2014 had been that his answer during the meeting had been true and honest: while he knew Rajinder Chatha was the common beneficial owner of all the companies, the Appellant companies were not corporately connected to the Isle of Man companies – they had no shared directors and the companies did not own each other.

333. However, Jatinder Chatha was copied into this email of 29 September 2014 on the same issue of the connection between companies and accepted that this was not the correct answer:

> "22 Q. But there is a connection, isn't there? What needed to
> 23 be said is "But actually they are owned by this one and
> 24 the same man, Mr Rajinder Chatha".
> 25 **A. Yes, it should have been."**

334. Both Jatinder Chatha and Philip Eagleton failed to provide any explanation for this email in their witness statements. The absence of an explanation is notable.

335. The connection between the Appellants, the Isle of Man Companies and Rajinder Chatha was only finally revealed in an email some nine months later on 15 June 2015 as is dealt with below.

336. Jatinder Chatha failed to appreciate the significance of the evidence that Philip Eagleton had lied to HMRC in this email. Instead, seeing this emailed answer as a virtue, he said :

> "1 **A. This would have been beneficial to put in. It says**
> 2 **that, you know, they did get an answer, rather than the**
> 3 **HMRC saying they didn't get an answer until February**
> 4 **'16."**

Follow up emails of 29 September 2014 produced during the hearing

337. In his email of 29 September 2014 to HMRC, Mr Eagleton had ended by stating that he would ask the question (regarding a connection). In cross examination he was asked about whether he had indeed asked for clarification from others as to any connection.

338. This resulted in the Appellants producing a series of emails at a very late stage during the hearing (on day nine), not previously voluntarily disclosed, to attempt to prove that Mr Eagleton had, on 29 September 2014, emailed queries concerning connections to "David" (in fact, Hardeep Chatha) and Rajinder Chatha.

339. In these emails, Mr Eagleton asked Hardeep Chatha whether *"there is any connection, beneficial or otherwise between your company and a Mr. Rajinder Chatha?"* (emphasis added). To refer to 'a Rajinder Chatha' appears strained and formal language in which to name one's own employer with whom Mr Eagleton had had a long working relationship.

340. This email correspondence was contrived and designed, the Tribunal might infer, to create deniability on Philip Eagleton's behalf, so he would be able to produce this evidence that he had asked the questions but received no reply.

341. Notably, Rajinder Chatha did not reply and Hardeep Chatha appears to have set his 'Out of office reply' following receipt of the first emails and also did not reply. Philip Eagleton, the only witness who could be cross-examined on these emails (given their late disclosure) could provide no convincing explanation for this contrived phrasing:

> "15 Go to the first one, which is 29 September 2014 at
> 16 17.51. This is sent to office@global, office@gbd, yes?
> 17 **A. Yes, that's right.**
> 18 Q. And it's addressed to David.
> 19 **A. Yes.**
> 20 Q. Whom you know is in fact Hardeep?
> 21 **A. Yes.**
> 22 Q. Hardeep Chatha who is the nephew of Rajinder Chatha?
> 23 **A. Yes.**
> 24 Q. "David, as a result of a recent meeting with HMRC
> 25 I wonder if you would respond as to whether there is any

Page 168
1 connection, beneficial or otherwise, between your
2 company and a Mr Rajinder Chatha."
3 Now, what you were saying is this. The impression
4 that you're trying to give in this is as if you don't
5 know who Mr Rajinder Chatha is?
6 **A. No, it's not that at all, sir.**
7 Q. Why do you say to "a Mr Rajinder Chatha"?
8 **A. I am requesting -- I am quite clearly requesting**
9 **a clarification.**
10 Q. Yes. Would you just focus on what I am asking about.
11 Why did you use the word "a" in front of
12 "Mr Rajinder Chatha"? You know him very well. You
13 worked for the man for 20 years. Why do you call him
14 "a Mr Rajinder Chatha"? Why not Raj?
15 **A. Is that not what Officer Bourne had phrased to**
16 **ourselves? I am only trying to reflect what was asked**
17 **of us in the meeting.**
18 Q. No, she didn't use the word "a Mr Rajinder Chatha".
19 What you are trying to do here is to create
20 an impression to anybody who looked at this from the
21 outside --
22 **A. No, that's not the case, sir, not at all.**
23 Q. -- as if you knew nothing at all about the connection
24 between Global and Rajinder Chatha?
25 **A. No, that's not the case. I think you're reading too**
Page 169
1 **much into that.**
2 Q. I see. But you knew what the answer was to the question
3 you were asked, didn't you?
4 **A. Well, I think it's better to have clarification from the**
5 **company.**
6 Q. But the way you ask it is "as to whether there is any
7 connection, beneficial or otherwise, between your
8 company and a Mr Rajinder Chatha."
9 **A. And if I get clarification from the company to satisfy**
10 **HMRC, then that satisfies everybody, doesn't it, myself**
11 **included? There could be no other doubt.**"

342. The Appellants' evidence, according to Rajinder Chatha, is that Philip Eagleton has worked with Rajinder Chatha since 1997 and knew of the reason for the interposition of the IOM companies (which was not to be disclosed to the public or suppliers) from the very beginning.

343. These emails are deliberately contrived if they were indeed sent contemporaneously. There is a curiosity regarding these emails in that the time on the clock is between 17.51 and 18.05 – ie. they appear to have been sent before the email to Tracey Bourne of 18.10. Therefore, the clarifying questions to his colleagues appear

to have already been asked before he states to Tracey Bourne 'I will ask the question' (future tense). Clocks on the email system may vary and the Tribunal heard no expert evidence as to the times attached to the emails.

344. One would therefore expect the email to read '*I have asked the question*' if the emails had indeed already been sent. However, the Tribunal does not need to make a finding on the timing on the emails in order to find that this was contrived correspondence which was not part of a genuine clarifying enquiry to his colleagues, because he already knew the answers and the answer he had given to HMRC was untruthful.

345. Furthermore, irrespective of the timing of the emails to his colleagues on 29 September 2014 and whether they preceded or followed the email to Officer Bourne, the Tribunal has real difficulty in accepting Mr Eagleton's account. His account as to the emails to his colleagues having been sent on 29 September 2014 is unlikely to be true given he forwarded his email of 29 September 2014 to Tracey Bourne on 2 October 2014 having initially sent it to the wrong email address.

346. By 2 October 2014, on his account, Mr Eagleton had asked the clarifying question of his colleagues and, on his account, received no reply. Therefore, it would have only been accurate to correct the contents of his email of 29 September 2014 to say: '*I have asked the question but not yet received a reply*'. He did not do so but maintained the phrase '*I will ask the question*'. Given his unreliability in so many aspects of his evidence it is difficult to accept Mr Eagleton's evidence on this point.

347. He may have been lying to Officer Bourne (and the Tribunal) when saying he would ask the question when he had already done so and he deliberately did not disclose the evidence of these emails because he had not received any reply from his colleagues on this important topic.

348. Alternatively, the clock may have been incorrect on the emails, or he forgot he had already asked the clarifying questions. The only other possibility is that these emails were written after the event and have been backdated.

349. The Tribunal does not need to decide between these possibilities.

350. The Tribunal is satisfied that the account given by Mr Eagleton regarding the emails is misleading – they were not part of a genuine enquiry to his colleagues regarding HMRC's questions. At best these emails, never previously disclosed, were to maintain deniability for HMRC's sake that he had asked the clarifying questions as he said he would. Mr Eagleton, by 29 September 2014, already knew the true answers without having to ask the clarifying questions. The answer he gave to HMRC in his email – that there was no connection between the companies – was false and he knew it.

Subsequent events

351. On 15 October 2014 Officers Pitt, Warburton and Nicholas attended a meeting of the Multi Lateral Control (MLC) group in Paris and made a presentation on Operation

Cracker 11. A minute records that Officer Pitt stated that the main objective for Cracker 11 had been to remove the warehouse operators' approval from WWL, failing this, the secondary objective would be to impose conditions on the operation of the warehouses. He stated that WWL had been in business for at least 20 years, they underwent a change of structure about 5 years before with additional companies being set up and run from the Isle of Man. Generally, he said, goods were to be sold to EFBL and stored in WWL. Goods were then sold to Global or Bridgewell and moved to the EU into the account of either Global or Bridgewell who then sold to primary UK buffers, then to secondary UK buffers, then finally to EU companies where the goods were removed from the EU warehouses.

352. The significance of Officer Pitt's view as of 15 October 2014 is dealt with in the separate chronology within the Appellants' submissions on the disposition of HMRC.

353. In the period October to December 2014 the HMRC investigation team provided a report to HMRC Solicitor's office for consideration and advice, the nature of which remains subject to legal professional privilege.

1 November 2014 - ADD Condition comes into force

354. On 1 November 2014 the new ADD condition in Excise Notice 196 came into force and applied to the Appellants. It may not have applied directly to Global and Bridgewell (they being outside the UK jurisdiction) but in effect, if the Appellants were to rely on the IOM companies' due diligence, they would have needed to ensure it met the same standards.

Subsequent correspondence

355. On 6 November 2014 Officer Maskew of HMRC emailed Philip Eagleton highlighting the new ADD condition stating that section 10 of Public Notice 196 was now high priority with Revenue Traders such as WWL. He also requested to pick up paperwork concerning due diligence on the hauliers that WWL used.

356. On 6 November 2014 IOM C&E Officer Burrows wrote to David Craine requesting information about EFB (IOM) Ltd, Global and Bridgewell's due diligence. There were 35 questions asked regarding the three companies. The information in reply was not provided for three months until it was produced in a response from Global and Bridgewell on 4 February 2015.

357. Officer Burrow's letter of 6 November 2014 also stated that he had been contacted by HMRC who had serious concerns regarding the three companies and that HMRC had requested information in relation to the trading of the business as there were concerns that their supply chains had become tainted by potential fraud which had led to significant tax losses. This was the first specific warning to Global and Bridgewell of HMRC's concerns regarding their connection to tax losses.

358. In a letter dated 7 November 2014 David Craine on behalf of Global wrote to Officer Burrows of IOM C&E stating that they would respond with full answers at the earliest opportunity. He also thanked Officer Burrows for notifying them of the new

due diligence rules. Mr Craine continued: 'What is most concerning is the statement that the companies have been involved in supply chains were large tax losses have occurred. We take from that statement that our companies are not directly involved but if any of our customers have an involvement would you please advise us who they are so that we may immediately cease any further business with them.'

359. On 13 November 2014 Officer Burrows of IOM C&E wrote to David Craine to advise him that he was unable to disclose the information requested due to confidentiality and could not advise them with whom they should or should not trade. Officer Burrows suggested that perhaps the best course of action may be to review the KYC (Know Your Customer) / due diligence documentations and procedures that they used for all of the supply chains of the three companies.

14 November 2014 due diligence provided by WWL and EFBL on Global and Bridgewell

360. On 14 November 2014 Philip Eagleton emailed Officer Maskew enclosing movement guarantee checks for hauliers WWL used – Hellman Worldwide Logistics and Wincanton Holdings Ltd. A second email also enclosed WOWGR certificates of Global, Bridgewell, EFBL, EFB(IOM) Limited and William Addison (Newport) Ltd.

361. On 12 January 2015 Officer Maskew of HMRC wrote to WWL highlighting EN 196, checks in relation to transport of duty suspended goods and querying a number of discrepancies in their warehousing processes.

362. On 20 January 2015 Philip Eagleton wrote on behalf of WWL responding to Officer Maskew's letter of 12 January 2015.

363. On the same date Officer Maskew of HMRC wrote to WWL with further detail of discrepancies following his letter of 12 January 2015. The letter included a section on Cancellation of approval under section 92 CEMA 1979 whereby HMRC stated they were able to cancel warehouse premises approval at any time if there was a reasonable cause.

364. This was the first of many pro forma notifications at the end of letters from HMRC to the Appellants.

365. On 2 February 2015 Philip Eagleton wrote to Officer Maskew disputing the accuracy of the discrepancies highlighted in his letter of 20 January 2015 and asking for a detailed breakdown of how he carried out his analysis comparison.

4 February 2015 Isle of Man meeting – Due diligence provided by Global and Bridgewell on their customers to IOM C&E

366. On 4 February 2015 Hardeep Chatha and David Craine on behalf of Global and Bridgewell attended Custom House in the Isle of Man. IOM C&E Officers John Buchanan and Graham Dugdale were present. They delivered a written response to questions forwarded to them by IOM C&E on 6 November 2014. A discussion took place with regards to certain points which they thought may need clarification. At the

end of the meeting Mr Chatha and Mr Craine left three file boxes with Sales / Purchase invoices and six document wallets containing other requested paperwork.

367. IOM C&E arranged for the records provided on 4 February 2015 by Mr Chatha and Mr Craine to be scanned onto disks which were then sent to HMRC in England. Unfortunately, the documents on those disks became corrupted or otherwise inaccessible and had to be provided again which was only done in October 2016.

368. On 18 February 2015 HMRC Officer Maskew emailed Philip Eagleton at EFBL suggesting a meeting on 10 March 2015. The purpose of the meeting was to go through comparison analysis work and section 10 of Notice 196.

11 March 2015 meeting between HMRC and the Appellants

369. On 11 March 2015 HMRC Officers Robert Maskew and Lynne Gibson met with Philip Eagleton and Dave Ball at the Walsall premises of WWL to conduct a visit of the Appellants. A contemporaneous handwritten note was taken which was turned into a typed written note.

370. The Tribunal is satisfied that these notes are reliable and the Officers' evidence regarding the meeting is likewise.

371. In respect of the oral evidence heard during the trial on behalf of the Appellants, the Tribunal is satisfied that David Ball was also a witness of truth. His evidence was both honest and reliable (with one exception) as to the contents of what was said at the meeting on 11 March 2015. The Tribunal is satisfied that David Ball is mistaken that there was any significant disagreement between the two HMRC officers present as to the extent of due diligence required to be done on a customer's customer. It is apparent from the notes of their evidence that the Officers enquired into this topic on the basis it was a reasonable check to be performed.

372. Officer Maskew began by explaining the high levels of alcohol fraud and that HMRC demands its officers adopt a robust approach in controlling excise warehouses and he mentioned his letter of 12 January 2015. They discussed the new ADD condition and the importance of due diligence.

373. Philip Eagleton stated that they dealt with very few customers, namely Global / Bridgewell / EFB (IOM) Ltd and they had already conducted ADD checks on these companies although they had dealt with them on a daily basis for several years.

374. Mr Eagleton stated that most of their goods went to excise warehouses in France namely IEFW and then on to Hypermarkets. He said he visited IEFW a few years before and that there was a sufficient market for these types of goods but he did acknowledge HMRC's concerns that the goods may end up back in the UK market, but he was satisfied that this was not happening.

375. Mr Eagleton confirmed that WWL did not check the due diligence carried out by Global/Bridgewell on their customers in the following terms.

376. In the course of that meeting, it is recorded that Mr Eagleton (PE) later stated: *"confirmed that they do not have a commercial relationship with say 'Bridgewell's' customers as this would be commercially sensitive information.* [PE] *said that if we did have a commercial relationship say with Bridgewell's customers then they may be concerned that Whittalls would approach Bridgewell's customers directly and cut out the middleman so Whittalls do not check their customer's customer"*.

377. The Tribunal is satisfied that Philip Eagleton again gave the false impression of there being no connection between the Appellants and Global /Bridgewell at that meeting, which was not known to Mr Ball to be false at the time.

378. Mr Ball (who was present at the meeting) accepted that the appropriate inference was that Global /Bridgewell were completely separate companies. Mr Ball, an honest and straightforward witness, who had no knowledge of the fact that the IOM companies were sister companies of the Appellants, agreed that the conversation gave the impression that they were ordinary, unrelated customers:

> "1 **A. It would appear that way, yes, but as far as -- as far**
> 2 **as my knowledge at the time, I had no -- I had no**
> 3 **knowledge of what the links between the companies were**
> 4 **or anything.**
> 5 Q. No. So --
> 6 **A. It's just another trading company that we were trading**
> 7 **to basically.**
> 8 Q. Sure. And the impression was maintained in your mind
> 9 that these were two sister companies which were your
> 10 customers, ordinary customers, with no pre-existing
> 11 relationship to EFB or Whittalls Wines?
> 12 **A. That's correct, yes.**
> 13 Q. Yes. And there was nothing which Mr Eagleton said in
> 14 the course of that meeting which led you to change your
> 15 thoughts about that?
> 16 **A. Nothing at all.**

379. Mr Eagleton could provide no credible answer to this in his oral evidence:

> "1 Q. "PE said if we did have a commercial relationship say
> 2 with Bridgewell's customers, then they [and that must be
> 3 Bridgewell] may be concerned that Whittalls would
> 4 approach Bridgewell's customers directly and cut out the
> 5 middleman so Whittalls do not check their customer's
> 6 customer."
> 7 **A. I was speaking generally but using Bridgewell as**
> 8 **an example.**
> 9 Q. As a specific example?
> 10 **A. Yes.**
> 11 Q. But you only had in fact two customers, didn't you, for
> 12 duty suspended goods?

A. Yes.
Q. Which were Bridgewell and Global?
A. Yes.
Q. So therefore the generality was the same as the specific because you only had those two customers to think about?
A. Yes.
Q. Yes. And the picture that you were giving there was this, wasn't it, that when you were referring to Bridgewell, that Bridgewell would be very upset -- they would be reluctant to disclose the identity of their own customers because they would be fearful that they would be cut out if that information ended up in the hands of WWL or EFB?
A. I was using them as an example, we were speaking generally.
Q. Yes. But so far as those two particular customers, your only customers in duty suspended goods are concerned --
A. Yes.
Q. -- it wasn't true, was it, because they weren't true arm's-length customers. All you had to do was ask Hardeep, "Let me see your files on your customers for the particular transaction where we are now about to transport the goods to France". You would only have to ask because they were associated companies?
A. And to that end Jatinder Chatha goes out to the Isle of Man and sees their due diligence and their customers.
Q. Let's just try and focus on the question and what you said, not what Mr Jatinder Chatha was saying. You were giving the clear impression, were you not, in that conversation that the relationship between WWL and EFBL in England was completely separate from the two Isle of Man companies, to such an extent that they would be upset if you were to learn of the identity of their customers, because they would fear that you would cut them out as the middleman?
A. All I am trying to do during that conversation is set out the principle of somebody looking at somebody else's customers' details --

Page 34

Q. But it was that general principle --
A. -- so that both myself and Officer Maskew understand the same thing, the principle of what we're talking about. That's all I'm doing.
Q. That general principle that you are talking about had no application whatsoever, did it, to the particular situation in which WWL and EFB were? None at all, did it?

9 **A. I'm not sure -- I think I've already answered it,**
10 **haven't I?**
11 Q. No, you haven't. There was no prospect whatever that
12 Bridgewell would have any fears at all if it disclosed
13 information about its customers to you?
14 **A. Not specifically those companies, no.**
15 Q. No. So what was the point of making a general point
16 which had no application whatever to your own company's
17 situation?
18 **A. So that both Officer Maskew and ourselves were**
19 **discussing how we viewed the due diligence, and that's**
20 **all. There's nothing sinister about it --**
21 Q. Well I suggest --
22 **A. -- and it shouldn't be implied from that."**

380. No positive case was put in relation to the 11 March 2015 meeting that Philip Eagleton did not say that the Appellants do not have a commercial relationship with Bridgewell's customers because this would be *"commercially sensitive information"* and that, if they did, Bridgewell would be concerned that the Appellants would approach those customers directly and cut out the middleman.

381. The Tribunal is satisfied that Mr Eagleton was being positively misleading both to HMRC in his answers at the time and to the Tribunal in his evidence, given his knowledge that Bridgewell was a company which was beneficially owned by Mr Rajinder Chatha.

382. Mr Eagleton's statements to HMRC officers at the meeting on 11 March 2015 and his evidence to the Tribunal regarding them were one of a piece. The statements made at the meeting on 11 March 2015 were similar to those made Mr Jatinder Chatha and by him in the meetings of 8 July 2014, 9 September 2014 and emails of 29 September 2014.

383. The answers were intended to mislead HMRC as to the extent of the connections between Global / Bridgewell and the Appellants. These were not arm's length companies but had a shared common beneficial owner in Rajinder Chatha. More importantly, Global / Bridgewell were specifically used by the Appellants to be interposed and sell all the Appellants' duty suspended alcohol on to wholesale customers and to customers in the European mainland (whether they be UK or foreign registered companies).

384. As will be evidenced below, HMRC did not know for sure of the connection and common beneficial ownership of the companies until June 2015 and the purpose of the trade conducted between them until February 2016.

385. Mr Eagleton, like Jatinder Chatha, compounded the attempt to mislead HMRC repeatedly during the meetings and correspondence by then lying to the Tribunal by suggesting that this was not the intention in the answers given to HMRC.

Post visit correspondence

386. On 12 March 2015 HMRC Officer Bourne in the UK was sent an encrypted disc of the documents received by IOM C&E on 4 February 2015. Unfortunately, the contents of the disc were corrupted. As noted above, it was only in October 2016 that the information was provided again in an uncorrupted form.

387. On 13 March 2015 HMRC Officer Maskew emailed Philip Eagleton raising a number of issues from their meeting and re-emphasising the importance of due diligence.

388. On 17 March 2015 HMRC Officer Maskew emailed Philip Eagleton further to his letter of 20 January 2015. He also requested further information in respect of transport arrangements.

389. On 18 March 2015 HMRC Officer Maskew emailed Philip Eagleton advising that HMRC was considering raising an assessment in relation to the retrospective issue of ARCs.

390. On 20 March 2015 Philip Eagleton emailed Officer Maskew providing vehicle details.

391. On 7 April 2015 HMRC Officer Bourne wrote to Jatinder Chatha on behalf of the Appellants concerning some outstanding requests for information, including the relationship of the Appellants to Global /Bridgewell, due diligence and discrepancies in travel. She included four outstanding requests.

392. The second outstanding request stated: '*I refer to my letter of 11 September 2014 and the letter from Mrs Nicholas of 24th September 2014 in which you were asked: "Please explain in detail how Global Beverage Distribution Ltd and Bridgewell Ltd approached Mr Rajinder Chatha, who made the decision to trade and why the decision was made to trade with these companies." This information has not been provided*.' This request was never answered by the Appellants in correspondence and it was only in their witness statements for the appeal in 2016 and 2017 did Rajinder and Jatinder Chatha begin to explain how the trade came about.

393. The fourth outstanding request stated: 'I refer to my letter of 11 September 2014 and the letter from Mrs Nicholas dated 24th September 2014 in which you were asked: "*Is my understanding correct in that there is no connection, beneficial or otherwise between Global Beverage Distribution Ltd, Bridgewell Ltd and EFB(IOM) Ltd with European Food Brokers Ltd, Whittalls Wines Ltd or Mr Rajinder Chatha? If not, please set out the correct position for me. I understand that EFB (IOM) Ltd is a wholly owned subsidiary of Chatha International Ltd. Please would you please confirm whether there is any connection beneficial or otherwise between Global Beverage Distribution Ltd, Bridgewell Ltd and Chatha International Ltd*" the deadline for response of 26 September 2014 to this was indicated in the letter from Mrs Nicholas dated 24 September 2014 and you have not provided this information.'

394. This was the third request by HMRC for the same information.

395. It is to be recalled that Mr Eagleton had attempted to give a response, misleading as it was, in his email dated 29 September 2014 which was forwarded again to Officer Bourne on 2 October 2014. This was that Mr Eagleton was not aware of a connection but he had said that he would ask. However, no further communication of clarification or confirmation had been forthcoming, in particular from Jatinder Chatha.

396. It was only on 15 June 2015, over two months later, that Jatinder Chatha finally answered this request in an email that is dealt with below. The information was readily known to Mr Eagleton and Mr Jatinder Chatha, as it was to Rajinder and Hardeep Chatha, and could have been produced in response to the first query in September 2014.

397. On 21 April 2015 Philip Eagleton emailed Officer Bourne, advising that they had only just received the 7 April 2015 letter and were therefore unable to respond by the deadline but 'where possible' would 'commence obtaining the answers required from today'. This email was copied to Jatinder Chatha. Mr Eagleton indicated that information would need to be obtained.

398. On 23 April 2015 HMRC Officers Maskew, Greenfield and Franklin attended the Birmingham warehouse of WWL and spoke with Nilesh Patel, warehouse supervisor about certain ARC deliveries.

399. On 1 May 2015 HMRC Officers Maskew, Higginson and Franklin attended the Walsall premises of WWL and met with Philip Eagleton. They discussed retrospectively-issued, being unlawful, ARCs and due diligence. They discussed the ADD condition and asked Mr Eagleton what his thoughts were. Mr Eagleton said they only dealt with three main customers, EFB, Bridgewell, and Global and he believed that they were doing all they could on ADD checks.

400. On 11 May 2015 HMRC Officer Maskew wrote to WWL advising that, exceptionally, HMRC would not be raising assessments in relation to retrospectively issued ARCs but that future occurrences would lead to a penalty.

401. On 21 May 2015 HMRC Officers Maskew, Ranch, Davies and Rahman made a routine visit to the Walsall premises of WWL.

402. On 28 May 2015 HMRC Officers Maskew, Ranch and Dhillon attended WWL and met Philip Eagleton. Goods were seized as a duty point had been said to have been created when goods were stored in a non-bonded warehouse for two days. The goods were deemed forfeited, but later HMRC agreed to restore them. The Tribunal is satisfied they were seized in error and this forms no part of HMRC's case. No compensation was payable.

15 June 2015 email

403. On 15 June 2015 Jatinder Chatha forwarded by e-mail to HMRC Officer Bourne an email of the same date from Hardeep Chatha to Philip Eagleton which had been copied to Jatinder and Rajinder Chatha.

404. It is also notable that there had significant delay in forwarding the answer to Tracey Bourne on 15 June 2015. Her request was made by letter dated 7 April 2015. Philip Eagleton emailed Hardeep Chatha on 1 May 2015 for an answer asking for a response by 'return e-mail'. On 1 May 2015, Mr Eagleton emailed Hardeep Chatha (this time addressing him as 'Deepa', rather than David) asking him to respond to HMRC's latest request to clarify the connections between the companies.

405. There was a further six week delay before Hardeep Chatha replied to Mr Eagleton and Jatinder Chatha emailed this reply on 15 June 2015.

406. In Hardeep Chatha's email to Philip Eagleton he states that Rajinder Chatha is the beneficial owner of Global and Bridgewell but in rather formal and contrived terms:

"I am lead (sic) to believe that the Isle of Man Customs and excise have an open dialogue with UK Revenue and Customs and they have explained in detail that Mr Rajinder Chatha is the ultimate beneficial owner of the Global Beverage Distribution Limited and Bridgewell Limited and assumed they were aware of this.

The only connection, therefore, between the companies in question, other than a strict arm's length commercial trading relationship, is that Mr Rajinder Chatha is either the shareholder or beneficial owner of all of the entities in question".

407. This email is peculiar in a number of ways. First, it did not require Hardeep Chatha to inform Jatinder Chatha regarding his brother's ownership of these companies. Jatinder Chatha knew of it.

408. Second, the claim of arm's length 'trading relationship' dealings is not supported by the Appellants' own evidence in which they admit that Global and Bridgewell were deliberately interposed to sell the Appellants' duty suspended alcohol to customers in mainland Europe.

409. While it is true that Rajinder Chatha is the beneficial owner of the companies, it is not true that the companies have an arm's length trading relationship, as discussed above and below. Therefore the Appellants, even at this late stage, only provided a half truth. When pressed on this matter during his evidence at trial, Hardeep Chatha could only state:

> "16 Q. Now, why did you add in "other than a strict
> 17 arm's-length commercial trading relationship"?
> 18 **A. As far as I see a strict arm's-length commercial trading**
> 19 **relationship, I was referring to transfer pricing.**
> **…**
> 24 Q. Because one thing that we know from the evidence in the
> 25 course of this appeal is that this was far from a strict
> Page 104
> 1 arm's-length commercial trading relationship. Do you
> 2 agree?
> 3 **A. Again, like I said with regard to transfer pricing, in**
> 4 **my knowledge**."

410. It is notable that, despite knowing the truth and being copied into this email, Rajinder and Jatinder Chatha both chose not to correct the statement that the relationship was at arm's length. Indeed, the same day, Jatinder Chatha forwarded this response on to HMRC. As a result of this untrue information, HMRC proceeded to consider the Appellants' due diligence, processes and procedures, on the basis that Global / Bridgewell were genuine arm's length customers, albeit with a shared beneficial owner.

411. It was only on 25 February 2016, in response to the HMRC's 'minded-to' letter, that the full truth behind the structure of the companies, the nature of their relationship, and the reason for the interposition of Global and Bridgewell in the supply chain, was revealed in a letter from Philip Rimmer.

The Appellants' attempt to explain their lies and non-disclosure to HMRC

412. Over the course of the hearing, the Appellants have suggested that they have always been open and honest about the nature of the relationship and connection between the Appellant companies and Global / Bridgewell.

413. However, the long history of lies told by them to HMRC, explained in detail above between July 2014 and June 2015, as to which they have no substantial positive case in answer, demonstrates that this is untrue.

414. The effect of their evidence is that they had always been open and honest with IOM C&E about the connection and shared ownership of the two companies in the belief that IOM C&E would have shared this with HMRC in the UK. If they honestly held that belief then there would be no need to lie to HMRC about this. The fact is that IOM C&E never provided any written confirmation to HMRC that Rajinder Chatha was the owner of Global and Bridgewell.

415. While IOM C&E were aware of Rajinder Chatha's beneficial ownership of Global and Bridgewell from 2010, HMRC were not. Even IOM C&E had not been shown the formal trust documents which confirmed this in writing. They were only produced at the hearing on request of the Tribunal.

416. As of 2015, the most that the HMRC witnesses had was the suspicion that Rajinder Chatha was the owner of Global and Bridgewell – as had been apparent to Tracey Bourne in 2013. There had been no earlier confirmation of this fact to any of the HMRC witnesses. There had been no confirmation passed between IOM C&E to the HMRC investigating team, who were careful only to pass information to HMRC concerning indirect and not direct tax matters. Nor had there been any material passed to Rajinder Chatha or the Appellants from which they could reasonably assume that knowledge of ownership had been passed from IOM C&E to HMRC.

417. Indeed, the only written confirmation was provided on 15 June 2015 and the documents in support of this were first provided to the Tribunal during the appeal. The reason to hide this connection from HMRC is likely to be a fear that the nature and

purpose behind their trading relationship would then be openly disclosed. This in turn might turn to the destruction of their duty suspended business as the Appellants' suppliers, once aware of this, would refuse to supply them with alcohol which should be exported in this fashion.

418. The nature and purpose of the trading relationship was only fully disclosed to HMRC in February 2016. It had never been disclosed to IOM C&E – they had only been given an inaccurate impression of this in 2013 and they did not pass this information to HMRC in any event.

419. As is dealt with below, the Appellants attempted to project an impression of honesty by asserting that they had always been open and honest with HMRC as to the reason for the structure of the companies (when this is untrue).

420. The essence of their evidence was that they fully disclosed the connection of ownership and the nature and purpose of the trading relationship to IOM C&E at the earliest possible stage in the belief that at all times this would be shared with HMRC.

421. Indeed, the letters from IOM C&E on which the Appellants rely to demonstrate this 'openness' are dated 20 and 23 March 2017 from Charles Coué, Collector of Customs and Excise in the Isle of Man. The answers given are in reply to questions posed in letters from Mr Foster, a director of Bridgewell through Burleigh, in March 2017. Mr Coué stated that Rajinder Chatha openly disclosed his beneficial ownership of Global and Bridgewell to IOM C&E and outlined the intended activities of the companies in December 2010.

422. In those letters Mr Coué states IOM C&E first learnt that Rajinder Chatha was the beneficial owner of Global and Bridgewell from discussions with Rajinder Chatha during December 2010 and first learnt about his ownership of the EFB Group of Companies in the UK in the period April to June 2010.

423. Mr Coué does not state what Rajinder Chatha said about the intended activities of the companies. Nor does he state whether IOM C&E discussed with HMRC the connection between Rajinder Chatha and Global / Bridgewell. He says that he cannot say precisely when IOM C&E first discussed with HMRC any connection between Rajinder Chatha and Global and Bridgewell but Officer Bourne of HMRC would have been briefed by officers in IOM C&E about Global and Bridgewell prior to the visits to these companies on 9 and 10 April 2013.

424. He also stated that the fact that Rajinder Chatha was known to be the beneficial owner of EFB (IOM) Ltd was disclosed to HMRC some months prior to the meeting in the Isle of Man on 9 / 10 April 2013.

425. Notwithstanding this letter, the Tribunal is satisfied that Officer Bourne had no more than a suspicion based upon what she had been told at the meeting, and to whomever in HMRC the information as to Rajinder Chatha's beneficial ownership was passed by IOM C&E, it was not passed to her as being a matter of confirmed fact.

426. Mr Coue states that, from documents and meeting notes he had seen, IOM C&E were aware that Global was intended to be involved in the wholesale supply of goods to duty suspended customers across the EU and Bridgewell was to be involved in the supply of duty suspended Goods via sales agents across Europe.

427. It is notable that the letters (a) do not demonstrate that IOM C&E were informed of the reasons for the interposition of Global and Bridgewell in the supply chain (ie. that they were to supply goods on behalf of EFBL and this was to be kept confidential from their suppliers who would otherwise decline to trade on this basis), and (b) the questions from Mr Foster (a director of the IOM companies) to Mr Charles Coué did not seek answers to this specific question. Rajinder Chatha accepted in his evidence that "It's not asked in these questions…".

428. Indeed, on 3 April 2013 Officer Graham Dugdale of IOM C&E had emailed Officer Jane Parry of HMRC stating that prior to the visit on 9/10 April 2013 in regard to Global and Bridgewell, Rajinder Chatha had expressed some concerns with HMRC officers being present at the inspection. Mr Dugdale's assumption was that Rajinder Chatha's concerns would be that information provided in the way of Excise inspections could be used for direct tax purposes so it was important for HMRC to give confirmation that information provided would only be used for excise purposes. HMRC gave this confirmation.

429. The Appellants lately disclosed (during the course of the hearing) a further letter which they sought to rely on from Mr Charles Coué, dated 27 June 2017. Mr Coué stated in that letter that he could confirm that IOM C&E were made aware at an early stage in the VAT registrations of both Global and Bridgewell that a key purpose of both registrations was to provide commercial confidentiality. He recalled it being stated by Mr David Craine at a meeting on 9 December 2010 to lodge the VAT applications for Global and Bridgewell that the companies were not to be part of the VAT group for commercial reasons. He also confirmed that IOM C&E was made aware that the sole / main supplier for both Global and Bridgewell would be other companies of which Rajinder Chatha was the beneficial owner.

430. Yet again, Rajinder Chatha did not ask whether the real reason for the interposition of the companies had been explained by them to IOM C&E; rather, he only asked if "commercial confidentiality" was given as the reason. The true reason (masking from suppliers the fact that EFBL was supplying the non-UK market on the basis they would otherwise decline to trade) cannot be conflated with a vague (and fundamentally different) notion of "commercial confidentiality".

431. IOM C&E had not had disclosed to it by any person nor company connected to the Chathas, the full nature and purpose of the trade that Global and Bridgewell was undertaking on behalf of the Appellants. The disclosure given by David Craine to IOM C&E on 25 March 2013 that they were involved in supplying to supermarkets was inaccurate.

432. It was only in the February 2016 correspondence from Philip Rimmer and 2017 witness statements from Jatinder and Rajinder Chatha that the full nature and purpose of the trading relationship between the Appellants and Global and Bridgewell was finally disclosed.

433. No positive case was put to explain the untruth in the email from Jatinder Chatha dated 15 June 2015 by which he forwarded to HMRC the earlier email to him from Hardeep Chatha stating that the English companies and the two IOM companies dealt with each other "strictly at arm's length", when in fact these companies had been established (as he well knew) as interposed companies by Rajinder Chatha for the purpose of enabling EFBL secretly to compete in Europe against EFBL's own suppliers. The truth was first exposed by a letter from Mr Rimmer dated 25 February 2016.

434. There appears to be an obvious reason for this. The Appellants, Global and Bridgewell were deliberately keeping the nature and purpose of this trade confidential so as to keep it from the authorised distributors and manufacturers supplying alcohol to the Appellants. These suppliers would not have continued to trade with the Appellants if they had known the Appellants were selling on their alcohol duty suspended to customers in mainland Europe and thus competing with their continental supply chains.

Summer 2015

435. On 2 July 2015 HMRC Officer Maskew emailed Philip Eagleton to arrange a meeting with the director(s) of the Appellants for 30 July 2015 to discuss due diligence.

436. On 21 July 2015 Philip Eagleton emailed Officer Maskew, copying in Jatinder and Balbir Chatha, stating that they would not be able to meet earlier than 27 August 2015.

437. By letter dated 22 July 2015 Officer Maskew wrote to Jatinder Chatha on behalf of the Appellants requesting due diligence documentation and detailing the types of documentation expected.

438. On the same date Officer Maskew emailed Philip Eagleton to advise that HMRC would go ahead with 30 July 2015 meeting simply to collect due diligence.

30 July 2015 meeting - Due diligence by WWL on Global and Bridgewell provided to HMRC

439. On 30 July 2015 HMRC Officers Maskew and Higginson met Philip Eagleton at the Walsall premises of WWL. A contemporaneous handwritten note was taken from which a typed up meeting note was made. Again, the Tribunal finds HMRC's notes and evidence of Officer Maskew to be reliable.

440. At the meeting, due diligence carried out by WWL was provided. EFBL due diligence was not provided. *Inter alia,* they discussed further due diligence procedures, advice was given as to some expected measures, and Philip Eagleton stated that visits

had been made to the Isle of Man companies where they had met the directors but he still needed to do these reports.

441. Some WWL due diligence was uplifted. IEFW due diligence was missing and Philip Eagleton said he *"will get* [Officer Maskew] *ADD paperwork for 'IEFW'"*. On the topic of visit reports he is recorded as stating *"I need to do them"*. Although he disputes saying he needed to do them, he does not contend that they had been prepared (and indeed none have ever been produced). It was his *"intention ...to get the directors together and agree what needs to be done"*. Mr Eagleton also stated that it was Jatinder Chatha's responsibility to do the ADD checks on the Isle of Man Companies.

442. Officer Maskew asked what ADD was conducted. Mr Eagleton stated that he only dealt with the ADD for the warehouse WWL and HMRC would need to speak to Jatinder Chatha for anything to do with EFBL.

443. Officer Maskew advised Mr Eagleton: "You need to assess the risks for the business and that you can demonstrate you have addressed these risks, there is a close link between European Food Brokers & Whittalls… I told Phil Eagleton that ADD is very comprehensive and that there is a fair bit to do and that revocation can follow as a result of poor ADD…".

Follow up

444. In August 2015 Officer Tracey Bourne left the HMRC team investigating the Appellants. By the time she left she was of the view that HMRC should work with the Appellants to improve their due diligence.

445. Officer Bourne's view is dealt with in a separate chronology of other events that the Appellants rely upon to evidence a pre-disposition on the part of HMRC to revoke the Appellants' approvals. The separate chronology is to be found in the section of this decision that deals with the Appellants' submissions. Nonetheless, the Tribunal is satisfied that the facts within that chronology have been proved on the balance of probabilities and those facts form parts of its findings.

446. Officer Craig Lewis joined the team as Officer Bourne's replacement and took over as lead investigator in August 2015.

447. By letter dated 6 August 2015 Officer Maskew wrote to Jatinder Chatha on behalf of the Appellants further to the 30 July 2015 meeting. He wrote that HMRC expected all due diligence to be received and in place by the meeting of 27 August 2015 and highlighted important due diligence measures. Officer Maskew stated that *"I have still not received any DD* (due diligence) *for EFB Ltd and the warehouse you use in France – IEFW…Can you provide any documents by the end of next week (14/08/15) so that I can review it?"*.

448. He stated '*As mentioned in our interview of 30/07/15 and in my letters of 22/7/15 & 12/1/15 I cannot provide a proscriptive list for DD but I refer you again to Notice 196 Section 10…..Unsatisfactory Due Diligence undertaken as I point out in our meeting of 30/7/15 can lead to revocation of your excise approval(s)*.'

449. On 7 August 2015 Philip Eagleton emailed HMRC Officer Maskew System of Exchange of Excise Data ("SEED") checks made on IEFW.

450. On 12 August 2015 Jatinder Chatha wrote to Officer Maskew responding to his letter of 6 August 2015 concerning Officer Maskew's interview with Philip Eagleton on 30 July 2015. He mentioned that Mr Eagleton had emailed the most recent SEED details for IEFW but stated that there was a lot of documentation for the due diligence on the duty suspended hauliers so asked for confirmation of how HMRC would like to receive it.

451. Mr Chatha also replied at some length on a number of other issues arising from the meeting of 30 July 2015 (which he did not attend) and the letter of 6 August 2015.

452. On 14 August 2015 Officer Maskew met Philip Eagleton at WWL's Walsall premises. This was an unannounced visit by him and three other HMRC officers. The purpose of the visit was to collect outstanding due diligence documentation – specifically for EFBL's suppliers. Mr Eagleton advised that Paul Buckley was "still working" on EFBL's customer due diligence and it would be provided the following week. Mr Eagleton stated that Jatinder Chatha was not about that day.

453. On the same day Officer Maskew emailed Jatinder Chatha, copying Philip Eagleton, thanking him for his letter dated 12 August 2015 and proposing to organise a meeting early in the following week. Philip Eagleton emailed Officer Maskew in reply that day stating that Jatinder Chatha would be unable to meet him and requested a written response to Mr Chatha's letter instead dated 12 August 2015.

454. On 17 August 2015 Officer Maskew wrote two letters to Jatinder Chatha on behalf of each Appellant in reply to the letter of 12 August 2015. He emphasised the importance of due diligence and highlighted suggested checks for each company and reports that should be included. He stated that all due diligence needed to be in place by 27 August 2015 so that he could formally advise if it was satisfactory and the consequences if not.

Instruction of Philip Rimmer on behalf of the Appellants in August 2015

455. On the morning of 21 August 2015 Officer Maskew emailed Philip Eagleton to advise that he would return EFBL's suppliers due diligence and hoped to pick up EFBL's customer due diligence on 24 August 2015.

456. Philip Rimmer of M&R Tax Advisers emailed Officer Maskew, stating that he had recently been engaged by EFBL *"to assist it both in relation to your current enquiries and in excise matters generally"*. He suggested arranging a meeting at a date that was convenient to all parties. Mr Rimmer attended the next meeting with HMRC on 9 September 2015.

457. Officer Maskew also spoke to Mr Rimmer by telephone that day. Mr Rimmer stated that *"they are still working on the other due diligence so it would not be available for me to pick up on Monday 24/8/15"*. Officer Maskew referred to the ADD condition

that was introduced in November 2014 to which Mr Rimmer responded by telling him that he was very familiar with the ADD process.

458. In the afternoon, Officer Maskew emailed Mr Rimmer requesting a meeting at the earliest date possible. Mr Rimmer responded that he would provide a suitable date in due course but that as his clients (the Appellants) wished him to be present and he had only been engaged on 17 August 2015 the proposed meeting on 27 August 2015 would have to be re-arranged.

459. On 24 August 2015 Officer Maskew emailed the Appellants, chasing due diligence documentation.

460. On 25 August 2015 Philip Rimmer emailed Officer Maskew advising that the Appellants were *"compiling their due diligence records"* and asked two questions about HMRC's due diligence requests: did they wish to have access to due dligience for both duty suspended and duty paid suppliers and customers? Did they wish to have access to both historic and current businesses with which the Appellants were trading?

461. On 27 August 2015 Officer Maskew emailed Philip Rimmer requesting that he provide dates so that due diligence could be discussed.

462. On the same date Philip Rimmer emailed Officer Maskew noting that he had not responded to his questions of 25 August 2015. No alternative date for a meeting was provided.

463. In letters dated 4 September 2015 emailed to Jatinder Chatha, copied to Mr Eagleton and Mr Rimmer, Officer Maskew wrote to Jatinder Chatha on behalf the Appellants warning them that their *"due diligence falls far short of the requirements in Public Notice 196, s10 and if you fail to comply with this condition further sanctions will be considered"* and requesting an urgent meeting for 9 September 2015.

464. On 4 September 2015 Officer Maskew phoned Jatinder Chatha to confirm whether he had received his letter of the same date. Jatinder Chatha confirmed that he had and that he would be available to meet on 9 September 2015.

465. Later that afternoon Philip Rimmer emailed Officer Maskew raising concerns with the *"tenor"* of his correspondence, advising that the Appellants would *"vigorously challenge"* any finding that their due diligence was deficient and requesting answers to his requests of 25 and 27 August 2015. He emphasised that the Appellants held due diligence records for a total of some 300 to 350 suppliers and customers within its business record and it would help if HMRC were to advise them as to exactly which of the Appellants' due diligence records it was that was required.

466. By the end of August 2015 HMRC officer Craig Lewis had taken over from Tracey Bourne as lead Officer in the investigation.

9 September 2015 meeting

467. On 9 September 2015 HMRC Officers Robert Maskew, Leslie Pitt and Craig Lewis met with Jatinder Chatha, Philip Eagleton and Philip Rimmer at the business premises of the Appellants in Walsall. Officers Lewis and Maskew each prepared typed written notes of the meeting from handwritten contemporaneous notes. Philip Rimmer also prepared typed notes of the meeting.

468. There is some dispute as to what exactly was said at the meeting as Mr Rimmer's notes provide a somewhat different account from that of HMRC. Having heard oral evidence from Officers Maskew and Lewis and Mr Rimmer, the Tribunal is satisfied that where the notes disagree or contradict each other, the notes prepared and the account given by HMRC officers is more likely to be accurate than that given by Mr Rimmer. Officers Lewis and Maskew were honest and reliable witnesses.

469. Mr Rimmer did not disclose any contemporaneous handwritten notes of the meeting, in contrast to those of HMRC. This alone would suggest that the accounts given by HMRC officers were based on notes which were more contemporaneously prepared than Mr Rimmer while events were fresher in their minds. Furthermore, the Tribunal has found, as set out below, that Mr Rimmer is mistaken in some regards in his evidence, perhaps out of an understandable desire to present his clients in the best possible light.

Officer Lewis' summary of the meeting

470. Officer Lewis reasonably summarised the meeting in the following way at paragraph 22 of Annex B to his decision letters:

> 22…… Officer Maskew explained the importance of the ADD condition and what is required of WWL and EFBL. Officer Maskew asked about the due diligence which had been completed by WWL since the condition was introduced.
>
> a. Mr Eagleton stated that for the bonded warehouse services the due diligence procedures are to obtain SEED checks, details of WOWGR registration, customers' I.D, and utility bills.
>
> b. For dispatches, Mr Eagleton stated that he had been a bond controller for 15 years and did not have any details of supply chain problems, and that there had been no loads lost in his time.
>
> c. As to changes in the businesses' due diligence checks since the new ADD condition came into effect, Mr Chatha stated that the businesses had introduced checks on the individual identifications (I.D.s) of directors.
>
> d. Mr Chatha confirmed that he had read Public Notice 196, and the ADD condition, and was *"100% confident"* in the level of due diligence being completed by the bond manager, Mr Eagleton.
>
> e. Asked about a Dun & Bradstreet report which had been supplied to HMRC, Mr Chatha stated that this was done to check credit level / worthiness of new customers. He confirmed that this check was only carried out for duty paid customers, as Mr Chatha considered that there was no need for it with duty suspended customers.

f. Mr Chatha confirmed that the businesses had no contracts in place with anyone. He said this was because *"anyone can approach anyone to trade with"*. Mr Eagleton stated that this was not unusual in this industry.

g. Officer Pitt asked whether there was anything WWL could do past their initial customer to assist in the eradication of fraud. Mr Eagleton stated that he *"wouldn't do anything that was suspected of fraud"*. Mr Chatha stated that he was well aware that the companies which deal with Global, Bridgewell and EFBL had not had any concerns raised or notified to them, and so he didn't see a risk in trading with them.

h. Mr Rimmer confirmed that he had advised WWL and EFBL to check the level of due diligence completed by their customer, to see if they were robust enough. He had also advised analysis of the market to see whether there is a true market for the traded goods. Mr Rimmer stated that this could be done by asking questions of the people he/the business was visiting.

i. Mr Chatha stated that EFBL had recently issued a letter to all customers requesting due diligence information. He provided a copy of this letter to officers: it concerned the introduction of the new Alcohol Wholesale Registration Scheme ("AWRS"), and on that basis EFBL requested photographic identification, utility bills and a copy of the VAT registration certificate from the recipients.

j. Officer Pitt asked what onward checks would now be completed on customers. Mr Chatha stated that numerous checks had been completed on duty paid transactions, and that the duty suspended checks consisted of discussions with Global and Bridgewell. The last visit to Global and Bridgewell was said to have been in November 2014, at which there was a meeting with Mr David Craine (a director of Global and Bridgewell).

The Tribunal's additional findings

471. The Tribunal is satisfied that towards the end of the meeting there was the exchange noted above. Jatinder Chatha was asked about due diligence checks undertaken on duty suspended customers. He stated that the due diligence consisted of discussions with Bridgewell and Global. Jatinder Chatha stated they were last visited in November (this being a mistake he meant to refer to September) 2014. He had met with 'David Crane' – Director of Bridgewell and Global' (this being David Craine).

472. The HMRC officers discussed the importance of due diligence, the steps taken by the Appellants and detailed guidance was given.

473. Mr Rimmer asserted, during the meeting, that the Appellants' due diligence was *"continually updated"*. Mr Rimmer recorded himself as advising the Appellants and HMRC that *"it is possible to check the due diligence conducted by a business' customers and to seek to ascertain the end user market*". Mr Rimmer's view, as expressed according to his own note of the meeting on 9 September 2015, was that *"there was no requirement to undertake due diligence upon transporters and bonded warehouses"*.

474. Mr Eagleton (PE), Mr Rimmer and Jatinder Chatha (JC) all stated that they were confident that their due diligence was appropriate and adequate. Despite probing questions from officers about the extent of their checks, when asked whether they

intended to do anything further, Officer Maskew recorded a *"categorical 'No' from both PE and JC but they are more than happy to accept any assistance and guidance from HMRC with this"*. When asked if they felt their ADD is adequate, they replied 'yes, but if there is anything that HMRC wants us to do further they are happy to have it in writing from HMRC.'

9 September 2015 due diligence by EFBL on Global and Bridgewell

475. A memory stick containing all of EFBL's due diligence was provided. This includes customer due diligence only in respect of Global and Bridgewell, and no due diligence in respect of the customers of these two companies (even though their identity was known to WWL through inter-company instructions for delivery of goods purchased).

476. The duty suspended customer due diligence material provided was minimal and did not comply with the ADD condition. The Tribunal deals with this topic in more detail in considering the evaluative conclusions below.

477. The due diligence material also included due diligence in respect of warehouses receiving duty suspended alcohol, duty-paid customers and hauliers of duty suspended alcohol. In addition, due diligence on hauliers of duty suspended alcohol had been provided in July 2015.

478. On 11 September 2015 Officer Maskew returned the memory stick to Philip Eagleton and emailed Jatinder Chatha confirming this. He stated he had not yet had the opportunity to look at the information but he would write once he had reviewed the data.

28 September 2015 email from Officer Lewis

479. In an email dated 28 September 2015 (nine months before the revocation decisions) from HMRC Officer Craig Lewis to John Buchanan of IOM C&E Officer Lewis stated, *"the overall final outcome for Op Cracker is to revoke all of the approvals and licences etc"*. The Appellants rely on this email, disclosed during the hearing, as part of their case. The implications of the email are considered in the discussion section of this decision on the issue of pre-disposition and in the section dealing with the Appellants' submissions.

480. In summary, cross examination on this topic of Officer Craig Lewis did not reveal any impropriety or inappropriate predisposition on his part. He was honest when speaking to the document and his answers were comprehensive. In short, his response to the allegation that he was predisposed to revoke the Appellants' approvals as at 28 September 2015 was entirely candid. He said in respect of the *"overall final outcome"*:

"that was based on the evidence that [the team] had at that time. But at that point in time I hadn't began all of the discussions with the stakeholders and the processes involved and how that works. This was a general overview from the team, because I had only been on the team for a month at that point."

"…that's the way the evidence was looking. I haven't written it well, but at that point we'd been out and done the first due diligence meeting, we already had the evidence of tax losses and the concerns. So that is where the evidence was pointing in regards to a decision. Of course it then went to further internal governance and we had to go through further layers to assure that was still the correct procedure."

481. On 15 October 2015 Officer Maskew emailed Jatinder Chatha requesting a meeting in the first week of November. Mr Rimmer replied seeking an explanation for why another meeting was necessary.

482. On 16 October 2015 Officer Maskew emailed Jatinder Chatha explaining why a meeting was requested to discuss the findings as to the alcohol due dligience for EFBL and a meeting was organised for 5 November 2015.

5 November 2015 meeting - one year after ADD Condition in EN 196 came into effect

483. On 5 November 2015 HMRC Officers Pitt, Maskew and Lewis again met Jatinder Chatha, Philip Eagleton and Philip Rimmer to discuss the due diligence provided at the previous meeting and other steps.

484. The Tribunal makes the same findings about the notes prepared and accounts given by the HMRC officers as compared to those prepared and given by Mr Rimmer. Where there is any material dispute the accounts of the HMRC officers are preferred as being more reliable on the balance of probabilities.

Officer Lewis' summary

485. Officer Lewis reasonably summarised the meeting in the following way at paragraph 23 of Annex B to his decision letters:

23….(Mr Chatha and Mr Eagleton) Asked about the existing due diligence:

a. Asked whether adjustments had been made to due diligence procedures since the last meeting, between HMRC and the businesses, Mr Chatha and Mr Eagleton confirmed that no further changes had been introduced because they did not feel that any were necessary.

b. Officer Lewis asked whether there was a documented procedure in place for the due diligence checks to be completed on customers and suppliers. Mr Chatha stated that a member of the clerical team, "Sandra", was responsible for risk assessments of customers, but that he approved the checks. Sandra was the only person who knew the procedure. In response to queries about what would happen if Sandra were for some reason unable to carry out due diligence checks, Mr Chatha called Sandra into the meeting and asked her whether there was a documented 'tick list' for due diligence checks. Sandra confirmed that there wasn't; and Mr Chatha asked her to implement a 'checklist'.

c. Officer Maskew produced a sample of documents which were an example of the hard copy due diligence documents which were provided by the WWL and EFBL previously. Officer Maskew observed that all of the printed due diligence documents which had been provided to HMRC appeared to have been created from July 2015 onwards (because a large amount of the documents had a date representing the printing of the document at the foot of the document).

Officer Maskew therefore asked whether any due diligence checks had been completed by EFBL between November 2014 and July 2015. Mr Chatha stated that checks had been completed and that documents did exist, but that he *"would have to get it together"*. He also stated that it wasn't to the "current level". Mr Chatha expanded upon this and stated that the business had increased the level of due diligence checks when Officer Maskew had requested the due diligence documents in July 2015.

d. Mr Rimmer stated that he felt that the business had assessed the risk of fraud in its supply chains, and had completed checks to support that. He added that the businesses were confident that there was no fraud in the chains. In response to questions, they confirmed that this confidence related to duty paid trade. Asked whether the same process and opinion was applicable to the duty suspended goods, and if they were confident that there was no fraud in those chains, Mr Chatha confirmed that the same applied and that he was confident there was no fraud in duty suspended supply chains.

e. Officer Maskew asked about the due diligence completed by EFBL on 'IEFW' – a tax warehouse in France, in which all the documents provided were written in French without translations. Mr Chatha stated that *"everyone has done French at some level and can get the important information from it."* He also stated that these checks were done in addition to the usual SEED checks etc, and they did it to go *"over and above"* to *"keep people happy"*.

f. Mr Chatha confirmed that there were no contracts in place with any business that they traded with. Mr Eagleton added that contracts would be *"the exception rather than the rule"*. Mr Rimmer added that *"if no one else is doing it, why would it be a concern?"*

g. Mr Chatha stated that he felt the businesses had gone *"above and beyond"*, and that they are satisfied with their supplies and their purchases. He confirmed that HMRC had been provided with all of these 'above and beyond' due diligence documents, but had not been given the usual SEED checks etc. Mr Rimmer stated that it had been quite an exercise for the business to get all of this together.

h. Officer Maskew discussed examples of movements on EMCS which had left WWL and been transported to different owners receiving the goods in IEFW in France. He asked whether WWL had completed checks on these new owners in IEFW, to check their credibility. Mr Eagleton stated that they did not complete due diligence on those businesses because EFBL sold to Global and Bridgewell and so that due diligence was the responsibility of Global and Bridgewell. Mr Eagleton added that WWL do ask Global and Bridgewell what checks have been completed on the onward customers, but said that these questions were asked verbally and not recorded.

The Tribunal's additional findings

486. At the meeting the Appellants gave further details about their due diligence procedures and stated that they were satisfied that it was *"of a very high standard"*. Officer Maskew referred to duty suspended customers of Global and Bridgewell who were identified in the movement instructions given to WWL and in movement information recorded on the EMCS system in respect of IEFW. He asked if due diligence was completed on them. Mr Eagleton said "*no, because that was the responsibility of GBDL/BL*". As noted above, Mr Eagleton added that they did ask

Global / Bridgewell what checks they did on their customers but it was all verbal and not recorded.

487. On 5 November 2015, the Tribunal is satisfied that Mr Eagleton stated that "*WWL do ask Global and Bridgewell what checks are completed on the onward customers but it is all verbal and not recorded*". Mr Rimmer's note reflects this very conversation: "*not written but by telephone*". Jatinder Chatha's oral evidence on this point was:

> "19 Q. As I understand it, in the course of this meeting you
> 20 did not focus in any way anyone's attention upon your
> 21 personal involvement in what was taking place in terms
> 22 of checking on the customers of Global and Bridgewell?
> 23 **A. Other than the reference that I had discussed it with**
> 24 **Global and Bridgewell, I haven't seen anything yet, no."**

488. Mr Rimmer did not dispute this factual matter in his oral evidence, but attempted to defend his clients' position without any reasonable concessions being made:

> "15 Q. "They would check their customer's due diligence and
> 16 discuss with the customer. Mr Maskew queried whether
> 17 there was a written record of this. PE replied not
> 18 written but by telephone. Commented that the customer
> 19 was long established."
> 20 Now, that answer from Mr Eagleton is again, is it
> 21 not, consistent with the suggested practice of there
> 22 being -- they did not have access to the records, they
> 23 simply were reliant upon what was being done by
> 24 Hardeep Chatha in the Isle of Man?
> 25 **A. I don't accept that. I mean, Phil Eagleton said they**
> Page 65
> 2 **would check their customer's due diligence. That**
> 2 **suggests to me that they would do exactly that."**

489. To give just one example of his evidence in this regard, Mr Rimmer was asked the following by the Appellants' counsel about the 5 November 2015 meeting:

> "11 Was there any indication at
> 12 this November meeting what their <u>specific concerns</u> were
> 13 with the due diligence being carried out by the two
> 14 companies?
> 15 **A. No."** (emphasis added)

490. Mr Rimmer appears to have been unnecessarily defensive or failed to appreciate that the following constituted specific examples, at that meeting alone (5 November 2015), of ways in which the Appellants' due diligence fell short as recorded in HMRC's notes:

"[Robert Maskew] *states that there was no legitimate market for what you supply to in Europe. 85% of the duty suspended beer that goes out from your Birmingham site is destined for this market yet there does not appear to be a market for the amount of beers that your warehouse send there"*.

"[Robert Maskew]…*Transport is a key area of ADD and I suggested that you have a 'relaxed attitude' to this and gave the following reasons…you do not do any checks on these hauliers, particularly the sub-contracted hauliers"*.

"[Robert Maskew] *advised that he had not seen a documented risk assessment in the ADD provide[d] by the business…[Craig Lewis] asked if there was a documented procedure"*.

"[Robert Maskew] *advised that he had looked at the ADD provided and that there was no audit trail"*.

"[Robert Maskew] *asked if WWL had supplied ADD for all the tax warehouses that WWL use"*.

491. It is apparent that haulage was actually contracted out by the Appellants and sometimes sub-sub-contracted to other hauliers (see below on this topic in the evaluative conclusions). As Mr Rimmer correctly identified, on the topic of haulage due diligence, in his own notes of the meeting on 5 November 2015 *"the issue is with sub-contracting"*.

492. On 5 November 2015, the Appellants were explicitly advised of tax losses in their supply chains. In particular, they were advised of historic tax losses in despatches which had been traced originally from WWL through Belogistiques. Jatinder Chatha's view at that meeting was, *"We are confident that there is not any fraud in our supply chains as they are long established suppliers"*.

493. It should be noted that the Appellants dispute the fact that they were advised on 5 November 2015 of tax losses in supply chains originating at WWL/EFBL. The Tribunal finds that the Appellants were so notified for the following reasons:

494. Mr Eagleton and Jatinder Chatha are not witnesses of truth. In the absence of other corroborative evidence, their accounts are not accepted.

495. There are two notes of officers which indicate that such a warning was given. Officer Lewis' contemporaneous handwritten notes record, *"LP explained goods sold by EFB and then transported out to Belogistiques from WWL. These goods have been chased and traced through to missing traders and tax losses in the EU"* and *"LP also made WWL + EFB aware that the goods sold by EFB and leaving WWL were traced through to fictitious traders…Can now see that they have been involved in fraudulent transaction chains and have the opportunity to address this…"*.

496. Officer Maskew's note records, *"Officer L. Pitt from FIS then went into the ongoing enquiries about movements from WWL regarding the Belgian warehouse – Belogistics and the fraud around this warehouse and that they were closed down by the Belgian authorities… There was about 15 ARC's that WWL transported there"*.

497. Indeed, Mr Rimmer's own note does not make sense unless this advice was given (save for his record that he disputed this at the meeting). For example, he records, *"LP: Stated that they had traced 15 ARCs to Belogistiques involving some 90 transactions since loads have been split. Onward warehouses had been found to be closed or fictitious and EMCS records were inaccurate."*

498. Furthermore, Mr Rimmer (PR) recorded the following discussion: *"PR: Queried whether there was any indication that there were tax losses within current supply chains. LP: Replied that there was no indication that it had stopped. PR: Stated that they had not despatched to Belogistiques since it had been closed."* This exchange makes no sense unless they were previously advised that the goods had been traced from WWL/EFBL.

499. On 5 November 2015, HMRC had arranged a meeting to discuss due diligence and, among other things, advise as to areas in which due diligence could be improved. Mr Rimmer, himself, notes that Officer Pitt (LP) "*Commented that he had wanted to update them on the progress of the HMRC enquiry and encourage them to reconsider their due diligence"*.

500. When Officer Maskew suggested it was *"appropriate to undertake due diligence upon despatching warehouses"*, Mr Rimmer stated – unreasonably - that it was *"disproportionate and unreasonable to expect this and that it was not WWL's responsibility to police overseas tax warehouses, this was the responsibility of the tax authorities"*.

501. On 5 November 2015, it is recorded that *"LP asked if WWL are aware of trailer swaps happening on their goods in transit, PE confirmed that they were not aware of this but he could see commercial reasons for it happening"*. Mr Eagleton (PE) accepts this at paragraph 8 of his witness statement. Indeed, the Appellants have not introduced any evidence to controvert HMRC's evidence. In the circumstances, the Tribunal can place no significant weight on any assertion that trailer swaps have not occurred, or that they required notification of this.

502. On 5 November 2015, despite this notification, the Appellants' response was that due diligence was not required on EU warehouses. Mr Rimmer records himself stating, *"it was disproportionate and unreasonable to expect this and that it was not WWL's responsibility to police overseas tax warehouses, this was the responsibility of the tax authorities."*

Follow up correspondence

503. On 1 December 2015 there was a meeting of HMRC officers where the merits of issuing 'minded to revoke' and warning letters to the Appellants were discussed. It was

accepted by all that there were lessons to be learnt from certain aspects of the investigation, however the officers agreed that a decision needed to be made based on where HMRC were at that time. The HMRC team discussed the evidence, particularly the historic nature of some of the evidence, but it was agreed / supported by all that there was enough to demonstrate that a 'minded to' letter was appropriate based on the overall basket of indicators. A meeting of the Assurance Panel was arranged for January 2016 and draft 'minded-to' letters were to be prepared.

504. On 2 December 2015 Officer Maskew wrote to the Jatinder Chatha on behalf of each Appellant regarding the meetings on 9 September 2015 and 5 November 2015 where HMRC had discussed the due diligence requirements set out in section 10 of Excise Notice 196. He advised that HMRC were still considering the information provided in earlier meetings and would contact Mr Chatha on their findings as soon as possible.

505. Later that day Philip Rimmer emailed Officer Maskew requesting confirmation of whether he would be sending a note of the 5 November 2015 meeting.

506. On 11 December 2015 Officer Maskew emailed Philip Rimmer to advise that he had not agreed to provide a note but that they would consider all the information provided and then write to the Appellants. Mr Rimmer responded disputing this recollection.

5 February 2016 HMRC Assurance Panel

507. On 5 February 2016, an internal HMRC Assurance Panel, comprising three senior HMRC civil servants at Deputy Director level, met and discussed the Appellants' approvals. They endorsed the issuing of 'minded to revoke' letters and, in the event that the Appellants' responses were inadequate to resolve the Commissioners' concerns, endorsed proceeding to revocation. This was the primary recommendation of Officer Lewis based upon a short report he presented.

508. There was cross examination of Officer Lewis as to the notes of what was discussed at the meeting and the evidence presented to the panel regarding the recommendation to approve 'minded-to-revoke' letters. It was suggested that a very limited and partial account of the state of the evidence was put to the panel. The evidence going to the issue of HMRC's predisposition, factual findings, and discussion of the Tribunal's conclusions are dealt with separately below when considering the Appellants' submissions.

509. The Tribunal is satisfied that there was only a limited amount of material put before the HMRC Assurance panel in the report and little information that would have undermined the recommendation against the Appellants.

510. However, the Tribunal finds that this was reasonable in circumstances and the report was not so partial as to be unreasonable and unfair to the Appellants. This is particularly the case where the minded-to process would give the Appellants the opportunity to respond to HMRC's case and the Tribunal is reviewing the revocation

decisions taken on 8 July 2016 rather than the decision of HMRC on 5 February 2016 to begin a minded-to process.

511. Therefore, the Tribunal does not need to make any further findings in this regard. It is not that meeting or decision which is the subject of the appeals but the revocation decisions themselves of July 2016. The Appellants' submission is that this, together with other evidence, supported a predisposition on HMRC's part to make the revocation decisions.

8 February 2016 Minded to letters

512. On 8 February 2016 Officer Lewis wrote to each Appellant, informing them that the Commissioners were 'minded to' revoke their approvals and provided reasons. Each letter stated that HMRC was minded to conclude that each Appellant was not a fit and proper person to hold a registration because the manner in which they had conducted their duty suspended business activities over a significant period of time had exposed the Revenue to an unacceptable risk of loss through fraud.

513. The reasons given were briefer than those latterly provided at the time of the revocation decisions of 8 July 2016 but were broadly similar – they touched on the tax loss in supply chains and due diligence failings. Each letter was seven pages long and included between 40 and 41 numbered paragraphs of HMRC's factual assertions or conclusions in support of their reasoning.

514. Officer Lewis invited the companies to make any representations in response to his letters by 22 February 2016.

515. At this stage, HMRC were still proceeding on the footing of the information provided by the Appellants that Global / Bridgewell and the Appellants were operating at arm's-length from each other. Therefore, the due diligence being carried out by the Appellants in respect of Global / Bridgewell fell to be assessed on the footing of two companies dealing with each other at full arm's-length.

516. On 8 February 2016, in response, Philip Rimmer wrote to Officer Lewis requesting a large amount of disclosure and information. He stated that he and his clients were severely impaired in their ability to make full representations on behalf of the Appellants given that there was an absence of relevant information, documentation and disclosure within HMRC's letters. He asserted that that HMRC had been highly selective in their assessment of the Appellants' due diligence, and that revocation would have such serious consequences, putting the Appellants out of business and leaving many employees without employment, that reasonableness, proportionality and natural justice required disclosure.

517. On 9 February 2016 Officer Lewis wrote to Philip Rimmer explaining that the disclosure request was unreasonable and unnecessary for the Appellants to provide their representations.

518. On 9 February 2016 Philip Rimmer wrote to Officer Lewis and requested that HMRC reconsider their position on disclosure.

519. On 18 February 2016 Officer Lewis wrote to M&R Tax Advisors reiterating that HMRC did not consider that the disclosure was necessary. Nevertheless, he provided copies of the hand-written notes of meetings in which due diligence and tax loss were discussed.

520. On 18 February 2016 Philip Rimmer emailed Officer Lewis requesting an extension of the deadline of 22 February 2016 for the Appellants' response.

521. On 19 February 2016 Officer Lewis emailed Philip Rimmer agreeing to an extension to 26 February 2016.

522. On 22 February 2016 Philip Rimmer wrote to Officer Lewis requesting that the Appellants be provided with 10 days' notice before revocation, should such a step be taken.

523. On 23 February 2016 Officer Lewis wrote to M&R Tax Advisors advising that he was unable to provide the undertaking sought.

524. On 25 February 2016 Philip Rimmer emailed Officer Lewis advising that the Appellants would be applying to the High Court for an injunction the following day.

25 February 2016 letter from Philip Rimmer

525. On the same day, by letter, Philip Rimmer wrote to HMRC with the Appellants' substantive response to the 'minded to' letters. This was an extensive letter consisting of 23 pages which replied to each paragraph in HMRC's letters in some detail.

526. In summary, Mr Rimmer asserted that the due diligence of the Appellants went above and beyond HMRC's requirements and that it was the Appellants' intention to challenge every single factual assertion. On 25 February 2016, in their substantive response to the 'minded to' letter, he asserted, *"We remind you that our clients intend to put you to strict proof on each and every allegation which you have made…"*. He went on to refute robustly HMRC's concerns: *"We submit that we have conclusively established above that your allegations of 'little or no' enhanced due diligence, of the 'real risk of tax loss' with our clients' customers and of the establishment of such tax loss 'in previous transactions' are entirely erroneous, misplaced, unreasonable and unfounded in any evidence with which we have been provided."*

First disclosure of the nature and purpose of the Appellants' relationship with Global and Bridgewell

527. In addition, in contrast to earlier descriptions of the relationship between the companies, Mr Rimmer described that, *"as has been made clear to Isle of Man HMRC – which we understand has full reciprocal arrangements with UK HMRC – from the outset and subsequently to UK HMRC, and as has never been denied GBDL and BL were established to enable our clients to dispatch stock supplied to them by their UK brand owner/manufacturer/brewer suppliers to the EU market where those suppliers would otherwise decline to trade with our clients on the basis that such suppliers attempt to control the worldwide market for their products ie our clients have entirely*

legitimate commercial reasons for selling stock to GBDL and BL rather than the fraudulent purposes which you now seek to infer and ,we reiterate, HMRC have been fully aware of the reason for these arrangements throughout. By way of explanation, therefore BGDL and BL were set up for the purposes of commercial confidentiality: since European Food Brokers Ltd, purchases stock from manufacturers or authorised distributors which would be unhappy if they became aware that it supplies some of this stock not into UK market but rather for despatch to other countries (where these manufacturers have their own distribution channels)." [Emphasis Added]

528. Thus, it was only on 25 February 2016, in this letter, that the truth behind the structure of the companies, the nature of their relationship, and the reason for the interposition of Global and Bridgewell in the supply chain, was revealed for the first time. The Appellants attempted to project an impression of credibility and candour by asserting that they had always been open and truthful with HMRC (directly and through IOM C&E) as to the reason for the structure of the companies. This was untrue for the reasons set out above and below in the sections of this decision dealing with the disclosure of information regarding the relationship between the companies.

Relationship between the Appellant companies and Global / Bridgewell in the Isle of Man and the nature and purpose of the trade

529. As set out above, there was an unusual structure by which the Isle of Man companies (Global and Bridgewell) were owned by Rajinder Chatha. His ownership of the companies was not transparent nor open to the public.

530. There is no dispute that the Isle of Man companies were interposed between the Appellants and the importing customers purchasing duty suspended alcohol for export to mainland Europe. These customers were mostly continental European companies but also some British companies purchasing alcohol in mainland Europe.

531. However, the precise purpose for which they were established and used is disputed. The Appellants suggest that the purpose was simply a matter of commercial confidentiality.

532. In his witness statement dated 21 October 2016 at paragraph 7, Rajinder Chatha explained the rationale thus:

"Global and Bridgewell were set up for the purposes of commercial confidentiality. Specifically: EFB purchases its stock directly from manufacturers or authorised distributors. These manufacturers and authorised distributors would be unhappy if EFB was supplying some of this stock into non-UK markets where they (the manufacturers) have their own distribution channels. If aware of this, such suppliers would decline to trade with EFB on the basis that they attempt to control the worldwide market for their products. By arranging for Global and Bridgewell to sell into these markets, it is not so obvious that EFB is competing with the manufacturers' own (non-UK) authorised distribution channels.

These arrangements have been made clear to Isle of Man Customs and Excise (which, I understand, has full reciprocal arrangements with UK HM Revenue and Customs ('HMRC') from the outset (there was a pre-WOWGR visit in October 2011) and was also made clear to HMRC when HMRC (along with Isle of Man customs and Excise) visited Bridgewell / Global in April 2013. I was not at this meeting but understand from David Craine that he was very open with IOM Customs and HMRC.

Using a separate entity for the purpose of commercial confidentiality as explained above is something that I had discussed with HMRC prior to my move to the Isle of Man (an prior to Global / Bridgewell being incorporated)"

(Emphasis added)

533. The witness statement of Jatinder Chatha put it this way at paragraph 36-38:

"36. *With the exception of a single instance in around 2012, all stock sold by Global and Bridgewell has been purchased from EFB.*

37. The reason for this arrangement is for the important purpose of securing that the onward destination of duty suspended sales by EFB should remain confidential from EFB's suppliers. This is important because, as noted above, EFB purchases 99.9% of its stock directly from manufacturers or authorised distributors. Because these manufacturers/ distributors generally have their own distribution channels in non—UK markets, they would be unhappy if they knew that EFB were competing with them by supplying some of this stock into non-UK markets. By having an arrangement whereby EFB sells to Global and Bridgewell in order that Global and Bridgewell can sell into non-UK markets in direct competition with the manufacturers/ distributors, it is more difficult for those manufacturers/ distributors to figure out that it is their supplying EFB with that alcohol that makes it viable and allows EFB to compete with them in that market.

38. Using a separate entity for the purposes of commercial confidentiality as explained above is something that my brother Raj had discussed with HMRC prior to him moving to the Isle of Man (and prior to Global / Bridgewell being incorporated)".

534. The Tribunal rejects the assertion of the Appellants during the hearing that this was simply *"bog-standard commercial confidentiality"*. The Tribunal finds that the purpose of this arrangement in order to allow the Chathas to conduct the Appellants' duty suspended alcohol export business while keeping this masked from their UK suppliers (manufacturers and authorised distributors of alcohol). This is effectively admitted within the Appellants' own witness statements.

535. It was not commercial confidentiality in any typical sense ie. keeping price sensitive information or profit margins confidential from suppliers and customers. It was not even simply confidentiality as to the distribution channels being used. It was confidentiality with a clear purpose to circumvent the understanding that if it had been revealed to suppliers, they would not have agreed to supply to the Appellants when goods were to be sold on for export in competition with the suppliers' mainland

European distribution channels. It is admitted that the suppliers would have declined to trade for good reason if they had known the true purpose behind the Appellants' purchase of their goods.

536. There was no evidence or suggestion that the Appellants were in breach of contract with their suppliers in exporting the goods to mainland Europe or that it was otherwise prohibited in law, but it was not simply confidentiality to maintain a market advantage but confidentiality to trade in a way their suppliers would not otherwise agree to them trading.

537. The Appellants contend that they have always been open and honest about the reasons for setting up the company structure in a manner which hides Rajinder Chatha's involvement in Global / Bridgewell.

538. It is important to distinguish between four categories of information that may have been disclosed to HMRC or IOM C&E at any one point:

a) That Rajinder Chatha was the beneficial owner of Global and Bridgewell (the IOM companies);

b) That there was therefore a common beneficial owner of the Appellants and IOM companies which constitutes a connection;

c) The nature of the trade in duty suspended alcohol from the Appellants and IOM companies was that of the wholesale export to customers in the European mainland (whether British or European registered companies); and

d) That the purpose of this arrangement was to mask or conceal the nature of the export trade from the Appellants' suppliers who would decline to trade with the Appellants if they had known of this.

539. The Tribunal finds that, contrary to Rajinder and Jatinder Chatha's assertions, Rajinder Chatha (or any other representative of the Appellants / Global & Bridgewell) at no time before 25 February 2016 discussed with HMRC the use of Global and Bridgewell for the purposes they suggest in their witness statements, let alone did they gain any approval or 'blessing' for this mechanism. At no point prior to June 2015 did the Appellants even disclose to HMRC that Rajinder Chatha owned Global and Bridgewell.

540. The information which was disclosed to IOM C&E from an early stage was that Rajinder Chatha owned Global and Bridgewell. The nature and purpose of the companies' trade was communicated by David Craine to IOM C&E. However, this did not reflect the true nature and purpose finally disclosed in the letter from Philip Rimmer of 25 February 2016 and witness statements of Jatinder and Rajinder Chatha dated October 2016. It is unnecessary to resolve whether this is because the Chathas did not explain the truth to Mr Craine, or that he misunderstood what they told him or he did not fully disclose the truth to IOM C&E.

541. This Tribunal takes into account the following matters in coming to this conclusion.

542. Rajinder Chatha's beneficial ownership of, and the relationship between, the Appellants and Global/Bridgewell was the subject of misleading and untruthful information passed to HMRC by various personnel of the Appellants, Jatinder Chatha and Philip Eagleton (and Hardeep Chatha, the manager of the two IOM companies and his nephew) between July 2014 and February 2016.

543. In particular, lies were told to HMRC at the meetings on 8 July 2014, 9 September 2014 and 11 March 2015 and in email correspondence dated 29 September 2014 and 15 June 2015. These lies consisted of assertions that Global and Bridgewell were unconnected to the Appellants or to Rajinder Chatha or that the two companies traded independently of the Appellants. The reasons for finding that this information given by the personnel to HMRC was misleading and untruthful are set out above within the chronology.

544. If the purpose of the arrangement had simply been 'bog-standard' commercial confidentiality there would have been no need to lie to HMRC as Jatinder Chatha and Philip Eagleton did between July 2014 and June 2015 regarding the nature of the ownership and relationship between companies.

545. This was compounded by the lies they told to the Tribunal when giving evidence. The reasons for finding that there were lies told during evidence to the Tribunal have also been set out above within the chronology.

546. The attempt to mislead HMRC as to the ownership of the Isle of Man companies and the nature of their relationship to the Appellants coloured the scope of the due diligence put forward by the Appellants which they provided at the time of this being put forward. It was only as late as April 2016 when the Appellants themselves provided due diligence files conducted by Global/Bridgewell on the latter companies' direct customers (on which they purport to have conducted checks, from before November 2014).

547. The Tribunal is satisfied that the Appellants were not open and honest as to Rajinder Chatha's beneficial ownership and the nature and purpose of the trade between the Appellants and Global / Bridgewell prior to February 2016. Indeed, it was only upon the supply of witness statements from Rajinder and Jatinder Chatha in October 2016 in support of the appeal that they finally directly disclosed the true extent of the reason for establishing the companies and trading in this fashion.

548. The account on behalf of the Appellants has changed over time.

549. David Craine, a director of Global and Bridgewell, gave evidence which alone demonstrates the changing nature of the justification for the company group structure.

550. Mr Craine is recorded as having told IOM C&E in a telephone call on 25 March 2013 that "the businesses were set up in a manner so that the big supermarket (sic) in the UK were not aware that they were being supplied by the same company ie. for

commercial purposes" (emphasis added). Although in oral evidence he stated he could not recall the conversation, he clarified that "I can't deny it if that's what he says he's recorded".

551. In Mr Craine's witness statement to this Tribunal, he described telling IOM C&E that the purpose of the structure was as follows: "*suppliers (such as Heineken) in the UK were not aware that European Food Brokers Ltd were selling their stock into the wholesale market and Global and Bridgewell had been set up to attempt to mask from the likes of Heineken what European Food Brokers was doing. The commercial reasons for setting up these companies has never been hidden from IOM C&E. I know that HMRC and IOM C&E have an open dialogue with each other and this information would be provided to HMRC should they request it*" (at paragraph 4).

(Emphasis added)

552. In oral evidence, Mr Craine first described the purpose behind the structure as being to keep confidential from the customers the source of the supply rather than keep confidential from the suppliers the destination of the goods:

> "3 A. Suppliers were supplying goods to Global and Bridgewell.
> 4 We didn't want the Global and Bridgewell customers
> 5 necessarily to know where those goods had come from. So
> 6 my understanding was that that was the commercial
> 7 confidentiality that Mr Chatha was looking for." (emphasis added)

553. However, later in oral evidence, inconsistently, Mr Craine also gave an account agreeing with the justification given by the Chatha witnesses:

> "5 MR NATHAN: Let me just clarify that. The purpose of the
> 6 arrangement was to keep hidden -- to mask from the
> 7 suppliers, distributors and producers, the fact that
> 8 goods being purchased by EFBL in England were intended
> 9 to be sold for export through these two interposed
> 10 companies, Bridgewell and Global?
> 11 A. That is my understanding, yes."

554. During the hearing the witnesses for the Appellants (the Chatha family) persisted in saying that their trading relationship is one at arm's length (while at the same time giving contradictory evidence). This belies either a lack of honesty or a deep confusion or misunderstanding about what arm's length trading involves: more likely the former, given the experience in the trade of the individuals involved.

555. The Tribunal is satisfied that the relationship was not one of arm's length trading. Global and Bridgewell were deliberately interposed companies acting simply as vehicles for EFBL's export business.

556. Jatinder Chatha agreed without qualification that paragraph 37 of his witness statement, as quoted above, summarised the nature of the relationship between EFBL and Global/Bridgewell as he understood it at the time of his witness statement. No witness has sought to suggest that he was wrong in this regard.

557. His brother, Rajinder Chatha, in his witness statement at paragraph 7, quoted above, explained the relationship as one which allows EFBL to compete with manufacturers outside the UK. Rajinder Chatha should know, since he is the owner of all the companies and businesses with which these appeals are concerned, and he conducts the trade negotiations for EFBL with its suppliers.

558. The Tribunal is therefore satisfied, given these clear statements, that Global/Bridgewell are no more than vehicles which allow EFBL, one of the two Appellants, of which Jatinder Chatha is a director and Rajinder Chatha the beneficial owner, to participate in the non-UK market. This is not arm's length trading: the sister companies are not behaving as would be expected in a normal trading relationship vis-a-vis the Appellants; they in truth operate to allow EFBL to access the non-UK market while going undetected by their suppliers. It is not properly arguable that there was an arm's length relationship given this background.

559. The inaccurate description of arm's length trading has however persisted even in the evidence before this Tribunal. For example, Jatinder Chatha stated the following:

> "11 Isle of Man. If this were truly an arm's-length company
> 12 which was not associated at all with you, this would not
> 13 obviously comply with the alcohol due diligence
> 14 condition?
> 15 **A. No, I agree.**
> 16 Q. You agree. The reason why there isn't a problem, as
> 17 I understand it, is that your case is that here are
> 18 companies which are closely associated.
> 19 **A. Yes.**
> 20 Q. In effect the companies in the Isle of Man are doing
> 21 your business for you, aren't they?
> 22 **A. No, they are still arm's length.**
> 23 Q. They are doing your export --
> 24 **A. They are just strictly commercial."**

560. The Appellants cannot have it both ways. If the sister companies trade with the Appellants at arm's length, then they ought to have conducted appropriate arm's length due diligence on them because they would not have ready knowledge of and access to sensitive information on their direct customer, such as who the latter's customers were, what due diligence they conducted on their own customers, what their own financial health was. They clearly failed to do so, as explained below. If (as the Tribunal has found) they were not trading at arm's length then they have persisted in attempting to mislead both HMRC and this Tribunal on the true nature of the relationship. Neither is the conduct of fit and proper persons.

561. Rajinder Chatha was not a witness of truth. In particular, his account in oral evidence of why Global and Bridgewell were set up as separate corporate entities (from EFBL and WWL), using nominee shareholders and with ownership not available to the public, was markedly different both from the account given by him and other witnesses in their statements to this Tribunal, and indeed even changed through his oral evidence.

562. Despite commenting on this matter in his statement of 27 March 2017 at paragraph 3 and correcting an error in his first statement at paragraph 7, he made no change to the substance of the rationale for setting up his businesses in this way, as explained in his first statement to this Tribunal.

563. When asked about the establishment of these companies by his own Counsel, he explained that setting up the businesses in the Isle of Man arose from the director of Global Sourcing and Distribution Ltd and Inter Retail Solutions Ltd suffering a stroke in late 2010 which rendered him unable to continue working, rather than any other purpose. This implied that the purpose was the same as that behind Global Sourcing and Distribution Ltd and Inter Retail Solutions Ltd, which he explained thus:

> "1 **A. Again if I can go back, every manufacturer has got sales**
> 2 **targets that they want to achieve. If you look at**
> 3 **a sales structure within a manufacturer's business they**
> 4 **will probably have four divisions within a company: one**
> 5 **will look after the supermarkets, one will look after**
> 6 **the wholesale, one will look after convenience, and the**
> 7 **other, the term they use nowadays is "route to market",**
> 8 **which means anything that falls outside of them three**
> 9 **categories.**
> 10 **Each one will have a sales director, and each sales**
> 11 **director will have a sales target and a bonus. So it's**
> 12 **a case of they are all desperate to sell stock and they**
> 13 **want to achieve their targets. So prior to 2007 when we**
> 14 **set these up, we had had a couple of instances where we**
> 15 **had sold stock to certain retailers or wholesalers and**
> 16 **they had used our invoices against us. So I'm going**
> 17 **back to the manufacturer saying: how can I buy this**
> 18 **stock cheaper from European Food Brokers than I can buy**
> 19 **from you? So basically the reason for setting these up**
> 20 **was to put that link in, so there was some commercial**
> 21 **confidentiality between us selling to the retailer and**
> 22 **it not being used against us**."

564. There was no mention at all in the rationale behind these two predecessor companies having anything to do with the *export market*, and the suppliers wishing to prevent trade into that market in direct competition with their own channels.

565. When the purpose set out in his first witness statement, quoted above, was put directly to him, Rajinder Chatha became evasive and inconsistent with the accounts he gave previously. He sought to distance himself from the clear statement in his own

witness statement at paragraph 7 *"If aware of this, such suppliers would decline to trade"* as well as, for instance, the letter of 25 February 2016 sent by Philip Rimmer, that suppliers were not aware that he was in truth supplying the export market *"*[they] *would otherwise decline to trade……. be unhappy if they became aware"*.

566. He not only asserted that at some level there was such knowledge within suppliers, but also gave changing accounts of who was aware of the true position within the suppliers' organisations:

> "14 **Now, as far as when I say my suppliers,**
> 15 **we're talking about the manufacturer. As far as the**
> 16 **sales director or the salesman that was selling me the**
> 17 **stock, did they know what I was doing? I'd say majority**
> 18 **of them did. But did the whole group that they were**
> 19 **working for know? No, they didn't."** (Emphasis added)

> "18 Q. So far as the senior management of each of these
> 19 companies -- the manufacturers and the suppliers are
> 20 concerned, they did not know, did they, that you were
> 21 buying stock for export?
> 22 **A. Some senior managers did, yes.**
> 23 Q. Some senior managers did. Well, who?
> 24 **A. Who would you want to know? So a channel director would**
> 25 **know what I was doing."** (Emphasis added)

> "24 **A. So when you say their management or their senior**
> 25 **executive, some of the CEOs of the countries knew what**
> Page 120
> 1 **was happening**.
> …
> 11 Q. And if this became public knowledge within the
> 12 distributors -- if it became known within the senior
> 13 management of the distributors and manufacturers that
> 14 you were doing this, their own managers above them or
> 15 the directors of the company would be furious, wouldn't
> 16 they?
> 17 **A. Like I said, some of the directors knew.**
> 18 Q. Sorry, you are now elevating it. You are going higher
> 19 and higher and higher.
> 20 **A. Well, I said it in my previous -- before this question.**
> 21 **Some of the managing directors of the UK companies knew**
> 22 **what was happening."**

(Emphasis added)

567. The varying assertions that the un-named sales directors, salesmen, senior managers, channel directors, CEOs of countries, directors and managing directors of suppliers (very large manufacturers and authorised distributors of alcohol) knew that the goods purchased by Rajinder Chatha were in part destined for export is entirely contrary to what Rajinder Chatha had said in his witness statement at paragraph 7 appended by a statement of truth.

568. The Tribunal is satisfied that Rajinder Chatha has changed his account and is not a witness of truth in this regard. He changed his account when he thought that this would advance his companies' case.

569. This is further underlined by the change in his evidence in relation to the effect of the suppliers knowing that he was supplying the export market. His witness statement at paragraph 7 is clear: *"If aware of this, such suppliers would decline to trade with EFB"*. Yet when giving oral evidence this account changed substantially (to give but one example, similar assertions were made repeatedly):

> "2 Q. Let's just read what you said:
> 3 "These manufacturers and authorised distributors
> 4 would be unhappy if EFB were supplying some of its stock
> 5 into non-UK markets as they, the manufacturers, have
> 6 their own distribution channels. If they were aware of
> 7 it, such suppliers would decline to trade with EFB."
> 8 That's very clear -- wait for the question. It's
> 9 very clear that if that information escaped to the
> 10 senior management of these companies, they would refuse
> 11 to supply you?
> 12 **A. The action they would have taken would have been to**
> 13 **restrict the amount of volume that I got.**
> 14 Q. I'm afraid you say the words --
> 15 **A. I understand.**
> 16 Q. -- "would decline to trade with EFB".
> 17 **A. They would restrict the volume.**
> 18 Q. So now you are saying something slightly different,
> 19 aren't you?
> 20 **A. Well --**
> 21 Q. You wave your hands, but no, it's different, isn't it?
> 22 **A. Okay, it's different."**

570. Even this account was moved away from during cross examination:

> "17 Q. So what you're saying is if they became aware, they
> 18 wouldn't close your accounts, they would reduce the

19 stock which would be made available to you so as to
20 confine it to UK business only?
21 **A. If that's what the action they wanted to take, yes.**
22 Q. Well, that's what you just told me is the action they
23 would take.
24 **A. <u>I'm not saying they would take it, they could take it</u>"** (emphasis added)

571. This is obviously a significant change of evidence. It cannot be explained by a simple misunderstanding or loose language. The words *"decline to trade"* are unambiguous and are not synonymous with *"reduce the volume of trade"*.

572. The effect of these changes of evidence was to attempt to distance himself from the earlier assertions that suppliers would mind very much if they knew the true arrangement and would cut off trade.

573. His new account, that some individuals in the suppliers' organisations knew, even at country CEO level, undermines the logic of going to the length of setting up two companies in the Isle of Man whose ownership was not public, with nominee shareholders, to mask his true ownership. If no one really cared much about his companies supplying the export market, which was the impression he attempted to convey when giving oral evidence, there would be no great need to go to such lengths. The Tribunal is satisfied his oral evidence was both illogical and untrue.

574. Rajinder Chatha was similarly unpersuasive in his attempts to persuade the Tribunal that he had disclosed to Isle of Man Customs and Excise the true reason for setting up Global and Bridgewell in the manner he did, namely to mask from suppliers the supply by EFBL to the export market.

575. As set out above, Mr Foster, a director acting on behalf of Bridgewell and Rajinder Chatha, having gone to the length of writing twice in March 2017 to IOM C&E to ask what information was shared with HMRC, the key question, namely whether IOM C&E knew the reason for setting up Global and Bridgewell was to keep the suppliers in the dark about exporting their goods was never asked so it was never answered (see above for consideration of the letters from Charles Coué).

576. Rajinder Chatha offered no explanation for why this important question had not been asked. The most likely explanation for not asking this question is that IOM C&E had never been told the real rationale for the setting up of Global and Bridgewell, and so would not be able to confirm this in writing.

577. Rajinder Chatha made a belated attempt to address this by providing a further letter from Mr Charles Coué dated 27 June 2017 (which is also discussed above). It is notable, however, that yet again he avoided asking IOM C&E the one important question on which he was cross-examined. It is worth reiterating that the true reason for setting up the companies cannot be equated with commonplace "commercial confidentiality".

Representations on due diligence conducted on Global and Bridgewell in Mr Rimmer's 25 February 2016 letter

578. Mr Rimmer went on to state in his letter of 25 February 2016, '*GBDL and BL do not provide our clients with access to their respective due diligence records or indeed, any other business records. GBDL and BL have never permitted access by European Food Brokers Ltd and Whittalls Wines Ltd, to their due diligence records but have instead confirmed to European Food Brokers Ltd and Whittalls Wines Ltd that from the detailed and comprehensive due diligence which they have themselves undertaken, they are satisfied with the onward supply to their own customers and with their customers' end user markets*.'

579. Later in the letter he stated, *"Again, as explained above, as distinct commercial entities, our clients' customers [GBDL/BL] do not provide our clients with access to their respective due diligence records but have instead confirmed to our clients that from the detailed and comprehensive due diligence which they themselves undertaken, they are satisfied with the onwards supply…".*

580. Given the nature of HMRC's concerns, and the case that the Appellants were asserting at this time, it is extremely unlikely that Mr Rimmer did not take direct and specific instructions on this precise and important point or that his clients simply overlooked his mistake on this important point (repeated twice in his letter). Furthermore, the position as then stated by Mr Rimmer was, in fact, entirely consistent with the information provided to HMRC previously, and with witness statements dated the same day (which he helped to draft):

(i) Hardeep Chatha's witness statement of 25 February 2016 at paragraph 16 states: "EFB is aware (because I have told Jatinder Chatha and Phil Eagleton) of the approach I take to due diligence".

(ii) Mr Eagleton's witness statement of 25 February 2016 states at paragraph 12: "…with regard to our two duty suspended customers, [GBDL and BL], we have obtained their confirmation that from the detailed and comprehensive due diligence which they have themselves undertaken, they are satisfied with the onward supply to their own customers and their customers' end-user markets…".

581. Thereafter, starting on 2 April 2016, the account of the Appellants' access to Global / Bridgewell's due diligence again changed markedly: the Appellants began to assert that Jatinder Chatha (on behalf of EFBL/WWL) was allowed to inspect the due diligence documents in the Isle of Man:

(i) In his letter of 2 April 2016, Mr Rimmer stated, "Further, whilst Global/Bridgewell did not provide to our clients copies of documents gathered during the due diligence process, our clients were (1) aware of the steps in Global/Bridgewell's due diligence and (2) were allowed to inspect documents…".

(ii) In Hardeep Chatha's witness statement of 11 May 2016, at paragraph 18, he adds to his earlier account: he repeats, "EFB is aware (because I have told Jatinder Chatha and Phil Eagleton) of the approach I take to due diligence" before continuing, "Jatinder Chatha has been to my office on the Isle of Man several times over the past years and has checked the due diligence I carry out on my customers." Hardeep Chatha states in his witness statement, at paragraph 68, that his failure to mention that Jatinder Chatha inspects his due diligence documentation was also an error: "*This was an error on my part in my witness statement made in the high court proceedings on 25th February 2016*".

(iii) Jatinder Chatha expanded even further in his witness statement of 12 May 2016, starting at paragraph 17.a., that he examined Global and Bridgewell's due diligence by *"randomly picking out documents to see what had been done and what had been recorded as being done"* and that he *"interrogated"* them and discussed the matter with Hardeep Chatha, his nephew.

582. In the course of these proceedings, the Tribunal is satisfied that the Appellants' witnesses have attempted to change earlier statements.

583. Mr Rimmer states in his witness statement, at paragraph 13, that his assertion in his letter of 25 February 2016, "was a genuine mistake which was derived from a misunderstanding as to whether EFB and Whittalls had access to GBDL and BL due diligence records, given that no copies of such were provided".

584. Mr Rimmer was asked about this *"mistake"* during the trial. Despite the evidence put to him (and as set out above) he suggested that: "*I haven't seen anything in anything that you've suggested to me to suggest that they didn't have access to the material*."

585. The Tribunal does not accept the evidence of Mr Rimmer that his letter was a mistake in this regard. The Tribunal is satisfied he was accurately communicating his instructions from his clients, on behalf of the Appellants, at this time. The Tribunal is satisfied that there has been a marked change of the Appellants' position on the extent of the due diligence conducted on Global and Bridgewell and this undermines the reliability and credibility of their accounts.

25 February 2016 witness statements on behalf of the Appellants

586. As is clear from the above, on the same day as the reply to the minded-to letter, M&R Tax Advisers emailed Officer Lewis enclosing witness statements of Philip Rimmer, Hardeep Chatha, Philip Eagleton and Jatinder Chatha.

26 February 2016 High Court hearing and Interim Injunction

587. On 26 February 2016, at a High Court hearing of the Appellants' application for an injunction, Mr Justice Ouseley ordered (by consent) that HMRC were not to revoke the Appellants' approvals before consideration of Mr Rimmer's substantive letter of 25 February 2016.

588. On 26 February 2016, the High Court issued an interim injunction that HMRC were not to revoke the Appellants' approvals until the injunction application was determined.

589. On 16 March 2016, the solicitor to HMRC (Helen Barnard) dealing with the case wrote to Philip Rimmer advising that HMRC had considered the Appellants' representations and were still minded to revoke.

590. As a result of Mr Rimmer's disclosure of 25 February 2016, it became apparent that far greater due diligence was required by EFBL/WWL in relation to due diligence being carried out upon the customers of Global and Bridgewell, as explained in her letter at paragraphs 14-18.

591. Ms Barnard offered Mr Rimmer a further opportunity to provide representations and herself provided two files of information including typed visit reports and samples of chains of transactions concerning goods held by WWL and sold through EFBL to Global and then traced by HMRC to missing traders and resulting in tax loss.

592. In light of this information, HMRC extended the deadline in respect of representations on revocation until 31 March 2016.

2 April 2016 correspondence and witness statement

593. On 2 April 2016 Philip Rimmer wrote to HMRC on behalf of the Appellants responding to HMRC's letter of 16 March 2016, making further representations and enclosing further due diligence documentation and a statement of Ayo Akintola, the managing director of EFB Retail Limited, the retail division of EFBL.

594. Mr Rimmer also stated that he had made a mistake in respect of due diligence: '*Further, Whilst Global / Bridgewell did not provide to our clients copies of documents gathered during the due diligence process, our clients were (1) aware of the steps in Global / Bridgewell's due diligence and (2) were allowed to inspect documents gathered as part of Global / Bridgewell's due diligence. To the extent that our letter of 25 February 2016 suggests otherwise, this was an error on our part*'. The Tribunal rejects this 'clarification' or explanation given as being a mistake on the part of Mr Rimmer - for the reasons set out above - it was a change of account by the Appellants.

6 April 2016 Due Diligence provided and Injunction proceedings thereafter

595. On 6 April 2016, Philip Rimmer sent Helen Barnard of HMRC four emails enclosing due diligence documentation of Global / Bridgewell in respect of three customers being CECL Trading Ltd, Euromotion Trading Ltd and Premier Inc Ltd, together with a 'current example' of due diligence with regard to Tara Beverages Ltd.

596. On 7 April 2016, the High Court witness statement of David Craine was provided by email.

597. On 21 April 2016, Helen Barnard of HMRC wrote to Philip Rimmer in response to his letter of 2 April 2016 (received on 4 April 2016) clarifying issues raised by the Appellants and enclosing information obtained on missing traders.

598. On 25 April 2016, Philip Rimmer wrote to Helen Barnard complaining about the quality of the disclosure provided by HMRC and seeking further information.

599. On 10 May 2016 HMRC wrote to the Appellants advising them that they proposed to proceed to revocation for the reasons set out in their 'minded to' letters, and that an application would be made to the High Court on 13 May 2016 for relief from the terms of the interim injunction, in order that the regulatory process could properly take its course.

600. On 13 May 2016, a hearing took place before HHJ Forster QC (sitting as a Deputy High Court Judge). The Appellants provided a number of witness statements just before the hearing. The High Court adjourned the hearing to allow HMRC time to consider the evidence. The Judge directed the Appellants to provide all further information which they wished HMRC to consider before any decision would be taken, to be delivered by 31 May 2016. No further due diligence material or files were, however, provided by the Appellants prior to the revocation decision.

601. On 13 May 2016, HHJ Forster QC had changed the terms of the interim injunction. The Judge allowed the Appellants until 31 May 2016 to provide further representations and gave directions for HMRC to notify the Appellants by 20 June 2016 if they were still minded to revoke. Any revocation would be stayed until a further order.

602. On 31 May 2016 Jatinder Chatha wrote to Helen Barnard on behalf of EFBL, providing further representations as to why the revocation decision should be revisited. He suggested that HMRC's assessment of the company was misplaced and HMRC had misinterpreted matters and that it amply met the ADD requirements of section 10 of EN196 and the Appellants had engaged the services of M&R Tax Advisers to regularly review its due diligence.

603. However, the letter appeared to represent a change of approach on behalf of the Appellants. It offered '*instead of revocation, sit down with us and our tax consultant to work out a practical way of meeting all your concerns – which we both entirely understand and are sympathetic to – whilst allowing this business to continue…..In short, we are willing. We urge the Commissioners to reciprocate and engage with us*.' Mr Chatha asserted that the Appellants recognised that *"this company needs to vouch for [GBDL and BL's] due diligence"* (at paragraph 20) and that hereafter, the company's records *"will include a greater particularity of the steps it has taken in carrying out its due diligence"* (at paragraph 24).

20 June 2016 revocation decision letters

604. On 20 June 2016, HMRC made the first decisions to revoke the Appellants' approvals and notified them by letter. However, these letters were re-issued on 8 July 2016 in order to correct some errors.

30 June 2016 – Injunction hearing

605. On 29-30 June 2016, a hearing of the Appellants' application for an injunction took place before HHJ Forster QC seeking to prevent HMRC *"giving effect to any revocation of the Claimants' excise approvals… until final determination of the Claimants' appeals to the [FtT] against those revocations or further order"*.

606. The Judge held that he had no power to grant the injunction, rejecting the argument that *CC&C* was *per incuriam*. However, he granted leave to appeal and an injunction that HMRC not give effect to revocation pending the determination of the appeal at the Court of Appeal.

607. The appeal at the Court of Appeal was listed to take place on 18-19 July 2017 following the conclusion of this appeal before the First Tier Tribunal (FtT), this Tribunal. However, it was indicated towards the end of the hearing that the injunction appeal would be compromised on terms that maintained the existing injunction preventing enforcement of revocation until the issue of this Tribunal's decision.

8 July 2016 revocation decision letters

608. On 8 July 2016, HMRC's revocation decision letters were re-issued with the same substantive reasoning, but corrected to amend errors in the pro forma wording arising out of the need to cater for the interim injunction which was in place in the High Court proceedings. These letters contained two annexes, Annex A, dealt with in detail below, and Annex B (a timeline of events).

Procedural History of the Appeal at the Tribunal

609. On 15 July 2016, the Appellants lodged appeals to the FtT against the revocation decisions.

610. On 4 August 2016, HMRC served a Respondents' notice (seeking permission to cross-appeal HHJ Forster QC's grant of an injunction) and an application for expedition of the hearing of the appeal.

611. On 8 August 2016, the FtT consolidated the appeals of the two Appellants which are now before the Tribunal.

612. On 4 October 2016 Judge Berner made directions for the filing of witness evidence and documents.

613. On 10 October 2016, HMRC filed its Statement of Case in response to the appeals.

614. On 21 October 2016, the Appellants filed witness evidence and documents.

615. On 15 November 2016, HMRC applied for an extension of time to serve evidence (previously directed for 18 November 2016), objected to by the Appellants.

616. On 18 November 2016, HMRC served witness statements of Officers Maskew, Gibson and Mountford, Michelle Williams and an initial list of documents.

617. On 21 November 2016, an application for expedition of Court of Appeal hearing was refused. Confirmation was given that the appeal and cross-appeal were listed for July 2017.

618. On 25 November 2016, the Tribunal allowed HMRC until 13 January 2017 to serve evidence, with the Appellants to serve evidence in response before 3 February 2017.

619. On 11 January 2017, HMRC wrote to the Appellants seeking agreement for an extension of time in respect of two witness statements. This was opposed by the Appellants.

620. On 13 January 2017 HMRC served its witness evidence, save for the statements of Officers Pitt and Lewis and made an application for further time in respect of those statements. The application was objected to by the Appellants.

621. On 18 January 2017 HMRC served the statement of Officer Pitt.

622. On 8 February 2017 HMRC's application for an extension of time was heard and granted by Judge Berner.

623. On 13 February 2017 HMRC served the statement of Officer Lewis.

624. On 14 February 2017 Judge Berner granted an extension of time for service of HMRC's witness statements. The Appellants were granted until 24 March to serve evidence in reply.

625. On 3 April 2017, the Appellants served further witness evidence (following two agreed extensions of time to 31 March 2017 and to 3 April 2017).

626. On 3 April 2017, Judge Berner ordered that all further hearings of these appeals be held in private. The Tribunal will return to this topic below.

627. On 26 April 2017, a Case Management Hearing took place before Judge Falk.

628. The appeals before the Tribunal took place at a hearing, sitting in private, over 25 days between 5 June 2017 and 14 July 2017.

629. The appeal at the Court of Appeal against HHJ Forster QC's order which was due to take place on 18-19 July 2017 did not do so. The parties compromised the appeal on the basis that the injunction preventing the revocation taking effect would continue until the decision of this Tribunal. The decision of the parties to maintain the status quo followed the judgment of the Court of Appeal in *ABC Ltd & Anor v HMRC* [2017] EWCA Civ 956 on 7 July 2017.

Factual Findings on the Four Evaluative Conclusions

630. The Tribunal makes the following findings in relation to the primary facts underlying the reasons for the four evaluative conclusions as set out in Annex A of the decision letters of 8 July 2016. This will enable the Tribunal to determine the reasonableness of the four evaluative conclusions and ultimate conclusion relied upon by HMRC that the Appellants were not fit and proper persons to hold approvals to trade in duty suspended alcohol such that these should be revoked.

631. Findings of fact are made on the balance of probabilities.

632. The approach taken to fact finding is set out above. In short, it is: (a) to find the facts in light of all the evidence heard during the appeal in 2017; (b) to apply these findings to the time of the decisions, in July 2016; (c) so as to assess the reasonableness of HMRC's conclusions and their underlying reasons at the time as against the facts now found.

Due Diligence

633. In summary, the Tribunal finds that HMRC's conclusion that the Appellants' due diligence was not adequate to comply with their responsibilities required by the ADD condition under section 10 of Excise Notice 196 was a reasonable one to have arrived at. In particular, the Tribunal is satisfied of the reasonableness of HMRC's determination that the Appellants failed to comply with the four pronged requirement set out in section 10.1 to assess, carry out checks, have procedures and document these.

634. It was reasonable for HMRC to conclude that the Appellants' due diligence remained insufficient to protect them from the risk of being involved in the supply of duty suspended alcohol leading to fraudulent tax loss within supply chains. The Tribunal is satisfied that it was reasonable for HMRC to decide that the inadequacy in due diligence carried out by the Appellants in conducting its duty suspended business over this time exposed the Revenue to an unacceptable risk of loss through fraud.

635. These findings apply to a significant period of time – from the date that the ADD condition entered into force on 1 November 2014 until the date of revocation of the Appellants' approvals on 8 July 2016.

<u>HMRC's reasons in Annex A of the decision letters</u>

636. HMRC provided detailed reasons for their view that the due diligence carried out by the Appellants had been and remained insufficient to protect them from being involved in the supply of fraudulent and tax loss supply chains and they had failed to comply with requirements set out in the ADD condition set out in paragraph 10 of Notice 196.

637. HMRC's reasons were set out at paragraphs 1-49 and 94-100 of Annex A to the revocation decision letters of 8 July 2016.

638. It is necessary to include all of paragraphs 11-49 and 94-100 of the reasons as the underlying facts and reasonableness of these are subject to challenge by the Appellants (Global is referred to as GBDL and Bridgewell as BWL):

"11. Set out below is a summary of the information you have given about the due diligence which you do on GBDL and BWL's customers:

a. On 8 July 2014 it was said that Mr Eagleton carried out due diligence on customers GBDL and BWL, and no mention was made of considering these businesses' due diligence on their customers.

b. On 9 September 2014 Mr Chatha stated that his brother, Mr Rajinder Chatha, completed credit checks on GDBL and BWL, had met with them in the IoM, and had visited their premises.

c. After the disclosure of 15 June 2015 as to the shared beneficial ownership of the businesses, a meeting was arranged for 30 July at which WWL's due diligence paperwork was uplifted.

d. On 9 September 2015 your adviser stated that he had advised WWL and EFBL to check the level of due diligence for their customer to see if they were robust enough. When asked what onward checks would be done on customers, Mr Chatha said that these consisted of discussions with GDBL and BWL, and that the last visit to GDBL and BWL had been in November 2014.

e. On 5 November 2015, Mr Eagleton said that WWL did not make due diligence checks on the new owners of goods in IEFW (i.e. GDBL and BWL's customers) because that was the responsibility of GDBL and BWL. He said that WWL do ask GDBL and BWL what checks they have completed on their customers, but that the exchanges were verbal and not recorded.

f. In the letter from your adviser dated 25 February 2016 (in response to the Commissioners' indication that they were 'minded to' revoke EFBL and WWL's WOWGR approvals), it was stated (at paragraph 37) that "*as distinct commercial entities, our clients' customers [Global and Bridgewell] do not provide our clients with access to their respective due diligence records but have instead confirmed to our clients that…they are satisfied with the onward supply…*".

g. However, your adviser in his letter dated 2 April 2016 stated that you agreed that GBDL and BWL's due diligence was important, and stated that *"Because of the common ownership and because of their knowledge of the experience and professionalism of the personnel working at Global/Bridgewell, our clients had confidence in the due diligence checks being conducted by Global/Bridgewell. Further, whilst Global/Bridgewell did not provide to our clients copies of documents gathered during the due diligence process, our clients were (1) aware of the steps in Global/Bridgewell's due diligence and (2) were allowed to inspect documents gathered as part of Global/Bridgewell's due diligence. To the extent that our letter of 25th February 2016 suggests otherwise, this was an error on our part"*.

h. On 4 April 2016, for the first time, some due diligence material was provided which you stated you had been given by GBDL and BWL, relating to previous years. There was no indication when it had been provided.

i. Most recently, and following the Commissioners' further indication of an intention to revoke, dated 10 May 2016) Jatinder Chatha provided a witness statement (dated 12 May 2016) in which he listed dates of visits to GBDL and BWL (6 visits between October 2012 and September 2014) at which he states he examined due diligence documents by *"randomly picking out documents to see what had been done and what had been recorded as being done"*.

He said that in September 2014 he "*interrogated*" GDBL and BWL about their due diligence procedures, and in December 2014 he discussed due diligence with Hardeep Chatha (an employee of EFB(IOM)L, GDBL and BWL) at EFBL's Walsall offices. Jatinder Chatha said he *"was and remain satisfied that the due diligence that [GDBL] and [BWL] undertake on their customers meet the published requirements of HMRC"*.

12. When the most recent statements are analysed against statements previously made, there are contradictions. At the 09 September 2014 meeting, Mr Jatinder Chatha stated that it was his brother, Rajinder Chatha, who met with GDBL and BWL and visited their premises. There was no mention of Mr Jatinder Chatha visiting the businesses in the Isle of Man. At the 05 November 2015 meeting, when discussing the due diligence on the customers' customer, Mr Eagleton stated that WWL do ask GBDL and BWL what checks they complete on their customers but that it was all verbal and not recorded (contrary to what is required by PN 196). There was no mention of Mr Jatinder Chatha making regular visits to the Isle of Man to conduct extensive reviews. Further, in your representative's letter of 25 February 2016, at paragraph (e) on page 4, it is stated in terms that "*GBDL and BL do not provide our clients with access to their respective due diligence records or indeed, any other business records."* Notwithstanding that this statement was later retracted, it is the Commissioners' assessment that it broadly corresponds with what was being said to their officers by EBFL/WWL employees and officials at meetings.

13. It is in this light that the witness statement of Mr Jatinder Chatha of 12 May 2016 is considered, and specifically his statement that Commissioner's position as to the extent of enquires made by WWL and EFBL into the due diligence checks completed by GBDL and BWL is inaccurate. Unfortunately, no records of the visits have been provided to the Commissioners to support this statement, and it remains the case that there is no documented evidence of the checks which were carried out, nor is there evidence that you have appropriate management governance in place to ensure that these checks are, and continue to be, carried out as intended (see Public Notice 196).

14. In all these circumstances, it is difficult for the Commissioners to have the necessary degree of trust and confidence as to your representations in this regard. Drawing on the above, the Commissioners take the view that the account most likely to be correct was that which was contemporaneously given, i.e. that checks by EFBL/WWL on GDBL and BWL's due diligence did not begin before 9 September 2015, when the advice of you adviser was to make checks. The Commissioners also take the view that the accounts of the level of checks which took place after that time was more accurately described contemporaneously, and was that verbal enquiry was made of GBDL and BWL as to their checks, which were not recorded.

15. In any event, the checks you have described, even in Mr Jatinder Chatha's 12 May 2016 witness statement, do not meet the requirements of Public Notice 196, because neither the historic checks, nor the process for the completion of ongoing checks, is documented. Accordingly, even if the Commissioners are wrong and checks occurred as described in the recent witness statement, they are no sufficient to properly inform and objective assessment of risk of fraud as required by PN196 and the ADD

16. The Commissioners have also reviewed the witness statements and documents provided by Hardeep Chatha on 11 May 2016 and David Craine on 07 April 2016. Their statements describe the due diligence checks conducted by GBDL and BWL on their customers. Having considered both statements, the Commissioners have identified some discrepancies in the accounts. Hardeep Chatha states that due diligence is conducted by him and describes the process that he follows when receiving information from a customer; if there are any discrepancies, he goes

back to them and asks for clarification. The due diligence checks are then said to be checked and reviewed by the directors.

17. However, the example of 'current standard' of due diligence exhibited by David Craine appears to contradict this account. The email chain within this bundle is clearly between David Craine and the potential new customer, Tara Beverages, and there is no email from Hardeep Chatha. However, the due diligence cover sheet is signed as completed by Hardeep Chatha on 02 December 2015. This appears to show the process as being different from what is claimed by Hardeep Chatha and that it is, in fact, David Craine who conducts the new customer due diligence process which is signed off by Hardeep Chatha. We note, though, that the due diligence sheet exhibited in David Craine's witness statement for Premier Inc Ltd has not been signed at all.

18. There is also an email conversation between David Craine and the director of Tara Beverages which indicates that on 03 December 2015, Tara Beverages were still yet to provide their 'actual VAT certificate' and 'utility bill for the office in Ireland'. However, despite this remaining outstanding, the 'due diligence check list' has been signed as complete on 02 December 2015 by both Hardeep Chatha and the director of Tara Beverages. This raises concerns as to the robustness of the due diligence process and the meaningfulness of the due diligence checks being conducted.

19. The Commissioners have reviewed the due diligence checks completed by GBDL and BWL, as set out in the documentation provided with David Craine's witness statement of 07 April 2016 and have concluded that it **does not** comply with the requirements of PN196. There is an emphasis on establishing the identity of the business and individual, but there is a lack of meaningful, further checks conducted. For example, the representative of Tara Beverages, Mr Sanjeev Bains has been identified as living in Dubai, running a business located in Ireland but storing stock in France. There has been no documentation provided to suggest that the reason given for this arrangement was investigated further, or whether any additional checks on this individual were conducted. There is no evidence that anyone within GBDL or BWL considered the commercial viability, in particular with regards to the risks inherent in trading in duty suspended alcohol, before deciding whether to trade. It appears that once a piece of information was obtained, it was accepted at face value and did not stimulate any further enquiry. It is a key component of the due diligence obligations in PN 196 that you should consider the viability and commerciality of the deal as a whole, which in the Commissioners' view has not been done to a sufficiently robust standard.

20. It is the conclusion of the Commissioners that there is a difference between the standard of due diligence which Hardeep Chatha says (in his witness statement of 11 May 2016) is carried out, and the due diligence checks conducted by GBDL and BWL which have been provided.

21. For the reasons set out above, the Commissioners are not satisfied as to the robustness of GBDL and BWL's due diligence, and the concerns as to the differences that are apparent between Jatinder Chatha, Hardeep Chatha, and David Craine as to how it is conducted, have influenced the Commissioners' decision.

Compliance with the ADD

22. The Commissioners consider that there is no, or no sufficient, structured, documented due diligence process in place to ensure that reasonable and proportionate checks are completed in your day to day trading to identify transactions which may lead to fraud, or involve goods on which the duty may not have been paid. For example, it was established at the meeting on 5

November 2015 that if the person responsible for completing the due diligence checks was not available, there were no procedures in place to enable those checks to be carried out. Notwithstanding that an instruction was given by Mr Jatinder Chatha that a 'checklist' should be implemented, it is of note that this was the position on 5 November 2015, after significant intervention and support from HMRC to improve due diligence processes. Further, in the event that due diligence checks showed a risk of fraud, there is no documented procedure in place to take timely and effective mitigating action, and there is no appropriate management governance in place to ensure that due diligence checks are, and continue to be, carried out as intended. Mr Jatinder Chatha stated that he is responsible for signing off new accounts and is confident in the due diligence checks being undertaken by his employees but was, on 5 November 2015, unaware of what processes were put in place by these individuals, and had to ask for clarification.

23. It remains the case that there is no record of the discussions between EFBL, WWL and their internal group customers GDBL and BWL as to their due diligence, nor is there evidence of EBFL or WWL testing that due diligence, nor of the outcome of any discussions about or inspections of that due diligence forming part of EFBL and WWL's assessments of the risk of fraud.

24. The standard of the procedures applied in relation to duty-paid goods was more robust than that applied to duty suspended goods, despite Mr Jatinder Chatha and Mr Eagleton stating that they did not think that there was a fraud risk with duty-paid goods. It is stated that risk ratings are applied to duty-paid customers following financial checks, and evidence has been seen that strategic reports, reports on directors and financial statements have been conducted on some duty-paid customers, but no such reports or annual accounts have been supplied for the duty suspended customers, GBDL and BWL (nor, by GBDL or BWL on their own customers).

25. Even after you were informed (on 9 September 2014 and 5 November 2015) that a number of the supply chains through EFBL, GDBL and BWL were ending with missing traders in other EU Member States, and that significant tax losses had arisen as a result, you continued to store and transport duty suspended goods sold by EFBL to GBDL and BWL, which were then sold by them to such businesses, and did not make any meaningful changes to your due diligence procedures that might have helped to identify the risk of such chains being formed in the future.

26. In considering your representations, we bear in mind the purpose of the ADD condition, which is to enable approved businesses and the Commissioners to combat fraud within the alcohol sector. We have also considered whether the due diligence that you employ meets what is expected of you by reference to the "FITTED" model (which assist traders in compliance with the ADD condition). The FITTED model highlights risk indicators and suggests checks which excise traders can apply in making decisions whether to make particular supplies of duty suspended goods. Taking the FITTED elements as a starting point, the Commissioners are of the opinion that your due diligence is deficient in a number of respects:

Financial health and **I**dentity of person with whom you intend to trade

27. Due diligence checks completed on EFBL's duty suspended customers, GBDL and BWL amounted to documents for identity of persons or companies only. There were no detailed financial checks undertaken, no reports or meeting notes to evidence visiting the businesses or inspecting their due diligence, no documented risk assessment of the transactions themselves and no secondary or follow up checks on any findings. Concerns with the documents held include, but are not limited to, having financial documents that do not include detailed financial records and identity documents which are years old with no apparent check to ensure those

details are still accurate (WOWGR certificates provided to you July 2015 dated 06/03/2014 and 07/03/2014 but no check with HMRC to ensure WOWGR registration is still live).

28. You had not translated documents from French which you had obtained relating to EU warehouses to whom goods that you sold to GBDL and BWL were despatched. You have explained why you felt this was unnecessary.

29. As explained above, the information provided about the exact relationship between EFBL/WWL and GDBL/BWL has changed over time. It is now clear, however, that EFBL/WWL does recognise a responsibility to identify and assess GBDL/WWL's customer. The Commissioners take the view, on the basis of the due diligence that you provided to us which you had obtained from GBDL and BWL, that the due diligence conducted by these companies suffers from the same deficiencies as the due diligence completed by you, in that it amounts to little more than the assembly of corporate and personal identification documents. You have provided a witness statement made by Mr Hardeep Chatha on 11 May 2016 which describes the due diligence procedures of GBDL and BWL. You also provided us with a witness statement from Mr Craine dated 7 April 2016 (a director of both companies until May 2015), which said simply that the due diligence procedures had been revised since the inception of the ADD condition and that during 2011 – 2014, he considered that the companies' due diligence obligations were being met. I have set out above, at paragraphs 9 – 21, the conclusions that the Commissioners have drawn on this topic.

Terms of any contracts

30. HMRC have not seen copies of any contracts with any business with whom you trade, be they customers, suppliers, warehouses or transport companies used. You have said that it is the norm for the industry that there are no written agreements. However, it is of concern to the Commissioners that there is no formal record of the arrangements between the parties as to what should happen, e.g. if goods fail to arrive or are not paid for, particularly in view of the value of the goods being supplied. Given your statement about concerns as to commercial risks (e.g. not getting paid), it is all the more surprising that you have chosen not to reduce to writing the terms on which you transact business.

31. Mr Jatinder Chatha states, in his 12 May 2016 witness statement, that: "the contractual arrangements are governed by the terms and conditions that are on the supplier invoices (for example when we buy champagne from Moet Hennessy these contractual terms are set out in the invoice issued to us by Moet. There is no separate document headed 'contract'. When we supply goods we include our terms and conditions on our invoices)." The Commissioners have considered this statement and find that it doesn't alter the fact that you have already confirmed in meetings with the Commissioners that there are no contracts in place and consider that contracts are not commonplace within the alcohol industry. The Commissioners have been unable (because you have not supplied any) to fully consider the claim made regarding the terms and conditions being detailed on the invoices and are therefore unable to assess whether their content would satisfy the requirements of PN196.

Transport of the goods

32. PN 196 advises retention of details of delivery vehicles and recording of any variations to expected transport arrangements. PN 196 at section 10 also makes it clear that the Commissioners expects traders to respond to warnings given and risks found as they occur.

33. A number of areas of concern relating to the transport arrangements for the goods sold by EBFL to GDBL and BWL have been drawn to your attention, which are dealt with in detail in the relevant paragraphs below (paragraphs 77-80 on trailer/vehicle swaps; paragraphs 71-76 on the weight of vehicles on cross-Channel ferries; and paragraphs 81-85 on replaced seals). For the reasons set out in those paragraphs, the Commissioners are not satisfied that, in relation to transport, you due diligence checks were or are robust enough to comply with the requirements of the ADD.

34. At the meeting on 5 November 2015, you were also made aware of the Commissioners' concerns regarding the goods that you had sold once they left the tax warehouse in France and Belgium. Officer Pitt informed you at that meeting that details of hauliers had been falsely recorded as having moved goods from Belogistiques warehouse. Those goods had, in turn, been traced to tax loss supply chains. The alleged end-customers within those supply chains are said to have sent cash by courier to the UK to pay the last UK-based company within the supply chain for the goods. These alleged end-customers based in other EU Member States have been found to be either missing or non-compliant traders. Tax assessments have been raised against a number of these entities in those other Member States.

35. We have considered what you have said about the due diligence checks conducted as to the hauliers who transported the goods from WWL's warehouse. Your adviser confirmed in his letter dated 25 February that your due diligence into the transport of the goods relied upon you being notified of any anomalies or irregularities by the haulier with whom you had contracted to transport the goods, and then appears to consist of querying any discrepancies with vehicle numbers. Your adviser also provided copies of corporate information relating to Hellmans, by way of the due diligence information that you had collated in respect of this haulier.

The **D**eal itself

36. The Commissioners have concluded that your due diligence did not include any, or any sufficient, measures designed to identify or guard against the risk of goods being diverted or sold within chains resulting in tax losses. In summary, the reasons for the Commissioners so concluding are:

a) The due diligence which was eventually provided to the Commissioners has not been tailored to take account of the specific requirements in paragraph 10 of PN 196. In particular, it amounts to little more than the collation of documents about identity, the fact of VAT and Companies' House registration. There is no evidence that any analysis of risk has been undertaken, for example as to whether there is a commercial need for the goods that EFBL sells, and WWL stores and transports, to be supplied as they had been, i.e. sold by EFBL to GBDL and/or BWL, and then sold on through at least one more broker trader, to persons who are alleged to run cash and carry businesses in other EU Member States. The lack of transparency regarding the relationship between you and your direct customers until 15 June 2015 has not assisted.

b) You provided (belatedly, on 4 April 2016) copies of due diligence that you said had been carried out by GBDL and BWL into some of their duty suspended customers. As explained above, it is the opinion of the Commissioners that this due diligence suffers from the same deficiencies as had been identified within your own: it contains no properly-tailored risk assessment regarding the deals with those customers, amounts to little more than the assembly of documents as to the existence and identity of companies and individuals, and further, it discloses no evidence that consideration has been given as to the commercial viability of the deal as a whole.

c) The due diligence that you carry out in relation to duty-paid sales is much more detailed than that which you apply to duty suspended sales (even assuming, your due diligence is enhanced by occasional undocumented checks carried out on GBDL and BWL's due diligence). While purely commercial risks (e.g. of not getting paid for goods supplied) are present with both types of sale, there is the additional risk of duty loss inherent in duty suspended sales, which your due diligence does not address. It was incumbent on you, as a registered excise dealer, to consider these risks.

d) Mr Chatha has stated that the standard of WWL's due diligence prior to July 2015 was *"not to the [current] standard"* that applied after that date. However, the due diligence which you provided to the Commissioners after 30 July 2015 disclosed no evidence of any structured process that may be geared to ensuring that the tax losses that had been notified to you are less likely to occur going forward.

e) Analysis of your trade shows that, on occasion, you were asked by your customer to send goods to different tax warehouses. You made the supplies without appearing to have made enquiries why different destination tax warehouses were requested for the shipment of goods. You were informed on 5 November 2015 that one warehouse to which goods were shipped from WWL (that is Belogistiques) had been closed down due to an investigation by Belgian customs authorities into suspected fraud. HMRC's investigations have revealed that four warehouses to which goods had been despatched have been closed down. Despite this, you have provided no evidence that you had queried the reason for a change in the warehouse being chosen to receive goods. In view of the information that had been provided to you prior to 5 November 2015 (i.e. since September 2014, you had been told that tax losses were occurring), the Commissioners consider that you ought to have made more careful enquiries as to what was happening to the goods once they had entered the supply chain in the mainland EU.

Your representations

37. I have considered the representations made by you and on your behalf as regards your due diligence.

38. In your letter of 02 April 2016 (paragraph 23) you claim that the officer's analysis of the due diligence checks conducted by your business is *"...superficial and self-serving in the extreme*…" and "…*failing to take into account much other due diligence information and documentation...*". You provide a list of checks that have been completed which you allege the Commissioners have not considered. I answer those points as follows;

a) *That you additionally visited your customers, GBDL and BWL, businesses and personnel in the Isle of Man* – Whilst officers were told on 9 September 2015 that a visit had taken place in November 2014, the Commissioners have not been provided with visit or site reports to record what happened at this or any other visit, nor how the customer (or their customer) was risk assessed, so were not able to consider whether the meetings were effective in meeting your due diligence responsibilities. No record of these visits have been kept. The most recent witness statements provide dates of visits for the first time, and some detail as to what checks were said to be made on due diligence documentation – this had been considered above.

b) You conducted VAT registration checks to confirm the validity of the GBDL's and BWL's VAT registrations – This was provided in the due diligence packs and has been considered.

c) You conducted WOWGR approval registration checks with HMRC National Verification Centre in Glasgow to confirm the validity of GBDL's and BWL's WOWGR approval

registrations - The Commissioners have seen copies of WOWGR certificates. However, the Commissioners records show that WWL made only one WOWGR registration check between 30 May 2013 and 22 January 2016 (which related to Seabrooks Warehouse, in September 2015). The Commissioners records show that EFBL made no WOWGR checks within that same period.

d) You obtained GBDL's and BWL's confirmation from the due diligence which they have undertaken, that they are satisfied with the onward supply to their own customers and with their customers' end-user market – As to GBDL and BWL's confirmation about their own due diligence, in part this is dealt with above. However, in terms of confirmation deal-by-deal, the Commissioners have not been provided with details to evidence when and how this has happened and can only consider the statement made by Mr Eagleton in the meeting of 05 November 2015 that 'checks on new owners' were done verbally and not recorded. There is no evidence as to how GBDL or BWL confirmed or evidenced they were satisfied with their customers' end user market. Overall, the failure to record the fact and outcome of checks for future use, or incorporate an assessment into the business's overall assessment of the risk of fraud, or put in place system of checks to use in day to day trading, weakens the strength of any such checks, even if they occurred in this way deal-by-deal. The discrepancies highlighted above (paragraphs 9 – 21) have been noted and their existence does not assuage the Commissioners' concerns in this regard.

e) *You kept duty suspended (as with duty-paid) due diligence under constant review* – It is the Commissioners' conclusion, from the information provided by you, that there is no structured or documented due diligence procedure in place, and when asked how often the due diligence was updated it was initially stated (at meeting on 08 July 2014) that it was once a year or if trade stopped of a length of time; at a subsequent meeting (09 September 2014) it was stated that it depended on whether you heard anything about your customers that concerned you. The only evidence as to the 'constancy' of review is in the assertions of the companies' directors; it is not corroborated by any documented evidence of systems or checks.

39. You state that the comment made by Mr Chatha during the 05 November 2015 meeting that the due diligence checks prior to July 2015 were *"not to the current standard"* has been taken out of context. You say that the pre-July 2015 checks were not inadequate. I have considered this point and read the meeting notes; however, the comment made by Mr Chatha was further expanded upon when he added that they had increased the level of due diligence checks completed when Officer Maskew had requested it. I consider that Mr Chatha did admit to a lack of sufficiency in due diligence prior to July 2015.

40. Mr Chatha states, at point 58-59 of the table appended to his 31 May 2016 letter, that Officer Maskew requested, by email of 06 November 2014, the due diligence for hauliers used by WWL and that this was provided by his business on 14 November 2014. Mr Chatha states therefore, that the Commissioners' statement that it wasn't provided until July 2015 is 'misleading in the extreme', and that the Commissioners should check Officer Maskew's email and retract this statement.

41. The Commissioners have reviewed this matter in light of your representations. Officer Maskew has confirmed that and email was received on 14 November 2014 from Mr Phil Eagleton which contained: 1 x Movement Guarantee for Hellmann Worldwide Logistics and 1x Movement Guarantee for Wincanton Holdings Ltd. Officer Maskew considered that these documents did not satisfy his 06 November 2014 request, which was for due diligence on hauliers used to transport goods for WWL. Additional documents were provided to HMRC in

July 2015 for Hellmann Worldwide Logistics, Wincanton Holdings Ltd and other hauliers. The Commissioners therefore conclude that one of two options is correct:

a. Either the entirety of the due diligence then in existence on the hauliers was supplied by you in November 2014. This means that the extent of due diligence being completed on hauliers at November 2014 was a check on the validity of the movement guarantee; or

b. Some documents were provided in November 2014, but this was not the total due diligence which was later provided only in July 2015.

In either case, the Commissioners have not had sight of the due diligence that was being conducted by you from November 2014 until July 2015 (apart from as set out immediately above) because it was not provided. The information obtained in July 2015 is considered to be insufficient to protect WWL from being involved in the supply of fraudulent or tax loss chains, and in either scenario there is no good reason why it took so long to be obtained or provided to the Commissioners.

42. The delay in providing the due diligence to the Commissioners when requested also casts doubt on your statement at paragraph 23 (e) of your 02 April 2016 letter that you kept duty suspended alcohol *"under constant review"*. If this was the case, the due diligence checks should have been easy to locate and to provide to the Commissioners. The fact that they were not provided in a timely fashion, despite numerous requests by Officer Maskew, has been taken into account by the Commissioners in reaching their conclusion, expressed above, that there is no properly governed and structured due diligence procedure in place, despite the introduction of the ADD condition and despite WWL having been informed in September 2014 of its involvement in the supply of alcohol into tax loss chains. It appears, from statements made by Mr Chatha and the absence of any information being provided to substantiate due diligence checks having been undertaken between November 2014 and July 2015, that none were carried out.

43. You have provided examples of the due diligence checks conducted by your customers, GBDL and BWL, on their customers to evidence that sufficient checks were being conducted. April 2016 was the first time that you provided examples of the due diligence conducted by GBDL and BWL and, by your own admission, you have previously only made oral enquiries into the standards of their checks. The Commissioners have analysed what you have provided and have concluded that it is not any more robust than the checks conducted by WWL or EFBL; therefore, it does not alter the decision.

44. In your letter of 02 April 2016, you suggest that the Commissioners are attempting to back date the enhanced ADD condition to the periods where the tax loss chains were identified. This is not the case. The Commissioners are notifying you of the tax losses which occurred previously in your supply chains which your due diligence checks at that time did not identify nor prevent. The Commissioners have separately analysed your current standard of due diligence checks, since the introduction of the ADD condition, to assess the risk of further tax losses within your supply chains.

Conclusions

45. The Commissioners have considered your representations in relation to WWL's due diligence checks, but their view remains unchanged. No new evidence or additional due diligence has been provided by you which alters the decision the Commissioners were minded

to make as set out in the letter of 08 February 2016. The reasoning behind the decision has been detailed in this letter.

46. Additionally, the comments and responses provided by the business at meetings held with HMRC between June 2014 and November 2015, and since the minded to revoke letters were issued, indicate that you are not engaged with the due diligence requirements. It appears that you are completing checks that you consider will satisfy HMRC, rather than to genuinely participate in the combatting of fraud in the alcohol sector.

47. You were advised in September 2014 that the goods sold by EFBL and stored at and transported from WWL premises, had been used in tax loss supply chains and that your due diligence was not robust enough to prevent this from happening again. The ADD condition was introduced in November 2014 and you were informed of the requirement to implement and complete robust due diligence checks.

48. Your due diligence was requested by the Commissioners but there was delay in providing it. This delay is a concern in itself, because it indicates that either there is no structured due diligence process in place, checks were not under "constant review" (as you have claimed) or at all. This appears to be further supported by the comment made by your adviser in the meeting on 05 November 2015 when Mr Rimmer added that *"it had been quite an exercise for the business to get all of this together"*. This comment suggests that there was a large amount of work required to collate the information. If there had been a structured procedure in place, the information should have already been available and easily accessible.

49. The only alternative reason for the delay in providing the requested information is that the business did not feel it necessary to comply with the request of the Commissioners. This of itself puts into question the fit and proper status of WWL and its directors."

……

Due diligence into onward supply chains, failure to identify and respond to risk with GBDL and BWL's customers, and evidence of contrivance in supply chains

94. In your adviser's letter of 2 April 2016, you accepted that you have a responsibility, in the circumstances of your trade, to assure yourselves of the veracity of GBDL's and BWL's customers (i.e. your intra group customers' customers); and you stated that you have been doing this by visiting GBDL and BWL and looking at the due diligence documentation they have compiled (as detailed above). Your representations state that your due diligence has identified no issues with regard to any personnel within your supply chains, and that you would like to know what due diligence checks could have been undertaken by you to identify issues with persons in the supply chain beyond your direct suppliers or customers. The Commissioners highlight the following matters:

95. Premier Inc Limited is a customer of GBDL and BWL, which purchased alcohol from BWL as recently as February 2016, and as to which evidence of the due diligence completed by GBDL was provided with Mr Craine's witness statement of 7 April 2016. This is a business which purchased duty suspended alcohol from GBDL, and sold it to a missing EU trader in 2014. Premier Inc Limited has a director by the name of Sukhwinder Todd. Mr Todd has been mentioned by name in judgments of the First-tier Tax Tribunal as being knowingly involved in transactions which have resulted in VAT losses through fraud. This is publicly available information.

96. Mr Jatinder Chatha states, in his 12 May 2016 witness statement that "various Google searches including 'Sukhwinder Todd fraud' have been undertaken on behalf of the Claimants and they did not reveal this this information. In addition a search was conducted *on the FTT website under the Appellant name 'Premier' and no relevant matched were returned".* The Commissioners have considered this statement and are again concerned as to the superficial nature of the checks that have been undertaken since being notified of this information.

97. In reality, it is easy to locate the details of this information in the public domain, particularly for a business which engages professional advisers to assist it with its due diligence. Methods include searching on a free case law database (for example, on bailii.org, which can search for names and phrases within judgments), or via Google. All that is required is searches of the type Mr Chatha carried out in respect of Premier to be carried out with Mr Todd's previous directorships. Mr Todd's previous directorships are listed on numerous free sites which list such company information, and anyway, seeking such information might be considered to be basic due diligence. These checks would lead to the case of Radarbeam, in which the FtT found that Mr Todd was knowingly involved in transactions which resulted in fraudulent tax loss. The information can be found by conducting a Google search for 'Sukhwinder Todd', this search returns the first/top match 'companycheck.co.uk' for Sukhwinder Todd. By clicking this link you can see 'Total directorships' of this individual. A secondary search was then completed for one of those companies 'Radarbeam Ltd' and the 4th link/4th from top match returned 'ipt.cc/news/the-latest-vat-tribunal-cases'. Once this is clicked, you see a list of cases which was updated 01 March 2016. On that list is 'Radarbeam Ltd', and when the link for the 'full decision' is clicked, you are directed to the ruling on the 'financeandtaxtribunals.gov.uk' website. Your inability to locate this information when it is easily accessible raises concerns as to your ability to conduct meaningful due diligence checks.

98. The Commissioners have documentation evidencing that CECL Trading Limited ("CECL") was a customer of GBDL until October 2012. CECL supplied alcohol purchased duty suspended from GBDL to UK businesses, who, in turn, supplied it to missing/non-compliant EU businesses and received sterling as payment. CECL was deregistered by HMRC from the VAT register with effect from 28 May 2013 and liquidators were appointed on 2 April 2013. Again, the due diligence conducted in relation to this company by GBDL was provided with Mr Craine's witness statement and the Commissioners' views on the quality of this due diligence are set out above.

99. Other due diligence checks might have uncovered numerous connections between businesses in the supply chains, or led to further questions being asked. Examples of connections discovered are:

a. CECL's director, Gurinder Gill, is also a director of SK Food & Drink Ltd, a customer of EFBL in duty paid goods.

b. The other director of SK Food & Drink Ltd until December 2013 was Ajminder Singh (55% shareholder). Ajminder Singh also shares ownership of Bar Leisure Holdings Ltd with Mr Rajinder Chatha, the beneficial owner of EFBL and WWL.

c. SK Food & Drink Ltd currently employ the services of a consultant, Toby De Vos, who was previously employed by EFBL. Mr de Vos also completes work for Pulse Products Ltd, who purchased goods from EFBL in 2011.

d. SK Food & Drink Ltd's previous director (between December 2011 and May 2013) was Avninder Grewal. During the same period Mr Grewal was a director of Maple Leaf Trading

Ltd, a business which purchased from Pulse Products goods that had been supplied by EFBL and GBDL. Maple Leaf Trading Ltd's customer was one of the businesses which had supplied goods to missing EU businesses and received cash sterling payments.

100. The Commissioners, when referring to 'supply chains', mean the supply chain as a whole and not merely the purchase by you and the immediate onward sale by you. It has already been confirmed by the Commissioners that no criminal convictions for excise/duty fraud offences or money seizures have been identified on the directors of your direct customers or suppliers, but that they relate to persons further along the supply chain. You state that you would be unable to identify such anomalies but the example given above highlights that one of the concerns relates to a direct customer of GBDL and BWL, i.e. Premier Inc Ltd."

Tribunal's conclusion on HMRC's findings set out in its reasons

639. The Tribunal finds that the primary facts relied upon by HMRC within Annex A as to the Appellants' due diligence have not been disproved on the balance of probabilities. The Tribunal is satisfied the primary facts upon which HMRC relied were established on the balance of probabilities on the evidence available as of 8 July 2016 and as of the hearing in July 2017.

640. The Tribunal, having heard the evidence from all the witnesses, is not satisfied that the Appellants have proved that any of the conclusions reached by HMRC within Annex A as to the Appellants' due diligence based upon the material available to it at 8 July 2016 was an unreasonable or perverse conclusion to reach. The conclusions which were based on the primary facts in Annex A were within the range of reasonableness based upon the material available as at 8 July 2016 as measured by the evidence heard during the appeal.

641. The Tribunal does not find that the conclusions reached by HMRC at 8 July 2016 took into account any irrelevant matters or failed to take into account any relevant matters.

642. The conclusions reached remain within the range of reasonableness having heard all the evidence as at the hearing of the appeal in July 2017.

643. If anything, for the reasons stated above, and below, the evidence against the Appellants has become stronger as a result of all the material considered in the appeal hearing than it was based upon the material available at the time of the revocation decision one year earlier.

Findings

644. The Appellants' approach to due diligence after the imposition of the ADD condition in November 2014 remained little more than an exercise in box-ticking and collation of paperwork with no meaningful analysis as required by the ADD condition and exemplified under the FITTED criteria.

645. As from autumn 2014, HMRC considered the due diligence material given to them by EFBL and WWL on the footing that the companies were genuinely acting at arm's length from Global and Bridgewell and the due diligence needed to be considered

from that point of view. HMRC's approach was based on (a) the misinformation provided to HMRC about the relationship between EFBL/WWL and Global /Bridgewell and (b) answers given on the Appellants' behalf in the two meetings held on 9 September 2015 and 5 November 2015. That was the position as at the date of the minded-to revoke letters dated 8 February 2016.

646. It is not seriously suggested by the Appellants that the customer due diligence carried out by EFBL and WWL on the two IOM companies complied with the requirements of the ADD Condition. It failed to do so in a number of serious and important respects: for example, see the chronology above in respect of the due diligence presented to HMRC in September 2015 by EFBL and WWL.

647. On 25 February 2016, following the minded-to letters, Mr Rimmer, the Appellants' adviser, explained to HMRC that the two IOM companies had been set up by Rajinder Chatha as vehicles by which to keep confidential from EFBL's suppliers the nature of its trade and it became apparent that they could not be considered to be dealing at arm's length with each other. As the Tribunal has found above, these actions were a deliberate and concerted plan on behalf of the Appellants to mask from their suppliers the nature of their trade. This was also masked from HMRC until February 2016, after the 'minded to' letters were sent.

648. The Tribunal has found that Hardeep Chatha, Mr Eagleton and other members of the Chatha family were well aware that the two IOM companies were set up for the purpose of hiding from the group's suppliers as to the markets in which they were selling.

649. Given the intimate 'family relationship' between the Appellants and the two IOM companies which were their sole customers for duty suspended goods, in order to comply with their due diligence obligations and as a starting point and a minimum, the Appellants needed to demonstrate that they had carried out appropriate and meaningful due diligence checks on the onward supply chain after the IOM companies, starting with their sister IOM companies' customers (i.e. the first extra-group customers). Even if EFBL and WWL relied on the quality of the due diligence being carried out by the two IOM companies, they needed to show that that due diligence itself was compliant with the ADD Condition.

650. Moreover, although EFBL/WWL asserted that they (through Rajinder and Jatinder Chatha) had made some checks on the quality of that due diligence, there were no records of any kind as to what had been examined, what conclusions had been reached and for what reasons such conclusions had been reached.

651. There was ample evidence to find a failure to demonstrate that a process was in place within EFBL/WWL which met these minimum requirements. At its highest, and amidst conflicting accounts, the Appellants were telling HMRC that some limited examination of the IOM companies' due diligence had been carried out by Rajinder Chatha and Jatinder Chatha, and both of them were satisfied with what they were shown.

652. One of the nominee directors of the two IOM companies, David Craine, gave evidence in the High Court proceedings in 2016 (see the chronology) that he was conversant with the requirements of due diligence for Global and Bridgewell and asserted (as he asserted during the hearing) that the due diligence carried out by Global and Bridgewell was, in his view, satisfactory. What was said by or on behalf of the Appellants was taken into account by Officer Lewis.

653. On 13 May 2016, the High Court had directed the Appellants to disclose by 31 May 2016 everything further that they wished to rely on before a decision was made by HMRC; and HMRC's solicitor had made it clear that that ought to include any customer due diligence carried out by the IOM companies upon which the Appellants wished to rely (see the chronology).

654. Judged by reference to the examples presented by the IOM companies and seen by HMRC prior to the 'minded to' letters, no reasonable person could have been satisfied as to the extent and quality of the due diligence carried out by the IOM companies. It was minimal, consisting – at its best – of a tick-box exercise, and it clearly did not satisfy the requirements of the four-pronged ADD condition, both before and after Excise Notice 196 came into force.

655. Following receipt of the 'minded to' letters dated 8 February 2016, the Appellants provided further disclosure as to due diligence, including documents from the Isle of Man companies. Even at this late stage, when High Court proceedings were underway, the Appellants' due diligence failed to demonstrate that they (through the related companies in the Isle of Man) were identifying and responding to risks in due diligence material, rather than simply assembling a set of very basic and minimal identification documents based (after 1 November 2014) on a basic, even simplistic, tick-box document; and were then making an informed assessment which was documented as required by the ADD condition.

656. For instance, in the material provided to HMRC at that stage, there were no follow-up checks of where these documents should have given rise to concerns, no credit checks, no obtaining of a trade reference, no obtaining of a trading history, no adequate inquiries into the actual nature of the customer's market and no explanation showing how the customer was contributing some value to the supply chain.

657. By way of a further example taken from the due diligence as it was disclosed to HMRC, Bridgewell conducted due diligence checks in March and April 2016 on a potential customer, Tara Beverages Ltd. Its owner resided in Dubai, but Tara Beverages Ltd was an Irish company, supposedly trading from premises in Cork, and storing duty suspended stock in France. There is nothing in the file, as disclosed to HMRC prior to revocation, to show an inquiry and a response as to the reason for this structure which may have shed light on its commercial rationale and viability. Documents relied upon to demonstrate due diligence contain inconsistent addresses which have not been queried and followed up.

658. The Appellants rely on a rental invoice from Tara Beverages Ltd, giving a Cork address of First Floor, No 6 Lapps Quay. However, the owner of Tara Beverages Ltd

corresponds in various emails to evidence the due diligence process, using an email signature giving a Cork address at 6th Floor, No 5 Lapps Quay. In the material provided to HMRC, there were no accounts and no trade references. There was no indication that the customer had any real substance at all, and the limited material gathered by Bridgewell was consistent with the company being questionable. This is an example of the Appellants' intra group company due diligence failing, more than 15 months after the introduction of the ADD Condition, to include appropriate checks and follow up checks, particularly since there were apparent and obvious discrepancies in documents given to Bridgewell.

659. It was inadequate to confine one's request about the customer's market by merely asking (by a closed question with a tick-box for the answer) for confirmation that the customer does not intend to resell the goods in the UK and to record vaguely that the end market is *"for consumption in the EC"*, yet HMRC were provided by the Appellants with no further documented inquiries and answers prior to the revocation of the approvals.

660. Although Hardeep Chatha claims to have investigated these arrangements, the email relied upon does no more than ask if Dubai is the business owner's place of residence and how much time he spends in Ireland. This does not constitute inquiring into the reasons behind the business structure.

Absence of Documentation

661. On the basis of the due diligence documentation which had been provided to HMRC by the Appellants, the Commissioners concluded in their decision under the heading "Due Diligence", that the Appellants had failed to comply with the requirements of ADD: "*...there is no, or no sufficient, structured, documented due diligence process in place to ensure that reasonable and proportionate checks are completed in your day to day trading to identify transactions which may lead to fraud, or involve goods on which duty may not have been paid*".

662. A key aspect of the ADD requirements explained in Excise Notice 196 section 10 is that those with the relevant approvals "*document the checks you intend to carry out and have appropriate management governance in place to make sure that these are, and continue to be, carried out as intended*".

663. No documented risk assessment procedure or policy document prepared by the Appellants or authorised representatives was provided to HMRC prior to the revocation decisions.

664. The Appellants failed to achieve the straightforward requirements both to provide a documented process, and to keep a full audit trail of all due diligence they claim to have conducted. Notably, in relation to their first arm's length customers, in other words the customers of Global and Bridgewell, the Appellants rely on their alleged checks on Global and Bridgewell's own due diligence.

665. For instance, Jatinder Chatha asserts "*The material [GBDL and BL's due diligence on their customers] was considered on my regular visits to the IoM and I was*

satisfied that it met the ADD requirements". Further, his evidence is that he did not visit the Isle of Man at any time between 1 November 2014 and revocation. In fact, as he accepted his last visit was 18 September 2014. Such examples of customer due diligence as were provided by the Appellants to the Commissioners demonstrate that the due diligence by Global and Bridgewell did not satisfy most of those requirements.

666. The Appellants accept that they did not record the checks they undertook on the first arm's length customers in their supply chain (i.e. Global and Bridgewell's customers) nor discussions with Global and Bridgewell on the latter two entities' due diligence. According to Jatinder Chatha's witness statement: "*Keeping notes of such intra-family discussions is something that really didn't occur to me*". Even when the Appellants were well aware of the concerns of HMRC as to the quality of their due diligence, there was no change in this respect made known to HMRC prior to the revocations.

667. Crucially therefore, the Appellants did not comply with the documentation requirements of Excise Notice 196, despite being notified of its content numerous times, beginning by letter dated 16 September 2014.

668. The Appellants have stressed their reliance on their intra- group companies' due diligence as evidence that they complied with the ADD requirements in place from November 2014, yet they failed to document any of their alleged checks on the IOM companies' due diligence.

669. Notably, Jatinder Chatha's evidence in his witness statement was that he visited the Isle of Man on 18 September 2014 during which new procedures and processes were discussed for implementation in time for the new due diligence condition.

670. There was only one person within EFBL supposedly carrying out customer due diligence and one person, Mr Eagleton, carrying out WWL's due diligence. If either of them 'fell under a bus', it would not be possible to know how much undocumented due diligence (if any) had been done.

671. This is not a mere technical requirement. The requirement to document serves several key purposes:

a. It allows holders of approvals to have in place robust monitoring systems, which are consistent and not ad hoc. It permits such persons to review past due diligence records to ascertain if changes have occurred in supply chains which are suspicious and therefore warrant further investigation. Reliance on memory alone is inadequate.

b. It provides a way in which HMRC can assess the quality of due diligence. Part of being a fit and proper person is having the ability to demonstrate to HMRC that due diligence is appropriate, tailored and sufficiently detailed. This is not possible, or at least much more difficult, without documentation of due diligence check performed.

c. It ensures that, if the person who conducts the due diligence is no longer available, such as through illness, changing employment or retirement, the business retains the

relevant due diligence information with its available documentation (in other words a trail which can be audited).

FITTED Checks

672. HMRC concluded that in key respects there had been serious due diligence failures by the Appellants. There was ample evidence to support such a finding from the due diligence materials provided to HMRC by the Appellants. HMRC considered the "FITTED" model, set out at section 10.2 of Excise Notice 196, which provides guidance to those subject to the ADD requirements in relation to the type of checks their ADD should involve.

673. The first and second letters of FITTED stand for "**F**inancial health of the company you intend to trade with" and "**I**dentity of the business you intend trading with". The Tribunal is satisfied that the Appellants did not provide evidence of adequate ADD in relation to these issues.

674. The requirement is for much more information to be obtained beyond simple identification, see section 10.6 of EN196.

675. The Appellants provided no record of credit checks on their customers, and their first extra group customers. This is a basic investigation into the financial health of the customer with which trade is intended which Excise Notice 196 specifically refers to. No, or a poor, credit rating is cited as a risk indicator.

676. Examination of the due diligence carried out by Global and Bridgewell, after the introduction of the ADD condition, and on which the Appellants rely, illustrates that it fell far short of the requirements of Excise Notice 196 in respect of checks on the identity of the business with whom trade was intended.

677. To give the one example relied upon by Officer Lewis at paragraphs 94-100 of Annex A of the revocation decisions, due diligence on Premier Inc Limited was provided by the Appellants on 6 April 2016, and Premier was still buying alcohol from Bridgewell in February 2016.

678. Publicly available information, using readily accessible internet searches, had they been conducted, would have revealed that Premier Inc Limited had a director named Sukhwinder Todd, who had previously been a director of Radarbeam Ltd. This latter entity has been the subject of a 2010 First Tier Tribunal (FtT) decision in which it was held to have knowingly engaged in transactions connected to the fraudulent evasion of VAT. Mr Todd is named in the decision as giving evidence in support of Radarbeam Ltd.

679. The following findings were specifically made in relation to Mr Todd by the FtT:

"[108] … His witness statement contains at least one untruth and his replies to Mrs. Mee in his interview with her were in part either untruthful or deceptive."

"[114]… There is an abundance of totally unequivocal evidence that Mr. Todd was aware by early 2005 of the existence of fraudulent defaulters in 19each of his supply chains in 09/04 and 10/04. Despite this, Mr. Todd in his witness statement, evidence in chief and cross examination maintained he had never known of the existence of defaulting traders in these chains. This evidence was quite simply untrue."

"[115] Similarly his evidence, both written and oral, was untrue in relation to third-party payments."

"[120]… Throughout these deals, Mr. Todd traded without any terms and conditions in place. His reason for this was quite absurd."

"[124]… The vagueness and inconsistency in Mr. Todd's evidence is just not credible…"

680. The documentation provided to HMRC fell far short of the sort of due diligence which should reasonably have been in place. Trade with Premier began on 1 July 2014. The utility bill provided is dated 19 September 2014 demonstrating that this element of due diligence was not conducted prior to trade beginning. There are no trade references, records of meetings with key individuals and what was discussed/ observed, no assessment of risk in the deal, and no analysis of the purported market being supplied.

681. IOM C&E passed on to HMRC further documents relating to Global and Bridgewell's due diligence on Premier, which had been supplied by the companies in February 2015. These include accounts, again plainly postdating the beginning of trade because the appointment of a new director is recorded as taking place on 29 July 2014. Despite assertions by the Appellants' witnesses that, both before and after 1 November 2014, trade did not and would not begin until their due diligence procedures had been followed (see for instance the witness statement of Hardeep Chatha at paragraph 11 which refers, among other matters, to requiring a utility bill for office premises), this was simply not the case. There were other significant deficiencies and inconsistencies in the due diligence relating to Premier Inc Ltd.

682. The third letter of FITTED stands for "**T**erms of any contracts". The Appellants did not supply any written terms of contract with their customers to the Commissioners by the time of the decisions in issue. They had stated that they do not enter into written agreements as this is not unusual in the industry. Jatinder Chatha has stated in his witness statement dated 12 May 2016 at paragraph 18.c. that terms of contracts were provided on the back of invoices. The latter had not been provided to HMRC by the time of the 8 July 2016 decisions, even though ADD documentation requests were made numerous times. It was then accepted that the invoices themselves were the only written contract in place.

683. The fourth letter of FITTED stands for "**T**ransport of the goods". Due diligence checks relating to transportation of goods were considered by HMRC not to have been robust enough to comply with ADD requirements. As described below, there was evidence of tax loss in the supply chains of the Appellants, yet their due diligence into the transport of their goods was not adequate.

684. By way of example, Philip Eagleton, WWL's bond manager, stated at the 5 November 2015 meeting that he was "*not surprised*" by (i.e. did not know of) any trailer swaps happening in relation to WWL's supply chains, yet there was substantial evidence that tractor and trailer swaps were happening in movements of goods beginning at WWL.

685. The hauliers employed by WWL, as a norm, supplied sub-contractors to carry out the movements of duty suspended alcohol for WWL/EFBL. No due diligence, however, was ever carried out by WWL/EFBL upon the sub-contractors. Further, there was no record of any enquiries, provided to HMRC prior to revocation, made by WWL/EFBL to the hauliers as to the nature, extent and quality of the due diligence which they carried out, both in relation to the sub-contractors and their drivers.

686. The final letter of FITTED stands for "the **D**eal". HMRC concluded that the Appellants' due diligence did not contain any, or any sufficient, measures designed to identify or guard against the risk of goods being diverted or sold within chains resulting in tax losses. Reasons for the conclusion included that there was no evidence that analysis of any commercial market for supplies to the extra-group customers in respect of the deals with them had been conducted. The terms of the actual transactions are relevant under "D" for the Deal.

687. As explained by Officer Craig Lewis for instance in his witness statement, the Appellants' due diligence did not include research into the market for the particular types of alcohol coming from the UK into other Member States and whether the quantities transported there from WWL were consistent with any demand. This would be necessary to come to a conclusion on the final bullet point of Excise Notice 196 at section 10.2, "*how the deal compares to the market generally*".

688. There is also no evidence for instance that the Appellants took steps to research if the type of goods which customers claimed were for a particular market were commonly available to the end consumer, in significant quantities, such as being for sale in local supermarkets, restaurants and bars. There is also no evidence that they checked whether any producer of the goods in question advertised in the market for which the goods were intended (which could indicate the existence of a market in the particular brand).

689. Without taking steps to consider and document that there is a market, the nature of that market and whether their supplies are commercially consistent with it, they could not comply with the requirement to assess and document "*how the deal compares to the market generally*". If the Appellants were making supplies which were notably in excess of the apparent demand in the market to which the customer purportedly supplied the goods originating at WWL, this would at least warrant a high degree of suspicion and further investigations.

690. Against this background, the due diligence provided by the Appellants to HMRC in respect of their duty suspended trade showed a failure to comply even with specific checks cited in Excise Notice 196, it was reasonably open to HMRC to conclude that

the Appellants' due diligence was inadequate to protect against the risk of fraud and to comply with the requirements imposed upon excise approval holders.

The Requirements of Due Diligence

691. The Tribunal accepts HMRC's evidence and submissions that they cannot give a definitive list of what due diligence each approval holder should conduct on their supply chains, because the risk assessment process must be flexible and adapted to the specific risks in the trading relationship in question and in relation to the specific "deal". In the case of the Appellants, who were in reality supplying the non-UK market with duty suspended alcohol through their IOM sister companies, the "deal" for the purposes of FITTED was with their first extra group customer.

692. As is set out above, analysis of the deal required them to assess *"how the deal compares to the market generally"* (final bullet point of section 10.2 of EN 196). This required them to take steps to inquire into the market which their customers' customer was supplying, and to perform market research to allow them to consider how the particular deal compared to the market specified by the customer of Global / Bridgewell.

High Risk nature of the Appellants' trade through Global / Bridgewell

693. There were 37 customers of Global / Bridgewell who purchased duty suspended alcohol supplied by EFBL and exported from WWL to warehouses in mainland Europe from 2012 onwards. Of these 37 importing customer companies, 28 were UK registered companies and 9 were foreign registered. It is to be noted that most of these first extra-group customers were one- or two-man bands. They were small companies, not well-known names. Yet they were buying millions of pounds worth of duty suspended alcohol. Further, they were trading into markets outside suppliers' and authorised distributors' own established channels. These features elevated the risk of fraud posed by transactions with these companies.

694. There were very few of them engaging in duty suspended transactions with the Appellants' group of companies at any one time. Despite this, the turnover from the duty suspended business of the Appellants in 2016 was around £15-£20 million per annum (this is an estimate based on Mr Chatha's evidence this business was worth 25% of turnover which was around £80 million per annum for the group). An additional fraud risk indicator was the existence of such a large turnover despite the small number of customers, who were themselves typically small entities, not well-known companies, sometimes operating from a virtual office or even a residential address only.

695. This background stands out as indicating that the risk of fraud in relation to such sales of duty suspended alcohol was high. The Appellants and their sister companies have given no indication that they recognised the high-risk nature of the particular trades they were engaged in. That is compounded by the fact that they made no serious or reasonable enquiries about the particular market for the alcohol which they were selling in any particular deal beyond the most rudimentary of questions as to the destination of goods.

696. Subject to the acknowledgement that HMRC can never provide a definitive list of appropriate steps for a business to take to perform ADD compliant due diligence, the Tribunal is satisfied that, given the nature of the Appellants' / IOM sister companies' trade, the following checks were likely to be needed in order to conduct, and demonstrate that an approval holder had conducted appropriate due diligence for the purposes of Excise Notice 196. It is to be emphasised that this list is not necessarily applicable to other traders but is an acceptance of HMRC's submissions as to what what was reasonable and proportionate on the specific facts of the Appellants' trade.

697. The following checks were reasonably required for the Appellants in relation to the following three groups:

698. First, on at least the first extra-group customer:

- Checks on the financial and regulatory state of the customer: credit checks prior to initial trade and thereafter (if trade continues) regularly, VAT registration checks, checking WOWGR approvals are in place.
- Identity checks, such as meeting the key individual(s) to verify identity and whether the place of business appears to conform with the given description of the business, acquisition and consideration of copies of identity documents for the business and key individuals (including cross checking them with sources other than provided by the customer and looking into associated individuals' own histories), acquiring trade references, acquisition and consideration of a rental invoice/ utility bill for the trading address, the business' banking details in a form produced by a bank.
- Investigation of each Deal: market research on the commerciality of the particular deal, consideration of whether the contract offered contains unusual/ uncommercial terms;
- Follow up research on any discrepancies/ anomalies;
- An overall on-going risk assessment which is fully documented.

699. In short, in the Appellants' situation it was important to establish the first extra-group customer's identity, that the customer's business was a legitimate one, that the attributes of the business supported the trade being carried out (for instance the business has premises and other hallmarks of a trader which would be entering into high value deals) and that the market/ type of customer to which the trader claims to be selling corresponds with the type of deal being done.

700. Second, on warehouses to which goods were despatched:

- Checks on the financial and regulatory state of the warehouse: credit checks prior to the initial movement to the warehouse and thereafter (if movements continue to that warehouse) regularly, SEED checks, checking VAT registration, checking EMCS, checking annual accounts;

- Identity checks, such as acquisition and consideration of copies of identity documents for the business and key individuals (including cross checking them with sources other than those provided by the customer and looking into associated individuals' own histories);
- Checking whether the warehouse's purported operation matches activities at the warehouse (such as by ascertaining its size, facilities, activities, experience of the business operating it, procedures when the goods arrive). This may be done by regularly visiting the site and making inquiries there;
- Follow up research on any discrepancies/ anomalies;
- An overall on-going risk assessment which is fully documented.

701. Third, on hauliers:

- Identity checks, such as meeting with key individuals, acquisition and consideration of copies of identity documents for the business and key individuals (including cross checking them with sources other than provided by the customer and looking into individuals' own histories), possibly checks on the identity of the individual drivers themselves;
- Checks on the subcontractors being used for each movement, and, if they are being used and they exist, the same identity checks as on contractors;
- Follow up research on any discrepancies/ anomalies;
- An overall, on-going risk assessment which is fully documented.

702. In summary, to comply with section 10 of EN196, the Appellants should reasonably have conducted due diligence which complied with the following:

a. There should have been appropriate procedures in operation from 1 November 2014 to ensure that due diligence would be thereafter conducted in relation to their supply chains in the duty- suspended alcohol trade (section 10.1). Due diligence should have been done on onward supply chains at least as far as to the first trader after intra-group traders, and as far down the chain of supply beyond that as was possible.

b. Due diligence should have been documented (section 10.1).

c. The due diligence to be carried out should have been tailored specifically to the particular risks in the Appellants' trade (section 10.2). Section 10.6 however contains useful examples of the types of checks likely to be appropriate.

d. Checks should have been regular, reasonable and proportionate. They should have been sufficiently sensitive, yet robust enough, to address potential fraud risks (section 10.2).

e. Where a check identified a matter which is (or should be) of concern, the Appellant should have responded appropriately to it (section 10.3), for instance by conducting further follow up checks to understand better the issue of concern, not entering into the deal, or by changing supply chain operations to avoid the concerning issue.

f. Factors indicated at section 10.5 should have given rise to concerns of potential fraud (although the list is non-exhaustive).

703. Notably, the Appellants had no policies or procedures in written form at the time of the decisions relating to customers, transport or warehouses in their duty suspended business. This is a serious failing. Excise Notice 196 provides:

"…*you must:*

- *…have procedures in place to take timely and effective mitigating action where a risk of fraud is identified*
- *document the checks you intend to carry out and have appropriate management governance in place to make sure that these are, and continue to be, carried out as intended*" (10.1)

704. The Appellants' witness, Hardeep Chatha, has produced various documents on behalf of Bridgewell. In February 2015 he produced a one page document for Bridgewell titled 'Due Diligence procedures'. It consisted of three sentences of advice pre-approval and two sentences of advice post-approval. He also provided a one page document entitled 'Customer Due Diligence – information to request'. Both documents were stated to be 'updated 01.11.2014.' Despite this, the list of information to be requested for customer due diligence was the seven bullet points identified as being the items sought prior to November 2014 (see paragraph 11 of his witness statement dealt with below). This was inconsistent with his evidence that post November 2014 a much larger list of documents was requested (see paragraph 12 of his witness statement dealt with below).

705. Hardeep Chatha also produced a short due diligence policy document for Bridgewell but which he conceded during his oral evidence could not have been in existence until 2016 a long time after most trading had occurred and the ADD had been in force.

706. The Appellants failed to put appropriate checks and procedures in place to comply with the requirements of section 10 of Excise Notice 196.

707. The conclusion which should be drawn from the evidence, and the absence of any positive case that the due diligence was adequate to satisfy the condition, is that there was a wholesale failure to complete appropriate due diligence after the coming into force of the ADD condition.

708. The Appellants were warned of the failings in their due diligence and given reasonable advice and guidance on what due diligence should consist of (discussed below). A failure to have appropriate checks and procedures in place, significantly after the coming into effect of the ADD condition, is not the conduct of a fit and proper person.

709. These conclusions as to the reasons relied upon by HMRC at the time of the revocation decisions are strengthened by the Tribunal's own findings of fact having heard all the evidence during the appeal as to the Appellants' due diligence up to July 2016. If anything, the reasons relied upon by HMRC to evidence the Appellants' due diligence failings in the revocation decisions are fortified and amplified by the Tribunal's factual findings as to the Appellants' due diligence failings as set out below.

Tribunal's findings on evidence provided during the hearing regarding due diligence

Due Diligence by the Appellants on Global and Bridgewell

710. The Tribunal has found that Global and Bridgewell are intra-group companies set up as vehicles for EFBL's export business for the reasons set out above. Therefore, the due diligence required on them by EFBL and WWL to satisfy EN 196 was not that required for a true arm's length customer.

711. As found above, the Appellants sought to mislead HMRC in relation to the true relationship between them and Global / Bridgewell, first stating that there was no relationship at all, later from June 2015 admitting that there was shared ownership, but insisting that it was a "*strict arm's length trading relationship"*. Even before the Tribunal, the inaccurate description of the relationship as being at arm's length continued.

712. Even so, had there been an arm's length relationship between the Appellants and Global / Bridgewell, then the due diligence performed by the Appellants would have been inadequate.

713. First, it was accepted by Philip Eagleton for the Appellants that the due diligence conducted was not satisfactory if Global / Bridgewell had been third party companies:

> "3 Q. "In his statement Officer Maskew refers to visiting our
> 4 warehouses on three occasions. In relation to his visit
> 5 on 1 May 2015, Officer Maskew refers to his discussions
> 6 with me in respect of our ADD. Given the common
> 7 ownership of EFBL, Global Beverage Distribution and
> 8 Bridgewell, which Officer Maskew refers to as the Chatha
> 9 group of companies, I do not see it as unreasonable that
> 10 the due diligence carried out between these co-owned
> 11 companies is less extensive than that carried out
> 12 between unrelated companies."
> 13 Do you see?
> 14 **A. Yes.**
> 15 Q. The point I was just making to you before –
> 16 **A. Yes**.
> 17 Q. -- that clearly it would not be satisfactory due
> 18 diligence if these had not been related companies?

19 **A. If they were genuinely third party companies, yes.**"

714. Further, due diligence on a true arm's length customer (even if it shares a common beneficial owner) should include all steps which are required to be performed on an unrelated company. This fact should reasonably be noted on the file to satisfy the audit trail.

715. Based upon their due diligence files on Global / Bridgewell and evidence provided to the Tribunal during the hearing, there has been a serious failure by the Appellants to comply with the ADD condition in Excise Notice 196, section 10 and in particular, the FITTED criteria in relation to their 'customers' Global and Bridgewell.

716. As an example, there was no risk assessment on the Appellants' deals with Global / Bridgewell, to satisfy the D in FITTED. This would include documented answers to queries on the end market being supplied and queries as to the customer's customer. If, as is not unlikely, the customer's customer was not disclosed, it should have included obtaining detailed answers as to the quality and nature of the due diligence being done on customers. There should have been evidence of market research to establish if the end market exists and is sufficiently large to explain the type and quantity of goods to be sold in it.

717. Those conducting the due diligence on Global and Bridgewell on behalf of the Appellants included Philip Eagleton (for WWL) and Jatinder Chatha (for EFBL).

718. Jatinder Chatha's understanding of due diligence and what would constitute appropriate steps to satisfy the requirements of Excise Notice 196, displayed a lack of reasonable knowledge.

719. When specific examples of poor due diligence by Global and Bridgewell's customers were put to him, he had no meaningful response. When Global / Bridgewell's due diligence on the customer Tidechain Ltd for instance was put to him, including the fact that a virtual office was engaged and supplied as the business address, he did not seem troubled by this, stating:

"3 **A. But that arrangement must have satisfied the VAT**
4 **registration, because I see the VAT certificate is**
6 **addressed to this office."**

720. Jatinder Chatha appears to have thought that simply becoming VAT registered gave a degree of assurance of the trader's legitimacy. This suggests a lack of knowledge about basic elements of due diligence and the significance of the documents collated.

721. Jatinder Chatha was asked by his own counsel, in relation to a discussion at a meeting about connections between the related companies:

"8 Q. And did you understand what the significance was in
9 terms of the difference between directorships and

10 beneficial ownership?
11 **A. No.**"

722. This displayed a lack of reasonable understanding. As the individual who conducted due diligence for EFBL, this type of basic distinction should have been well known to him. He demonstrated no real understanding of what appropriate due diligence would constitute. In relation to due diligence, he repeatedly stressed that, if only HMRC had given him advice on what was wrong with the Appellants' due diligence, it could have been put right.

723. This was either a lie, or an assertion made in ignorance of the reasonable amount of advice on what appropriate due diligence constitutes, provided by HMRC to the Appellants, set out in their public notice, correspondence and meetings with the Appellants and summarised in Annex 1 to this decision.

724. To give an example of his evidence on this topic, he was asked the following by his own counsel about meeting with HMRC on 5 November 2015:

"11 Was there any indication at
12 this November meeting what their specific concerns were
13 with the due diligence being carried out by the two
14 companies?
15 **A. No."** (emphasis added)

725. Mr Chatha was either lying, or failed to understand that the following constituted specific examples, at that meeting alone (5 November 2015), of ways in which the Appellants' due diligence fell short:

"[Robert Maskew] *states that there was no legitimate market for what you supply to in Europe. 85% of the duty suspended beer that goes out from your Birmingham site is destined for this market yet there does not appear to be a market for the amount of beers that your warehouse send there".*

"[Robert Maskew]…*Transport is a key area of ADD and I suggested that you have a 'relaxed attitude' to this and gave the following reasons…you do not do any checks on these hauliers, particularly the sub-contracted hauliers".*

"[Robert Maskew] *advised that he had not seen a documented risk assessment in the ADD provide[d] by the business…[Craig Lewis] asked if there was a documented procedure".*

"[Robert Maskew] *advised that he had looked at the ADD provided and that there was no audit trail."*

"[Robert Maskew] *asked if WWL had supplied ADD for all the tax warehouses that WWL use"*

726. These are some examples, in a meeting where advice on due diligence, and criticism of it, were raised by HMRC, as had also occurred earlier. Jatinder Chatha stated no specific examples were provided. This revealed a lack of reasonable understanding of what a specific example is, and what level of guidance and advice HMRC can reasonably be expected to provide.

727. The Appellants repeatedly attempted to blame any due diligence failures on HMRC's lack of specific guidance. This could not provide a reasonable excuse. Public guidance was in existence and the burden was on the Appellants to follow. Furthermore, HMRC did provide reasonable advice and some criticism of where the Appellants' due diligence fell short (written warnings are summarised in Annex 1 to this decision) prior to the revocation decisions even if this was not comprehensive and many of the warnings were given orally at meetings rather than in writing.

728. Irrespective of HMRC's advice to the Appellants on due diligence failings, the responsibility was on the Appellants to ensure they understood their obligations pursuant to Excise Notice 196, section 10, whether they choose to do so with the help of a professional adviser or otherwise. HMRC does not function as a professional due diligence adviser and could not reasonably be expected to do so. The Appellants were at liberty at any time to take such advice, and from August 2015 did so from Mr Rimmer.

729. To the extent the Appellants initially attempted to rely upon an arm's length trading relationship with Global and Bridgewell, then their due diligence on the latter entities fell far short of the requirements of Excise Notice 196, section 10.

The Appellants' due diligence on customers of Global / Bridgewell

730. As above, by the time of the revocation and the hearing of the appeal it was not disputed that the Appellants were required to ensure that appropriate due diligence on the first extra-group customers complied with Excise Notice 196, section 10. These would be the customers of Global / Bridgewell. It did not matter which person or company in the group structure performs this due diligence, but the Appellants were responsible for ensuring it complied with their obligations as WOWGR holders. Appropriate guidance and oversight should have been in place to ensure that this due diligence met the requisite standard.

731. EFBL and WWL ought to have had in place their own extensive checks to ensure that Global / Bridgewell carried out compliant due diligence on their customers.

732. This would and should have been reasonably apparent to the Appellants at the time. As with all its conclusions, the Tribunal is careful to avoid applying hindsight to its assessment of the Appellants' conduct.

Access to and Input of the Appellants into Global / Bridgewell's Due Diligence Process

733. The Appellants have been highly inconsistent in their account of access which they had to Global / Bridgewell's due diligence. This is dealt with above in the chronology in relation to what was said to HMRC at the meetings between June 2014 and November 2015.

734. This is all the more so given the finding that the Appellants and their sister companies Global / Bridgewell were in truth engaged in providing EFBL a route to trade outside the UK in duty suspended alcohol, in a manner masked from suppliers of EFBL.

735. The Appellants did rely on the quality of due diligence carried out by their sister companies, Global and Bridgewell, upon their own customers as satisfying the Appellants' requirements pursuant to the ADD condition to perform appropriate checks on their supply chains.

736. On 9 September 2015, Mr Rimmer recorded himself as advising the Appellants and HMRC that *"it is possible to check the due diligence conducted by a business' customers and to seek to ascertain the end user market*".

737. The Appellants' case is that Hardeep Chatha performed the due diligence exercise for Global / Bridgewell upon their customers, with oversight from the directors of Global / Bridgewell.

Due Diligence on Global / Bridgewell's customers provided prior to Appellant's revocation

738. The Tribunal first considers the due diligence on Global / Bridgewell's customers provided by the Appellants to HMRC prior to the making of the revocation decisions on 8 July 2016.

Pre - 1 November 2014 ADD condition

739. Only four companies' due diligence files were provided by the Appellants to HMRC prior to revocation, concerning CECL Trading Ltd, Euromotion Ltd, Premier Inc Ltd and Tara Beverages Ltd. The relevance of those disclosed prior to revocation which concerned trade solely prior to 1 November 2014 is of course less than those post-dating 1 November 2014, but it is useful to consider.

740. Two of these four files relate to companies trading exclusively with Global / Bridgewell prior to 1 November 2014, CECL and Euromotion. These failed to comply with the lists provided by Hardeep Chatha which he purported to satisfy before trading would begin, and in relation to the latter two entities with whom trade took place after 1 November 2014, they failed to comply with Excise Notice 196.

741. Hardeep Chatha gave evidence in his witness statement, at paragraph 11, and to the Tribunal that he would acquire the following documents prior to trading before 1 November 2014:

a. Certificate of incorporation;

b. Director's/s' passport;
c. VAT certificate;
d. WOWGR if applicable;
e. Bank details;
f. Recent utility bill for office address;
g. Any other relevant documentation supporting the nature of the business.

742. In respect of CECL and Euromotion, with whom Global/ Bridgewell began to trade with prior to 1 November 2014, Hardeep Chatha failed to secure some of these documents prior to trading. There is, for instance, no recent utility bill for Euromotion's office address.

743. Hardeep Chatha attempted to defend the absence of documents by stating that he would remove old documents if new ones were obtained and further that he *"risk assessed"* traders when he did not acquire all documents requested prior to trade ie. that he filleted the files. This explanation appeared nowhere in his witness statements but was provided in cross examination.

744. Given the nature of due diligence, and what is required, (including an audit trail) this explanation is not credible and contrary to common sense.

745. The assertion that old documents were replaced by new ones and thrown away does not appear in any of the witness statements he has given to explain missing documents. This is also contrary to the due diligence material provided in April 2016, when a file in respect of Premier Inc Ltd was provided which contains a VIES VAT check from 2014, demonstrating that when Hardeep Chatha obtained later documents, he did not always throw away the old ones.

746. The Tribunal rejects Hardeep's Chatha's explanation on this topic as untrue.

747. In relation to *"risk assessing"* prospective customers in the event that they failed to provide all requested documents, he was willing to say to the High Court and the Tribunal in witness statements appended by statements of truth that he would *"require"* or *"insist"* on the list of documents (referred to above) prior to trading before 1 November 2014. His account had changed by the time of cross examination in these proceedings, doubtless because it is obvious on analysis of the files provided to HMRC that he did not *"require"* or *"insist"* on the provision of each of the specified documents before trading.

748. He did not explain how the process of *"risk assessment"* could possibly satisfy him that the businesses he was considering trading with were legitimate, financially sound and not likely to be involved in tax fraud.

749. For example, he considered himself to have taken appropriate steps when he ascertained from one trader, Tidechain, trading using a virtual office address, that the virtual office was able to provide meeting rooms if required and that the virtual address had been used for VAT registration. He, like his uncle Jatinder Chatha, assumed

(although conceded he did not know) that HMRC performed some form of due diligence before allowing a trader to use a virtual office address as a VAT registration address.

750. Hardeep Chatha's evidence is that he simply accepted this trader's answer that meeting rooms were available if required as some sort of assurance of legitimacy without further probing. He further relied on an (incorrect) assumption that prior to VAT registration, HMRC would subject potential registrants to a due diligence process which he was entitled to rely on as an assurance of legitimacy. His *"risk assessment"* process, if it was ever performed at all, was inadequate as was his conception of what risk assessment involves.

751. None of the Global / Bridgewell due diligence disclosed to HMRC by the Appellants has any record of assessment of the risk relating to the sales including proper due diligence in relation to the customers' customers or any other records showing inquiry as to the intended market for the goods beyond the vaguest of generalisations (see discussion of Tara below).

752. This evidence serves to illustrate Hardeep Chatha had a poor understanding of due diligence processes and that he was not in fact completing the checks he claims he was doing, prior to trade, in paragraph 11 of his witness statement. This goes both to his credibility and the lack of thoroughness in his processes.

Post 1 November 2014 ADD condition

753. It is useful to contrast the due diligence material above with that provided to HMRC prior to revocation on trade *after* 1 November 2014. Given the paucity of due diligence material in the individual files for trade pre-dating 1 November 2014, one would expect to comply with the new ADD condition a marked improvement would be evident in that post-dating the condition.

754. Hardeep Chatha gave evidence that this occurred, in his witness statement, at paragraph 12, and to the Tribunal that he would acquire the following documents prior to trading after 1 November 2014:

a. Certificate of incorporation;
b. VAT certificate;
c. Director's/s' passport;
d. Copy of recent (last 3 months) utility bill for director's home address;
e. Details of who beneficial owner/s are;
f. WOWGR if applicable;
g. Bank details;
h. Recent utility bill for office address;
i. An explanation of experience in this trade sector;
j. Any other relevant documentation supporting the nature of the business;
k. A list of who their customers are;

l. If the potential new customer refuses to provide a list of their customers, details of what level of duty diligence they conduct on their respective customers; and
m. Details of the intended end market of the products that they are interested in purchasing.

755. The two due diligence files provided to HMRC by the Appellants prior to revocation for traders who traded after 1 November 2014 with Global / Bridgewell were for Premier Inc and Tara Beverages Ltd.

756. These files show no significant shift to a due diligence procedure compliant with the ADD condition under section 10 of Excise Notice 196.

757. In respect of Premier Inc, with whom trade spanned 1 July 2014 to 8 February 2016, the due diligence file provided by the Appellants fails to comply with Excise Notice 196, section 10:

a. As in every single duty suspended customer due diligence pack provided to HMRC, there is no credit check, even though a poor or no credit record is cited as a specific risk factor in section 10 of Excise Notice 196.
b. The only VIES VAT check is dated 15 May 2014 and was not apparently refreshed at any point thereafter until trade ceased in February 2016.
c. There is no analysis, let alone a meaningful one, of the legitimacy of the business, the end market, or the financial health of the customer.
d. The only utility bill, dated 19 September 2014, post-dates trade starting.

758. The due diligence file for Tara Beverages Ltd ("Tara") was forwarded to HMRC by Mr Rimmer on 6 April 2016 as a *"current"* example of due diligence. The Tribunal rejects Hardeep Chatha's explanation that this due diligence pack may not have been the full file at early April 2016 (which the Commissioners say the Tribunal should reject as untrue), for the reasons dealt with below. The file fails to conform with the requirements of Excise Notice 196, section 10 in substantial ways, for example:

a. There is no credit check or other check as to the financial viability of the company.
b. The email signature address is different from that provided on the office rental invoice. There could be an innocent explanation, but such an obvious discrepancy should have been noticed, inquired into, resolved and this process documented.
c. Tara Beverages had an unusual structure: the director lived in Dubai, but ran a business in Ireland, supplying goods mostly into IEFW warehouse in Calais. No query was raised into why this structure was used. Hardeep Chatha (using the name "David") in an email simply asked, "*Could you please confirm if Dubai is where you live and how much time do you spend in Ireland?"* (sic). Hardeep Chatha saw nothing unusual about this structure which required him to inquire further: *"I didn't see anything wrong with that. That didn't arise (sic) any suspicion to me"*. Hardeep Chatha considered the fact the business owner only attended his office, far away

from home, and did so only once per month as no reason to make any further enquiries of any kind at all. This indicates a failure to apply reasonable standards of due diligence; what Mr Rimmer says in his witness statement as to what proper customer due diligence ought to involve.

d. No office utility bill has been provided, which Hardeep Chatha's statement says would be required before trade could start.

e. The due diligence checklist has been signed before checks were complete. This demonstrates that the checklist was not prepared once all the information of relevance had been gathered and assessed: it was not a genuine risk assessment document at all, just a form to show to HMRC.

f. No adequate query and reply into the due diligence Tara performed on its own customers was obtained. The owner simply stated in an email *"Our due diligence checks are very similar to yours, we make extensive checks to know our customers"*. This is vague and ought to have provoked detailed inquiry if proper due diligence requirements were to be satisfied.

g. The end market was not adequately explored at all, and absolutely no market research is evidenced into the existence of the market and whether demand for the particular goods correlated with the proposed end market. The potential customer simply stated that the market was *"for consumption in the EC"*. Hardeep Chatha's explanation for this failure in oral evidence was that he claimed to have had a conversation with the customer in which far more detail was obtained. This was undocumented, and in the absence of any independent record the Tribunal does not accept this explanation.

h. No official tax clearance certificate was ever obtained, even though Hardeep Chatha, writing as "David", claimed to *"insist on a copy"*. Under cross-examination, Hardeep Chatha relied upon the fact he had obtained a letter from Moore Stephens Nathans instead, confirming registration for various taxes in Ireland. This letter was dated 19 August 2010, many years prior to trade and no check was made that the information was current. Apart from a VIES VAT check, no other cross-checking into whether Tara remained appropriately registered for tax in Ireland was conducted. This was not an appropriate substitute to receiving an official tax clearance certificate.

759. The due diligence pack of April 2016 demonstrates an inadequate level of due diligence, undertaken about a year and a half after Excise Notice 196, section 10 came into effect. The Tribunal is satisfied that Hardeep Chatha did not address himself on behalf of Global / Bridgewell (and therefore on behalf of the Appellants) as to many of the factors which should have triggered further checks and inquiries. He did not reasonably apply himself to the process. These inadequacies were then the subject of untrue evidence from him when he sought to explain the absence of proper records.

David Craine's oversight of Global / Bridgewell's due diligence

760. The involvement of David Craine, giving oversight in the due diligence process performed by Global / Bridgewell, does not assist the Appellants.

761. First and foremost, the due diligence of Global/Bridgewell, which the Appellants belatedly rely on, is poor quality.

762. Even if David Craine had had a great role in its preparation, this would in no way ameliorate its failings. However, his evidence is that his involvement in due diligence was slight: he did not look at each file, limiting himself to perhaps five (out of 37 customers from 2012 to May 2015 when he retired). His evidence as to how he reviewed these files was significantly different from Hardeep Chatha's evidence. David Craine's evidence was that he carried out a review at Hardeep Chatha's office:

> "4 Q. And how was it determined which files of customers you
> 5 would review?
> 6 **A. They're on a shelf in Hardeep Chatha's office and**
> 7 **I simply picked them at random.**"

763. By contrast, Hardeep Chatha's evidence was that the review was carried out at Mr Craine's office:

> "1 Q. How physically was that done; would you take a file down
> 2 to the office --
> 3 **A. I would take a paper file across --**
> 4 Q. -- or Brown Craine --
> 5 **A. Brown, Craine & Co, yes.**
> 6 Q. You take it down to them?
> 7 **A. I take a paper folder down, yes.**
> 8 JUDGE RUPERT JONES: Sorry, I didn't catch that at all.
> 9 MR NATHAN: You need to speak up. I am always accused of
> 10 having a soft voice but you are far lower than I.
> 11 **A. Mr Nathan asked how the due diligence was checked by the**
> 12 **directors, and I would go across to Burleigh Manor with**
> 13 **a folder, a customer due diligence folder, for them to**
> 14 **check.**
> 15 JUDGE RUPERT JONES: Which office were you -- sorry, what
> 16 was the name of the building you were in when you would
> 17 go across?
> 18 **A. EFB (Isle of Man), European House.**
> 19 JUDGE RUPERT JONES: Thank you.
> 20 MR NATHAN: And you would take it down to the office of --
> 20 **A. Burleigh Manor, yes, it's just over the road.**"

764. Mr Craine's evidence also revealed a lack of understanding of the relevance of certain documents acquired as part of due diligence. Like Hardeep Chatha and Jatinder Chatha, he appeared to think, incorrectly, that being VAT registered in itself was an assurance of being a legitimate trader.

765. Mr Craine stated that in relation to Global /Bridgewell's customers holding certificates of VAT registration and being registered as a High Value Dealer under the Money Laundering Regulations: *"I would take comfort from the fact that there were two HMRC documents contained there...I still think surely they don't give these things out...I am impressed by the HMRC document. I am saying there it is. It is VAT registered so it has gone through a registration process"*.

766. Mr Craine was an accountant, holding himself out as having *"a sound working knowledge of due diligence procedures"* and having *"18 years' experience in ensuring that such procedures are undertaken in my own business"*. He should reasonably have recognised that, while the confirmation of being VAT registered was a necessary step for Global / Bridgewell to check for all customers which were required to be registered for VAT, it is not a registration system that involves any kind of stringent suitability test.

767. When taken to a specific example, he agreed that, had he seen the file, the details therein such as the use of a virtual office as a business address, *"would lead to questions"*. He agreed that another specific example was *"not adequate"*. The system of oversight performed by directors was inadequate, to the extent it took place at all.

The Disclosure of due diligence files by the Appellants on 21 October 2016 – post revocation

768. On 21 October 2016, at a time after revocation and as part of its evidence in support of its appeal, the Appellants provided three lever arch files of due diligence said to have been conducted on the customers of Global and Bridgewell. Having initially objected to the admission of this evidence at the beginning of the hearing, HMRC accepted that the Tribunal should admit the material on the basis it sheds light on the due diligence conducted and provided by 8 July 2016.

769. The Tribunal is satisfied the material provided is relevant to its consideration of the due diligence conducted by Global / Bridgewell and hence the Appellants by the time of the revocation decisions.

770. Furthermore, the Tribunal is not satisfied that any of the material in these files can be said to have been part of Global / Bridgewell's due diligence files in existence as at 8 July 2016, save where there is an objective, verifiable date at which it was obtained, such as provided on VIES VAT checks.

771. The Appellants have failed to prove that this material, or parts thereof, were present in Global / Bridgewell's due diligence files as at the date of the decisions under challenge. In relation to the majority of files, the Appellants have failed to detail in a witness statement what their position is as to their content by the date of the decision.

772. The material provided goes to the issue of Hardeep Chatha's credibility, and also is supportive evidence demonstrating that even as at October 2016, the due diligence by Global / Bridgewell was not meeting the requirements of Excise Notice 196 section 10, which reinforces the finding that it did not do so before either.

773. The Tribunal finds, for reasons set out in detail below, in summary that: Hardeep Chatha has backdated handwritten documents in order to enhance the appearance of these files. They were not innocently backdated in order latterly to record due diligence and events that took place at the time (which even had it been the case, would have revealed systematically poor record keeping). Rather they were deliberately backdated and included descriptions of due diligence that did not take place in order to give a false impression that due diligence took place when it did not.

774. The Tribunal finds that Hardeep Chatha is not a witness of truth and to the extent that his evidence indicates the date when any document entered these files, his evidence is not accepted as true, save where a different, reliable source supports this. Documents have also been included in the October 2016 files which, while they may well have existed as at the date of the decisions under challenge, 8 July 2016, formed no part of Global / Bridgewell's due diligence files and process as at that date.

775. Further Hardeep Chatha has included, for instance, Google and First Tier Tribunal website searches in relation to customers with whom the companies had ceased to trade a long time before. This exemplifies his attempts to lend false credibility to his due diligence files. This material is simply not due diligence at all.

776. The Tribunal rejects Hardeep Chatha's evidence in support of his assertions that the October 2016 material was in the files by the time of the decisions on 8 July 2016 (save where he has otherwise indicated that the material was not present at the time of the decision under challenge).

777. On analysis of the various disclosures of due diligence files it is can be seen that the files have been 'filled out' significantly after the 'minded-to' process in February 2016.

778. In particular the Tribunal has taken into account the following evidence:

779. On 4 February 2015, due diligence files in relation to Premier Inc Ltd and Planet Wine Ltd were supplied to IOM C&E, and thereafter to HMRC. Both files contain a two-page Global 'Customer Due Diligence Internal Check List' marked as *"Updated 1.11.14"*. These checklists are cursory and consist of tick-boxes for nine different documents to be provided with space for reasons if not provided. There is no other evidence or record of any FITTED type risk analysis taking place.

780. On 6 April 2016, several due diligence files including that of Premier Inc, were forwarded to HMRC by Mr Rimmer, representing the Appellants, under cover of an email which described them as *"copies of the Global Beverage Distribution Ltd./Bridgewell Ltd. due diligence files for the relevant three customers which feature in the HMRC analysis, being...Premier Inc Ltd"*. There is no indication at all in this email, that these files have been filleted to relate to any specific time period. Nor have the Appellants ever stated in their correspondence or witness statements to the High Court and the Tribunal that they filleted these files.

781. The Tribunal is satisfied that the files presented by this time represented the then current level of due diligence conducted on the companies at the time it was presented

to HMRC. The Tribunal rejects the evidence on behalf of the Appellants that they were providing the due diligence which had been in place as at the time of the earlier identified tax losses. On 7 April 2016, Mr Craine exhibited the same material (with the addition of the first page of the Premier Inc Ltd checklist) and described the material as *"the due diligence that was conducted upon each of these three customers"*. Had these in fact been filleted files, not the full files as at early April 2016, this statement would have been false.

782. The October 2016 disclosure of these files contain documents which must have been backdated, because they are absent from the February 2015 disclosure yet purport to have existed before the date of that disclosure. Similarly, there are likely to be documents which were in the public record, but have been acquired and added to the files for the purpose of this litigation and in order to give the impression of a much greater due diligence process than in fact took place before and during trade.

783. In relation to Planet Wine, with whom trade ended on 19 October 2016, the files supplied in October 2016 includes a four-page Bridgewell 'Customer Due Diligence Check List', hand dated and signed by Hardeep Chatha on 4 January 2015 and Paul Sherlock on behalf of Planet Wine on 6 January 2015. The four-page checklist, in contrast to the two-page checklist, contained fifteen questions, the first eight being identical to the two-page checklist. Thereafter the four-page checklist asks a series of questions about the customer's customer, the nature of the trade and the end market. It also contains space for a nominee on behalf of Global / Bridgewell and a space for their customer to sign.

784. If the four-page checklist for Planet Wine existed at that time it would have been in the February 2015 disclosure of the Planet Wine file, and it is not. The same point applies to handwritten notes purporting to date from January 2015, for instance that referring to telephone contact, some contractual terms, and 2011 and 2012 accounts.

785. In relation to Premier Inc Ltd, with whom trade ended on 8 February 2016, similarly, there are: handwritten notes purportedly written on 16 and 17 February 2015; terms and conditions purportedly signed on 16 February 2015; 2013 and 2014 accounts; a four-page checklist purporting to date from 16 February 2015; an email dated 14 May 2014; and a 2012 director's appointment.

786. None of these documents are in the April 2016 disclosure. The documents with handwritten dates, notes of purported meetings and checklists of due diligence, have been created later and backdated to make it appear that fuller due diligence was performed prior to and during trade.

787. There is an alternative explanation that could be made regarding this backdating of documents. It is not an explanation that Hardeep Chatha gave, because he did not accept any backdating, but it is possible that the documents have been innocently backdated to record due diligence which took place at the time by early 2015 but was not written up or evidenced until October 2016. This, of itself, would evidence very poor due diligence procedures as there would have been no documenting of the due diligence undertaken at the time or during the course of trade.

788. However, the Tribunal is not satisfied the backdating was innocent. It has assessed the credibility of Hardeep Chatha and the lack of independent evidence that the due diligence recorded took place contemporaneously. It would also involve Hardeep Chatha having an extraordinary memory of meetings and telephone calls many months later.

789. The Tribunal is satisfied on the balance of probabilities of the finding it has made: that the backdating was not innocent, the due diligence did not take place and these documents provide false records and were provided to HMRC and the Tribunal to give a false impression of the due diligence which took place; thereafter Hardeep Chatha has lied about these records to the Tribunal.

790. In relation to accounts, the director's appointment and the 2014 email, these documents may well have existed as at 4 February 2015 and 6-7 April 2016, but formed no part of Global / Bridgewell's due diligence files or process by those dates.

791. In relation to Google and FtT decisions website searches, it was admitted by Hardeep Chatha that these were not performed before May 2016 when he began to do them. Trade ended with many of the companies on whom these searches have been done prior to May 2016 by a considerable margin (the most startling example being Tidechain Ltd, with trade ending on 24 March 2015, whose resolutions for winding-up on 11 May 2016 actually appear in the search, second hit).

792. On the timing of these searches Hardeep Chatha has at least been truthful (and indeed the dates of some articles caught by the Google searches would put beyond doubt that they could not have taken place earlier), but this material has no place in "due diligence" files where it post-dates trade, because it played no role at all in the due diligence process. It proves no more than that Hardeep Chatha can enter a name into a search engine. Its inclusion in disclosure to HMRC and the trial bundle as "due diligence" is deliberately misleading.

793. Hardeep Chatha's evidence as to the October 2016 files representing contemporanerously conducted due diligence was unsatisfactory and was not credible.

Filleting of Files

794. It is first highly significant to note that the assertion of filleting of the due diligence files provided to tax authorities on 4 February 2015 and 6-7 April 2016 appears nowhere in the correspondence or written evidence of the Appellants. Had the files provided on those dates excluded material which was already present in Global / Bridgewell's due diligence files by the dates of disclosure, this important information ought to have, and would be expected to have, been made plain in the associated correspondence and statements in the High Court and this Tribunal. The explanation now proposed by the Appellants has not been aired before their oral evidence and is not credible.

Explanations for the time period to which the due diligence provided related

795. Initially, Hardeep Chatha made the following comments in oral evidence about when the four-page due diligence checklists for Global and Bridgewell first came into being:

> "18…**let's say in January or February 2015**
> 19 **I was obtaining, I don't know, an email or**
> 20 **correspondence saying that they weren't prepared to**
> 21 **provide a list of who their customers were, I may have**
> 23 **had that information on my file but not have**
> 23 **incorporated that into my checklist. So because the**
> 24 **checklist, as you're saying, may have evolved three to**
> 25 **four months afterwards, the questions within the**
> 1 **checklist, I may have had -- well, I would have had the**
> 2 **information as part of the file, but as I was requesting**
> 3 **information the checklist may have evolved, yes.**"

796. However, as it began to emerge during cross examination that this made it obvious that documents such as checklists had been backdated (because otherwise they would be present in the files from the dates marked on them, but were not), the account changed. Hardeep Chatha's evidence in relation to the content of the Planet Wine and Premier Inc Ltd files provided to IOM C&E on 4 February 2015 now became:

> "12 **A. I'm saying the due diligence that was provided to Isle**
> 13 **of Man Customs in February 2015 was relevant to the**
> 14 **point when I received this letter, being November 2014.**"
> [T7/143]

797. The Tribunal finds this evidence to be a lie, invented to try to explain the fact that the material in the February 2015 disclosure does not include documents which have in fact been inserted and/or created later, such as the four-page Planet Wine checklist which is back-dated to January 2015.

798. The Tribunal finds that no reasonable businessman would submit to IOM C&E due diligence material which was three months out of date, without a detailed explanation of why that material was in that condition, and also highlighting the up to date position since it was obvious that IOM C&E were asking to know what due diligence was being done after 1 November 2014 when the ADD condition came into effect.

799. Hardeep Chatha produced further, completely inconsistent explanations as to why he would have produced old, not current, due diligence. First, that he thought old due diligence was what was being requested of him:

> "2 **A. As I mentioned previously, Mr Nathan, the date this**
> 3 **later came through was 6 November 2014; okay? I read**
> 4 **all the questions and understood from what I could see,**

> **what was being requested in terms of copy purchase and sales listings, copy purchase invoices, copy sales invoices and the due diligence that was held on file at the time.**" (emphasis added)

800. Inconsistently, he also stated that the reason for supplying November 2014 due diligence was that he had essentially put it in his box first before collecting up the other documents requested by IOM C&E and that he continued to update the original due diligence files. The presence of a 26 January 2015 VIES VAT check, in the files handed over to IOM C&E on 4 February 2015 shows that this is untrue, further discussed below:

> "9 **Now, given the amount of information that was being requested and given the fact it took two months to get all the information together, it was quite a lengthy exercise, and the first port of call for me was, okay, what's the first thing I get my hands on? Due diligence, bang, put it in the box.**" (emphasis added)

801. Hardeep Chatha also postulated that there may have been a separate Bridgewell file which was not provided, even though the request letter makes it plain that both Global and Bridgewell were to answer: *"Global Beverage Distribution Ltd, Bridgewell Ltd and EFB IOM Ltd are requested to provide evidence of the following...26. Please provide details of the due diligence undertaken by Global Beverage Distribution Ltd and Bridgewell Ltd in respect of the following companies..."*. Hardeep Chatha stated:

> "4 **Premier Inc started trading with Bridgewell in December or January 2015, and there was a completely separate file for Premier Incorporated which would contain all the ADD documents.**"

802. There was no satisfactory clarification of which of these three explanations as to why he would have produced only the old due diligence files as at 4 February 2015 was correct. None of the explanations are correct. The two due diligence files provided at 4 February 2014 were current as at 4 February 2015.

803. Notably, IOM C&E's letter requesting this due diligence makes no reference, nor can be read reasonably to imply, that the files to be produced should be those as at 6 November 2014. The request is for *"details of the due diligence conducted..."* The reply makes no reference at all, and cannot sensibly be read as indicating, that only due diligence files as at 6 November 2014 had been provided.

804. The lie is brought into focus by the inclusion in the February 2015 disclosure of a VIES VAT check on 26 January 2015. The Tribunal finds that Hardeep Chatha *was*

keen to ensure the due diligence files he forwarded to IOM C&E were up to date. On this point he stated:

> "1 **As I was looking through the due diligence file for**
> 2 **Premier Incorporated, I realised that I didn't have**
> 3 **a current VIES Europa validation check on file. So that**
> 4 **was done at that time and added to the file for the sake**
> 5 **of completeness; okay?**"

805. This is also consistent with his witness statement, at paragraph 33, where he states:

"Bridgewell and Global compiled the information requested and, in February 2015 David Craine and I met with IoM Customs and hand delivered copies of all of the documentation they had requested and answers to their questions within the letter. For my own part, I regarded the meeting as an important opportunity to give IoM Customs/HMRC all the information they required and address any residual queries they might have."

806. It is not credible that such an *"important opportunity"* would pass by without providing the most complete and current material in respect of the requested due diligence files and policy documents.

807. If Hardeep Chatha was to provide incomplete, old files and superseded policy documents, one would have expected this to be made plain both at 4 February 2015, and in the witness statement to this Tribunal. The new explanation, that the files provided were those as at 6 November 2014, is a lie to try to explain the presence of documents in the October 2016 disclosure which do not appear in the earlier disclosure, yet purport to date from before the disclosure both in February 2015 and April 2016.

808. The lie is further underlined by the fact that, in the same bundle of documents handed to IOM C&E on 4 February 2015, a due diligence checklist and policy was produced. Again, there is no indication at all that this was anything other than the current one: it was forwarded with the description *"Copy due diligence checklist attached"*, letter dated 4 February 2015. This is the two-page version of the checklist, *"Updated 1.11.14"*.

809. If the four-page version of the checklist had existed at this time, as the Appellants now assert (because they claim that the Planet Wine four-page version actually existed by 4 January 2015) the four-page version would have been forwarded to IOM C&E. It would be illogical and misleading to have supplied a superseded checklist, least of all without making this plain in the accompanying letter.

810. Hardeep Chatha also made untruthful statements in relation to the files of due diligence on Tara Beverages Ltd (Tara), forwarded by Mr Rimmer as *"a current example of due diligence"* and David Craine as *"an example of the due diligence that Bridgewell...now conducts on potential customers"*. He described it thus:

"Q. So what you're saying is that what we see being handed over by you to Mr Rimmer is not the up-to-date file for the due diligence of April?

A. It's not the complete file, no.

Q. Not the complete file?

A. Not the complete file, no.

Q. Why didn't you hand in the complete file? That doesn't make any sense.

A. Because the examples that were given for the due diligence on Tara was, as well as the identification documents, copy examples of questions that would have been asked of Tara with regard to their due diligence.

Q. Sorry, copies of the questions that would be asked of Tara?

A. Yes.

Q. Yes. I don't understand, why didn't you hand him the whole of the file? He clearly understood that he had got the whole of the file and so did Mr Craine.

A. When I was asked to give examples of the due diligence that we carried out on Tara, that's when I gave the examples as well as the identification documents, copies

Page 68

of correspondence that was going between myself and Tara, certain questions.

Q. If you were being asked to give an example of the due diligence which you were doing and you gave as an example Tara, I still do not understand why you chose not to give the complete file. It doesn't make any sense.

A. Well, I must have misunderstood what was being asked of me. They said, "Can you give examples of what due diligence you were doing on Tara". As well as my identification documents were examples of questions that were being asked of Tara and responses, if I –

Q. I suggest you're making all this up. It is very easy. You answered the question. I suggest you've just made up all of this evidence because you know there's a big problem coming your way, don't you?

A. I disagree."

811. This explanation is beyond credibility. At the time, in the 'minded to' process from February 2016, where the Appellants began expressly relying on the due diligence performed by their sister companies on their first arm's length customers, it made no sense at all for a filleted file to be provided under cover of being current due diligence.

812. The Tribunal finds this evidence was given because Hardeep Chatha knew that there was something not in the file provided to HMRC and the High Court at April 2016 but which appears in the October 2016 due diligence.

813. This evidences the likelihood that he has added to the files after trading by the time of October 2016 in order to make it appear as though better due diligence was done historically than is in fact true. In the case of Tara this would include, for instance, a handwritten record of a telephone call which purportedly took place on 2 December 2015 and meeting notes from meetings on 28 January 2016 and 8 March 2016. Had these documents existed as at 6 April 2016, they would have appeared in the due diligence files disclosed on that date and the next day.

814. David Craine was not reliable in his evidence about whether the material provided on 4 February 2015 to IOM C&E was current. He gave evidence that the due diligence conducted was evidenced by the material which was in the file as at November 2014.

815. His explanations in evidence were unsatisfactory, for instance:

> "20 Q. Why would anybody collate information which effectively
> 21 wasn't the information which was relevant as of the date
> 22 when you were delivered it?
> 23 **A. It was relevant at the date it was asked for.**
> 23 Q. But that's -- but that makes no sense –
> 24 **A. It may not but it's a fact**."

> "9 Q. You were the director who was involved in the company.
> 10 You didn't write a letter subsequently saying "Oh, by
> 11 the way, I ought to tell you that the answer to
> 12 question 15 which in the material we've given you
> 13 actually is completely out of date"?
> 14 **A. I didn't think it relevant.**"

> "21 **A. I can say no more. It is as it is**."

816. As an experienced company director, communicating with relevant tax authorities about an important request for due diligence material, this would be inexplicable conduct if it was done knowingly by him.

The two and four-page checklists

817. Mr Craine was, at best, confused as to when the four-page checklist was first implemented. When asked by the Appellants' counsel what changes were made to respond to the introduction of the ADD condition on 1 November 2014, he stated:

> "9 Q. Did the checklist get longer, shorter, ask for more
> 10 information, what?
> 11 **A. I think it doubled in size, yes. I think it became**
> 12 **a four-page document from a two-page document**."

818. It is right that after some time a four-page checklist replaced a two-page checklist, but what his explanation omits is the fact that the two-page document was marked *"**Updated 1.11.14**"*.

819. It is reasonable to infer that the first change made following the introduction of the ADD condition must have been the implementation of the two-page checklist, in the form which can be seen in the February 2015 Premier Inc file provided to IOM C&E. The four-page document must have been created at some point later.

820. Yet Mr Craine's answer in relation to what changes were made following the introduction of the ADD condition misses out the two-page checklist being introduced (or an older version updated) on 1 November 2014.

821. Mr Craine's evidence later contradicted his position that the four-page checklist was in place by February 2015 when taken to specific examples:

> "11 MR NATHAN: Certainly. What I am suggesting to you,
> 12 Mr Craine, is here is the due diligence in relation to
> 13 this company, Premier Inc, which you produced in
> 14 April 2016 at a time when the company had only just
> 15 stopped trading only a matter of few months before, and
> 16 the only form that we see there is a two-page one, and
> 17 what I am suggesting to you is that was a form which was
> 18 used by Global all the way through until somewhere
> 19 towards the end of 2015.
> 20 **A. I can only agree.**
> 21 Q. You agree?
> 22 **A. Yes.**"

822. The Tribunal finds that the two-page checklist continued to be used at least until towards the end of 2015 as suggested. But Mr Craine's acceptance of this is inconsistent with his earlier answers. His evidence on the introduction of the checklist or the date which at which the due diligence files provided on 4 February 2015 were current, cannot be taken as reliable and, as indicated above, it is not supported by any other objective evidence, such as a computer record.

823. The Tribunal finds that Mr Craine was mistaken when he stated that the four-page checklist was in place by January or February 2015. This may simply be a lack of memory of the detail or because he knew that any later date for the making of this checklist would support the contention that Hardeep Chatha had backdated documents.

824. On balance, the Tribunal finds that Mr Craine was likely to have been confused about when the various checklists came into being. Significantly, on this point, no contemporaneous computer records were produced by the Appellants (as they could have been) to establish the date of the making of the four-page check list.

825. The fact that Mr Craine was mistaken on the use and creation of the two and four-page due diligence checklists - an important record of the due diligence conducted - evidences the reality that he was at best detached (and at worst uninvolved) from any day to day involvement in the conduct of Global and Bridgewell's due diligence and his supervision thereof was limited.

826. The Appellants' evidence in relation to the date at which the due diligence was undertaken in the files provided on 6-7 April 2016 is similarly unreliable. Hardeep Chatha stated in oral evidence, as to the content of Philip Rimmer's email of 6 April 2016 where he referred to the due diligence files provided (save for Tara Beverages Ltd) relating to *"the relevant three customers which feature within the HMRC analysis"*:

> "17 **A. May I just say, it also goes on to read:**
> 18 **"For the relevant three customers which feature**
> 19 **within the HMRC analysis ..."**
> 20 **That HMRC analysis, what was that analysis -- what**
> 21 **was that relating to and within what period?"**

> "5 **A. Sir, may I just say this HMRC analysis, if I think it is**
> 6 **what it is, related to, I think it was purported tax**
> 7 **loss supply chains. And I don't know if it's in one of**
> 8 **my witness statements or Mr Craine's, but I'm pretty**
> 9 **sure this due diligence that we exhibit was the due**
> 10 **diligence held on those customers for the period where**
> 11 **the purported tax losses were occurring.**"

827. Just as for the February 2015 material, this is a new explanation which was never put before in any communication or witness statement produced for the High Court or this Tribunal. The most that the previous accounts stated was that the three files in question related to *"the relevant three customers which feature within the HMRC analysis"* (Mr Rimmer's email of 6 April 2016) and "*I understand that HMRC has raised issue with three of Global's customers. I exhibit hereto marked DCI a copy of*

the due diligence that was conducted upon each of these three customers" (High Court witness statement of David Craine).

828. These descriptions of the documents say nothing more than that the three customers have been identified through looking at disclosure by HMRC relating to tax loss chains. They say nothing at all about the files presented being those relating to an earlier time or the current files having been filleted to reflect the files as at some earlier period. Indeed, that earlier alleged period for this due diligence is not identified in relation to each customer.

829. The current version is wholly at odds with these earlier, clear explanations of the due diligence files being provided at April 2016. Had the files being provided to HMRC and the Court not been current files, but filleted files so as to reflect some earlier state of due diligence, this would surely have been stated – and very clearly so, at the time. It was not.

830. The timing as at April 2016 is important. HMRC's 'minded to' letter had been sent to the Appellants on 8 February 2016. High Court proceedings had been initiated by the Appellants on 25 February 2016 and were ongoing. It would have been important for them at this stage, given that their approvals were at risk of revocation, to present to HMRC the best possible due diligence. The Appellants were aware that the onus was on them at this point to provide material to try to persuade HMRC that revocation of their approvals should not occur.

831. It is, therefore, not believable for the Appellants to suggest that the due diligence files for the customers CECL, Euromotion and Premier supplied to HMRC for consideration as part of the 'minded to' process were not the current files, at a point long after the ADD condition came into force. There is no mention these were (instead) much earlier files, frozen at unspecified dates and filleted to remove later due diligence.

832. By agreement between the parties, the High Court ordered the Appellants to produce any further information that they wished for HMRC to consider before reaching a decision by 31 May 2016. Significantly, no further due diligence files were provided from Global / Bridgewell nor EFBL and WWL by this date.

833. It is not credible that the Appellants had available to them fuller, more up to date due diligence files performed by their sister companies, Global and Bridgewell (especially in light of trade with Premier ceasing only at 8 February 2016), and yet they did not provide them to HMRC before this agreed deadline.

834. Mr Craine's evidence on what material he understood himself to be providing as at April 2016 is illuminating. His cross-examination continued as follows:

> "3...But, again, there's no
> 4 hint in what you say in paragraph 6 of your witness
> 5 statement, just go back for a moment, you say there
> 6 that -- go to paragraph 6 -- by the time we come to the
> 7 end of 2015, let us say, in relation to this customer

which was a continuing customer of the company, and look at the middle -- go down about six or eight lines to the sentence in the middle of the page, "I am aware and was aware ..."

A. Yes.

Q. "I am aware and was aware at the time that it was being conducted of the due diligence that Global/Bridgewell undertook in respect of its trading partners in 2011, 2012, 2013 and 2014."

Now, the practice would therefore have been to continue, wouldn't it, to do due diligence which would take into account whatever was required to be done, because that's what you and your colleague were overviewing?

A. That's what we would expect, yes.

Q. Yes. But you would have expected to find that the due diligence that was being presented by you on behalf of the company, admittedly at a time when you had ceased to

Page 117

be a director, you would expect to find that that would have been the up-to-date due diligence as at the time at least when it ceased trading with Global because that was only a matter of months before you gave your witness statement?

A. I would have expected that.

Q. Yes. And if it hadn't been, one would have expected you to have qualified that and given some explanation to the High Court?

A. Not necessarily. I've exhibited what we had. As you said, I was no longer a director at that stage." (emphasis added)

835. Then under re-examination, his story changed, becoming consistent with the implausible account given by Hardeep Chatha that at April 2016 he had provided HMRC and the Court with a filleted file for Premier Inc, confining the material enclosed to the material said to have been in the file at some unspecified earlier date:

"9Q....Look back at paragraph 6, halfway down:

"I am aware of the due diligence that Global/Bridgewell undertook in respect of trading partners in 2011, 2012, 2013 and 2014. I understand that HMRC has raised issue with three of Global's customers."

15 And they are customers from 2011, 2012, 2013 and
16 2014, Premier, CECL and Euromotion.
17 "I exhibit hereto marked 'DC1' a copy of the due
18 diligence that was conducted upon each of these three
19 customers."
20 What was your understanding of what DC1 was?
21 **A. They would be the due diligence files at that time up**
22 **until 2014."**

836. No evidence was given by Mr Craine which explained this change of approach. His first account is likely to be correct. The due diligence files provided would be those which were up to date, showing the improvements made after the implementation of the ADD condition. David Craine's evidence on this point under re-examination is rejected as unsatisfactory and unreliable. The Tribunal is of the view that Mr Craine's confusion may have been motivated by an attempt to give a coherent account on behalf of the Appellants when this was not possible.

837. Similarly, Mr Rimmer, who listened in court to much of the evidence given by other witnesses, may have been motivated by the same desire but the Tribunal likewise finds him to have been mistaken and confused. His evidence was not reliable in relation to the content of the April 2016 files (save for Tara) which he forwarded to HMRC. He stated:

"20 **A. I do recall that at the time when this letter was being**
21 **drafted, the discussion involved providing the due**
22 **diligence as it stood at the time of the relevant tax**
23 **loss supply chain examples**"

838. This explanation and caveat is completely absent from his email on 6 April 2016. When questioned on this position, he had no helpful answers to give on questions arising - such as why he would not have made this clear in his covering email if true or what was missing from the files which had come into being by April 2016 but had been filleted out. He simply could not assist:

"7 **A. I think I've now answered the same question three times.**
...
24 **A. I'm sorry, I don't understand that question. It was**
25 **about three minutes long.**"

839. His evidence on this matter was not reliable.

840. Given this unsatisfactory evidential position, the Tribunal finds, on balance, that the October 2016 disclosure of "due diligence" did not contain documents which existed and/or were present in the files as at the date of the decision under challenge, 8

July 2016. The exception to this is where there is an objective, verifiable date at which it was obtained, such as on VIES VAT checks.

841. The Appellants have failed to prove the dates of most of the documents, and when they entered Global / Bridgewell's due diligence files, and hence that this material was within them as at 8 July 2016.

842. However, what the presentation of the October 2016 files demonstrates is that the Appellants, through Hardeep Chatha, were prepared to provide a deliberately false and inflated impression both to HMRC and to the Tribunal as to the extent of the due diligence they, through Global and Bridgewell, were conducting on customers in the period January 2015 until revocation in July 2016.

843. These files have, in effect, been 'stuffed'. This undermines the Appellants' fitness to hold the approvals subject to these appeals but it also sheds some light on the state of the Appellants' knowledge as to their due diligence. It suggests they came to know, understand and accept that their due diligence was inadequate and took unconscionable steps to repair it.

Quality of due diligence in the October 2016 Files

844. Even were the Tribunal wrong and the October 2016 material had been present in the due diligence files of Global / Bridgewell as at 8 July 2016, the material would illustrate continued non-compliance with the due diligence requirements of Excise Notice 196. Therefore, the Tribunal is of the view that had material been before the decision maker, it would not have altered the evaluative conclusion reached.

845. The Tribunal considers a few examples of Bridgewell's due diligence conducted on its customers as presented in the October 2016 files. The customers DJD International Brands, Tara Beverages Ltd and AFL Consultores are worthy of consideration. Some general observations are made below on these specific examples.

846. DJD International Brands traded with Bridgewell between 27 April 2015 and 14 October 2016, i.e. long after the ADD condition came into effect and significantly after the 'minded to' process and revocation decisions. It was a regular purchaser of duty suspended alcohol. The owner of DJD was an Indian resident and running a Dubai company. The due diligence on this customer suffers from significant problems, for instance:

a. As for every single duty suspended customer of Global / Bridgewell, there is no credit check.
b. The bank statement reveals, as Hardeep Chatha agreed, that the customer in fact does not have much money. There is no evidence showing how Hardeep Chatha came to be satisfied of the financial health and viability of this company.
c. There is inconsistency in the company address and company name.

d. The end-user market is enormous: Eastern Europe, Asia, Australia and China and *"many other markets"*. There is, as is typical, no evidence of market research to investigate whether the end market for any particular goods supplied existed and was consistent with the quantity to be supplied.
e. There has been no investigation or due diligence under "D" of FITTED as to each deal itself.

847. Bridgewell traded with Tara Beverages Ltd (Tara) between 7 December 2015 and 15 December 2015. The same individual behind the company then went on to trade with Bridgewell as ZF Trading FZE. Hardeep Chatha did not know anything about this individual when he was approached to begin trading. The October 2016 due diligence file for Tara is fuller than that disclosed at April 2016, but it continues to suffer from serious flaws such as:

a. There continues to be no credit check.
b. The inconsistency of addresses, referred to above in relation to the April 2016 version, was never queried. There may be an innocent reason, but this type of inconsistency should be queried. It could be an indication of hijacked identity.
c. The reasons for the unusual structure, with the director living in Dubai, running an Irish company, supplying into the continent, was never queried.
d. A Google search has been done, but there is no evidence any of the links were ever opened or investigated further. It was, in any event, admittedly conducted in or after May 2016, well after trading ceased. It formed no part of due diligence on Tara.
e. An FtT decisions database search has been done, only for the director's name. No search, whether on a UK, Irish or any other case database has been made for the company.
f. The handwritten meeting notes record meetings said to have taken place after trade and give no details of what was discussed or observed.
g. No research has been done into the market, which is in any event astonishingly vague *"For consumption in the EC"* and there is no documented further query.
h. There is no record of due diligence on each deal, as required under "D" of FITTED.
i. No risk assessment has been documented.

848. AFL Consultores traded with Bridgewell once, on 3 March 2016, i.e. after the 'minded to' letter. Examples of serious problems with this due diligence are:

a. There is no credit check.
b. The Google searches played no part in the actual due diligence process, being performed after trade in May 2016.

c. Hardeep Chatha thought that Arsenio Lopez was the director of the company proposing trade. The trader was actually a natural person.
d. No financial information on the "company" was obtained.
e. Hardeep Chatha was not aware that one of the documents supplied was actually no more than a 2014 census declaration in Spanish.
f. No documented risk assessment appears in the file.

849. There is a consistent pattern in the October 2016 due diligence:

850. Steps have been taken to make the files bigger, including doing so after trade had ceased with some of the companies, such as by printing off Google or FtT decisions database searches. But no individual Google links are evidenced as having even been opened, and no analysis of any results on Google is recorded. These are just lists and lists of Google hits.

851. Credit checks continued not to be performed.

852. Market research to establish whether end markets exist and whether the type and quantity of goods sought corresponds with demand in that end market was not performed.

853. There are no lists of the customer's customers and there were no proper inquiries as to each deal.

854. No risk assessments are documented.

855. Notes of purported meetings give no meaningful detail of the questions asked, answers obtained and anything else of relevance observed, such as whether an office appeared to have staff and facilities in accordance with the sort of business which the trader held itself out as running.

856. Notably, the efforts made to perform additional checks, on companies which were still trading by or up until shortly before October 2016, do not address the shortcomings in Global / Bridgewell's due diligence material which were pointed out in the revocation letters of July 2016.

857. For instance, as was the case in the material before the decision maker, by October 2016 there are still no properly tailored risk-assessments regarding the deals[3]. The material amounts to little more than the assembly of documents as to the existence and identity of companies and individuals, but there is no consideration of the commercial

[3] The Tribunal has decided to admit the bank statement excerpt of Bridgewell from February and March 2016 produced by HMRC during the hearing. The amounts of money paid in the transactions were already in evidence due to the production of the relevant deal packs containing invoices etc. The Tribunal notes the very large sums of money paid to Bridgewell by ZF during these two months, exceeding £1.8 million in total. The due diligence file submitted on ZF contains no analysis of how any of these deals compares to the market generally, as required by Excise Notice 196.

viability of the deals as a whole (see the decision letters at paragraph 36(b) of Annex A).

858. Hardeep Chatha's frequent answers when pressed on the absence of checks or details was to say that he had "*risk assessed*" the transaction, or spoken with the potential customer, but none of this was written down.

859. Given all the other unsatisfactory statements by him, Hardeep Chatha's explanation is not accepted. In any event, compliance with the ADD Condition required that the steps taken in the due diligence process should have been documented, and that did not happen.

860. At such a late stage, after: (i) the reasonable amount of guidance given to the Appellants; (ii) the lengthy period of time which had passed since the implementation of the ADD condition; and (iii) the 'minded to' process which should have served particularly to re-emphasise to the Appellants their due diligence obligations and brought into sharp focus the need for appropriate due diligence, a failure to perform appropriate due diligence is a particularly serious failure.

861. At the very late stage of October 2016, Bridgewell still failed to perform due diligence compliant with the ADD condition in Excise Notice 196 on companies still trading with it (Global having ceased trading in approximately 2015) despite the 'minded to' process beginning in February 2016 and revocation letters to the Appellants of July 2016.

WWL's due diligence on Hauliers

862. Excise Notice 196 does not specifically state that due diligence should be conducted on the hauliers used to convey duty suspended alcohol. However, the Appellants did not dispute HMRC's contention that this was a requirement and this was plain from the text itself: the second 'T' in FITTED stands for "transport", and section 10.6 gives as examples of checks to be performed:

"Transport

- *establish where the goods will be sourced from. Is this the country of production? If not why are the goods being routed in this way?*
- *who is responsible for the transport? Is the cost of the goods inclusive of transport? If so, does this mean that the potential logistical costs make the unit price unrealistic?*
- *details of delivery vehicles should be retained and if necessary any variations to expected transport arrangements recorded."*

863. Mr Rimmer according to his own note of the meeting on 9 September 2015, stated that *"there was no requirement to undertake due diligence upon transporters"*. Even accepting that this may be an isolated statement out of context, it would be no defence to a failure to perform any meaningful due diligence on those haulage contractors

transporting goods out of WWL to say that Mr Rimmer's view was relied upon. The Appellants did not go so far as to suggest so.

864. As early as 6 November 2014, the Appellants were asked by HMRC for *"due diligence paperwork on the hauliers that you use"*. There can be no doubt that they were made aware that they should be performing due diligence in this regard.

865. Responsibility for due diligence on hauliers fell to Philip Eagleton. Material provided to HMRC prior to the making of their decision which related to hauliers was extremely thin. Only "due diligence" on Wincanton, Hellmann and JF Hillebrand was provided by 8 July 2016.

866. The Appellants' main justification in evidence, when the paucity of due diligence on hauliers was raised, was that no more needed to be done because they used large, blue chip hauliers. Philip Eagleton described them as *"very, very reputable hauliers...very, very large hauliers"*. Had companies such as Hellmann performed the actual haulage themselves, HMRC understandably may have been less concerned than they were by the limited nature of the due diligence on hauliers.

867. It is evident that haulage was actually sub-contracted and sometimes sub-sub-contracted to other hauliers. As Mr Rimmer correctly identified, on the topic of haulage due diligence, in his own notes of the meeting on 5 November 2015 *"the issue is with sub-contracting"*.

868. The Appellants performed no due diligence at all on sub-contractors or sub-sub-contractors. In the absence of doing so, they should reasonably have made appropriate inquiries to satisfy themselves that the hauliers they engaged were performing adequate due diligence both on their sub-contractors and that those sub-contractors were performing adequate due diligence on their sub-sub-contractors. There is no third way to satisfy FITTED which states in terms *"As a general rule 'FITTED' checks should normally focus on:... transport details of the movement of the goods involved whether or not you are directly involved in this"* (10.2) and *"details of delivery vehicles should be retained and if necessary any variations to expected transport arrangements recorded"* (10.6).

869. The failure to do so is all the more surprising given that, at a meeting on 3 June 2014, Philip Eagleton stated he was *"aware of joint/ sev. Liability* [illegible- probably "for"] *goods*".

870. The need for WWL to conduct reasonable due diligence to ensure that it had adequate knowledge of, and control over, the transport of duty suspended goods leaving its warehouse was brought into sharp relief when transport irregularities such as seal changes and trailer swaps were brought to the Appellants' attention. There were serious attitudinal failings in relation to how the Appellants responded to notification of these concerns by HMRC, their regulator, dealt with below.

871. After cross-examination of Philip Eagleton, the Appellants disclosed a document they now rely on, consisting of an email dated 19 May 2016 from Steve Harris of

Hellmann Beverage Logistics, in which Philip Eagleton asked the following questions and received the following answers:

"1. Do you sub-contract out movements of duty suspended alcohol that you undertake on our behalf?
Yes- Hellmann do not run their own vehicles. Our entire operation is based on 3rd party sub-contractors. All sub contractors are pre-approved, for the alcohol business we stick with carriers we have known for many years.

...

4. What sort of due diligence do you carry out on the hauliers to whom you sub-contract out such work?
All hauliers are checked and approved at company level before they can commence working with Hellmann. Checks include insurance and O licence checks

...

7. Knowing what you do about the haulage industry and HMRC's concerns generally in relation to the movement of duty suspended alcohol, can you think of any changes, from the haulage industry perspective, that we could implement to assist in guarding against alcohol duty fraud?
This is a subject we take very seriously...if you have any suggestions from your end please let me know so we can include this in our meetings."

872. This email exchange was not provided to HMRC before the revocation decisions, so necessarily it was not taken into account. However, it demonstrates that only eighteen months after implementation of the ADD condition and towards the end of the 'minded to' process beginning in February 2016 did WWL appear to be asking more detailed questions about the hauliers being used.

873. Even at this late stage it demonstrates Philip Eagleton asked nothing about knowledge of or control over sub-subcontracting. The movement documentation of the Appellants revealed sub-subcontracting including by Hellmann. This tends to show WWL did have the unreasonably relaxed attitude to transport due diligence HMRC referred to in the 5 November 2015 meeting.

874. There is no evidence at all that there were any enquiries made of hauliers into due diligence on sub-subcontractors which the latter had carried out, or were continuing to carry out, prior to the decision letters. Philip Eagleton said in oral evidence that he believed that Hellmann knew about sub-subcontracting as vehicle and trailer numbers would be provided to WWL by Hellmann.

875. This was an incorrect assumption. Jatinder Chatha exhibited emails to and from Hellmann, exhibited to one of his statements dated 17 to 21 March 2017 which post-date the decision under challenge and so are not, in the ordinary course of events, relevant matters to be taken into account.

876. However, the email exchange is of note (and admissible) because it reveals that Hellmann forbade sub-subcontracting and so cannot have been doing due diligence on such hauliers prior to the decisions under challenge, an important fact which the

Appellants evidently did not know - because they never asked these types of questions earlier.

877. With appropriate due diligence and control of transport arrangements, as specified in section 10 of Excise Notice 196, the Appellants would have asked Hellmann sufficient and timely questions about their due diligence on subcontractors, and importantly about what checks they were doing on sub-subcontracting which the Appellants knew was going on. Hellmann could have taken appropriate steps to prevent this breach of their requirements had the right questions been asked and their control over movements could have been restored. Section 10.3 states "*Where your checks indicated real concerns, we would normally expect aspects of your supply chain to be changed to address this, eg the supplier or the destination of the goods.*" No such changes occurred in the transport arrangements of the Appellants, as they never made the reasonable enquiries.

878. Notably, Philip Eagleton gave evidence that Hellmann was one of two main hauliers used. There is no evidence at all that any enquiries, whether about subcontracting or sub-subcontracting, were asked of the other haulier.

879. Consequently, at its highest, the Appellants' due diligence on transport prior to the revocation decisions consisted of nothing more than basic checks on the primary haulage contractor, in the knowledge the actual haulage was being carried out by other secondary companies, sometimes sub-sub-contractors, and the above quoted email, sent very late in the day to Hellmann. No enquiries at all were made concerning sub-subcontractors, whether directly of them, or through asking Hellmann what due diligence it performed and generally how it retained control over movements when its own contractors had sub-contracted.

880. This is concerning given the express warnings given to the Appellants which should have made them consider risks specific to transport and specific checks they should conduct. For instance, on 12 January 2015 Officer Maskew notified them in writing that their due diligence checks should include finding out *"who is responsible for the transport?...details of delivery vehicles should be retained and if necessary any variations to expected transport arrangements recorded"*.

881. There were other notifications by HMRC that transport checks should be part of due diligence. A company complying with the ADD condition would have reviewed their transport due diligence procedures in the light of these warnings.

Due diligence by the Appellants on warehouses

882. Excise Notice 196 provides *"Import and warehousing procedures are often exploited to provide cover for the illicit movement of goods"* (10.2). While the Notice does not specifically state that due diligence must be conducted on warehouses, it should reasonably have formed part of an appropriate risk analysis of the specific business of the Appellants. They should have identified that overseas bonds receiving duty suspended alcohol dispatched by WWL were an area of risk due to the possibility of inward and outward diversion fraud. At least by the time of the hearing they did not seriously suggest in evidence that due diligence on warehouses was unnecessary.

883. It is relevant that the Appellants' own representative and due diligence adviser, Philip Rimmer, had earlier recorded his own opinion, in his own meeting note relating to 9 September 2015 that *"there was no requirement to undertake due diligence upon transporters and bonded warehouses"* and *"it was disproportionate and unreasonable to expect"* due diligence on overseas bonded warehouses in his 5 November 2015 note.

884. This interpretation must be unreasonable in the Appellants' case, as warehouse due diligence was necessary in order to objectively assess the specific risks in supply chains, given that the Appellants were dispatching very large quantities of duty-suspended goods to overseas bonds.

885. From September 2014, the Appellants were notified of tax losses in their duty suspended supply chains and the possibility of light and empty loads crossing the channel. This should have prompted the Appellants to review their approach to due diligence on tax warehouses they used on the continent because it raised the possibility that the warehouses to which WWL was dispatching duty suspended goods were involved in fraud and certainly were a source of risk against which mitigating action, such as due diligence, needed to be taken.

886. The types of checks which would have allowed proper warehouse risk assessments to take place would reasonably have involved looking into the operation of warehouses, such as whether they were secure and whether the operations going on accorded with their purported activities and size, checks on individuals operating warehouses, and checking the regulatory state of the warehouses such as whether it is appropriate SEED and VAT (or equivalent) registered.

887. The Appellants' approach to this area of due diligence was, again, lacking. In relation, for instance, to SEED checks on warehouses, Jatinder Chatha regarded them as essentially definitive as to the warehouse's legitimacy:

> "8 Q. What did you at the relevant time understand to be the
> 9 authoritativeness of the information on SEED?
> 10 **A. I thought it was exactly the same as HMRC would have**
> 11 **told me or told any other customer asking about my**
> 12 **companies. It was bulletproof."**

888. Similarly, Philip Eagleton stated on SEED checks:

> "11...**we deal with bonded warehouses**
> 12 **that are accredited through the SEED system. They are**
> 13 **compliant warehouses, they are fit and proper therefore.**
> 14 **We draw great comfort from that."**

> "14 Q. Yes. So it is simply the fact that they are bonded

15 warehouses is good enough for you?
16 **A. Yes, we do draw, yes, very great comfort from that.**"

889. This is concerning. SEED checks should reasonably be done to confirm that the warehouse is SEED approved, but to regard SEED approval as *sufficient* is to miss the point: warehouses which are in fact engaged in illegal practices may remain SEED approved for a long time, before the national authorities identify illegality such that SEED approval is removed.

890. Warehouse due diligence performed by the Appellants was inadequate to satisfy Excise Notice 196. As for other types of due diligence carried out by the Appellants, no risk assessments were recorded. There was no written record at all provided by Philip Eagleton (or anyone else) documenting, for instance, why despatch to a particular warehouse was considered to be low, medium or high risk. In relation to rarely or newly used warehouses, risk assessment should have been particularly stringent and this should have been recorded, and where a warehouse has been in use regularly and consequently is considered lower risk, this also should be documented.

891. To take a specific example, Tamaz is a French warehouse, whose owner lives in Bognor Regis, operating it through an online portal with reliance on his local management team. Due diligence provided by the Appellants by the time of the decisions under challenge fell short in the following ways:

892. The untranslated accounts included in the WWL Tamaz due diligence file are old (2011) and date from before the current owner, Glyn Davies, was running the warehouse. Consequently, they are of very little (or no) use in relation to assessing the financial viability of the business, or whether the business appears to be unusually profitable.

893. Philip Eagleton, responsible for performing warehouse due diligence, gave this evidence on the relevance of the accounts to the process he was conducting:

"1 Q. When these documents were obtained did you actually read
2 them, look at them, or did you just put them in a file?
3 **A. No, I had a look at them. They don't tell me a great**
4 **deal. I don't read accounts I have to say.**
5 Q. You don't read accounts and I dare say you don't read
6 French either.
7 **A. Yes, correct.**
8 Q. You don't. So these were basically documents which are
9 meaningless to you?
10 **A. Well, to me as a layman looking at these, yes, you're**
11 **absolutely right.**"

894. In fairness to Mr Eagleton, he went on to say that Jatinder Chatha *"does read accounts better than me"*, but the evidence of the Appellants was that Philip Eagleton was the person responsible for due diligence on warehouses, so this does not assist them. These documents have been assembled into the due diligence file, but no meaningful analysis has been performed on them to risk assess the warehouse.

895. There is no documentary record of any VAT check prior to 12 August 2015 or a SEED check prior to February 2015 although Philip Eagleton thought that SEED checks may have been done prior to that date.

896. In relation to Vinotheque Ltd, another warehouse used by the Appellants, Philip Eagleton had not noticed that in the due diligence pack he assembled, a different company (but with a similar name)'s Directors' Report and Companies House checks had been included. This latter company, Vinotheque Holdings Ltd, is listed in the documentation as having as its principal activity *"property management"* (under "Principal activity"). This due diligence pack would appear, again, to have been assembled (ie downloaded from the internet) in an attempt to try to provide sufficient due diligence material to be able to produce something which had the flavour of genuine due diligence in order satisfy HMRC's demand to see all their due diligence, rather than through any meaningful risk assessment process.

897. The main warehouse used for despatch by WWL, IEFW in France, had last been visited by the Appellants for due diligence purposes in 2009, ie years before. Although they assert that they (ie. Jatinder Chatha) visited it since for the same purpose, the evidence of its owner Manuel Gluck in relation to post 2009 visits was that: *"I think it was for an amicable visit and to talk about the work as well"*. No visit reports have ever been produced to support what was observed and any conclusions drawn from it.

Duty Paid Customer Due Diligence

898. The poor quality of the due diligence conducted on Global / Bridgewell's duty suspended customers (for which the Appellants are ultimately responsible) is to be contrasted with that conducted on the Appellants' duty paid customers. This is illustrative.

899. The Appellants' duty paid customer due diligence included some steps which were notably absent in their duty suspended customer due diligence (and also absent in Global's / Bridgewell's duty suspended customer due diligence). This does not mean that it was compliant with Excise Notice 196 and the decision letters make clear that it was not reviewed in this regard.

900. However, two positive features of the due diligence performed on duty paid customers were that the Appellants conducted credit checks on them, and risk stratified them. This is in contrast to the checks performed on duty suspended customers.

901. Credit checks are a type of check recommended in Excise Notice 196, which cites the following as examples of risk:

- "*there is no, or poor, credit ratings but it is still able to finance substantial deals*
- *there are high levels of debt*"

902. By failing to perform credit checks on duty suspended customers, the Appellants and their sister companies were not able to benefit from the knowledge such checks would bring, and perform this important element of risk assessment on the financial health of the entities with which they were dealing.

903. Examples of risk stratification for duty paid customers were produced by the Appellants. This due diligence would be significantly better if there was an explanation of how the risk assessment had been carried out and which factors had been weighed up, but the due diligence on duty suspended trade of the Appellants and Global / Bridgewell contains no documented risk stratification for any customer. This is significant. Excise Notice 196, section 10 states on the matter:

> "*10.1…*
>
> *you must:*
>
> - *objectively assess the risks of alcohol duty fraud within the supply chains in which you operate*
> - *…*
> - *document the checks you intend to carry out*
>
> *10.2*
> *…To assess your exposure to this risk you will need to objectively assess if there is potential for duty evasion resulting from your trading activity. You will need to know who you are selling to and where the goods are destined for and understand the market for these products.*
>
> *…*
>
> *To assess your exposure to this risk you will need to objectively consider whether the supply chain and trading activity is credible which includes knowing who you source goods from and provide a service to.*"

904. The Appellants have sought to place some responsibility on HMRC for any failings in their due diligence on a lack of advice on how to improve their due diligence. This is mostly unfounded as a reasonable amount of advice was given (see elsewhere in this decision as summarised in Annex 1 to this decision). In any event, it is evident that the Appellants knew of additional steps which could be taken to enhance their due diligence as they were doing some of them on duty paid customers. Officer Warburton had even suggested using their duty paid customer duty diligence procedures as a basis for duty suspended checks at one of his meetings with the Appellants.

Conclusions on Due Diligence

905. The due diligence provided to HMRC was, in considerable and important respects, inadequate to satisfy the requirements of Excise Notice 196, and continued to be so for a very long time after the introduction of the ADD Condition on 1 November 2014. It was reasonable for HMRC so to find and draw the conclusions that they did on the basis of due diligence failures. The evaluative conclusion was comfortably within the range of reasonableness.

906. The Appellants have put forward almost no positive case on due diligence. It has been limited to asserting that the checklist complied with Excise Notice 196 (which it plainly did not, nor was it actually adhered to).

907. As a result of the numerous discrepancies and inconsistencies in the Appellants' account, it was reasonable for HMRC to conclude that they did not have "*the necessary degree of trust and confidence as to [the Appellants'] representations*" as to the checks they have undertaken (paragraph 14 of Annex A to the decisions). In the absence of documented checks and faced with inconsistent statements, the Commissioners reasonably concluded that "*the account most likely to be correct was that which was contemporaneously given, i.e. that checks by EFBL/WWL on GBDL and BWL's due diligence did not begin before 9 September 2015… [and] that verbal enquiry was made of GBDL and BWL as to their checks, which were not recorded*".

Tax losses in supply chains

908. HMRC's revocation decisions provided the following reasons in support of the evaluative conclusion on tax losses at paragraphs 50-68 of Annex A:

Tax Losses in supply chains

50. The Commissioners have established that duty suspended alcohol that was sold by EFBL to GBDL and BWL, and stored in the warehouses of WWL, has been part of tax loss supply chains in 2011, 2012, 2013 and 2014.

51. WWL have recorded on the Excise Movement Control System ("EMCS") that a total of 85.3 million litres of duty suspended alcohol left WWL's premises for the EU between 2011 and 2014. A sample of supply chains have been traced by HMRC's Fraud Investigation Service ("FIS") for the years 2011, 2012, 2013, 2014. Approximately 14 million litres of the 85.3 million litres of duty suspended alcohol was traced through to the end user. This is approximately 16.5% of the total duty suspended alcohol trade through WWL between 2011 and 2014.

52. In respect of the 14 million litres of alcohol which was traced to an end user:

a. 100% was sold to a business located outside of the UK.

b. The alcohol ended up at one of 20 different non-UK businesses.

c. 18 of these 20 businesses have been confirmed as missing, defaulting or non-compliant businesses by the relevant EU authorities.

d. EU tax assessments to the value of €19 million have been issued to businesses in the EU as a result of this investigation

53. As part of this investigation, the Commissioners have also established that 15 of the 18 missing or non-compliant, non-UK businesses which were allegedly purchasing the goods from UK buffer businesses in EFBL's supply chains, were also allegedly paying for the goods via a sterling transaction. Approximately £85 million in sterling was received by UK businesses near the end of the supply chain in this way. This has been investigated by the Commissioners:

a. The UK businesses receiving the sterling were questioned about the receipt. Their explanation was that the sterling was transported by cash couriers across the Channel. It was then paid into UK bank accounts and used to pay their UK supplier. The funds were then transferred up the supply chain to, in these instances, EFBL. They were not able to provide any convincing explanation for transacting business in this way, rather than having funds transferred electronically.

b. The Commissioners' investigation has established that many of the non UK traders who allegedly received the goods were non-existent/missing traders (as set out at paragraph 52 above); the couriers who were said to have transported the sterling claimed to have no connection with the businesses; and evidence relating to the transporting of the sterling has often been found to be false.

54. The conclusion reached in this investigation is that the goods were not sold as stated outside the UK but may have been diverted onto the UK market and sold without VAT and Duty being paid or accounted for. The Commissioners' conclusion is that the source of the sterling derives from undeclared UK sales of alcohol, and has issued £17,603,473 in UK VAT assessments to 7 UK businesses. EFBL has, therefore, ultimately benefited from the sale of goods which appear to have been diverted further along the supply chain.

Your representations

55. You accepted in your 25 February 2016 and 02 April 2016 letters that HMRC officers notified you of tax losses identified on goods sold by EFBL at the meeting on 09 September 2014 (but said you were provided with no further detail or documentation relating to this), and accepted that you were further notified about tax losses at the meeting on 05 November 2015.

56. Your adviser has put forward the case that there was no prior notice of the tax losses provided by HMRC before the potential revocation action was notified to the business. I have considered these points and conclude that although tax loss supply chains were not notified to the business in writing, the fact remains that they were notified to you verbally on previous occasions, both 17 months and 3 months before the intention to revoke the warehouse approvals was issued. You were informed that the tax losses were significant. It is of note that despite this information you did not make, and said that you did not see the need to make, any improvements to the commercial checks that you would carry out or the risk assessments you would make.

57. Your adviser also stated that "...Officers present accepted that no tax losses had been identified in supply chains involving stock despatched to Belogistiques BVBA from or by our clients..." and refer to a statement made by Officer Pitt that he "clarified that it is the Belgium warehouse where fraud traced from and not directly back to WWL and EFB as far as HMRC are aware". I have considered these points and have concluded that they are a selective representation of the conversation:

a. Firstly, page 4 of the copy of the officer's note book, for the meeting of 05 November 2015, contains a record of what Officer Pitt said, "*LP confirmed Belogistiques closed down due to involvement in Tax and Excise diversion fraud. LP explained goods sold by EFB and then transported out to Belogistiques from WWL. These goods have been chased and traced through Missing Traders and Tax Losses in the EU. LP advised there were also hijacked hauliers in the chains with Belogistiques".* Therefore, I do not agree with your claim, as HMRC's record clearly states that HMRC officers did advise that the goods traced through Belogistiques were traced to tax losses.

b. Secondly, page 8 of the copy of officer note book contains a record of what Officer Pitt said about the movements: "LP confirmed that fraud identified in movement of goods which originated at EFB and Whittalls Wines have been used in fraudulent movements in the EU. LP clarified that it is the Belgium warehouse where fraud traced from and not directly back to WWL and EFB as far as HMRC are aware." I can confirm that Officer Pitt was referring to the physical movement of goods and that the fraudulent activities were identified in the onward movement from Belogistiques and none had been established in the transportation from Whittalls Wines warehouse to Belogistiques. However, the goods that were used in the fraudulent movements out of Belogistiques were sold by EFBL and were transported there from WWL warehouse.

58. You state in your 02 April 2016 letter, at paragraph 3, that the disclosure provided on the tax losses 'underpins how weak the Commissioners' position is', and you claim that the disclosure shows only 1 tax loss chain in 2011, 2012 and 2012 and only 16 tax loss chain in 2014, in the context of 'many hundreds of movements our clients were involved in in each of those years'. The letter of Ms Barnard of HMRC to you of 16 March 2016, at paragraph 4, clearly explains that the details of the transaction chains sent to you were examples, and the Commissioners' decision has not been reached solely on the basis of those example deals.

59. The same response applies to your further point that "...Global's direct counterparty was either CECL Trading Ltd, Euromotion Trading or Premier Inc.." and that the "trade with CECL, Euromotion and Premier accounted for just 2.16%, 0.31% and 0.24% respectively of Global/Bridgewell's total wholesale trade in the period 2011-2014". As already stated, the documents provided by the Commissioners are a sample of the tax loss chains identified and do not represent the tax losses identified in their entirety.

60. Your adviser claimed, initially, (in his letter of 25 February 2016, at page 6 in particular) that the Commissioners were alleging that tax losses had occurred in relation to your sales but that they had not provided evidence to prove it and then, subsequently, conceded that even if they had occurred they were only a small amount of the overall quantity of goods sold by you (his letter of 2 April, at paragraph 3). The attitude exhibited here is of concern to the Commissioners because, regardless of the percentage of your sales ending in tax loss, the pertinent point is that losses did occur. As an approved owner and warehouse of excise goods, you should be concerned about the prevalence of fraud in your trade sector and within your transaction chains, particularly when this has been drawn to your attention. The Commissioners would expect a business, when presented with facts of this nature, to show concern and tighten procedures, rather than deny it ever happened or seek to belittle its importance.

61. Mr Chatha states in his 12 May 2016 witness statement that if goods sold by EFBL or moved by WWL have been part of tax loss supply chains, this is something that he would '*take seriously indeed*' (paragraph 20). He said he had requested further information to *'assure ourselves that there were indeed taxes losses'*, and to *'properly target any improvements in your due diligence procedures'*.

62. The Commissioners have considered this statement, but have concluded that it is contradicted by previous events and representations made by WWL and EFBL to the Commissioners. During the 09 September 2014 meeting with HMRC, you were notified that goods being sold by EFBL, and therefore held at WWL premises, had been identified as being used in significant tax loss supply chains. You were also advised that HMRC considered that the due diligence checks conducted at that time were insufficient to reduce the risk of this occurring. It is the Commissioners' conclusion that nothing has been provided by you to evidence that you took heed of this warning and reviewed your due diligence procedures or introduced improvements. This conclusion is further supported following the 05 November 2015 meeting where further fraudulent activity and tax losses within your supply chains were notified to you. This was followed up in writing on 08 February 2016. Your representations made between 09 February 2016 and 25 April 2016 concentrated on repeatedly asking HMRC to provide evidence that tax losses occurred or denying that WWL and EFBL could have known about it if they did occur.

Conclusion

63. The Commissioners have considered your representations in relation to the tax loss supply chains identified on goods sold under duty suspension by your business, and their position remains unchanged. The fact remains that significant quantities of goods sold by EFBL and subsequently transported from WWL warehouses were traced by the Commissioners and ended with missing or a defaulting/non-compliant business and the relevant tax was not accounted for nor paid. Your representations on this issue have been either a denial that the supply chains had anything to do with your clients (as per your adviser's letter dated 25 February) or, latterly, statements to the effect that the losses represented a relatively small proportion of your overall business (the implication being that the Commissioners should pay little heed to them).

64. Mr Chatha states within his 31 May 2016 letter that "Upon analysis, it can be seen that the only risks in the way that in which this company conducts its duty suspended business are the unavoidable risks which are inherent in the duty suspended regime – something Parliament has elected to allow. It would be quite wrong for the Commissioners to alight on these as if they were unique to this company". The Commissioners accept that there is risk inherent in trading in the duty suspended regime; however the Commissioners' concern is that EFBL and WWL's due diligence and attitude since being notified of tax losses and the inadequacies of the due diligence does not actively contribute to reducing that risk. If the requirements of PN 196 (in particular section 10) had been met fully, this would have a positive effect on mitigating the risk within the duty suspended regime.

65. Mr Chatha states, at paragraph 44 of that letter, that "Notification of suspicious activity and facts are not the same thing. The former cannot be collapsed into the latter. We do not deny facts. In every instance where this company has been made aware of fraudulent activity downstream, we have responded swiftly and appropriately. To seek particularity or material beyond say-so is not to deny facts: it is to be careful that legitimate businesses are not wrongly tarred".

66. The Commissioners have considered this statement but do not consider it to be persuasive. The Commissioners notified EFBL and WWL in September 2014 that they were at the beginning of 'significant tax loss chains' and that the due diligence wasn't adequate to protect from this occurring. On 05 November 2015, the Commissioners notified EFBL and WWL that they were supplying alcohol into chains where other suspicious activity and tax losses had been identified, and this was followed up in the letter of 08 February 2016. The representations made by EFBL and WWL since receiving this information has been, variously, to either deny there

are any failings in the due diligence processes of EFBL and WWL, or to reject that tax losses have occurred and insist on HMRC providing them with evidence of this.

67. Furthermore it is not, for a regulated entity (such as EFBL or WWL) to stipulate what material it will or will not accept in order to be convinced by information provided by the regulator which strongly suggests that a change in the business' behaviours or processes are required. Rather, it is for the regulated business to meet the conditions of its approval, and conduct the approved business in a duly diligent way to mitigate the risks that have been drawn to its attention.

68. Secondly, the statement made by Mr Chatha at para 44 of the 31 May letter appears to contradict what he states at paragraph 19 of the same letter. At this paragraph Mr Chatha states that *"...Our intelligence resources are much more limited than those of HMRC. We rely on HMRC to point us to specific matters of concern so that we can respond or, if HMRC prefers, the specific response that HMRC would like us to follow*". In light of the way in which previous warnings and advice have been received, the Commissioners do not have sufficient confidence that you would accept notification from them that there are suspicious activities within your supply chains and take appropriate action in response to such notification.

Tribunal's conclusion on HMRC's findings set out in its reasons

909. HMRC served a very large amount of documentary evidence in support of the primary facts relied upon at paragraphs 51 to 54 of Annex A, including the extent of volumes of alcohol and tax losses traced to missing or defaulting traders in mainland Europe. The Tribunal has seen the documentary statements and exhibits and heard oral evidence from all the witnesses in relation to the primary facts relied upon at paragraphs 50-68 of Annex A.

910. The Tribunal is not satisfied that the Appellants have proved that any of the primary facts as to the tax losses were not established on the balance of probabilities based upon the material available to it at 8 July 2016. Likewise, the Tribunal is not satisfied that the Appellants have established that the conclusions reached by HMRC in relation to the same were unreasonable or perverse. The Tribunal is satisfied that HMRC's conclusions on tax losses were reasonable, and the primary facts upon which they were based have been established on the balance of probabilities. The Tribunal has based its assessment upon the material available as at 8 July 2016 and all the evidence heard during the appeal.

911. The Tribunal does not find that the conclusions reached by HMRC at 8 July 2016 took into account any irrelevant matters or failed to take into account any relevant matters.

912. Furthermore, the Tribunal finds that the primary facts relied upon are established on the balance of probabilities and the conclusions reached remain within the range of reasonableness having heard all the evidence as at the hearing of the appeal in July 2017.

Evidence heard by the Tribunal during the hearing on Tax Loss

913. On the balance of probabilities, the Tribunal finds that the Appellants have been involved in supply chains resulting in tax losses featuring missing or non-compliant traders, often in France, and movements which cannot possibly have taken place as indicated by the formal documentation. There is extensive evidence of this in the witness statements and exhibits of Craig Lewis, Leslie Pitt and Karl Roberts which supports such factual conclusions being reached.

914. The Tribunal notes that there are a small number of outstanding appeals in relation to assessments concerning some of the tax loss chains in evidence in this appeal. In particular, there are outstanding appeals concerning Awards Drinks and Dale Global. Belgian authorities issued an assessment against Pulse Products Ltd. On HMRC's understanding, a first appeal against the assessment was dismissed and HMRC are awaiting information from Belgium as to whether there has been another appeal initiated.

915. In the circumstances, the Tribunal accepts HMRC's submission that the appropriate course is to find that the primary findings of fact made by the decision maker as to tax loss in the Appellants' supply chains were established on the balance of probabilities, that the evidence as a whole supports the finding that there was tax loss in the supply chains of the Appellants between 2011-2014. Nonetheless, this decision should not be taken as binding on any individual tax loss chain in other proceedings. [4]

916. In outline, HMRC concluded that there was significant tax loss in the supply chains of the Appellants on the basis of the following evidence: movements and sales of duty suspended alcohol, starting with either EFBL or one of the immediate extra-group customers to whom the duty suspended alcohol had been resold, resulted in tax losses in onward supply chains, between 2011 and 2014. This is demonstrated by the 'deal packs' exhibited to Karl Roberts' statement. Further details are also to be found in the statements of Craig Lewis and Leslie Pitt.

917. It remains unclear if and on what basis the Appellants put a positive case that the finding of such tax loss is not proved or unreasonable. They did not seek to challenge that the tax losses occurred at any stage during the appeal. In those circumstances the Tribunal having reviewed the evidence, primarily of Craig Lewis and Leslie Pitt considers that it is unnecessary to attempt to summarise this substantial evidence. It has already been summarised in Annex A of the revocation decisions but the following breakdown may be helpful by way of illustration.

918. The general construction of the tax-loss supply chains consists of:

---

[4] Importantly, no res judicata could arise as a consequence of any findings of the Tribunal on this issue because the parties in this case would not be identical to those in assessment appeals. HMRC cited a well established principle, *Phipson On Evidence*, 18th Edition, 43-25: "*The corollary of the rule that judgments are binding on parties and privies is that judgments can have no such effect as between strangers or a party and a stranger…*". Consequently, the Tribunal does not feel restrained in its jurisdiction to find the primary facts as to tax loss chains.

a) EFBL purchasing goods from a producer and receiving the goods at WWL premises.

b) EFBL has then sold the goods to Global or Bridgewell who are both situated on the Isle of Man, but the goods remained within the possession of WWL in the warehouse.

c) The goods were then sold by the IOM companies to UK-based companies (whilst the goods remained within WWL's possession).

d) Then the goods were transported directly to a tax warehouse located in another EU Member State. The UK-based companies, therefore, never physically received the goods themselves.

e) Once the goods were in the EU mainland tax warehouse, they were either sold to further UK companies who in turn sold them to the end non-UK businesses; or they were sold directly by the initial UK company to the end non-UK businesses.

919. In 2011 a total of 13.1 million litres of alcohol left WWL for transport to EU tax warehouses. HMRC have traced 3.79 milllion litres (28.93%) of this to an end user and established that all of the traced alcohol ended with a missing or non-compliant business.

920. In 2012 a total of 27.6 million litres of alcohol left WWL. HMRC have traced 4.04 milllion litres (14.64%) of this to an end user and again established that all of the traced alcohol ended with a missing or non-compliant business.

921. In 2013 a total of 26.8 million litres of alcohol left WWL. HMRC have traced 4.9 milllion litres (18.28%) of this to an end user and again established that all of the traced alcohol ended with a missing or non-compliant business.

922. In 2012 a total of 17.7 million litres of alcohol left WWL. HMRC have traced 84,565 litres (0.48%) of this to an end user and again established that all of the traced alcohol ended with a missing or non-compliant business. By comparison with the three previous years, the amount of alcohol which HMRC have traced was significantly less. Nevertheless, all of the alcohol which was traced ended, like in the previous years with a missing trader or non-compliant business.

923. Of the 85.3 million litres which left WWL between January 2011 and December 2014, 12.8 million litres have been traced through to a missing, non-compliant or suspicious business. This equates to approximately 15.01%.

924. It should be borne in mind that, having initially accepted that tax losses were occurring in their supply chains, the attitude of the Appellants over such tax loss changed and, leading up to the revocation decisions, the stance of the Appellants was to demand that such tax losses referred to by HMRC had to be proved to them before they would do anything to change their due diligence and they repeatedly asked for more information when notified of tax losses in their supply chains.

925. In their latest evidence, for instance the second statement of Jatinder Chatha, his comments on the evidence of tax loss in the witness statement of Craig Lewis essentially seek to defend the Appellants' requests for more evidence, and to deny knowledge of various entities which were missing or non-compliant traders in their onward supply chains rather than disputing that there was tax loss.

926. That misses the point which is focussed on the requirement that, having been informed by HMRC of the existence of such tax losses, they ought to have reviewed their due diligence procedures. The Appellants refused to carry out any such review and to consider what better due diligence measures could be taken by them.

927. The Appellants have no positive case that tax losses did not flow from goods sold by the Appellants, through Global/ Bridgewell between 2011 and 2014. They bear the burden of proof. They have not persuaded the Tribunal that, on the balance of probabilities, tax losses did not occur in the Appellants' supply chains in 2011-2014, that they could successfully challenge this aspect of the decisions.

928. There is sufficient evidence of tax loss flowing from goods sold by the Appellants in 2011-2014 to prove this occurred on the balance of probabilities. The tax losses are in the terms set out in Annex A to the decisions and include VAT / TVA losses (where applicable) in mainland Europe. In addition, for the reasons set out in Officer Lewis' decision, it is reasonable to conclude that further tax losses occurred in the UK as a result of these tax losses abroad.

929. The only attempt to challenge the tax losses by the Appellants was to test the connection of the losses to the Appellant by examining the supply chains. No positive case was put that these supply chains did not flow from the Appellants. Officer Pitt, for whom Officer Ryan Martin stood in during oral evidence, gave extensive evidence of tax loss chains. The reasons for the Tribunal's decision to admit Officer Martin's evidence in substitute for Officer Pitt's are recorded elsewhere in this decision. As to the tracing of specific goods in these particular tax loss chains, Officer Martin gave evidence that this could be seen from the documents provided to the Commissioners by the Belgian tax authority, through rotation numbers.

930. He demonstrated that these documents included warehouse stock rotation records, showing goods coming from the Appellants, into Belogistiques, and the same goods leaving Belogistiques and resulting in tax loss. He used Exhibit LRP 96 as a specific example, showing that pages 8-9 shows goods being received, and page 9 shows all three lines of products, with their reference numbers and rotation numbers. Page 3 shows the delivery note to Manutention. When one marries up the left-hand column rotation number, it matches the page 9 rotation number.

931. The Appellants made no attempt to challenge this evidence in any way. They cannot reasonably contend that it does not, on the balance of probabilities, demonstrate tax losses in their supply chains in the relevant period.

932. It is true that Karl Roberts, who exhibited some of the evidence of tax losses, did not do the original analysis on the chains. However, his evidence on why he was

confident that the goods flowing from the Appellants ended up in tax loss chains was that he had reasonably relied on information from other officers that the deal packs were put together mostly by the traders to whom goods were sold. He received this information from Officer Martin so while it is hearsay it is first hand hearsay on which the Tribunal places weight.

933. This is notwithstanding the fact that the Tribunal excluded certain evidence which had a more direct bearing upon this topic, namely four paragraphs of a statement of Officer Martin, giving its reasons in a ruling on 6 July 2017. Officer Roberts was nonetheless able to explain how invoice and stock reference numbers demonstrate the tracing of the goods through a particular deal pack.

934. There is no evidence at all that the goods came from any source other than Global / Bridgewell. There is a very large amount of evidence of goods being sold in these chains ending up in tax loss. There is sufficient evidence to show that, on the balance of probabilities, the deal packs accurately track goods sold originally by the Appellants, through their sister companies and on into chains resulting in tax loss.

935. The challenge by the Appellants in cross-examination did not demonstrate, on the balance of probabilities, that the goods sold by the Appellants were not the same goods as against which there was ultimately tax loss (and this was not put to Officer Martin who was able to point to warehouse rotation numbers to trace specific goods). The fact that Officer Roberts did not himself do the initial analysis on the chains he exhibited does not meaningfully detract from this. It was reasonable, given the huge volume of material generated in this investigation, for an officer to give evidence relying on the work of others.

936. The Tribunal is satisfied that HMRC's findings of primary fact in this regard are established, and that their conclusions drawn from those facts are within the range of reasonableness.

937. The existence of tax loss at the end of the Appellants' supply chains is particularly relevant to exposing the Revenue to an unacceptable risk of loss in at least two ways: a) the Appellants' failures to comply with the ADD condition from 1 November 2014 must be seen in light of actual losses previously occurring in the Appellants' supply chains when no due diligence condition was in force; b) the Appellants' behavior and attitude – the notification of these tax losses should have resulted in concern by the Appellants, and a review of how due diligence could be improved to address this risk. It is also relevant to the proportionality of the revocation decisions.

938. This is an example of how the conclusion on the second evaluative conclusion (supplies chains resulting in tax loss) interacts with the first evaluative conclusion (failure to comply with the ADD condition) and the fourth evaluative conclusion (behavior and attitude, particularly in relation to the failure to respond reasonably to warnings).

Historic and European tax losses

939. The historic nature of the tax losses, occurring in 2011-2014 compared to the decisions made in 2016, does not undermine the decisions because the relevance of tax losses in supply chains is as set out above. The appellants were notified of tax losses in supply chains, first in September 2014, which, although in the past, were not a very long time before. A fit and proper person would have displayed an attitude of concern and sought to address the risk to a greater extent than the Appellants did in their due diligence. The tax losses in question were not so old that the Appellants could have reasonably regarded themselves as no longer potentially inadvertently trading with (extra-group) parties committing fraud or supplying those committing fraud.

940. Indeed, the historic nature of the tax losses was considered by Officer Lewis as set out in Alcohol Assurance Panel report. The Appellants' business model had not changed and for instance they were still trading with Premier Inc (which features in the supply chains in which tax loss occurred) until February 2016.

941. Evidence of tax losses is necessarily historic: HMRC and other tax authorities can only discover tax losses *after* the event. The Tribunal accepts HMRC's contention that the ADD condition was introduced because tax authorities often cannot stop fraudsters before they have committed the fraud. The ADD condition ensures that traders look to reduce the risk of fraud in the present and future: section 10.1 provides, *"This condition requires that all excise registered businesses operating in the alcohol sector consider the risk of excise duty evasion as well as any commercial and other risks when they are trading. Doing so will help to drive illicit trading out of alcohol supply chains, and reduce the risk to businesses of financial liabilities associated with goods on which duty has been evaded."*

942. The Tribunal is satisfied that HMRC were not "back dating" the ADD condition when relying on these tax losses. Rather, their purpose in notifying the tax losses in the supply chains to the Appellants was in order to alert them to the risk of fraud in their supply chains, and to give them cause to take appropriate due diligence measures in response. They were, in any event, notified for the first time in September 2014, the same month in which they received notification of the ADD condition coming into effect in November 2014.

943. The Tribunal finds that it does not matter whether the tax loss have been proved to have occurred in the UK or another EU Member State. The Appellants' actions throughout exposed the UK Revenue to a risk of fraudulent loss. A fit and proper person should be concerned to prevent tax losses, regardless of whether they occur in the UK or elsewhere.

944. Further, EU Member States are reliant on one another to assist in combating tax fraud. There is considerable co-operation between HMRC and the other tax authorities within the EU in their common fight against tax fraud in connection with the sale and movement of duty suspended alcohol in the EU. HMRC have a proper interest not merely in protecting the UK Revenue, but also in assisting other EU tax authorities in that common fight to protect their respective tax revenues from fraud.

945. It is reasonable for HMRC to regard the ADD condition as one way in which the UK assists both itself and other Member States in combating tax fraud. Indeed, although a tax loss has been proved to have taken place in another Member State, there is a risk that a further and much more significant the tax loss has occurred in the UK through inward diversion and sale in the UK, or outward diversion (the onward sales in the EU being part of a fraudulent audit trail to cover this diversion). The potential for UK tax losses was indeed highlighted by Officer Lewis within his decisions at Annex A.

946. Therefore, it was reasonable for HMRC in its decision to rely upon substantial tax losses occurring in the Appellants' supply chains ending in mainland Europe as exposing the Revenue to an unacceptable risk of loss through fraud. Even were the Tribunal wrong about this and it would only be reasonable for HMRC to rely upon tax losses occurring in the UK, it was reasonable for HMRC to conclude there was evidence of some tax losses occurring in the UK or at least that there was a *risk* of tax losses occurring in the UK.

Irregularity in movements of duty suspended goods

947. HMRC's revocation decisions provided the following reasons in support of the evaluative conclusion on irregularities in movements of duty suspended goods at paragraphs 69-93 of Annex A of the revocation decisions (GBDL is Global and BWL is Bridgewell):

Irregularities concerning transport and EU warehouses

69. The Commissioners have identified discrepancies on both the UK transport of alcohol from WWL warehouses, and on the onward movement of those goods leaving the EU tax warehouses. The Commissioners have identified the following discrepancies:

a. Trailers which left WWL's premises fully loaded and destined for the mainland EU have been weighed and found to have travelled across the Channel light or empty, but are then recorded as received in full in the destination warehouse.

b. Trailers which left WWL's premises have been uncoupled and left at a trailer park in Dover, which are then collected by an alternative tractor unit and hauled onto the ferry. These loads are confirmed as received as stated by the EU receiving warehouse and no discrepancies highlighted.

c. Seals changed by UKBA on the journey between WWL's premises have not been entered on EMCS system or highlighted as a discrepancy by the EU receiving warehouse.

d. There are issues with the details for the hauliers transporting goods from the EU warehouse to which goods were dispatched from WWL.

70. Details of these irregularities are set out below. Taken together, the Commissioners consider these examples provide powerful evidence that the due diligence processes you have put in place are not robust enough to ensure you are notified when irregularities occur in the movements of goods, and call into question the standard of due diligence that you (and in EFBL's case, your internal group customers GBDL and BWL) carry out on the hauliers transporting your goods and the EU warehouses receiving them.

Light or empty loads

71. You were advised on 9 September 2014, by letter and in a meeting that trailers leaving WWL had been found to be light or empty when crossing the Channel. At the meeting, Officer Bourne explained the anomalies and what was required from you. Mr Eagleton provided paperwork for those movements and initially queried if it was possible that the recorded weights could be wrong or that the trailers were weighed incorrectly. Mr Eagleton, by email on 26 September 2014, further stated *"Each of the completed files additionally contain an e-mail from the customer stating that he has received all goods despatched to their account in respect of the files in question. Each file additionally contains a landing document from the warehouse of receipt which demonstrates that all goods despatched from Whittalls Wines Ltd were received at the intended warehouse of receipt. Given the above, I am not in a position to be able to explain why these loads subsequently weighed either light or empty when passing through the Channel Tunnel when clearly this could not be the case"*.

72. The representations made by you in your letters of 26 February and 2 April on the light or empty loads concentrate on whether the Commissioners can prove that the vehicles travelled across the Channel light or empty, complaints as to the level of detail in information which has been provided to you, and a claim that cross-Channel operators' procedures are not as robust as they should be. Your opinion is that the information from the EU warehouse and customer that the goods have been received appears to be irrefutable. Mr Chatha states, in his 12 May 2016 witness statement, without conceding that it happened, that the issue of the 'light or empty loads' is of '*real concern'* and he has asked for additional information to enable him to follow it up and ascertain what might have occurred. Given that you were advised in September 2014 exactly which loads were in issue, it is not clear what further material can meaningfully assist you. However, subsequent representations made on 31 May 2016 state again that EFBL and WWL have received confirmation from the EU warehouse that all goods were received and so that the Commissioners are wrong to trust the information of the cross-Channel operators without checking the accuracy of the data provided by them. The attitude displayed in paragraphs 34 – 36 of the 31 May 2016 letter does not appear to be one of 'real concern'.

73. You have criticised the Commissioners' reliance on evidence provided from the cross-Channel ferry operators (P&O Ferries) in preference to the evidence from the EU tax warehouses which assert that the goods were received. The Commissioners have investigated the reliability of the cross-Channel operator data and are satisfied that the cross-Channel operators have a robust procedure in place and that their information can be relied upon. That this is the Commissioners' view was confirmed to you on 8 February 2016. The reasons that the Commissioners regard the former evidence as more reliable than the latter on this topic are, broadly:

a. It has been demonstrated to the Commissioners' satisfaction that the weighbridges were in good working order at the relevant time;

b. The weight of the vehicles and contents in question has been confirmed by the ferry operator;

c. In view of the concerns we have raised with you regarding 4 of the EU tax warehouses to which you have despatched goods, it is not unreasonable for the Commissioners to prefer the account of the ferry companies, which suggests that the vehicles in question did not travel with stock as stated, to that of the tax warehouses, which suggests that they did.

74. The information obtained on the transport of goods alongside the tax warehouses' responses raises the concern that you do not have adequate control on the goods once they leave WWL's

warehouse. The identification of empty loads and the absence of any convincing explanation for it gives the Commissioners concern that the load may have been unloaded prior to the vehicle leaving the UK, i.e. that the goods may have been diverted.

75. The Commissioners take the view that you should, through your experience in the alcohol industry, be aware of the threat of duty suspended alcohol being diverted and sold on the UK market. The information presented to you on the empty loads should have alerted you to the possibility that the goods being sold by EFBL and subsequently transported from WWL's warehouses by the customer were being diverted during transit. As a response, your due diligence processes and risk assessments should have been reconsidered and enhanced to address this potential risk.

76. Instead, you remain firm in your view that the goods did arrive at the EU warehouse as manifested, that the light or empty loads, and therefore potential diversion, did not happen, and that there was no need to reassess the risks in the way that the goods were being transported. This reinforces the Commissioners' view that you are not meeting the ADD condition.

77. As to trailer swaps: the Commissioners have established discrepancies in the movement of goods leaving the UK from WWL warehouses. Movements of goods from WWL warehouses have been analysed and it has been identified that the actual trailer or vehicle carrying the goods to its final destination is different to that recorded on EMCS, but that the receiving warehouse has not queried this nor recorded it. This is a clear indication that there are trailer or vehicle swaps occurring after the loads leave the warehouse and before arriving at the destination.

78. During the 5 November 2015 meeting, you were asked whether you were aware of any trailer swaps happening on the loads in transit to the EU. Mr Eagleton stated that he was not aware of any trailer swaps happening, but he stated that he could see a commercial reason for it happening if it did.

79. The Commissioners' investigation has established that Rohlig (UK) Ltd, one of the haulage companies responsible for transporting goods for WWL, was subcontracting work to a French haulier, SARL Route Destination Voyages ("RDV"). The director of the French haulier has confirmed (in interview with the French customs authorities) that depositing of trailers at the port of Dover covered the majority of movements and was not something that happened on rare occasions. This information, together with the comments of Mr Eagleton that you were unaware of swaps, is a clear indication of the lack of proper control of the goods once they had left the premises.

80. The representations made by you on the matter of trailer swaps concentrates on the terminology used by the Commissioners, and you state that swaps may occur for normal commercial reasons. You have enquired as whether HMRC are taking any action against the haulier and seek confirmation that the Commissioners do not accuse WWL and EFBL of knowing involvement in diversion fraud.

a. The Commissioners acknowledge that there are different kinds of swap, i.e. trailer and vehicle, and accept that there may be commercial reasons for a vehicle swap to occur. However, you yourself concede that there is little commercial reason for a trailer swap. The Commissioners have identified that both kinds of swap appear to have happened between 2011 and 2014, and informed the companies of this in the letters of 10 May 2016. Mr Chatha's letter of 31 May 2016 persists in making the same representations regarding tractor v. trailer swaps and contains no new information for the Commissioners to consider in relation to this.

b. The Commissioners have also established that the haulier subcontracted to carry your goods considered such swaps to be normal. However, it appears that you were not aware of it until notified by the Commissioners. The Commissioners would expect you to have put systems in place which ensured that you are made aware of any such irregularities (i.e. tractor or trailer), so that you could assess whether there was a proper reason or not, as part of a robust process to mitigate the risk of fraud in this area.

c. As has already been confirmed, the Commissioners do not suggest that EFBL and WWL are knowingly involved in diversion fraud. The reason for informing you of the discrepancies that the officers had identified was to make you aware that they were happening and to alert you to the possibility that the goods being sold by EFBL, and subsequently transported from WWL warehouses by the customer, were being diverted during transit. You were notified in order that you could reconsider your due diligence processes and risk assessments. Instead, no adjustments have been made to the due diligence procedures or outcomes and you maintain that your due diligence is robust enough.

Failure to record seals

81. The discrepancies regarding the changing of the seals not being recorded or queried by the receiving warehouse were notified you in the letter of 08 February 2016. This information was provided to alert you to the fact that vehicles had been stopped, new seals applied and that it appears that the receiving EU warehouse or your haulier didn't consider it necessary to notify you. These irregularities are a potential indicator of risk. The purpose of providing such information is to allow you to reassess your due diligence procedures and conclusions in response.

82. The representations made by you on the matter of the change of seals concentrate on the frequency of the occurrences, whether UKBA found any discrepancies, that the Commissioners seek to rely only on 'fictitious information' to initiate revocation action. However, you also accept that you were not aware that any new seals had been applied to goods leaving your warehouse.

83. Your confirmation (in your adviser's letter of 25 February) that you were unaware of the new seals having been applied is of concern to the Commissioners because this indicates that anomalies are either not being identified by the receiving warehouse; or they are being identified and that they are being ignored; or that they are identified but the warehouse is choosing not to inform you. Had these anomalies been identified and reported back to you, you would have been alerted to events taking place on the vehicles en route, and you would have been able to make enquiries and reassess the risk. That this did not occur implies that your due diligence processes are not robust enough to ensure risk indicators are always reported to you, or that your due diligence on your hauliers or the receiving warehouses are insufficient to alert you to weaknesses in their due diligence processes.

84. The information provided by the Commissioners on 8 February 2016 should have alerted you to the possibility that the EU warehouses do not always notify you of anomalies and that, therefore, you should make your own enquiries. Instead, the attitude expressed in your representations remains that you trust the information provided to you by the receiving warehouses and rely upon the statement made by Mr Eagleton at the 05 November 2015 meeting that 'he had never had a load not arrive at the destination' in the 15 years that he has worked for EFBL/WWL.

85. Mr Chatha states in paragraph 4(4) of his letter of 31 May 2016 that '*We have informed recipient bonds that they must immediately inform us of any discrepancies in relation to seal numbers*.' Although Mr Chatha does not evidence or date this instruction, his statement at this stage suggests that this instruction has been recently put in place. This is a further cause of concern. As an experienced warehousekeeper, you should have already been aware that the changing of seals could indicate that the loads are being opened, changed or even stolen en route. As an approved warehousekeeper, despatching goods under duty suspension, you are responsible for the goods until they reached their destination and therefore, should be aware of what happens to the goods during transit. This is a further example of WWL not adequately assessing the risks in their transactions.

Irregularities with the onward hauliers' details

86. The Commissioners have also established the following discrepancies on the onward transportation of goods leaving the EU warehouses to which goods were delivered from WWL premises:

a. Details of the haulier which is recorded as moving the goods from the EU warehouse between September 2013 and March 2014 had been hijacked;

b. Vehicles shown as moving the goods were never owned by the true haulier who allegedly moved the goods between September 2013 and March 2014

c. Vehicles recorded as transporting the goods which were physically incapable of doing so (i.e. cars and motorcycles) between September 2013 and March 2014

d. Hauliers' details recorded as moving the goods between September 2013 and November 2013 were fictitious.

87. You were advised about these issues at the 05 November 2015 meeting and in the letter of 8 February 2016. Your representations made on this point are that you could not be aware of these irregularities, or responsible for, or complicit in them. You also state that the identification of these issues by the Commissioners is proof that the goods did arrive at the destination from WWL premises and that WWL obligations were therefore entirely met. Again, the Commissioners do not say and have never stated that you have been responsible for these irregularities or have been complicit in them. The Commissioners have not stated that the goods did not arrive at the EU warehouse on these occasions. The reason for informing you of the events identified in the EU was to notify you that they were happening and to alert you to the possibility that the goods being sold by EFBL and subsequently transported from WWL warehouses by the customer were being used in suspicious activity in the EU. As an experienced alcohol trader, this information should also have alerted you to the potential inward alcohol diversion taking place on the goods. Your due diligence processes and risk assessments could have been reconsidered as a response. Instead, you continue to maintain that your due diligence procedures are robust enough.

88. This information, taken together with the information HMRC has provided to you about the failure to record seal, vehicle and trailer anomalies by the EU warehouses, calls into question the amount of trust that you ought to place in them, and in the standard of the due diligence checks being undertaken by you on them.

89. Mr Chatha states (at paragraph 4(5) of his letter of 31 May 2016) that 'We have approached our main haulier (Hellmanns)….and asked that it gives consideration to what further steps it

could put in place to ensure it is not involved in duty fraud…we can report that Hellmanns has told us that it is going to discuss the matter internally in the coming month and we will follow up with Hellmanns immediately thereafter..'. The Commissioners have not been provided with a copy of the request or response, and do not have sufficient information to assess the viability of this proposal. In any event, as it comes so many months after the various issues were initially notified to you, the Commissioners are not able to treat this information as evidencing a sufficient or appropriate response as would be expected from a person fit and proper to hold approval.

Closures of EU warehouses to which goods were previously dispatched by WWL

90. The Commissioners have investigated goods which were sold by EFBL and transported from WWL's premises to EU tax warehouses under duty suspension. The Commissioners have established that 25 EU warehouses were used between 2011 and 2014. EU authorities have confirmed that six of these warehouses are no longer trading: two have closed due to having ceased trading; four (Belogistiques (Belgium), Consortium (France), Care Distribution (France) and MT Manutention (France)), have been closed by the relevant EU tax authorities due to their suspected involvement in alcohol diversion fraud. Approximately 14 million litres of the 85.3 million litres total alcohol leaving WWL, referred to at paragraph 52, above passed through these four EU warehouses closed by the EU authorities.

91. You were informed of the closure of these four warehouses at the 05 November 2015 meeting and in the letter of 8 February 2016. The representations made by you on 25 February 2016 about the EU warehouses reiterate your opinion that your due diligence checks were robust enough, that the warehouses were authorised to receive goods at the time of despatch, and that this was confirmed by SEED checks through HMRC. You also state that if the relevant authorities consider the warehouses in question fit and proper to be approved, you were entitled to assume that they were fit and proper.

92. The Commissioners have considered these representations, but do not consider that they address the Commissioners' main concerns. These are that WWL has been informed that it had previously transported goods to four EU warehouses which have been closed down by the tax authorities due to suspected involvement in alcohol fraud, and rather than treating this further warning as a potential problem and reassessing the due diligence procedures being undertaken by the business, you instead state that there is no way you could have known. There has been no evidence produced to show that you have reassessed the due diligence procedures in response to the provision of this information, or contacted the customer who instructed you to send goods to the relevant warehouses, or conducted any other enquiry.

93. This attitude is further enhanced with your additional statement that "...the reality is that in recent years, the vast majority of our clients' despatches - some 80% - have instead been made to the French excise bonded warehouse IEFW, which remains very much in operation". This is of a concern to the Commissioners because it suggests that as long the warehouse is open and approved, you consider that there is no risk in sending goods to it. This is despite section 10 of PN 196, which lists the checks to carry out on warehouses and risk indicators associated with the onward movement of goods. It is also despite being aware of the problems identified with previous EU warehouses receiving goods, and being aware, through the example deal packs provided by the Commissioners on 16 March 2016, that tax losses have been identified in transaction chains which have been delivered through IEFW.

948. The Tribunal, having heard the evidence from all the witnesses, is not satisfied that the Appellants have proved that any of the conclusions reached by HMRC as to the

Appellants' irregular movements based upon the material available to it at 8 July 2016 was an unreasonable or perverse conclusion to reach.

949. The primary facts underlying the conclusions in this part of the decisions letters are established on the balance of probabilities based upon the material available as at 8 July 2016.

950. The Tribunal does not find that the conclusions reached by HMRC at 8 July 2016 took into account any irrelevant matters or failed to take into account any relevant matters.

951. Nonetheless, the Tribunal is not satisfied, in light of the evidence served by the Appellants after the revocation decisions on 8 July 2016 and all the evidence heard during the appeal, that the primary findings of fact of HMRC as to the four light and empty loads relied upon (paragraphs 69a and 71-76 of Annex A) are now established on the balance of probabilities.

952. The Appellants have satisfied the Tribunal on the balance of probabilities that the four loads in question as set out in the anomalies letter of 9 September 2014 did travel, they were not empty and the goods were received by the EU warehouses in question. This is considered in greater detail below.

953. The Tribunal begins by considering the nature of the evidence before HMRC as at the time of the revocation decisions of 8 July 2016 before considering the nature of the evidence presented by the conclusion of the hearing of the appeals.

Irregularities concerning transport and EU warehouses as at 8 July 2016

954. As at the time of the revocation decisions the Tribunal finds the following facts on the balance of probabilities.

955. WWL did not have in place any procedures or written requirements, disclosed to HMRC prior to revocation, which were communicated to the hauliers and their various sub-contractors, that WWL had to be notified of any changes in load, tractor or trailer swaps, seal changes, and the reason for any such changes.

956. HMRC had discovered a number of irregularities and discrepancies in the supply of goods from the WWL warehouses to bonded warehouses in the mainland EU. Duty suspended alcohol despatched from WWL warehouses to bonded warehouses in EU Member states must be recorded and detailed on the Excise Movement and Control System (EMCS). However, evidence obtained from HMRC tracking systems and raw data from two ferry operators at Dover Port, raised the possibility that goods were being fraudulently diverted into the UK market prior to being shipped to the mainland Europe.

957. Ferry manifests and records indicated that a number of loads which were recorded on EMCS as received (and received by specific tractor and trailer units), were empty, light or did not travel, or travelled with different tractor or trailer units. It was not alleged that the Appellants were responsible for these irregularities but they clearly represented a real risk of fraud occurring.

958. By way of example of one such empty load, the EMCS data showed despatch and receipt of 15,840 kg of wine, yet documentation from the ferry companies which shows the weighbridge measured the gross weight as 7,500 kg which suggested the trailer was empty.

959. Similarly, WWL used seals with unique numbers to secure loads (a non-mandatory but appropriate step against theft and diversion) which should only be removed on receipt of goods by the receiving warehouse. HMRC's evidence indicated that seal changes were occurring and this did not appear to be disputed on behalf of the Appellants.

960. The Appellants' own procedures (disclosed for the first time in their disclosure in the appeal) specifically referred to seals being applied and a requirement that they be checked by the receiving warehouse to see that they have not been removed or tampered with prior to acceptance by the receiving warehouse. The Appellants' evidence demonstrated that this requirement was routinely ignored (if it ever existed in reality at all). Their major receiving warehouse never did any such checks at all.

961. Further, when HMRC presented information on light and empty loads to the Appellants, they denied that the evidence of the weighbridge could be relied upon, solely relied on the confirmation of receipt by the receiving warehouse and refused to carry out any further review of their procedures.

962. The conclusions reached in relation the irregularities in movements were open to HMRC on the evidence available at 8 July 2016.

Tribunal's findings as to irregularities following the evidence heard during the appeal

963. There are four different irregularities and discrepancies which have been identified in the movement of goods from the Appellants' warehouses, as set out at paragraph 69 of Annex A of the decision letter. They are:

(a) Trailers recorded as being despatched and received in full were weighed and recorded as light or empty at the port.

(b) Trailer and tractor swaps occurred without the Appellants being notified.

(c) Seal changes were taking place but were not highlighted to the Appellants by the receiving warehouse in the EU.

(d) Fraudulent movements of goods were taking place in the onward supply chains from EU warehouses into which the Appellants had supplied.

964. The nature of the Commissioners' reliance on this matter is clear from paragraph 70 of Annex A: *"Taken together, the Commissioners consider these examples provide powerful evidence that the due diligence processes you have put in place are not robust enough to ensure you are notified when irregularities occur in the movements of goods, and call into question the standard of due diligence that you (and in EFBL's case, your internal group customers GBDL and BWL) carry out on the hauliers transporting your goods and the EU warehouses receiving them."*

965. It is unclear whether the Appellants accepted the fact of trailer and tractor swaps, seal changes which went unreported and concerns with EU warehouses and their transport arrangements, but they put forward no positive case on these matters.

966. The Tribunal finds that the conclusions (b), (c) & (d) were reasonable and the primary facts supporting them were established on the balance of probabilities based on all the evidence available as at 8 July 2016 and that presented during the trial.

(a) Light and empty loads

967. HMRC's allegation in respect of the four light and empty loads is introduced at paragraph 69(a) of Annex A of the decision letter.

968. The Tribunal has heard evidence of the way in which HMRC obtained evidence of light and empty loads. Freight vehicles are weighed at ports by ferry companies. This information is then fed into HMRC's Freight Targeting Service ('FTS'). HMRC Officers then approached ferry companies to seek the raw data to confirm the information held on the FTS system.

969. Duty suspended alcohol despatched from WWL warehouses to bonded warehouses in EU Member states must be recorded and detailed on the Excise Movement and Control System (EMCS). However, evidence obtained from HMRC tracking systems and raw data from two ferry operators at Dover Port, raised the possibility that goods were being fraudulently diverted into the UK market prior to being shipped to the EU.

970. At P&O (according to the evidence of Ms. Medhurst), check-in systems operate with ANPR (Automatic Number Plate Recognition) which transfers the pre-booking (*"prelodgement"*) to the check-in system (*"Port Handling System"*). Prior to 3 February 2015 (when the requirement for the weighbridge was removed), all freight vehicles passed over a weighbridge and if the weight was above 14,680 kg, the vehicle was assumed to be not empty. This is because the average weight of an empty tractor-trailer combination is around 15,000 kg. The weighbridge ticket is presented by the driver and scanned (and entered manually if the scanning does not work). The check-in operator asks the driver for the trailer number, asks if the vehicle is empty or loaded and paperwork is provided by the driver.

971. DFDS Seaways (according to the evidence of Michelle Williams) has a slightly different method for uploading the data onto their system but they also, prior to 3 February 2015, required a weighbridge ticket.

972. Ferry manifests and records indicate that a number of loads which were recorded on EMCS as received (and received by specific tractor and trailer units), were empty, light or did not travel, or travelled with different tractor or trailer units. It was not alleged that the Appellants were responsible for these irregularities but they represent a real risk of fraud occurring.

973. By way of example of one such empty load, the EMCS data showed the despatch and receipt of 15,840 kg of wine, with documentation from the ferry companies which

shows the weighbridge measured the gross weight (including trailer) as 7,500 kg and suggests the trailer was empty.

974. Officer Hammouda gave evidence that, prior to 2014, HMRC visited Dover port, were given a guided tour and taken through the booking process. Further, she gave evidence that the weighbridge is checked regularly and that it *"had to be calibrated and it was tested by weights and measures"*. Ms Medhurst emphasised the importance of the accuracy of the weighbridge given its introduction following the disaster involving the Herald of Free Enterprise and also indicated that she understood the weighbridge was regularly calibrated and checked. Despite the Appellants' criticisms of the information obtained from the ferry companies, they have not satisfied the Tribunal that the weighbridge is, itself, flawed.

975. The Appellants relied on the following:

976. The difference between the gross weight and the description of the load indicate that there is an inaccuracy. However, HMRC have not relied on loads which are described as empty but have a gross weight suggesting they are full. At all times, HMRC have looked at the gross weights recorded.

977. In any event, there is no such discrepancy in the three loads which HMRC considered may have travelled empty and to which the Appellants were notified on 9 September 2014. Ms Medhurst explained that, where there is a discrepancy, the gross weight is more likely to be accurate. In particular, she drew attention to the fact that the weighbridge information is inputted into the system (manually or by scanning) whereas the load description defaults to 'empty' which may explain the discrepancy.

978. Other criticisms were made of the spreadsheets setting out many possible light and empty loads. For example, the Appellants have pointed to circumstances where the weights are recorded with an extra '0' or there is an obvious typographical error in the spreadsheets such that the weight is implausible (eg. 247,500 kg). HMRC accepted the possibility of human error. In any event, Officer Martin explained that these were (evidently) not taken into account as light or empty loads.

979. Similarly, the Appellants relied on a case involving the haulier Rohlig and a different ferry operator, Sea France. The Tribunal does not consider this to be relevant. Both Ms Williams and Ms Medhurst gave evidence to suggest the concerns raised by Rohlig are not relevant to their procedures.

980. The Appellants also relied on data from Rohlig. However, this data was difficult to match up conclusively because the ARC numbers were unreadable. Furthermore, as demonstrated by Officer Martin, they themselves contained numerous inconsistencies: in respect of just two examples, the "matched" data had the same seal numbers but different tractor and trailer units (an impossibility). If anything, this data threw up further discrepancies.

981. Any other potential criticisms (such as the possible use of an old weighbridge ticket, or other possible indications of human error) are so general and non-specific,

that they do not satisfy the Tribunal of the Appellants' assertion that they have conclusively disproved the reliability of weighbridge data.

982. It was put to Ms Williams that HMRC did not have the gross weight data in respect of the loads they were asked about – because Ms McAuley had simply stated that they were declared as empty, so recorded as such. In fact, HMRC had that information from the FTS system (eg. ARC ending '0950') showing the gross weight from FTS matched to this example using date (24 Feb 2014) and trailer (KP5126Z) and tractor unit (F117KP).

983. The criticisms made by the Appellants do not undermine the reliability of the weighbridge data. Furthermore, even if the Tribunal accepted some of the Appellants' criticisms of HMRC's spreadsheets as valid, they do not undermine evidence of empty loads where there are no discrepancies between the 'raw data' from the ferry companies and the FTS data. At the relevant time, all loads had to be weighed at the weighbridge in Dover Port; thus the weighbridge recording was a wholly objective factor. Despite the multitude of criticisms by the Appellants of the recording on FTS of weighbridge data, there is no evidence that the weighbridge itself is inaccurate or a challenge to its objectivity.

984. On 3 February 2015, procedures at Dover changed such that a weighbridge ticket was no longer required. The vehicle weight was based on the driver's declaration and documentation as to the weight of goods which is added to the average unladen weight of a vehicle. Therefore, *after* February 2015, the weighbridge data is far less accurate. The CCTV footage of goods purportedly arriving at IEFW, supplied by Hardeep Chatha, relates to loads travelling after February 2015 and is therefore irrelevant to the four loads relied upon by HMRC in their revocation decisions.

985. In light of the significant risks of alcohol diversion fraud, the non-existent due diligence undertaken on subcontracted hauliers, limited due diligence on IEFW (among other warehouses), minimal due diligence on extra-group customers and reliance on SEED checks (despite fraudulent conduct by authorised bonded warehouses such as Belogistiques), the Appellants dismissed even the possibility of diversion. Therefore, as set out at paragraphs 75-76 of the decision letter, HMRC reasonably concluded that the Appellants were not realistically and objectively assessing the risk of fraud and not meeting the ADD condition.

986. The Tribunal makes the following findings:

(a) It was reasonable for HMRC to conclude that the Appellants had not fully and reasonably satisfied themselves, and the Commissioners, that there was no possibility that these loads could have been diverted.

(b) As such, it was reasonable for HMRC to conclude that the Appellants were not fulfilling the ADD condition as they did not *"objectively assess the risks of alcohol duty fraud within the*[ir] *supply chains"* or *"put in place reasonable and proportionate checks, in* [their] *day to day trading"* (section 10, EN 196).

987. On the evidence provided at the time of the decision, and in the evidence before this Tribunal, the Appellants had not demonstrated that there was no possibility that these loads could have been diverted.

The Appellants' reaction to the evidence regarding the four light and empty loads

988. On 9 September 2014, the Appellants were notified of four movements which were recorded as light or empty at the port, orally and in writing, which were recorded on EMCS as being despatched and received in full. The Tribunal accepts HMRC's submission that the reason for notifying the Appellants was: (a) to obtain evidence in order to ascertain whether these goods did, in fact, travel; and, (b) to highlight concerns such that the Appellants could re-visit their due diligence procedures and introduce reasonable and proportionate checks to ensure they had control over their goods.

989. The four relevant loads highlighted in HMRC's letter dated 9 September 2014 were said to be either empty or non-travelling loads. In each case with regard to the three empty loads, the Dover ferry operator was P&O. The fourth load did not appear in any record of any ferry operator (or the Channel Tunnel operator). At the relevant time, all loads being loaded at Dover had to be weighed at the weighbridge in Dover Port; and thus the weighbridge recording was an objective factor. The revocation letters set out specifically the relevance, nature and extent of HMRC's reliance on the ferry operator dates – see in particular paragraphs 73 and 74 of Annex A.

990. Subsequent to the revocation decisions the Appellants produced evidenced in relation to three selected alleged light, empty and non-travelling loads from 2016, two of which took place *after* the revocation decision. More importantly, all three examples selected by the Appellants relate to loads shipped *after* 3 February 2015, when a weighbridge ticket was no longer a mandatory requirement and the ferry companies relied on the driver to tell them what the load weighed at Dover port.

991. While the evidence suggests potential inaccuracies in the post-2015 ferry company data, it does not render inaccurate any of the earlier evidence. Importantly, it does not detract from the Commissioners' concerns that the Appellants (a) had no procedures in place to pick up discrepancies and (b) refused to engage properly with the Commissioners' concerns. This is dealt with elsewhere.

992. The Appellants provided some evidence that the goods had purportedly arrived at the EU warehouses, (exhibited to Mr Eagleton's witness statement, save for an email from "David" purporting to show that the customer had received the goods). This information indicated that the receiving warehouse had confirmed receipt of the goods.

993. On 24 September 2014, HMRC wrote to the Appellants to thank them for the information provided and to seek an explanation as to why the Cross Channel operators show that the loads were light or empty.

994. On 25 September 2014, Officer Nicholas spoke to Mr Eagleton on the phone. She recorded that, *"Phil said he was concerned that the cross channel operators' information showed there had been 'light or empty loads' and wondered how this could happen – is it possible that the recorded weights could be wrong or that the trailer was*

weighed incorrectly? He said that he doesn't hold ferry tickets etc but that he had spoken to Hellmans (their 3rd party haulier) who said that they should be able to provide this information."

995. On 2 October 2014, Mr Eagleton emailed as follows: *"Each of the completed files additionally contain an e-mail from the customer stating that he has received all goods despatched to their account in respect of the files in question. Each file additionally contains a landing document from the warehouse of receipt which demonstrates that all goods despatched from Whittalls Wines Ltd were received at the intended warehouse of receipt. Given the above, I am not in a position to be able to explain why these loads subsequently weighed either light or empty when passing through the Channel Tunnel when clearly this could not be the case."*

996. The email correspondence from the "customer" cannot be relied upon given the relationship between Mr Eagleton and Hardeep Chatha (and the companies). The information was being obtained specifically for HMRC; both Mr Eagleton and Hardeep Chatha were aware of this. There is no reason, therefore, to use a pseudonym as Hardeep Chatha did – that of 'David'. As Mr Eagleton explained (in relation to a different misleading email from "David"):

> "19 Q. No, not lost on you. And also when he was using the
> 20 pseudonym David --
> 21 **A. Yes.**
> 22 Q. -- you knew perfectly well that it wasn't David, it was
> 23 Hardeep?
> 24 **A. Absolutely correct.**
> 25 Q. But it was necessary to keep up that pretence to the
> Page 163
> 1 outside world in case the secret leaked out?
> 2 **A. It was -- it's for email purposes as much as anything**
> 3 **else.**
> 4 Q. Yes.
> 5 **A. If you have to communicate and one goes astray, at least**
> 6 **the confidentiality is there.**
> 7 Q. Very often people by mistake send out an email in
> 8 a string of emails which has got information --
> 9 **A. Absolutely.**
> 10 Q. Exactly. And you don't know, just so -- it was a device
> 11 to hide away who he was?
> 12 **A. To continue the commercial confidentiality, yes, that's**
> 13 **right.**
> 14 Q. Otherwise if you picked up the phone and talked to him
> 15 you'd say "Hello Dippa"?
> 16 **A. Yes, I mean he never rang me and said "Hello Phil, it's**
> 17 **David", that would be ridiculous."**

It is notable that Mr Eagleton has *not* exhibited this email chain (now that the relationship between the companies and the pseudonym has been revealed).

997. Throughout 2015, the Appellants were advised of areas in which their due diligence procedures should be improved and aspects of their business to which they should focus attention. In particular, during meetings on 30 July 2015 and 5 November 2015, and in correspondence, HMRC highlighted that Excise Notice 196, section 10 requires that a business put in place reasonable and proportionate checks on transport arrangements. The Tribunal accepts HMRC's submission that the purpose of the notification was not to move towards an assessment, but to highlight potential issues in their supply chain (in which they were aware that there was a risk of fraud, and were subsequently aware that there was, in fact, fraud occurring).

998. HMRC set out their concerns regarding the light and empty loads in the minded to letter of 8 February 2016. The Commissioners highlighted that, among other transport irregularities, trailers were recorded as empty by ferry operators and, *"This highlights the fact that goods sold on by your direct customer have left the warehouse in duty suspension and <u>may</u> not have arrived at the destination stated in the EMCS and on the EAD…"* (emphasis added). As a result of this information, HMRC's concerns were:

> (a) *"Mr Eagleton's response to these concerns leads the Commissioners to believe that Whittalls Wines Ltd and therefore EFB Ltd (as they have the same directors and owners) do not take sufficient care to satisfy themselves as to the whereabouts of goods that have left the UK warehouse or that those goods have, in fact, reached the destination stated on the EAD"*.
>
> (b) *"The information presented to you by the Commissioners on the empty loads ought to have alerted you to the possibility that the goods sold by you and subsequently transported from Whittalls Wines Ltd warehouses by your direct customer were being diverted encountered. Despite being advised of the empty loads travelling across the channel, no evidence has been provided to show that EFB Ltd made enquiries with the direct customers or gained a satisfactory response to address these issues. Instead, you attempted to explain the anomaly by suggesting that the cross channel operators were at fault or that their systems were inaccurate. The Commissioners have investigated this potential scenario and are satisfied that the cross channel operators have a robust procedure and that their information can be relied upon"*.

999. In the Appellants' substantive response to the 'minded to' letter, at paragraph 16, Mr Rimmer queried why HMRC themselves had not approached the haulage companies, attempted to minimise the number of allegations of light or empty loads, and asserted that, in light of the evidence they had obtained, *"…it was our clients' position at the time, and it remains so, that whatever the HMRC allegations of light or empty loads, the four movements were indeed properly completed…"*.

1000. Further, the Appellants relied on the unsatisfactory correspondence set out above, payment by Global / Bridgewell and notification of receipt of goods from IEFW to Global / Bridgewell. This information took the Tribunal no further than their previous position: that an EU bonded warehouse had reported that they had received the goods. At paragraph 16 of his letter, Mr Rimmer asserted:

"Further, as stated above, this matter was then fully investigated by our clients and it was established and notified to HMRC that:-

(a) *An e-mail, a hard copy of which was held in the movement file, had been received from the customer in each of the four movements concerned confirming receipt of all goods despatched into its account;*
(b) *In each case, the customer paid for the relevant goods, as presumably you would accept it would have done had it not received all or any of the relevant stock..."* (emphasis added)

1001. As such, it was the Appellants' view that, on the evidence that they had provided, they had disproved the possibility of fraud:

"As an experienced HMRC Officer, you should be aware that as we have established above, there is highly likely to be an alternative, more straightforward and entirely legitimate explanation than excise diversion fraud for the 'information' upon which the Commissioners rely. We remind you that our clients' third party haulage companies are highly reputable and have their own unblemished movement guarantees approved by HMRC."

1002. On 16 March 2016, HMRC reiterated that the Appellants should consider transport arrangements as part of their due diligence and that the evidence provided demonstrated that they *"do not concern themselves with what happens to the goods once they have left the warehouse"*.

1003. On 2 April 2016, the Appellants continued to focus on whether HMRC could prove (or the Appellants could disprove) the empty loads, rather than HMRC's concerns that the Appellants had no, or no adequate, control on the goods.

1004. On 31 May 2016, Mr Jatinder Chatha provided the final representations on which the Appellants sought to rely, in accordance with the order of the High Court dated 13 May 2016. Mr Chatha made it clear at paragraph 39 of the letter that he understood the nature of the reliance on the ferry records as showing the possibility of diversion fraud and the reasons that HMRC were concerned. Nevertheless, he stated at paragraph 40:

"Such tenuity – goods, having duly arrived at the EU warehouse, there being a "possibility" that at some point thereafter those goods were used in "suspicious" activity for which this company was neither responsible nor complicit – is not a proper basis for making such an important decision: a decision that threatens the employment of over 800 British employees. It is not even a proper factor for such a decision."

The nature of the decision on light and empty loads

1005. The nature and purpose of HMRC's reliance on the ferry company data is set out at paragraph 73-74 of Annex A of the revocation decision:

"73. The Commissioners have investigated the reliability of the cross-Channel operator data and are satisfied that the cross-Channel operators have a robust procedure in place and that their information can be relied upon. The reasons that the Commissioners regard the former evidence as more reliable than the latter on this topic are:

(a) It has been demonstrated to the Commissioners' satisfaction that the weighbridges were in good working order at the relevant time;
(b) The weight of the vehicles and contents in question has been confirmed by the ferry operator;
(c) In view of the concerns we have raised with you regarding 4 of the EU tax warehouses to which you have despatched goods, it is not unreasonable for the Commissioners to prefer the account of the ferry companies, which suggests that the vehicles in question did not travel with stock as stated, to that of the tax warehouses, which suggests that they did.

74. The information obtained on the transport of goods alongside the tax warehouses responses raises the concern that you do not have adequate control on the goods ones they leave WWL's warehouse. The identification of empty loads and the absence of any convincing explanation for it gives the Commissioners concern that the load may have been unloaded prior to the vehicle leaving the UK, i.e. That the goods may have been diverted." (Emphasis added)

1006. Similarly, as Officer Lewis made clear in his witness statement at paragraph 241:

"The Commissioners do not suggest that the Appellants were knowingly involved in diversion fraud. The reason for informing the Appellants of the discrepancies which HMRC had identified was to make them aware that these were happening and to alert the Appellants to the possibility that the goods being sold by EFBL, and subsequently transported from WWL warehouses by the customer, were being diverted during transit. The Appellants were notified in order that they could reconsider their due diligence processes and risk assessments. Instead, no adjustments were made to the due diligence procedures or outcomes and the Appellants maintained that their due diligence was robust enough." (emphasis added)

Conclusion

1007. It is common ground that the Tribunal has the power to make findings of fact in light of 'clarifying' evidence provided after the decision in relation to facts and events at the time of the decision.

1008. The Appellants have, subsequent to the revocation decisions, provided evidence of the onward supply of goods, indicating transfer to the first extra-group customer and being assigned an internal rotation number in the bonded warehouse. There is a notable absence, however, of any CCTV evidence (which Mr Gluck stated would have been available) or an audit trail through the warehouse and out again.

1009. There is no evidence to demonstrate when the Appellants had access to these documents (indeed, Mr Eagleton's evidence suggests he did not consider it); there is therefore no evidence that these documents fell within the Appellants' state of knowledge at the time of the revocation decisions. Nevertheless, even if they did have this material at the time of the decisions, they did not disclose this information to HMRC when they were ordered by the High Court to provide any information and representations on which they relied by 31 May 2016.

1010. As above, the Appellants have not demonstrated that they had, at the time of the decision, reasonably and objectively assessed the risks or concluded that there was no possibility that these goods could have been diverted.

1011. Nonetheless, on balance the Tribunal is satisfied that they have disproved the likelihood that these four loads did not in fact arrive. The Tribunal finds on balance that the four loads did in fact arrive so did not travel light or empty.

1012. HMRC now accept that, in light of the evidence that the Appellants have now supplied through the exhibits of Mr Hardeep Chatha to his witness statement dated 3 April 2017 (being onward supply information) and the exhibit to the witness statement of Mr Pryke dated 22 March 2017, it is likely that they would have concluded that there is *now* sufficient evidence to show that these goods may have arrived at the IEFW warehouse.

1013. As such, HMRC do not pursue the contention that these four loads of goods did not, in fact, arrive. As indicated above, the Tribunal finds on the balance of probabilities that the four loads of goods did in fact arrive and these were not light or empty loads. The evidentiary position expressly given to HMRC by the Appellants as at the date of the decision did not include the factual material set out in the April 2017 evidence.

Findings relevant to inevitability decision

1014. Nonetheless, the Tribunal having heard all the evidence, continues to find that the conclusion upon which HMRC relied in respect of light and empty loads (that they indicated the *possibility* of outward diversion) to be a reasonable one to have arrived at the time the decision was made as regards four loads. This is notwithstanding its finding that, in light of the recent evidence, the goods in question are likely to have been received.

1015. Furthermore, on the evidence as it now stands, in light of the reliability and objectivity of the weighbridge, the Tribunal is satisfied that HMRC's other concerns remained reasonable:

(a) HMRC reasonably relied on the ferry operator data as indicators of the possibility of loads being unloaded and thus a risk to the consignments of duty suspended alcohol being supplied to the EU tax warehouses.

(b) HMRC had a reasonable and legitimate expectation that, well before the decision was taken, the Appellants would carry out a proper audit and investigation of the 4 apparently empty/light loads signalled to the Appellants in HMRC's letter dated 9 September 2014. By that time, it was clear that the companies were not operating at arm's length; there was no reason why the information provided to HMRC could not have included the provision of full onward supply information into and out of the French tax warehouses (including CCTV information as was readily and regularly used by IEFW). To have provided only (i) an EMCS computer-inputted receipt, (ii) the receiving warehouse's landing document and (iii) an email from "David" (Hardeep Chatha) saying that he believed that the goods had arrived was not adequate proof on their own, especially in the context of a number of approved EU tax warehouses having been closed down.

(c) In light of the information given to the Appellants about the risk to their consignments, HMRC reasonably expected that the Appellants would carry out a review of the due diligence and would improve their due diligence checks and notification requirements with regard to the hauliers whom WWL employed.

(d) The Tribunal is satisfied that the Appellants did not carry out any proper review and did not make any improvements to their due diligence or to their requirements for notification by the hauliers. At best, they signalled that, by 31 May 2016 (some 18 months after the ADD Condition had come into effect) that they had only just asked their principal hauliers, Hellmann, to consider the position.

1016. HMRC's conclusion – that the Appellants did not have sufficient control on the goods when they left the WWL warehouses – was made on the footing that it was reasonable to rely on the ferry operator data to suggest that the loads may have travelled empty and that the Appellants should have, but failed to, *"reassess the risks in the way that the goods were being transported"*.

1017. The Tribunal is satisfied that it was reasonable for HMRC to continue to rely on the evidence of these four light and empty loads (which was placed before the Appellants) as indicators at that time of the possible risk of suspicious activity or diversion fraud taking place.

1018. The Appellants have not satisfied the Tribunal that the ferry operator data was so unreliable that it was not reasonable for HMRC to have relied on the data at the time of the decision in July 2016 and to have concluded that such data indicated there was a risk of suspicious activity or diversion fraud which the Appellants had been unwilling properly to recognise and address in their due diligence and other appropriate measures of control over their consignments.

1019. By contrast, the Appellants' position is that they were not required to make any changes to their procedures because they had conclusively disproved these discrepancies, as set out in the witness statement of Jatinder Chatha at paragraph 115:

"Mr Lewis suggests that HMRC's reasons for informing us of tax losses and other irregularities was "to alert [us] to the possibility that the goods being sold by EFBL and subsequently transported from WWL warehouses by EFBL's customer were being used in suspicious apparently fraudulent activity in the EU." HMRC then expected us to reassess our due diligence. Of course, this all presupposes that HMRC had in fact given us clear indications of tax losses within our own supply chains in relation to which we could respond meaningfully; and, that allegations of the limited number of 'light or empty loads' was not satisfactorily explained following by our own enquiries. Neither of these were in fact the case."

1020. Therefore, while the Tribunal has made findings of fact that these four loads did not, in fact, travel light or empty, this is of relatively little significance when considered in light of the context set out above. Even though it now turns out that HMRC are likely to have been wrong about these loads, they were not so based upon the evidence available to them at the time of the revocation decision in July 2016.

1021. Furthermore, the Tribunal is satisfied to a high degree of probability that the same decision would inevitably have been reached taking into account the new evidence and findings given the context set out above: there remain (unchallenged) discrepancies and anomalies in the Appellants' transport arrangements, and the important conclusion that HMRC made was the poor quality of the Appellants' response to these matters and their day-to-day checks and due diligence procedures. The matter of light / empty loads feeds into three of the evaluative conclusions: the first (due diligence), the third (transport irregularities) and fourth (attitude). Furthermore, it is only one of the transport irregularities upheld as being reasonably identified as of concern and this finding does not disturb HMRC's conclusions on the Appellants' due diligence and attitude to warnings.

1022. In addition to these points, there has been significant new evidence served since the revocation decisions and the Tribunal has made additional findings going far beyond that which support the original decisions. It has made additional findings in relation to the inadequacy of due diligence than that set out in the revocation decision letters and additional findings on the Appellants' behaviour and attitude.

1023. For example, there have been striking findings in relation to numerous lies told by key persons within the Appellants (Rajinder Chatha, Jatinder Chatha, Philip Eagleton and Hardeep Chatha) to HMRC at meetings and in witness statements and to the Tribunal in oral evidence. These findings have been dealt with at length above.

1024. All of this feeds into the Tribunal's conclusion that, even if Officer Lewis, or HMRC as a whole, taken into account the finding and evidence on the four light and empty loads in making their decisions, it is inevitable that they would have arrived at the same decisions that:

a) there were irregularities in the movements of the Appellants' goods;

b) the Appellants were not fit and proper to hold the approvals due to all four evaluative conclusions;

c) the Appellants' approvals should be revoked.

Additionally, HMRC would inevitably have reached the same conclusion that they were not fit and proper persons and their approvals should be revoked based upon the evidence heard by the Tribunal on the Appellants' misleading statements and behaviour in relation to matters material to their duty suspended businesses which could reasonably and independently justify such a conclusion.

1025. The Tribunal is mindful of the high hurdle that is required to be satisfied before it can apply the 'inevitability' jurisdiction (set out in *John Dee* and *Behzad Fuels*) and will return to this point in its discussion.

1026. Suffice to say at this stage, if these appeals are not an example of when the inevitability jurisdiction should be applied, then the Tribunal struggles to think of any case in which it could be applied.

1027. There is an overwhelming case that it is simply not conceivable that Officer Lewis or HMRC would come to any other decision than they did in light of all the evidence heard by the Tribunal and findings it has now made.

b) Trailer and tractor swaps

1028. HMRC found evidence that there were tractor and trailer swaps occurring in the Appellants' consignments of goods to EU bonded warehouses. A tractor swap is swapping the tractor which tows a trailer consigning the goods. A trailer swap is taking the goods out of one trailer and placing them in another. HMRC produced in evidence to the Tribunal examples of tractor swaps in the Appellants' consignments in a schedule of sub-subcontracting and numerous examples of trailer swaps such as, for example, for trailer 696W in the 2014 entries.

1029. However, when this information was put to the Appellants, they indicated that they were unaware of this happening and they made no effort to introduce procedures to require notification. This is another matter of concern, tending to suggest that the Appellants did not have control (or reasonable interest in the control) of goods once they left their warehouses.

1030. For the avoidance of doubt, HMRC had evidence of both tractor swaps (when the tractor unit is swapped, but the trailer remains the same) and trailer swaps (when the goods are removed from the trailer, and loaded into a new trailer). While trailer swaps are much more concerning, HMRC reasonably considered that, in view of the high risks of fraud in the transport of goods, the Appellants should have had procedures in place to be notified of both trailer swaps and tractor swaps.

1031. The Appellants accept that trailer swaps occur but that they were not aware of them happening. At the meeting on 5 November 2015, it is recorded that *"LP asked if WWL are aware of trailer swaps happening on their goods in transit, PE confirmed that they were not aware of this but he could see commercial reasons for it happening"* [LP is Leslie Pitt and PE is Philip Eagleton]. Mr Eagleton accepts this at paragraph 8 of his statement. Indeed, they have not introduced any evidence to controvert HMRC's evidence. In the circumstances, it is not open to them to assert that trailer swaps have not occurred, or that they required notification of this.

1032. In respect of tractor swaps, it appears that the Appellants also accept that these were occurring, but do not consider that they should be notified thereof. However, in cross-examination of Officer Bourne, there was an implication that the Appellants *were* notified of tractor swaps [RDV being a sub-contracted transport company]:

> "24 Q. And then you ask:
> 25 "Have Whittalls ever queried the vehicles sent?"
> Page 54
> 1 And Ms Baker says yes:
> 2 "Truck swap, RDV are not allowed to do this."
> 3 And that's entirely consistent, isn't it, with
> 4 Whittalls taking its due diligence and transport

5 obligations seriously; correct?
7 A. Yes."

1033. It is not entirely clear what was being suggested. If it was the Appellants' case that RDV were not allowed (by Rohlig) to conduct tractor swaps and that the Appellants were aware of this, it is unclear how this advances the Appellants' position.

1034. Based on the disclosure of documents by the Appellants, it is likely that the Appellants were aware of tractor swaps by RDV in breach of Rohlig rules, and yet did not raise the issue with Rohlig or RDV. Furthermore, it would tend to suggest that Rohlig were not in control of these goods nor were they carrying out adequate due diligence themselves. There is no evidence to suggest that the Appellants made any changes to their procedures in light of this.

1035. In addition to the notification on 5 November 2015, the Appellants were notified by letter on 8 February 2016. HMRC accepts that the terminology in this letter may appear confused. Nevertheless, in correspondence on 10 May 2016, HMRC made their position very clear that both tractor swaps and trailer swaps were occurring:

"a. The Commissioners acknowledge that there are different kinds of swap, i.e. trailer and vehicle, and accept that there may be commercial reasons for a vehicle swap to occur. However, you yourself concede that there is little commercial reason for a trailer swap. The Commissioners have identified that <u>both kinds of swap appear</u> to have happened between 2011 and 2014.
b. The Commissioners have also established that the haulier subcontracted to carry your goods considered such swaps to be normal. However, it appears that you were not aware of it until notified by the Commissioners…" (emphasis added)

Similar clarity is evident in the revocation decisions at paragraph 80.a. of Annex A.

1036. Nevertheless, the Appellants' evidence and submissions have sought to deflect or deny, rather than focus on HMRC's concerns. In his letter of 31 May 2016, and despite the clarity of the 10 May 2016 letter, Jatinder Chatha continued to suggest that HMRC were mistaken:

"37. That leads us to the trailer swaps on which the Commissioners rely. As we have demonstrated in our table, the Commissioners have mistaken a trailer swap for a tractor swap – a perfectly commonplace and legitimate activity which of itself involves no risk for the Revenue.
38. The mistake is as basic as could be. It serves to illustrate why HMRC would be better to hear this company out with an open mind rather than approach it with a concluded view which is then used as the basis on which to accept or reject the evidence."

1037. The Appellants have not provided any evidence to dispute the existence of tractor and/or trailer swaps, or any evidence that they put in place notification requirements for their hauliers, subcontracted hauliers or sub-subcontracted hauliers. Further, it was not

put in questions to any HMRC officer (in particular, Officer Martin) that trailer and tractor swaps were not occurring.

1038. In light of the concerns highlighted by HMRC of possible outward and inward diversion fraud, such notification requirements were reasonably required for compliance with the ADD condition. Section 10 is detailed and, in some ways, specific as to the steps that should be taken: Section 10.2 of EN196 states, inter alia, "*As a general rule 'FITTED' checks should normally focus on: ... transport details of the movement of the goods involved whether or not you are directly involved in this"*; Section 10.6 provides that, *"... details of delivery vehicles should be retained and if necessary any variations to expected transport arrangements recorded."*

1039. Indeed, the Appellants' own evidence demonstrated the importance of such notification requirements and further due diligence checks. They were aware (or should have been aware) that sub-subcontracting took place. For example, Arden Forest Logistics Ltd collected goods from their warehouses despite Hellmann subcontracting to Aqumen. One example is shown at LRP28: the actual haulier is Arden Forest, shown on the EMCS record (created by the Appellants); the (two) CMRs show both Aquamen (not Aqumen) and Arden; it is clear from the invoices, and emails that these were sub-subcontracted.

1040. However, it is evident from correspondence between Jatinder Chatha and Mr Steve Harris, Branch Manager at Hellmann (carried out for the purpose of these appeals) that Hellmann were totally unaware of this: Mr Chatha asked, *"Aware that Acqumen was subbing down to Arden? Did you have any concerns about Arden? If so, did you communicate these concerns to Whittalls?"* and Mr Harris responded, *"We forbid sub-contracting of any loads and have no knowledge of Arden"*. These investigations should reasonably have been carried out long before, rather than in March 2017 (post the revocation decisions). Furthermore, there is no evidence that any changes have subsequently been put in place – confirming HMRC's concerns that the Appellants do not respond to identified risks.

c) Seals

1041. The use of seals with unique numbering is an appropriate security precaution (albeit not mandatory in the UK) to protect goods against theft and diversion while they are in transit. However, if seals are removed and replaced before delivery during transit, and discrepancies are not recorded and notified to the consignor by the receiving warehouse, the precaution is worthless.

1042. HMRC's evidence – which has gone unchallenged – indicates that seal changes were occurring during transit but the Appellants' receiving warehouses paid no attention to this; and WWL were never notified about discrepancies. Examples of seal changes are set out by HMRC in a schedule of seal changes. HMRC was aware of seal changes based on information provided by the UK Border Agency (UKBA). It is not suggested (nor has it ever been) that these particular seal changes indicate any impropriety in the particular loads (they were carried out by UKBA).

1043. The Appellants were notified that seal changes were going unrecorded in correspondence from HMRC prior to revocation. The Appellants were notified in order to highlight the possibility that (a) their reliance on seals was misplaced, and (b) information entered on to EMCS by the receiving warehouse may not be as accurate as they assumed. HMRC would reasonably have expected the Appellants to assess objectively this information and introduce reasonable and proportionate checks in their day-to-day trading.

1044. However, the Appellants have misunderstood the nature of HMRC's concerns. In his letter of 25 February 2016, Mr Rimmer (on behalf of the Appellants) asserted that:

"…it is a matter for the destination bond's own procedures as to whether it deems it necessary to record the change of seal. In any event our clients are very concerned that yet again, you have sought to infer the presence of excise diversion fraud from unproven circumstances which, if they have arisen at all, have, we submit, a far more straightforward and entirely legitimate explanation.
A final point here which again you appear to have failed to have considered, ignored or dismissed out of hand: if the loads to which you refer have been intercepted by UKBA prior to their departure from the UK to the EU and seals have been identified which do not accord with EMCS records, why did UKBA apparently then fail to act upon these apparent discrepancies and properly examine the load to establish any evidence of potential diversion, for example light or empty loads? Or did UKBA in fact examine the loads but no such evidence of diversion was found, a fact that conveniently fail to mention here? We are very concerned that the only 'fictitious information' which arises in this case is that upon which you seek to rely in your threatened revocation of our clients' various excise approvals."

1045. The Appellants have failed to appreciate that HMRC's concern is <u>not</u> that these loads were suspicious but that the receiving warehouse did not record seal changes on EMCS. Similarly, when these seal changes were put to Mr Glyn Davies (of Tamaz warehouse), he stated that there was nothing *"sinister in the fact that the seal has been changed in this instance"*. Again, this was not HMRC's concern. Rather, HMRC's reasonable concern was that the Appellants should not have unquestioning confidence (in the absence of other supportive evidence) in their seals or in the information inputted on to EMCS by the receiving warehouses.

1046. In his oral evidence, Mr Glyn Davies accepted that it was only worthwhile using seals if the consigning warehouse were notified of any changes. He made it clear that Tamaz staff do not check the seal numbers and that the Appellants had not requested that he check the seal numbers and/or notify them of any change. He also accepted that such a step would make *"absolute"* sense. Mr Manuel Gluck's evidence was that IEFW warehouse do <u>not</u> check seals at all as they see no need to do this. However, he then gave evidence that the Appellants did request that he notify them of seal changes. His witness statement, dated 3 April 2017, indicates that seal changes were not recorded.

1047. On the final day of evidence, the Appellants disclosed to HMRC and the Tribunal an email dated 12 May 2016 in which Philip Eagleton requested that IEFW should check the seals. This does not meaningfully assist the Appellants: the email was sent

towards the end of the minded to process; there is no specific or documentary evidence that any other receiving warehouse or haulier was so instructed and IEFW continue not to check seals. It is plain that the Appellants have known that IEFW continues not to check seals routinely since at least 3 April 2017 (when Mr Gluck said as much in his witness statement) but have not taken steps to correct this.

1048. In light of the evidence of Mr Gluck and Mr Davies, it appears that the Appellants' assertions as to the remedial steps that they have taken are not borne out. In his letter dated 31 May 2016, Mr Jatinder Chatha asserted, "*We have informed recipient bonds that they must immediately inform us of any discrepancies in relation to seal numbers."* Similarly, in their 'Alcohol Governance Policy' documents (disclosed for the first time in the Appellants' disclosure in this appeal in October 2016), purporting to date from November 2014 or September 2016, they assert, *"Receipting warehouse keeper notifies if there are any issue wit (sic) the goods, vehicle, seals or documentation received and notifies dispatching warehouse and notes discrepancies on EMCS"* and similar notification requirements are made of hauliers. There is no evidence that such requests of hauliers were made.

1049. It appears that the Appellants have accepted that seal changes occurred and the receiving warehouses did not (and do not) notify them of these discrepancies. It is a reasonable, inexpensive and easy step to take in order to protect against the risks of diversion fraud; a step which the Appellants have indicated they were willing to do. However, it is abundantly clear that even by the time of the hearing, some 18 months after the initial notification, their receiving warehouses did not make checks or notify them of any discrepancies.

1050. Although the Appellants' practice is to use their own seals, they were content to allow a sub-subcontracted haulage company (on which it is common ground that they had conducted no due diligence), Arden Forest Logistics Limited, to use their own seals. In itself, such an approach is unreasonable for a company which purports to have significant experience in the trade and objectively assess the risks of excise fraud, and which relies on seals as a means of securing loads against that risk.

1051. As set out in the witness statement of Officer Pitt, adopted by Officer Martin, Arden Forest was noted to be using duplicate seals. As he explained, the security value of such seals is zero. In the context of the specific risks inherent in the consignment of goods to EU warehouses, such an approach indicates a lack of control and lack of interest in the control of goods once they have left the WWL warehouses.

1052. The Appellants accept that they allowed Arden to use their own seals (containing duplicates). However, their attitude is to deny that this is a problem. Mr Eagleton accepts in his witness statement, at paragraph 15, "*Whilst this is true, it was merely a case of Arden providing their own seals and drivers bringing one into the admin office along with their CMRs when they first arrived for their collections. As the seals appeared to be of a good enough quality there was no reason not to use them."*

1053. He goes on to suggest that this was not a problem, *"It seems clear that Arden has simply produced multiple seals with the same number, and in context, it certainly does*

not demonstrate the 'abuse' of a safeguard system for all concerned as Officer Pitt states, as all sixteen of the aforementioned loads were delivered in full and within the life of the ARC document." As set out above, this response is inconsistent with an objective assessment of risks, and indicative of the Appellants' approach to the ADD condition.

Closure of EU warehouses

1054. During the period 2011 to 2014, the Appellants despatched goods to a number of EU warehouses. Four such warehouses have been closed down by the French and Belgian authorities due to their suspected involvement in alcohol excise diversion fraud.

1055. At the meeting on 5 November 2015, the Appellants were notified that Belogistiques in Belgium was one such warehouse to which they had despatched goods which had subsequently been closed down. Further, on 8 February 2016, the Appellants were advised of the four warehouses to which they consigned goods that had subsequently been shut down: Belogistiques, Consortium, CARE Distribution and MT Manutention.

1056. The Appellants contend that HMRC Officers advised them that goods were not traced back to WWL from Belogistiques, whereas the HMRC officers' records suggest the opposite. The Tribunal is satisfied on the balance of probabilities that the accounts of what occurred in meetings as set out in the Officers' contemporaneous notes is to be preferred to that of the Appellants for the same reasons as set out above in relation to the chronology of meetings. The Tribunal has found Mr Eagleton and Mr Jatinder Chatha to have lied about what they have said during meetings and Mr Rimmer's accounts of the two meetings he attended were motivated by a desire to represent the Appellants in their best light. This is dealt with in more detail above**.**

1057. Notification by HMRC to the Appellants of the closure of these warehouses served a number of purposes:

1058. In respect of the potential for light and empty loads, the Appellants placed heavy reliance on the confirmation of receipt by the receiving bond in France/Belgium as confirmation that the goods had, in fact, arrived. In circumstances where there was a discrepancy in the evidence, the Appellants should reasonably have, but failed to, take into account the risk that the warehouse to which they consigned goods was potentially involved in a fraud or could not be wholly relied on where discrepancies or anomalies arose.

1059. In the absence of adequate due diligence checks on such warehouses, and total reliance on the *"bulletproof"* SEED checks, the notification that a SEED-registered warehouse had been involved in fraud should reasonably have led the Appellants to review their reliance on information from EU bonded warehouses and their due diligence procedures.

1060. Indeed, even on Mr Rimmer's unsatisfactory account of the meeting – that the goods were *not* traced back to WWL/EFBL – the Appellants should have recognised that SEED checks were, evidently, not *"bulletproof"*.

1061. This notification of the closure of a receiving warehouse made no meaningful difference to the Appellants' attitude to HMRC or to their due diligence obligations. On 5 November 2015, despite this notification, the Appellants' response was that due diligence was not required on EU warehouses.

1062. Mr Rimmer records himself stating in his account of the meeting, *"it was disproportionate and unreasonable to expect this and that it was not WWL's responsibility to police overseas tax warehouses, this was the responsibility of the tax authorities."* Similarly, on 25 February 2016, the Appellants asserted that their due diligence went *"beyond the enhanced due diligence requirements"* of section 10. However, the due diligence steps they carried out after 1 November 2014 on EU warehouses involved little more than SEED checks and use of the EMCS system.

1063. The Tribunal is satisfied that this was an inadequate response to such a notification by HMRC in the circumstances of their case. The Appellants were aware that the ADD condition was introduced in order to require duty suspended alcohol traders to assist HMRC in the fight against excise diversion fraud. HMRC can only look backwards, at historic tax losses, taking action by, for example, raising assessments or revoking the authorisations of non-compliant or fraudulent traders. Their functions in this regard are, necessarily, backwards looking.

1064. The Tribunal is also satisfied by HMRC's submission that part of the purpose of the ADD condition is to assist HMRC in removing the possibility that fraudulent traders have access to the market in the first place. It is aimed at preventing fraud occurring. It is, therefore, inherent in the ADD condition, that SEED authorisation or use of EMCS is only the starting point. Due diligence on EU warehouses should reasonably have gone beyond such basic checks, based on particular risk factors identified in the Appellants' case. Therefore, the notion that SEED checks on EU warehouses takes the Appellants' due diligence *"above and beyond"* the requirements of section 10 is not reasonable – whatever the advice of Mr Rimmer. It is unlikely that the Appellants themselves came to this conclusion, or if they did, this was unreasonable.

1065. Further, in the letter of 25 February 2016, Mr Rimmer asserted on behalf of the Appellants, *"the reality is that in recent years, the vast majority of our clients' despatches – some 80% - have instead been made to the French excise bonded warehouses IEFW, which remains very much in operation"*. Yet again, the Appellants demonstrated their total lack of understanding (whether deliberate or not) of the importance of the ADD condition or the reason for HMRC notifying them of these concerns.

1066. The Appellants were being given advice by HMRC that indicated that fraudulent tax losses were taking place in respect of goods despatched from WWL's warehouses to SEED-registered, authorised, EU bonded warehouses. It is unlikely or unreasonable

that the Appellants did not reconsider their view that their due diligence was *"above and beyond"* the requirements of section 10.

d) Irregularities with onward hauliers' details

1067. The matters set out at paragraphs 86-89 of Annex A to the decision letters have not been challenged by the Appellants and the Tribunal does not consider these matters in detail. However, it is not – and has never been – HMRC's case that the Appellants were responsible for, or could have discovered this fraud.

1068. Nonetheless, in the same way in which the Appellants were notified about light/empty loads and closures of EU warehouses, these were risk indicators which should reasonably have prompted a review and re-assessment of due diligence procedures. Following the notification on 5 November 2015 and again on 8 February 2016, the Appellants' response was such as to suggest non-compliance with the ADD condition.

Summary of findings on the interaction between HMRC's conclusions on the first and third evaluative conclusions – failure to comply with the ADD condition and irregularities in transport arrangements

1069. The Tribunal emphasises that it is not HMRC's case that the Appellants were involved in, or knew about contemporaneously, fraudulent tax losses in supply chains in which they were involved. That allegation has never been HMRC's case and Tribunal does not make any such finding.

1070. HMRC's concern has been that the Appellants have not introduced (and were not indicating any intention to introduce) reasonable and proportionate checks in their day-to-day business to reduce the risk of fraudulent tax loss. One area in which there is a very high risk of tax loss is outward diversion fraud.

1071. The Appellants gave evidence that they were well aware that this is one of the two main areas of risk (in addition to inward diversion fraud). This necessarily involves the collusion of some individuals and/ or companies during the transport of goods from the UK (and WWL's warehouses) to EU warehouses. As such, and in accordance with the ADD condition, HMRC expects that WOWGR-authorised traders introduce checks tailored to this risk.

1072. The evidence before the Tribunal, and summarised above, relating to potential light, empty or non-travelling loads, trailer and tractor swaps, and serious failings in the use of seals, led HMRC to the reasonable conclusion that the Appellants did not have any, or any sufficient, control of their goods during transit from WWL warehouses to EU warehouses.

1073. In circumstances where the risks of diversion fraud are objectively high and HMRC have notified the Appellants of concerns in these arrangements (whether anomalies or discrepancies in light loads or a lack of information or control over arrangements), compliance with the ADD condition would require (at the very least) a review of procedures. Following the notification of the existence of fraud within their

supply chains (which is necessarily historic) and that SEED-registered warehouses have been discovered to be fraudulent, an objective assessment of risks would require a review and significant improvement in the Appellants' procedures in respect of transport.

1074. The Tribunal is satisfied it was reasonable for HMRC to rely upon the evidence as to the Appellants' lack of control over their goods, their apparent lack of interest in the control over their goods and their refusals to review their due diligence procedures or daily checks, even on reasonable advice from HMRC. This supports HMRC's reasonable evaluative conclusions: that the Appellants' due diligence was insufficiently robust such as to guard against the risk of fraud or comply with the ADD condition; and that there were irregularities identified in the movements of goods they sold. Both of these evaluative conclusions supported HMRC's reasonable and ultimate conclusion that the Appellants were not *"fit and proper"* to hold excise approvals as the manner in which they had conducted their duty suspended business activities over a very significant period of time has exposed the Revenue to an unacceptable risk of loss through fraud.

1075. The Tribunal finds that this was a conclusion within the range of reasonableness on the basis of these primary facts.

1076. The Tribunal finds that the evidence of possible outward diversion fraud was a reasonable conclusion for HMRC to reach in light of the evidence received by the time of the revocation decisions and in light of all the evidence now received. The evidence of light and empty loads was established as at 8 July 2016 on the balance of probabilities and it was reasonable for HMRC to rely upon.

1077. Having heard all the evidence as of July 2017, the Tribunal finds that the four loads HMRC relied upon were not, on balance, light or empty. Nonetheless HMRC's evaluative conclusion that there were irregularities in the movements of goods sold remains reasonable in light of all the evidence now received. It is inevitable HMRC would have reached this same conclusion even taking into account this subsequent finding and the evidence in support. The vast majority of the primary facts supporting the reasons for the evaluative conclusion on irregularities of movements have been upheld such as: the findings of discrepancies and anomalies in transport arrangements (of which, the majority remain undisputed); the inadequacies in the Appellants' attitude and review of their due diligence; and lack of reasonable modification of their due diligence in response to the inadequacies being identified.

Behaviour and Attitude

1078. HMRC's revocation decision letters provide the following reasons for the evaluative conclusion in relation to behavior and attitude at paragraphs 101 to 106 of Annex A:

Behaviour and Attitude

101. The changing information provided as to the nature of the relationship between EFBL/WWL and GDBL/BWL is a matter of concern to the Commissioners. When asked about

the interrelationship initially (in September 2014) the situation appeared to be either that: (a) Mr Jatinder Chatha was not aware of how the IoM businesses were formed and that the owner of EFBL and WWL, his brother, also owned the business of his customers. If correct, this is a significant concern as to the due diligence checks being conducted; or (b) there was some attempt by your business to disguise the true connections between you and your customers before 15 June 2015. This, again, does not support your status as fit and proper to hold excise approvals.

102. The Commissioners are also concerned with your approach and attitude to the excise regime as a whole. You have been informed by the Commissioners that tax losses have been identified in goods sold by EFBL and subsequently transported from WWL warehouses. You have also been notified of suspicious activity identified in the transportation of goods leaving WWL warehouse and within the EU warehouses receiving goods. The Commissioners would expect an experienced alcohol trader, upon receipt of this information, to acknowledge the potential weaknesses in the supply chain or their due diligence and begin to ask questions or reassess their procedure. Instead, your response (until 12 May 2016) has in each case been a combination of denial of the facts, denial of responsibility, and a refusal to improve or reconsider the adequacy of your own processes in light of the new information.

103. The Commissioners have considered the proposals made by Mr Chatha in his 12 May 2016 witness statement and also within his letter of 31 May 2016, regarding an alternative way of addressing the Commissioners' concerns to the way in which EFBL and WWL conduct their duty suspended-trading. Those representations also contain actions that EFBL and WWL state that they are or will be undertaking to address the concerns.

a. The 31 May 2016 letter from Mr Chatha explains that EFBL and WWL are '*in the process of recruiting a due diligence/HMRC compliance officer'* and lists the roles that they will be required to undertake. The Commissioners are concerned that, despite initially being advised of the failings of the due diligence in meetings from September 2014, and then more formally in the Commissioners' letter of 08 February 2016, it is only on 12 May 2016 after two sets of representations have been sent by your advisers, that you indicate that you have begun to engage with the Commissioners to implement changes. Your attitude prior to this was to deny that any changes were required and that your due diligence, was in fact, fit for purpose or over and above what was required.

The Commissioners are also concerned that the list of duties that will be attributed to the new 'due diligence/HMRC Compliance Officer, are those that should already have been in place within the business and conducted or ensured are conducted by the directors.

b. Mr Chatha states within the same letter that EFBL and WWL '...have instructed M&R Tax to undertake a full review of our due diligence specifically taking into account the concerns raised by HMRC in correspondence. This review should be completed by 27 June 2016'.

The Commissioners note this information, but fail to see what purpose or impact this new review will have, because you have also stated in your representations that M&R have already reviewed your due diligence and consider that it satisfies PN 196.

Mr Rimmer of M&R Tax has also submitted witness statements confirming that he has conducted a review of the due diligence and states that his opinion is that it *'goes above and beyond what is required of section 10 or PN 196'*. In the circumstances, the Commissioners do not see how the new review by the same person will do otherwise than yield the same conclusions as before.

104. Mr Chatha also states that EFBL/WWL are '*...in the process of instructing Deloitte LLP to undertake a full, independent review of our due diligence…*'. The Commissioners are concerned that, despite receiving formal notification of the Commissioners' concerns regarding your due diligence on 08 February 2016 (which was contrary to the advice you have received from M&R Tax), that you did not consider an independent review earlier than 12 May 2016.

105. Instead, in repeated representations, you have dismissed the Commissioners' conclusions and instead preferred the opinion of M&R Tax. In every single piece of correspondence since the Commissioners' 8 February letters you have, through your advisers, refused to accept criticisms of your due diligence. For example:

a. at paragraph 13 on p.13 of the letter from your adviser dated 25 February it is said that "Your allegation regarding the alleged failings in our clients' due diligence is simply not accepted.";

b. at paragraph 28 on p.19 of that letter: "Your suggestion that our clients had accepted that their pre-July 2015 due diligence was 'not to the current standard' is taken wholly out of context and no inference should be drawn that our clients thereby agreed that their pre-July 2015 due diligence was in any way inadequate. For the avoidance of doubt, our clients did not accept this at the time and do not accept it now.";

c. at paragraph 13 of your adviser's letter of 2 April, the following: "..yet our clients are now chastised for alleged failings in this regard [i.e. of due diligence] (which for the avoidance of doubt, are not accepted)";

d. at paragraph 22 of that letter: "We repeat that our client has undertaken appropriate due diligence.";

e. and in paragraph 23 of that letter, when referring to the tables provided with Helen Barnard's letter of 16 March setting out the due diligence failings found in relation to some of your supply chains: *"Nevertheless, for the avoidance of doubt, we wish to make clear that the failings alleged within the tables which you have provided are not accepted."*.

106. Your decision to instruct an independent tax consultancy to conduct an independent review was initially raised in Mr Chatha's witness statement of 12 May 2016; however, the statement in the letter of 31 May 2016, the situation has not progressed any further, and still is that you '*...are in the process of instructing Deloitte LLP…*'. This statement indicates that this is still yet to begin. No further evidence has been submitted to suggest otherwise.

1079. The Tribunal is satisfied that these reasons, given at the time of the decision in July 2016, are within a reasonable range of conclusions and that the primary facts underlying them were established on a balance of probabilities at the time of the decision and following all the evidence heard during the appeal.

1080. At the time of the revocation decisions HMRC reasonably relied upon those matters and did not fail to take into account relevant matters or take into account irrelevant matters.

1081. As is set out above, the behaviour and attitude of the Appellants, while it is a free standing evaluative conclusion, also feeds into each of the three evaluative conclusions in supporting that there was unacceptable risk of loss to the Revenue through fraud. The Appellants' adverse behaviour and attitude when material was highlighted to them

by HMRC in relation to the first three evaluative conclusions (due diligence, tax loss and irregularities in movement) provides further reasonable justification for HMRC's conclusion that the duty suspended businesses presented an unacceptable risk to the Revenue.

1082. The Tribunal takes into account further material heard in the appeal from that presented to HMRC at the time of the revocation decisions.

Lies and Iunconsistencies

1083. The Appellants gave HMRC untrue and misleading information as is set out in some detail in the chronology above (for instance on the relationship between Global / Bridgewell and the Appellants).

1084. Furthermore, aside from HMRC's concern that the Appellants' due diligence was insufficient and inadequate, the information provided in relation to their due diligence activity was inconsistent. Examples of this is set out in the detailed chronology above.

1085. HMRC reasonably concluded that these inconsistent responses indicated either that there were no proper due diligence procedures in place or, alternatively, that the information provided could not be trusted by HMRC. Some examples are selected and highlighted below.

1086. In respect of due diligence on Global and Bridgewell, the Appellants stated alternatively (on 8 July 2014) that this was carried out by Philip Eagleton and (on 9 September 2014) that it was carried out by Rajinder Chatha.

1087. Following the disclosure that the companies continued to be, and had always, in fact, been connected, HMRC sought further information from the Appellants as to the checks they made on the due diligence carried out by their customers (ie. the due diligence checks carried out by Global and Bridgewell). However, this information contained inconsistencies:

1088. At the meeting on 9 September 2015, the Appellants were advised to check the due diligence carried out by their customers. Jatinder Chatha stated that these checks were carried out and involved discussions with David Craine and "Graham", directors of Global and Bridgewell, their last visit being in November 2014.

1089. At the meeting on 5 November 2015, Philip Eagleton stated that they did not check the due diligence of the customers of Global and Bridgewell as that was the responsibility of Global and Bridgewell. He said that they asked about their checks but exchanges were verbal and not recorded.

1090. In his letter dated 25 February 2016, Mr Rimmer asserted that, "as distinct commercial entities, our clients' customers [GBDL and BL] do not provide our clients with access to their respective due diligence records but have instead confirmed to our clients that… they are satisfied with the onward supply…" and such access has "never" been permitted. Similarly, in his witness statement in the High Court proceedings dated

25 February 2016, Hardeep Chatha states, at paragraph 16: "EFB is aware (because I have told Jatinder Chatha and Phil Eagleton) of the approach I take to due diligence."

1091. However, the account then changed. In Hardeep Chatha's witness statement of 11 May 2016, he first repeats the sentence quoted above but then he adds to that statement that, *"Jatinder Chatha has been to my office on the Isle of Man several times over the past years and has checked the due diligence I carry out on my customers"*. If true, it is surprising that this important detail did not feature in the first statement.

1092. Similarly, Mr Rimmer changed his account. In his letter dated 2 April 2016, he asserts at paragraph 11 that his letter of 25 February 2016 was incorrect to assert that Global and Bridgewell did not provide the Appellants access to their due diligence records, and this was his mistake. Rather, the Appellants were made aware of Global and Bridgewell's due diligence steps and allowed to inspect documents gathered.

1093. Mr Rimmer then explained in his witness statement that "it was a genuine mistake which was derived from a misunderstanding as to whether EFB and Whittalls had access to GBDL and BL due diligence records, given that no copies of such were provided". This, if true, in itself is a matter of concern. If the Appellants' own due diligence adviser was not aware of their own due diligence procedures in February 2016, it is reasonable that HMRC themselves concluded that the procedures were not in compliance with the ADD condition.

1094. On 6 April 2016, under cover of an email from Mr Rimmer, the Appellants provided due diligence material which was said to be given to them by Global and Bridgewell relating to previous years. However, there was no indication as to when this information had been provided by Global / Bridgewell to the Appellants. If it is the Appellants' case that this documentation was provided in earlier years, it is inconsistent with the assertion that the checks were verbal or alternatively that they were only allowed to inspect Global /Bridgewell's documents. Further, and in any event, the due diligence material provided on 6 April 2016 demonstrated that the due diligence had been seriously deficient.

1095. In his witness statement dated 12 May 2016, at paragraph 17.a, Jatinder Chatha states that he examined Global and Bridgewell's due diligence documents by *"randomly picking out documents to see what had been done and what had been recorded as being done"* and that he interrogated them and discussed the matter with Hardeep Chatha, his nephew. There is no documentary evidence to support any of these assertions, despite the requirement for proper records to be kept.

1096. The above selection of inconsistencies left HMRC in the position that they concluded that the Appellants had in place no established (and recorded) set of procedures for checking the due diligence carried out by Global and Bridgewell. Faced with these continual discrepancies, Officer Lewis set out at paragraph 220-221 of his statement his reasons for concluding the most likely position as to the checks that were carried out was what HMRC's investigators and he were told contemporaneously in 2014 and 2015. That was a reasonable conclusion to reach.

Responses to HMRC's concerns

1097. HMRC gave the Appellants warnings and considerable time and opportunity to make improvements to their due diligence and achieve compliance with PN196 (some 15 months from 1 November 2014 until the 'minded to' letters in February 2016 and 20 months until the decisions in July 2016).

1098. Despite this, the Tribunal is satisfied that the Appellants' responses were obstructive and inadequate. The Appellants dispute such an analysis of their attitude: *"The approach of the Appellants throughout the time that they have held approvals, the Appellants have answered as fully, and as expeditiously as possible, all of the concerns raised by HMRC"* (Jatinder Chatha's witness statement at paragraph 82); and his letter of 31 May 2016 in which Jatinder Chatha refers to their relationship with HMRC as a *"continuing partnership"*. The evidence does not support the Appellants' account.

1099. The Appellants refused to acknowledge that there were any inadequacies in their due diligence policies and procedures and refused to reconsider or adapt their procedures. The Appellants consistently asserted that no changes were necessary as their due diligence was already *"above and beyond"*. Further examples include:

1100. The Appellants never provided any written policies and procedures to HMRC prior to the revocation decision.

1101. On 25 February 2016, Mr Rimmer, their adviser, wrote a substantive response to the Commissioners' 'minded to revoke' letter. He asserted that the Appellants considered that their due diligence was adequate and *"undertaken at a very high level and in certain key areas, goes way beyond any HMRC requirements…"* and any concerns were as a consequence of *"HMRC's tendency to 'move the goalposts' in due diligence matters"*.

1102. Similarly, in his letter of 2 April 2016, the Appellants' adviser wrote, *"We repeat that our client has undertaken appropriate due diligence"*.

1103. Rather than accepting that HMRC had legitimate concerns, the Appellants attempted to deflect and undermine HMRC's due diligence concerns by challenging the existence of fraud in supply chains in which they were involved or the importance of due diligence in countering the risk of such fraud:

1104. In his letter of 25 February 2016, Mr Rimmer wrote that HMRC were alleging tax loss in supply chains but had not provided evidence. As such, the allegation could, in effect, be ignored: *"...you have summarily and without justification refused to provide any such disclosure. Without such disclosure, your allegations are entirely unsubstantiated and to a very large extent, meaningless"*.

1105. It appears that the Appellants remain steadfast in their view that they were not required to make any changes to their due diligence procedures in the absence of conclusive evidence of fraud or tax loss (see for example Jatinder Chatha's witness statement at paragraph 18, bullet point 4).

1106. Nevertheless, this assertion is contradicted by the Appellants' position as set out in Jatinder Chatha's letter dated 31 May 2016: *"Our intelligence resources are much more limited than those of HMRC. We rely on HMRC to point us to specific matters of concern so that we can respond or, if HMRC prefers, the specific response that HMRC would like us to follow"*. This is contradicted again by the evidence supplied in these proceedings.

1107. In his letter of 2 April 2016, the Appellants' adviser wrote that the HMRC's position was *"weak"* because any tax losses which may have occurred by reason of fraud in their supply chains was only related to a small proportion of Global / Bridgewell's trade. Further, the adviser challenged the importance of undertaking such due diligence in any event: *"It seems to us that no amount of reasonable due diligence by our clients would have uncovered the future fraud"*. That misses the point: the purpose of due diligence is to properly address risk of fraud and for that reason HMRC introduced the ADD Condition on 1 November 2014.

1108. In his letter of 25 April 2016, the Appellants' adviser repeated that, "*we submit that in conducting the visits and the various checks, from our firm's experience, our clients have gone way beyond what is the norm within the industry*". The Tribunal does not accept that this has been proved and was not prepared to admit as relevant evidence any comparative analysis of due diligence conducted by other companies as the question of reasonable and proportionate due diligence is fact specific based upon each trader and each transaction. In any event, the presence of poor due diligence in the wider industry would not render HMRC's concerns in respect of the Appellants' ADD any less serious. The requirements for satisfying the ADD condition is a fact specific question based upon the specific circumstances and trade of each company.

1109. On 31 May 2016, Jatinder Chatha wrote to HMRC stating that no due diligence would have enabled them to identify the fraud: *"...the only risks in the way in which this company conducts its duty suspended business are the unavoidable risks which are inherent in the duty suspended regime – something Parliament has elected to allow. It would be quite wrong for the Commissioners to alight on these as if they were unique to this company"*. As above, the question of whether specific checks would have enabled the Appellants to identify or prevent fraud is the wrong question to ask. The question is whether they undertook reasonable and proportionate due diligence to reduce the risk of fraudulent tax loss occurring.

1110. The Tribunal has already made specific findings as to why on the facts of this case it is satisfied that the Appellants conducted poor due diligence and that HMRC's view was reasonable that the Appellants were in breach of the ADD condition and this exposed the Revenue to an unacceptable risk of loss through fraud.

Delay

1111. Further, when HMRC requested information or due diligence documentation, there was significant delay before it was provided by the Appellants. For example, by letter on 22 July 2015, Officer Maskew stated his intention to uplift all the Appellants' due diligence on 30 July 2015. EFBL's due diligence was not provided until 9

September 2015, following numerous requests by Officer Maskew. It was made clear to the Appellants, prior to the ADD condition coming into force, what its requirements were. From 1 November 2014 they should reasonably have been able to provide copies of a structured, ongoing due diligence process easily and quickly to HMRC.

1112. The Tribunal concludes, on balance, from the Appellants' delay in responding to HMRC's requests that they fell into one of two categories: either, the Appellants considered that it was not necessary for them to comply conscientiously and with reasonable expedition to HMRC's requests to provide them with due diligence; or, they were conducting very little due diligence as a key aspect of their day-to-day trade, and were playing "catch up" when HMRC made requests to see due diligence material. For example, the great majority of VIES VAT registration requests are dated 10-12 August 2015 and not many months before as they ought to have been.

1113. The Tribunal finds that on balance it was the latter – the Appellants were conducting little reasonable contemporaneous due diligence and were playing 'catch up' in providing material to HMRC. Even were the Tribunal wrong about this they failed to take reasonable steps in replying to the requests made of them by HMRC to supply documents. As the Appellants fell into either of these categories, it was reasonable for HMRC to take into account their behaviour and attitude in concluding that they were not fit and proper.

1114. Officer Lewis set out his view as to the response of the Appellants to HMRC's warnings and advice in his witness statement. He noted that Jatinder Chatha subsequently stated in his witness statement of 12 May 2016 in the High Court proceedings, at paragraph 20 that he took HMRC's concerns very seriously. Officer Lewis explained why he considered that this statement was contradicted by previous events.

1115. The Appellants now assert that their attitude has been the opposite of that set out above (see the statement of Mr Rimmer at paragraph 9) and that HMRC *"have been largely unwilling to assist the Appellants with recommendations for meaningful, specific and realistic due diligence improvements prior to HMRC's 'minded to' revoke letters…"* The Tribunal does not accept this contention. General advice on how to improve due diligence was given both prior to the ADD condition coming into force and numerous times thereafter (for example, see the summary of warnings at Appendix 1). Section 10 of Excise Notice 196 itself contains detailed guidance as to what due diligence should be conducted. As explained above, over a sustained period, the Appellants failed to comply with it in obvious respects.

1116. Although HMRC did not give the Appellants a great number of written and specific steps to remedy the failures, HMRC does not have any duty to give specific advice on due diligence which needs to be tailored by the company in question to its trading activity, as Section 10 of Excise Notice 196 makes clear.

1117. It was only *after* the 'minded to' letter in February 2016 and shortly before revocation of the Appellants' approvals, in their letter of 31 May 2016, that they showed any substantial indication that they were willing properly to engage with the HMRC's

concerns and to review their procedures. The Tribunal finds that it was not a 'big, bold, open and generous offer' but 'too little too late' - borne out of the Appellants' unsurprising desire at a very late stage to take any steps to avoid revocation, whether they accepted their necessity or not. In the circumstances of the Appellants' previous conduct and failings, and given that the offer came at such a late stage, the Tribunal is satisfied that HMRC would reasonably conclude that the Appellants' offer could not be relied upon and it was insufficient to allay HMRC's concerns.

1118. The Appellants had ample opportunity to review their procedures and to demonstrate their willingness to engage properly with HMRC's concerns. They failed to do this prior to HMRC's revocation decisions.

1119. In Jatinder Chatha's witness statement dated 12 May 2016 in the High Court proceedings following the 'minded-to revoke' letters of 8 February 2016, the Appellants advised HMRC that they were in the process of appointing Deloitte LLP to conduct a review of their due diligence. Subsequently, in his letter of 31 May 2016, Jatinder Chatha repeated that they were still in the process of instructing Deloitte LLP. This delay indicated that there was no sense of urgency on the part of the Appellants, even though by then 4 months had passed since the minded to letters.

1120. The Tribunal was informed that such a review has not actually been carried out (due to a potential conflict of interest). Jatinder Chatha suggested that the review never took place as the proposed individual was an acquaintance of HMRC's solicitor. It is not clear to the Tribunal why a different individual at Deloitte LLP or another firm could not have been promptly engaged if that matter was a real concern.

1121. It was only by way of the Appellants' disclosure for the hearing that a review of Bridgewell's due diligence (not the Appellants') carried out by KPMG has been disclosed. The report is dated 23 September 2016 – nearly three months after the revocation decisions under challenge were taken.

1122. To the extent that the Tribunal examines subsequent evidence in order to shed light on the revocation decisions, the Tribunal is prepared to consider the report but give it very little weight: a) it is not prepared in relation to the Appellants; b) it was prepared after the revocation decisions based upon material supplied at a late stage; and c) the views of KPMG as to the adequacy of the Appellants' due diligence are not the central question – it is the reasonableness of HMRC's view as to the poor quality of the Appellants' due diligence which is the subject of this Tribunal's review. HMRC has satisfied the Tribunal of the reasonableness of their view for the reasons given above which the report does not undermine. The KPMG report itself provides recommendations on further due diligence steps that Bridgewell might perform.

1123. The Appellants have also now disclosed a letter from their adviser in which he purports to review the Appellants' due diligence on duty suspended goods, dated 24 June 2016. This letter was also only provided after HMRC's decisions to revoke their approvals, as part of the Appellants' evidence in this appeal.

1124. Insofar as the Appellants did indicate a willingness to engage with HMRC's concerns, in Jatinder Chatha's letter dated 31 May 2016, he stated that they had instructed M&R Tax (Mr Rimmer's firm) to undertake a review of their due diligence procedures. However, the purpose of this review was unclear as the Appellants had made it abundantly clear by then that M&R Tax considered that their due diligence satisfied Excise Notice 196. M&R Tax for instance stated that this was the case, and that their due diligence actually exceeded HMRC's requirements in their letter of 25 February 2016. Therefore, any report was unlikely to be prepared on an independent basis with an open mind as a starting point, particularly when Mr Rimmer was also representing the Appellants.

1125. It was reasonable for HMRC to conclude that the Appellants had failed meaningfully to engage with their concerns throughout the period and even after the 'minded-to revoke' letters. Any indications of a willingness to adapt or change between February 2016 and the decisions to revoke were, in the context of previous dealings, little more than lip service to HMRC's concerns. HMRC were entitled to conclude, therefore, that the Appellants' behaviour and attitude was a material factor which could be taken into account in concluding that they were not 'fit and proper'.

1126. HMRC's evaluative conclusion as to the Appellants' behaviour and attitude rendering them unfit to hold approvals has become more strongly supported as a result of the evidence heard during the appeal.

The Tribunal's further findings upon the evidence heard during the course of the appeal

1127. The Tribunal's most significant finding regarding the Appellants' attitude is that key persons in the Appellants (such as Philip Eagleton and Jatinder Chatha), were misleading, evasive and told lies in communicating with HMRC Officers in meetings and correspondence.

1128. As set out in detail in the Chronology above, a good example of this is that the Appellants misled and lied to HMRC as to their connected ownership and relationship (and nature and purpose of trade) with Global / Bridgewell. This appears to have been in part to assist Rajinder Chatha in his direct tax investigation and in part to prevent their suppliers discovering the nature and purpose of their trade with Global / Bridgewell.

1129. Another example of lies told on behalf of the Appellants was the production of the October 2016 due diligence files on behalf of Global and Bridgewell and the lies told by Hardeep Chatha about the date of their creation and the filleting of due diligence files.

1130. The misleading communications and lies told to HMRC on these topics were compounded by lies told to the Tribunal on the same topics by Philip Eagleton, Rajinder Chatha, Jatinder Chatha and Hardeep Chatha.

1131. The Tribunal finds that it would be reasonable for HMRC to conclude that this conduct alone on behalf of the Appellants in communications with HMRC and the

Tribunal on matters relating to their duty suspended businesses renders the Appellants unfit and improper to hold approvals to trade in duty suspended alcohol.

1132. The Appellants' attitude towards HMRC was in further respects both inappropriate and non-compliant with the ADD condition: they refused to accept warnings of tax losses in their supply chains, they rebuffed any suggestion that their due diligence was inadequate, and they delayed and stalled when asked for due diligence (post-1 November 2014).

Refusal to accept warnings

1133. During the period September 2014 to July 2016, the Appellants refused to consider properly and react to HMRC's warnings that (a) they were involved in tax loss supply chains, and (b) that their due diligence was inadequate.

Tax losses

1134. In respect of tax losses, the Appellants' evidence before the Tribunal was that they required HMRC to prove each and every aspect of these tax losses, and they, the Appellants, would be able to disprove this. Jatinder Chatha states at paragraph 63 of his statement: *"…it is undoubtedly the case that if HMRC were to identify which sale(s) of duty suspended alcohol sold by EFB to Global/Bridgewell were part of a tax loss supply chain, the Appellants would then become in a position to disprove it."* Similarly, Mr Rimmer states at paragraph 11 of his statement, *"Experience tells us that we cannot afford to assume that HMRC's findings will necessarily be correct and well-founded in the evidence…"*

1135. When the Appellants had been advised that there were tax losses in their supply chains, their response has been to deny them and rely upon this to do nothing else. A reasonable reaction for the Appellants would be, notwithstanding the denial, to review their due diligence procedures for robustness and to add to them where appropriate while awaiting resolution of whether in fact the tax losses could be proved.

1136. On 9 September 2014, Officer Bourne advised the Appellants that *"from checking EFBL's supply chains it is apparent that EFBL are involved in supply chains leading to significant tax losses"*.

1137. At the meeting of 11 March 2015, Mr Eagleton's response to such a warning was, *"Not happy with SI implications of being involved in problematic supply chains"*.

1138. On 5 November 2015, the Appellants were explicitly advised of tax losses in their supply chains. In particular, they were advised of historic tax losses in despatches which had been traced originally from WWL through Belogistiques. Jatinder Chatha's view at that meeting was, *"We are confident that there is not any fraud in our supply chains as they are long established suppliers"*.

1139. Following the 'minded to' letter, the Appellants again refused to accept the suggestion that there had been tax losses. In their letter seeking extensive disclosure on

9 February 2016, they asserted: *"…it should be clear to you as an experienced Officer how and why disclosure of this nature is highly relevant to our clients' position given the allegations which you make, which are currently wholly unsubstantiated by any evidence provided to us. For the avoidance of doubt, our clients intend to put you to strict proof on each and every allegations which you have made, including, but not limited to, requiring you to demonstrate how our clients are in any way responsible for any irregularities (if proved)."*

1140. On 25 February 2016, in their substantive response to the 'minded to' letter, the Appellants asserted, *"We remind you that our clients intend to put you to strict proof on each and every allegations which you have made…"*. They went on to robustly refute HMRC's concern: *"We submit that we have conclusively established above that your allegations of 'little or no' enhanced due diligence, of the 'real risk of tax loss' with our clients' customers and of the establishment of such tax loss 'in previous transactions' are entirely erroneous, misplaced, unreasonable and unfounded in any evidence with which we have been provided."*

1141. On 2 April 2016, the Appellants continued to challenge and undermine HMRC's concerns as to tax loss: *"Saying that the Commissioners have established that an unspecified number of 'supply chains' involving our clients have been traced through to one of 20 'EU businesses' and that 18 of those businesses are 'missing or defaulting/non-compliant) is largely meaningless and raises more questions than it answers…"*.

1142. On 31 May 2016, Jatinder Chatha asserted, *"The Commissioners need to go on to demonstrate tax losses occasioned by alcohol sold by this company"*.

1143. The approach of the Appellants was unreasonable. The Appellants have, without having any evidence in support of their assumption or a positive alternative case, assumed that HMRC have relied on the existence of tax loss chains without reasonable evidence.

1144. Under examination, the Appellants' position shifted: before this Tribunal, the Appellants have turned to *"agnosticism"*. The Appellants did not resile from their position or seek to justify their assumption that HMRC have relied on tax loss chains without any supportive evidence.

1145. The Appellants' position in respect of tax losses, summarised by their counsel, was, *"So what? … Our response is that discovery of those particular fraudulent transactions would have required a level of due diligence that was beyond that which was reasonable and proportionate"*. The Tribunal finds that this was not the purpose of the evidence. HMRC have not suggested that the Appellants were expected to discover the fraudulent transactions in their supply chains. Nonetheless, evidence of tax losses is important a) because it is an indicator that due diligence may have been inadequate and a higher level of due diligence may have reduced or eliminated the risk of these occurring; and b) on notification thereof the Appellants should have re-assessed their procedures as to their robustness.

1146. The Appellants relied on information from HMRC without supportive evidence when it suited them – for example, considering SEED checks to be "bulletproof" or in taking comfort from a VAT certificate. In light of these comments, it is highly surprising that the closure by the Belgian authorities of a previously SEED-authorised warehouse was regarded as insufficient as an indication that there was fraud taking place. Indeed, Jatinder Chatha wrote on 31 May 2016, *"Our intelligence resources are much more limited than those of HMRC. We rely on HMRC to point us to specific matters of concern so that we can respond or, if HMRC prefers, the specific response that HMRC would like us to follow"*.

1147. To the extent that the Appellants contend that they can rely on SEED checks, VAT registration and similar as proof that a potential customer is legitimate, this attitude is inappropriate and non-compliant with Excise Notice 196, section 10 which requires an objective assessment of the risks. The Appellants in any event do not respond appropriately to being pointed to "specific matters of concern" by HMRC, as the above responses demonstrate.

1148. It should be noted that the Appellants disputed the fact that they were advised on 5 November 2015 of tax losses in supply chains originating at WWL/EFBL. The Tribunal is satisfied on the balance of probabilities that the Appellants were so notified for the following reasons:

1149. Mr Eagleton and Jatinder Chatha were not witnesses of truth. In the absence of other corroborative evidence, their accounts should not be accepted.

1150. There are two notes of officers which indicate that such a warning was given. Officer Lewis' contemporaneous handwritten notes record, *"LP explained goods sold by EFB and then transported out to Belogistiques from WWL. These goods have been chased and traced through to missing traders and tax losses in the EU"* (LP being Leslie Pitt) and *"LP also made WWL + EFB aware that the goods sold by EFB and leaving WWL were traced through to fictitious traders…Can now see that they have been involved in fraudulent transaction chains and have the opportunity to address this…"*.

1151. Officer Maskew's note records, *"Officer L. Pitt from FIS then went into the ongoing enquiries about movements from WWL regarding the Belgian warehouse – Belogistics and the fraud around this warehouse and that they were closed down by the Belgian authorities… There was about 15 ARC's that WWL transported there"*.

1152. Indeed, Mr Rimmer's own note does not make sense unless this advice was given (save for his record that he disputed this at the meeting). For example, he records, *"LP: Stated that they had traced 15 ARCs to Belogistiques involving some 90 transactions since loads have been split. Onward warehouses had been found to be closed or fictitious and EMCS records were inaccurate."*

1153. Furthermore, Mr Rimmer also recorded the following discussion (PR being Philip Rimmer): *"PR: Queried whether there was any indication that there were tax losses within current supply chains. LP: Replied that there was no indication that it had*

stopped. PR: Stated that they had not despatched to Belogistiques since it had been closed." This exchange makes no sense unless they were previously advised that the goods had been traced from WWL/EFBL.

1154. Unlike the Appellants' indifferent attitude towards tax losses, HMRC expect (and Excise Notice, section 10.1 requires) WOWGR-approved traders to *"objectively assess the risks of alcohol duty fraud within the supply chains in which you operate"*. Such a notification should have prompted a review of the Appellants' due diligence processes and procedures. In the absence of this response, it was reasonable for HMRC to conclude that the Appellants were not complying with Excise Notice 196, section 10.

Due diligence

1155. Similarly, in respect of due diligence, the Appellants have consistently asserted that, not only does their due diligence comply with, but that it goes *"above and beyond"* the requirements of Excise Notice 196, section 10. In their evidence, the Appellants' witnesses (Hardeep Chatha, Jatinder Chatha, Mr Eagleton and Mr Rimmer) sought to defend their due diligence. This has been their approach from November 2014 up to the date of the decision on 8 July 2016.

1156. Despite their own evidence, the Appellants' counsel did not appear to put a positive case to the HMRC witnesses who analysed their due diligence that it was compliant with the ADD condition in section 10. If this is right it might be taken as a tacit acceptance of HMRC's position and suggest that they now accepted that their response to criticisms was ill-informed, unreasonable and inappropriate. Indeed, the cross-examination of Officer Maskew suggests that the Appellants blame their inadequate due diligence on the failure of HMRC to notify them of inadequacies or give them specific advice.

1157. Nonetheless, even if this analysis goes too far and the Appellants do maintain their original position that they were fully compliant with the ADD condition, the Tribunal is satisfied that they were not for the reasons set out above.

1158. As to advice on what due diligence to perform, HMRC prepared a summary of advice, both generic and specific given to the Appellants which is contained in Annex 1. The Tribunal is satisfied that the primary facts within are accurate but that it is a non-exhaustive summary.

1159. The Tribunal is satisfied that the Appellants' due diligence failures were not due to HMRC giving insufficient advice. The Appellants were given reasonable advice on due diligence, over a long period of time and beginning before the ADD condition came into force. Despite this, they chose not to make themselves compliant with the ADD condition. Excise Notice 196, section 10 itself is detailed and contains helpful information on how to perform due diligence: the Appellants' counsel put this to Officer Lewis: Excise Notice 196 "spells out what they have to do by way of due diligence, doesn't it?" The Tribunal agrees.

1160. It has been evidenced that the Appellants (a) were advised that their due diligence was inadequate, and (b) vehemently denied that there were any inadequacies. It is notable that Mr Rimmer was not engaged to review the Appellants' due diligence before they relied on his advice and before Mr Rimmer, himself, made assertions to HMRC as to its quality (assertions which, in light of his non-review of all the material, were necessarily unsubstantiated).

1161. On 30 July 2015, Officer Maskew advised Mr Eagleton: *"You need to assess the risks for the business and that you can demonstrate you have addressed these risks, there is a close link between European Food Brokers & Whittalls… I told Phil Eagleton that ADD is very comprehensive and that there is a fair bit to do and that revocation can follow as a result of poor ADD…"*.

1162. On 4 September 2015, Mr Rimmer emailed Officer Maskew stating, *"For the avoidance of doubt, please note that our client in no way accepts your allegation that its due diligence is deficient in this regard and will hold you to strict account in this matter; and will vigorously challenge any such finding. We look forward to your written, detailed explanation as to how our client's due diligence is said to be inadequate"*.

1163. On 9 September 2015, Mr Eagleton, Mr Rimmer and Jatinder Chatha all stated that they were confident that their due diligence was appropriate and adequate. Despite probing questions from officers about the extent of their checks, when asked whether they intended to do anything further, Officer Maskew recorded a *"categorical 'No' from both PE and JC but they are more than happy to accept any assistance and guidance from HMRC with this"* (PE being Philip Eagleton and JC being Jatinder Chatha).

1164. On 5 November 2015, HMRC arranged a meeting to discuss due diligence and, among other things, advise as to areas in which due diligence could be improved. Mr Rimmer, himself, notes that Officer Pitt "*Commented that he had wanted to update them on the progress of the HMRC enquiry and encourage them to reconsider their due diligence"*.

1165. When Officer Maskew suggested it was *"appropriate to undertake due diligence upon despatching warehouses"*, Mr Rimmer stated – unreasonably - that it was *"disproportionate and unreasonable to expect this and that it was not WWL's responsibility to police overseas tax warehouses, this was the responsibility of the tax authorities"*.

1166. In the 'minded to' letter, HMRC set out their concerns regarding due diligence in writing. Yet again, the Appellants' response was to vehemently deny any such suggestion. At paragraph 13 of his letter, Mr Rimmer wrote, *"Your allegation regarding the alleged failing in our clients' due diligence is simply not accepted"*.

1167. He went on to assert that the due diligence was *"undertaken at a very high level and in certain key areas, goes way beyond any HMRC requirements… Our firm's alcohol wholesaler clients often complain of HMRC's tendency to 'move the goalposts'*

in due diligence matters to suit HMRC requirements in particular cases. In this case, we suggest, the goalposts have been moved to such an extent that they no longer remain on the same pitch".

1168. Mr Eagleton, in his letter dated 25 February 2016, at paragraph 9, stated, "*In my view, the due diligence undertaken by both companies has fully complied with all relevant HMRC due diligence requirements throughout, including responding to developments in appropriate due diligence checks"*.

1169. Similar assertions were made in the letters of 2 April 2016, and 25 April 2016.

1170. On 31 May 2016, Jatinder Chatha stated *"This company has <u>never</u> refused to improve or reconsider the adequacy of its own processes in light of new information"*. This is, perhaps, an acknowledgement or acceptance by Jatinder Chatha of the attitude that the Appellants were expected to have (and he understood they were expected to have) towards concerns raised. In light of the evidence of meetings and correspondence, Jatinder Chatha's assertion is an inaccurate representation of the Appellants' response to HMRC's concerns. Indeed, in the very same letter, Jatinder Chatha wrote, *"...the only risks in the way in which this company conducts its duty suspended business are the unavoidable risks which are inherent in the duty suspended regime – something Parliament has elected to allow. It would be quite wrong for the Commissioners to alight on these as if they were unique to this company"*.

1171. It is self-evident that the Appellants were aware that HMRC considered that their due diligence was inadequate (there is no reason why else they would make such denials). The Appellants should have, themselves, reasonably recognised that it was inadequate. When HMRC notified them that it was inadequate, in the absence of a good justification, such a response was unreasonable. It was reasonable for HMRC to expect an experienced alcohol trader (as the Appellants were) to acknowledge potential weaknesses and review and reassess their procedures. This is all the more so when they were in receipt of the advice of an independent tax adviser whose experience as a former HMRC officer they have relied upon within the proceedings (and an experienced accountant in the Isle of Man reviewing Hardeep Chatha's due diligence). Instead, they denied and deflected HMRC's concerns.

1172. It was reasonable for HMRC to consider this indicative of a non-compliant attitude serious enough to justify consideration of revocation (within section 10.4 of Excise Notice 196).

Eventual response: too little, too late

1173. The Appellants had sufficient opportunity to introduce, review and improve their due diligence procedures between the introduction of the ADD condition on 1 November 2014 and the commencement of the 'minded to' process in February 2016. The Appellants were given written and oral warnings and advice as to the inadequacy of their due diligence during that period. Thereafter, the Appellants still had an opportunity to improve their due diligence and attitude following further formal notification of these concerns.

1174. Not only did the Appellants fail to make any meaningful improvements (as set out above), they proposed a number of steps which they would undertake: these were either inadequate or simply not carried out by the Appellants. In his letter of 31 May 2016, Jatinder Chatha stated, at paragraph 4, *"As testament to our resolve to meet the Commissioners' concerns (and without detracting from our response to those concerns) this company has gone ahead and taken the following steps…"*. He listed five measures they were going to take to demonstrate this *"resolve"*:

1175. First, he asserted, at paragraph 4(1), that, *"We are in the process of recruiting a due diligence/HMRC compliance officer"*. HMRC's concern in the decision letter, that this response comes far too late to indicate a willingness to change, appears to be substantiated: no evidence has been provided to demonstrate that the Appellants had, in fact, recruited such an individual.

1176. Secondly, Mr Chatha advised (at paragraph 4(2)), that they had instructed M&R Tax to undertake a full review of their due diligence. At the time of the decision, HMRC were under the impression (because of representations made by the Appellants' and Mr Rimmer) that such a review had already been conducted. This is unsurprising given Mr Rimmer's robust defence of their due diligence procedures. As an independent adviser, it would be unlikely that such representations would have been made without first conducting a review. In any event, his report is dated 24 June 2016, and only provided to HMRC in the course of these appeals.

1177. Thirdly, at paragraph 4(3), Mr Chatha asserted *"We are in the process of instructing Deloitte LLP to undertake a full, independent review of our due diligence"*. It is unclear why it took almost four months to contemplate such action – Jatinder Chatha could provide no adequate explanation in his evidence. Further, the Appellants never actually instructed Deloitte:

> "16 Q. Yes. In the end there wasn't any instruction given to
> 17 Deloittes, was there?
> 18 **A. We had a discussion internally and KPMG was doing an --**
> 19 **something on Global and Bridgewell, and obviously in**
> 20 **terms of the whole context of things the Deloitte one**
> 21 **was fairly meaningless.**
> 22 Q. Was meaningless?
> 23 **A. Because of our close associations with Global and**
> 24 **Bridgewell, it was more --**
> 25 Q. Sorry –
> Page 29
> 1 **A. It was felt to be of greater value to do a due diligence**
> 2 **on their procedures.**
> 3 Q. On the procedures of --
> 4 **A. Global and Bridgewell.**
> 5 Q. And not on your own procedures?

6 **A. No.”**

1178. This ‘excuse’ given by Jatinder Chatha is inadequate. Given HMRC’s concerns about due diligence carried out by EFBL/WWL themselves, in respect of checking Global / Bridgewell’s due diligence, but also due diligence on hauliers and warehouses, it should reasonably have been clear that a KPMG report on Bridgewell was insufficient (and it was only provided in the course of these appeals). Indeed, KPMG were only instructed on 26 May 2016, did not report until 23 September 2016, and remained critical of Bridgewell’s due diligence, even if couched in the polite language of an adviser. In any event, in his witness statement, Jatinder Chatha gave a slightly different for not instructing Deloitte, at paragraph 108. In his oral evidence, Jatinder Chatha responded as follows:

“1 You have given us your reason that you chose not to
2 go to Deloittes to get a report but instead went to
3 KPMG, because it was felt that the appropriate way
4 forward was to get a report on the due diligence being
5 carried out on the Isle of Man by the two companies. Is
6 that really the reason that you have chosen not to get
7 a report immediately from Deloittes?
8 **A. Yes, it was.**
9 Q. Would you look, please, at volume 3, tab H. If you go
10 to page 37, go to the bottom of the page:
11 "With regard to the proposed instruction of
12 Deloitte LLP to undertake a separate review, we became
13 aware that the individual at Deloittes who was being
14 tasked with the due diligence review was an acquaintance
15 of Ms Helen Barnard, HMRC's case solicitor."
16 **A. That's right.**
17 Q. "We subsequently took the view that ... (Reading to the
18 words)... because HMRC had accepted that it was this due
19 diligence that was more relevant."
20 Now, it's a somewhat different reason, isn't it?
21 **A. I don't think there is anything different at all.”**

1179. Fourthly, Mr Chatha asserted that they had informed recipient bonds that they *“must immediately inform us of any discrepancies in relation to seal numbers”* (paragraph 4(4)). As set out elsewhere, this was not carried out in relation to Tamaz - see the witness statement of Glyn Davies at paragraph 18. In relation to IEFW, no such instruction appears to have been given prior to April 2017 (see the witness statement of Manuel Gluck at paragraph 21), and, based upon the oral evidence heard, although there is now an instruction from WWL, it continues to go ignored by IEFW.

1180. Finally, Mr Chatha asserted that they had approached their hauliers to discuss further checks and that Hellmann's were to *"discuss the matter internally in the course of this coming month and we will follow up with Hellmanns immediately thereafter"* (paragraph 4(5)). The Appellants disclosed (on day 11 of the trial, 22 June 2017) an email dated 19 May 2016 from Hellmann to Mr Eagleton setting out vague responses to questions, discussed above. There is no evidence that any such follow up was carried out, or that this resulted in any meaningful change. As set out above, this document in itself demonstrates a lack of understanding on the part of Mr Eagleton as to the issues to address in relation to haulier due diligence.

1181. The Tribunal is satisfied that the Appellants unreasonably failed to make meaningful improvement to their due diligence steps over the course of 18 months since the introduction of the ADD condition.

1182. Their assurances as to the steps that they were taking or were going to take in the course of the 'minded to' process and in the course of litigation have proven unjustified. Further, in view of the Appellants' witnesses' false assurances on other points of evidence, the Tribunal was not inclined to accept any evidence from the Appellants that they have made any meaningful changes in the course of the period 1 November 2014 to 8 July 2016 in the absence of other corroborative evidence. Post-decision failings were not taken into account for the purposes of the revocation decision in July 2016, but the Tribunal *now* takes this information into account as further supportive evidence for HMRC's revocation decisions.

Delay

1183. The Appellants have contended that they provided a *"steady flow of information"* to HMRC following their requests for particular material. This is not correct. The Appellants, at times, provided material reasonably promptly. This is not a factor in their favour: approval holders should provide information as quickly as they reasonably can to HMRC. It is, at best, a neutral point.

1184. Importantly, the Appellants should have been able to provide their due diligence material quickly if it was being conducted as they allege it was i.e. as an ongoing process which was updated from time to time and, in particular, improved after the coming into force of the ADD Condition. The following timeline is to be borne in mind.

1185. On 9 September 2014, at a meeting with Jatinder Chatha and Philip Eagleton, HMRC requested *"credit checks or any documents beyond identification from Global and Bridgewell…JC said that he could ask for it from EFB (IOM)"*.

1186. On 11 and 24 September 2014 requests for Global and Bridgewell's due diligence material were sent in writing to the Appellants. Although the Appellants say they did not receive the first request, there is no dispute that they received the second.

1187. On 6 November 2014, Officer Maskew requested due diligence on hauliers from the Appellants.

1188. On 14 November 2014, Philip Eagleton forwarded two movement guarantees, and some WOWGR certificates, some of which relate to Global / Bridgewell. These documents were so sparse, and were not described as due diligence in the emails providing them, with the result that Officer Maskew did not even realise they were intended as a response to the September and November 2014 requests.

1189. The Appellants cannot have it both ways (specifically considered in the decisions at paragraph 41 of Annex A): either they contend that this was the requested due diligence, in which case it was woefully inadequate, or they failed to provide the requested documents in a timely manner. At the very least, supplying due diligence on Global / Bridgewell in November 2014, which had been requested in September 2014, was a slow response.

1190. On 12 January 2015, Officer Maskew wrote to the Appellants, stressing the importance of due diligence.

1191. At the meeting on 11 March 2015, and in a letter shortly thereafter, Officer Maskew raised with the Appellants the importance of undertaking adequate due diligence.

1192. On 7 April 2015, the Appellants were written to by Officer Bourne, chasing credit checks and reports of site visits requested originally on 9 September 2014. On 21 April 2015 a request for an extension to respond was received, on the basis of a postal delay in receipt of the 7 April 2015 letter.

1193. On 2 July 2015 Officer Maskew emailed Philip Eagleton to seek a meeting to discuss their *"current Due Diligence"*.

1194. On 21 July 2015 Philip Eagleton replied, stating that *"mainly due to varying holiday and business commitments, the earliest available date we are available will be from 27/8/15"*.

1195. On 22 July 2015 Officer Maskew emailed Philip Eagleton stating he would like to proceed with a 30 July visit and *"Although I do not necessarily need to see anybody then, I would like to have copies of all your Due Diligence"*. He also wrote about attending that day.

1196. On 30 July 2015, some WWL due diligence was uplifted. IEFW due diligence was missing and Philip Eagleton said he *"will get* [Officer Maskew] *ADD paperwork for 'IEFW'"*. On the topic of visit reports he is recorded as stating *"I need to do them"*. Although he disputes saying he needed to do them, he does not contend that they had been prepared (and indeed none have ever been produced). It was his *"intention …to get the directors together and agree what needs to be done"*.

1197. On 6 August 2015 Officer Maskew sent a letter referring to the 30 July 2015 meeting, and the fact that *"I have still not received any DD for EFB Ltd and the warehouse you use in France – IEFW…Can you provide any documents by the end of next week (14/08/15) so that I can review it?"*.

1198. On 7 August 2015 SEED checks on warehouses were provided to Officer Maskew by email from Philip Eagleton.

1199. On 12 August 2015 Jatinder Chatha wrote to Officer Maskew (this suggests he was not, in fact, unavailable until 27 August) stating on due diligence still not provided *"there is a lot of documentation which would probably be best collected than emailed to you. Could you please confirm how you would like to receive this documentation?"*

1200. On 14 August 2015 Officer Maskew responded, seeking a meeting on 17 or 18 August to discuss due diligence. This was declined by Philip Eagleton because *"my director will not be available"*. No alternative dates were provided. On the same date Officer Maskew visited WWL and uplifted some more due diligence.

1201. On 21 August 2015, Philip Rimmer stated by phone to Officer Maskew that *"they are still working on the other due diligence"*. Officer Maskew stated in an email of the same date *"You told me you are still working on EFB- customer DD"*. He proposed picking up the other due diligence on Monday (24 August). Mr Rimmer stated that he would provide a date for a meeting as soon as possible after 25 August 2015 when he would be discussing matters with his clients. He had only recently been instructed.

1202. On 24 August 2015, Officer Maskew chased for EFBL's outstanding customer due diligence by email.

1203. On 25 August 2015, although Philip Rimmer emailed on this date, he supplied no dates for a meeting and instead raised queries.

1204. On 27 August 2015, Officer Maskew did not answer the queries, having already made plain what due diligence he was asking to see, but requested dates for the meeting.

1205. On 27 August 2015, Philip Rimmer responded, asking for clarification of the scope of due diligence required. No dates for a meeting were provided.

1206. On 4 September 2015, Officer Maskew wrote to EFBL, stating that they had failed to provide customer due diligence to him despite several requests and proposed to meet on 9 September 2015. Philip Rimmer responded, blaming Officer Maskew for failing to reply to the 25 and 27 August queries.

1207. On 9 September 2015, EFBL's customer due diligence, along with suppliers, was provided on a data stick.

1208. No due diligence was provided by the Appellants to HMRC on Global / Bridgewell's customers until 6 April 2016 (albeit that Global / Bridgewell supplied some to IOM C&E in February 2015).

1209. From 1 November 2014, having been forewarned of the ADD condition on 16 September 2014, the Appellants should reasonably have been performing compliant due diligence. They should have been able, within a short period of time, to provide copies of it to HMRC. It is plain, from reading the above chronology, that there was an unreasonable delay in providing due diligence after it was requested by HMRC.

1210. There are two likely reasons for this: either (a) they did not consider that complying with requests from HMRC for such material was important (which is not an attitude of a fit and proper person); or (b), as HMRC contend, the Appellants did not have any compliant ADD system in place from 1 November 2014 and instead were frantically trying to assemble due diligence material when pressed. Both of these possibilities are considered in the decision letter (at paragraph 41 of Annex A). As the Tribunal has found above, on balance, it is satisfied of the latter explanation based on all the evidence it has now heard. There was a particular scramble to obtain due diligence material in late July and mid-August 2015.

1211. Indeed, when the Appellants have that material easily accessible, they have been at pains to highlight how diligent they were in providing that information. For example, on 3 June 2014, the Appellants provided their list of customers, as requested that day. On 11 July 2014, three days after the request, the Appellants provided their "due diligence" on Global and Bridgewell. This willingness, which they have relied upon at times during the hearing, is in contrast to the Appellants' delay in respect of post-November 2014 requests.

1212. The catch-up in assembling due diligence materials, as set out above, is apparent from looking at the date of many of the documents handed over to HMRC in July-September 2015. To take but a few examples (and there are more):

a. Almost every VIES VAT check provided to the Commissioners by 9 September 2015 was performed on 10-12 August 2015 (see above).
b. Extrait Kbis documents state under their headings *"jour au 11 août 2015"* ("up to date at 11 August 2015").
c. Companies House documents have been printed off on 10-12 August 2015.
d. Jatinder Chatha, far from being away or unavailable until 27 August, made a request for material which was received on 12 August 2015 and wrote a detailed letter on the same day.
e. File 17, largely consisting of supplier due diligence, contains a great many number of documents which are dated with the dates of printing which fall in late July 2015 and mid-August 2015 (see for instance the examples put to Officer Maskew). Other files exhibited by Officer Maskew, provided to him over the summer of 2015 up to 9 September 2015 have similar dates on a great many of the document provided.

1213. At the time, Mr Eagleton and Mr Rimmer (representing the Appellants) made statements which also make it obvious they were still assembling their due diligence files when Officer Maskew was pressing to see them:

1214. Philip Eagleton, when asked during a warehouse visit on 14 August 2015 by Officer Maskew for EFBL's customer due diligence, stated that Paul Buckley was still working on it.

1215. On 21 August 2015, Philip Rimmer stated in a telephone call with Officer Maskew, that *"they are still working on the other due diligence"*. See also his email of 25 August 2015 in which he stated that *"Our client is actively compiling the outstanding due diligence records which you have requested"*.

1216. Taken as a whole, there is no audit trail which demonstrates that the Appellants had any meaningful due diligence process in place at all by summer 2015, when they were being pressed to provide HMRC due diligence material. The queries from Mr Rimmer (following Officer Maskew making it clear he wanted to see all due diligence material which they had) and postponing of meeting dates in summer 2015 can only reasonably be explained as stalling for time, while the Appellants put together a large volume of downloaded papers (with no apparent due diligence work of any kind being carried out in respect of them) in the hope that it would make HMRC believe that they had an appropriate due diligence procedure in place.

1217. The alternative explanation contended by the Appellants, essentially that Officer Maskew, in not answering the queries they raised in August 2015, was in some way causing delay by failing to be more helpful, is without foundation. He had made it completely clear that he wished to see all of their due diligence: see for instance his letter of 22 July 2015: *"*[at the proposed meeting] *Please make available the following documents"*. There then follow two lists, one for each Appellant, setting out a long list of due diligence documents anticipated and ending with *"All other checks"*. There could be little doubt upon reading this letter as to the scope of the due diligence material requested.

1218. As Officer Maskew stated in oral evidence, when asked what he had in mind in relation to customers, he was asking for *"The due diligence on all of their customers, whether it would be duty paid or duty suspended"*. There was no reasonable ambiguity. Indeed, it was put to Officer Maskew, that in making the requests in August 2015, *"*[Mr Rimmer] *was trying to reduce the burden on the business"*.

1219. The Appellants cannot reasonably suggest that they could not respond sooner in the summer of 2015 because their personnel were unavailable until 28 August 2015 (as asserted by Philip Eagleton on 21 July 2015 – responding to an email sent 19 days earlier) and this was in some way relevant to their inability to provide due diligence material faster.

1220. This is an unsatisfactory explanation: if there was an ongoing ADD process, the documentation could and should simply have been produced. In any event, it is obvious, as described above, that some member or members of the Appellants' staff were hard at work, trying to create a significant amount of material to present as their due diligence files at this time. Jatinder Chatha, for instance, far from being away or unavailable, made a request for material for these files on 12 August 2015 and wrote a detailed letter on the same day. Philip Eagleton wrote a number of communications throughout summer 2015 and was present at warehouse visits on 30 July 2015.

1221. Some of the downloaded documents show that Mr Chatha was himself engaged in this hurried work.

1222. HMRC would be reasonable in concluding that the above course of events is not a demonstration of the attitude of fit and proper persons. The Appellants were clearly not carrying out due diligence as required by the ADD condition in section 10 and were not providing due diligence material to HMRC in a timely manner. There was ample evidence for the decisions under challenge to conclude that the Appellants delayed in this regard.

1223. Further the confrontational stance adopted by the Appellants at the meetings on 9 September and 5 November 2015 reflected an attitude of non-co-operation with HMRC.

Conclusion as to the Appellants' Attitude

1224. HMRC reasonably relied on a requirement for a cooperative attitude of excise approval holders in order to combat the risk of tax loss through fraud. Indeed, Jatinder Chatha accepts the importance of this attitude for the excise approval regime: *"It necessarily involves our being wholly cooperative and forthcoming with HMRC. We have been assiduous in doing so"* (paragraph 23 of his witness statement).

1225. The Tribunal is satisfied on the balance of probabilities that the Appellants' attitude has been the opposite of that reasonably expected and required: the Appellants have lied and been evasive with HMRC; they rebuffed any suggestion that there were inadequacies in their due diligence or tax loss within their supply chains; and they have failed to provide due diligence and other information when requested. It was reasonable to conclude that this attitude is not that of a "fit and proper" person and, as it applies to their duty suspended business, exposes the Revenue to an unacceptable risk of loss through fraud.

Findings relevant to proportionality - impact on the Appellant businesses of revocation of duty suspended approvals

1226. At paragraphs 107-113 of Annex A of HMRC's revocation decisions, Officer Lewis considered the impact of revocation of the approvals to keep, use and warehouse duty suspended alcohol upon the Appellant businesses:

107. The Commissioners have considered the representations made by employees of the EFB Group, in their witness statements of 11 May 2016 and 12 May 2016, in relation to the potential impact that the revocation of excise approvals would have across the Group. The Commissioners have carefully considered this in their decision making but have concerns regarding the information provided.

108. The witness statement of Ayo Akintola focuses primarily on the potential reputational damage that the revocation decision will have on the [] retail business, and suggests that public confidence in the brand would 'evaporate overnight'. The only evidence offered to support this claim is the historic activity of [one of the retail store companies] entering administration in 2011, and how suppliers refused to supply to the new company. The Commissioners consider this to be a different scenario to the revocation of excise approvals and have been provided with no evidence to confirm this would happen again in the different situation of revocation of the WWL and EFBL warehousing and wholesale businesses.

109. The Commissioners cannot comment on any reputational damage that the [] "brand" may have suffered in the past, but they cannot see why any other business would become aware of the reasons for excise approvals being revoked. The requirement of notifying other businesses that EFBL and WWL excise approvals have been revoked would lie with WWL and EFBL. The Commissioners do not normally issue press releases for revocation of excise approvals and therefore, the wider public would not be aware of the association between [the retail stores] and EFBL. Furthermore, the High Court has, on the Claimants' application, ordered that the evidence heard in proceedings relating to these approvals to be kept private.

110. The witness statement of Nicholas Randell concentrates on the benefits of EFBL being able to purchase large quantities of duty suspended goods, and how EFBL would not be able to fund this quantity if it had to pay VAT and Duty upfront. The evidence supplied to the Commissioners to support the stated discounts of bulk buying and funding have been redacted, which has resulted in the Commissioners being unable to verify its accuracy with the relevant parties.

111. The Commissioners have, therefore, only been able to consider the statements made in the witness statements of employees of the EFB Group. These have been considered and, although the Commissioners accept that there will inevitably be some impact on EFBL, WWL and the wider Group, there has not been sufficient evidence supplied by EFBL/WWL to support their opinion that the entire EFB Group would be 'completely unviable within 3 months' or that there will be no other way for the retail arm to remain viable. The Commissioners note that a significant part of EFBL's duty suspended purchases are exported to other EU Member States and, as such, do not impact on the UK retail arm of the organisation.

112. The Commissioners also have to consider the risk to the Crown and potential loss of revenue. Given, not least, the amount of tax losses and VAT assessments identified on goods sold by EFBL and leaving WWL premises historically, the Commissioners consider the decision to proceed with the revocation of the excise approvals to be reasonable, proportionate and the most appropriate action.

113. It is for these reasons that the Commissioners consider that it would not be appropriate to take any lesser step, e.g. impose conditions on your approvals. Compliance with the Alcohol Due Diligence condition in PN 196 is the minimum requirement for all approval holders and, as has been explained above in detail, the Commissioners are not satisfied that you have complied with this, or are likely to do so. Mr Chatha suggested in his letter of 31 May that the companies would undertake not to export goods in duty suspense to other EU Members States, pending reviews into the companies' due diligence procedures. Without waiving legal professional privilege, the Commissioners are of the view that they could not lawfully impose conditions such as this on your approvals and the fact that you would consent to them does not alter the Commissioners' view of their lawfulness. Finally, the Commissioners are obliged to properly police the duty-suspension regime and to treat all approval holders fairly. You have already been given ample opportunity to take action to address the deficiencies that have been brought to your attention, but have not done so. It would not be fair or reasonable for the Commissioners, as a public authority, to afford a greater opportunity to you than they would to others.

1227. The Tribunal is satisfied that underlying facts are proved on the balance of probabilities and the conclusions reached by HMRC were reasonably arrived at both at the time of the decision on 8 July 2016 and in light of all the evidence heard during the appeal. The Tribunal is satisfied that this part of the decisions did not fail to take into account relevant material or take into account irrelevant material.

Evidence available at the time of the revocation decisions

1228. HMRC accepted that revocation of the WOWGR (duty suspended) approvals would have had a serious effect on cash-flow of the Appellants' businesses and on the (duty paid alcohol) business of the wider group of companies of which the Appellants are a part. However, in the balancing exercise carried out by HMRC, it was open to HMRC to reasonably conclude that the evidence was weighted in favour of the wider public interest and thus in favour of revocation. Serious adverse effects on business cannot themselves be sufficient to make it unreasonable to revoke approvals, where approval holders are not considered to be fit and proper persons.

1229. The evidence provided by the Appellants prior to the revocation did not support their assertions that the effect of the revocation would be that public confidence would *"evaporate overnight"*, as asserted by Ayo Akintola. HMRC reasonably considered the fact that the one of the retail store companies struggled to obtain suppliers when they entered administration to be a different commercial scenario to the revocation of a duty suspended excise approval. In any event, the fact that the group had turned one of the retail store companies around was an encouraging feature to suggest that the businesses would not close overnight.

1230. HMRC further considered the witness statement of Mr Nicholas Randell dated 12 May 2016 in the High Court proceedings. He explained that revocation would result in a cash flow problem. However, the evidence provided was redacted so that it could not be verified. Further, while it was accepted by HMRC that there may be a cash flow problem, the Appellants had not demonstrated that the result would be an inevitable failure to trade, given that a substantial duty-paid alcohol market exists.

1231. The Appellants did not submit any independent reports or otherwise in support of their assertions. Had they done so, such reports or independent evidence would have been considered by HMRC.

1232. In any event, and even if the Appellants' assertions had been supported by evidence and could be verified, HMRC reasonably considered this evidence in the context of (i) the WOWGR regime in which duty suspended trade in alcohol is a privilege and not a right, and (ii) the risk of potential loss of Revenue.

1233. The Appellants assert that other steps, such as imposing conditions, could have been taken by HMRC. As Officer Lewis explains at paragraph 15 of his second witness statement, *the Appellants continued to act in breach of the ADD condition, they refused to accept warnings about tax losses and they had given inconsistent accounts about their relationship and connection to and about their information sharing with Global and Bridgewell to HMRC* (see also paragraph 221 of his first statement). It was the view of HMRC that any conditions would be inappropriate *"in view of the lack of trust in the* Appellants' ability or willingness to comply with the due diligence requirements" (paragraph 282 of Officer Lewis' first statement).

Evidence heard during the appeal

1234. The evidence heard during the appeal did not undermine the findings of primary fact and reasonableness of the conclusions reached by HMRC.

1235. Rajinder Chatha's evidence of catastrophic effects on the business of EFBL and the wider group was purely opinion evidence, and speculative at best. He refused to give any indication of his own net worth, other than that it was less than £100 million. Consequently, he has failed to provide any evidence beyond an assertion that he personally could not maintain group cash flow (for example, to fund the upfront payment of duty) in the event of the revocations taking effect.

1236. There was no convincing answer when it was put to him that he had failed to get independent expert evidence to support the assertions of economic catastrophe. First, he asserted simply that his opinion *"is fact"*. He also suggested that there would have been insufficient time because "this time last year everybody was running around like headless chickens trying to get pieces of papers together and do whatever they could do, trying to get as much evidence in as we could".

1237. When it was pointed out to him that many months had gone by since the injunction hearing of 29-30 June 2016 during which a report could have been obtained, he sought to blame the fact that somebody else had not told him to get an accountant's report. When it was put to him that, in the revocation letters of 8 July 2016, HMRC had pointed to the absence of sufficient evidence to support the assertions of catastrophe made by the Appellants (paragraphs 108-111 of Annex A), he simply asserted the business would collapse and that he had "*no issue with somebody looking at it*", ignoring the fact that these were the Appellants' appeals and they bear the burden of proof. It was for the Appellants to provide independent and reliable evidence in support of the arguments as to the impact of revocation of duty suspended approvals upon the businesses.

1238. There is little evidential basis for the assertions of business collapse put forward by Rajinder Chatha. He had ample time to acquire appropriate independent expert evidence and had chosen not to do so. An independent report could have considered all consequences of approval revocation and options, such as sale of the retail store companies as happened when one of the retail store companies went into administration and Rajinder Chatha himself purchased part of the business, thereby saving jobs. Instead, he simply provided his own opinions which do not in themselves prove the facts asserted.

1239. Notably, Jatinder Chatha's evidence was that *"each arm of the business has to stand on its own two feet"* and that even the shops owned by the group are not given preferential treatment but treated as any independent shop would be. Given this arrangement, there is no reason to believe that if one arm of the group's business activities were to reduce or cease trading, this would necessarily mean that other aspects of the group's activities as a whole would suffer. Certainly, without expert evidence to explain and support the argument that this would necessarily occur, the Appellants are not in position to demonstrate that it would.

1240. Mr Akintola gave evidence as to the potential effect of revocation on the businesses. As the Managing Director of EFB Retail Ltd and former managing director of one of the retail store companies (a very significant employer in the EFB Group), his evidence is of importance given the heavy reliance by the Appellants on the number of potential job losses.

1241. He gave evidence that the reputational damage sustained by one of the retail store companies, in the eyes of the general public, would be minimal if the Appellants' approval was revoked: the average member of the public would not know or care about the ownership of the retail stores.

1242. Further, he accepted that the viability of the business is dependent upon two factors: first, the ability to fund the duty upfront:

"5 Q. Your witness statement, therefore, focuses upon the duty

6 point, doesn't it?

7 **A. Yes.**

8 Q. Yes. And so if EFB has the funds available to it to pay

9 for the duty, then the problem which you identify here

10 in that sentence goes away?

11 **A. If EFB has the funds?**

12 Q. If it has the funds.

13 **A. Yes.**

14 Q. Yes. And those funds can be provided, for example, by

15 means of a borrowing facility if EFB is able to borrow

16 the money from a bank?

17 **A. I couldn't possibly comment on that.**"

18

1243. The second point he made in relation to the viability of the business, is the ability to purchase (and then sell on) large volumes of stock:

"1 Q. I see. So what the independents need is access to

2 a supplier who can give them lower prices than simply

3 buying from a supplier offering duty-paid? Is that it?

4 **A. No, what it is is every -- in the trade everything is**

5 **given by the volume, the pricing that you get is driven**

6 **by the volume that actually have. An independent wine**

7 **merchant will buy two cases of Puligny-Montrachet.**

8 **[the retail stores] can buy 100 cases of Puligny-Montrachet, so the**

9 **pricing that we get is completely different.**

10 Q. And the ability to buy that, the small independent

11 hasn't got the kind of financing which EFB has got?

12 **A. The small independent hasn't got the outlet to move**

13 **100 cases.**

14 Q. Certainly. But [the retail stores] represent the

15 retail outlets to shift that kind of volume; yes?

16 **A. We are buying the volume because of the outlets that we**

19 **actually have.**"

1244. The viability of these businesses, and the protection of jobs, is dependent upon the ability of the Appellants (and/ or Rajinder Chatha) to secure a loan or provide funds required to provide additional working capital to EFBL in order to fund the gap caused by the loss of the benefit of having duty suspended stock, from which the group companies can draw down. The amount involved is asserted by the Appellants as £10-14 million and the cost of financing such a loan (if the money is required to be provided) is modest – in the region of perhaps £100,000 to £200,000 per annum and potentially financed by EFBL out of its profits, if it chooses to do so.

1245. First, EFBL is a profitable company. It is to be noted that a large part of its profits is transferred to Bridgewell (Global no longer trading). Jatinder Chatha commented that lower prices are offered to Global / Bridgewell due to the volumes of stock purchased by them (although HMRC contend that the true reason is because they are simply vehicles for EFBL's business). Offshore profit-taking by Mr Rajinder Chatha's group of companies has not been disclosed.

1246. Secondly, there is no doubt that Rajinder Chatha is a very wealthy man. His declining to disclose to the Tribunal any details of his personal wealth and assets in response to HMRC's counsel is a choice he was entitled to make. Nonetheless, he Tribunal cannot find, given his lack of disclosure on this issue that, if so minded, he could not afford to step in and provide the money himself (such as by way of further equity investment) or that he could not provide security for a loan to EFBL.

1247. Given that he solely owns the Appellants, these companies have not satisfied the Tribunal that (a) they would not survive, let alone not be able to do so for more than three months if the appeals are dismissed or (b) there would necessarily be significant job losses.

1248. The Tribunal finds that the Appellants and Rajinder Chatha have not given it the full picture or sufficient evidence which would enable it to reach a reasoned and principled decision on the likely impact of WOWGR revocations upon the businesses. Rather, the Appellants have chosen to provide the Tribunal with only a partial picture, suggesting the impact would be catastrophic without sufficient supporting evidence.

1249. The Tribunal will return to the implications of these factual findings when considering the issue of proportionality of the revocation decisions.

Discussion and Decision

The Appellants' Grounds of Appeal

Grounds 1(a)-(c)

1250. Ground 1 of the Appellants' grounds of appeal was primarily a reasonableness challenge.

1251. In Ground 1(a) the Appellants asserted that, "*Unless a primary fact is proved by evidence, HMRC ought not to have relied on that fact when reaching Evaluative Conclusions*". The Appellants submitted that "*much of what was set out in Annex A*" of the decision letters was either not founded on evidence or the evidence was so weak it could not, without more, support the conclusion reached.

1252. It therefore falls to the Appellants to establish that there was no evidential basis for HMRC's conclusions or that the evidence was so weak so as not to form a proper basis for those conclusions.

1253. The Tribunal finds that, to the extent that the Appellants seek by this sub-Ground to import a higher standard of proof, or to shift the burden of proof from themselves (per s16(6) of the Finance Act 1994) to HMRC, this sub-Ground is mistaken. It is for the Appellants to establish that the decision to revoke was one which no reasonable Board of Commissioners could have reached.

1254. The Tribunal has already found that there was evidence to prove on the balance of probabilities, therefore the Appellants have failed to disprove, each major factual

finding relied upon by HMRC in support of their four evaluative and ultimate conclusions and that each of the conclusions was reasonably arrived at.

1255. The four evaluative conclusions do not need repeating but the Tribunal should record its finding that it was reasonable for HMRC to conclude ultimately that the Appellants were not fit and proper persons to hold excise approvals because the manner in which they have conducted their duty suspended business activities over a very significant period of time has exposed the Revenue to an unacceptable risk of loss through fraud.

1256. Applying the test in *Safe Cellars*, it was reasonable for HMRC to conclude that the Appellants were not fit and proper in that they have not demonstrated behaviours of a type likely to assist, and not to hinder, the proper administration, collection and protection of the revenue.

1257. The Tribunal makes this finding both in respect of the time at which HMRC made the revocation decisions and in light of all the evidence heard during the appeal.

1258. The Tribunal has already explained how each of the four evaluative conclusions must be considered independently and collectively but also that they interact with each other.

1259. The Tribunal has made extensive findings of fact going beyond the reasons relied upon by HMRC in their revocation decisions against the Appellants on 8 July 2016 (as set out in Annex A). The Tribunal has found that the facts and reasons relied upon by HMRC to have been proved on the balance of probabilities with one very limited exception of the allegation as to the four light and empty loads relied upon by HMRC.

1260. The Tribunal has found that this factual finding of HMRC on four light and empty loads (which it does not categorise as a major factual finding) has subsequently been proved not to be correct on the balance of probabilities at the conclusion of hearing all the evidence in the appeal.

1261. Nonetheless it was established at the time of the revocation decision in July 2016 and it was reasonable for HMRC to rely upon it at that time. While, the Tribunal has found that it was reasonable for HMRC to rely upon these four loads at the time of the decisions on 8 July 2016, having heard the evidence provided subsequent to the decisions, the underlying facts are not established on the balance of probabilities.

1262. The Tribunal has also already provided its reasons above for why, notwithstanding the high hurdle set out in *John Dee* and *Behzad Fuels*, it is of the view that it is inevitable that HMRC would have come to the same conclusion irrespective of this change of finding having heard all the evidence (see above).

1263. To summarise, even in light of this allegation not being made out on the evidence heard by the conclusion of the hearing, it is inevitable that HMRC would have reached the same evaluative conclusions in respect of: a) the irregularities in the movements of the Appellants' duty suspended goods; and b) that they were not fit and proper persons to hold approvals; and c) that the approvals should be revoked.

1264. This is because of the sheer weight of other evidence available at the time of the decision on 8 July 2016 and by the end of the hearing which supported a) the irregularities in movements of the Appellants' duty suspended goods; and b) the other three evaluative conclusions.

1265. Furthermore, HMRC's ultimate conclusion that the Appellants were not fit and proper persons to hold approvals and that these should be revoked has received greater support as a result of the evidence heard in the appeals than was available at the time of the revocation decisions. Having heard all the evidence, the reasonableness of HMRC's case that the Appellants are not fit and proper to hold approvals has strengthened markedly since the original revocation decisions.

1266. Key persons in the Appellants have been concerted in their attempts to mislead, evade giving true answers and lie to HMRC and the Tribunal on significant matters going towards their duty suspended businesses (company connections, nature and purpose of trade, due diligence performed by them and their sister companies). These strike at the heart of the risk they pose to the Revenue and such conduct alone would render them unfit to hold approvals.

1267. Again, the Tribunal attempts to summarise the findings it has already made.

1268. First, through the course of their dealing with HMRC, the Appellants (and, in particular, their witnesses Jatinder Chatha and Philip Eagleton) have lied and misled HMRC as to their relationship with the Isle of Man companies and the nature and purpose of their trade. Secondly, and connected to this lie, the checks that they purported to carry out on the due diligence of Global/Bridgewell have morphed over time to correspond to whatever the purported nature of the relationship is at any given time.

1269. The lies told to HMRC on these topics, primarily by Jatinder Chatha and Philip Eagleton, have been compounded by the lies told to the Tribunal on the same topics, by Rajinder Chatha, Jatinder Chatha, Philip Eagleton and Hardeep Chatha.

1270. The Tribunal is satisfied that the facts relied on by the decision maker at paragraph 101 of Annex A in respect of the Appellants providing inconsistent accounts or attempting to disguise company connections have been proved and therefore his decision was within the range of reasonableness.

1271. Nonetheless the evidence heard and findings made by the Tribunal have gone much further, for instance, than Officer Lewis' conclusion of '*some attempt by your business to disguise the true connections between you and your customers before 15 June 2015*' relied on at paragraph 101 of Annex A to the revocation decisions.

1272. The lies told on behalf of the Appellants to HMRC and to the Tribunal have extended further than these topics.

1273. As set out within the Tribunal's factual findings:

Hardeep Chatha has back-dated or at least used documents containing falsehoods for the purpose of advancing the Appellants' case in relation to due diligence in these appeals;

Four witnesses appearing on behalf of the Appellants lied to HMRC and the Tribunal in relation to the connections between the Appellants and the IOM sister companies, the reason for the interposition of the companies, due diligence steps actually undertaken or the contents of meetings between HMRC and the Appellants; and

Unreliable email correspondence was relied upon by the Appellants when HMRC raised concerns about irregularities in transport arrangements.

1274. The Tribunal is satisfied that it would be reasonable for HMRC to conclude that this conduct of key persons in the Appellants, taken alone and independently of the four evaluative conclusions, would render them not "fit and proper" to hold duty suspended WOWGR approvals and to revoke the Appellants' approvals. They have demonstrated by this conduct that their lack of integrity on significant matters relating to their duty suspended business is such that they pose a risk to the Revenue in the conduct of these businesses.

1275. The key persons have not demonstrated behaviours of a type likely to assist, and not to hinder, the proper administration, collection and protection of the revenue. Further, the Tribunal is satisfied that there is no condition which HMRC could impose on the Appellants' approval which could address such behaviour. The applicability and proportionality of potential conditions on the approvals is considered in detail below.

1276. Much of this part of HMRC's case on the related evaluative conclusion (the behaviour and attitude of the Appellants) has gone unchallenged by the Appellants; none of the grounds of appeal are made out in relation to the conduct of the Appellants.

1277. Furthermore, this conduct has had a significant impact on other aspects of HMRC's decisions.

1278. First, it is reasonable for HMRC to conclude it could not trust the Appellants as to assertions they made about their due diligence procedures.

1279. Secondly, it has hindered HMRC's ability to regulate and supervise the duty suspended alcohol market: see, for example, the assertions and unsatisfactory email correspondence provided to HMRC in respect of the four anomalous consignments.

1280. Thirdly, it goes to the Appellants' attitude and behaviour towards HMRC and also towards the excise approvals regime generally.

1281. The Tribunal is satisfied that this conduct and behaviour is so serious in itself that HMRC would have inevitably reached the same conclusion that the Appellants were not fit and proper persons to hold approvals and they should be revoked.

1282. The WOWGR approvals regime relies on HMRC having trust and confidence in approval holders to assist in the fight against fraud, which is why it is considered a

privilege. The Appellants' conduct demonstrates behaviours of a type not likely to assist, but to hinder, the proper administration, collection and protection of the revenue.

1283. The fit and proper test as defined in *Safe Cellars Ltd v HMRC* [2017] UKFTT 78 (TC), as being: "*persons who demonstrate behaviours of a type likely to assist, and not to hinder, the proper administration, collection and protection of the revenue*" may not even be a complete statement of the test for duty suspended excise approvals.

1284. The fit and proper test may not simply be confined solely to the proper administration, collection and protection of the revenue. Where, for instance, honesty, trust and confidence are involved in the matters being regulated, then lying to the regulator or the court (or both) and lack of integrity in relevant or connected business affairs may all be highly relevant matters which would make a person not fit and proper.

1285. The Court of Appeal in *Financial Conduct Authority v Hobbs* [2013] EWCA Civ 918 stated at [38 and 39]:

38. There is a public interest in ensuring, so far as possible, that persons who are not fit and proper persons to perform functions in relation to a regulated activity are precluded from doing so. A narrowing of the inquiry by the Tribunal that excludes relevant material from its assessment of an applicant is to be avoided, provided, of course, that the applicant is given a fair opportunity to address the Authority's case. In Mr Hobbs' case, it could not be suggested, and was not suggested, that he did not have a fair opportunity to address the allegations that he had been guilty of repeated and persistent lying. The second reason is that if the Tribunal incorrectly restricts its determination, it may be difficult for the Authority to rely on the excluded facts in future in assessing, for example, whether the Applicant is a fit and proper person, or should be granted an authorisation he seeks to engage in a regulated activity. To take the present case as an example, I can see that it might be arguable that on *Henderson v Henderson* grounds the Authority should not be permitted to rely on allegations that it put before the Tribunal but which the Tribunal did not accept demonstrated that Mr Hobbs was not a fit and proper person. Such a situation should be avoided.

39. For all these reasons, I consider it was incumbent on the Tribunal to address the question whether, even if Mr Hobbs was not guilty of market abuse, his lying, which it found as a fact, demonstrated that he was not a fit and proper person. It erred in law in failing to do so.

1286. The sections of Excise Notice 196, such as section 2 and 3.2, excluding section 10, dealing with matters which must be satisfied before an approval will be granted, are obviously relevant when considering the issue of revocation. A failure to continue to satisfy one or more of these matters may appropriately give rise to sanctions. Revocation can occur for any *"reasonable cause"*, as stated both in Excise Notice 196 at 3.6 and importantly, in CEMA sections 92(7) and 100G(5).

1287. The Tribunal is assisted by the Court of Appeal's judgment at paragraph 29 in *FCA v Hobbs*:

"I read the last sentence of paragraph 243 as the Tribunal stating that because it had found that Mr Hobbs was not engaged in market abuse, the Authority had not made out its case that Mr Hobbs was not a fit and proper person. Unless the Authority had confined its case to the allegation of market abuse, this was a non-sequitur. That it did so would be inconsistent with

the Tribunal's statement in the same paragraph that the Authority's case rested on a combination of Mr Hobbs' alleged conduct and his lying about it. Lying, by definition [is] deliberate and if intended to mislead, may well of itself demonstrate that a person is not a fit and proper person to carry out a regulated activity, and whether or not it did so in this case was a matter for the Tribunal to address. Furthermore, even if I am wrong in my interpretation of paragraph 243, if the question whether Mr Hobbs' lying rendered him unfit and not a proper person was live before the Tribunal, the Tribunal gave no reasons whatsoever for a finding that his lying, which the Tribunal had clearly found, did not affect his fitness and propriety"

1288. The Tribunal takes into account that it would not be reasonable for the Appellants to continue to hold approvals to trade in duty suspended alcohol when HMRC cannot reasonable rely on information provided by them.

1289. Not only would it be inappropriate and unfair on other traders (whose conduct may be unimpeachable) to continue to approve the Appellants, but in these circumstances it would be reasonable for HMRC to conclude their continued approval would undermine the basis of the regime, and no condition could be introduced that could remedy this behaviour.

1290. Even if HMRC had relied on no other evaluative conclusions, the Tribunal would have found that, the fact of this conduct would make it reasonable to uphold the conclusion that the Appellants were not fit and proper and their approvals should be revoked.

1291. Further and in any event, it was reasonable to conclude that the Appellants do not satisfy the *Safe Cellars* test of being fit and proper based upon the four evaluative and ultimate conclusions.

1292. One other piece of evidence should reasonably be taken into account. It emerged in the evidence that it was necessary for EFBL to keep masked from its suppliers the fact that it was purchasing at least £20 million of stock per annum from them for supply to customers trading that stock as duty suspended alcohol into different parts of Europe.

1293. Given that any supplier should reasonably have complied with its own due diligence obligations under the ADD in Section 10 of EN196 and should have sought to be informed as to the specific market being supplied by their customer EFBL, EFBL could only keep its secret if it also concealed (or at least did not disclose) to its suppliers where the market for this supply of alcohol actually was. In short, keeping their secret meant that EFBL would always have the intention of defeating the due diligence regime set out in Section 10 if it was asked to provide due diligence information to its own suppliers.

1294. These reasons support HMRC's conclusion that the Appellants were not fit and proper persons to hold excise duty approvals.

1295. In Ground 1(b) of their appeal the Appellants contend that those facts and matters that are proved do not support the evaluative conclusions. The Tribunal has found that HMRC's decision to rely on the facts and matters set out in the decision letters at Annex A to reach the evaluative conclusions cannot, by any measure, be said to have fallen

outside the range of reasonable decision-making at the time of the decisions. The evaluative conclusions taken independently, collectively and in interplay reasonably support the ultimate conclusion as explained above.

1296. By Ground 1(c) the Appellants contend that the evaluative conclusions do not support the outcome. The Tribunal has found that this to be without foundation: the evaluative conclusions formed a reasonable basis for the decisions.

1297. The Tribunal is satisfied on the balance of probabilities of the factual bases for the four evaluative conclusions set out in the revocation decision letters and that these reasonably support the ultimate conclusion. This addresses Grounds 1(a)-(c) of the Appellants' grounds of appeal.

1298. The Tribunal is satisfied to a high degree of probability, well in excess of the balance of probabilities, that HMRC's decisions that the Appellants were not fit and proper persons were ones that could reasonably have been arrived at.

1299. The Appellant companies were not, at the time of the revocation decisions and in light of all the evidence heard during the appeal, persons of a type likely to assist, and not to hinder, the proper administration, collection and protection of the revenue. This determination is made by reference to the companies' behaviour as a whole and by reference to the key persons within the Appellants, Rajinder Chatha, Jatinder Chatha and Philip Eagleton. Each of these persons may be considered key persons for the purposes of paragraph 3.2 EN196:

> 'those who play a key role in the operation of the business to the extent that they can be seen as one of its 'guiding minds'. For example, they have authority and responsibility for directing and controlling the activities of the business or day to day management. It also includes significant beneficiaries of the business who are not directors or partners etc.'

Omission of Material Factors (Ground 1(d))

1300. In respect of Ground 1(d) – omission of material factors - the Appellants have made attempts to extract evidence from witnesses to build a case that something material has been omitted from the decisions under challenge. The Tribunal finds that they have not succeeded.

1301. In relation to an alleged failure to take into account relevant considerations, only two matters were pleaded in the Grounds of Appeal, namely – that HMRC did not take into account that (1) the Appellants were closely linked to the IOM companies and (2) they had engaged M&R Tax to advise them. The Appellants have not pleaded any other matter which should have been taken into account in the decision. The Tribunal has found that these matters were taken into account by HMRC in arriving at their decisions.

1302. In relation to these two points which were raised in the Appellants' Grounds, it is apparent that HMRC did indeed take into account the fact that the Appellants were closely linked to the IOM companies, both substantively in relation to the failings in carrying out due diligence and also in relation to the lack of transparency on their part

of the Appellants: see for instance paragraphs 9-21 of Annex A of the revocation decisions.

1303. Further, in relation to the engagement of M&R Tax and Mr Rimmer, the decision letters of 8 July 2016 expressly refer to him and to his role, for instance at paragraphs 56 and 103(b) of Annex A to the revocation decisions.

1304. During the hearing, in the course of the cross-examination of Officer Lewis, a number of matters were put to him in an attempt to expand upon this sub-Ground.

1305. In the absence of a pleaded case setting out the additional items of complaint, the Tribunal accepts HMRC's submission that they were not able to respond fully or to respond to each point in detail.

1306. In addition, for lack of notice, HMRC did not, for instance, put any of these matters to their witnesses as they would have done (had they known about them) pursuant to directions given in this appeal which allowed supplementary questions at the start of evidence in chief of a witness. The Tribunal accepts HMRC's submission that they did not have a full opportunity to submit evidence on these matters through lack of a pleaded case.

1307. The Tribunal, accordingly, gives little weight to the introduction of any of these new challenges. It would be procedurally unfair for the Appellants to be permitted, in effect, to "plead by cross examination".

1308. In any event the Tribunal accepts HMRC's submission in response that the Appellants' unpleaded complaints, in summary, fall into the following three categories:

(a) They were taken into account as set out in the decision letter;
(b) They were taken into account but the finer detail was not included in the decision; or,
(c) They were immaterial to the decision (and it is therefore irrelevant whether or not they were taken into account).

1309. In particular, the Appellants' counsel suggested to Officer Lewis that a number of matters mentioned which were "positive" for the Appellants (in particular, assertions as to due diligence steps) were not included in the decision letters, therefore indicating a biased view or a failure to take into account relevant considerations.

1310. The Tribunal finds that this proceeds on a false premise. First, in a large case such as this one involving a number of inter-linked complaints against the Appellants and large factual matrix, it is impractical and implausible to include every detail in the decision letter. The mere absence of a certain matter does not indicate it was not taken into account. Indeed, this is made explicit in the decision letters:

"In respect of each meeting I have included a summary of the discussions which took place, but have not listed every exchange" (emphasis added) [paragraph 1 of Annex B to the decision letters].

1311. Secondly, it presupposes that the decision letters set out every piece of analysis and evidence taken into account, rather than the conclusions reached as part of the decision. As Officer Lewis was at pains to point out, for instance, the letters set out HMRC's reasons for the decisions; they are not documents recording all matters favourable and detrimental to the Appellants – they set out a summary as to why Officer Lewis in particular, and HMRC generally, took the view that that they did. The decision maker was not required to set out all positives and negatives - that would not be practicable - but provided reasoned conclusions for his decisions which were based on sustainable evidence so long as all matters had been taken into account before the reasons were explained. Officer Lewis gave evidence that he did, for the very most part, take into account the matters put to him as having been ignored.

1312. Thirdly, the fact that the conclusions include findings detrimental to the Appellants does not indicate some sort of impropriety on the part of the decision maker: it is for the Appellants to establish that these conclusions were not reasonably founded on the information available to Officer Lewis, or on evidence at least in existence by 8 July 2016.

1313. It was suggested on a number of occasions that Officer Lewis failed to take into account that Mr Rimmer asserted, on 9 September 2015, that the Appellants' due diligence was *"continually updated"*. It is accepted that this specific assertion on that specific date does not appear in the decision letter. However, the point has no merit (and is not pleaded).

1314. First, it is not proved to the Tribunal's satisfaction that this was, in fact, said. But, in any event, at paragraph 42 of Annex A of the decision letters, Officer Lewis did expressly consider the representation of 2 April 2016 that the Appellants' due diligence was *"under constant review"* and he explained the reasons why he doubted the veracity of this statement (see also paragraph 38(e)). Consequently, he did take into account the assertion that there was constant review of due diligence by the Appellants.

1315. He explained in his oral evidence to the Tribunal that, entirely reasonably, he did not rely solely on verbal assertions of the Appellants, but also on evidence which he had seen; and he had seen no evidence of continual updating of due diligence at all by the Appellants (apart from the updating between November 2014 and summer 2015 of the due diligence file relating to Hellmann Logistics).

1316. Further, on the contrary, the evidence of the dates on the files relating to suppliers and warehouses showed reasonably clearly that there was no such meaningful updating at all. Rather (following the increasingly persistent requests of Officer Maskew asking to be shown all of the Appellants' due diligence files in the summer of 2015), there was one short period in July/August 2015 when volumes of documents were downloaded from the internet by EFBL/WWL with no attempt to carry out any, let alone any meaningful, assessment of risks associated with particular companies with which the Appellants had dealings. See the section on delay, above for more detail.

1317. It cannot, therefore, be said that this was a material matter which was not considered – it did not happen as a matter of fact.

1318. As to matters which the Appellants say were not considered before the Alcohol Assurance Panel, for example, the impact on the businesses, provided that relevant matters were taken into account in the decisions of 8 July 2016, such a complaint cannot undermine the decision (and, again, is not pleaded).

1319. The Appellants' counsel questioned Officer Lewis in relation to the two-page checklist. It was put to him that he had not referred to the document when making his decision and that this sort of information was "*highly relevant*". What was ignored by this line of questioning, was that the identical checklist (but filled in this time) was seen by him and taken into account when making his decision. The point has no substance.

1320. It was also put by the Appellants' counsel to Officer Lewis that the abbreviated financial statements of Planet Wine Ltd were not taken into account but were "*highly relevant*". It is unreasonable for the Appellants to assert that sight of this document was relevant and would have assisted their position had it been taken into account by the decision maker.

1321. As Officer Lewis explained in oral evidence, this material would not in any way have altered his conclusions that Global / Bridgewell were performing inadequate due diligence. The VIES VAT check and abbreviated financial statements post date trade starting (on 24 July 2014). There is no assessment of risk, no analysis of the stability of the company, no information on the market or type of customers. It is plain that this file does not assist the Appellants in demonstrating that Global / Bridgewell performed due diligence compliant with the ADD condition. It is yet another example of inadequate due diligence.

1322. Every other matter put to Officer Lewis in cross examination was so minor, or otherwise immaterial, that it cannot support an argument that a material factor was left out of account in the decisions.

Alleged Predisposition of HMRC towards making the decisions (Ground 1(e))

1323. The alleged predisposition of HMRC towards making the decisions was not a stand-alone Ground. The Tribunal is satisfied that even if HMRC had been predisposed to the evaluative conclusions, this is not a basis on which the decision can be said to be unlawful. Motive is irrelevant. This argument can be relevant only if the Appellants can show that the decision maker failed to take into account a relevant consideration, and if that had been taken into account the decision would not inevitably have been the same.

1324. For the avoidance of doubt, the Tribunal is not satisfied on the balance of probabilities that HMRC were predisposed to the evaluative conclusions.

1325. The Tribunal is satisfied on the evidence, as HMRC received material over time and evaluated it, they developed views increasingly adverse to the Appellants. They ultimately came to the decision that they should embark upon the process to revoke the approvals, including giving the Appellants an opportunity through the minded to

process to provide any further material and make submissions which would be taken into account.

1326. This is a reasonable, professional and proper manner in which to conduct an investigation – it would be rather odd to carry on an investigation if the officers did not form a view as to the merits of the matters they were investigating. There is no evidence that HMRC, through the investigating Officers, were biased such that they failed to investigate and consider material and reasonable lines of enquiry that pointed away from the conclusions they were to reach.

1327. The Tribunal will return to the issue of pre-disposition when considering the Appellants' submissions on this topic and the more detailed chronology of evidence upon which they rely.

1328. The Appellants rely in part on the disclosure of an email dated 28 September 2015 (nine months before the decisions) from Officer Craig Lewis to John Buchanan of IOM C&E in which he stated, *"the overall final outcome for Op Cracker is to revoke all of the approvals and licences etc"*. The Appellants rely on this as one of the significant points in their case when it was disclosed to them, being described by Mr Coppel QC as of *"profound importance"*.

1329. However, cross examination on this topic of Officer Craig Lewis did not reveal any impropriety or inappropriate predisposition on his part. He was honest when speaking to the document and his answers were comprehensive. In short, his response to the allegation that he was predisposed to revoke the Appellants' approvals as at 28 September 2015 was entirely candid. He said in respect of the *"overall final outcome"*:

"that was based on the evidence that [the team] had at that time. But at that point in time I hadn't began all of the discussions with the stakeholders and the processes involved and how that works. This was a general overview from the team, because I had only been on the team for a month at that point."

"...that's the way the evidence was looking. I haven't written it well, but at that point we'd been out and done the first due diligence meeting, we already had the evidence of tax losses and the concerns. So that is where the evidence was pointing in regards to a decision. Of course it then went to further internal governance and we had to go through further layers to assure that was still the correct procedure."

1330. At this relatively late stage in September 2015: after all the due diligence done by the Appellants had been received (the small amount received during the minded to process came from Global / Bridgewell); long after misleading matters had been stated by Jatinder Chatha and Philip Eagleton in meetings and correspondence with HMRC, to give the false impression that there was no connection between the Appellants and Global / Bridgewell; it is unsurprising that a (preliminary) view had been formed by some HMRC team members that the evidence was pointing toward the Appellants not being fit and proper and their approvals being revoked.

1331. Indeed, given that most of the material on which the decisions were based was already in the possession of HMRC, it would be very odd if no views had been formed in relation to it. It would be surprising if HMRC had been of any mindset, at this stage, other than that the evidence was deeply concerning. In every investigation which leads to a decision that a person is not fit and proper, there must be a thought process over time on the part of the investigating team, leading to a view being formed that the person is likely not to be fit and proper, which pre-dates the decision being made.

1332. There had been no final decision by 28 September 2015. The submissions and evidence provided later by the Appellants were properly taken into account (indeed they feature heavily in the decision letters). This single email, and consideration of the entire chronology upon which the Appellants rely, form no basis for a finding that there was predisposition after the fraud investigation ended, leading to the omission of a material factor from consideration when making the decisions under challenge. In every case, there must be a preliminary view in order to trigger the minded to process. This does not mean that the approval holder's representations and evidence submitted during that process are not taken into account.

1333. The Appellants rely on other matters put to witnesses and a chronology to the submissions on predisposition – this is dealt with below. To the extent that the Appellants seek to argue that there was some sort of procedural unfairness, vitiating the decisions, this is not accepted and is beyond the Tribunal's jurisdiction in any event. This would be a matter for judicial review and consequently would need to have been argued in the High Court.

1334. Even if this Tribunal could consider such a point, no such allegation has been pleaded and the Tribunal is not satisfied of its merits.

Other matters

1335. The Appellants have suggested for instance that there is no breach of confidence in revealing the identity of customers featuring in tax loss chains, and that in such circumstances the Appellants should have been notified by HMRC of which customers were concerned. This ignores the absence of an obligation to make such disclosure, and the fact that during the minded to process, details of customers in tax loss supply chains were disclosed to them.

1336. They have put to witnesses that there is some significance to the absence of warning letters with such specific details in this case. Again, this does not take the Appellants very far. There is no obligation on HMRC to send such letters. The purpose of the minded-to process in this case was to give the Appellants warning of the potential revocations, and to give them an opportunity to submit further materials or representations to be taken into account.

1337. Due to the operation of agreed extensions and the agreement on a High Court order on 11 May 2016, the Appellants had between 8 February 2016 and 31 May 2016 to respond. Had they submitted material even after this, but before the decisions, it would have been considered likewise.

1338. Consequently, there is little merit to these arguments: they did not undermine the strength of HMRC's evidence in this appeal, particularly given the lack of any positive case from the Appellants on some key issues.

1339. Officer Lewis' evidence on the Appellants' failure to respond appropriately to the minded-to process is of assistance:

> "6 **Q. You've had essentially what is the warning letter.**
> **7 They've now come back to you with more material on the**
> **8 matters that you were warning them about. Why do you**
> **9 reject it if in fact it is dealing with the very things**
> **10 that you say previously there had been a shortfall of**
> **11 information? They are damned if they do and they are**
> **12 damned if they don't, aren't they, Mr Lewis?**
> 13 A. No. The information that came back immediately after
> 14 the "minded to" wasn't -- it was considered, but it
> 15 wasn't the response that I think HMRC were expecting in
> 16 regards to it was very combative and there was a lot of
> 17 denial, asking HMRC to prove all of their findings.
> 18 Well, at that point we were hoping to change behaviour.
> 19 Because it's not the outcome we want, to revoke
> 20 approvals and shut businesses down. The ideal outcome
> 21 would be to turn a business into being a compliant
> 22 business. So if the reply had been more constructive
> 23 and more open, then we obviously would have considered
> 24 it in a different way, but it came back asking us to
> 25 prove all of that. And when we're talking about fit and
> Page 161
> 1 proper, we need to have trust in each other, and
> 2 obviously HMRC have to have trust in the trader, and the
> 3 replies that we got back didn't heighten that trust."

Grounds 2 and 3

1340. The Appellants submit under Ground 2, that the revocation decisions constitute a disproportionate interference with their rights to peaceful enjoyment of property pursuant to Article 1 Protocol 1 (A1P1) of the European Convention on Human Rights (ECHR), because the loss of duty suspended approvals will result in a very substantial loss of goodwill to their businesses.

1341. This Ground is not made out. While the Tribunal is satisfied that the principle of proportionality is engaged by HMRC's revocation decisions, whether through A1PI or otherwise, any interference with the Appellants' rights in revoking their approvals was reasonable, proportionate and lawful.

1342. The Tribunal has made findings as to the impact on the Appellants' businesses of revocation of duty suspended approvals above.

1343. In summary, these findings were that revocation of the Appellants' approvals to trade in duty suspended alcohol may have significant consequences for their businesses. Nevertheless, the Appellants have not proved that revocation would automatically and inevitably lead to the catastrophic consequences for the businesses they suggested such as their closing or substantial losses following.

1344. Furthermore, even if the most serious consequences were to follow, the Tribunal is satisfied that the decisions to revoke would still be proportionate to the findings that the Appellants were not fit and proper persons to hold duty suspended approvals.

1345. HMRC submitted that:

a. A1P1 of the ECHR is not engaged on the facts of this case.
b. In the alternative, if A1P1 is engaged, revocation is proportionate.

No Engagement of A1P1

1346. HMRC submitted that A1P1 concerns only possessions of natural or legal persons, and the duty suspended approvals of the Appellants in this case are not possessions within the meaning of the ECHR jurisprudence. They submitted that the Grounds of Appeal fail to identify that goodwill in the UK accountancy sense is not necessarily a possession within the meaning the ECHR jurisprudence. It was submitted that the approvals in issue are not part of the goodwill of the business, within the meaning of the A1P1 jurisprudence, which can constitute possessions and therefore A1P1 is not engaged.

1347. The Tribunal does not need to resolve this argument in order to decide whether the decision to revoke the Appellants' approval must be considered against a test of proportionality. It notes that Judge Hellier in *Safe Cellars* decided that A1P1 applies in part to these types of decision – see paragraphs 192 to 196:

A1P1 Our Conclusions

192. Each of the approvals under appeal are conferred on a particular person. They are not assignable or acquired for value. We conclude that on their own they are not possessions or property protected by A1P1.

193. There was no suggestion that, and no evidence of, the revocation of the approvals affected assets other than Safe Cellars' goodwill and premises which might be possessions for the purpose of A1P1. Our enquiry is thus limited to the effect on the use of the premises and any goodwill.

194. The premises at which Safe Cellars conducted its business are clearly possessions and property. The warehouse licence controlled the use of that property. The revocation of that licence must therefore be considered under A1P1.

195. If the business of the Appellant had realisable goodwill that would be property for the purposes of A1P1. However, as Mr Kinnear submitted, we had no evidence that the business of Safe Cellars had realisable goodwill, or that, if it did, it would be damaged by the loss of

approval. As a result, we find that A1P1 is engaged only in relation to the revocation of the warehouse licence.

196. Section 100G(5) bestows a discretion on HMRC: for reasonable cause HMRC "may" revoke an approval. The exercise of that discretion is thus the matter which engages A1P1 and may require an assessment of whether the revocation decisions were proportionate.

1348. Even if A1P1 were not to apply to each of HMRC's decisions to revoke approvals there would be no need to decide whether EU law or common law imported any similar requirements as to proportionality in the decision making.

1349. This is because the Tribunal retains its statutory jurisdiction to decide whether HMRC's decisions were reasonably arrived at. Both the terms of HMRC's decision, and the policy it followed within EN196, mandate consideration of proportionality.

1350. In the course of its revocation decisions HMRC considered the proportionality of the decisions when considering the impact on the businesses (within Annex A). Likewise Excise Notice 196, section 10.4 (i.e. the section specifically dealing with failures to comply with the Alcohol Due Diligence condition), also refers to proportionality:

"In more serious cases such as a failure to consider the risks, undertake due diligence checks or respond to clear indications of fraud, we will apply appropriate and proportionate sanctions. For serious non compliance, such as ignoring warnings or knowingly entering into high risk transactions, we may revoke excise approvals and licences."

1351. A failure to apply the principle of proportionality properly by HMRC would also mean a decision is one that could not reasonably have been arrived at. Proportionality is a matter to be considered because: (1) HMRC as a public body acting reasonably must always act proportionately (certainly in cases involving the revocation of a licence or anything akin to a licence); (2) in the context of approvals under WOWGR, the Commissioners have in EN 196 undertaken to act proportionately; and (3) where, as here, a right protected by A1P1 or another convention right is at stake, HMRC are required to act proportionately.

Proportionality of the revocation decisions

1352. The Tribunal finds that the interference with the rights of the Appellants caused by revocation of their approvals is proportionate, within the meaning of the term in human rights jurisprudence.

1353. Excise Notice 196, which deals, as a whole, with excise registration and approvals**,** permits revocation of approvals in much broader circumstances than those provided as examples relating specifically to the due diligence condition. It provides, so far as is material:

Concerning approvals, authorisations and registrations:

"Only persons who can demonstrate that they are fit and proper to carry out an excise business will be authorised or registered." (Section 2)

Concerning authorisation as excise warehousekeepers:
"Only applicants who can demonstrate that they are fit and proper to carry on an excise business will be granted approval. This means we must be satisfied that the business is a genuine enterprise which is commercially viable, with a genuine need for approval, and that all persons with an important role or interest in it are law abiding, responsible, and do not pose any significant threat in terms of potential revenue non-compliance or fraud.

1354. In short, the Tribunal accepts HMRC's submissions as regards the following:

1355. Pursuant to the Human Rights Act 1998, section 6, the Commissioners must act in accordance with Convention rights, as defined under the Human Rights Act 1998.

1356. Where the Commissioners interfere with a qualified Convention right, interference must be proportionate. This applies regardless of whether section 10 of EN196, and/ or some other grounds, are the reasons for imposition of a sanction.

1357. The ADD Condition, consisting of section 10 of Excise Notice 196, specifies that sanctions for non-compliance should be appropriate and proportionate. *Proportionate* for these purposes does not have a materially different meaning to proportionality as defined in human rights law.

1358. The Tribunal accepts HMRC's contention that the examples of sanctions, and the types of conduct which would trigger the sanctions, as explained in section 10, are not exclusive (including in relation to the types of ADD conduct which might give rise to sanctions). They are examples, not a definitive list.

1359. Revocation, and other sanctions, can lawfully be imposed on an excise approval holder because of a failure to satisfy the Commissioners that such a person remains fit and proper for reasons which are likely incapable of confinement to a precise list.

1360. Consequently, when the Tribunal goes on to considers the issue of proportionality, it bears in mind that the decision in question was based on more than one ground for revocation. One ground was failure to comply with the ADD condition.

1361. The proportionality assessment conducted by the Tribunal takes into account *all* factors which it considers were appropriately found by HMRC as grounds for revocation and the additional findings it had made in relation to the Appellants' misleading and untruthful conduct towards HMRC and the Tribunal.

1362. The proportionality assessment should not be confined only to failures relating to the ADD condition although the word "proportionality" appears only in the corresponding part of Excise Notice 196.

1363. The Tribunal is satisfied that, for all abovementioned reasons, the decisions were properly made on the basis of the specified conclusions. The Tribunal is further satisfied

that, in the light of this, revocation was a proportionate response to the Appellants' failings.

1364. The four-stage test of proportionality, as explained by Lord Sumption JSC in *Bank Mellat v HM Treasury (No 2)* [2013] UKSC 38, is as follows:

> *"the question depends on an exacting analysis of the factual case advanced in defence of the measure, in order to determine*
>
> *(i) whether its objective is sufficiently important to justify the limitation of a fundamental right;*
> *(ii) whether it is rationally connected to the objective;*
> *(iii) whether a less intrusive measure could have been used; and*
> (iv) *whether, having regard to these matters and to the severity of the consequences, a fair balance has been struck between the rights of the individual and the interests of the community."*

Sufficient Importance and Rational Connection

1365. There can be little dispute between the parties in relation to the first two questions. The objective of restricting approvals to trade in duty suspended alcohol to persons who are fit and proper, and consequently revoking approvals where HMRC are no longer of the view that such persons are fit and proper, for the purpose of protecting the revenue given the high risk of fraud in the duty suspended alcohol sector, is an objective of sufficient importance to justify interference with A1P1.

1366. There is a rational connection between the measure (revocation where fitness and properness has not been demonstrated to the Commissioners' satisfaction) and the objective (to protect the revenue). Restricting approvals to fit and proper persons, thereby ensuring that those involved in the duty suspended alcohol trade in the UK are only those whose conduct is of a type likely to assist, and not to hinder, the proper administration, collection and protection of the revenue, obviously assists in achieving the aim of protection of revenue.

Less Intrusive Measure

1367. On the question of whether a less intrusive measure could be used to meet the Commissioners' concerns, there is one type of measure which falls to be considered: imposition of conditions on the Appellants' WOWGR approvals.

1368. The Tribunal has considered whether, if a person is not fit and proper, it is ever disproportionate to revoke their approval. The Tribunal accepts HMRC's submission on this issue that every case is fact specific but, speaking generally, if the reason for the lack of fitness and properness can be "corrected" by the imposition of a condition, then it may be arguable that revocation is not proportionate. Where HMRC lack trust and confidence in the approval holder, for example where their integrity is undermined in material ways, it is exceptionally unlikely that a condition can "correct" this.

1369. The Tribunal is satisfied that no conditions can be applied to the Appellants' approvals which would adequately meet the concerns of HMRC which led to the decisions. In the circumstances, revocation was proportionate.

1370. The Appellants have only suggested two types of condition in their questioning of witnesses: the imposition of a "blacklist" of customers with whom Global / Bridgewell could not trade or a "whitelist" of customers with whom they could trade. The Tribunal is satisfied these would not be appropriate types of condition to impose.

1371. The first reason is because there is no vires for HMRC to impose such conditions. Directive 2008/118 is the basis in European Union law under which duty suspended movements are permitted. Recital (17) states as follows:

"It should be possible for excise goods, prior to their release for consumption, to move within the Community under suspension of excise duty. Such movement should be allowed from a tax warehouse to various destinations, in particular another tax warehouse but also to places equivalent for the purposes of this Directive."

1372. Provided tax warehouses are authorised by relevant national authorities for the purposes of handling duty suspended goods, the freedom to move goods in duty suspense between authorised warehouses in member states is unqualified.

1373. Recital (19) requires as a corresponding obligation that those involved in movements provide movement guarantees as a measure to combat fraud arising under the duty suspended system. To impose a condition that the Appellants' sister companies could only make duty suspended sales to certain persons, or not to others (all of whom were approved to receive such goods in duty suspension), would be to impede upon an entitlement imposed by the Directive in unqualified terms. This is not something which falls within their power.

1374. Article 16 does provide that national authorities may lay down requirements to be complied with by authorised persons:

"It is also necessary to lay down requirements to be complied with by authorised warehousekeepers and traders without authorised warehousekeeper status."

1375. This is manifested in domestic law in CEMA sections 93 and 100G which provide as follows:

Section 93:

"(1) The Commissioners may by regulations under this section (referred to in this Act as 'warehousing regulations')—

(a) prohibit the deposit or keeping of goods in a warehouse except where the occupier of the warehouse has been approved by the Commissioners in accordance with the regulations and where such conditions as may be prescribed in relation to that occupier are satisfied;"

Section 100G:

"(1) For the purpose of administering, collecting or protecting the revenues derived from duties of excise, the Commissioners may by regulations under this section (in this Act referred to as *"registered excise dealers and shippers regulations"*)—
(a) confer or impose such powers, duties, privileges and liabilities as may be prescribed in the regulations upon any person who is or has been a registered excise dealer and shipper; and
(b) impose on persons other than registered excise dealers and shippers, or in respect of any goods of a class or description specified in the regulations, such requirements or restrictions as may by or under the regulations be prescribed with respect to registered excise dealers and shippers or any activities carried on by them."

1376. WOWGR 1999, Regulations 17-19 permit the Commissioners to impose *"conditions and restrictions prescribed in a notice published by the Commissioners"* on relevant excise approvals. This is not an unfettered power. It can only be exercised in accordance with the principles in the Directive.

1377. HMRC submitted that the CJEU case of Case C-315/12 *Metro Cash & Carry Danmark ApS* [2013] ECR I-0000 was of assistance on this issue. The case concerned an arrangement reached between Sweden and Denmark, after Swedish authorities became aware that restaurants were buying large quantities of alcohol in Denmark, paying the (much lower) excise duty there, then importing it to Sweden for commercial use, without paying the duty in Sweden. To combat the problem, Denmark agreed to require Danish wholesalers, such as the Applicant, to ask customers questions as to whether they intended to take goods to another member state and use them for private or commercial use. This information enabled the Swedish authorities to target restaurants who were unlawfully not paying excise duty under Swedish law on excise goods imported for commercial use.

1378. Reference was made to the CJEU for a preliminary ruling on whether the requirement to ask customers of the Applicant these questions was permissible under Community law. The CJEU found that it was not a lawful arrangement. While the facts are clearly far removed from those in play in this case, the key point made by the CJEU was that widespread evasion of a Member States' taxation rules did not justify departure from the uniform rules imposed by Directive 2008/118. It found that the scheme was not a lawful one, because under the terms of the Directive, and a related Regulation providing for simplified accompanying documents for intra-Community movements of products subject to excise duty, there was no provision requiring traders such as the Applicant to take the particular steps Denmark required, to assist another Member State in its functions protecting revenue:

"[37] Consequently, it must be held that a trader such as Metro cannot be considered to be a 'person who is responsible for the intra-Community movement' within the meaning of Article 1 of Regulation No 3649/92, and does not have to check whether the conditions are met that would require the person responsible to draw up the simplified accompanying document and to give it to the trader so that the trader can keep it."

1379. Consequently, the CJEU found the lack of express provision in the relevant Community legislation for such a requirement meant that it was unlawful, despite its likely assistance in combating fraud. This indicates that the CJEU takes a restrictive view on the extent to which national authorities may impose conditions on traders in

the duty suspended regime and in particular, that the broad scope of Recital 17 cannot be narrowed save where the Directive expressly allows.

1380. Further, black or whitelisting may give rise to challenges under TFEU article 34 which prohibits *"Quantitative restrictions on imports and all measures having equivalent effect shall be prohibited between Member States."* Given that the Appellants sell duty suspended goods to their sister companies in order to supply the Continental market, a condition prohibiting them from selling to customers supplying the EU would prima facie breach Article 34. Exceptions are permitted where justified under Article 36 on grounds such as "public policy", but it is obviously extremely difficult to see how such justification could succeed where the trader in question remained WOWGR approved, and registered for VAT or equivalent in other jurisdictions.

1381. There are further reasons why, even if they had such power and there was no infringement of EU law, HMRC's serious concerns could not be met by imposition of such types of condition.

1382. Importantly, the Appellants have been misleading and untruthful in their dealings with HMRC, and latterly before the Tribunal. No condition is likely to render a person fit and proper in such circumstances and certainly so on the facts of the Appellants' case. This is a fundamental and insurmountable problem with any suggestion by the Appellants that anything less than revocation would be appropriate.

1383. If a blacklist were imposed, there would have to be a rational basis for HMRC to add any company or individual to the list. If HMRC only added companies/ persons to the list who had already been investigated and in relation to whom there was significant evidence of wrongdoing, such that some sort of criminal or regulatory action had been taken against them, this would not adequately meet the serious concerns that arise from the inadequate due diligence of the Appellants.

1384. Due diligence, done properly, should prevent trade with suspicious companies/ persons who are still trading with all lawful approvals/registrations. Much of the inadequate due diligence relied on by the Appellants in this appeal relates to traders who were, for instance, VAT registered at the time of trading. Preventing trade with those who have already had regulatory or other action taken against them due to non-compliance with legal requirements would not have any effect on the due diligence failures in relation to persons still holding relevant approvals/registration.

1385. If a whitelist were imposed, the same problem would arise: if only those companies or persons who were already the subject of criminal or regulatory action were kept from it, this would not meet the concerns of HMRC with respect to the inadequate due diligence performed on companies / persons who still held relevant regulatory status.

1386. The blacklist could not include companies / persons against whom no criminal or regulatory action had been taken, but about whom HMRC (or other national tax authorities) had intelligence or evidence tending to suggest that they were non-

compliant with the law. To add their details as entities with whom the Appellants could not trade to the approvals of the Appellants or their sister companies would have serious potential to jeopardise sensitive ongoing operations. The fact that trade had to stop and that they appeared on the WOWGR approvals of the Appellants would make it apparent that HMRC (or equivalent national authorities) were investigating or at least had reasons to be suspicious. This would be unattractive and in reality, an impractical step for HMRC to take. The same applies if there was a whitelist: a refusal by HMRC to add a company or entity to the approved list would make it obvious that there was knowledge or suspicion on the part HMRC of a nature with the potential to compromise operations.

1387. Further, the decision to add a trader to a blacklist, or refuse their entry on to a whitelist, would be one which the trader in question would be entitled to challenge in litigation. It would be very difficult to show that such exclusion was proportionate in circumstances where regulatory or criminal action had not yet been taken or was not imminent. It has the potential to lead to litigation in which HMRC may have to compromise, on the basis that they either did not yet have sufficient evidence to support taking such criminal or regulatory action or because to rely on it (and consequently disclose it and not apply for PII) would compromise ongoing operations. This would further undermine the effectiveness of conditions to ameliorate poor due diligence.

1388. Consequently, if a blacklist or whitelist was imposed, it would not meet the concerns of HMRC: it could not "cure" the Appellants' behavior and attitudinal failings, in particular their history of giving misleading and untrue information in response to queries of the Commissioners, and it could not "cure" their due diligence failings because the ADD condition, an existing condition attached to the approvals, was not complied with.

1389. In effect, a blacklist or whitelist would shift the burden of due diligence on to HMRC. All persons holding relevant approvals to trade in duty suspended alcohol must comply with Excise Notice 196, section 10. A blacklist or whitelist should not be imposed in order to "cure" a person's inability or unwillingness to comply with the ADD condition.

Other conditions

1390. The Tribunal considered the proportionality of imposing other conditions on the approvals in issue. First, the Tribunal considered a condition requiring the Appellants to provide their due diligence to HMRC within a fixed timescale following duty suspended trade or in advance (practicability and proportionality). The Tribunal is satisfied that this would not meet HMRC's concerns. First, the relationship of trust and confidence has been broken by the lies told by the Appellants as detailed above, and this cannot be corrected by the imposition of this, or any other, condition.

1391. Secondly, the Appellants are already required to perform appropriate due diligence by the ADD condition, and have already been subject to requests (repeatedly) to provide it to HMRC for review. This has not resulted in their complying the Excise Notice 196, section 10, or providing due diligence material promptly. Further, it is the

sister companies, Global and Bridgewell, who deal with extra-group customers, not the Appellants. The Tribunal is satisfied that, given the seriousness of the due diligence failures in this case, coupled with all other major matters of concern rendering the Appellants not fit and proper, imposition of such a condition would not go nearly far enough to addressing the concerns underlying the decisions under challenge.

1392. As to the second and third possibilities considered by the Tribunal, namely conditions that the Appellants are not to supply duty suspended goods directly for export to EU customers or not supply duty suspended goods to any company beneficially owned by Chatha family, these would again not address at all the loss of trust and confidence caused by their conduct. Further, both conditions are met by the EU law problem outlined above, and the restriction on export to EU customers would be highly likely to breach Article 34 TFEU, as explained above.

1393. A condition preventing supply of duty suspended goods to Chatha family owned entities would also not meet HMRC's concerns because of the history of the Appellants hiding the connections between entities. The Tribunal does not consider, given this background, that their serious concerns could be met by such a condition, in the light of the history of the Appellants' untruths and propensity to set up complex company structures with hidden beneficial ownership and control.

1394. Such a condition would also not meet HMRC's concerns regarding poor due diligence. EFBL would be well placed simply to supply Global / Bridgewell's customers direct, given that it has access to their details and in fact Global / Bridgewell are interposed companies to mask the true deals between EFBL and the non-related customers. There is nothing to indicate that EFBL would, in such circumstances, begin to comply with Excise Notice 196, section 10.

1395. In these circumstances, the Tribunal is satisfied that revocation is the least intrusive measure.

Fair Balance

1396. Bearing in mind the powerful public interest in protecting the Revenue, through limiting approvals to trade in duty suspended alcohol to fit and proper persons, the Tribunal is satisfied that revocation strikes a fair balance between this interest and that of the Appellants.

1397. In these circumstances, the Tribunal finds that revocation of the Appellants approvals was at the time of the decisions and is, in light of all the evidence heard on appeal, both reasonable and proportionate.

Consideration of the Appellants' submissions

1398. The Tribunal proceeds to address the closing submissions made on behalf of the Appellants. Before doing so, the Tribunal acknowledges the very high standard of representation that the Appellants received. Both Mr Coppel QC and Mr Bedenham, presented their case attractively and diligently.

1399. The Tribunal will provide its conclusions after considering each ground relied upon by the Appellants.

Overview of the Appellants' submissions

1400. On behalf of the Appellants it was submitted that the decisions to revoke the approvals were decisions that could not properly have been arrived at on the grounds that HMRC:

(a) took into account irrelevant matters or gave undue weight to certain matters;

(b) failed to take into account all relevant matters or attached insufficient weight to certain matters;

(c) were tainted by pre-disposition/animated by an improper purpose;

(d) made decisions that were disproportionate because:

(i) having regard to paragraph 10.4 of EN 196, there was no 'serious non-compliance' with the due diligence condition ('such as ignoring warnings or knowingly entering into high risk transactions') such as to justify a revocation;

(ii) to the extent that HMRC relies on alleged failings beyond the due diligence condition, and to the extent that the Tribunal finds those failings established, they are not failings such as to justify an immediate revocation of the Appellants' approvals;

(iii) resulted in consequences that bore no proportionality to the likelihood and/or scale of harm to HMRC that would be caused by the continued approval of the Appellants; and

(iv) further and in any event, appropriate conditions could have addressed any concerns that HMRC legitimately had.

1401. It was submitted that the Tribunal ought to grant the following relief:

(a) an order under s.16(4)(a) of the FA 1994 that the revocation decision should cease to have effect.

(b) alternatively, an order under s.16(4)(a) of the FA 1994 coupled with an order under s.16(4)(b) of the FA 1994.

(c) alternatively, an order under s.16(4)(b) of the FA 1994.

1402. The Tribunal has considered and rejected above each of these outline submissions which correspond broadly, although not exactly, to the grounds of appeal.

(a) Irrelevant matters taken into account or matters given undue weight -

'combative' attitude since the minded to letters

1403. It was submitted that at paragraphs 101-106 of the decision letters, Officer Lewis dealt with the 'attitude' of the Appellants since the minded-to letters (8 February 2016). It was submitted that the significance attached by Officer Lewis to this 'attitude' became clear during the first day of his oral evidence where he stated '*if the reply* [to the minded to letter] *had been more constructive and more open, then we obviously would have considered it in a different way…HMRC have to have trust in a trader and the replies that we got back didn't heighten that trust.'*

1404. The Appellants submitted that there were three key points:

1405. The first was that there was no 'combative' attitude. Asking for disclosure of material and for HMRC to clearly set out its position was necessary and proportionate if the Appellants were going to be able to properly engage with the matters raised in the 'minded to' letters. Even if Officer Lewis did not feel able to bring himself to acknowledge it, there was nothing wrong with circumspection. As he was prepared to acknowledge, from the perspective of HMRC there is an important distinction between circumspection and indifference.

The Tribunal's conclusion

1406. The Tribunal rejects this submission for the reasons set out above. It has found that there was a combative attitude on the part of the Appellants. They delayed in providing information requested, they provided misleading information and failed to respond to reasonable warnings, even if not always in writing or highly detailed, which were sufficient to put them on notice of the multiple inadequacies in their processes and concerns of HMRC.

1407. While the Appellants may reasonably be entitled to challenge or ask HMRC to prove the basis for their concerns, they could not reasonably rely on this as a reason not to take reasonable steps in the interim and, pending proof of the justification of the concerns, to adjust their procedures in light of information provided by HMRC.

1408. Most of the concerns of HMRC were based on an assessment of the Appellants' own conduct and procedures and did not require external verification or further information to be provided by HMRC. Likewise, HMRC could not reasonably be expected to have to provide evidence of every issue raised in an investigation prior to taking formal action such as a revocation. If the evidence relied upon by HMRC was unreliable this would be exposed in any challenge to the revocation decisions themselves. The Tribunal has found that the matters of concerns relied upon by HMRC were reliably established and reasonably relied upon.

Second submission on behalf of Appellants

1409. The second submission on behalf of the Appellants was that if the Appellants' approach somehow merited the epithet 'combative', their approach had arisen from a setting in which HMRC had, for no stated reason, repeatedly refused to give requested details of their matters of concern. Where once they had promised to give those details they came (in abbreviated form) through a 'minded to' letter threatening immediate and devastating consequences, followed by a refusal to supply any information with which

to answer them. Therefore, the Appellants' impugned responses were ones made in that context and were ones authored by the Appellants' professional advisers. In short, any hints of combativeness in the Appellants' response was only present because of the approach adopted by HMRC at meetings and in correspondence – one only has to read the minded to letter to see how high HMRC appeared to be pitching its case.

The Tribunal's assessment

1410. The Tribunal rejects this submission for the reasons set out above. HMRC did give reasonable details of the matters of its concerns and did not act in a high handed or unreasonable fashion. The Tribunal is satisfied they could not reasonably be expected to give specific advice on every due diligence step to be undertaken. They were entitled to take into account the Appellants' combative attitude which was unprompted by HMRC's actions. The Appellants' non-compliant attitude to the excise duty regime and to providing open and truthful information has been demonstrated in the way its key witnesses dealt with HMRC and gave evidence to the Tribunal.

The Appellants' third submission

1411. It was submitted that when the Appellants wrote their own letter to HMRC on 31 May 2016 it was made quite clear that they were willing to work with HMRC. Prior to the decision being made then it should have been clear to HMRC that the Appellants did not want to engage in 'combat'. What is apparent from Officer Lewis' oral evidence is that by this date he was not willing to take up the Appellants' offer to "*sit down with us and our tax consultant to work out a practical way to meet all [HMRC's] concerns – which we both entirely understand and are sympathetic to – whilst allowing this business to continue*" (paragraph 3, and similarly paragraphs 49-51). The Appellants' manifest willingness in May 2016 to work with and be guided by HMRC was – perversely − used by Officer Lewis as a stick with which to beat the Appellants. Why was this offer, he told the Tribunal, not made at an earlier opportunity; the offer was "a complete flip" and so it did not even reduce the concerns of HMRC.

The Tribunal's conclusion

1412. The Tribunal rejects this submission. Officer Lewis was reasonably entitled to the response he gave at the time and in evidence. The Appellants' offer of cooperation was only made at a very late stage in the minded to process on 31 May 2016. It was not a bold, generous and open offer but a last minute and last-ditch attempt to hold off HMRC from making revocation decisions. HMRC were entitled to place little weight on the genuineness of the offer to engage only made on 31 May 2016. The Appellants had effectively failed to engage cooperatively since at least July or September 2014 and since the ADD condition came into effect in November 2014.

Warnings

1413. The Appellants submitted that Officer Lewis proceeded on the basis that adequate warnings had been given to the Appellants (see paragraphs 56, 62, 68, 80 and 92 of Annex A to the decision letters). Officer Lewis also said that the 'minded to' letter

served as a warning letter. It was submitted he was wrong to approach his decision on the basis that adequate warnings had been given to the Appellants given:

(a) HMRC concede there were no written warnings (despite accepting that such warnings can be sent and were sent to other traders in a similar position to the Appellants).

(b) What Officer Lewis treats as "warning" things were not warnings. Thus, for example, in paragraph 62 he characterises the Appellants having been "*notified that goods sold by EFBL, and therefore held at WWL premises, had been identified as being used in significant tax loss supply chains*" at the meeting on 9 September 2014 as a "warning" of which the Appellants took no heed. As HMRC's own notes (both typed and handwritten) of that meeting reveal, at the meeting on 9 September 2014 HMRC *informed* the Appellants that EFB's supply chains had been looked at and tax losses found; HMRC *expressed concern* at the level of the Appellants' due diligence. There was no "warning" on 9 September 2014. A *warning* notifies a potential consequence.

(c) Officer Lewis relies principally upon what was said at the meeting on 5 November 2015 to support the proposition that the Appellants had been given warnings: see paragraphs 11(e), 12, 22, 25, 34, 36(e), 38(d), 39, 48, 55, 57(a), 62, 66, 78, 84, 87 and 91 of Annex A. But even here, Officer Lewis simply records that at the meeting the Appellants had been made aware of the Commissioners' concerns regarding the goods that the Appellants had sold once they left the tax warehouse in France. HMRC's own notes of meeting when dealing with this point do not record a warning of any sort.

(d) In any event, given the scale of the consequences, oral notification of occurrences given during the course of meeting, notes of which were not provided or even read back to the Appellants would not (even if they were to be characterised as "warnings") be adequate. Any reasonable person in the position of the Appellants would have thought (as they did) that if HMRC was issuing them with a warning, ie notifying them of a particular consequence if they did or failed to do something, that would be spelled out in writing. Reasonable people understand that words reduced to writing carry an enduring significance that does not attach to the spoken word unless attended by an agreed formality.

(e) The 'minded to' could never have served as a 'warning'. Not least because the Decision to revoke had been made before the minded to letter was sent and because it was not concerned with addressing future conduct but sought explanation for past conduct.

(f) As to the suggestion at paragraph 80(a) of Annex A of the decision letters that the Appellants were warned of 'swaps' on 10 May 2016 – the 10 May letter cannot be a 'warning' (it says in terms that the decision has already been made – '*The Commissioners intend to proceed with the revocation of your excise approvals*…').

1414. The Appellants submitted that HMRC's attempt through Annex 5 to its submissions to add to the list of warnings was to put words into Officer Lewis's

decision letter that were just not there. Thus, for example: (a) nowhere in his decision letter does Officer Lewis suggest that the letter of 6 November 2014 from Isle of Man Customs and Excise to David Craine constituted a warning. Indeed, Officer Lewis does not even refer to that letter; (b) Similarly, the letter of 13 November 2014 does not feature in the decision letters; (c) In making passing reference to the letter of 12 January 2015 (Annex B, §13) Officer Lewis does not suggest it contained a warning; (d) So, too, Officer Lewis's reference to the 11 March 2015 meeting (Annex B, §15); (e) Officer Lewis does not even hint that he viewed the 22 July 2015 email as containing a warning (Annex B, §20); (f) Officer Lewis refers in general terms to what a contravention of the ADD condition could result in (Annex B, §21) without any suggestion by him that he viewed this as one of the warnings on which he was relying; and (g) Officer Lewis does not refer in the decision letters to the HMRC letters of 6 or 17 August 2015 or 4 September 2015, so none of these can have been one of the warnings upon which he rested his conclusions.

The Tribunal's conclusion

1415. The Tribunal rejects these arguments for the reasons already given above. It is satisfied that the Appellants were given reasonable warnings by HMRC in relation to a) due diligence failings; b) tax losses in its supply chains; and c) irregularities in movements of the goods. It is the Appellants' failure to adapt reasonably to these warnings which is most pertinent to HMRC's revocation decisions.

1416. HMRC are entitled to rely both upon the evidence of warnings that Officer Lewis relied upon in his review decision and all the evidence of warnings to the Appellants identified in the evidence served for the appeal. Annex 1, 2 and 5 to HMRC's closing submissions which has become the Tribunal's Annex 1 to this decision is a useful summary of the warnings and advice given by HMRC to the Appellants which are set out in more detail within this decision.

1417. While not all the warnings were in detail or in writing it is apparent that numerous warnings were given to the Appellants on each of the topics a)-c) which were reasonably relied upon by HMRC.

1418. Each warning of a negative indicator, inadequacy or failure identified by HMRC on the Appellants' part does not require to be followed by guidance as to how it is to be corrected or what adverse consequences may follow in order to constitute a warning. The Appellants could reasonably be expected to adapt their behaviour based on reasonable investigations, public guidance already given, instruction of external experts to assist (as they did) or other common-sense steps.

1419. It is not HMRC's duty to act as a primary adviser, albeit that they should reasonably assist taxpayers where they can to comply with the standards they set. This approach is apparent from Section 10.4 of Notice EN 196. HMRC are entitled to some degree of latitude in this approach and to take into account the Appellants' behaviour in doing so.

Light and empty loads

1420. 'Light or empty loads' are dealt with at paragraphs 69(a), 71-76 of Annex A and paragraphs 7(c), 9 and 10 of Annex B to the revocation decision letters. The Appellants submitted that the light and empty loads conclusions reached in these paragraphs underpin conclusion (c) on the first page of the decision letter (the third evaluative conclusion). It was submitted that it became clear during the evidence that a major part of Operation Cracker had concentrated on 'light or empty' loads. HMRC *thought* that there were many hundreds of light or empty loads.

1421. In his evidence Officer Lewis accepted that he had reached a view that was wrong based on evidence now seen (but evidence which existed as at the date of the decision – HMRC could at any point have gone to the haulier and/or asked the French authorities to ask IEFW for the video evidence).

1422. It was submitted that in the face of the evidence, HMRC was grudging in its submission on this point. HMRC "accept[ed] that these loads may have travelled…" but could not bring itself to accede to a finding that on the balance of probabilities the loads had arrived at the intended recipient warehouse. Mr Gluck of the recipient warehouse gave unchallenged evidence that his sample of the loads alleged by HMRC as being light, empty or non-travelling had in fact reached his warehouse, with contemporaneous video evidence to support it. In their submissions to the Tribunal, HMRC expressly disavowed any suggestion that Mr Gluck was not a witness of truth, adding that "his evidence was of some assistance to the Tribunal".

1423. It was submitted that the Tribunal can confidently conclude on the balance of probabilities that the loads that HMRC had thought were light, empty or non-travelling, did in fact arrive full at the warehouse of IEFW as contended by the Appellants. The reluctance of HMRC betrays their recognition that with this, a major part of the basis for Officer Lewis's decision falls away.

1424. It was submitted that what Mr Gluck's evidence demonstrates is that once HMRC provides the specifics of the movements that are said were light, empty or non-travelling, then he is put in a position to check the records (documentary and video) to ascertain whether or not HMRC's suspicion is well-founded.

1425. Officer Bourne had identified four light or empty loads in her letter to the Appellants on 9 September 2014. The Appellants advised Ms Bourne later that month that emails from the customer confirmed that those loads had arrived. She did not include this as an outstanding matter in her letter to the Appellants of 7 April 2015. Nevertheless, Officer Lewis resurrected these loads in his decision letters at paragraph 71.

1426. He acknowledged that he was oblivious to the CCTV evidence, but excused himself on the basis that it had not been provided to HMRC. The fact of the matter is that HMRC had simply preferred to rely on the data of the cross-Channel operator rather than accept the evidence of the Appellants.

1427. It was submitted that the suggestion, now majored on, that (despite the allegation of light or empty loads being one not in fact justified) the Appellants' reaction to

HMRC's assertions about 'light or empty' loads fell short: this is unsustainable. The Appellants followed these movements up as recognised by Officer Lewis at paragraph 71 of Annex A to the Decision letters– but this follow up was rejected by Officer Lewis because '*it is not unreasonable for the Commissioners to prefer the account of the ferry companies…*' (see paragraph 73(c) of Annex A to the Decision letters).

The Tribunal's conclusion

1428. The Tribunal has dealt with the issue of light and empty loads in detail above. Some, but not all, of these submissions are accepted. There is no need to repeat any of what has already been found. The four loads which have been proved to have been received represented only one small plank of HMRC's case on irregularity of movements. HMRC were entitled to reach the decision at the time they did although not upon the subsequent evidence. The issue of light / empty loads generally was still relevant to the Appellants' due diligence and response to warnings. It is inevitable in light of the other evidence available at 8 July 2016 and the further evidence available to the Tribunal by July 2017 that HMRC would have reached the same evaluative and ultimate conclusions notwithstanding the finding on the four light and empty loads.

That the ownership and purpose of Global/Bridgewell was hidden from IOM C&E

1429. It was submitted that it would appear that HMRC took into account that the beneficial ownership of Global and Bridgewell, Global/Bridgewell's purpose (to provide commercial confidentiality) and Global and Bridgewell's link through Rajinder Chatha to the Appellants had been concealed from IOM C&E. That it must have been a matter that was taken into account by the decision maker is shown by the emphasis that was placed on this point by HMRC in their written and oral opening (otherwise why was so much time spent on it). As confirmed by IOM C&E in the letters from Charles Coué and by the IOM VAT registration documents there was no such concealment.

1430. There was an information sharing arrangement between IOM C&E and HMRC in relation to VAT and Excise matters (and this was known to David Craine). So the suggestion that attempts were made to conceal the arrangement from HMRC is preposterous. If that had been the aim, then the matters would also need to have been concealed from IOM C&E.

The Tribunal's conclusion

1431. The Tribunal has already made robust findings of fact on this issue and will not repeat them. It rejects these submissions without hesitation.

Terms of contracts

1432. It was submitted that at paragraphs 30-31 of Annex A to the decisions, Officer Lewis placed reliance on there being 'no written agreements' which he finds is a 'concern'. He was wrong to be concerned. Terms and Conditions (T&Cs) are stated on supplier invoices – this is the norm in the industry. As recognised at paragraph 31, the Appellants had made this clear to HMRC. If HMRC disbelieved the Appellants on this,

it could have asked the Appellants or Moet Hennessy to see a copy of the T&Cs. Instead Officer Lewis decided to stick to his guns. It seemed that Officer Lewis thought that there needs to be a document headed up 'contract'. That the decision maker has such a limited understanding of commercial dealings is a source of huge concern.

The Tribunal's assessment

1433. The Tribunal has dealt with this issue above and rejects it. In fact, the decision maker considered within his decisions the fact that there were no separate contracts other than the invoices and there were no terms and conditions supplied on the back of the invoices.

The 'inadequacy' of the Appellants' DD on Global/Bridgewell

1434. It was submitted that at paragraph 27 of Annex A to the decisions, Officer Lewis says that the checks conducted in relation to Global/Bridgewell '*amounted to documents for identity or persons or companies only…Concerns with the documents held include, but are not limited to, having financial documents that do not include detailed financial checks and identity documents which are years old…WOWGR certificates provided by you in July 2015 dated 6/3/14 and 7/3/14 but no check with HMRC to ensure registration is still live'.*

1435. It was submitted that Officer Lewis failed to appreciate or give adequate regard to the fact that there was a common beneficial owner and family connection, and the Appellants *knew* (1) that the IOM companies were financially sound and (2) that the WOWGRs were still current. In light of this, Officer Lewis' reasoning at paragraph 38 of Annex A to the decisions is particularly muddled.

The Tribunal's conclusion

1436. The Tribunal rejects this submission. The Appellants gave varying accounts of the relationship with the IOM companies and the level of due diligence conducted. Officer Lewis was entitled to approach the DD on the basis that the companies may have been operating at arm's length and that the Appellants may not have conducted documented due diligence on them. The Appellants did not provide the documentary evidence to Officer Lewis before his decision to support the state of knowledge they now rely on. In any event, Officer Lewis was entitled to reasonably rely on the absence of documents that he did.

The 'inadequacy' of the Appellants' DD on the recipient bonds

1437. It was submitted on behalf of the Appellants that they:

(a) visited the recipient bonds (and while there assessed whether the operations were credible);

(b) checked on HMRC's SEED system that the bonds were approved to receive the specific type of alcohol being sent;

(c) only drew up EMCS paperwork on the day of the movement so as to guard against the risk that a bond had had its approval withdrawn overnight;

(d) had a long standing relationship with the recipient bonds; and

(e) held formal documents (including accounts) in relation to the bonds.

1438. Instead of properly considering all of this, Officer Lewis focused on the fact that the accounts for IEFW were in French (see paragraph 28 of Annex A to the decisions).

The Tribunal's assessment

1439. The Tribunal rejects this submission. Officer Lewis was entitled reasonably to rely on the negative indicators which he did in considering the Appellants' due diligence on recipient bonds and warehouses. The Tribunal has considered this topic in detail above both on the basis of what was before Officer Lewis at the time and all the evidence heard in the appeals.

The 'inadequacy' of the Appellants' DD on hauliers

1440. It was submitted that the Appellants only used hauliers that:

(a) were long-established and well-regarded businesses;

(b) had been given a movement guarantee my HMRC sufficient to cover the duty on the load in question (meaning that the hauliers had a very real interest in making sure nothing untoward happened to the load in question);

(c) in the case of Hellman, held AEOC approval which on HMRC's website is described as an industry 'kite mark'; and

(d) the Appellants dealt with on a regular basis and who, by their actions, had shown the Appellants they were professional and credible outfits.

1441. Instead of properly considering all of this and giving a reasoned assessment, Officer Lewis at paragraphs 35 and 41 of Annex A simply said that the due diligence was insufficient.

The Tribunal's conclusion

1442. The Tribunal has dealt with the inadequacy of the due diligence conducted on hauliers in some detail above and rejects this submission. Officer Lewis was reasonably entitled to come to the conclusion he did based on all the evidence before him at the time of the decision and that heard during the appeals.

Tax losses

1443. It was submitted that at paragraphs 50-54 of Annex A to the decisions, Officer Lewis refers to tax losses in the Appellants' supply chains. Officer Lewis specifically stated at paragraph 54 that '*EFBL has, therefore, ultimately benefitted from the sale of goods which appear to have been diverted further along the supply chain*'.

1444. It was submitted that EFBL had not 'benefitted' from the diversion of goods. EFBL was paid by its customer. That is where EFBL's 'benefit' derived from.

1445. Further, that goods sold by a trader may end up at a future date forming part of some sort of fraud cannot go to whether the trader is fit and proper unless it can be shown that the trader is somehow culpable. Officer Lewis seemed to miss this point and instead thought that the simple fact of goods leading forward to tax defaults was in and of itself something that went to the 'fit and proper' test.

1446. It was submitted that Officer Lewis also failed to pay proper regard to the years in which the tax losses are said to have occurred. They can give no indicator as to future risk in the circumstances given the new age that dawned with the advent of the ADD. Further, on a forward looking test, Officer Lewis should have considered whether, if he gave the Appellants detail of the tax losses, they could (and would) take steps to guard against recurrence of the same.

The Tribunal's conclusion

1447. The Tribunal has dealt with this topic in some detail above and rejects this submission. The Tax losses have been proved on the balance of probabilities and were not disputed. Their connection to the Appellants has not been substantially disputed. The historic nature has already been considered. While HMRC has not alleged that the Appellants have caused the tax losses, it was entitled reasonably to take this into consideration as a free standing evaluative conclusion that the Appellants' businesses presented an unacceptable risk of loss to the revenue, particularly so where the Appellants did not conduct reasonable due diligence in compliance with the ADD condition and failed to respond to warnings of tax losses in their supply chains. The fact of these tax losses also supports the proportionality of the revocation decisions in circumstances where there were due diligence failings and a failure to respond to reasonable warnings.

1448. Officer Lewis' conclusion that the Appellants benefitted from goods which were ultimately diverted does not suggest they were involved in the fraud. The word 'benefitted' can reasonably be read as a neutral term ie. that the Appellants received payment for goods from their customers of goods which later down the supply chain were diverted causing tax losses. The Appellants therefore did benefit from the supply of goods in circumstances where the supply ultimately ended in a tax loss.

Alleged lack of candour by Philip Eagleton and Jatinder Chatha

1449. It was submitted that the case now advanced by HMRC is that Philip Eagleton and Jatinder Chatha told lies about the links between the Appellants and the IOM companies. There were no lies. But there was confusion. HMRC, for reasons best known to its officers, decided not to ask clear, unambiguous questions. It is a small wonder that there was confusion. If HMRC really thought that its officers had asked clear questions at the meetings, why did it feel the need to ask the questions again in writing? Further and in any event, that Philip Eagleton and Jatinder Chatha told lies formed no part of the decision made by Officer Lewis. Lastly, where there was an ongoing direct tax inquiry, Jatinder Chatha and Philip Eagleton sensibly decided to find out exact details of the structure before making assertions to HMRC that may have proved inaccurate.

The Tribunal's assessment

1450. The Tribunal rejects this submission without hesitation. It has dealt with this topic in detail above and made robust findings of fact. It is not for the Tribunal to make findings as to the reason why HMRC put the questions in writing but the fact they asked the questions they did (a) supports the nature of the misleading answers that were given during the meetings; and (b) supports HMRC's desire to receive confirmation, particularly if those answers were surprising.

Relevant matters not taken into account or not given proper weight

1451. It was submitted that if the Tribunal is satisfied that any one (or more) of the below matters was a relevant consideration in deciding whether to revoke the approvals and that HMRC did not take that matter into account then the decision is an unreasonable one (given the obligation to take into account *all* relevant matters – see *C&E Commissioners v JH Corbitt (Numismatists) Ltd* [1981] AC 22 at 60 per Lord Lane).

1452. It was submitted that Officer Lewis inter alia failed to take into account the following relevant matters.

1453. It was submitted that the Appellants had written to IEFW to ask that seals be checked (at paragraph 85 of Annex A to his decision letters Officer Lewis acknowledges this but says that it comes too late – even though the email to IEFW was in May 2016). Again, this showed that Officer Lewis failed to adopt the forward looking approach to the decision.

The Tribunal's conclusion

1454. The Tribunal rejects this submission. It has made detailed findings of fact on the Appellants' failures to check seals. Officer Lewis reasonably took this into account. Furthermore, any evidence presented in May 2016 was at a very late stage of the minded to process, could reasonably have been provided earlier and Officer Lewis could reasonably place little weight therefore upon it.

1455. It was submitted that Tracey Bourne who had been the officer in charge for many years had planned to assist the Appellants with due diligence as this was the appropriate next step and that because of Tracey Bourne's departure that step had not been taken and in fact no education, assistance or meaningful guidance had been provided to the Appellants (despite Officer Maskew accepting that in other cases such assistance/guidance was provided).

The Tribunal's conclusion

1456. The Tribunal rejects this submission. It formed no relevant part of the facts and conclusions that Officer Lewis reasonably reached. Officer Bourne left the investigation in summer 2015 and it was not her view or decision that is under review but that of Officer Lewis in July 2016. He was entitled to a different view justified on

the evidence before him at the time. It is not even clear that he was aware of her view and would not reasonably be required to be so.

1457. It was submitted that Jatinder Chatha (and Rajinder Chatha who supplies services under a services agreement) are experts in the alcohol field. They are out there in the market place. They know if there is a legitimate market for stock. They know if something looks out of the ordinary. To the extent that HMRC seem to think that the Appellants should have paid someone like PWC to conduct a 'market research' analysis, this is misconceived. The Appellants had expertise on tap.

The Tribunal's conclusion

1458. The Tribunal rejects this submission. Officer Lewis was entitled to rely on the absence of documented and reasonable investigation and analysis of the markets the Appellants' customers were supplying. Officer Lewis acted reasonably in not relying on the word of the Chathas to the extent they made these representations prior to the revocation decisions.

1459. It was submitted that the Appellants A1P1 rights and the scale of the jobs put at risk by the decision were not taken into account. To extent that Officer Lewis says he needed more information, he could simply have asked.

The Tribunal's conclusion

1460. The Tribunal rejects this submission. Officer Lewis considered the witness statements provided as to the impact of revocation upon the businesses and the letters of representation which stated the number of jobs which would be at risk if the Appellants ceased trading. He provided reasons for his decision at paragraphs 107-113 of Annex A to the review decisions.

1461. These were reasonable reasons, as the Tribunal has found, and did not fail to consider the potentially serious impact of the loss of approvals. However, Officer Lewis reasonably concluded, as the Tribunal has found, that the business would not inevitably cease trading and he had seen insufficient independent evidence of the impact on the business.

1462. It is clear from Officer Lewis' oral evidence at trial that he took seriously the task of making the revocation decisions in reasonable knowledge of the potential impact on the businesses, in terms of their loss of trade or job losses.

1463. It was submitted that in reaching his decision, Officer Lewis was reliant upon information that had been gathered by a team that had approached its investigation on the basis that the Appellants were knowingly involved in fraud and that accordingly the information provided was skewed against the Appellants. This was compounded by the fact that there seems to have been rather poor organisation of the documentation gathered during the investigation. So rather than reviewing all the material gathered, he reviewed only that material shown to him by others who had spent years trying to show that the Appellants were fraudsters. In other words, those that provided the material to

Officer Lewis were 'revocation-loaded' and this will potentially have influenced the way that that material was presented (and indeed which evidence was presented).

The Tribunal's conclusion

1464. The Tribunal rejects this submission. It has found that Officer Lewis has not failed to take into account relevant material in coming to his decisions. He was entitled to rely on material adverse to the Appellants and did consider the material upon which they relied even if he rejected it. To an extent this forms part of the predisposition argument dealt with above and below.

1465. It was submitted that the UK was protected against duty loss by the fact that the Appellants only used hauliers that had HMRC approved movement guarantees sufficient to cover the duty on the relevant movement. Therefore, Officer Lewis' suggestion at paragraph 112 of Annex A of '*risk to the Crown and potential loss of revenue*' is misconceived.

The Tribunal's conclusion

1466. The Tribunal rejects this submission. The evidence before Officer Lewis at the time of the decision and before the Tribunal reasonably justified the conclusion of risk of loss to the Revenue.

1467. There was extensive evidence of actual tax losses occurring in mainland Europe with evidence of tax losses resulting in the UK. In any event, Officer Lewis and HMRC were reasonable in concluding there was a potential risk to the Revenue in light of the Appellants' due diligence and attitude / behaviour.

1468. The fact of the Appellants using movement guarantees in those circumstances could not reasonably be relied upon to evidence that there was no unacceptable risk to the Revenue.

1469. It was submitted that to the extent that there was any lack of clarity on the part of Jatinder Chatha and Philip Eagleton in relation to Rajinder Chatha's beneficial ownership of the IOM companies, that (1) the question was never asked in clear terms (2) there was no 'sinister' reason for this and (3) any reticence to give information without first checking that it was 100% accurate was no doubt animated by the spectre of the HMRC's direct tax investigation into Rajinder Chatha (and of course the Appellants now know that Operation Cracker extended to looking at the tax affairs of the individuals connected with the Appellants).

The Tribunal's conclusion

1470. The Tribunal rejects this submission. It has made robust findings of fact on this topic based on the evidence it heard, part of which was before Officer Lewis at the time of his decision and summarised at paragraph 101 of Annex A of the review decision letters.

Appellants' submissions on disclosure

1471. It was submitted that consideration also needed to be given by the Tribunal to the issue of disclosure.

1472. It was submitted that HMRC's disclosure had — to put it neutrally — been chaotic. Whether the neutrality was deserved was another matter. The Tribunal had witnessed important documents trickling in throughout the course of the six-week hearing, and well after clear, unqualified assurances. The Tribunal would remember, for example, those assurances given on 27 June 2017 and what emerged the next day. This was but an instance. On the final morning of the hearing (less than an hour before the Appellants' oral closing was to begin), another important document (reiterating that the Operation Cracker's objective was to close down the Appellants) had been emailed by HMRC. No reason was given as to why this had not been provided before.

1473. It was submitted that the point about disclosure was not simply from a litigation perspective and the unfairness that it effected upon the Appellants. It was more profound than that.

1474. It was submitted that it evidenced deep-seated document management failures by HMRC in the information that they held about the Appellants. At no relevant time had HMRC had a proper grip on that information. The evidence was that over the years it had all been stuffed onto a CAF file. In his attempt to excuse the disclosure debacle, Mr Nathan QC told the Tribunal that the "central control access folder" (aka the CAF file) "*is not well organised from the searcher's point of view*" and that "*it's not user-friendly from the point of view of the solicitor looking for material*."

1475. It was submitted that it was not to be expected that it would be any easier for the decision-maker. And that, indeed, was the evidence. According to Officer Lewis, all the information held by HMRC went onto the CAF file. He told the Tribunal that the file was "huge" with "five or six years' worth of information" and that it was not easy to navigate. He told the Tribunal that it had folders, sub-folders, sub-sub-folders etc — lots of them. It was really complex, he said. Mr Maskew said that he did not quarrel with Officer Lewis' assessment of its labyrinthine qualities.

1476. So, it was submitted that Officer Lewis, when challenged about the late production of relevant documentation, explained that it was all on the CAF file but that "*he didn't see it there*". And if Officer Lewis did not see that material — the relevance of which was blindingly obvious and which he had been asked to produce — the Tribunal can have no confidence that other equally relevant material was also not overlooked. Officer Lewis candidly admitted that he had overlooked the material and that there might yet be more material that he overlooked.

1477. It was submitted that there were yet further complications to the CAF system. First, it seems that parts of the information on the system was "restricted" and not made available to officers. Secondly, information copied over to the CAF from other electronic sources (e.g. from discs of documents supplied by Isle of Man C&E to HMRC) remained locked with the passwords that protected the information on those discs. Thirdly, other information on the CAF was "corrupted" and so could not be viewed. The upshot was that the decision-maker (Officer Lewis) was unable to look at

the contents of this information before making his decisions. Officer Lewis was unable to say whether he had seen that information before or not. What the Appellants now know is that information included "*evidence as to the supply chains from the Isle of Man companies to missing traders in other EU member states*".

1478. It was submitted that Officer Lewis admitted that none of this material was taken into account by him in making his 8 July 2016 decisions. His response when challenged why he did not just ask the Isle of Man officers for another copy of the password-protected and corrupted material that they had sent to HMRC was illuminating: "*I don't know*".

1479. It was submitted that exactly what material was or was not on the CAF relevant to the revocations has not been made known to the Tribunal: it would seem that it may never be known. Still less is it known exactly which of that information was seen by Officer Lewis prior to making the 8 July 2016 decisions. What is known is that certain of that information was not taken into account by him and that that information is of a description and had an origin that made it relevant to his decisions. The Tribunal cannot be confident that there is no other relevant information on the CAF that Officer Lewis did not take into account.

The Tribunal's conclusion

1480. The Tribunal rejects this submission.

1481. Arguments by the Appellants on disclosure took up a significant part of the hearing. At a pre-trial hearing on 26 April 2017 Judge Falk had refused an application by the Appellants for HMRC to provide wide ranging disclosure going beyond the standard disclosure of a List of Documents upon which HMRC relied. The Judge invited the parties to agree to further voluntary disclosure prior to the hearing of the appeal.

1482. Throughout the course of the hearing the Appellants made late and repeated applications for disclosure of further documents, particularly in relation to the investigation conducted by HMRC. The Tribunal granted some applications and upon hearing others, invited HMRC to voluntarily disclose material. It specified certain categories of material for HMRC to examine which it considered particularly relevant to the issues in the appeals. These are identified within the section of this decision dealing with the Public Interest Immunity application and the documents disclosed after the conclusion of the hearing.

1483. While this material was not disclosed perfectly, coming in pieces and over several weeks, with some documents initially overlooked, the Tribunal was satisfied by HMRC's undertaking and evidence that it had disclosed all material relied upon in the decision making process or otherwise which would undermine its position or assist the Appellants. The Appellants benefitted from a full level of disclosure which required significant manpower by HMRC – they conducted a further review of all documents on their system during the trial. Many of the disclosure requests made by HMRC were at the periphery of what might be considered relevant and the Tribunal erred on the side

of the widest possible range of disclosure in light of the seriousness of the allegations in the case and the potential consequences for the Appellants. It therefore considered such wide-ranging disclosure to be proportionate, notwithstanding that much came at a very late stage.

1484. At all times, the Appellants had received the material that Officer Lewis had relied upon in making his decisions and by the end of the hearing the Tribunal is satisfied that the Appellants had also had disclosure of any other documents created or examined by him that may have undermined his decision or assisted the Appellants. Neutral documents were not disclosable. The Tribunal is satisfied that it has received and heard all evidence that materially impacted on Officer Lewis' decisions and he has not failed to take into account material that he should reasonably have done.

Dishonesty and failure to put serious matters to witnesses

1485. It was submitted that HMRC had in its closing submissions made sweeping allegations of dishonesty. Indeed, Hardeep Chatha is even called a 'forger'. These are allegations that need to be proved by clear, cogent evidence. In truth, they are allegations that ought not to have been made. The Tribunal heard from Rajinder Chatha, Jatinder Chatha, Hardeep Chatha and Philip Eagleton. It will assess the questions asked and the answers given. Those answers (where questions were fairly and squarely put) were credible ones. They should not lightly be rejected. The Tribunal must also consider the extent to which these serious matters were properly put. In numerous instances, the witnesses were not given a chance to properly respond to the allegations now being made – that is simple impermissible. Equally matters like price marked packs and pint cans could all have been explained if only the questions had been put. They were not.

The Tribunal's conclusion

1486. The Tribunal rejects this submission. HMRC were entitled to put to witnesses, and did so, that they were not telling the truth, were misleading, evasive, or lying and that documents contained untruths or were backdated based on the evidence heard and received during the hearing. The witnesses had an opportunity to answer these suggestions and the Tribunal has made its findings of fact. It is satisfied that key witnesses and key persons for the Appellants, Rajinder Chatha, Jatinder Chatha, Philip Eagleton and Hardeep Chatha have lied to HMRC and the Tribunal about material aspects of their case.

1487. While the case against the Appellants is not one of fraud or dishonesty because the revocation decisions did not rely upon such allegations and they were not pleaded, the Tribunal is entitled to have regard to the lack of credibility of witnesses (including lies told, misleading statements and evasion) on key topics supporting HMRC's evaluative conclusions and the ultimate conclusion that the Appellants are not fit and proper persons to hold excise approvals.

Pre-disposition and improper purpose

1488. It was submitted on behalf of the Appellants that the issue of predisposition was raised in April 2017 before Tribunal Judge Falk.

1489. It was submitted that the Appellants had had to press HMRC for disclosure on this issue. The assurances of HMRC that such material did not exist were shown to be misplaced. What emerged from HMRC during the hearing supported the Officer making the decision, who was a part of a team, being predisposed in his decision to revoke.

Chronology on disposition of HMRC

1490. The Appellants provided a chronology based upon documents disclosed which they relied upon. In summary, the Tribunal is satisfied of the factual basis for the chronology set out below. However, it must be read against the main chronology of other factual findings by the Tribunal:

2011	Operation Cracker 11 begins, HMRC is tasked with investigating "*the directors, shareholders and other controlling minds of Whittalls Wines...The alleged fraud has been operating for a number of years and the potential tax loss for any given 12 months is approximately £52m*".
2012-13	HMRC officers travel on a number of occasions to the Isle of Man as part of Operation Cracker, visiting IOM C&E and Global and Bridgewell.
Feb 2013	Meeting between IOM C&E and HMRC with a plan.
March 2013	Officer Bourne joins the Alcohol Team and is given "*the responsibility for co-ordinating investigations completed by HMRC officers in suspected alcohol fraud for the companies Whittalls... and EFB...*". When she joins the team there were officers who had already made up their minds about the Appellants: "*I think there was Officer Barnbrook and Officer Smith, who'd left the team, but were the people there at the start with responsibility...*". Officer Bourne said it was "*something that I was not comfortable with*".
Sept 2014	Officer Bourne emails IOM C&E seeking further information on Global and Bridgewell, so that if they are not VAT registered the "*necessary penalties and assessments can be raised" and that if applicable this "would add further weight to our fit and proper person tests in respect of the warehouse and WOWGR registrations held*".
15 Oct 2014	Meeting of MLC in Paris, attended by inter alia Officers Pitt, Soleman, Warburton and Nicholas. The minutes record Officer Pitt telling the meeting that: "*The main objective for Cracker 11 has been to remove the warehouse operators' approvals from WWL, failing this, the secondary objective would be to impose conditions on the operations of the warehouses...*"

August 2015 — Officer Bourne leaves the team. Her evidence was that, had she not left the team, what she wanted to do was to spend some time with the Appellants on their due diligence "*in some detail, to help them with that...*" . She believed that "*you've got to give people a chance to put things right. And that was why my next step would have been to have sat down and gone through that in some detail with them...*".

August 2015 — Officer Lewis joins the Alcohol Fraud team, having had no prior experience in the area. There was no induction session and Officer Lewis had to "*pick it up as he went along*".

14 Sept 2015 — Officer Lewis emails IOM C&E introducing himself as the new lead officer in Operation Cracker and stating that while he may have to "*look up any answers for you and reply as soon as I can*"...

> "*What I am able to do is keep the tasks and objectives ticking over and within deadlines...*"

He then refers to the operational plan.

28 Sep 2015 — Officer Lewis emails IOM C&E, including:

> "*As you are already aware the overall final outcome for Op Cracker is to revoke all of the approvals and licences etc.*
>
> *This will also apply to Global, Bridgewell and EFB (IOM) in the Isle of Man.*
>
> *In the event that we are successful and gain the necessary approval to revoke, do you know who would be responsible for revoking the approvals in the Isle of Man?*
>
> .....
>
> *I appreciate your input with this because we are just trying to get ahead of the game to ensure that we are coordinated and that all of the approvals are revoked at the same time.*"

1 Dec 2015 — Operation Cracker team meeting held, attended by inter alia Officer Lewis. The minute records that the purpose of the meeting:

> "*...following extensive investigation over a number of years in the principles (sic) at the centre of the CRACKER operation, FIS propose to meeting attendees [ie incl Officer Lewis] that a 'minded to' letter should be issued as the businesses/individuals are not 'fit and proper.*"

The minute records that it was agreed that "*Craig & Les to drafted minded to letter by close of play 11 December 2015*".

2 Dec 2015 — Draft minded-to letter prepared. Officer Lewis maintains that he is almost certain that he had not, prior to 6 July 2017, seen it, although it is adopted for the purpose of the 8 February 2016 minded to letter.

5 Feb 2016	Assurance panel meeting. Officer Lewis addresses "*the panel with a brief outline of the case and the decision*."
8 Feb 2016	Minded to letter issued. Officer Lewis states that "*a period of 10 working days is a reasonable time within which to invite representations*." (ie 22/2/16)
8 Feb 2016	Appellants' representatives ask for particularity and specific documents in order to be able to respond.
9 Feb 2016	Officer Lewis refuses 8/2/16 request telling him that it "*is not reasonable to expect HMRC to provide your clients with copies of all the documentation amassed in this case...*".
9 Feb 2016	Appellants' representative press the need for the information and asks for a response as a matter of urgency.
18 Feb 2016	Officer Lewis responds to 9/2/16 letter attaching some notes of meetings but otherwise supplying nothing.
18 Feb 2016	Appellants' representative asks for more time to respond.
19 Feb 2016	Officer Lewis allows extension from 22/2/16 to 26/2/16.
25 Feb 2016	Appellants' representatives respond with a 23-page response to the minded-to letter.
26 Feb 2016	High Court orders that HMRC are not to revoke until their injunction application has been decided.
16 Mar 2016	Ms Barnard responds to letter of 25/2/16. The letter resembles Officer Lewis' decision letters. HMRC provide the Appellants with a little more documentation and invite a response by 31/3/16 (later delayed to 2/4/16).
2 Apr 2016	Appellants' representative responds with 18-page response.
10 May 2016	Officer Lewis writes that the Commissioners intend to proceed with the revocation of the approvals and that the Commissioners "*consider that you are not a fit and proper person to hold a registration because....*". The letter is substantially the same as the 8/7/16 letters. Officer Lewis notifies the Appellants that an application was to be made to the High Court for the injunction to be lifted "*in order that the decision to revoke may be made*."
13 May 2016	Hearing before HHJ Forster QC. The Judge continues the injunction and makes an order allowing the Appellants to respond to HMRC's 10/5/16 letter by 31/5/16.
31 May 2016	Appellants respond in detail to 10/5/16 letters.
20 Jun 2016	Officer Lewis makes his first attempt at the revocation letters.
29-30 Jun 16	Hearing before HHJ Forster QC for injunction. Oral judgment at end.
8 Jul 2016	Revocation Decision letters are issued.

1491. It was submitted that the chronology and material reveal that by the time that Officer Lewis joined the team, the die had already been cast. Meetings with and correspondence to the Appellants thereafter were prepared for later consumption.

1492. It was submitted that Officer Lewis never brought an independent mind to bear, let alone by 8 July 2016.

1493. It was submitted that while Officer Lewis had been at pains at the start of his evidence to stress that he wanted the decision to be his own decision and not rely on what Officer Bourne had had in her mind, by the end of his oral evidence it was apparent that he relied upon others extensively before reaching his conclusions and took the position of others as definitive.

The Tribunal's assessment

1494. The Tribunal rejects these submissions. The Tribunal has dealt with the issue of predisposition above. Essentially, it has already found that it has not been proved and is irrelevant to the issues in the case. The Tribunal is satisfied that Officer Lewis took the revocation decisions alone and was responsible for them, in line with the evidence he gave. He was entitled to, and did, take into account the views of others within HMRC and draw on material they had collated in making his decisions. Further, prior to their making, he sought approval for his recommendation to issue minded to letters from the HMRC assurance panel in line with established procedure. Even if Officer Lewis or HMRC had formed a closed mind or predisposition at an early stage as to revocation this is only relevant to the extent it can be proved that Officer Lewis or HMRC failed to take into account relevant material, took into account irrelevant material or made an unreasonable decision. The Tribunal has decided that this has not been proved. Furthermore, the Tribunal is not satisfied that Officer Lewis or HMRC had formed a closed mind on the balance of probabilities. They considered all the representations made up until 8 July 2016 and rejected them with reason.

1495. It is right to record that the evidence reveals an increasingly strong view in HMRC from September 2015 that revocation was the appropriate step but the fact that Officer Lewis and HMRC pursued the procedurally fair steps of going through the assurance panel and 'minded to' process in which the Appellants' representations were considered demonstrates that they had not 'shut the door' to alternative actions. Officer Lewis and HMRC were entitled to come to an increasingly strong view that the Appellants were unlikely to be fit and proper persons to hold excise approvals as the investigation developed and by September 2015 there was good evidence on which to reach this provisional view. The ADD condition had been in force for 10 months with relatively little compliance by the Appellants despite interventions from HMRC and misleading information having been provided between July 2014 and June 2015.

1496. To the extent it was suggested that HMRC had simply repackaged their material from the 2011 to 2014 unproductive fraud investigation to redeploy it in support of revocation, the Tribunal rejects this submission. The fraud investigation having concluded without any evidence to substantiate the allegation, HMRC were entitled to turn their subsequent investigation to whether the Appellants were fit and proper in light of the ADD condition and historic tax losses occasioned. The Tribunal has found the facts relied upon to be established, and conclusions reached to be reasonable.

The threshold for revocation in section 10.4 of EN196

1497. It was submitted that if HMRC wish to rely on a breach of the ADD condition to justify the revocation of a WOWGR approval then the threshold set out in EN196

paragraph 10.4 must be met. It is clear that for an approval to be revoked for non-compliance, the breaches must be of the most serious sort – involving a high degree of culpability on the part of the trader (ignoring warnings or knowingly entering into high risk deals). That threshold is simply not met on the present facts.

1498. It was accepted by the Appellants that HMRC can also revoke for reasons other than breach of the ADD condition if those other reasons show that the approved person is not, standing where we are today and looking forward (see below), a fit and proper person to hold an approval. 'Fit and proper' '*is an expression directed to ensuring that an applicant for permission to do something has the personal qualities and professional qualifications reasonably required of a person doing whatever it is that the applicant seeks permission to do.*' (*R v Crown Court at Warrington (ex p RBNB)* [2002] 1 WLR 1954).

1499. It was submitted that a person that is fit and proper to trade or store duty suspended alcohol must, then, have relevant industry knowledge (not least so that he/she can identify and stay alert to the risks involved in the industry) and must be someone that will behave responsibly in his/her dealings with duty suspended alcohol vis-a-vis the public revenue. The fact that a particular person has certain 'bad' qualities or does a 'bad' act that does not mean he/she is not fit and proper for the purpose of a WOWGR approval. The question will be whether those 'bad qualities' or 'bad acts', viewed within the totality of that person's conduct, allow the Tribunal to confidently predict that that person will not behave responsibly in his dealings with duty suspended alcohol vis–a-vis the public revenue.

The Tribunal's conclusion

1500. The Tribunal rejects these submissions. It has dealt with the issue of the Appellants not being fit and proper elsewhere. It notes the Appellants' concession that the concept of fit and proper extends beyond that implied by the terms of Sections 2, 3.2, 3.6, 10.4 or otherwise of EN 196. The Tribunal has examined the common law concepts identified in *Safe Cellars* and *FCA v Hobbs* as well as *ex p RBNB*. It has found that the four evaluative conclusions of HMRC justify the ultimate conclusion and finding of unfitness and that its further findings regarding the Appellants' misleading and untruthful evidence to HMRC and the Tribunal independently justify the same.

1501. Furthermore, it finds that there was serious non-compliance with the ADD condition by the Appellants for the purposes of section 10.4 of EN196. There were egregious and multiple failings in their due diligence as set out above. Furthermore, there were failures to respond reasonably to warnings given by HMRC as are set out elsewhere. Revocation was therefore reasonably justified by HMRC on this ground alone as the hurdle within section 10.4 was overcome. This would be independent of them being found not to be fit and proper persons.

1502. Moreover, Officer Lewis and HMRC relied on three evaluative conclusions and the ultimate conclusion that the Appellants were not fit and proper persons because the manner in which they conducted their businesses exposed the Revenue to an unacceptable risk of loss through fraud. This was not a revocation purely based on a

failure to comply with the ADD condition in section 10. Each of the four evaluative conclusions individually, collectively and in interaction, fed into the ultimate conclusion. The ultimate conclusion as to the Appellants not being fit and proper satisfied the test as set out in *Safe Cellars* that they did not demonstrate behaviours of a type likely to assist, and not to hinder, the proper administration, collection and protection of the revenue.

1503. Finally, the Tribunal is satisfied that the Appellants' conduct: evasion, lies and misleading evidence given to HMRC and the Tribunal by key persons in relation to material aspects of their evidence supplied for HMRC's investigation and decisions; would reasonably and inevitably justify HMRC concluding that they were not fit and proper based upon the test in *Safe Cellars* and revocation should therefore proceed.

Forwards or Backwards looking?

1504. The Tribunal raised whether the 'fit and proper' test is 'backwards' or 'forwards' looking. The Appellants submitted that the only sensible approach is a 'forwards' looking one. If, looking forward, it appears that a person will adhere to the requirements of the regime then the fact that he may not have done so in the past is only relevant to the extent that it enables the Tribunal to predict whether a person will, going forward, adhere to the relevant requirements. Before concluding that past conduct provides a safe basis for predicting future conduct, the Tribunal will look to see whether there *is* a willingness on the part of the person to change his ways. Such a present willingness can displace past shortcomings.

1505. It was submitted that HMRC's decision letters reveal HMRC having approached the decision on a 'backwards' looking basis (see page 1 of the decision letters – '…because the manner in which you **have** conduct**ed** your duty suspended business activities over a very significant period of time **has** expos**ed** the Revenue to an unacceptable risk of loss through fraud.'). What has emerged through this hearing is that by the end of 2015 this had become the *idée fixe* within the team to which Officer Lewis belonged, with years of investigation into the Appellants producing an element of groupthink: something about which Officer Bourne in her evidence said she had felt misgivings before leaving the team. HMRC failed to take into account whether there was an ongoing (forward looking) '*unacceptable risk of loss through fraud*'.

The Tribunal's conclusion

1506. The Tribunal rejects these submissions.

1507. First, the Tribunal's jurisdiction is to review HMRC's decision at the time it was made based upon all the evidence it has now heard. Based upon that evidence it has found Officer Lewis and HMRC were reasonable in reaching the conclusion that they did on 8 July 2016 that the Appellants' past behaviour rendered them unfit. Necessarily the decision is based upon facts and reasons that have happened in the past which rendered them unfit at the time of the decision. HMRC made a decision based upon their then current assessment based on past behaviour. There was no need to look to the future. To the extent necessary, in any event, in making the assessment that the

Appellants were then currently not fit and proper this did indicate a measure of forward looking risk assessment. This much was apparent from the HMRC's ultimate conclusion that they were not fit and proper. Any assessment of risk must be forward looking but can only be based on past behaviour.

1508. Furthermore, the Tribunal has found that in light of all the evidence now heard that the facts in support of the conclusions reached were valid as at the time of the decisions and the appeal hearing ie. that as of July 2017 it continued to be reasonable for HMRC to conclude that they were not fit and proper persons and presented an unacceptable risk to the revenue.

1509. Therefore, to the extent that HMRC made a forward looking risk assessment in July 2016, it was reasonable to conclude that the Appellants would continue not to be fit and proper persons as they would continue to present a risk to the Revenue. That much was borne out by the conduct of their key persons in giving false or misleading or evasive evidence to the Tribunal. HMRC would be entitled to conclude that as of July 2017 and as of the time of the Tribunal's decision the Appellants continued not to be fit and proper persons at the time they made their decisions and at the time the Tribunal makes its decision on the appeal.

Proportionality

1510. It was submitted that revocation would destroy the Appellants' businesses. Even if there were any shortcomings that could amount to the Appellants not being fit and proper (which is denied) then HMRC should, given what was at stake, have given fair warning and allowed the Appellants a real opportunity to deal with those concerns. Not to do so and to instead to revoke the approvals was disproportionate.

The Tribunal's conclusion

1511. The Tribunal has rejected these submissions for the reasons set out as to why the revocation decisions were proportionate. It was reasonable to conclude that it had not been proved that revocation of duty suspended approvals would destroy the businesses as a whole. There was no independent or expert evidence as to the impact on the duty paid parts of the business or the Group's business generally and it had not been proved that the Appellants or Rajinder Chatha could not fund the duty to carry on the same business as the duty suspended part of the business had hitherto been conducting. Whether the Appellants' suppliers would continue to supply the Appellants in light of full disclosure of the business is another matter, there may always be alternative sources of supply.

1512. Furthermore, and in any event, the Tribunal is not satisfied that it would be disproportionate to revoke the duty suspended approvals even if it did have a grave and wide ranging impact on the other parts of the businesses of the Appellants or the group as a whole. The gravity of the conduct by the Appellants in relation to their duty suspended business and their evidence to HMRC and the Tribunal is such that it is hard to envisage that a lesser measure could be proportionate in light of the risk that HMRC reasonably consider they pose to the Revenue. No other measure could render the

Appellants fit and proper in circumstances where they have been found not to be so. Only in the exceptional circumstances where a condition could meet the concerns as to why the Appellants were unfit and improper could it be proportionate to impose a lesser measure than revocation.

Conditions

1513. It is submitted that in any event, if HMRC had legitimate concerns then these could have been dealt with by way of conditions (for the avoidance of doubt, the Appellants maintain that conditions were not necessary and it may be that had conditions been imposed then these would have been appealed but unless and until removed, the Appellants would have complied with them – and HMRC had no reason to think otherwise).

1514. It was submitted that given the need to act proportionately, consideration of appropriate conditions should have formed a key part of Officer Lewis' decision-making process but in fact Officer Lewis did not even apply his mind to appropriate conditions because Steve Charlton apparently told him that no suitable conditions could be imposed. This failure by Officer Lewis to even apply his mind to imposition of conditions renders the decisions ones that could not reasonably have been reached. The Appellants proposed the following conditions that could have been considered:

1.The Appellants must on a monthly basis review the due diligence conducted by Bridgewell in relation to its duty suspended trading and provide copies of the same to HMRC on demand; and/or

2.The Appellants must on a monthly basis send to HMRC a list of all companies to whom the Appellants have made supplies of duty suspended alcohol in the previous 4 weeks. Where the Appellants have in those 4 weeks made duty suspended supplies to Bridgewell or other companies beneficially owned by Rajinder Chatha and those companies have on-sold the goods in duty suspense, the list should include the name of Bridgewell's customer.

3.The Appellants (and any other company beneficially owned by Rajinder Chatha where that company has sourced its duty suspended stock from the Appellants) may only sell duty suspended alcohol to (1) the customers listed below and (2) any other person if, at least 72 hours prior to making the supply, the Appellants give HMRC notification of their intention; and/or

[list of customers to be inserted following discussion with HMRC]

4. The Appellants must appoint a person or persons who will assume ultimate responsibility for the Appellants' duty suspended trading and duty suspended due diligence. The person(s) appointed must be other than [Mr xxx].

1515. It was submitted that as an absolute 'worst case scenario' HMRC could have imposed a condition that duty suspended alcohol purchased by the Appellants cannot be on-sold in duty suspense. However, such a condition would have caused huge financial harm to the Appellants for the reasons explained to the FTT and would certainly have to be appealed. Nonetheless the point remains that HMRC did not even consider it.

The Tribunal's conclusion

1516. The Tribunal rejects these submissions. It has set out above in detail why conditions would not satisfy HMRC's concerns regarding the Appellants' unfitness, may not be complied with and may not be lawful. It is satisfied that no lesser measure such as conditions would be proportionate.

1517. Officer Lewis did consider whether a lesser measure than revocation would be reasonable and proportionate, see paragraph 113 of Annex A of his revocation decisions, and consulted others before forming the view that he could find no condition that would be so. The specific conditions now hypothetically suggested by the Appellants were not put for him to consider at the time of the decisions so he has not unreasonably failed to consider them.

Relief

An order under s.16(4) (a) of the FA 1994

1518. It was submitted that HMRC's decision was not merely unreasonable in the way that it was reached. The entire process leading up to it was unreasonable and unfair. No adequate warnings were given to the Appellants. No fair opportunity was allowed for the Appellants to address concerns. No proper 'education' or assistance was provided by HMRC to the Appellants. In these circumstances, the Tribunal should order that the decision is to cease to have effect. If HMRC want to take any action in relation to the Appellants' approvals then they should follow fair process - which would include giving clear warnings to the Appellants about any concerns and allowing the Appellants to properly respond. Of course, any such action by HMRC would need to take into account the findings made by this Tribunal.

The Tribunal's conclusion

1519. The Tribunal rejects this submission. It has found that reasonable warnings and a fair opportunity to address concerns were given by HMRC to the Appellants. The Appellants benefited from a fair process prior to revocation including multiple visits and correspondence including warnings, from July 2014 to November 2015 and a substantial 'minded-to' process lasting from 8 February 2016 to 8 July 2016 (five months). During this time, they were given a reasonable opportunity to present evidence and representations on their behalf.

1520. No remedy arises because the Tribunal has found the revocation decisions to have been reasonably arrived at and proportionate. It has already rejected above the suggestion that it could direct that the decisions cease to have effect as an appropriate remedy.

An order under s.16(4)(a) of the FA 1994 coupled with an order under s.16(4)(b) of the FA 1994

1521. It was submitted that alternatively, the Tribunal might in addition to ordering that the decision cease, wish to make sure that HMRC comply with fair process by ordering

that if HMRC is to take any further action in relation to the Appellants' WOWGRs it must follow a process something like (1) set out its concerns in writing (taking into account findings made by this tribunal) (2) give the Appellants a reasonable opportunity to respond. This is the sort of 16(4)(b) direction made in *Ace Drinks* – see above.

An order under s.16(4)(b) of the FA 1994

1522. Alternatively, it was submitted that the Tribunal might simply make a s.16(4)(b) direction. If this is the approach adopted by the Tribunal then the Appellants asked that this be similar to the direction made in *Ace Drinks.*

The Tribunal's conclusion

1523. The Tribunal rejects the application of either of these remedies for the reasons set out above.

Inevitability argument

1524. It was submitted that on no sensible view would it be inevitable that a fresh decision maker would reach the same conclusion. As to future risk and conduct going forward, the new decision makers would need to *inter alia* consider the current due diligence arrangements which are based on the KPMG and M&R reports. HMRC would also need to meet with the employee now charged with conducting due diligence and assess his attitude and approach. It would also need to assess and consider the implementation of the policy documents put in place by the Appellants - also before the Tribunal.

1525. As to the suggestion that if the Tribunal finds dishonesty against one or more of the Appellants' witnesses (which the Appellants say certainly should not be a finding that the Tribunal makes) that means that the Appellants will inevitably therefore not be fit and proper, that is misconceived. The Appellants are not 'one man bands'. If the Tribunal made adverse findings against someone involved in the Appellants' business or trading then the Appellants would take steps to remove or isolate that person from the duty suspended business.

1526. In circumstances where there is no allegation of fraud against the Appellants (such allegations being very difficult to 'cure'), there are no matters that cannot be addressed if only the Appellants are given fair notice of the same (hence the request that HMRC follow fair process and/or that the Tribunal gives an *Ace Drinks* direction). Where there is a will, there is a way. And the Appellants have the will – too much is at stake for them not to have it. As the Tribunal has correctly observed, HMRC have used the reasons raised in Officer Lewis' decisions a basis for refusing EFBL's AWRS. So, if this decision stands – it is not just the duty suspended business that fails.

The Tribunal's assessment

1527. The Tribunal rejects these submissions. The refusal of the Appellants' AWRS is not an appeal before the Tribunal. The Appellants' appeals in relation to AWRS decisions will be considered separately and play no part in this Tribunal's decision. It can make no determinations based on the impact of AWRS decisions. The only

assessment it can make on proportionality is in relation to the impact of the revocation of duty suspended approvals upon: a) the Appellants' ability to continue the same trade on a duty paid basis by funding the duty; b) the Appellants' existing and independent duty paid business.

1528. The Tribunal is alive to the high hurdle to be applied before applying the *John Dee* 'inevitability' jurisdiction as highlighted by the Upper Tribunal in *Behzad Fuels*. It has considered this point in detail above. It is inevitable that HMRC would reach the same conclusion notwithstanding the finding on four light and empty loads, or any of the criticisms made of their decision, in circumstances where the remaining parts of the evaluative conclusions have been upheld and the Appellants have lied to HMRC and the Tribunal about significant aspects of their duty suspended businesses.

Procedural Issues

Admission of evidence – application to exclude witness statement of Leslie Pitt

1529. The parties made various applications during the course of the hearing for the admission or exclusion of evidence.

1530. The Tribunal has already dealt with three matters:

1531. The Tribunal gave a ruling on 6 July 2017 setting out its reasons for excluding certain parts of a witness statement of Officer Ryan Martin.

1532. HMRC withdrew its initial opposition to the admission of three files of due diligence supplied by the Appellants on 21 October 2016.

1533. The Tribunal has given its reasons for admitting some evidence from bank statements as to the size of the payments of sums of money made in respect of some of the Appellants' transactions through Global and Bridgewell.

1534. The Tribunal now gives its reasons for admitting the evidence of HMRC Officer Leslie Pitt.

1535. HMRC applied for Officer Pitt's witness statement and exhibits of 18 January 2017 to be admitted on the basis that Officer Ryan Martin would be substituted to adopt the evidence on his behalf and be available for cross examination.

1536. Officer Pitt retired from HMRC in March 2017 and he was diagnosed as having a serious medical condition at a time before 11 May 2017. Thus, it was not in dispute he had become seriously unwell at a late stage after first making a statement and independent evidence was provided in respect of this. He was unable to attend the hearing to give oral evidence. This was not in dispute.

1537. Nonetheless, it was submitted that Officer Ryan Martin, who had worked with Officer Pitt throughout the investigation since February 2012, had reviewed his statement and exhibits which were lengthy and could speak to the evidence. Officer Martin provided evidence of the same in a statement dated 9 June 2017 – that he had a

good working knowledge of the methodologies of the investigation and had reviewed the Appellants' statements and familiarised himself with Officer Pitt's work and the challenges thereto. He accepted that he had no personal knowledge of the meetings that Officer Pitt had attended with the Appellants but had read the minutes of the meetings which had also been attended by other HMRC officers.

Appellants' submissions

1538. On behalf of the Appellants Mr Coppel QC objected to the admission of Officer Pitt's evidence, his statement and exhibits. He submitted that the statements were substantially directed towards the issue of proving tax losses in the Appellants' supply chains and irregularities in transport such as light and empty loads. He submitted that it was possible that the tax losses had occurred further down the chain after the goods had been received at recipient bonds. The Appellants were agnostic on this issue and did not know. He submitted that tax loss evidence was relevant in two ways.

1539. The first was to prove that the tax loss in supply chains connected to the Appellants demonstrated that consequences of any failures in due diligence caused a loss to the Revenue in the relevant years (2011 to 2014) – it demonstrates that any failures had consequences and goes to the culpability and proportionality of revocation action.

1540. The second issue was proving that HMRC's warnings to the Appellants of tax losses were justified and that any failures to respond to warnings by reasonable and proportionate adaptation and increased due diligence could be evidence that they were not fit and proper.

1541. He submitted that the Appellants would be denied a fair hearing and opportunity to challenge the statement maker if Officer Pitt did not give oral evidence. The evidence otherwise should be excluded or given very little weight as untestable hearsay. The evidence would substantially prejudice the Appellants and much was not capable of substantial challenge in the absence of Officer Pitt. It would be impossible for the Tribunal to evaluate the reliability of what was said in the statement. He submitted that it would be unfair to admit the statement and exhibits for the purposes of Rule 15(2) of the Tribunal Rules.

The Tribunal's conclusion

1542. The Tribunal admitted the statement of Officer Pitt and allowed Officer Martin to give oral evidence in substitution for Officer Pitt for the following reasons.

1543. Officer Pitt had provided an extensive statement and exhibits and had become unfit to give attendance at a very late stage. Officer Martin had a good working knowledge of the investigation having been involved from an early stage. Officer Martin had also reviewed all of Officer Pitt's evidence and was in a position to adopt and speak to it.

1544. Most of the evidence relied upon documented checks of loads and connections to companies in mainland Europe involving tax losses. This involved examination of

independent documents rather than consideration of evidence peculiarly within Officer Pitt's knowledge. Officer Martin could be cross examined upon his methodology and that of Officer Pitt and whether tax losses had been proved to occur and whether these were linked to the Appellants' supplies. This cross examination indeed occurred. Therefore, the Appellants were not substantially prejudiced.

1545. The Appellants themselves did not vigorously challenge the tax loss evidence – they had no positive case and were 'agnostic' upon it. The evidence as to 'light and empty loads' was evidence that the Tribunal has considered in detail in any event. The Appellants had not expanded on the nature of their objection to the content of the evidence on tax fraud. Most of this evidence was simply inference from the production of primary material.

1546. The Tribunal accepted that Officer Pitt's evidence was important for it to consider in order to determine whether there were tax losses in the Appellants' supply chains as this would impact upon: the reasonableness of the evaluative conclusions; the proportionality of the revocation decisions; the justification for the warnings that HMRC gave the Appellants; and adverse inferences to be drawn from the Appellants' response to warnings. However, it was satisfied that the Appellants were not substantially prejudiced by the adoption of his evidence by Officer Martin.

1547. It was fair to record that Officer Pitt also spoke to meetings with the Appellants which he attended which Officer Martin had not. However, most of these meetings had also been attended by other HMRC officers who were to give evidence and could be cross examined. While there were a few meetings that only Officer Pitt attended, these were of limited importance to the issues in the case.

1548. The Tribunal was satisfied that it was in accordance with the interests of the overriding objective to deal with cases fairly and justly to admit the evidence and that it would not be unfair to admit it for the purposes of Rule 15(2) of the Tribunal Rules.

Public Interest Immunity

1549. Towards the end of the hearing, the Tribunal heard an application by HMRC for public interest immunity to be granted over material.

1550. The application was made on notice to the Appellants but with limited information disclosed to the Appellants during the inter partes hearing. The material upon which the application was based was considered in an ex parte hearing. The Tribunal was satisfied that using its case management powers under Rule 5(3)(d) and power to hold proceedings in private under Rule 32(2)(c), (d) & (3) of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009, it had jurisdiction to conduct an ex parte hearing. It was satisfied that it was justified to restrict access to this part of the hearing in order to maintain the confidentiality of sensitive information and avoid serious harm to the public interest. It applied the overriding objective in doing so. It adopted a procedure akin to that under the Civil Procedure Rules 31.19.

1551. The application was accompanied by a public interest immunity certificate of the Chief Executive of HMRC dated 30 June 2017 which was divided into an open part and

a confidential part with a sensitive schedule which was not disclosed to the Appellants but which was considered by the Tribunal during the ex parte hearing. The Tribunal asked itself three questions in considering the application.

1552. The first question was whether the information in question passed the threshold test for disclosure being one of materiality or relevance. The Tribunal had asked HMRC to examine three issues in particular when conducting its review of disclosure and to disclose relevant documents which might undermine HMRC's case or assist the Appellants'. The first issue was whether HMRC had any predisposition to revoke the Appellants' excise approvals. The second issue was the state of HMRC's officers' knowledge as to the reason for the establishment of the IOM companies (Global and Bridgewell). The third issue was the identification of any information which had been passed from IOM C&E to HMRC about the connections between the Appellants and Global / Bridgewell.

1553. On examining the material subject to the application, the Tribunal was satisfied that it met the first test of relevance.

1554. The second question was whether the material attracted PII on the basis of damage or harm that would be done to a specific category of public interest by disclosure. The Tribunal was satisfied that disclosure of the material would damage or cause substantial harm to a specific category of public interest and it therefore attracted PII. The Tribunal was satisfied that it was not possible for a gist or other summary of the material to be disclosed to the Appellants without substantial harm being caused. Nor was it possible to disclose the category of public interest involved without substantial harm being caused.

1555. The third question was whether the public interest in non-disclosure based on damage or harm done to a specified category of public interest outweighed the public interest in disclosure of the information for the purpose of doing justice in the proceedings.

1556. It balanced the competing aspects of public interests in line with the judgment in *R v Chief Constable of West Midlands Police ex parte Wiley* [29915] 1 AC 288. It was satisfied that the public interest in non-disclosure based on substantial harm that would be caused to a specified category of public interest by disclosure outweighed the public interest in disclosure to the Appellants of relevant material in pursuit of the administration of justice within the proceedings.

1557. The Tribunal gave what reasons it was able to give to the Appellants during the course of the inter partes hearing and gave fuller reasons during the course of the ex parte hearing.

Sitting in Private

1558. The appeals sat in private throughout. This was pursuant to the direction of Judge Berner who ordered, on 6 April 2017, that any hearing in the Tribunal in the appeals should be in private with effect from 3 April 2017. The power to conduct proceedings in private is set out in Rule 32(2) of the Tribunal Rules as cited above. The Judge's

reasons are set out in his decision of that date. In summary, Judge Berner concluded that it would be right in circumstances in which the judgment of the High Court in the parallel judicial review and injunction application was restrained from publication and those proceedings, he had been told, took place in private.

1559. Therefore, Judge Berner's direction flowed from the order of His Honour Judge Forster QC on 30 June 2016. HHJ Forster QC had refused the Appellants' application for judicial review and an injunction staying the effects of revocation until the hearing by the Tribunal was concluded and a decision made. Nonetheless, the Judge had granted the Appellants permission to appeal his order and continued the injunction pending their appeal to the Court of Appeal. The injunction proceedings had taken place in private. As is set out elsewhere, the appeal to the Court of Appeal listed for 18-19 July 2017 did not take place as the parties agreed to continue the injunction until the decision of this Tribunal was issued.

1560. HHJ Forster QC was no doubt influenced by the evidence provided to him in summary statements as to the impact and effect of the businesses of any revocation of duty suspended approvals and the interim impact of any publicity of HMRC's decision and any court proceedings upon their businesses – such as loss of confidence by their suppliers and damage to reputation, loss of trade and employees etc. In those circumstances, it is understandable that a view was taken that the Courts should hold the ring until the substantive merits of the Appellants' arguments were heard and that there should be no risk of jeopardy to the Appellants' businesses in the mean time.

1561. Nonetheless, the Tribunal recognises that hearing these appeals in private represented a substantial departure from the principles of open justice and was undesirable. The Tribunal had a far longer and greater opportunity to consider fuller evidence on the merits of HMRC's revocation decisions and the potential impact on the Appellants' businesses than the two more senior Judges, who had limited time and evidence available in interim applications.

1562. In particular, the Court of Appeal at paragraphs 81 to 85 of the judgment in *ABC Ltd & Anor v The Commissioners for HM Revenue and Customs* [2017] EWCA Civ 956, followed by the High Court at paragraphs 23 to 25 of the judgment in *Seabrook Warehousing Ltd, R (On the Application Of) v Revenue And Customs* [2017] EWHC 2583 (Admin) 13 October 2017*),* have made clear that in order for an injunction to be granted the Courts would wish to see independent and compelling evidence of irreparable damage being done to a business pending determination of an appeal before the Tribunal. This Tribunal has already noted the absence of such type of evidence in its review of the Appellants' evidence on the impact of revocation of duty suspended approvals upon its businesses and the effect this has upon its submission that revocation would be disproportionate.

1563. Towards the end of the hearing the appeals, the Tribunal invited submissions as to whether the proceedings should continue to be heard in private. At that stage the Appellants continued to seek privacy and HMRC took a neutral stance. By their closing submissions HMRC did not seek to overturn the ruling of Judge Berner that the proceedings should continue to be held in private. However, HMRC submitted that this

decision of the Tribunal should be published and the Appellants identified, in accordance with the usual principles concerning open justice. The Appellants did not oppose such a course in their closing submissions but were given a further opportunity to do so after circulation of the Tribunal's draft decision.

1564. The Tribunal has no hesitation in acceding to HMRC's submission. This decision will be published in accordance with the fundamental principle of open justice.

Circulation of the draft decision for comment by the parties

1565. It should be noted that a draft of this decision was circulated on 7 December 2017 giving the parties a significant amount of time, given its length, to consider the usual issues of typographical and grammatical corrections and make comment upon any issues of anonymity in respect of third parties or any other matters which require confidentiality.

1566. It should also be noted that the Appellants had previously invited the Tribunal to indicate when it may give its decision because of the potential impact upon its business during the Christmas period which is the busiest time of year for alcohol sales. The Tribunal declined to take into account the Appellants' business in deciding the timetable for the circulation of a draft decision and release of the final decision.

Disclosure of further material by HMRC after the conclusion of the hearing

1567. On 21 July 2017, a week after the end of the hearing, HMRC disclosed further material being minutes of five meetings of the HMRC Mutual Liaison or Assistance Committee (MLC). Both parties served written submissions in respect of the same.

1568. The Appellants made the following submissions.

1569. It was submitted that the existence of certain of the minutes was known from being referred to in lately disclosed other minutes (the meeting of 16/10/14 was referred to in the minutes of 10/12/14) and had been repeatedly sought (most recently by email to Mr Nathan QC on 13/7/17). Serious questions arose as to why these documents were not provided earlier.

1570. The Appellants had highlighted some of the salient passages in the minutes. They submitted that the relevance of these documents was self-evident from the face of the documents. Had HMRC complied with its disclosure obligation and produced these documents when they should have, the Appellants would have relied upon them for cross-examination of HMRC's witnesses and for final submissions.

1571. It was submitted that it was apparent from the minutes that as early as 2014 Officer Pitt was committed to revocation of the Appellants' approvals, and the "adoption" of his statement by Officer Martin was but one of the lines of cross-examination that these minutes would have permitted.

1572. It was submitted that the 19 June 2013 meeting suggests that there was a '3 strikes' approach to outward movements not travelling as claimed. By 19 June 2013,

HMRC had for some years been scheduling the Appellants movements on a daily basis. In the 19 June 2013 meeting it seems to be accepted that HMRC could not (even on its own view of things) show '3 strikes' against the Appellants. How on earth, then, did HMRC come to allege that hundreds of movements had not travelled as claimed (only to later concede that point)?

1573. It was submitted that the disclosure suggests that the HMRC team dealing with the Appellants' approvals was aware of and giving consideration to the direct tax position of Rajinder Chatha (see 16 October 2014 meeting where Rajinder Chatha's tax planning options are referenced).

1574. It was submitted that this most recent episode of late disclosure revealed the following.

1575. First, it was submitted that HMRC's assurances, both through their counsel and solicitor, to the Tribunal as to the thoroughness of HMRC's disclosure in these appeals were worthless. The Appellants invited the Tribunal to find that it has no confidence in the disclosure by HMRC in these appeals and, specifically, to record that the Tribunal cannot rule out there being further documents held by HMRC that would have been either helpful to the Appellants' appeals or damaging to HMRC's case (or both) that remain undisclosed and/or that the decision-making officer should have taken into account before revoking the approvals. Indeed, there are various documents referred to in the MLC minutes that HMRC even now say they cannot find.

1576. Second, it was submitted that the Appellants' submission of pre-determination is reinforced. HMRC has, in its covering letter, sought to cover itself by saying that Officer Lewis did not read any of these minutes before making his decision. Whether or not that is true, it does not help HMRC one jot — quite the opposite: (a) HMRC's statement demonstrates that Officer Lewis did not consult important documents that were on the CAF. The Tribunal can have no confidence that other important documents were not also similarly ignored by him before making his decision. (b) HMRC's covering letter and late disclosure also serves to demonstrate that no-one on the team, despite the exhortations to disclose that were coming throughout the hearing from HMRC's legal team, had any idea of the existence of relevant documents that were on the CAF. Given that HMRC does not even know what information it holds, this Tribunal is no longer in a position to accept any submissions from HMRC that the Appellants failed to advise HMRC of certain matters.

1577. Third it was submitted that any reasonable decision-making officer, had that officer been aware of Officer Pitt's longstanding objective of revoking the Appellants' approvals, would not have placed the sort of dependency that Officer Lewis placed on Officer Pitt's evidence as Officer Lewis did throughout his statement.

1578. Fourth it was submitted that such a reasonable decision-making officer would also have borne this in mind in evaluating what took place at meetings with the Appellants that were attended by Officer Pitt.

1579. Fifth it was submitted that Officer Martin told the Tribunal that he had "as good as" the same personal knowledge as Officer Pitt, having worked "very close" to him since he joined the team in 2012 and acted as "a mentor" to Officer Martin. For "as good as" the Tribunal can now safely read that Officer Martin was "as determined as" Officer Pitt to revoke the approvals, whatever the evidence might have been.

The Tribunal's conclusion

1580. The Tribunal has reviewed the additional disclosure and rejects the submissions of the Appellants for the reasons submitted by HMRC.

1581. The Appellants' attempts to place reliance on the newly disclosed documents and any attempt to accuse HMRC of a degree of impropriety is diversionary and does not provide substance in support of their case on the main issues in the appeal such as misleading HMRC and serious due diligence failures on their part.

1582. The Tribunal is satisfied HMRC have used all reasonable and proportionate efforts to respond voluntarily to late requests for disclosure which, on one view, may be seen as speculative.

The History of Disclosure

1583. The Tribunal reminds itself of the significance of the history of disclosure in this appeal:

a. In October 2016 there was a Rule 27 disclosure order made, in other words that the parties should disclose only documents which they intended to rely on.

b. On 26 April 2017, at a late stage and with little notice, the Appellants unsuccessfully sought wide disclosure, which Judge Falk refused to order. It was at this hearing that the Appellants stated that they would be alleging that, having come to the end of a long and expensive fraud inquiry without finding evidence of the Appellants' involvement in fraud, HMRC were predisposed to find other means to revoke their approvals.

c. Following that hearing, additional documents were voluntarily disclosed by HMRC in accordance with a further written request from the Appellants. A further statement from Officer Craig Lewis was served on 15 May 2017 in accordance with the Judge's direction; and the Appellants chose not to return to the Tribunal to seek any further disclosure (as Judge Falk indicated they were to do in the event of any disagreement as to their new disclosure request).

d. On 5 June 2017, effectively the day before the start of the hearing, the Appellants began to request further disclosure.

1584. The Tribunal is satisfied HMRC have, in good faith, given further disclosure on a voluntary basis as requested by the Tribunal in response to the Appellants' various late requests.

1585. HMRC's representatives could not reasonably be expected to have read every document in the CAF during the course of the hearing. They have made reasonable and proportionate decisions in relation to which folders to search and which search terms to be adopted, as set out in the fourth witness statement of Helen Barnard dated 29 June 2017. The Tribunal accepts HMRC's position, the CAF is not designed for searches by solicitors engaged in litigation; the manner in which documents are stored on it is complex and makes it very difficult to search through.

1586. Given the lateness of the requests for disclosure, the presence of the MLC minutes in sub-sub-folders in the CAF with titles or references which do not obviously relate to these meetings and the fact that the issue of "predisposition" does not lend itself easily to specific search terms. The Tribunal rejects the Appellants' criticisms of the disclosure exercise conducted by HMRC. Such criticism is unwarranted.

1587. HMRC regret not finding these MLC minutes earlier. However, the Appellants did not fully plead the extent of the case they presented during the substantive hearing. They only lightly touched on predisposition in their appeal grounds. It became clear during the hearing that it was suggested that HMRC were predisposed towards revocation as a result of the lack of success of the department's civil investigation into fraud, and their wish to have something to show for the time, cost and effort of that investigation.

1588. The Appellants' submissions in relation to the recently disclosed MLC minutes ultimately lack merit.

1589. The Tribunal rejects the submission that it can have no confidence in the disclosure by HMRC. For the reasons explained above, it is satisfied HMRC have taken reasonable and proportionate steps, in difficult circumstances and under time pressure, to provide voluntary disclosure. The documents were not initially located by HMRC's Solicitors' Office despite using reasonable and appropriate search terms.

1590. The Appellants make their argument in this regard on an erroneous basis which does not fully represent the letter sent by HMRC's solicitor disclosing the documents. It is incorrect to state that "*there are various documents referred to in the MLC minutes that HMRC even now say they cannot find*". As HMRC's letter of 21 July 2017 states in terms, the "wallpaper chart" referred to in the minutes of 19 June 2013 no longer exists and various presentations, slides and a spreadsheet do not appear to have any relevance; so no further search for them is proposed. To characterise this as HMRC saying they cannot find certain documents goes too far.

1591. The Tribunal is not satisfied that the MLC minutes are somehow determinative of Officer Pitt having made up his mind to revoke the approvals regardless of the evidence. Officer Pitt has not given evidence to explain the sentences highlighted by the Appellants and they are open to a number of interpretations. There is nothing in any of the documents disclosed which is supportive of HMRC intending to revoke "*whatever the evidence might have been*".

1592. On the contrary, the minutes show a detailed investigation into supply chains tainted by fraud, trying to locate those who may have been knowingly involved, the conduct of detailed analysis and liaison with overseas authorities. This does not support the submission of them attempting to revoke regardless of the evidence. The words relied on by the Appellants must be seen in this important, wider context.

1593. It is also important to bear in mind that the minutes clearly relate to the earlier period when the fraud investigation was ongoing. The state of mind of the officers at this time is not relevant to the Appellants' appeal case, which relates to their predisposition after the fraud investigation ended in 2014, because it did not find evidence showing the Appellants were knowingly involved in fraud.

1594. The Tribunal does not rely on the disclosure made nor find that Officer Lewis did not consult important documents on the CAF. The minutes do not assist the Appellants' case: they do not, for example, refer to any questions about the quality of any due diligence of the Appellants.

1595. The Tribunal does not accept it "is no longer in a position to accept any submissions from HMRC that the Appellants failed to advise HMRC of certain matters".

1596. It has made findings about the misleading statements made and lies told by Mr Jatinder Chatha and Mr Eagleton in 2014 and 2015 about the true relationship between the Appellants, Global / Bridgewell and Mr Rajinder Chatha and to the long delay up to mid-June 2015 before part (but not all) of the true position was disclosed by Mr Jatinder Chatha. The recently disclosed minutes have no relevance to this issue. Moreover, the Appellants assert no positive case that they did not make the statements which HMRC contend they did, as discussed at length in this decision; these statements are documented both in contemporaneous notes and emails and what was said is not disputed by the Appellants.

1597. The Appellants have sought to rely on Mr Rajinder Chatha having made disclosures to IOM C&E about the true relationship, not on their or him having disclosed such matters to HMRC (prior to June 2015 when the Appellants made a partial admission). IOM C&E were asked in writing, repeatedly, by the Appellants to confirm what was disclosed to them. Notably, above all, there is no evidence from that source that the "purpose" asserted by the Appellants was ever disclosed to IOM C&E or anyone else outside the Chatha family and Mr Eagleton.

1598. There is also no merit in the submission that Officer Lewis should have placed less weight on Officer Pitt's evidence, given his "*longstanding objective of revoking the Appellants' approvals*" or "*in evaluating what took place at meetings that were attended by Officer Pitt*". Officer Pitt's evidence (adopted by Officer Martin) was based on objective facts and documents, set out extensively in his exhibits. Officer Lewis was able to analyse these himself and draw appropriate conclusions.

1599. The Tribunal is not satisfied that Officer Pitt's mere presence at certain MLC meetings somehow detracts from the (not denied) misleading statements made by

Jatinder Chatha and Philip Eagleton. It is implausible that his presence at such meetings in some way affects the unchallenged evidence as to what they stated in those meetings.

1600. The Tribunal is not satisfied it "can now safely read that Officer Martin was "as determined as" Officer Pitt to revoke the approvals, whatever the evidence may have been". There is no basis for such a submission. Officer Martin was not present at any of the meetings, and his evidence was simply that he had similar knowledge of the investigation as Officer Pitt.

1601. The Appellants' submissions have made two further points which do not address the pleaded or wider issues in this appeal.

1602. First, they place reliance on a comment concerning "*3 strikes*" in the minutes of 19 June 2013. The comment at the meeting is not fully explained and the person who made it has not given evidence. It has no relevance to any issue in this appeal. As explained in detail in this decision, four light or empty loads were considered by Officer Lewis, not "*hundreds*" as stated by the Appellants: HMRC have never "*concede[d]" that they could not make good that "hundreds of movements had not travelled*".

1603. Secondly, without any explanation of relevance, the Appellants state that the 16 October 2014 minutes show that Rajinder Chatha's direct tax position was known to the investigative team. The existence of a direct tax investigation into Rajinder Chatha and the fact that this was known to some of the investigating officers is not new and has been referred to a number of times during the evidence. It played no role in the decisions under challenge and the Appellants have never pleaded or otherwise made any case that it did. The only relevance of the direct tax investigation to these appeals is Jatinder Chatha's own admission, in his evidence, that he made his misleading and untrue statements to HMRC in order to try to avoid causing problems for his brother in that investigation.

The Appellants' supplementary submissions on the threshold for revoking an existing approval being higher than that to grant an approval at the outset

1604. The Appellants made supplementary submissions on the threshold to be applied when revoking an approval as opposed to that in granting an approval.

1605. It was submitted that it had long been recognised that non-renewal of an existing approval/licence is usually a more serious matter than refusal to grant that approval/licence in the first place, and revocation of that approval/licence is a yet more serious matter than non-renewal of that approval/licence: *R v Barnsley MBC, ex p Hook* [1976] 1 WLR 1052 at 1058F-H. This is relevant to the issue of proportionality and reasonableness: *Pham v SSHD* [2015] 1 WLR 1590 (SC) at [114]; *Bank Mellat v HM Treasury (no 2)* [2014] AC 700 at [82].

1606. It was submitted that revocation under the duty suspended regime is to be contrasted with revocation under the construction industry scheme, as considered by the Court of Appeal in *HMRC v JP Whitter (Waterwell Engineers) Ltd* [2016] EWCA Civ 1160, [2017] STC 149. There, s 66(1) of the Finance Act 2004 specifically empowered HMRC to cancel a person's registration if it appeared to HMRC that "*if an*

application to register the person for gross payment were to be made at that time, the Board would refuse so to register him" — see [30]. Parliament chose not to adopt this approach in relation to revocation under the duty suspended regime.

1607. It was submitted that here the balance falls to be considered at an antecedent stage, ie in deciding whether the Appellants are fit and proper to hold the approvals, not in a consideration of what is a proportionate response once it is concluded that they are not fit and proper persons. At the antecedent stage, HMRC does not for an applicant have the trading history that it has in relation to an approval-holder. The longer an approval is held, the greater the trading history. In deciding whether particular conduct renders the approval-holder not a fit and proper person, the conduct must be set against the entire trading history. The greater and more extensive the trading history, the more compelling or sustained must be the conduct needed to render the person not fit and proper.

The Tribunal's conclusion

1608. The Tribunal does not need to resolve these submissions – whether or not there is a higher threshold to revoke an approval than to grant it, the Tribunal is more than satisfied that it is met and the conclusion of HMRC that the Appellants were not fit and proper is more than reasonable.

1609. The Tribunal does tend to agree with HMRC's submissions set out below.

1610. The Appellants' attempt at distinguishing *HMRC v JP Whitter (Waterwell Engineers) Ltd* [2016] EWCA Civ 1160 is misconceived. The case is a significant authority on the common law principle of proportionality, and the approach to Article 1 of the First Protocol of the ECHR. In that case, it was held that the legislative provision in issue in that case, which concerned a construction industry scheme, permitted cancellation of the registration for the scheme on the basis that HMRC would have refused registration, if the registrant were making an application to register at that time.

1611. In the case of excise approvals, the legislative provisions are broader in scope, giving a wider discretion to HMRC to revoke for reasonable cause. It is without merit to argue, as the Appellants attempt to do, that the absence of the same formulation as in the construction industry scheme legislation (permitting revocation because registration would be rejected if it was applied for at the same time) means that HMRC have a materially different (and by implication narrower according to the Appellants) discretion to revoke in excise approvals.

1612. On the contrary, the phrase '*for reasonable cause*' has a very wide meaning and simply means "having reasonable grounds": *Sibleys Fuel & Marine Services v Commissioners for HM Revenue and Customs* [2016] UKFTT 777(TC) at paras 71-83. It may include grounds which would also lead to a refusal of an application for approval, but it also includes all other matters which constitute reasonable grounds, as is discussed at length in HMRC's Closing Submissions.

1613. The arguments in the final paragraph of the Appellants' submissions are flawed. The fit and proper test does not involve a balancing exercise counter-balancing, on the one hand, behaviour of concern to HMRC, and on the other hand, the length of trading history.

1614. It is a question for the Commissioners to decide (essentially as a question of fact) whether an approval holder is a fit and proper person and in doing that they may consider, as in this case, non-compliance with express conditions, honesty, integrity, and attitude toward HMRC inquires. There is no authority for the proposition that the fit and proper test involves an exercise in which length of trading history can in any way counter-act or counter-balance behaviour which would otherwise render an approval holder not fit and proper.

1615. It is incorrect to argue, as the Appellants do, that "*The greater and more extensive the trading history, the more compelling or sustained must be the conduct needed to render the person not fit and proper*". This is a confused submission. Conduct which renders a person unfit is conduct which renders a person unfit: no more and no less. When it comes to the question of fit and proper, there is no special status in, or effect from, a business having operated for a period of time with an approval. Revocation of an approval used by a business only for a short time may have significant effects on the approval holder, while a business which has traded with an approval for a long period may be much less affected by revocation. Such considerations have no application at all to the test of whether a person is fit and proper and they represent a confusion on the Appellants' part.

Conclusion

1616. The Tribunal dismisses these appeals. The decisions of HMRC were reasonably arrived at that the Appellants were not fit and proper persons to hold excise approvals because the manner in which they conducted their duty suspended businesses over a significant period of time exposed the Revenue to a risk of loss through fraud. The decisions to revoke the Appellants' excise approvals to own and warehouse duty suspended alcohol were both reasonable and proportionate.

1617. This document contains full findings of fact and reasons for the decision. Any party dissatisfied with this decision has a right to apply for permission to appeal against it pursuant to Rule 39 of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009. The application must be received by this Tribunal not later than 56 days after this decision is sent to that party. The parties are referred to "Guidance to accompany a Decision from the First-tier Tribunal (Tax Chamber)" which accompanies and forms part of this decision notice.

RUPERT JONES

TRIBUNAL JUDGE

RELEASE DATE: 01 FEBRUARY 2018

Annex 1

Schedule of Warnings to the appellants at meetings or in correspondence

[references are to File/Tab/page numbers]

9 September 2014 meeting:

warnings of **tax loss** in own supply chains and **insufficient due diligence** [74/10/3-4]. "*Officer Bourne explained that from checking EFBL's supply chains it is apparent that EFBL are involved in supply chains leading to significant tax losses....Officer Warburton reiterated the point that EFBL's duty suspended supply chains had been looked at and tax losses found. HMRC are concerned about this and that the level of due diligence carried out is not sufficient to protect themselves from being involved in supply chains with tax losses*".

[6 November 2014 C&E letter to David Craine regarding GBDL/ BL containing a warning of **tax loss:**

[75/28/2] "*...there are concerns that [GBDL/ BL's] supply chains have become tainted by potential fraud which has led to significant tax losses*".]

[13 November 2014 C&E letter to David Craine recommending **due diligence review** in light of tax loss chains:

[75/31/2] "*...perhaps your best course of action may be to review the KYC/ due diligence documentation and procedures that you use for all of the supply chains of [GBDL/ BL]*".]

12 January 2015 HMRC letter to WWL:

[75/33] letter regarding record keeping and due diligence, containing a warning of **cancellation of approval for reasonable cause**.

11 March 2015 meeting:

warning of possibility of involvement in corrupt chains if **due diligence is inadequate** [74/14/3]. *"[Officer Maskew] reiterated they may inadvertently get involved with corrupt supply chains if they don't conduct adequate ADD checks*". Mr Eagleton recognised this as a serious warning and protested about it.

22 July 2015 HMRC letter to Appellants :

[75/50] letter solely concerning due diligence containing a warning of **cancellation of approval for reasonable cause**.

30 July 2015 meeting:

warning that **revocation can follow if ADD is inadequate and the Appellants' ADD is not complete** [74/16/2] "*[Officer Maskew] told Phil Eagleton that ADD is very comprehensive and that there is a* ***fair bit to do*** *and that revocation can follow as a result of poor ADD...revocation is a reality if ADD not satisfactory*" (emphasis added).

6 August 2015 HMRC letter to Appellants:

[75/51] warning that **revocation can follow if ADD is inadequate and that not all of the Appellants' ADD had been provided despite HMRC's requests**. "*Unsatisfactory due diligence undertaken as I pointed out in our meeting of 30/7/15 can lead to revocation of your excise approval(s).*" This letter also contains a warning of **cancellation of approval for reasonable cause**.

17 August 2015 HMRC letters to Appellants:

[75/55] letters solely concerning due diligence containing a warning of **cancellation of approval for reasonable cause**. "*Unsatisfactory due diligence undertaken can lead to revocation of your excise approval(s).*"

4 September 2015 HMRC letter to Appellants:

[75/61/3] letter warning that the Appellants' **due diligence is seriously inadequate and that failure to comply with the ADD condition can lead to sanctions.** "*HMRC have **serious concerns about the current level of due diligence checks** being completed by your business as required by the conditions of your approval. Your due diligence **falls far short** of the requirements in Public Notice 196, s10 and if you fail to comply with this condition further sanctions will be considered*" (emphasis added).

5 November 2015 meeting:

[74/21] meeting at which the Appellants' **due diligence was criticised and a number of specific risks were highlighted against which due diligence needed to be made**. The minutes should be read in full.

Examples of warnings and criticisms include the following.

"*[Officer Pitt] confirmed Belogistiques closed down due to involvement in tax and excise diversion fraud. LP explained goods sold by EFB and then transported out to Belogistiques from WWL. These goods have been chased and traced through to missing traders in the EU*" [74/20/5].

"[Officer Maskew] states that there was no legitimate market for what you supply to in Europe. 85% of the duty suspended beer that goes out from your Birmingham site is destined for this market yet there does not appear to be a market for the amount of beers that your warehouse send there" [74/20/5].

"[Officer Maskew]…Transport is a key area of ADD and I suggested that you have a 'relaxed attitude' to this and gave the following reasons…you do not do any checks on these hauliers, particularly the sub-contracted hauliers" [74/20/5].

"*[Officer Maskew] advised that he had not seen a documented risk assessment in the ADD provide[d] by the business…"* [74/21/3].

"[Officer Maskew] advised that he had looked at the ADD provided and that there was no audit trail." [74/21/4].

8 February 2016 HMRC minded to letter to the Appellants:

[75/68] **warnings of involvement in tax loss supply chains, due diligence failings and transport irregularities**.

9 February 2016 HMRC letter to Appellants:

[75/69] further **warning of involvement in tax loss supply chains and inadequate due diligence**.

16 March 2016 HMRC letter to Appellants:

[75/79] further details of **tax loss supply chains and criticisms of due diligence**.

10 May 2016 HMRC letter to Appellants:

[76/84] further warnings of **tax loss supply chains, inadequate due diligence, irregularities concerning transport and EU warehouses and behavior and attitudinal problems**.

<u>*Advice on Due Diligence provided to the Appellants*</u>

3 June 2014 Meeting [75/6-7]. Officer Bourne asked what checks were undertaken on hauliers. Notice 726 [Auths/38] was supplied to Jatinder Chatha which states (underlining added):

(a) *"6.1 What checks can I undertake to help ensure the integrity of my supply chain*

The following are examples of indicators that could alert you to the risk that VAT would go unpaid:

1) Legitimacy of customers or suppliers. For example:

- what is your customer's/supplier's history in the trade?
- …
- are they high value deals offered with no formal contractual arrangements?
- are they high value deals offered by a newly established supplier with minimal trading history, low credit rating etc?
- …

2) Commercial viability of the transaction. For example:

- is there a market for this type of goods – such as superseded or outdated mobile phone models or non-UK specific models?
- what research have you done to test whether these goods are available as described and in the quantities being offered?
- is it commercially viable for the price of the goods to increase within the short duration of the supply chain?
- have normal commercial practices been adopted in negotiating prices?
- is there a commercial reason for any third party payments?
- are normal commercial arrangements in place for the financing of the goods?

…

6.2 Checks carried out by existing businesses

The following are examples of specific checks carried out by businesses that took part in the consultation exercise in 2003 when these rules were introduced. These may also help you to decide what checks you should carry out, but this list is not exhaustive and you should decide what checks you need to carry out before dealing with a supplier or customer:

- obtain copies of Certificates of Incorporation and VAT registration certificates
- verify VAT registration details with HMRC
- obtain signed letters of introduction on headed paper
- obtain some form of written and signed trade references
- obtain credit checks or other background checks from an independent third party

- insist on personal contact with a senior officer of the prospective supplier, making an initial visit to their premises whenever possible
- obtain the prospective supplier's bank details, to check whether:

(a) payments would be made to a third party; and

(b) that in the case of an import, the supplier and their bank shared the same country of residence.

- check details provided against other sources, e.g. website, letterheads, BT landline records

Paperwork in addition to invoices may be received in relation to the supplies you purchase and sell. This documentation should be kept to support your view of a transaction's legitimacy. The following are examples of additional paperwork that some businesses retain:

- purchase orders
- pro-forma invoices
- delivery notes
- CMRs (Convention Merchandises Routiers) or airway bills
- allocation notification
- inspection reports

Again this is not an exhaustive list, but does show some of the more common subsidiary documentation."

8 July 2014 Meeting [74/8-9]. Officer Bourne asked whether due diligence on GBDL/ BL was updated [74/8/3].

9 Sept 2014 Meeting [74/10-11]. Officer Bourne asked Jatinder Chatha *"if he was aware of any of his customers' customers through the grapevine who dealt in cash.."* [74/10/3].

Officer Bourne discussed tax losses in supply chains: *"I advised Mr Chatha that the issue arose two or three companies removed from European Food Brokers Ltd. I asked Mr Chatha if he looked at his customers' customer. Mr Chatha advised he was aware of supply chain fraud in the alcohol trade sector but he said that wouldn't be given this information due to 'commercial sensitivity'.* [Bourne para 93: 7/A/18] [74/10/3]

Public Notice 726 was referred to Jatinder Chatha again and he was advised that it could be the basis for duty suspended customer checks [74/10/3-4]. Officer Warburton pointed out to Jatinder Chatha that he would know the identity of some customers from movements to tax warehouses and that asking about the extent of due diligence undertaken by their customers would help to ensure EFBL is not supplying into tax loss chains [74/10/3].

	Officer Bourne asked if Jatinder Chatha believed there was a market for UK goods in the EU, and advised that visit reports (to warehouses) with supporting photographs of premises and risks assessed would add more weight to their due diligence [74/10/4].
9 Sept 2014	Letter [75/19]. Travel documents were sought from the Appellants including travel tickets, receipts etc.
11 Sept 2014	Letter [75/20] (which the Appellants say they did not receive). Due diligence including credit checks, visit reports, risk assessments and GBDL/ BL's history of trade in the industry was sought.
16 Sept 2014	Generic letter explaining ADD condition [75/21].
24 Sept 2014	Letter [75/23] repeating due diligence requests from 11 Sept 2014.
1 Nov 2014	Excise Notice 196, section 10 itself contains much guidance [15/3/1], and should be read in full. Examples of guidance therein are included within the full decision.
6 Nov 2014	Letter to GBDL/BL from IOM C&E raising concerns with their due diligence [75/28]. Question 23 [10/6C/K/5]: *"How do you assure the supply chains you deal in; e.g. do you look at your customer's customer? If not, why not?"*. The letter asks about market research, contracts, visits to customers, transporters and warehouses including noting whether the premises are consistent with what would be expected and supporting documents for such visits, financial health, credit checks, and trading history. NB. Jatinder Chatha knew about this letter at the time [§50: 3/F/12].
6 Nov 14	Email [75/29]. Officer Maskew forwarded Excise Notice 196 to Philip Eagleton.
13 Nov 2014	Letter [75/31]. IoM C&E advised GBDL/ BL to review their due diligence in the light of fraud in their chains.
12 Jan 15	Letter [75/33]. Officer Maskew referred WWL to Excise Notice 196. On transport, he stressed ascertaining who is responsible for the transport, details of delivery vehicles and recording variations in transport arrangements.
11 Mar 15	Meeting [75/13-14]. Excise Notice 196 was discussed and guidance offered [75/14/2]. Officer Maskew asked where most of the Appellants' goods, in particular well-known brands, go to and is there a market for them, does Philip Eagleton look at the full supply chain, if you have meetings on ADD do you record this? [75/14/3].
7 Apr 15	Letter [75/43]. Credit checks and visit reports previously requested were chased.
22 July 15	Letter [75/50]. Officer Maskew listed due diligence records to be made available at the upcoming meeting, including lists of owners, due diligence on owners, financial health checks, due diligence on transport and warehouses.
30 July 15	Meeting [74/16]. Officer Maskew asked if there are IoM company visit reports [74/16/1]. Officer Maskew asked what credit reports had been done on warehouses, and said Philip Eagleton needed to assess the risks for the business and demonstrate this [74/16/2].

6 Aug 15	Letter [75/51]. Officer Maskew wrote to WWL/ EFBL giving examples of due diligence checks that should be included in requested documentation: checks on those who transport duty-suspended goods, site reports, credit checks on warehouses and customers, risk assessments.
17 Aug 15	Letter [75/55]. Officer Maskew reiterated checks listed in 22.7.15 letter.
4 Sept 15	Letter [75/61]. Officer Maskew enclosed letters of 22.7.15, 6.8.15 and 17.8.15 with reference to due diligence and stated to EFBL and WWL "*Your due diligence falls far short of the requirements in Public Notice 196, s10…*" [75/61/3].
9 Sept 15	Meeting [74/18-19]. Notices 196 and 726 were again discussed, the Appellants were reminded to have appropriate management governance in place regarding due diligence, know to whom they were selling, where the goods were destined for and understand the market; checks should be individually tailored, robust. Customer demands for specific brands in countries exceeding expected levels of consumption and goods moving via unusual supply routes were highlighted as risks. Officer Maskew asked if there was a set structure for carrying out checks, and if anything was documented [74/18/2]. He asked if they did ADD on excise warehouses [74/18/2-3]. Officer Pitt asked whether they did owners checks throughout the supply chain, for instance on customers' customers [74/18/2]. Officer Maskew asked if credit checks were done, if contracts were in place with owners [74/18/3]. Officer Pitt recommended checking the level of ADD done by their customers and analysing whether there was a market for the goods [74/15/4]. He asked if they did any onward supply chain checks e.g. the customer's customer [74/18/5-6]. Mr Rimmer recommended WWL and EFBL check the level of due diligence completed by their customer, to see if the checks were robust enough. He also recommended doing analysis of the market to see whether there was a true market for the traded goods. [74/19/3]. He further opined that the most important aspect of FITTED is "D" for deal [74/19/3].
5 Nov 2015	Meeting [74/20-21]. Officer Maskew referred to Excise Notice 196 again. He asked if the Appellants had completed a risk assessment, stressed objectively assessing risks, had reasonable and proportionate checks, which were timely and effective, and documented checks [74/20/2]. He asked how information from customers was tested [74/20/3]. He also asked about the existence of contracts and whether their absence was concerning [74/20/3]. Officer Maskew asked if ADD was done on excise warehouses [74/20/3]. Officer Pitt asked if warehouses have been visited [74/20/4]. Officer Pitt also asked how they safeguard themselves with hauliers [74/20/4]. Officer Maskew said transport was a key area for ADD and asked about ADD on a new haulier and subcontractors, said HMRC was particularly concerned in relation to ADD on subcontractors [74/20/5].

Officer Maskew raised market research and the absence of an apparent market [74/20/5].

Annex 2

HMRC's Timeline of Events - Annex B to the revocation decisions of 8 July 2016

1. I set out below a timeline of the relevant events. In respect of each meeting I have included a summary of the discussions which took place, but have not listed every exchange:-

2. On 03 June 2014 HMRC Officers Tracey Bourne and Emma Robotham attended the business premises of EFBL and your associated business, Whittalls Wines Limited ("WWL"). The officers met with the director of both businesses, Mr Jatinder Chatha, and the bond manager of both businesses, Mr Phil Eagleton. Mr Chatha and Mr Eagleton were asked about the due diligence checks completed by the businesses:

a. Mr Chatha stated that it is his decision whether to sign up a new customer, but he doesn't meet with the directors of those businesses personally: this responsibility is held by the field sales team.

b. Mr Chatha stated that EFBL due diligence checks on customers consisted of credit checks, obtaining copies of the last 3 years' accounts, checking for CCJs, obtaining a VAT registration certificate and requesting company details from Companies House.

c. It was stated that both Mr Chatha and Mr Eagleton had made a visit to IEFW, a tax warehouse located in France.

d. Mr Chatha stated that due diligence checks were completed on the suppliers but not to the same extent as for customers.

e. Mr Chatha and Mr Eagleton were advised by HMRC officers to use Public Notice 726 as a guide for completing their checks.

f. Asked what the risks in the alcohol trade were, Mr Chatha stated these were *'not getting paid'* and *'generic risks with suspicious businesses'*. HMRC officers advised of the risk of duty suspended goods being diverted for home use without the payment of duty of VAT. Mr Chatha and Mr Eagleton agreed, but stated that their experience in this trade for a considerable number of years mitigated the risks of duty suspended diversion fraud.

3. On 08 July 2014 HMRC Officers Tracey Bourne and Emma Robotham attended the business premises of WWL and EFBL and met with Mr Chatha and Mr Eagleton. Officer Bourne explained the purpose of the visit was to discuss the functions performed by the Head Office company in the IoM and the interaction between companies.

a. Mr Chatha confirmed the name of the Head Office company was European Food Brokers Isle of Man Limited ("EFB(IOM)L"). He stated that Mr Rajinder Chatha is the director of EFB(IOM)L.

b. Mr Chatha advised this relationship had started approximately four and a half years earlier, when Rajinder Chatha had to leave the UK and go to the Isle of Mans, and that

he retained the responsibilities and function he had performed at EFBL when based on the mainland UK. This was a continuation of the prior arrangements.

c. The functions completed by EFB(IOM)L were described as 'purchasing', whereby suppliers were met and deals agreed, negotiation and arrangement of retail and wholesale sales prices and the maintenance of systems for stock retail and wholesale. Officer Bourne asked if EFBL had approached any other company to perform head office functions for them and Mr Chatha confirmed they had not.

d. Asked who in EFB(IOM)L had management responsibility for purchases, Mr Chatha stated that Rajinder Chatha and his team were responsible for the purchasing decisions, as Rajinder Chatha had a direct relationship with 10-12 of the main suppliers; Rajinder Chatha is responsible for both duty paid and duty suspended purchases.

e. As to sales, Mr Chatha confirmed the telesales function and mobile sales person were based in Walsall along with sales, accounting, HR and payroll. Mr Chatha confirmed that he had management responsibility for sales including the credit function and new customers.

f. Mr Chatha stated that duty suspended customers were obtained by word of mouth.

4. The due diligence completed by the EFBL and WWL business, and how often it was updated, was also discussed.

a. Mr Chatha stated that the main supplier had been used for many years, and so due diligence was not updated on them.

b. The duty suspended alcohol customers were confirmed to be Global Beverages and Drinks Ltd ("GBDL") and Bridgewell Ltd ("BWL").

c. Mr Eagleton was confirmed to be the bond manager of the EFBL and WWL businesses, and responsible for completing the due diligence checks on GBDL and BWL. Mr Eagleton stated that due diligence on these customers had been completed recently, in around February/March 2014, and was updated every year, or if trade had stopped for any length of time.

d. Officer Bourne asked who owned these companies. Mr Eagleton confirmed they are IOM companies. Mr Eagleton was unclear about who was the contact in these companies, saying *"it's someone called David, who works for both companies. They are separate e-mail addresses but they may be the same person"*.

5. On 09 September 2014 HMRC Officers Tracey Bourne, Jonathan Warburton and Patricia Nicholas attended the business premises of WWL and EFBL and met with Mr Chatha and Mr Eagleton. Due diligence on GBDL and BWL was again discussed:

a. Mr Chatha stated that his brother, Rajinder Chatha, had completed credit checks on these business had met with them in the IoM, and visited the premises.

b. Officer Warburton noted that he had not seen the credit checks or any documents beyond identification for these companies within the due diligence paperwork that he had seen. Mr Chatha said he could ask for this from EFB(IOM)L.

c. Asked how often the due diligence checks were renewed, Mr Chatha said that it depended upon whether they heard anything about their customers that concerned them.

d. Officer Warburton asked how Mr Rajinder Chatha came to trade with GBDL and BWL. Mr Chatha said that his brother now resided in the IOM, was integrating himself

into the local community, and had purchased properties and businesses in the IOM. He said that GBDL and BWL had approached Mr Rajinder Chatha.
e. Mr Chatha did not know how long GBDL and BWL had been trading.
f. Officer Warburton asked whether there was any connection between GBDL, BWL, EFBL and EFB(IOM)L, Mr Chatha stated that "there was not". Officer Warburton asked whether there was any connection between GBDL, BWL and Mr Rajinder Chatha, as GBDL and BWL were taken on as customers of EFBL when Mr Rajinder Chatha was in the IoM. Mr Chatha stated that he was not aware of any connections between his brother and the businesses.

6. During this meeting, WWL and EFBL were advised by HMRC officers:

a. That the level of due diligence which was being completed by them was not robust enough;
b. That there had been tax losses identified in EFBL's supply chains; and
c. That trailers leaving WWL fully loaded and destined for EU had been weighed by cross Channel operators and found to be travelling across the Channel light or empty. They were formally advised of this irregularity in a letter handed to them at the meeting.
d. For assistance in increasing the level of due diligence completed on traders in the duty suspended sector, it was suggested that the business could use Public Notice 726. Mr Chatha replied *"okay"*.

7. On 11 and 24 September 2014 the Commissioners wrote to EFBL and WWL seeking confirmation of the information provided by Mr Chatha at the 09 September 2014 meeting. The letters outlined the Officers' understanding that there was no connection, beneficial or otherwise, between GBDL, BWL, EFB (IOM)L and EFBL, WWL or Mr Rajinder Chatha and also asked if there was any connection, beneficial or otherwise, between GBDL, BWL and Chatha International.

8. On 16 September 2014 the Commissioners wrote to WWL to inform them about the introduction of the new condition relating to their registration or approval with HMRC as an excise trader, taking effect from 01 November 2014. The letter provided information of why the "due diligence" requirements were being introduced and what was to be expected of HMRC approved excise businesses.

9. On 25 September 2014 Mr Eagleton provided paperwork for the movements which had been found to have travelled light of empty across the Channel (as raised in the meeting and letter of 9 September). During a telephone conversation with Officer Nicholas on the same day Mr Eagleton said that he was concerned about the 'light or empty loads' finding. He asked if it was possible that the recorded weights could be wrong or that the trailers were weighed incorrectly.

10. On 26 September 2014 Mr Eagleton stated on email on the topic of light/empty loads that *"Each of the completed files additionally contain an e-mail from the customer stating that he has received all goods despatched to their account in respect of the files in question. Each file additionally contains a landing document from the warehouse of receipt which demonstrates that all goods despatched from Whittalls Wines Ltd were*

received at the intended warehouse of receipt. Given the above, I am not in a position to be able to explain why these loads subsequently weighed either light or empty when passing through the Channel Tunnel when clearly this could not be the case".

11. On 1 November 2014, an Alcohol Due Diligence ("ADD") condition was added to the excise approvals of all registered excise traders. The new ADD condition was set out in **Excise Notice 196: excise goods - registration and approval of warehousekeepers, warehouse premises, owners of goods and registered consignors** ("PN 196"), and details were given in section 10 of the notice. PN 196, containing the new condition, was reissued on 23 October 2014.

12. On 6 November 2014 Officer Maskew sent an email to Mr Eagleton in which he requested the diligence checks carried out by WWL on the hauliers used, in order that the Commissioners could review the due diligence currently being conducted on behalf of the businesses. Officer Maskew also drew Mr Eagleton's attention to the ADD condition and emphasised the importance of this section for all revenue traders.

13. On 12 January 2015 Officer Maskew issued a letter to WWL. In this letter he advised the business of changes to their due diligence obligations since the introduction of the ADD condition in PN196. At this stage, the due diligence documents which had been requested from the business on 06 November 2014 had yet to be provided.

14. On 18 February 2015 Officer Maskew emailed Mr Eagleton and requested a meeting to discuss a number of issues arising from routine warehouse checks which he had conducted, including the ADD condition and the implications that this may have on the businesses. At this stage he had still not received any due diligence documents despite his request on 06 November 2014.

15. On 11 March 2015 Officer Maskew held a meeting with Mr Eagleton to discuss a number of issues including, importantly, EFBL and WWL's ADD responsibilities. At this meeting Officer Maskew explained the contents of PN196 section 10 and HMRC's expectations of traders operating in this area.

16. On 13 March 2015 Officer Maskew sent an email to Mr Eagleton in which he set out the matters that they discussed in the meeting of 11 March 2015, and stated that he needed to speak with Mr Eagleton again concerning EFBL and WWL's due diligence obligations. Officer Maskew stated that he had identified a number of issues regarding movements in duty-suspense, and that he wished to be satisfied that their due diligence procedures were sufficiently robust to identify risks and anomalies.

17. On 7 April 2015 the Commissioners wrote to EFBL requesting again information on the connections between EFBL, GBDL, BWL and Mr Rajinder Chatha, as it had not been provided despite requests on 11 and 24 September 2014. The question asked in the 11 September 2014 and 24 September 2014 letters was repeated.

18. On 15 June 2015 Mr Jatinder Chatha replied to the Commissioners' letter of 7 April 2015. This reply was a forwarding of an email received from Hardeep Chatha,

employee of the IOM businesses, which stated that *"I am lead to believe that the Isle Of Man Customs and Excise have an open dialogue with UK Revenue And Customs and they have explained in detail that Mr Rajinder Chatha is the ultimate beneficial owner of Global Beverage Distribution Limited and Bridgewell Limited and assumed they were aware of this. The only connection, therefore, between the companies in question, other than a strict arm's length commercial trading relationship, is that Mr Rajinder Chatha is either the shareholder or beneficial owner of all of the entities in question."*.

19. On 2 July 2015 Officer Maskew sent an email to Mr Eagleton and requested a formal meeting with the directors of the businesses on 30 July 2015, to discuss due diligence. Officer Maskew had still not received any due diligence paperwork to review despite his request for the same on 6 November 2014.

20. On 22 July 2015 Officer Maskew sent an email to Mr Chatha and Mr Eagleton in which he stated that he would like to proceed with the due diligence meeting proposed for 30 July 2015 despite their request to reschedule. Officer Maskew stated that on this date he intended to uplift all of the businesses' due diligence records for review, and to assist the businesses with their ADD.

21. On 30 July 2015 Officers Robert Maskew and Caroline Higginson attended the business premises of WWL and EFBL and met with Mr Eagleton. They collected the due diligence paperwork detailing checks completed by WWL for analysis. This included some of the due diligence material which had first been requested on 6 November 2014. The officers emphasised to Mr Eagleton the importance of adhering with the ADD condition, and advised of the potential to revoke approvals if the condition was not adhered to. Mr Eagleton confirmed that both he and the directors fully understood the consequences conducting unsatisfactory due diligence. No due diligence completed by EFBL was provided to Officers at this meeting. Mr Eagleton asked for advice as to the types of matters that ought to be covered. Officer Maskew told him that HMRC do not prescribe specific ADD measures, but require businesses to make those assessments themselves. Some due diligence relating to EFBL was provided on 14 August and 9 September 2014.

22. On 09 September 2015, Officers Rob Maskew, Leslie Pitt and Craig Lewis attended the business premises of WWL and EFBL and met with the director, Mr Chatha, Mr Eagleton and their authorised agent, Mr Philip Rimmer. Officer Maskew explained the importance of the ADD condition and what is required of WWL and EFBL. Officer Maskew asked about the due diligence which had been completed by WWL since the condition was introduced.

a. Mr Eagleton stated that for the bonded warehouse services the due diligence procedures are to obtain SEED checks, details of WOWGR registration, customers' I.D, and utility bills.

b. For dispatches, Mr Eagleton stated that he had been a bond controller for 15 years and didn't have any details of supply chain problems, and that there had been no loads lost in his time.

c. As to changes in the businesses' due diligence checks since the new ADD condition came into effect, Mr Chatha stated that the businesses had introduced checks on the individual I.D of directors.

d. Mr Chatha confirmed that he had read Public Notice 196, and the ADD condition, and was *"100% confident"* in the level of due diligence being completed by the bond manager, Mr Eagleton.

e. Asked about a Dun & Bradstreet report which had been supplied to HMRC, Mr Chatha stated that this was done to check credit level / worthiness of new customers. He confirmed that this check was only carried out for duty paid customers, as Mr Chatha considered that there was no need for it with duty suspended customers.

f. Mr Chatha confirmed that the businesses had no contracts in place with anyone. He said this was because *"anyone can approach anyone to trade with"*. Mr Eagleton stated that this was not unusual in this industry.

g. Officer Pitt asked whether there was anything WWL could do past their initial customer to assist in the eradication of fraud. Mr Eagleton stated that he *"wouldn't do anything that was suspected of fraud"*. Mr Chatha stated that he was well aware that the companies which deal with GBDL, BWL and EFBL had not had any concerns raised or notified to them, and so he didn't see a risk in trading with them.

h. Mr Rimmer confirmed that he had advised WWL and EFBL to check the level of due diligence completed by their customer, to see if they were robust enough. He had also advised analysis of the market to see whether there is a true market for the traded goods. Mr Rimmer stated that this could be done by asking questions of the people he/the business was visiting.

i. Mr Chatha stated that EFBL had recently issued a letter to all customers requesting due diligence information. He provided a copy of this letter to officers: it concerned the introduction of the new Alcohol Wholesale Registration Scheme ("AWRS"), and on that basis EFBL requested photographic identification, utility bills and a copy of the VAT registration certificate from the recipients.

j. Officer Pitt asked what onward checks would now be completed on customers. Mr Chatha stated that numerous checks had been completed on duty paid transactions, and that the duty suspended checks consisted of discussions with GBDL and BWL. The last visit to GBDL and BWL was said to have been in November 2014, at which there was a meeting with Mr David Craine (a director of GBDL and BWL).

23. On 05 November 2015 HMRC Officers Robert Maskew, Leslie Pitt and Craig Lewis attended the business premises of WWL and EFBL and met with the director, Mr Chatha, Mr Eagleton and their authorised agent, Mr Philip Rimmer. Asked about the existing due diligence:

a. Asked whether adjustments had been made to due diligence procedures since the last meeting, between HMRC and the businesses, Mr Chatha and Mr Eagleton confirmed that no further changes had been introduced because they did not feel that any were necessary.

b. Officer Lewis asked whether there was a documented procedure in place for the due diligence checks to be completed on customers and suppliers. Mr Chatha stated that a member of the clerical team, "Sandra", was responsible for risk assessments of customers, but that he approved the checks. Sandra was the only person who knew the

procedure. In response to queries about what would happen if Sandra were for some reason unable to carry out due diligence checks, Mr Chatha called Sandra into the meeting and asked her whether there was a documented 'tick list' for due diligence checks. Sandra confirmed that there wasn't; and Mr Chatha asked her to implement a 'checklist'.

c. Officer Maskew produced a sample of documents which were an example of the hard copy due diligence documents which were provided by the WWL and EFBL previously. Officer Maskew observed that all of the printed due diligence documents which had been provided to HMRC appeared to have been created from July 2015 onwards (because a large amount of the documents had a date representing the printing of the document at the foot of the document).Officer Maskew therefore asked whether any due diligence checks had been completed by EFBL between November 2014 and July 2015. Mr Chatha stated that checks had been completed and that documents did exist, but that he *"would have to get it together"*. He also stated that it wasn't to the "current level". Mr Chatha expanded upon this and stated that the business had increased the level of due diligence checks when Officer Maskew had requested the due diligence documents in July 2015.

d. Mr Rimmer stated that he felt that the business had assessed the risk of fraud in its supply chains, and had completed checks to support that. He added that the businesses were confident that there was no fraud in the chains. In response to questions, they confirmed that this confidence related to duty paid trade. Asked whether the same process and opinion was applicable to the duty-suspended goods, and if they were confident that there was no fraud in those chains, Mr Chatha confirmed that the same applied and that he was confident there was no fraud in duty suspended supply chains.

e. Officer Maskew asked about the due diligence completed by EFBL on 'IEFW' – a tax warehouse in France, in which all the documents provided were written in French without translations. Mr Chatha stated that *"everyone has done French at some level and can get the important information from it."* He also stated that these checks were done in addition to the usual SEED checks etc, and they did it to go *"over and above"* to *"keep people happy"*.

f. Mr Chatha confirmed that there were no contracts in place with any business that they trade with. Mr Eagleton added that contracts would be *"the exception rather than the rule"*. Mr Rimmer added that *"if no one else is doing it, why would it be a concern?"*

g. Mr Chatha stated that he felt the businesses had gone *"above and beyond"*, and that they are satisfied with their supplies and their purchases. He confirmed that HMRC had been provided with all of these 'above and beyond' due diligence documents, but had not been given the usual SEED checks etc. Mr Rimmer stated that it had been quite an exercise for the business to get all of this together.

h. Officer Maskew discussed examples of movements on EMCS which had left WWL and been transported to different owners receiving the goods in IEFW in France. He asked whether WWL had completed checks on these new owners in IEFW, to check their credibility. Mr Eagleton stated that they did not complete due diligence on those businesses because EFBL sold to GBDL and BWL and so that due diligence was the responsibility of GBDL and BWL. Mr Eagleton added that WWL do ask GBDL and BWL what checks have been completed on the onward customers, but said that these questions were asked verbally and not recorded.

24. Officers also provided information to the business as follows:

i. Officer Maskew advised that HMRC had conducted checks on the availability of alcohol moving from the UK to France and that there was an indication that there was not a market for those goods going to France. Mr Rimmer stated that France may not be the ultimate destination for the goods, and provided a non-specific example of goods potentially going on to Cyprus after France.

Officer Lewis explained that Officer Maskew asked this question to establish whether the business had considered if there was a legitimate the market for the volume of goods being traded, the commercial viability of their supply of duty-suspended goods, and, if they had considered these risks, whether they had recorded their concerns and checks. Mr Eagleton agreed that he could see the point of asking these questions, and added that he could ask but could only count on the answers they get; they only know what the other business chooses to tell them. Officer Lewis explained that asking the question could lead to answers which showed the need to ask further questions.

j. Officer Pitt notified WWL and EFBL of fraudulent activities which had been identified in the supply chains of goods originating at EFBL and stored at WWL premises. He advised that goods had been traced from WWL's warehouse to EU warehouses where irregularities had occurred. He gave an example of Belogistiques, an EU tax warehouse which had been closed by the Belgium tax authorities due to its involvement in alcohol diversion fraud. Officer Pitt explained how goods arriving at Belogistiques from WWL in one load had been split into multiple loads when leaving the EU warehouse for the onward journey. Some of those onward movements have been traced to missing traders and EU tax losses.

k. Officer Pitt gave further information on what had been established within the chain. He explained that hi-jacked haulier details had been used and recorded as moving the goods from Belogistiques, and that the goods had been traced to fictitious cash and carry businesses allegedly receiving cash sterling as payment. This cash sterling was allegedly transported into the UK to pay the supplier, who paid the funds into UK bank accounts. Officer Pitt confirmed that this is a concern as it is an indication of goods being diverted and sold on the UK market rather than elsewhere in the EU.

l. Officer Pitt asked what changes the businesses would implement now that they were aware of the fraudulent activity occurring in their supply chains. Mr Chatha stated that he still didn't think any more checks were necessary and repeated that what they did was "over and above" what was required.

25. On 8 February 2016, because of the concerns that the Commissioners had (on the basis of their investigation, and correspondence and meetings with you since June 2014), I wrote to inform you that the Commissioners were minded to revoke your excise approvals. You responded to that letter, substantively, on 25 February. Ms Barnard of HMRC Solicitor's Office replied to that letter on 16 March. This was followed by further representations, in letters from your advisers dated 2 and 26 April, and by witness statements and documents in support of your contention that you should retain your excise approvals. I have considered all of this material in reaching a view as to whether or not your approval should be revoked.