NCN: [2021] UKFTT 0287 (TC)

TC08230

VALUE ADDED TAX – denial of relief for input tax on the basis that the Appellant knew or should have known that the supplies in question were connected to the fraudulent evasion of VAT – denial of zero rating for supplies made by the Appellant on the basis that the Appellant knew or should have known that the supplies in question were connected to the fraudulent evasion of VAT – conclusion that, in relation to the supplies made to the Appellant, on the balance of probabilities, the Appellant did not know, but should have known, of that connection and appeals dismissed to that extent – conclusion that, in relation to the supplies made by the Appellant, the appeals succeeded because either the Respondents had not adequately pleaded their case or the Respondents had not satisfied the burden of showing that, on the balance of probabilities, the supplies were connected to the fraudulent evasion of VAT

FIRST-TIER TRIBUNAL
TAX CHAMBER

Appeal number: TC/2018/06449;
TC/2019/04337

BETWEEN

NORTHSIDE FLEET LIMITED **Appellant**

-and-

THE COMMISSIONERS FOR
HER MAJESTY'S REVENUE AND CUSTOMS **Respondents**

TRIBUNAL: JUDGE TONY BEARE
MR JULIAN SIMS

The hearing took place on 5, 6, 7 and 8 July 2021. The form of the hearing was V (video) on the Tribunal video platform. A face-to-face hearing was not held because of the pandemic. The documents to which we were referred were a documents bundle of 3246 pages (the "DB"), an authorities bundle of 625 pages and various documents provided in the course of the hearing, including three publications of the Respondents – namely, a fact sheet in relation to compliance checks (CC/FS1a), VAT Notice 726 (in the form in which it stood in the period relevant to the appeals) and a booklet headed "How to spot missing trader fraud".

Prior notice of the hearing had been published on the gov.uk website, with information about how representatives of the media or members of the public could apply to join the hearing remotely in order to observe the proceedings. As such, the hearing was held in public.

Mr Howard Watkinson, instructed by ASW Solicitors, for the Appellant

Ms Joanna Vicary, instructed by the General Counsel and Solicitor to HM Revenue and Customs, for the Respondents

DECISION

TABLE OF CONTENTS

INTRODUCTION

1. This appeal relates to:

   (1) decisions by the Respondents to deny the Appellant the right to recover input tax for the purposes of value added tax ("VAT") in respect of certain acquisitions made by the Appellant in the Appellant's monthly VAT accounting periods ending 01/17, 02/17, 03/17, 04/17, 05/17, 06/17 and 07/17; and

   (2) decisions by the Respondents to refuse zero-rating for certain supplies made by the Appellant in the Appellant's monthly VAT accounting periods ending 01/17, 02/17, 03/17, 04/17, 05/17, 06/17 and 07/17 and the final VAT accounting period before its de-registration (referred to as VAT accounting period "99/99").

2. The Respondents have based their decision to deny the input tax recovery on the basis that the transactions in question were connected to the fraudulent evasion of VAT and the Appellant either knew or should have known that that was the case, under the principle set out in *Axel Kittel v Belgian State and Belgian State v Recolta Recycling SPRL* (C-439/04 and C-440/04) ("*Kittel*"), whilst the Respondents have based their decision to refuse zero-rating on the basis that the transactions in question were connected to the fraudulent evasion of VAT and the Appellant either knew or should have known that that was the case, under the principle set out in *Mecsek-Gabona Kft v Nemzeti Ado-es Vamhivatal Del-dunantuli Regionalis Ado Foigazgatosaga* (C-273/11)("*Mecsek*").

3. The aggregate amount of input tax at stake in relation to the decisions described in paragraph 1(1) above - following an amendment to the figures in issue on 27 December 2018 - is £197,469.40 (£142,936.06 plus £54,533.34), whilst the aggregate amount of output tax at stake in relation to the decisions mentioned in paragraph 1(2) above is £470,715.99 (£351,250.00 plus £119,465.99).

4. Originally, these matters were the subject of two separate appeals but those appeals were consolidated by way of a direction made by the First-tier Tribunal on 2 August 2019.

THE LAW

Introduction

5. There is no dispute between the parties in relation to the law which is relevant to this appeal.

Input tax

Legislation

6. Articles 167 and 168 of Council Directive 2006/112/EC of 28 November 2006 on the common system of VAT (the "2006 Directive") provide as follows:

"Article 167

A right of deduction shall arise at the time the deductible tax becomes chargeable.

Article 168

In so far as the goods and services are used for the purposes of the taxed transactions of a taxable person, the taxable person shall be entitled, in the Member State in which he carries out these transactions, to deduct the following from the VAT, which he is liable to pay:

(a) the VAT due or paid in that Member State in respect of supplies to him of goods or services, carried out or to be carried out by another taxable person…"

7. Article 273 of the 2006 Directive provides that "Member States may impose other obligations which they deem necessary to ensure the correct collection of VAT and to prevent evasion, subject to the requirement of equal treatment as between domestic transactions and transactions carried out between Member States by taxable persons and provided that such obligations do not, in trade between Member States, give rise to formalities connected with the crossing of frontiers".

8. The above provisions are reflected in the UK domestic legislation by Sections 24, 25 and 26 of the Value Added Tax Act 1994 (the "VATA"), the relevant parts of which provide as follows:

"24 Input tax and output tax

(1) Subject to the following provisions of this section, "input tax", in relation to a taxable person, means the following tax, that is to say-

(a) VAT on the supply to him of any goods or services;…

being (in each case) goods or services used or to be used for the purpose of any business carried on or to be carried on by him…

(2) Subject to the following provisions of this section, "output tax", in relation to a taxable person, means VAT on supplies which he makes…"

25 Payment by reference to accounting periods and credit for input tax against output tax

(1) A taxable person shall-

(a) in respect of supplies made by him…

account for and pay VAT by reference to such periods (in this Act referred to as "prescribed accounting periods") at such time and in such manner as may be determined by or under regulations and regulations may make different provision for different circumstances.

(2) Subject to the provisions of this section, he is entitled at the end of each prescribed accounting period to credit for so much of his input tax as is allowable under section 26, and then to deduct that amount from any output tax that is due from him.

26 Input tax allowable under section 25

(1) The amount of input tax for which a taxable person is entitled to credit at the end of any period shall be so much of the input tax for the period (that is input tax on supplies…in the period) as is allowable by or under regulations as being attributable to supplies within subsection (2) below.

(2) The supplies within this subsection are the following supplies made or to be made by the taxable person in the course or furtherance of his business –

(a) taxable supplies…"

9. It follows from the above provisions that the normal application of the VAT legislation is that, where a taxable person has incurred input tax on a supply which is properly attributable to, inter alia, a taxable supply made by that person and holds an invoice complying with the requirements of the relevant regulations in respect of the supply so received, then that person is entitled to set off against its VAT output tax liability in respect of the VAT accounting period in question the input tax on the supply and, to the extent that that input tax exceeds its output tax liability, receive a repayment from the Respondents in respect of the input tax.

Case law

Knowledge or means of knowledge

10. Notwithstanding the legislation set out in paragraphs 6 to 9 above, the European Court of Justice (the "CJEU") in *Kittel* confirmed that a taxable person who knew or should have known that the supplies in which input tax was incurred were connected with the fraudulent evasion of VAT would not be entitled to claim a credit in respect of that input tax in the manner described above. In particular, at paragraphs [51] and [56] of its decision in *Kittel*, the CJEU, whilst reiterating that "traders who take every precaution which could reasonably be required of them to ensure that their transactions are not connected with fraud" should not lose their right to a credit for the input tax in relation to supplies associated with fraud, held that *"*a taxable person who knew or should have known that, by his purchase, he was taking part in a transaction connected with fraudulent evasion of VAT must, for the purposes of the [then applicable directive (which has now been replaced by the 2006 Directive)], be regarded as a participant in that fraud, irrespective of whether or not he profited by the resale of the goods."

11. The rationale for the above approach was set out by the CJEU at paragraphs [57] and [58] of its decision, where it noted the following:

"[57] That is because in such a situation the taxable person aids the perpetrators of the fraud and becomes their accomplice.

[58] In addition, such an interpretation, by making it more difficult to carry out fraudulent transactions, is apt to prevent them."

12. At paragraph [59] of its decision, the CJEU concluded that "it is for the referring court to refuse entitlement to the right to deduct where it is ascertained, having regard to objective factors, that the taxable person knew or should have known that, by his purchase, he was participating in a transaction connected with fraudulent evasion of VAT, and to do so even where the transaction in question meets the objective criteria which form the basis of the concepts of 'supply of goods effected by a taxable person acting as such' and 'economic activity'."

13. At paragraph [61] of its decision, the CJEU reiterated that, "where it is ascertained, having regard to objective factors, that the supply is to a taxable person who knew or should have known that, by his purchase, he was participating in a transaction connected with fraudulent evasion of VAT, it is for the national court to refuse that taxable person entitlement to the right to deduct."

14. The issues to which the CJEU decision in *Kittel* gave rise were addressed in the UK context by the Court of Appeal in its decision in *Mobilx Limited (in Liquidation) v The Commissioners for Her Majesty's Revenue and Customs* [2010] EWCA Civ 517 ("*Mobilx*"). At paragraph [52] of the decision in that case, Moses LJ said as follows in relation to the "should have known" part of the *Kittel* test:

"If a taxpayer has the means at his disposal of knowing that by his purchase he is participating in a transaction connected with fraudulent evasion of VAT he loses his right to deduct, not as a penalty for negligence, but because the objective criteria for the scope of that right are not met. It profits nothing to contend that, in domestic law, complicity in fraud denotes a more culpable state of mind than carelessness, in the light of the principle in Kittel. A trader who fails to deploy means of knowledge available to him does not satisfy the objective criteria which must be met before his right to deduct arises."

Extent of knowledge

15. At paragraphs [53] to [60] of the decision in *Mobilx*, Moses LJ went on to address the question of the extent of knowledge required. He observed that it would offend the principle of legal certainty to deny the input tax credit on the grounds that the relevant taxpayer knew or should have known that it was more likely than not that the supplies in question were connected with fraud. Instead, such denial could be made only if the relevant taxpayer knew or should have known that the supplies in question were connected with fraud. At paragraph [59], Moses LJ observed that:

"The test in Kittel is simple and should not be over-refined, it embraces not only those who know of the connection but those who "should have known". Thus it includes those who should have known from the circumstances which surround their transactions that they were connected to fraudulent evasion. If a trader should have known that the only reasonable explanation for the transaction in which he was involved was that it was connected with fraudulent evasion of VAT then he should have known of that fact..." .

Undeployed means of knowledge

16. In the paragraph of the decision in *Mobilx* just cited, Moses LJ went on to say the following:

"A trader who decides to participate in a transaction connected to fraudulent evasion, despite knowledge of that connection, is making an informed choice; he knows where he stands and knows before he enters into the transaction that if found out, he will not be entitled to deduct input tax. The extension of that principle to a taxable person who has the means of knowledge but chooses not to deploy it, similarly, does not infringe that principle. If he has the means of knowledge available and chooses not to deploy it he knows that, if found out, he will not be entitled to deduct. If he chooses to ignore obvious inferences from the facts and circumstances in which he has been trading, he will not be entitled to deduct."

17. A significant question which arises out of this is whether a person who has carried out no, or an insufficient amount of, due diligence but who would still have been unable to discover that the transactions in question were connected with fraud even if it had carried out the appropriate level of due diligence should lose the right to credit the input tax. The general rule in those circumstances is that, if the appropriate level of due diligence would still not have revealed the fraud, then the right to credit remains. As Lewison J noted in *The Commissioners for Her Majesty's Revenue and Customs v Livewire Telecom Limited* [2009] EWHC 15 (Ch) ("*Livewire*") at paragraph [88]:

"In my judgment …if a taxable person has not taken every precaution that could reasonably be expected of him, he will still not forfeit his right to deduct input tax in a case where he would not have discovered the connection with fraud even if he had taken those precautions".

It stands to reason that that should be the case because it is implicit in the phrase "should have known" that the failure of the relevant person to conduct appropriate due diligence can be significant in this context only if that due diligence would have revealed something.

18. On the other hand, it is easy to become too focused on the relevance of due diligence without taking into account obvious inferences which should be drawn from the circumstances in which the transaction in question is carried out. At paragraph [64] of the decision in *Mobilx*, Moses LJ reiterated that, "[if] it is established that a trader should have known that by his purchase there was no reasonable explanation for the circumstances in which the transaction was undertaken other than that it was connected with fraud then such a trader was directly and knowingly involved in fraudulent evasion of VAT*"* and, at paragraphs [81] and [82] of the decision in *Mobilx*, Moses LJ noted that the burden of proof in such cases is on the Respondents but made it clear that that "is far from saying that the surrounding circumstances cannot establish sufficient knowledge to treat the trader as a participant ...Tribunals should not unduly focus on the question whether a trader has acted with due diligence. Even if a trader has asked appropriate questions, he is not entitled to ignore the circumstances in which his transactions take place if the only reasonable explanation for them is that his transactions have been or will be connected to fraud. The danger in focussing on the question of due diligence is that it may deflect a Tribunal from asking the essential question posed in *Kittel*, namely, whether the trader should have known that by his purchase he was taking part in a transaction connected with fraudulent evasion of VAT. The circumstances may well establish that he was.*"*

No other reasonable explanation

19. The test outlined in *Mobilx* – to the effect that a taxpayer should be regarded as having constructive knowledge that its transaction was connected with fraud only if the only reasonable explanation for the transaction was that it was connected with fraud – was referred to by Arden LJ in in *Davis & Dann & Another v The Commissioners for HM Customs and Excise* [2016] EWCA Civ 142 ("*Davis*") at paragraph [4] as "the no other reasonable explanation standard". Arden LJ went on to hold that, in applying this standard, a court needs to consider the totality of the evidence and not examine each factor in the transaction in a piecemeal fashion. In other words, a factor which, when viewed in isolation, might be capable of explanation as being unconnected with fraud might still tend to be probative of knowledge to "the no other reasonable explanation standard" once it is viewed in the light of all of the evidence – see paragraphs [60] to [65] in *Davis*.

Summary

20. In our view, the case law described above establishes the following principles of importance in the context of this case:

(1) the relevant question is not whether the relevant trader has conducted due diligence but rather whether the relevant trader should have known of the connection with the fraud (see Moses LJ in *Mobilx*, as described in paragraphs 14 and 15 above);

(2) this means that the fact that the relevant trader has not done any, or what the relevant court or tribunal considers to be an appropriate amount of, due diligence will not, in and of itself, mean that the relevant trader should be denied a credit for the input tax if it can be shown that the due diligence in question would not have revealed the connection with the fraud (see Lewison J in *Livewire*, as described in paragraph 17 above);

(3) on the other hand, if the relevant trader should have been aware of the connection with fraud because it was an obvious inference from the facts and circumstances of the transaction and there was no other reasonable explanation for the circumstances in which the transaction was undertaken, then it should not be entitled to a credit for the input tax regardless of whether or not it has conducted due diligence (see Moses LJ in *Mobilx*, as described in paragraph 18 above);

(4) it not sufficient for the Respondents to show that the taxpayer should have known that, by its purchase:

(a) it was running the risk that it might be taking part in a transaction connected with fraud; or

(b) it was taking part in a transaction which was likely to have been connected with fraud.

Instead, the facts must be such that the only reasonable explanation for the transaction was that it was connected with fraud (see Moses LJ in *Mobilx* as described in paragraph 18 above); and

(5) however, in approaching that question, the relevant court or tribunal needs to consider the totality of the evidence and not examine each factor in the transaction in a piecemeal fashion (see Arden LJ in *Davis* as described in paragraph 19 above).

21. From the submissions of the parties at the hearing of the appeals, we believe that they were in agreement with the above statement of the law in this area.

Zero-rating

Legislation

22. Article 138(1) of the 2006 Directive provides as follows:

"Member States shall exempt the supply of goods dispatched or transported to a destination outside their respective territory but within the Community, by or on behalf of the vendor or the person acquiring the goods, for another taxable person, or for a non-taxable legal person acting as such in a Member State other than that in which dispatch or transport of the goods began."

23. The above provision is reflected in the UK domestic legislation by Section 30(8) VATA, which, at the time of the transactions which are relevant in the appeals, stipulated that:

"Regulations may provide for the zero-rating of supplies of goods, or of such goods as may be specified in the regulations, in cases where—

(a) the Commissioners are satisfied that the goods have been or are to be exported to a place outside the member States or that the supply in question involves both—

(i) the removal of the goods from the United Kingdom; and

(ii) their acquisition in another member State by a person who is liable for VAT on the

acquisition in accordance with provisions of the law of that member State corresponding, in relation to that member State, to the provisions of section 10; and

(b) such other conditions, if any, as may be specified in the regulations or the Commissioners may impose are fulfilled."

Case law

24. In *Mecsek*, the CJEU addressed the question of the lengths to which a supplier was required to go in order to satisfy itself that its supplies qualified for zero-rating, recognising the need for legal certainty and the correct and straightforward application of the VAT regime. It held that, in order to prevent tax evasion, avoidance and abuse, stringent requirements in relation to the supplier's obligations could be justified (see paragraph [47] in *Mecsek*).

25. It was therefore "not contrary to European law to require a supplier to act in good faith and to take every step which could reasonably be asked of it to satisfy itself that the transaction which it is carrying out does not result in its participation in tax fraud" (see paragraph [48] in M*ecsek*). In that respect, the CJEU was following the earlier decisions in *R (Teleos plc and others) v Customs and Excise Commissioners* (Case C-409/04) [2008] QB 600 ("*Teleos*") (at paragraph [65]) and *Mahagében kft v Nemzeti Adó-es Vámhivatal Dél-dunántúli Regionális Adó Föigazgatósága and Dávid v Nemzeti Adó-es Vámhivatal Észak-alföldi Regionális Adó Föigazgatósága* [2012] STC 1934 ("*Mahagében*") (at paragraph [54]).

26. The CJEU went on to say (in paragraphs [53] to [55]) that it was for the national court in each case to establish whether the relevant supplier "had acted in good faith and taken every step which could reasonably be asked of it to satisfy itself that the transaction which it had carried out had not resulted in its participation in tax fraud" and that, in circumstances where that was not the case, there would be no entitlement to zero-rating.

27. It can be seen that the way in which the CJEU expressed the relevant test in the above cases on zero-rating exports was by reference to a two-stage process – namely, has the supplier acted in good faith and taken every step which could reasonably be asked of it to satisfy itself that the transaction which it has carried out has not resulted in its participation in tax fraud. In contrast, the way in which the CJEU expressed the relevant test in the *Kittel* input tax credit situation was to ask whether the taxpayer knew or should have known of the tax fraud. Neither party in these proceedings sought to make anything of this difference and it seems from the way in which the CJEU approached its decision in *Staatssecretaris van Financiën v Schoenimport 'Italmoda' Mariano Previti vof and other cases* (C-131/13, C-163/13, C-164/13) [2014] 12 WLUK 662 ("*Italmoda*"), that the CJEU sees no distinction between the two – see paragraphs [49] and [50] in *Italmoda*. Instead, the two-stage test in *Mecsek* can be seen as no more than an application of the actual or constructive knowledge formulation in *Kittel*. That is certainly the view which was reached by the Upper Tribunal in *Infinity Distribution Limited (in administration) v The Commissioners for Her Majesty's Revenue and Customs* [2019] UKUT 405 (TCC) at paragraph [72].

28. It therefore follows that the principles described in paragraph 20 above in relation to the application of *Kittel* in the input tax context are equally applicable in relation to the application of *Mecsek* in the zero-rating context.

THE MATTERS IN DISPUTE

Introduction

29. Before outlining the questions of law to which the appeals in this case give rise, we should briefly summarise the transactions which have led to the appeals.

30. The input tax element of the appeals arises out of the denial by the Respondents of the Appellant's right to recover input tax on purchases of vehicles made by the Appellant during the VAT accounting periods in question from four suppliers, as follows:

(1) Mr Joseph Murdock, trading as Mohawk Trading ("Mohawk");

(2) Instant Sales Limited ("Instant");

(3) KW Direct Limited ("KWD"); and

(4) Donnelly Leasing Limited ("DLL").

31. The zero-rating element of the appeals arises out of the denial by the Respondents of the Appellant's right to zero-rate sales of vehicles made by the Appellant during the VAT accounting periods in question to nine customers in the Republic of Ireland (the "ROI"), as follows:

(1) Mr Kevin Francis Corr ("Corr");

(2) Mr Leon Lee ("Lee");

(3) Mr Wayne Cottrell ("Cottrell");

(4) Greasemonkey Motorworks Limited ("Greasemonkey");

(5) Ivymill Limited ("Ivymill";

(6) Mr Paul McGurk ("McGurk");

(7) Solum Limited ("Solum");

(8) Actron Distribution Limited ("Actron"); and

(9) Hayes & Healy Transport Limited ("Hayes").

32. In other words, in relation to each vehicle the purchase of which is relevant to the input tax element of the appeals, the Respondents are alleging that there was fraud "upstream" of the Appellant which gave rise to a loss of VAT and that the Appellant knew or ought to have known that its purchase was connected with that fraud and, in relation to each vehicle the sale of which is relevant to the zero-rating element of the appeals, the Respondents are alleging that there was fraud "downstream" of the Appellant which gave rise to a loss of VAT in the ROI and that the Appellant knew or ought to have known that its sale was connected with that fraud.

The substantive issues

33. It is common ground that the above means that the substantive issues which need to be addressed in relation to each purchase or sale which is relevant to the appeals are:

(1) has there been a loss of VAT?

(2) has the loss of VAT been caused by fraudulent evasion?

(3) was the relevant purchase or sale connected with that fraudulent evasion? and

(4) did the Appellant know or should the Appellant have known that the relevant purchase or sale was connected with that fraudulent evasion?

34. It is also common ground that the burden of proof in relation to each of the above is on the Respondents and therefore that it is for the Respondents to prove that each of the above is the case, on the balance of probabilities - see *Mobilx* at paragraphs [81] and [82]. Thus, it is incumbent on the Respondents to establish that the evidence which they have adduced satisfies us that each of the four conditions set out in paragraph 33 above is satisfied in relation to each

purchase or sale unless the Appellant accepts that a particular condition is satisfied in relation to that purchase or sale.

35. The Appellant has accepted that the first of the conditions set out in paragraph 33 above is met in relation to each purchase in this case but it does not accept that that condition is satisfied in relation to each sale in this case. It also does not accept that the second or fourth conditions are satisfied in relation to any purchase or sale in this case. That is to say that it submits that, even if there was a VAT loss in relation to any vehicle, it does not accept that that VAT loss was caused by fraud and it submits that, even if there was a VAT loss in relation to any vehicle caused by fraud, it did not know and could not reasonably have known that that was the case.

36. However, it has accepted that, insofar as the Respondents are able to establish that a particular vehicle was the subject of a fraud giving rise to a VAT loss by its supplier or customer, there is a connection between the transaction in relation to that vehicle into which it entered with that supplier or customer and that fraudulent evasion of VAT so that the third condition set out in paragraph 33 above would be satisfied. In other words, it accepts that it has entered into the transactions with the relevant suppliers and customers which the Respondents allege it has.

The procedural issue

37. At the start of the hearing of the appeals, before considering the evidence, we were required to adjudicate on a preliminary procedural question, which was whether the Respondents were even entitled to adduce evidence in relation to the fraud which it was alleging had been committed by one or more of the Appellant's customers.

38. It is well-established that fraudulent behaviour needs to be distinctly alleged and distinctly proved - see *Armitage v Nurse* [1998] Ch 241 at 256F per Millett LJ. More importantly, the alleged fraudulent behaviour must be sufficiently particularised in order to give the other party sufficient notice that this is indeed what is being alleged - see *Three Rivers District Council v Governor and Company of the Bank of England* (No 3) [2003] 2 AC 1 ("*Three Rivers*") at paragraphs [184] to [186] per Lord Millett. These principles apply just as much in tax appeals heard in the First-tier Tribunal as they do in other litigation - see *Blue Sphere Global Ltd. v The Commissioners for Her Majesty's Revenue and Customs* [2008] UKVAT 20694 at paragraph [30] per Judge Wallace.

39. As noted by Lord Millett in the paragraphs from *Three Rivers* referred to above, there are two principles in play in this context. One is simply a matter of pleading. The function of pleadings is to give the other party sufficient notice of the case which is being made against him. However, "[the] second principle, which is quite distinct, is that an allegation of fraud or dishonesty must be sufficiently particularised, and that particulars of facts which are consistent with honesty are not sufficient. This is only partly a matter of pleading. It is also a matter of substance. As I have said, the defendant is entitled to know the case he has to meet. But since dishonesty is usually a matter of inference from primary facts, this involves knowing not only that he is alleged to have acted dishonestly, but also the primary facts which will be relied upon at trial to justify the inference. At trial the court will not normally allow proof of primary facts which have not been pleaded, and will not do so in a case of fraud. It is not open to the court to infer dishonesty from facts which have not been pleaded, or from facts which have been pleaded but are consistent with honesty. There must be some fact which tilts the balance and justifies an inference of dishonesty, and this fact must be both pleaded and proved."

40. In reliance on the above procedural rule, at the start of the hearing, Mr Watkinson submitted on behalf of the Appellant that the pleading of fraud made by the Respondents in their consolidated statement of case (the "CSOC") in relation to each of the Appellant's

customers was insufficiently particularised to allow the Respondents' case against the Appellant in relation to the zero-rating element of the appeals to proceed. In particular, he noted that, in order for the Respondents to be able to succeed in relation to their allegation of fraud by a particular customer in relation to the vehicle sold by the Appellant to that customer, the Respondents would need to show that the vehicle in question had been the subject of VAT fraud in the ROI - in other words, that the customer had on-sold the relevant vehicle in circumstances where the sale gave rise to VAT and had fraudulently failed to account for some or all of that VAT.

41. Whilst not dissenting from the above description of the procedural rule, Ms Vicary, on behalf of the Respondents, submitted that, on the contrary, the CSOC did contain sufficiently-particularised allegations of fraud to enable the Respondents to proceed with their case in relation to that element of the appeals, particularly when the content of the CSOC was viewed together with the information which was contained in the witness statements of the Respondents' witnesses.

42. After adjourning to consider the relevant section of the CSOC, which is set out in full in the Appendix to this decision, we concluded that Mr Watkinson was correct in relation to those of the vehicles which had been sold by the Appellant to each of the specified customers apart from Greasemonkey and Hayes. We reached this conclusion for the following reasons:

(1) in our view, in order for the CSOC to have met the standard of particularisation set out in *Three Rivers*, it needed to set out, in sufficient detail for the Appellant to understand the case which it was required to meet, the primary facts on which the Respondents intended to rely to establish that each relevant customer had perpetrated a VAT fraud in relation to each of the vehicles which the Appellant had sold to that customer and which was the subject of the appeals. It was not sufficient for the CSOC to set out generalised allegations, unsupported by the primary facts on which reliance was to be placed to support those generalised allegations, and then rely on the detail in the witness statements to cure that defect;

(2) the terms of the CSOC were woefully inadequate in this respect. Instead of setting out the primary facts on which the Respondents intended to rely to show that the vehicles sold by the Appellant had been the subject of VAT fraud by each customer to whom the Appellant had sold vehicles, the CSOC contained a number general statements and assertions which bore no necessary relationship to fraud by the customer in relation to the vehicles in question;

(3) for example, the preamble to paragraph 56 of the CSOC contained a general statement to the effect that each of the customers "have been found to have been involved in fraudulent transactions or were the subject of deregistration action in the Republic of Ireland". That statement would have been entirely appropriate as an introduction to a recitation of the primary facts required to be proved in order to justify the statement but, in and of itself, it was not sufficiently particularised to comply with the standard laid down by Lord Millett;

(4) although the paragraph then purported to describe in further detail the nature of the wrongdoing by each customer, those descriptions were, for the most part, vague and unparticularised and, with the exception of the sub-paragraphs relating to Greasemonkey and Hayes, none of the sub-paragraphs relating to the customers set out the primary facts which, if established, would enable us to conclude that the relevant customer had fraudulently evaded VAT in respect of the vehicle in question;

(5) picking up on specific points:

(a) a number of the sub-paragraphs asserted that the relevant customer had been de-registered for VAT in the ROI – see those sub-paragraphs in relation to Corr, Lee, Cottrell, Ivymill, McGurk, Solum and Actron. However, none of those sub-paragraphs then went on to say that vehicles sold to the relevant customer by the Appellant had consequently then been the subject of VAT fraud. In fact, in the case of Cottrell, the date of de-registration was said to be 19 April 2017, which was clearly after the end of the last VAT accounting period of the Appellant in which the sales by the Appellant to Cottrell took place;

(b) similarly, a number of the sub-paragraphs asserted that the relevant customer was a missing trader without specifying the date from which the relevant customer had become a missing trader and what defaults the relevant customer had made in his VAT liabilities as a result of being so – see those sub-paragraphs in relation to Corr, Lee and Ivymill. As a result, no link was set out in the CSOC between any liability for VAT on the vehicles in question and the fact that the trader had gone missing;

(c) although the sub-paragraph in relation to Lee contained a pleading to the effect that the vehicles sold to Lee had been on-sold by Lee to Northside Motorpark Limited ("Motorpark"), an affiliate of the Appellant in the ROI, there was no pleading to the effect that Lee had fraudulently failed to account for VAT in respect of those sales, which was what the Respondents would have to establish in order to satisfy the burden of proof in the appeals so far as the sale by the Appellant to Lee were concerned;

(d) although the sub-paragraphs in relation to each of Cottrell and Solum contained a statement that the relevant customer was being investigated for VAT fraud, no statement was made linking the alleged VAT fraud to any of the vehicles sold by the Appellant to the relevant customer;

(e) although the sub-paragraphs in relation to Lee and Ivymill alluded to the fact that Lee was the director of Ivymill, that was not a primary fact which, if proved, would establish the existence of the fraudulent evasion of VAT by either of Lee or Ivymill in respect of the vehicles sold to them by the Appellant; and

(f) the sub-paragraph in relation to Solum referred to the fact that a number of the vehicles sold by the Appellant to Solum had been on-sold by Solum to customers in the UK. It was unclear to us how such sales gave rise to VAT in the ROI for which Solum fraudulently failed to account and therefore how such sales gave rise to a VAT loss caused by fraud by the customer; and

(6) despite the above deficiencies, we considered that there was enough in the sub-paragraphs in relation to each of Greasemonkey and Hayes to allow the case against the Appellant in respect of the vehicles sold to those customers to be allowed to proceed. In the case of Greasemonkey, we concluded that the statement to the effect that the company's VAT number had been hijacked might be sufficient, if proven, to establish on the balance of probabilities that the person who purchased the relevant vehicles from the Appellant had committed VAT fraud in relation to the vehicles which it had acquired from the Appellant and, in the case of Hayes, we concluded that the statement to the effect that Hayes had "failed to account for VAT on the purchase and sale of the vehicles in question" might be sufficient, if proven, to establish on the balance of probabilities that Hayes had committed VAT fraud in relation to the vehicles which it had acquired from the Appellant.

43. Given the conclusions set out in paragraph 42 above, we orally directed that the Respondents were permitted to pursue the zero-rating element of their case against the Appellant only in respect of the vehicles sold by the Appellant to Greasemonkey or Hayes and that the Appellant was entitled to succeed in its appeals to the extent that the appeals related to the zero-rating of the vehicles sold to the customers in the ROI other than Greasemonkey or Hayes (the "disqualified customers"). In response to Ms Vicary's request for an indication of the practical effect of this direction, we further directed that this did not preclude the Respondents from relying on any facts set out in the CSOC in relation to the disqualified customers to the extent that those facts were relevant to the issues which remained outstanding in the appeals following the above direction.

44. After we made the direction described in paragraph 43 above, Ms Vicary asked us to set out in writing the full reasons for the direction, which we have now done in paragraph 42 above, and informed us that the Respondents intended to apply for permission to appeal against the direction in due course. She went on to make an application on behalf of the Respondents for the proceedings to be adjourned in order to enable the full reasons for the direction to be produced.

45. That application was strongly opposed by Mr Watkinson, who adopted the arguments made in similar circumstances in the First-tier Tribunal case of *JDI Trading Limited v The Commissioners for Her Majesty's Revenue and Customs* [2012] UKFTT 642 (TC) ("*JDI*") and summarised in paragraphs [44] and [45] of the decision in that case.

46. After adjourning once again to consider Ms Vicary's application for an adjournment, we concluded, on balance, that the application should be refused and we should proceed to hear the evidence in relation to the appeals to the extent that the appeals remained outstanding. Our reasons for reaching this conclusion were that:

(1) the direction described in paragraph 43 above was a case management direction against which there was a very high bar for permission to appeal – see Sir Andrew Park in *Mobile Export/Shelford v The Commissioners for Her Majesty's Revenue and Customs* [2009] EWHC 797 (Ch), referring to *Customs and Excise Commissioners v Gil Insurance Limited* [2000] STC 2004, *Customs and Excise Commissioners v Young* [1993] STC 394 and *Seabrook and Smith Limited v Customs and Excise Commissioners* [2004] EWHC 306;

(2) the Respondents had been on notice of the Appellant's objections to the terms of the CSOC since the delivery of Mr Watkinson's skeleton argument some two weeks before the hearing and had done nothing in response to those objections prior to the hearing either by addressing them in their skeleton argument or by making an application to amend the CSOC;

(3) the appeals had been ongoing for some considerable time. Although the period for which they had been pending was slightly shorter than the four years over which the proceedings in *JDI* had been on foot at the time when the equivalent conclusion was reached in that case, it was not much shorter. The appeals in this case related to VAT accounting periods ending in 2017;

(4) the parties and their witnesses were all present and prepared for the substantive hearing. If the requested adjournment were to be allowed, there might well be a considerable delay before it was possible for everyone to reconvene;

(5) in this case, it was clear from the witness statement of Mr Alan Harford, the director of the Appellant, that Mr Harford had suffered considerable financial difficulties and

stress in relation to the appeals. A further delay caused by an adjournment would therefore be unfair on Mr Harford; and

(6) accordingly, applying the overriding objective in Rule 2 of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009 (the "Tribunal Rules"), we considered that it would not be fair or just to accede to the application to adjourn.

47. We therefore proceeded to hear the appeals to the extent that they remained on foot following the case management decision described in paragraph 43 above.

THE AGREED FACTS

48. The following facts are not in dispute:

(1) the Appellant was incorporated on 5 December 2011 with Mr Harford as its sole director and sole shareholder;

(2) the Appellant was registered for VAT with effect from 1 April 2012 although registration was permitted only after an initial refusal by the Respondents to register the Appellant and a successful appeal by the Appellant against that refusal. In its application, the Appellant stated that its intended activity was the sale of used cars and light motor vehicles and, in the course of responding to the Respondents' enquiries about the application, the Appellant stated that the sales it proposed to make were to be exports to trade customers and that no vehicle storage was required;

(3) from the date of its VAT registration, the business of the Appellant was as stated above. In other words, it bought and sold used cars and, as the bulk of its sales were to trade customers in the ROI, it received regular VAT repayments from the Respondents, reflecting the fact that its purchases were by way of standard-rated supplies and its sales were by way of zero-rated supplies;

(4) from the outset, the Appellant used its accountants, SB&P LLP ("SB&P") to manage its VAT affairs. It was SB&P which corresponded with the Respondents in relation to the Appellant's VAT position and all of the meetings which took place between the parties in relation to VAT were at SB&P's offices;

(5) initially, the Appellant made its VAT returns quarterly but it began to make monthly VAT returns in February 2015;

(6) the Appellant was subject to periodic VAT checks by the Respondents between the date of its registration and the start of the period to which the appeals relate. Some of those checks revealed errors in the way in which the Appellant was accounting for VAT – for example, the check on 1 July 2014 revealed that the Appellant had included VAT at the standard rate on some of its sales invoices to customers in the ROI and, on 12 August 2015, the Respondents wrote to the Appellant to inform it that it had failed to complete an EC Sales List in respect of its VAT accounting period 05/15. However, prior to the letter of 27 April 2016, referred to in paragraph 48(8) below, VAT fraud was never raised as an issue with the Appellant by the Respondents;

(7) on 1 March 2016, Officer Aileen Baxter of the Respondents visited SB&P's offices in order to conduct a check in relation to the Appellant's VAT accounting period 12/15. That check revealed that one of the customers in the ROI to whom the Appellant had sold vehicles had been de-registered for VAT in the ROI prior to the sales of some of the vehicles by the Appellant to that customer. The additional VAT payable by the Appellant as a result was £16,944.00. The Respondents took the view that this amounted to careless behaviour on the part of the Appellant but agreed to suspend the penalty due as a result on condition that the Appellant agreed to obtain a valid VAT registration number from

each of its new customers and to check the ongoing validity of the VAT registration numbers of each of its existing customers on a monthly basis;

(8) in her letter of 27 April 2016 dealing with the matter described in paragraph 48(7) above, Officer Goodliffe of the Respondents explained to the Appellant that a failure to check that a customer had a valid VAT registration number could lead to joint and several liability for any fraud which ensued. This was the first time that fraud was raised as an issue with the Appellant by the Respondents;

(9) on 20 October 2016, Officers Ged Fazakerley and Kelly Giblin of the Respondents met Mr Harford and his accountant, Mr Rob Young of SB&P, at SB&P's offices. The Respondents' note of the meeting held on that day records that, inter alia:

(a) the purpose of the visit was to check the validity of certain transactions between the Appellant and a company called David McMahon Limited;

(b) at that meeting, Mr Harford informed the Respondents' representatives that:

(i) the Appellant had premises in Runcorn on a three-year lease which the Appellant had been using for about a year;

(ii) Mr Harford attended those premises for approximately one day each week;

(iii) Mr Harford had an arrangement with a business called Motor Imports ("MI"), run by a Mr Jason Duffy, pursuant to which MI was able to use the Appellant's premises for free and, in return, would, in the absence of Mr Harford, take receipt of certain vehicles purchased by the Appellant;

(iv) Mr Harford also owned Motorpark, a company in the ROI which sold used cars domestically;

(v) no vehicles were purchased on credit and they were usually purchased to order at a rate of about eight to ten per week;

(vi) one of his suppliers was a company called MCM Sales Limited ("MCM") where he dealt with a Mr David McMahon. He did not usually do due diligence on the Appellant's suppliers but, in that case, he had checked to confirm that MCM was VAT-registered; and

(vii) a typical transaction for the Appellant would be for a customer to ring and enquire about a specific vehicle and for the Appellant then to source the vehicle from a motor auctioneer, such as Mannheim, one of the large auto-trader companies, such as Northgate Vehicle Sales, Hertz UK Limited ("Hertz") or Arval, or through websites such as Autotrade-mail;

(c) at that meeting, the Respondents' representatives:

(i) asked Mr Harford various questions in relation to MCM and Mr Harford's understanding of how MCM sourced its vehicles;

(ii) explained to Mr Harford the importance of his doing due diligence in relation to the Appellant's suppliers;

(iii) gave Mr Harford Public Notice 726 ("PN 726"), with Section 6 in PN 726 highlighted; and

(iv) requested various information and documentation in relation to the Appellant's purchases from MCM;

(10) On 5 January 2017, Officer Fazakerley wrote to Mr Harford. In that letter (the "tax loss letter"), Officer Fazakerley informed Mr Harford that Missing Trader Intra-Community ("MTIC") fraud continued to be the Respondents' top VAT fraud priority and that, as a result of the Respondents' enquiries into the Appellant's VAT returns in respect of its 06/16, 07/16, 08/16 and 09/16 VAT accounting periods, they had become aware of the fact that tax losses of more than £274,000.00 in aggregate had arisen in connection with a number of the transaction chains involving the Appellant. The letter then listed various invoices involving purchases by the Appellant from MCM which had been linked to those fraudulent transaction chains and informed Mr Harford that:

(a) checks were still ongoing into the remaining deals undertaken in the VAT accounting periods mentioned above with a view to gathering further supporting documentary evidence;

(b) pursuant to a CJEU decision, the recovery of input tax incurred in relation to of transactions connected with the fraudulent evasion of VAT where the person claiming the input tax knew or should have known of that connection could be denied; and

(c) he should satisfy himself that he was carrying out sufficient due diligence in relation to the Appellant's suppliers and customers in order to avoid that risk.

The tax loss letter enclosed a further copy of PN 726 and directed Mr Harford to Section 6 of that document for examples of the sort of checks that he might wish to make;

(11) on 9 February 2017, Officer Gemma Lowth of the Respondents wrote to the Appellant. In that letter, Officer Lowth reiterated that MTIC fraud was a severe threat to public finances and that the Respondents were concerned that the Appellant's business could be at risk of involvement in supply chains connected with fraud, which could potentially lead to a loss of input tax recovery for the Appellant. Officer Lowth requested a meeting with Mr Harford to discuss the subject, inspect the Appellant's records and explain to Mr Harford how he might more easily be able to identify supply chains which were linked to MTIC fraud. Finally, Officer Lowth enclosed the Respondents' fact sheet on compliance checks (CC/FS1) and referred Mr Harford to PN 726 and the Respondents' leaflet entitled "How to spot VAT missing trader fraud";

(12) on 13 March 2017, Officers Lowth and Mike Pye of the Respondents attended a meeting with Mr Harford and Mr Young at SB&P's offices. The Respondents' note of the meeting held on that day records that, inter alia:

(a) Mr Harford confirmed to the Respondents' representatives that he had seen PN 726;

(b) Mr Harford explained to the Respondents' representatives how the Appellant's business operated including the facts that:

(i) no credit was provided in relation to transactions and that all payments were made straight away by way of bank transfer;

(ii) the Appellant's purchases tended to be driven by customer demand – in other words, the Appellant would tend to purchase a vehicle only if it knew that one of its customers was looking for that vehicle and would buy it from the Appellant;

(iii) there were no written contracts;

(iv) negotiations were by telephone; and

(v) only the expensive vehicles were delivered to the Appellant's premises in Runcorn and the rest were delivered by the Appellant's supplier directly to the Appellant's customer; and

(c) Mr Harford asked the Respondents' representatives whether verifying the VAT numbers of its suppliers was sufficient due diligence to satisfy the Respondents and the Respondents' representatives replied that establishing the existence of the VAT number was not sufficient in and of itself and that Mr Harford needed to carry out the checks necessary to satisfy himself that his transactions were part of a legitimate supply chain and not connected with fraud;

(13) on 26 April 2017, Mr Young of SB&P sent an email to Officer Lowth setting out information in relation to the due diligence which the Appellant had undertaken in relation to thirteen of its suppliers and seven of its customers and said that he would "forward three emails with the documents". For the purposes of the appeals, the following extracts from Mr Young's email are relevant:

"Suppliers

1. Instant Sales Ltd – verification of VAT No, Certificate of Incorporation, Director's ID check.
2. KW Direct Ltd - verification of VAT No, Certificate of Incorporation, Director's ID check.
3. Mohawk Trading – Director's ID check, utility bill…….

Customers

…

Greasemonkey Motorworks – verification of VAT No, Director's ID check….

From compiling this information for you Mr Harford now realises that he should have a more formalised Due Diligence process in place and will be taking measures to introduce something suitable for the business. The director believes that the Due Diligence he has undertaken to date has been appropriate in addressing the risks he identified for his business, however he accepts that it could have been documented in a clearer manner";

(14) on 7 June 2017, Officers Lowth and Pye attended a further meeting with Mr Harford and Mr Young at SB&P's offices to discuss the due diligence process. Mr Hayden Clarke, solicitor to the Appellant, and Mr Chris Mann, the Appellant's VAT advisor, were also in attendance at the meeting. The Respondents' note of the meeting held on that day records that, inter alia:

(a) at the meeting, the Respondents' representatives handed Mr Harford letters recording tax losses in chains involving 4 of the Appellant's customers in the ROI and told him that certain of the Appellant's suppliers had been de-registered from VAT in the UK but that the Respondents were still investigating whether there were tax losses in chains involving those suppliers;

(b) the Respondents' representatives informed the Appellant's representatives that they had received invoices from one of the Appellant's transporters – Kevin White Transport ("KWT") – and the shipping documents but that:

(i) they had no way of matching the KWT invoices with the shipping documents; and

(ii) the KWT invoices simply stated that the vehicles which were the subject of the invoices had gone from Liverpool to Dublin but did not contain the exact address in the ROI to which the vehicles had been delivered,

and Mr Young said that he would provide that missing information;

(c) the Respondents' representatives informed the Appellant's representatives that Mohawk, Instant and KWD had all been de-registered over the course of April and May 2017 and that the Respondents had identified a company called Mohawk Trading Company Limited with a registered office which was in Plymouth and had a registered office address which was similar to the address on the invoices which the Appellant had provided from Mohawk but that the VAT number on those invoices belonged to Mr Joseph Murdock, whose registered principal place of business ("PPOB") for VAT purposes was a completely different address from the address of the company and the address on the invoices; and

(d) in response to questions raised by Mr Mann, the Respondents' representatives:

(i) provided further information in relation to various suppliers and customers of the Appellant;

(ii) confirmed that they had not checked whether the vehicles which the Appellant claimed to have exported to the ROI were now registered in the ROI;

(iii) confirmed that they were satisfied that all payments in the transactions had gone through the Appellant's bank account and that there were no cash payments; and

(iv) informed Mr Mann that, although used cars were not amongst the goods specified in PN 726, Section 6 – which the Respondents had highlighted to Mr Harford when handing him a copy of PN 726 on 20 October 2016 - was of general application in the context of due diligence; and

(15) the Appellant was compulsorily de-registered for VAT with effect from 21 August 2017 on the ground that the Respondents considered that it was using its VAT registration solely or principally for fraudulent purposes. The Appellant initially appealed against that decision but withdrew that appeal on 7 June 2018 although it strenuously denies the allegation underlying the decision to de-register and the consent order withdrawing that appeal made that clear.

THE EVIDENCE

Introduction

49. The evidence at the hearing of the appeals took the form of:

(1) the documents contained in the DB, along with various documents provided in the course of the hearing, including two publications of the Respondents – namely, PN 726 and the booklet headed "How to spot missing trader fraud";

(2) the oral and written witness evidence of Officer Lowth and Mr Harford; and

(3) the written witness evidence of the four officers of the Respondents who had dealt with the relevant suppliers to the Appellant – Officer Lisa Wilkinson (in relation to Mohawk), Officer Paul Johnson (in relation to Instant), Officer Sebastian Harvey (in relation to KWD) and Officer Claire Lee (in relation to DLL). The primary facts set out in the witness statements of these four officers were not challenged by the Appellant

although it did not accept the conclusions drawn by the officers from those primary facts, which Mr Watkinson pointed out were properly the province of the First-tier Tribunal.

The documentation

The DB

50. The DB contained the following documents which are relevant to these proceedings:

Mohawk

(1) a VAT Information Exchange System ("VIES") report in relation to Mr Murdock which recorded that he was registered for VAT and that his registered PPOB for VAT purposes was Unit 10, Downpatrick Business Centre, Brannish Road, Downpatrick BT30 6LL ("Unit 10, Downpatrick Business Centre");

(2) various invoices from Mohawk to the Appellant which set out the VAT registration number of Mr Murdock and an address of Unit 3, Embankment Road, Plymouth PL4 6PY ("Unit 3, Embankment Road");

(3) a record from Companies House of a company called Mohawk Trading Company Limited whose registered office was Blagdons, 250 Embankment Road, Plymouth PL4 9JH and whose sole director was a Mr Ian Lott;

Instant

(4) records from Companies House in relation to Instant, showing that:

(a) its initial director was Mr William Ashcroft of 32 Forth Drive, Livingston, West Lothian EH54 5LT ("32 Forth Drive");

(b) thereafter, its directors were Mr Seamus Maguire of 72 Bardsay Road, Liverpool L4 5SQ ("72 Bardsay Road") (appointed on 1 September 2016 and resigned on 16 November 2016), Mr David Patrick McMahon of 72 Bardsay Road (appointed on 16 November 2016 and resigned on 1 January 2017) and Mr Christopher Fisher of 31 Langley Park, Mill Hill, London NW7 2AA ("31 Langley Park") (appointed on 6 January 2017 and resigned on 4 February 2017);

(c) the appointment of Mr Fisher as a director had not been notified to Companies House until 8 March 2017;

(d) the resignation of Mr McMahon as a director had not been notified to Companies House until 19 April 2017 and the resignation of Mr Fisher as a director had not been notified to Companies House until 10 March 2017; and

(e) the company had changed its registered office for company law purposes to 72 Bardsay Road on 2 September 2016, then to 31 Langley Park on 26 January 2017 and finally to 5 Exchange Flags, Liverpool L2 3PF ("5 Exchange Flags") on 28 March 2017;

(5) a record from Companies House referring to a Mr David McMahon, a director of East West Direct Limited between 3 April 2017 and 11 May 2017, with the same month of birth (December 1990) as the Mr David Patrick McMahon referred to above;

(6) two invoices rendered by Auto Trader Limited ("AutoTrader") to Instant at 31 Langley Park in respect of advertisements placed with AutoTrader by Instant;

(7) various invoices rendered by Instant to the Appellant which set out an address for Instant of 31 Langley Park;

KWD

(8) records from Companies House in relation to KWD showing that:

(a) on 13 July 2016, Companies House were notified that Mr Seamus Maguire of 72 Bardsay Road had agreed to act as director of KWD with effect from that date;

(b) on the same day, Companies House were notified that the registered office of KWD for company law purposes was being changed to 72 Bardsay Road;

(c) as of 9 November 2016, KWD was wholly-owned by Mr Maguire;

(d) on 16 November 2016, Companies House were notified that the registered office of KWD for company law purposes was being changed to 31 Langley Park;

(e) on 27 March 2017, Companies House were notified that Mr Maguire had resigned as a director of KWD on 10 November 2016;

(f) on the same day, Companies House were notified that Mr John Paul Hughes had agreed to act as a director of KWD with effect from 6 November 2016;

(g) on 20 April 2017, Companies House were notified that Mr David Doyle had agreed to act as a director of KWD with effect from 1 January 2017;

(h) on 5 October 2017, Companies House were notified that the registered office of KWD for company law purposes was being changed back to 72 Bardsay Road; and

(i) on the same day, Companies House were notified that Mr Maguire had ceased to be a person with significant control over the company on 11 March 2017;

(9) various invoices rendered by KWD to the Appellant which set out an address for KWD of London Bridge, Alpha House, 100 Borough Street, London SE11LB ("London Bridge");

(10) email correspondence between Officer Beena Gomez of the Respondents and Mr Maguire recording that:

(a) on 13 March 2017, Officer Gomez wrote to Mr Maguire to say that it had been impossible to contact him on the phone number provided and asking if it would be possible to visit KWD at 31 Langley Park on 16 March 2017;

(b) on 14 March 2017, Mr Maguire wrote to Officer Gomez to say that he would be in New York on the suggested date and suggesting 3 April 2017 as an alternative meeting date when he was back;

(c) on the same day, Officer Gomez responded by saying that the date suggested by Mr Maguire didn't work for her and suggesting the day after that for the meeting. She also asked Mr Maguire for his contact number;

(d) on the same day, Mr Maguire replied to the effect that the revised date was fine, provided his telephone number and asked if Officer Gomez might explain what the enquiry was about;

(e) on 27 March 2017, Mr Maguire wrote to Officer Gomez to ask if he might defer the meeting proposed for the following day because he was unwell and asked if the meeting could be held later that week instead;

(f) on 28 March 2017, Officer Gomez responded to say that the meeting had in fact been arranged for the following week (and not for 28 March 2017) and asking

Mr Maguire to confirm whether the date previously agreed was still suitable and what address she should visit;

(g) on the same day, Mr Maguire responded by apologising for his error and confirmed that the date previously agreed was fine for him;

(h) on the same day, Officer Gomez asked Mr Maguire to confirm the address where she should visit;

(i) on 29 March 2017, Mr Maguire responded to say that the address she should visit was 31 Langley Park; and

(j) on 3 April 2017, Mr Maguire wrote to Officer Gomez to ask if he might defer the meeting proposed for the following day because he was still unwell and asked if the meeting could be held in the following week instead;

(11) an email of 23 March 2017 from a Ms Alison Mace of the Hendon Christian Housing Association (the "HCHA") to the Respondents confirming that 31 Langley Park had been in the ownership of the HCHA for over forty years and that none of the tenants at that address was aware of any of Instant, KWD or Mr Maguire;

DLL

(12) various invoices rendered by DLL to the Appellant which set out an address for DLL of 38 Market Square, Dungannon, County Tyrone, BT70 1JH ("38 Market Square");

Greasemonkey

(13) an exchange of information report from the Irish tax authorities (a "SCAC report") to the Respondents dated 29 June 2017 in relation to Greasemonkey which stated that:

(a) Greasemonkey was not a missing trader;

(b) one of the directors of Greasemonkey (a Ms Kellie Ann Fitzpatrick) and her brother were directors of a company called PJF Construction Limited in relation to which the Irish tax authorities had concerns over possible fraud;

(c) the Irish tax authorities had conducted an interview at the premises of Greasemonkey with Ms Fitzpatrick and her fellow-director, a Mr Kevin Coady, and both directors had claimed not to know either the Appellant or Mr Harford. They had expressed surprise that their VAT number would have been used in this way and Mr Coady had said at a subsequent meeting with the Irish tax authorities in June 2017 that he had not been to the UK for many years;

(d) the business of Greasemonkey was the servicing and repair of cars;

(e) Ms Fitzpatrick was employed full-time by Debenhams and Mr Coady was on social security having previously been a driver for Autovalue Limited and neither of them had any experience in car maintenance, which was the stated business of Greasemonkey;

(f) Mr Coady had no source of income other than from the company and was not currently drawing any salary; and

(g) the company had been registered for VAT with effect from 9 September 2016 and had had its VAT registration number cancelled with effect from 14 March 2017. On that date, the company submitted VAT returns for the period in which it had been registered showing VAT repayments aggregating to a little over €2,000, which repayments had not been pursued by the directors;

Hayes

(14) a SCAC report to the Respondents dated 25 July 2018 in relation to Hayes which stated that:

(a) the company had been registered for VAT with effect from 29 April 2016 and had had its VAT number cancelled with effect from 17 July 2018;

(b) (in response to a question from the Respondents which appeared on its face to refer to all of the vehicles which were sold by the Appellant to Hayes) the company "did not account for VAT on the purchase and sales of the vehicles in question"; and

(c) in relation to the invoices supplied to the Irish tax authorities by the Respondents, two of the vehicles appeared not to have been on-sold and four had been on-sold to trade buyers and were currently in the hands of individuals and registered in the ROI;

General

(15) an email from SB&P to Officer Lowth of 12 December 2018 relaying the information that:

(a) Mr Harford's contact with Hayes had been made through a Mr Tim Flood of Supreme Autos to whom the Appellant had sold four or five vehicles in December 2016; and

(b) Mr Harford's contact with DLL had been made through a Mr Pat Spears, a friend of Mr Harford's from Armagh;

(16) various items of due diligence which the Appellant had provided to the Respondents through SB&P. These included the following:

(a) in relation to Mohawk, the driver's licence of Mr Murdock and a printout of a VIES report of 6 April 2017 showing that Mr Murdock was registered for VAT. (The DB also contained a copy of an earlier VIES report in relation to Mr Murdock dated 15 March 2017);

(b) in relation to Instant, a certificate of incorporation and a screenshot of its VAT certificate as at 9 March 2017, showing its registered PPOB for VAT purposes as 31 Langley Park;

(c) in relation to KWD, a certificate of incorporation and a screenshot of its VAT registration number and its registered PPOB for VAT purposes as at 23 November 2016 (the latter's being said to be 72 Bardsay Road);

(d) in relation to Greasemonkey, the driver's licence of Mr Coady and photocopy of its advice of VAT registration; and

(e) in relation to Hayes, the driver's licence of Mr Kenneth Healy (a director of Hayes), a print out from the Companies Registration Office in the ROI of the registration of Hayes as a company, a certificate of registration, a VIES report of 2 June 2017 showing that Hayes was registered for VAT in the ROI, a screen shot showing outstanding balances owed by Hayes to the Irish tax authorities, a copy of redacted correspondence from the Irish tax authorities to Hayes and a statement for an account of Hayes at the Bank of Ireland (the "BOI") showing a negligible balance;

(17) details of the vehicles which were the subject of the appeals. These were common marques such as Ford, Volvo, Toyota, Audi, BMW, Mercedes, Volkswagen, Citroen etc..

In broad terms, the purchase prices ranged from as low as around £3,000 to as high as around £52,000 but the average purchase price was between £8,000 and £20,000; and

(18) bank statements of the Appellant showing receipts from, inter alia, Greasemonkey and invoices from the Appellant to, inter alia, each of Greasemonkey and Hayes.

PN 726

51. The most relevant parts of PN 726 were as follows:

(1) Sections 1.3 and 1.4, which stipulated that the notice was directed at VAT-registered persons involved in the supply of any of the goods described in Section 1.4. (These goods did not include the supply of used cars);

(2) Section 2.4, which stipulated that it was highly unlikely that retailers would be affected by the rules;

(3) Section 6.1, which set out various factors which might alert a person to the possibility that VAT might go unpaid. These factors were grouped into three – legitimacy of customers or suppliers, the commercial viability of transactions and the viability of the goods described by the supplier. All in all, some 26 factors were mentioned, some of which were:

(a) what is your customer's/supplier's history in the trade?

(b) has a buyer and seller contacted you within a short space of time with offers to buy/sell goods of the same specifications and quantity?

(c) are the goods adequately insured?

(d) are they high value deals offered with no formal contractual arrangements?

(e) are they high value deals offered by a newly-established supplier with minimal trading history, low credit rating etc?

(f) can a brand new business obtain specified goods cheaper than a long-established one?

(g) have the Respondents specifically notified you that previous deals involving your supplier have been traced to a VAT loss?

(h) have normal commercial practices been adopted in negotiating prices?

(i) are the goods in good condition and not damaged?

(j) what recourse is there if the goods are not as described? and

(4) Section 6.2, which gave examples of the sorts of specific checks carried out by businesses involved in the consultation exercise when the rules were introduced. These included:

(a) obtaining copies of certificates of incorporation and VAT registration certificates;

(b) verifying VAT registration details with the Respondents;

(c) obtaining signed letters of introduction on headed paper;

(d) obtaining some form of written and signed trade references;

(e) obtaining credit checks or other background checks from an independent party; and

(f) insisting on personal contact with a senior officer of a prospective supplier, making an initial visit to their premises wherever possible.

Booklet entitled "How to spot missing trader fraud"

52. The material in this booklet replicated to a large extent the material in PN 726. However, the booklet was not expressed to be limited to traders in certain specified goods but was expressed more generally and the list of factors which might arouse suspicion of fraud was shorter than in PN 726. Two of the factors which the booklet said should arouse suspicion were:

(1) a newly-established company with no financial or trading history; and

(2) entities trading from residential or short-term lease accommodation and serviced offices.

The witness evidence

Officer Lowth

53. In her evidence, Officer Lowth testified as follows:

(1) she did not accept that Mr Harford could reasonably have concluded that PN 726 had no relevance to the Appellant despite the fact that the Appellant's business activity did not involve any of the categories of goods which were specified in Sections 1.3 and 1.4 of PN 726 or that Section 2.4 of PN 726 stipulated that it was highly unlikely that retailers would be affected by the rules. She said that, when handing the notice to Mr Harford, she had made it clear that the issues described in the notice were relevant in a much wider range of circumstances than those expressly described in the notice. In short, at and after the meeting held on 20 October 2016, Mr Harford had been made well aware of the prevalence of MTIC fraud in the export markets;

(2) she agreed that a considerable number of the factors which were said to be indicative of possible MTIC fraud set out in Section 6 of PN 726 were not relevant in this case. However, some of those factors were applicable. In her view, the relevant ones were as follows:

(a) a number of the suppliers were newly-formed companies with no track record in the market. The fact that such newcomers were able to access vehicles which could not be obtained from the various large players in the market from whom the Appellant also made purchases from time to time should have aroused suspicion;

(b) the Appellant was regularly able to acquire vehicles for on-sale to its customers in a very short space of time at an acceptable price, often within the space of a day or at most within a few days, and she thought it incredible that the Appellant was repeatedly able to source vehicles to match its customers' needs at such short notice;

(c) the documentation relating to the relevant purchases was inadequate. Each purchase was evidenced solely by an invoice describing the make of car and its UK registration number;

(d) there was no written evidence of any negotiations preceding the relevant purchases. She would have expected to see a written record of the discussions preceding each transaction; and

(e) the Appellant had never had any insurance and therefore the vehicles were not adequately insured;

(3) she added that, in addition, Mr Harford might well have been able to detect the existence of fraud by the Appellant's suppliers if he had adopted some of the practices set out in Section 6.2 of PN 726. For example, if he had:

(a) noted the discrepancy between the registered PPOB of a supplier for VAT purposes and the address shown on the invoices which the Appellant received in relation to its purchase from that supplier;

(b) visited the premises shown on the invoice from a supplier; or

(c) obtained letters of introduction from a trusted source in relation to a supplier or taken up trade or credit references in relation to a supplier;

(4) in addition, she said that, in her view, Mr Harford should have asked the Appellant's suppliers for copies of their VAT returns and for information about where they were able to access the vehicles which they sold to the Appellant;

(5) moreover, she said that, contrary to the allegation made by Mr Harford, she had not simply informed Mr Harford that he needed to improve his due diligence without providing guidance as to how he might do that but had instead specifically told him that, in addition to checking that a relevant supplier was VAT-registered, he needed to visit the premises of the relevant supplier as set out on its invoices;

(6) she accepted that she had not sought information from the customer relationship managers of those of the Appellant's suppliers which were large companies as to:

(a) the practices of those companies when it came to exporting vehicles themselves and dealing with new suppliers or customers;

(b) whether they tended to execute formal contracts when making sales;

(c) whether they tended to record their pre-sale negotiations;

(d) how they handled insurance for their vehicles; or

(e) the volume of vehicles of the types sold by the Appellant which tended to be in the market at any time;

(7) she accepted that the SCAC report in relation to Hayes showed that two of the vehicles which had been sold by the Appellant to Hayes had not been on-sold but said that there was clear evidence in the SCAC report that four of them had been on-sold and that, in her view, on the balance of probabilities, the same was true of the remaining five vehicles which the Appellant had sold to Hayes and to which no reference had been made by the Irish tax authorities in the SCAC report. The reason why the Irish tax authorities had not dealt with those five vehicles in the SCAC report was that no registration numbers or invoices had been provided by the Appellant in relation to those vehicles. (In fact, we noted that, according to Officer Lowth's witness statement, that was true of only three of the five vehicles). She said that she had become aware of those sales only because they were recorded in the Appellant's VAT account; and

(8) she accepted that:

(a) she had not asked Mr Harford for any material in relation to purchases which the Appellant had made from suppliers other than the ones which were the subject of the appeals. She therefore could not say whether the observations of her's recorded in paragraph 53(2) above as to the inadequate contractual documentation and the absence of a written record of pre-purchase negotiations which characterised the relevant purchases could also be made in relation to those other purchases as well;

(b) the pricing of, and profits arising out of, the relevant purchases were not fixed but fluctuated and that that feature was indicative of the fact that negotiations had taken place in relation to the relevant purchases before they occurred;

(c) if the vehicles in question were never delivered to the Appellant but were simply moved by a transport company from the Appellant's supplier to the Appellant's customer, then the fact that the transport company had had its own insurance might be sufficient for the Appellant to conclude that it did not need to insure the vehicle as well;

(d) she had not exhibited to her witness statement or included in the DB all of the KWT invoices which had been provided to her by the Appellant; and

(e) the Respondents had not made any allegation of fraud in relation to certain vehicles which the Appellant had acquired from KWD in late 2016 and from Mohawk in January 2017. So far as the acquisitions from KWD were concerned, she explained that that was because those purchases fell outside the period of the Respondents' investigation into the Appellant's purchases.

Mr Harford

54. In his evidence, Mr Harford said as follows:

(1) he had moved to his premises in Runcorn around the beginning of 2016. The premises had (indoor) space for about three vehicles;

(2) approximately three cars were delivered to the premises each month because nearly all of the vehicles in which he traded were delivered directly from his supplier to his customer;

(3) although Mr Duffy was able to use the Appellant's premises for free, that meant that Mr Duffy could take receipt of certain cars purchased by the Appellant and that suited him as he wasn't there for much of the time. Mr Duffy did not work for the Appellant, as such, although he did occasionally arrange deals for the Appellant by introducing prospective customers, for which he earned a commission. When shown invoices from Hertz which referred to Mr Duffy as being the purchaser of certain vehicles on behalf of the Appellant, Mr Harford said that Mr Duffy had had no involvement in the relevant purchases and that his name appeared on the Hertz customer base in connection with the Appellant solely because the person at Hertz with whom he dealt had known Mr Duffy previously and putting Mr Duffy's name down made it easier to set up the Appellant's account;

(4) although he had been handed PN 726 at the meeting of 20 October 2016, he had not paid much regard to it as it seemed to him to be irrelevant to the type of business which the Appellant conducted. The notice did not refer to sales of used cars but to specific types of goods which were unrelated to used cars. Thus, even though three of the four suppliers which were relevant in this case had been incorporated only in 2016, which was one of the factors suggested in PN 726 that should raise concerns, he did not think that it was necessary to investigate that further;

(5) he couldn't recall when he had read the booklet entitled "How to spot missing trader fraud" although he accepted that he had been directed to read it by Officer Lowth in her letter of 9 February 2017. However, the recent incorporation of the suppliers hadn't troubled him in that context either because the individuals with whom he dealt at the suppliers didn't give him the impression of having poor knowledge of the used car market and so he assumed that they were experienced in trading in used cars;

(6) he had not at any time been informed by the Respondents that, in order to perform the appropriate due diligence on a supplier, he needed to go to the premises of the supplier as set out on its invoices. Instead, the Respondents had merely said that he needed to satisfy himself as to the extent of the due diligence which was appropriate without giving him any further guidance as to the form which that due diligence might take;

(7) following the warnings given to him by the Respondents in early 2017, the Appellant had engaged Mr Mann as its VAT advisor, to assist the Appellant in improving its due diligence processes. Mr Mann had attended the meeting with the Respondents on 7 June 2017. However, the Appellant had been de-registered for VAT purposes before Mr Mann could make any recommendations to the Appellant about those processes;

(8) in circumstances where a supplier was advertising on Autotrade-mail, he took comfort from that fact because, in order to be a member of Autotrade-mail, it was necessary to pay a meaningful amount as a membership fee and he assumed that Autotrade-mail would conduct checks before allowing anyone to become a member, as had been the case when the Appellant had become a member;

(9) vehicles remained at the premises of the relevant supplier until they were collected by the transporter to be taken to the Appellant's customer. He believed that the vehicles were covered on the supplier's insurance while they remained on the supplier's premises and were then covered by the transporter's insurance while they were in transit. There was therefore no need for the Appellant to insure the vehicles at any time. He added that the reliability of this assumption was borne out when, on occasion, vehicles had been damaged whilst being loaded or unloaded onto the transporter's vehicle and, in those circumstances, the damage had been repaired without cost to the Appellant;

(10) he used various transporters to move the vehicles from the suppliers to the customers. KWT was one. Others were a Mr Phil Stanley and JW Transport. In some cases, the vehicles were delivered by the transporter to the ferry companies P&O or Sea Truck and then collected by the customer from Dublin docks, whilst, in others, the vehicle was delivered to the customer's premises in the ROI as shown on the invoice;

(11) in the case of each of the relevant purchases, it was he who initiated contact with the relevant supplier because he would have been looking for a vehicle which met the specifications required by the Appellant's customer. Thereafter, all negotiations were carried out over the telephone;

(12) in addition to the purchases which the Appellant had made from the suppliers which were relevant to this case, the Appellant had bought a significant number of vehicles from large company suppliers of used vehicles such as Hertz, British Car Auctions, Northgate Vehicle Sales and Zenith Vehicle Contracts and there were essentially no differences between the Appellant's purchases from the relevant suppliers and the Appellant's purchases from those larger companies;

(13) the reason why he had bought vehicles from the relevant suppliers in this case, as opposed to one of the larger suppliers from whom he also purchased vehicles from time to time, was that his customers would ask for a particular specification of vehicle and those larger companies didn't always have a vehicle with the desired specification available for sale at the specific time when he needed it. This did not raise any alarm bells for him because, although the vehicles in question were common marques, it wasn't surprising that a vehicle of the precise specification required was not available from the larger companies at the specific time he was looking for it. In response to a question as to why he didn't ask the relevant suppliers for the sources of the vehicles which he bought from them, in order to ascertain the provenance of those vehicles, he said that no trader

would ever reveal its sources for fear that it would be cut out of the transaction chain. Thus, he would never ask a supplier for the sources it was using and he would never reveal the Appellant's sources to any of the Appellant's customers who might ask for them;

(14) he did not see any reason to visit the premises shown on a particular invoice from a supplier or the premises shown as the registered PPOB for VAT purposes of a supplier. In his view, that wouldn't have told him very much as it was not uncommon for a business to conduct its trade from premises other than its registered PPOB and, as was the case with the Appellant, there was no need for a supplier to hold any stock at its own premises when it could simply arrange deliveries of the stock from its supplier to its customer;

(15) there was no reason to doubt the provenance of the vehicles in question. It wasn't as if the price he was offered in each case was too good to be true. The vehicles were offered to him at the then-prevailing market prices;

(16) Mr Murdock had been introduced to him by Mr Pat Spears, who had also introduced him to Mr Donnelly;

(17) although the two VAT registration checks in relation to Mr Murdock shown in the DB were dated 15 March 2017 and 6 April 2017 and the Appellant had purchased vehicles from Mohawk prior to the earlier of those two dates in 2017, he said that he had done a number of such checks in relation Mr Murdock before the ones which were set out in the DB and that he always did such a check before the first occasion on which he dealt with a supplier;

(18) as a result of doing those checks, he had noticed that the name and address on the invoices he received from Mr Murdock was Mohawk Trading at Unit 3, Embankment Road and that both the name and the address were different from the information set out in the VIES report in relation to the VAT number on the invoices, which he had obtained as a result of his due diligence. That report referred to Mr Murdock himself as the registered person (and not Mohawk Trading) and to the registered PPOB for VAT purposes as being Unit 10 Downpatrick Business Centre. However, he had asked Mr Murdock about that and had been told that Mohawk was the trading name of Mr Murdock's business and that the premises where Mr Murdock carried on his business were different from the registered PPOB for VAT purposes of the business. Nevertheless, he had never visited either the address shown on the invoices or the registered PPOB for VAT purposes;

(19) although he was wary about future dealings with MCM and Mr McMahon following the meeting with the Respondents on 20 October 2016, he had ceased to deal with MCM and Mr McMahon well before that meeting and the subsequent tax loss letter of 5 January 2017;

(20) when it was drawn to his attention that a Mr David Patrick McMahon was one of the directors of Instant until 1 January 2017 and that Mr McMahon's resignation as a director had not been notified to Companies House until 19 April 2017, after the date of the Appellant's purchases from Instant, he said that he was not aware of any connection between Mr McMahon and Instant and that he had dealt solely with Mr Maguire when he dealt with Instant;

(21) he could not recall who had introduced him to Mr Maguire. When he first met Mr Maguire he had enquired as to the latter's experience in the motor trade and had been told around 15 years. He had not enquired as to why, if that was the case, Instant had been incorporated so recently;

(22) he did not know that Mr Maguire was also a director of KWD. In his dealings with KWD, he had dealt with someone else whose name he could not now recall. He also could not recall who had introduced that person to him. Moreover, he could not recall which director of KWD was the one whose identification he had checked, as mentioned in the email from Mr Young referred to in paragraph 48(13) above;

(23) he had noticed that the address on the invoices he received from KWD was London Bridge, whereas the registered PPOB for VAT purposes of that company - which he had obtained as a result of his due diligence - was 72 Bardsay Road. However, he had never visited either the address shown on the invoices or the registered PPOB for VAT purposes;

(24) he had not enquired from the person with whom he was dealing at KWD as to why the company had been incorporated so recently (22 June 2016);

(25) although the DB did not contain any evidence that Mr Harford had done any due diligence in relation to DLL – for example, that company was not mentioned in the email from Mr Young referred to in paragraph 48(13) above – Mr Harford explained that:

(a) his point of contact at DLL was Mr Paul Donnelly, who, as with Mr Murdock, had been introduced to him by Mr Pat Spears;

(b) in any event, he already knew Mr Donnelly's brother and was aware of the fact that the Donnelly family owned the second biggest car dealership in Northern Ireland; and

(c) he had been told that DLL was a subsidiary of that dealership.

He therefore considered that there was no need to ask Mr Donnelly about his credentials and history;

(26) he had been introduced to Mr Kevin Coady by someone called Mr Paul Byrne, whom he knew from his dealings in the used car trade in the ROI. He had met Mr Coady three or four times and had obtained a copy of Mr Coady's driver's licence although he had never visited Mr Coady's business premises, which he assumed were in Kildare. When he was presented with the record of the interview with Mr Coady in the SCAC report in relation to Greasemonkey, in which Mr Coady denied having met him or dealt with him, he said that he could not explain it;

(27) his point of contact at Hayes was Mr Kevin Healy who had been introduced to him by a Mr Tom O'Connor; and

(28) he had paid no attention to the fact that the bank statement for Hayes at the BOI referred to in paragraph 50(16)(e) above showed a negligible balance because the transactions between the Appellant and Hayes didn't involve giving any credit to Hayes. His sole purpose in obtaining the bank statement was to identify that Hayes had an account. The balance on that account was irrelevant. (We noted that the DB contained evidence of three sales of vehicles to Hayes which had taken place a few days prior to the date on the bank statement).

Officer Wilkinson

55. Officer Wilkinson testified as follows:

(1) she was a member of the Respondents' MTIC team based in Belfast;

(2) on 25 November 2016, the Respondents had received an application on behalf of Mr Murdock to register for VAT. The registered PPOB for VAT purposes was stated to be Unit 10, Downpatrick Business Centre and the business activity was stated to be

"[buying] and selling horse equipment and racing carts. Also converting vans into pony boxes";

(3) Mr Murdock was registered with effect from 6 April 2016 and de-registered on 31 May 2017. Over that period – which encompassed three VAT accounting periods – he had not submitted any VAT returns. He had also not completed the income tax self-assessment returns issued to him in relation to the tax years of assessment ending 5 April 2017 and 5 April 2018;

(4) on 22 May 2017, she had made an unannounced visit to the registered PPOB for VAT purposes of Mr Murdock and Mr Murdock was not there although the person she had met at the address confirmed that he had been sub-letting the premises to Mr Murdock;

(5) on the same day, she had written to Mr Murdock to say that, unless he contacted her urgently, he would be de-registered with effect from 31 May 2017;

(6) three VAT assessments, including an assessment on 10 October 2017 in respect of the sales by Mr Murdock to the Appellant in the Appellant's VAT accounting period 03/17, had been issued to Mr Murdock. The assessment in respect of the sales to the Appellant had been sent, with a covering letter, to both the registered PPOB for VAT purposes referred to above and the address set out on the invoices (Unit 3, Embankment Road). The assessments remained unpaid;

(7) on 19 September 2019, she had become aware of further sales by Mr Murdock to the Appellant in April and May 2017 but had not raised any assessments in relation to those sales as the Respondents were now outside the time limit for doing so; and

(8) she was of the view that Mr Murdock was a defaulting trader because:

(a) he had failed to provide the Respondents with an updated registered PPOB for VAT purposes;

(b) he had failed to account for VAT on any of the invoices rendered to the Appellant; and

(c) to her knowledge, he had failed to pay any of the VAT due.

Officer Johnson

56. Mr Johnson testified as follows:

(1) he had been employed by the Respondents (and its predecessor, HM Customs & Excise) since 1990 and, since 2000, apart from the period between January 2016 and January 2018 when he had been involved in the issue of securities, his role had related to supply chain fraud;

(2) he had been the allocated officer for Instant since 1 February 2019;

(3) Instant had been incorporated on 2 March 2016 and its initial director was Mr William Ashcroft of 32 Forth Drive;

(4) Mr Ashcroft had been replaced by Mr Maguire, of 72 Bardsay Road, on 1 September 2016. Mr Maguire had remained a director of the company until 16 November 2016 although the notification of his resignation as a director had not been received by Companies House until 27 March 2017. (In fact, the exhibits attached to Officer Johnson's witness statement showed that the notification of Mr Maguire's resignation as a director had been received on 17 November 2016);

(5) Mr Maguire had been replaced as a director on 16 November 2016 by Mr David Patrick McMahon, of the same address as Mr Maguire. Mr McMahon had remained a director of the company until 1 January 2017 although the notification of his resignation as a director had not been received by Companies House until 19 April 2017;

(6) on 6 January 2017, Mr Christopher Fisher, of 31 Langley Park, had become a director although the notification of Mr Fisher's appointment as a director had not been received by Companies House until 8 March 2017. Mr Fisher had remained a director of the company until 4 February 2017 although the notification of his resignation as a director had not been received by Companies House until 10 March 2017;

(7) the registered office of the company for company law purposes had changed as referred to in paragraph 50(4) above;

(8) on 1 June 2016, the Respondents had received an application on behalf of Instant to register for VAT with effect from 20 May 2016. The business activity was stated to be "[business] consultancy services";

(9) Instant had been registered for VAT with effect from 20 May 2016 and with a registered PPOB for VAT purposes of 32 Forth Drive;

(10) after the date of its registration, there had been the following notifications to the Respondents of a change in the registered PPOB of the company for VAT purposes:

(a) on 2 September 2016, the company had notified the Respondents that its registered PPOB for VAT purposes was being changed to 72 Bardsay Road; and

(b) on 8 February 2017, the company had notified the Respondents that its registered PPOB for VAT purposes was being changed to 31 Langley Park;

(11) no change of the registered PPOB of the company for VAT purposes had been notified to the Respondents when the company changed its registered office for company law purposes to 5 Exchange Flags on 28 March 2017;

(12) Instant had never filed any VAT returns and the Respondents had no record of its ever notifying them that its business had changed from making supplies of business consultancy services to making supplies of vehicles;

(13) the company had been dissolved on 19 December 2017 and had never filed any annual accounts at Companies House;

(14) the Respondents' investigation in relation to the company had been referred by the officers involved in the investigation to Officer Gomez because she was already investigating KWD, which was a trader dealing in vehicles and had the same registered PPOB for VAT purposes as the company (31 Langley Park);

(15) in the lead-up to that visit, Officer David Nixon had made a visit request application within the Respondents in which he referred to the fact that Mr McMahon had been a sole trader who had previously been de-registered for VAT purposes in Ireland in 2013 and de-registered for VAT purposes in the UK in November 2016, in both cases because of his involvement in MTIC fraud;

(16) following the exchanges of emails in relation to KWD between Officer Gomez and Mr Maguire referred to in in paragraph 50(10) above and the receipt by Officer Gomez of the email from Ms Mace referred to in paragraph 50(11) above, Officer Gomez had become aware of the fact that Instant had no presence at 31 Langley Park;

(17) Instant had been de-registered for VAT purposes on 11 April 2017 as it was not at its registered PPOB for VAT purposes;

(18) Instant had had no directors in place from 2 January 2017 to 5 January 2017 or from 4 February 2017;

(19) sales to the Appellant had been made between 23 February 2017 and 31 March 2017, when no directors had been in place. In addition, Instant had made supplies of vehicles to a purchaser other than the Appellant (King Bros Finance Limited) between 27 January 2017 and 27 February 2017 and, for part of that period, no directors had been in place;

(20) in addition to the company's failing to account for VAT in respect of the sales referred to in paragraph 56(19) above, there had been various lacunae in the invoicing of the sales made by the company. For example:

(a) invoices appeared not to have been issued in numerical sequence so that earlier invoice numbers were purportedly issued after later invoice numbers;

(b) two of the transactions bore the same invoice number; and

(c) one invoice described, as a Mercedes, a car which was in fact registered with the UK Driver and Vehicle Licensing Authority as a Volvo;

(21) in addition, the Respondents' records showed that Instant had purportedly imported four vehicles into the UK from Cyprus but the VIES report showed that neither Cyprus nor any other jurisdiction within the European Union (the "EU") had reported any export of the vehicles in question to the VAT registration number in use by Instant;

(22) as a result of being informed by Officer Lowth of the various vehicle sales by Instant to the Appellant, Officer Gomez had written to the company on 14 July 2017 at both 5 Exchange Flags (its registered office for company law purposes) and 31 Langley Park (its registered PPOB for VAT purposes) notifying the company of the Respondents' decision to assess. However, for a reason which was not apparent from the Respondents' records, no assessment had been issued to the company and it was now too late to do so;

(23) Mr Maguire had been found to be involved as a director in two other VAT-registered companies which had been de-registered without filing VAT returns and one other VAT-registered company in relation to which the returns were incomplete and erroneous. VAT losses had been identified in relation to two of those companies;

(24) one of the VAT-registered companies of which Mr McMahon had been a director, East West Direct Limited:

(a) had had a registered office for company law purposes which was at various times 31 Langley Park and 72 Bardsay Road;

(b) had had a registered PPOB for VAT purposes of 31 Langley Park;

(c) had filed incomplete and erroneous VAT returns; and

(d) had been de-registered for VAT purposes after a visit to its registered PPOB for VAT purposes revealed that it was not at those premises;

(25) Mr Fisher had also been involved as a director of East West Direct Limited; and

(26) he was of the view that Instant was a fraudulent defaulting trader because:

(a) it had been involved in the supply of vehicles at a time when it had no directors;

(b) VAT returns had not been rendered; and

(c) the documents filed at Companies House recorded that Instant had changed its registered office for company law purposes to 31 Langley Park and this was incorrect, as shown by the email from Ms Mace referred to in paragraph 50(11) above.

Officer Harvey

57. Officer Harvey testified as follows:

(1) he was a member of the Fraud Investigation Service, Organised Crime, Group within the Respondents and had been involved in investigating MTIC fraud since August 2018. He was the allocated default officer in relation to KWD and had been since 22 January 2019;

(2) KWD was incorporated on 22 June 2016 and the nature of the business was initially recorded as the sale of used cars and light motor vehicles. The initial director was Mr Malcolm Kerr (who at that time held 100% of the company). The directorships and registered office of the company for company law purposes had subsequently changed as referred to in paragraph 50(8) above;

(3) on 23 June 2016, the Respondents had received an application on behalf of KWD to register for VAT. The business activity was stated to be "[business] consultancy services";

(4) KWD had been registered for VAT with effect from 23 June 2016 with a registered PPOB for VAT purposes of 27a Castlegate, Jedburgh, Roxburghshire TD8 6AS ("27a Castlegate");

(5) following the exchanges of emails referred to in in paragraph 50(10) above, as Officer Gomez had become aware of the fact that KWD had no presence at 31 Langley Park, by virtue of her receipt of the email from Ms Mace referred to in paragraph 50(11) above, she had not responded to Mr Maguire's request to rearrange the meeting scheduled for 4 April 2017;

(6) on 16 May 2017, Officer Gomez had sent an email to KWD at 31 Langley Park, notifying KWD that its VAT registration number had been cancelled with effect from 11 April 2017;

(7) as a result of being informed by Officer Lowth of various vehicle sales by KWD to the Appellant between 10 November 2016 and 31 January 2017, a notice of VAT assessments in respect of those sales had been issued to KWD at 31 Langley Park on 12 July 2017. Those assessments remained unpaid;

(8) KWD had been dissolved on 24 April 2018;

(9) he was of the view that KWD was a fraudulent defaulting trader because:

(a) Mr Maguire had failed to confirm 31 Langley Park as KWD's business address. (We noted that this was in fact not the case, as the email referred to in paragraph 50(10)(i) above makes clear);

(b) the documents filed at Companies House recorded that KWD changed its registered office for company law purposes to 31 Langley Park and this was incorrect, as shown by the email from Ms Mace referred to in paragraph 50(11) above;

(c) the invoices rendered by KWD to the Appellant had shown London Bridge and not its registered PPOB for VAT purposes as its address;

(d) the company had submitted a nil VAT return in respect of its VAT accounting period 11/16 but had failed to submit a VAT return thereafter (although we noted that Officer Gomez had recorded in her post-registration summary of MTIC activity in April 2017 that the company had filed no VAT returns whatsoever);

(e) the company had not filed VAT returns in respect of the VAT accounting periods within which it had sold vehicles to the Appellant; and

(f) no response had been received from the company since the assessments had been issued.

Officer Lee

58. Officer Lee testified as follows:

(1) she had worked as a tracing unit officer for the Respondents for over 16 years. The role of that unit was to trace new PPOBs for VAT purposes for businesses where mail addressed to the businesses was returned;

(2) DLL had been incorporated on 27 October 2015 with Mr Paul Donnelly as its sole subscriber and shareholder. Its registered office for company law purposes had originally been Forsyth House, Cromac Square, Belfast BT2 8LA and this had changed on 17 October 2017 to Omagh Enterprise, Great Northern Road, Omagh, Tyrone BT78 5LU;

(3) the directors of DLL since that time had been Mr Donnelly – appointed on 27 October 2015 and resigned on 3 May 2016 – Ms Seanan Marie McNulty – appointed on 15 January 2016 and resigned on 8 July 2016 - and Mr Martin Burke – appointed on 1 July 2016 and resigned on 19 October 2017. Following the resignation of Mr Burke, there did not appear to have been any directors of the company;

(4) the company had been registered for VAT with effect from 1 February 2016. The registered PPOB for VAT purposes had been stated to be Unit 5, Adelaide Business Centre, Apollo Road, Belfast BT12 6HT and the business activity had been stated to be "[buying] and selling new and used cars and light commercial vehicles";

(5) the company had submitted returns for its VAT accounting periods 04/16 and 07/16, both of which were repayment returns. No further returns had been received from the company;

(6) on 8 June 2016, the Respondents had received the company's return for its VAT accounting period 04/16 claiming a repayment of £24,938.60;

(7) on 19 June 2016, the Respondents had written to the company to say that the return was being checked and requesting some further information;

(8) on 7 July 2016, the Respondents had received a letter from Mr Donnelly to say that he had transferred his shareholding in the company to Ms McNulty and that she was now the director and shareholder of the company;

(9) on 21 July 2016, as no reply had been received to their earlier letter of 19 June 2016, the Respondents had written to the company requesting a response;

(10) on 25 July 2016, the company's accountants had called the Respondents to request some additional time to respond;

(11) on 22 August 2016, the Respondents had received a letter from the company's accountants providing the requested information and indicating that the repayment claim was being reduced to £23,680.06;

(12) on 1 September 2016, the Respondents had replied to that letter to say that the reduced repayment of £23,680.06 would be made;

(13) on 13 September 2016, the Respondents had written to the company to say that:

(a) since making the reduced repayment, the Respondents had discovered that the company had under-declared its output tax and therefore the Respondents were enclosing an assessment in the amount of £16,583.14 in respect of that undeclared output tax; and

(b) as no return had been received in respect of the company's VAT accounting period 07/16, a protective notice of assessment in respect of that VAT accounting period in the amount of £29,591.25 was also enclosed,

and to remind the company of its obligation to keep appropriate records for VAT purposes;

(14) on 20 September 2016, the Respondents had issued a letter warning the company that, if the outstanding VAT was not paid within three days, the Respondents would commence legal proceedings and that might ultimately result in a petition to wind up the company;

(15) on 21 September 2016, the company's accountants had called the Respondents to say that the letter had been received and that they would contact the company to try to ensure that the outstanding amount was paid;

(16) on 11 October 2016, the Respondents had received a letter from the company's accountants querying the basis for the amounts assessed;

(17) on the same day, the Respondents had replied to that letter explaining the basis of the assessments;

(18) in the interim, the Respondents had commenced winding up proceedings against the company in respect of the unpaid VAT. Following the lodging of those proceedings, the company had made a payment of £46,174.26 into court which covered the outstanding amount of VAT shown in the two assessments;

(19) on 11 January 2017, in the absence of any return in respect of the company's VAT accounting period 10/16, the Respondents had issued an assessment to the company in respect of that VAT accounting period in the amount of £16,445.00;

(20) on 21 February 2017, the Respondents had received the company's return for its VAT accounting period 07/16 claiming a repayment of £46,390.18;

(21) on 23 February 2017, the Respondents had sent a letter to the company's accountants to say that the return in respect of the company's VAT accounting period 07/16 was being checked and requesting some further information;

(22) on the same day, the Respondents had sent a letter to the company, care of its accountants, requiring the company to remedy its failure to update the VAT register with its new PPOB;

(23) on 19 April 2017, the Respondents had written to the company's accountants to inform them that, in the absence of a response to the queries set out in their letter of 23 February 2017, the repayment claim in respect of the company's VAT accounting period 07/16 had been rejected and the output tax had been increased in line with the assessment previously made in respect of that VAT accounting period. (The amount shown in that assessment had already been paid, as described in paragraph 58(18) above);

(24) on 25 April 2017, the Respondents had received a reply to their letter of 23 February 2017 from the company's accountants, providing the documents requested and saying that, as far as they were aware, Mr Burke remained a director of the company;

(25) on or around 14 June 2017, Mr Burke had contacted the Respondents to provide information about the company's new PPOB and contact details. The new PPOB was stated to be 38 Market Square;

(26) on 23 June 2017, the Respondents had received an email from Mr Burke to say that:

> (i) although VIES had been updated with the new PPOB, the company still could not process its return. (Mr Burke did not specify which return that was); and
>
> (ii) if the Respondents had any queries with the repayment claim in respect of the company's VAT accounting period 07/16, they should let him know;

(27) on 28 June 2017, the Respondents had received a further email from Mr Burke asking for an update in relation to the repayment claim;

(28) on the same day, the Respondents had replied to say that they apologised for the delay but hoped to be able to complete the analysis on the documents over the next two weeks;

(29) on 14 July 2017, the Respondents had received a further email from Mr Burke asking whether they had been able to complete the analysis on the documents. Mr Burke pointed out in that email that the company had been waiting for some time in relation to the return and needed some sort of progression to be able to push forward with trading;

(30) on 20 July 2017, the Respondents had replied to Mr Burke to say that they were still waiting for the results of some of the checks and that, in relation to those checks which had been completed, they had identified various issues in relation to the claim and had written to him separately, with a copy to the company's accountants, about those issues;

(31) on 21 July 2017, the Respondents had sent their letter setting out those queries to the company and its accountants;

(32) on 5 September 2017, the Respondents had received an email from Mr Burke asking whether they had any update or further information in relation to the repayment;

(33) on the same day, the Respondents had replied to the effect that no decision could be made as regards the repayment until they had received a response to their letter of 21 July 2017;

(34) no further correspondence had been received from the company and no further contact had been made by the Respondents with the company after the Respondents' letter of 5 September 2017;

(35) on or around 6 March 2018, correspondence that had been sent to the company had been returned to the Respondents as undeliverable;

(36) the assessment of £16,445.00 in respect of the company's VAT accounting period 10/16 referred to in paragraph 58(19) above had never been paid or appealed;

(37) she had subsequently conducted checks at Companies House which revealed that the company had no directors or agent following the termination of Mr Burke's directorship on 19 October 2017 and therefore she had de-registered the company for

VAT purposes on 12 June 2018 with effect from 1 August 2017. No letter had been sent to the company to confirm this as there was no known address for the company at the time;

(38) the amounts of VAT shown on the invoices in relation to sales of five vehicles made by the company to the Appellant in June and July 2017 had only recently been discovered. They had therefore not been the subject of any assessment;

(39) the company had been dissolved on 5 June 2018; and

(40) she was of the view that DLL showed all the hallmarks of a defaulting trader because:

(a) it had failed to pay the VAT assessed on it;

(b) it had not provided returns or business records to the Respondents which resulted in the notice of assessments being issued;

(c) it had disappeared from its registered PPOB for VAT purposes; and

(d) it had undertaken transactions giving rise to VAT for which it had not accounted and which were discovered only as a result of records obtained by officers of the Respondents who were dealing with the purchasing company.

FINDINGS OF FACT

Introduction

59. Before we set out our findings of fact in relation to the appeals, we would make some general observations about the evidence summarised above.

60. We should start by saying that we did not consider Mr Harford to be a wholly reliable witness. This is because some of Mr Harford's oral evidence was contradictory or at odds with the documentation which we were shown. For example:

(1) having initially said that every purchase the Appellant made was prompted by an order from a customer for a vehicle of the relevant specification, he subsequently said that, on occasion, the Appellant had acquired vehicles for which it did not have a customer lined up as long as he thought that the Appellant would be able to sell the vehicle fairly easily;

(2) he said that Mr Duffy had never worked for the Appellant and yet the invoices from Hertz referred to in paragraph 54(3) above strongly suggested that that was not the case. We did not find the reason given by Mr Harford for the appearance of Mr Duffy's name as the representative of the Appellant on those invoices – as referred to in paragraph 54(3) above - compelling;

(3) he said in his witness statement that he had found each of the relevant suppliers on Autotrade-mail, where traders advertise cars, but then said in his oral evidence that he had been introduced to those suppliers by individuals that he knew previously – for example, Mr Spears, in the case of Messrs Murdock and Donnelly;

(4) he said that he had been introduced to Hayes by a Mr Tom O'Connor but the email on the Appellant's behalf from SB&P to the Respondents referred to in paragraph 50(15)(a) above said that he had been introduced to Hayes by a Mr Tim Flood of Supreme Autos; and

(5) he said that the fact that Ivymill had on-sold to Motorpark certain of the vehicles sold to it by the Appellant was attributable to the fact that Ivymill could not sell those vehicles for some reason and so Motorpark had effectively agreed to buy them back

because it had sourced customers for them. It was pointed out to him that the invoice in relation to each transaction between Ivymill and Motorpark was dated on the same day – or, on the odd occasion, the day after - the invoice in relation to the related purchase of the relevant vehicle by Ivymill from the Appellant. This suggested that the on-sales could not have been attributable to a failure by Ivymill to find customers for the relevant vehicles. He suggested that this was an invoicing error on the part of Ivymill and that the on-sale in each case had actually taken place on a much later date. However, we did not find this explanation to be persuasive.

61. We also found it strange that:

(1) Mr Harford could not recall the name of the person who had introduced Mr Maguire to him;

(2) Mr Harford could not recall the name of the person with whom he had dealt at KWD or the person who had introduced that person to him, even though the email from Mr Young referred to in paragraph 48(13) above said that he had obtained a director's identification in relation to that company;

(3) Mr Harford claimed that he did not know that Mr McMahon, as well as being a director of MCM, was also a director of Instant and did not know that Mr Maguire, as well as being a director of Instant, was also a director of KWD; and

(4) Mr Harford claimed that he dealt with Mr Paul Donnelly when the Appellant made purchases from DLL whereas the documentary evidence showed that Mr Donnelly had ceased to be a director or shareholder of DLL more than a year before the transactions between the Appellant and DLL.

62. Whilst Officer Lowth's evidence seemed to us to be generally more credible than the evidence of Mr Harford, we did not think that she and her colleagues' conduct of the matters in issue was all that it could have been. For example:

(1) in our view, in seeking information from the Irish tax authorities, there was insufficient focus on precisely what facts needed to be proved in order to succeed in the case against the Appellant. We have addressed in paragraphs 37 to 46 above the implications of this in terms of the inadequacy of the pleadings in the CSOC but, even in those circumstances where we have concluded that the pleadings were sufficient for the case to proceed in relation to vehicles sold to a particular customer of the Appellant in the ROI, the enquiries made of the Irish tax authorities were not as fulsome or detailed as we would have expected. In addition, the Respondents did not follow up on the responses made by the Irish tax authorities to obtain any primary evidence of the alleged frauds perpetrated by the customer in question. An example of the latter was the case of Mr Coady. A central issue in the case as regards the vehicles which were sold by the Appellant to Greasemonkey was whether the evidence of Mr Harford in relation to his dealings with Mr Coady should be preferred to the summary, in the SCAC report in relation to Greasemonkey, of the interviews which were carried out by representatives of the Irish tax authorities with Mr Coady and Ms Fitzpatrick. In that regard, it would have been helpful for us to have heard the evidence of Mr Coady at the hearing. At the very least, it would have been helpful for us to have been able to see a photographic identification document, such as a driver's licence, for the Mr Coady whom the Irish tax authorities met, so that we could be certain that it was the same person who was shown on the driver's licence obtained by Mr Harford and passed on to the Respondents. As it transpired, the Respondents provided no evidence to support the view that the driver's licence obtained by Mr Harford in the course of his due diligence was forged or provided

to Mr Harford by someone other than the Mr Coady who was interviewed by the Irish tax authorities;

(2) in our opinion, a similar lack of rigour was shown in the manner in which the Respondents pursued the appeals so far as they pertained to the Appellant's suppliers in the UK. It would have been easy for the officers of the Respondents who were dealing with the appeals to liaise with the customer relationship managers of the large auto-traders who dealt with the Appellant in order to understand better the nature of the used car market and, hence, the Appellant's business. Had they done so, they would have been able to ascertain the differences, if any, between the manner in which the purchases by the Appellant that are the subject of the appeals were documented (and the negotiations preceding those purchases were recorded) and the manner in which equivalent purchases were made and equivalent negotiations were conducted, by those companies. In addition, they would have been able to ascertain whether those companies had available for sale, on the same day as the relevant purchases were made by the Appellant, vehicles with similar specifications to those purchased by the Appellant from the allegedly fraudulent suppliers;

(3) in addition, Officer Lowth testified that she had not received any of the due diligence material promised by Mr Young in his email of 26 April 2017 referred to in paragraph 48(13) above and yet at least some of that material appeared in the DB; and

(4) by Officer Lowth's own admission, the DB did not contain all of the KWT invoices received by the Respondents from the Appellant. Given that the Respondents sought at the hearing to rely on the inadequacies in the Appellant's documentation as regards the transportation of the vehicles in order to support their case against the Appellant, this was unacceptable.

63. We would add that, more generally, there were various shortcomings in the DB. For instance, a number of crucial documents in the DB – most notably, the SCAC reports in relation to Greasemonkey and Hayes - were illegible and every second page of Ms Wilkinson's witness statement was missing from the DB and we had specifically to request that the full witness statement be provided to us. Even then, many of the exhibits to Ms Wilkinson's witness statement were illegible.

64. Taken together, the features mentioned in paragraphs 60 to 63 above have made it quite difficult for us to reach our decision in this case.

Findings of fact

65. In the light of the evidence summarised in paragraphs 49 to 58 above and our observations in paragraphs 59 to 64 above, we make the following findings of fact:

(1) since the Appellant has not sought to challenge the primary facts set out in the witness statements of Officers Wilkinson, Johnson, Harvey and Lee, together with their exhibits, we hereby adopt those primary facts as findings of fact with the exception of:

(a) the statement made by Officer Johnson in relation to the date on which notification of Mr Maguire's resignation as a director of Instant was received by Companies House. As flagged in paragraph 56(4) above, we find as a fact that that notification was received by Companies House on 17 November 2016 and not 27 March 2017;

(b) the statement made by Officer Harvey to the effect that Mr Maguire did not notify Officer Gomez of the address of KWD for the purposes of Officer Gomez's proposed inspection of KWD. In fact, as the email chain referred to in paragraph 50(10) above makes clear, Mr Maguire sent an email to Officer Gomez on 29

March 2017 confirming that she should go to 31 Langley Park and we therefore find that as a fact; and

(c) the statement made by Officer Harvey to the effect that KWD filed one return, albeit a nil return, for VAT purposes – a return in respect of its VAT accounting period 11/16. That statement is contradicted by the statement made by Officer Gomez in her post-registration summary of MTIC activity in April 2017 to the effect that the company had filed no VAT returns whatsoever. Since Officer Gomez's statement was more proximate in time to the events in question, we are inclined to conclude that no VAT return was submitted by KWD but nothing turns on this in the present context because the vehicles sold by KWD to the Appellant which are relevant to the appeals were sold in a later VAT accounting period - KWD's VAT accounting period 02/17.

We wish to make it clear that the primary facts set out in the four witness statements which we have adopted as findings of fact do not include the conclusions drawn by the Officers, as set out in paragraphs 55(8), 56(26), 57(9) and 58(40), above;

(2) notwithstanding the claim to the contrary by Officer Lowth, we consider that, on the balance of probabilities, the information described in Mr Young's email of 26 April 2017 referred to in paragraph 48(13) above was provided to the Respondents. We say that because:

(a) first, in paragraph [55] of her witness statement, Ms Lowth referred to receiving "various" emails from Mr Young on that date and not just one;

(b) secondly, there was no record in the DB of the Respondents' chasing Mr Young after that date to provide the promised information; and

(c) thirdly, some of the information to which that email referred was in fact contained in the DB, as we have mentioned in paragraph 62(3) above;

(3) we consider that, on the balance of probabilities, Mr Harford did meet Mr Coady of Greasemonkey and that the Appellant did sell to Mr Coady (acting on behalf of Greasemonkey) the vehicles which Mr Harford alleges it sold. We have reached this conclusion for the following reasons:

(a) although Mr Harford was, in our view, not a wholly reliable witness, he obtained in the course of his due diligence, and provided to the Respondents, the driver's licence of Mr Coady and photocopy of the advice of VAT registration in relation to Greasemonkey. Prima facie, therefore, it seems likely that the person he met was the Mr Coady who was shown on the driver's license which Mr Harford provided to the Respondents;

(b) in addition, there were several features of the SCAC report in relation to Greasemonkey which cast doubt on the information which was provided to the Irish tax authorities by Mr Coady and Ms Fitzpatrick. These were as follows:

(i) first, Ms Fitzpatrick and her brother were directors of another company – PJF Construction Limited – in respect of which the Irish tax authorities said they they had concerns in relation to fraud;

(ii) secondly, Ms Fitzpatrick was employed full-time by Debenhams and Mr Coady was on social security having previously been a driver for Autovalue Limited and neither of them had any experience in car maintenance, which was the stated business of Greasemonkey;

(iii) thirdly, on Mr Coady's own admission, the company was doing very little work; and

(iv) finally, the VAT returns submitted by the company showed that it was owed over €2,000 of VAT repayments and yet those repayments were never pursued by the directors of the company; and

(c) moreover, the bank statements set out in the DB show that the Appellant was recorded as receiving payments from Greasemonkey.

These features are sufficient in our mind to suggest that the denials by Mr Coady and Ms Fitzpatrick cannot be taken at face value and therefore we find that, on the balance of probabilities, the Appellant did sell to Mr Coady, acting on behalf of Greasemonkey, the vehicles which Mr Harford said it did;

(4) despite the valiant attempt by Mr Watkinson to suggest the contrary, we consider that, on the balance of probabilities, the Mr David McMahon who was the director of MCM was the same person as the Mr David Patrick McMahon who was the director of Instant. In saying that, we are cognisant of the fact that McMahon is a name which is not uncommon in the ROI and therefore that there is very likely to be more than one Mr David McMahon in existence. However, the material in the DB revealed that there was a Mr David McMahon who was a director of East West Direct Limited and we have concluded that that person was the same person as the Mr David Patrick McMahon who was the director of Instant because:

(a) both of them are recorded at Companies House as having been born in December 1990;

(b) each of 31 Langley Park and 72 Bardsay Road was at some point the registered office of East West Direct Limited for company law purposes and those addresses were also the registered office of Instant – and, for that matter, KWD - for company law purposes at various times;

(c) Mr Christopher Fisher was a director of both Instant and East West Direct Limited, thereby reinforcing the link between those two companies; and

(d) East West Direct Limited also defaulted on its VAT liabilities in a similar fashion to Instant – and, for that matter, KWD.

Having reached the conclusion that the Mr McMahon who was the director of East West Direct Limited was the Mr David Patrick McMahon who was the director of Instant, we think it highly probable that the same Mr David McMahon was also the director of MCM. In short, it seems improbable to us that there were two different Mr David McMahons who were operating in the used car market in the UK at this particular time, who had dealings with the Appellant and who was associated with companies which were defaulting on their VAT liabilities;

(5) we consider that, on the balance of probabilities, at the time when the Appellant purchased vehicles from DLL, DLL was not represented by Mr Paul Donnelly. We say that because it was clear from the documentary evidence that Mr Donnelly had ceased to be a director and shareholder of DLL more than a year before the transactions between the Appellant and DLL and we think that it is most unlikely that he would have done that and yet still continued to represent the company more than a year later; and

(6) although we believe that it is not strictly necessary to make these findings of fact– given our conclusion in paragraph 110 below to the effect that Mr Harford would have

discovered the facts in any event if he had made the appropriate enquiries - we consider that, on the balance of probabilities:

(a) Mr Harford was aware that there was a connection between Mr McMahon and Instant and between Mr Maguire and KWD. We say that because of our conclusions in relation to the reliability of Mr Harford's evidence in general (as set out in paragraphs 60 and 61 above). Moreover, so far as concerns Mr Maguire's connection with KWD, the fact that Mr Maguire was clearly representing KWD when Officer Gomez proposed to visit KWD's premises in March 2017 suggests that he was very much in control of KWD at that time; and

(b) Officer Lowth did not simply tell Mr Harford that he needed to improve his due diligence without specifying how he might do that – as Mr Harford alleged in his evidence – but that, on the contrary, Officer Lowth expressly pointed out to Mr Harford that he should visit the premises of the Appellant's suppliers as set out on their invoices and not simply meet those suppliers in coffee shops. We say that because we found the testimony of Officer Lowth to be more credible than that of Mr Harford.

DISCUSSION

Introduction

66. We now turn to address the substantive issues in the appeals.

67. It can be seen from paragraphs 33 to 36 above that the starting point in this process must be to consider whether, on the balance of probabilities, the Respondents have satisfied us that:

(1) so far as each relevant supplier is concerned, the VAT loss which the Appellant accepts has arisen was caused by that supplier's fraudulent evasion; and

(2) so far as each relevant customer is concerned, there was a VAT loss and that VAT loss was caused by that customer's fraudulent evasion.

68. That is because, unless the Respondents can succeed on those issues in relation to a particular vehicle which was purchased by the Appellant from a relevant supplier or sold by the Appellant to a relevant customer, the question of the Appellant's actual or constructive knowledge of fraud in relation to the relevant vehicle does not arise.

Suppliers

69. In the light of the evidence provided to us and the submissions of the parties, our views in relation to whether the VAT loss which the Appellant accepts has arisen in the case of each vehicle purchased by the Appellant from a relevant supplier was caused by fraudulent evasion are as follows.

Mohawk

70. Mr Watkinson submitted that we should be slow to conclude that Mr Murdock was guilty of fraud given that:

(1) his VAT registration included, in addition to his registered PPOB for VAT purposes of Unit 10, Downpatrick Business Centre, an email address, a home address, a telephone number and details of his agent;

(2) the Respondents also held details of Mr Murdock's registered PPOB for VAT purposes, home address and employer in connection with income tax;

(3) when the Respondents visited Mr Murdock's registered PPOB for VAT purposes, they were told that he was indeed renting space there;

(4) no evidence had been presented to the effect that the Respondents had ever tried:

(a) to visit Mr Murdock at his home address;

(b) to contact Mr Murdock using the email or telephone details he had provided;

(c) to contact Mr Murdock through his agent or employer; or

(d) to visit the address on the invoices provided by Mr Murdock to the Appellant; and

(5) an equally plausible explanation for the failure by Mr Murdock to discharge his VAT liabilities was that he went insolvent.

71. Against that, we have the testimony of Officer Wilkinson set out in paragraph 55 above.

72. Whilst it is perhaps fair to say that the Respondents might have made greater efforts to contact Mr Murdock than they did, the Respondents have satisfied us that, on the balance of probabilities, Mr Murdock fraudulently evaded his VAT liabilities in respect of the vehicles which he sold to the Appellant. We say that because:

(1) Mr Murdock did not submit VAT returns for any of the three VAT accounting periods in which he was registered for VAT;

(2) Mr Murdock also did not complete the income tax self-assessment returns issued to him in relation to the tax years of assessment ending 5 April 2017 and 5 April 2018;

(3) Mr Murdock failed to respond to the letter from Officer Wilkinson of 22 May 2017 threatening him with de-registration;

(4) Mr Murdock failed to pay any of the assessments which had been sent to him at both Unit 3 Embankment Road (the address on the invoices rendered to the Appellant) and Unit 10, Downpatrick Business Centre (his registered PPOB for VAT purposes); and

(5) the address on the invoices rendered by Mr Murdock to the Appellant was uncannily close to the address of a company, Mohawk Trading Company Limited, which appears to have been entirely unrelated to Mr Murdock.

In our view, these factors, when viewed together, are much more consistent with an attempt to evade VAT liabilities fraudulently than to a failure to pay VAT by reason of insolvency.

Instant

73. Mr Watkinson submitted that we should be slow to conclude that Instant was guilty of fraud given that:

(1) Instant was invoiced by AutoTrader for advertisements carried by AutoTrader for Instant;

(2) no evidence had been presented that the Respondents followed through with their attempt to discuss Instant's business with Instant's director, Mr Maguire. Instead, the Respondents had initially sought to discuss KWD's business with Mr Maguire but had then in fact declined to meet with Mr Maguire when a meeting had been arranged;

(3) the Respondents had made no attempt to contact Mr Maguire at his home address;

(4) no assessments had been issued to Instant and it was mere supposition to assume that, had assessments been issued, Instant would have failed to discharge those assessments;

(5) no evidence had been produced that the Mr David Patrick McMahon, who was for a period a director of Instant, had any involvement in MCM (the company which was the

subject of the tax loss letter of 5 January 2017) or was even the same person as the Mr David McMahon who was the director of MCM. McMahon was a common name in the ROI; and

(6) an equally plausible explanation for the failure by Instant to discharge its VAT liabilities was that it went insolvent.

74. Against that, we have the testimony of Officer Johnson set out in paragraph 56 above.

75. The Respondents have satisfied us that, on the balance of probabilities, Instant fraudulently evaded its VAT liabilities in respect of the vehicles which it sold to the Appellant. We say that because:

(1) for the reasons set out in paragraph 65(4) above, we consider that, on the balance of probabilities, the Mr David Patrick McMahon who was for a time the director of Instant was the same person as the Mr David McMahon who was the director of East West Direct Limited and MCM. There was therefore a direct connection between MCM and Instant and between East West Direct Limited and Instant;

(2) there was a further connection between East West Direct Limited and Instant in that:

(a) like Mr McMahon, Mr Christopher Fisher of 31 Langley Park was also a director of both companies at various times; and

(b) both companies had registered offices for company law purposes at both 72 Bardsay Road and 31 Langley Park at various times;

(3) there was also a connection between Instant and KWD as a result of the fact that:

(a) Mr Maguire was a director of both of those companies at various times;

(b) Mr Maguire was in addition the owner of 100% of the share capital in KWD for a period; and

(c) both companies had registered offices for company law purposes at both 72 Bardsay Road and 31 Langley Park at various times;

(4) each of MCM, East West Direct Limited, Instant and KWD defaulted on its VAT liabilities;

(5) Mr McMahon had previously been involved in VAT fraud in both the UK and the ROI;

(6) the business activity of Instant when it registered for VAT was stated to be "[business] consultancy services" when in fact its business involved the sale of used cars and the Respondents have no record of being notified by Instant of any change in its business activity;

(7) Instant did not file any VAT returns;

(8) Instant did not notify the Respondents of a change in its registered PPOB for VAT purposes when its registered office for company law purposes changed from 31 Langley Park to 5 Exchange Flags;

(9) upon investigation, it transpired that 31 Langley Park was owned by the HCHA and that none of the tenants knew of Mr Maguire, Instant or KWD. Thus, Instant had no presence at that address despite the fact that it purported to have its registered office for company law purposes and its registered PPOB for VAT purposes there and despite the fact that that was the address shown on the invoices which it rendered to the Appellant;

(10) Instant had no directors in place from 2 January 2017 to 5 January 2017 or from 4 February 2017 and therefore had no directors in place at the time when the relevant vehicle sales to the Appellant occurred;

(11) there were lacunae in the invoicing of sales made by Instant;

(12) Instant purportedly imported four vehicles into the UK from Cyprus but the VIES report showed that neither Cyprus nor any other jurisdiction within the EU had reported the export of the vehicles in question to the VAT registration number in use by Instant; and

(13) Instant did not file any annual accounts at Companies House.

In our view, these factors, when viewed together, are much more consistent with an attempt to evade VAT liabilities fraudulently than to a failure to pay VAT by reason of insolvency.

KWD

76. Mr Watkinson submitted that we should be slow to conclude that KWD was guilty of fraud given that:

(1) on first registration at Companies House, the business of KWD was properly recorded as the sale of used cars and light motor vehicles;

(2) the registered PPOB for VAT purposes was at all times 27a Castlegate. (There were no changes in the registered PPOB for VAT purposes when the registered office for company law purposes changed to 72 Bardsay Road, then 31 Langley Park and then back to 72 Bardsay Road.) However, there was no evidence that the Respondents had ever visited 27a Castlegate;

(3) the fact that the Respondents' attempts to visit KWD at its registered offices for company law purposes had foundered was of no evidential value given that many companies did not trade from their registered offices for company law purposes;

(4) 72 Bardsay Road was not the registered office of KWD for company law purposes on 28 November 2016, when the Respondents said that they visited and posted a warning letter requesting contact. In fact, the registered office of KWD for company law purposes had changed from 72 Bardsay Road to 31 Langley Park on 16 November 2016;

(5) Mr Maguire had been responsive to the request made by Officer Gomez for a meeting, as the email chain described in paragraph 50(10) above bore out. In effect, it was the Respondents who failed to re-arrange the meeting as a result of receiving the email from Ms Mace referred to in paragraph 50(11) above;

(6) no evidence had been presented that the Respondents had ever visited London Bridge, the address on the invoices rendered by KWD to the Appellant, or attempted to contact Mr Maguire at his home address;

(7) the notification of assessments sent to KWD on 12 July 2017 was sent to 31 Langley Park, even though the Respondents had by then already concluded that the company had no presence at that address. It was therefore difficult to conclude that the company had become aware of the assessments and deliberately not paid them; and

(8) an equally plausible explanation of the failure by KWD to discharge its VAT liabilities was that it went insolvent.

77. Against that, we have the testimony of Officer Harvey set out in paragraph 57 above.

78. The Respondents have satisfied us that, on the balance of probabilities, KWD fraudulently evaded its VAT liabilities in respect of the vehicles which it sold to the Appellant. We say that because:

(1) the business activity of KWD when it registered for VAT was stated to be "[business] consultancy services" when in fact its business involved the sale of used cars and the Respondents have no record of being notified by Instant of any change in its business activity, even though its business activity was properly recorded at Companies House from its first registration as the sale of used cars and light motor vehicles;

(2) regardless of whether KWD filed a nil return in respect of its VAT accounting period 11/16 – and, if it did, that nil return was erroneous on the basis of the evidence to the effect that the company had made sales in that VAT accounting period – KWD did not file any VAT return in respect of its VAT accounting period 02/17, when the vehicles which are relevant to the appeals were sold to the Appellant;

(3) there was a connection between KWD and Instant as a result of the fact that:

(a) Mr Maguire was a director of both of those companies at various times;

(b) Mr Maguire was in addition the owner of 100% of the share capital in KWD for a period; and

(c) both companies had registered offices for company law purposes at both 72 Bardsay Road and 31 Langley Park at various times;

(4) each of Instant and KWD defaulted on its VAT liabilities;

(5) the invoices rendered by KWD to the Appellant showed London Bridge and not its registered office for company law purposes of 31 Langley Park or its registered PPOB for VAT purposes of 27a Castlegate as its address and yet Mr Maguire did not suggest that address as an appropriate meeting place for his meeting with Officer Gomez;

(6) upon investigation, it transpired that 31 Langley Park was owned by the HCHA and that none of the tenants knew of Mr Maguire, Instant or KWD. Thus, KWD had no presence at that address despite the fact that it purported to have its registered office for company law purposes there;

(7) moreover, notwithstanding the above, Mr Maguire suggested that the meeting proposed between him and Officer Gomez should take place at 31 Langley Park. In the circumstances, we think that it was reasonable for Officer Gomez to have concluded that re-arranging the meeting at that address would have been a wasted effort; and

(8) although Mr Watkinson was quite right in saying that the registered PPOB for VAT purposes of KWD never changed from 27a Castlegate, there were numerous changes in the registered office of the company for company law purposes and, between 16 November 2016 and 5 October 2017, the registered office of the company for company law purposes was 31 Langley Park. The Respondents were therefore perfectly entitled to send their notice of assessments letter of 12 July 2017 to the company at that address and any failure on the part of the company to become aware of the assessments because it had no presence at that address would have been entirely the fault of the director of the company at the relevant time and, in the light of the other facts set out above, could only be interpreted as deliberate.

In our view, these factors, when viewed together, are much more consistent with an attempt to evade VAT liabilities fraudulently than to a failure to pay VAT by reason of insolvency.

DLL

79. The position in relation to DLL is more finely-balanced than in relation to the other three suppliers.

80. Mr Watkinson submitted that we should be slow to conclude that DLL was guilty of fraud given that:

(1) on registering for VAT, the business of DLL was properly recorded as the buying and selling of new and used cars and light motor vehicles;

(2) DLL submitted its first two VAT returns and its first VAT return was verified by the Respondents, who then made a repayment to the company;

(3) DLL appointed accountants to deal with the Respondents' queries in relation to VAT;

(4) the director of DLL, Mr Burke, provided the Respondents on 14 June 2017 with the company's new PPOB for VAT purposes and two telephone numbers;

(5) Mr Burke had informed the Respondents that the company could not process its return as a result of difficulties with its address and there was no evidence that the Respondents had attempted to help the company to resolve those difficulties; and

(6) hence, the failure to submit a return covering the supplies in question could not properly be attributed to a fraudulent intent on the part of DLL.

81. In addition to those submissions, we note that:

(1) the company did in fact pay VAT of £46,390.18 in respect of its first two VAT accounting periods, albeit only after being threatened with winding up by the Respondents; and

(2) the evidence shows that, over the period 23 June 2017 to 5 September 2017, Mr Burke was pressing the Respondents to process the company's repayment claim in respect of its VAT accounting period 07/16.

82. Against that, we have the testimony of Officer Lee set out in paragraph 58 above to the effect that:

(1) on 11 January 2017, the company was assessed to VAT in the amount of £16,445.00 in respect of its VAT accounting period 10/16 and neither appealed against, nor discharged, that assessment;

(2) the company was slow to update the VAT register with its new PPOB for VAT purposes;

(3) the address on the invoices rendered to the Appellant in respect of the vehicles in question was different from the company's registered PPOB for VAT purposes;

(4) the company did not submit a return in respect of its VAT accounting periods after the VAT accounting period 07/16 and did not account for VAT on the sales of the relevant vehicles to the Appellant in June and July 2017; and

(5) the company disappeared from its registered PPOB for VAT purposes following the Respondents' letter of 5 September 2017 containing queries in relation to its VAT accounting period 07/16.

83. What we find perplexing about these facts is that, unlike the other three suppliers to which the appeals relate, DLL was clearly a compliant taxpayer for much of the period in which it existed. It engaged professionals to help it to deal with its VAT obligations and it discharged

many of those obligations. The position appears to have changed in and around September 2017, when the company simply disappeared without accounting for VAT in respect of its supplies to the Appellant. On balance, we have reached the conclusion that, on the balance of probabilities, the company's failure to account for VAT in respect of those supplies was fraudulent and not simply attributable to the insolvency of the company. We say this because, in the absence of any fraudulent intent, the company would have contacted the Respondents in order to manage its VAT liabilities and would have sought to file a VAT return recording the supplies which it made to the Appellant.

84. For that reason, the Respondents have satisfied us that, on the balance of probabilities, DLL fraudulently evaded its VAT liabilities in respect of the vehicles which it sold to the Appellant.

Customers

85. In the light of the evidence provided to us and the submissions of the parties, our views in relation to whether each vehicle sold by the Appellant to a relevant customer gave rise to a VAT loss caused by fraudulent evasion are as follows.

Greasemonkey

86. The Respondents' case in relation to Greasemonkey is that Ms Fitzpatrick and Mr Coady are to be believed when they said that they had never heard of either the Appellant or Mr Harford and that Greasemonkey had not purchased from the Appellant the vehicles which Mr Harford claims that the Appellant sold to it. According to the Respondents, this means that the Greasemonkey VAT registration number must have been hijacked by a person unknown and therefore that whoever purchased the vehicles must have sold the vehicles in a transaction giving rise to VAT in the ROI for which it failed to account.

87. It may be seen from paragraph 65(3) above that we do not accept this version of events. We think it more likely that Ms Fitzpatrick and Mr Coady did in fact purchase the relevant vehicles from the Appellant notwithstanding their protestations.

88. However, in our view, very little turns on this in the context of this decision because, in either case, it is clear that there is no record that any VAT was accounted for in respect of the on-sale of the relevant vehicles in the ROI. The question which then arises is whether the Respondents have done enough to discharge the burden of proof that is on them to show that, on the balance of probabilities, each relevant vehicle was the subject of an on-sale in the ROI giving rise to VAT for which the person making the sale fraudulently failed to account.

89. In that regard, Mr Watkinson submitted that:

(1) both the pleaded facts, and the evidence provided, in relation to the vehicles purportedly sold to Greasemonkey were insufficient to justify that conclusion;

(2) the Respondents' case was based on untestable hearsay from the tax authorities in the ROI which had not been updated since the middle of 2017 and which was unsupported by any primary evidence; and

(3) there was no evidence that the vehicles in question had been sold in the ROI by anyone, let alone that the vehicles in question had been sold in transactions giving rise to VAT for which the seller fraudulently failed to account.

90. We can see the force in those submissions.

91. The contrary argument made by Ms Vicary was that:

(1) it is most likely that each vehicle in question was the subject of an on-sale in the ROI by the customer - whether it be Greasemonkey or the person who hijacked Greasemonkey's VAT registration number - in a transaction giving rise to VAT;

(2) there is no record in the ROI that any VAT was accounted for in respect of any such on-sale; and

(3) therefore, the balance of probabilities suggests that the on-sale of the vehicle in question gave rise to a VAT liability for which the customer - whether it be Greasemonkey or the person who hijacked Greasemonkey's VAT registration number - fraudulently failed to account.

92. In weighing up the respective submissions of the parties, we have asked ourselves what more evidence the Respondents could have produced to support their pleading to the effect that the on-sale of each vehicle which was sold to Greasemonkey gave rise to a VAT liability for which the customer - whether it be Greasemonkey or the person who hijacked Greasemonkey's VAT registration number - fraudulently failed to account. In doing so, we have noted from the evidence of Officer Lowth that, in all but ten transactions effected in March 2017, the Respondents were in possession of both the marque and the UK registration number of the vehicle in question. That being the case, we consider that attempts could have been made to see if the vehicle in question had been re-registered in the ROI and, from that, it would have been possible to determine whether the vehicle in question was the subject of an on-sale in the ROI in respect of which VAT arose but was unpaid.

93. In the circumstances, we have concluded that the Respondents have not done enough in relation to the vehicles sold by the Appellant to Greasemonkey to satisfy the burden of proof on this issue. There is absolutely no evidence on which we can conclude that the vehicles in question were on-sold in transactions giving rise to VAT in the ROI and therefore no evidence on which we can conclude that the vehicles gave rise to VAT losses in the ROI which derived from fraud. The relevant vehicles might never have been sold or might have been exported in transactions which did not give rise to VAT, as was the case in relation to some of the vehicles which were sold by the Appellant to Solum (see paragraph 42(5)(f) above). We simply do not know enough about the dealings with the vehicles following their sale by the Appellant to conclude that they were the subject of VAT fraud.

94. It follows that we consider that the Appellant is entitled to succeed in the appeals to the extent that the appeals relate to the vehicles which it sold to Greasemonkey.

Hayes

95. The Respondents' case in relation to Hayes is that each of the vehicles sold by the Appellant to Hayes gave rise to a VAT loss in the ROI because Hayes failed to account for VAT in respect of its on-sale of the relevant vehicle and that that failure was fraudulent.

96. However, Mr Watkinson pointed out that:

(1) the SCAC report in relation to Hayes addressed the position in relation to only six of the eleven vehicles sold to Hayes which are relevant to the appeals;

(2) that SCAC report said that two of those six vehicles were not the subject of an on-sale at all – the vehicles with UK registration numbers RJ140KM and BV15VOO;

(3) it followed that the only vehicles in relation to which there was any evidence of a VAT loss, let alone a VAT loss caused by fraudulent evasion, were the other four vehicles to which reference was made in the SCAC report; and

(4) even in relation to those vehicles, there was no evidence as to why the company had failed to account for VAT in respect of the on-sales and therefore the VAT loss which

had arisen in relation to them might very easily have been the result of insolvency, as opposed to fraudulent evasion.

97. We agree with Mr Watkinson that there is no evidence of any VAT loss in respect of the two vehicles which were said in the SCAC report not to have been on-sold. If those vehicles were not on-sold, they can hardly have given rise to a liability to account for VAT. It follows that the Appellant is entitled to succeed in the appeals to the extent that the appeals relate to those two vehicles.

98. Turning then to the other four vehicles to which reference was made in the SCAC report:

(1) since the report said that those vehicles were on-sold and also that Hayes did not account for VAT in respect of those sales, we think that the Respondents have established that those vehicles gave rise to a VAT loss in the ROI; and

(2) since the report said that Hayes did not account for VAT and then immediately referred to the issue of "Section 108D letters" – which we assume are similar to the tax loss letters which are issued by the Respondents in cases involving fraud within a supply chain in the UK context, although the Respondents did not provide any explanation or evidence to that effect - and made no mention of an insolvency-related default, we think that the Respondents have established that, on the balance of probabilities, the VAT loss so arising was caused by fraudulent evasion.

99. Finally, in relation to the other five vehicles, we have concluded that the Respondents have not done enough to satisfy the burden of proof in relation to those vehicles. We have noted that the evidence of Officer Lowth was that the Respondents did not have the marque or UK registration details in relation to three of the five vehicles – the vehicles sold to Hayes on 14 and 16 June 2017. Given the inadequacies noted in paragraph 62(1) above in the manner in which the Respondents have pursued this case, we are by no means certain that the Respondents did not have the marque or UK registration details in relation to those three vehicles. However, even if they did not, the Respondents still had the dates of sale and the amounts paid to the Appellant in respect of them. They could therefore have asked the Irish tax authorities to investigate what became of those vehicles. Instead, there is no evidence that the Respondents asked the Irish tax authorities to investigate what might have happened to any of those vehicles. They have simply relied on the fact that the SCAC report referred to four of the six vehicles mentioned in that report as having been sold without any VAT's being accounted for. We think that that is insufficient to establish that, on the balance of probabilities, the remaining five vehicles were on-sold in transactions giving rise to VAT which was not paid because of fraud. The very fact that two of the six vehicles mentioned in the SCAC report were not on-sold demonstrates that it was perfectly possible that some or all of those five vehicles were also not on-sold. Alternatively, some or all of those vehicles may have been on-sold by way of export in transactions which did not give rise to VAT, as was the case in relation to some of the vehicles which were sold by the Appellant to Solum (see paragraph 42(5)(f) above). In the circumstances, we have concluded that the Appellant is entitled to succeed in the appeals to the extent that the appeals relate to those five vehicles.

Conclusions in relation to suppliers and customers

100. On the basis of the above, our conclusions on this aspect of the appeal are that:

(1) in the case of each of the vehicles purchased by the Appellant from a relevant supplier, the Respondents have established that, on the balance of probabilities, the VAT loss which the Appellant accepts has arisen in relation to the relevant vehicle was caused by fraudulent evasion;

(2) in the case of each of the vehicles sold by the Appellant to Greasemonkey, the Respondents have not established that, on the balance of probabilities, there was a VAT loss which was caused by fraudulent evasion in relation to the relevant vehicle;

(3) in the case of each of the four vehicles sold by the Appellant to Hayes which were said in the SCAC report in relation to Hayes to have been on-sold by Hayes, the Respondents have established that, on the balance of probabilities, there was a VAT loss which was caused by fraudulent evasion in relation to the relevant vehicle; and

(4) in the case of each of the other seven vehicles sold by the Appellant to Hayes, the Respondents have not established that, on the balance of probabilities, there was a VAT loss which was caused by fraudulent evasion in relation to the relevant vehicle.

Knew or should have known

101. The above conclusions mean that it is necessary for us to address the issue of whether the Appellant knew or should have known of the connection to the fraudulently-caused VAT loss in the case of each of the vehicles referred to in paragraphs 100(1) and 100(3) above.

The parties' submissions

102. Mr Watkinson submitted that we should answer that question in the negative for the reasons which follow:

(1) the Respondents had made no particularised allegations, either in the CSOC or in their cross-examination of Mr Harford, to the effect that:

(a) VAT fraud was endemic in the used car "business-to-business" trade;

(b) the purchases and sales effected by the Appellant were part of an overall scheme to defraud the Respondents or part of an MTIC fraud;

(c) the purchases and sales effected by the Appellant were orchestrated or pre-ordained;

(d) the purchases and sales effected by the Appellant had no commercial rationale;

(e) the suppliers to the Appellant other than the relevant suppliers were fraudulent or indeed anything other than legitimate enterprises engaged in ordinary business;

(f) any other party to the transaction chains above each relevant supplier was party to the alleged fraud of the relevant supplier or knew or should have known of that alleged fraud;

(g) the profits made by the Appellant is respect of its purchases and sales were too good to be true;

(h) the Appellant had no commercial interest in the vehicles which were the subject of the purchases and sales because the transaction documents failed to describe the vehicles appropriately or the vehicles were not fit for purpose;

(i) the prices at which the purchases and sales took place were in any way extraordinary;

(j) the volume of vehicles purchased and sold was any way extraordinary;

(k) there was anything unusual in the Appellant's turnover, profits or input tax claims in the VAT accounting periods in question;

(l) there was anything concerning in the manner in which the Appellant conducted its business over the period from its registration on 1 April 2012 to the meeting on 20 October 2016 or that any transactions into which the Appellant had entered over that period were connected with the fraudulent evasion of VAT; or

(m) the vehicles were released by the Appellant to a purchaser before the purchaser paid for the vehicle;

(2) in addition, the Respondents had made no particularised allegations in the CSOC to the effect that:

(a) the logistical arrangements in relation to the vehicles which the Appellant sold to the customers were anything other than commercially normal; or

(b) Mr Duffy was responsible for, or in any way relevant to, the transactions in question,

although they had cross-examined Mr Harford on those two subjects;

(3) given the omissions set out in paragraphs 102(1) and 102(2) above, there were far too many unchallenged factors for us to make a finding of actual knowledge in this case;

(4) moreover, people who knowingly participated in transactions which were connected with VAT fraud risked losing their input tax credits or losing zero-rating on their exports, either of which would eradicate any profits from the relevant transactions. Thus, such people would generally take the lion's share of the profits arising out of the transactions based on the risks they were taking. However, in this case, the Respondents had accepted that the profits made by the Appellant from the relevant transactions were commercially normal;

(5) as for constructive knowledge of fraud, the case law showed that, in order for us to conclude that the Appellant should have known of the connection to fraud, the "no other reasonable explanation standard" had to be met and, given that the Respondents themselves accepted that the vast majority of circumstances in this case were commercially normal, it was not possible to reach that conclusion; and

(6) the figures in the Appellant's VAT returns for the relevant VAT accounting periods showed that the Respondents were challenging the input tax claimed in respect of only 30% of the vehicle purchases made by the Appellant over those periods, which meant that the Respondents had accepted that 70% of those vehicle purchases had no connection with VAT fraud.

103. In response, Ms Vicary submitted that the evidence showed that the Appellant knew or should have known that its purchases and sales were connected with VAT fraud. In particular:

(1) Mr Harford's evidence was contradictory and unreliable, involving as it did regular changes of position on how he had met particular suppliers and a failure to recall names. For example, he had said that he could not recall the name of either the person with whom he dealt at KWD or the person who had introduced that person (and Mr Maguire) to him. Mr Harford had also been evasive in relation to the role played by Mr Duffy for the Appellant;

(2) each of the relevant company suppliers was newly-incorporated with no track record in the used car market. As such, their ability to access at very short notice vehicles which the Appellant was apparently unable to acquire from one of its large company suppliers was highly suspicious;

(3) there was no written record of the negotiations preceding any purchase or sale by the Appellant;

(4) the transaction documentation in relation to each purchase and sale was scant, comprising as it did simply an invoice noting the marque and UK registration number of the vehicle in question. The invoice did not include details of the specification or the condition of the vehicle;

(5) Mr Harford had not taken the appropriate steps in relation to insuring the vehicles. Although he had asserted that the vehicles were insured by the relevant supplier or transporter, he had not properly checked that that was the case;

(6) Mr Harford had never inspected the vehicles himself, instead relying solely on the descriptions he received from the relevant suppliers. He therefore knew nothing about the condition of the vehicles at the time of purchase or even whether the vehicles matched the specifications required by the Appellant's customer;

(7) the due diligence carried out by Mr Harford was inadequate. In particular:

(a) he should have visited the addresses shown on the invoices provided by the Appellant's suppliers and the registered PPOBs of the suppliers for VAT purposes to look for signs that they were carrying on business at those premises and should not simply have conducted all of the Appellant's transactions with those suppliers on the phone or by way of meetings in coffee shops. Had he visited the addresses on the invoices and the registered PPOBs for VAT purposes, he would have discovered that 31 Langley Park was occupied by the HCHA and that no-one there had any knowledge of Mr Maguire, Instant or KWD;

(b) the bank statement obtained by Mr Harford from Hayes showed a negligible balance and was, in any event, obtained only after several sales had been made by the Appellant to Hayes;

(c) despite the statement in Mr Young's email of 26 April 2017 to the effect that Mr Harford had conducted director's identity checks in relation to each of Instant and KWD, that could not have been the case as Mr Harford claimed at the hearing not to know that Mr McMahon was a director of Instant or that Mr Maguire was a director of KWD; and

(d) no due diligence whatsoever had been done in relation to DLL as was demonstrated by the fact that Mr Young's email of 26 April 2017 referred to in paragraph 48(13) above had not referred to DLL;

(8) Mr Harford was on notice after the meeting on 20 October 2016 that one of the Appellant's suppliers – MCM – had been involved in the fraudulent evasion of VAT. At that point he was directed to read PN 726 and told that it was of potential relevance to the Appellant despite the fact that the business of the Appellant did not relate to the type of goods to which reference was made in that document. Had he read Section 6 of that document properly, he would have seen that a number of the factors described above were said to be warning signs of possible connection to fraud and ought then to have improved the level of his due diligence; and

(9) the documentation provided by the Appellant in relation to the transportation of the vehicles was inadequate. Invoices from transporters were either missing or inadequate to identify the vehicle being transported or the end-destination of the delivery within the ROI.

Conclusion

104. After reflecting on the respective submissions of the parties, we have concluded that, on the balance of probabilities, the Appellant did not have actual knowledge of the connection between the relevant purchases and sales which it made and the frauds in question. We say that because:

(1) at the time of the transactions, the Appellant had been carrying on its trade for almost five years without any suggestion of nefarious activities. Moreover, a significant percentage of the purchases into which the Appellant entered in the VAT accounting periods in question were with large companies in the used car market who were clearly not engaged in VAT fraud. That being the case, it would have been illogical for Mr Harford to run the risk of destroying the Appellant's business for the sake of increasing his turnover by entering into transactions connected with VAT fraud. It would have made far more sense to have forgone the opportunity to participate in those transactions;

(2) that conclusion is reinforced when one considers that, as the Respondents accepted, the profits derived by the Appellant from these transactions were no greater than the profits derived by the Appellant from its other transactions. Mr Harford knew from as early as October 2016 that a possible consequence of participating in transactions connected with fraud was that the Appellant might lose its ability to claim a credit for its input tax or its ability to zero-rate its exports. That being the case, it would have made no economic sense for Mr Harford knowingly to enter into such transactions on behalf of the Appellant without adequate remuneration to the Appellant for the significant risks he knew the Appellant to be running. The fact that the profits derived by the Appellant from these transactions were no greater than the profits derived by the Appellant from its other transactions is strongly indicative of the fact that Mr Harford was unaware of the fact that the transactions were connected with fraud because, had he been so aware, he would have been foolhardy to enter into the transactions on behalf of the Appellant without being remunerated for the risks which the Appellant was running; and

(3) finally, in his interactions with the Respondents, Mr Harford did not behave in a manner which suggested that he was engaged in nefarious activities. He had regular meetings with officers of the Respondents at which he was open about his business model and sought advice from them as to how he might improve the Appellant's due diligence procedures. In addition, in attempting to improve those procedures, he incurred professional fees in the form of SB&P and Mr Mann, the Appellant's VAT advisor. These actions are not consistent with a person who is knowingly participating in transactions connected with fraud.

105. We have much more difficulty in reaching a conclusion in relation to the question of whether the Appellant should have known that the transactions in question were connected with fraud.

106. We would start by saying that we were a little bemused by some of the arguments which the Respondents sought to advance in support of this proposition. For example:

(1) the Respondents submitted that Mr Harford should have asked to see the VAT returns of the Appellant's suppliers and asked those suppliers for the identities of the people from whom they were acquiring the vehicles which they sold to the Appellant. We consider that both of those suggestions were wholly uncommercial. We would be amazed if any person were to accede to such a request from its purchaser given the confidential nature of the information in question;

(2) similarly, the Respondents submitted that Mr Harford should have suspected that something was amiss when the Appellant was unable to satisfy an order by one of its customers by acquiring the relevant vehicle from one of the large companies participating in the market and was instead able in fairly short order to acquire the relevant vehicle from the fraudulent supplier. However, the Respondents provided us with no evidence to support that assertion. The vehicles in question were generally common marques but customers ordered vehicles with particular specifications. It does not seem fanciful to us that, on any particular day, the Appellant might have been unable to find a vehicle of the desired specification at one of its large company suppliers and therefore had to have recourse to a smaller supplier. In order for the Respondents to make anything of this point, they would have needed to show that, in each case, the Appellant's large company suppliers did have available for sale on the relevant date a vehicle of the same specification but the Appellant chose instead to purchase the vehicle from the fraudulent supplier;

(3) another submission of the Respondents which we found perplexing was the suggestion that there had clearly been no negotiations between the Appellant and the fraudulent suppliers because the Appellant had not provided the Respondents with any written record of such negotiations. Again, the Respondents were not able to support this proposition by showing that such written records existed in the case of the purchases which the Appellant made from its large company suppliers. Subject to a point to which we will return in due course, we do not think that it is at all surprising to find that the parties to a used car sale chose not to record their pre-sale negotiations in writing. Moreover, the Respondents accepted that the prices at which the various transactions were effected were not fixed or off-market. That very strongly suggests that such transactions were preceded by negotiations of some sort;

(4) of similar ilk was the suggestion by the Respondents that there were deficiencies in the way that the transactions between the Appellant and its fraudulent suppliers were documented. In the case of most of the transactions, the vehicle which was the subject of the sale was identified by way of its marque and UK registration number and the Respondents did not suggest that the documentation of the transactions between the Appellant and its large company suppliers was markedly different. Subject to a point to which we will return in due course, we do not think that it is at all surprising to find that there was minimal documentation in relation to these transactions. We wouldn't have expected voluminous documentation in the case of the sale of a used car between two traders in the market;

(5) the Respondents spent some time at the hearing focusing on the arrangements which had been made for transporting the vehicles to the ROI and the deficiencies in the invoicing of that activity. However, it was unclear to us what relevance this had to the issues in the appeals given that the Respondents have accepted that the vehicles were actually exported to the ROI and that the conditions for zero-rating the exports were satisfied. Given the Respondents' acceptance of those facts, we did not understand what bearing the invoicing of the transportation had on the question of whether the Appellant had actual or constructive knowledge of fraud by the Appellant's suppliers or customers. In any event, as we have already mentioned, the Respondents did not include in the DB all of the invoices with which they had been provided by the Appellant and that substantially undercut the point which they were seeking to make in relation to transportation; and

(6) another area of focus of the Respondents which we found puzzling was insurance. Mr Harford's consistently-stated position was that the Appellant had no need to insure

the relevant vehicles in this case as they were not delivered to the Appellant but were instead delivered directly from the Appellant's suppliers to the Appellant's customers and were covered either by the relevant supplier's insurance or by the relevant transporter's insurance. On cross-examination, Officer Lowth conceded that, if that was the case, then it was reasonable for the Appellant not to insure the relevant vehicles. That being the case, we were unsure how the Appellant's failure to insure the vehicles itself advanced the Respondents' case in relation to actual or constructive knowledge.

107. In relation to many of the matters set out in paragraph 106 above, we were surprised that the Respondents did not:

(1) seek to draw out the differences, if any, between the transactions into which the Appellant entered with the relevant suppliers and customers in this case and the transactions into which the Appellant entered with its other suppliers and customers, both before and within the VAT accounting periods in question; or

(2) seek to use their internal know-how - in the form of the customer relationship managers of the large company traders in the used car market – to draw out the differences, if any, between the transactions into which the Appellant entered with the relevant suppliers and customers in this case and the transactions into which those large company suppliers entered with their suppliers and customers.

108. In the context of determining whether the Appellant should have known that the relevant transactions were connected with fraud, a logical starting point would have been to identify how these transactions differed from both the transactions into which the Appellant entered with its other suppliers and customers and the transactions into which the Appellant's large company suppliers entered with their suppliers and customers. The Respondents' failure to do that has led inevitably to the challenge from the Appellant of how it was meant to know that these purchases and sales were connected with fraud when its other purchases and sales were not.

109. In relation to many of the points mentioned above, it seems to us that the Respondents have blindly applied, as a template, the various factors set out in PN 726 without taking into account the fact that the appeals in this case concern transactions in used cars and not any of the goods described in that document. A factor which might well point to constructive knowledge of a connection with fraud in the case of a mobile telephone might not do so in the case of a used car and we consider that the Respondents have not properly taken into account that fact in pursuing this case.

110. However, in our view, the deficiencies in the Respondents' submissions described in paragraphs 106 to 109 above do not mean that the Appellant has no case to answer, at least so far as the relevant purchases are concerned. Despite the fact that those purchases resembled in many ways the purchases which the Appellant made from its large company suppliers, there were a number of matters which ought to have alerted the Appellant to the fact that those purchases were connected with VAT fraud. For example:

(1) each of the relevant suppliers had been incorporated very recently and had no trading history, features which were expressly stated in both PN 726 and the booklet entitled "How to spot missing trader fraud" to be potential indicia of fraud;

(2) we think that, given the lack of each relevant supplier's trading history, and in the light of the warnings given by the Respondents from the meeting on 20 October 2016 onwards, it was reasonable to expect Mr Harford to conduct searches in respect of each relevant supplier both at Companies House and through VIES. It was also reasonable to

expect Mr Harford to have sought written references in relation to the relevant suppliers from reliable sources;

(3) had he done the above, he would have noticed that, at least in the case of the invoices from each of Mohawk and KWD, there was a difference between the address of the relevant supplier as shown on the invoices rendered to the Appellant and the relevant supplier's registered PPOB for VAT purposes;

(4) in addition, in the case of Mr Murdock:

(a) he would have noticed that there was a difference between the name shown as the registered person for VAT purposes (Mr Murdock himself) and the name shown on the relevant invoices (Mohawk Trading); and

(b) a search at Companies House would have shown that a company bearing an uncannily similar name to the name on the invoices but with no apparent connection to Mr Murdock had its registered office in the same road as the road shown on the invoices rendered by Mr Murdock;

(5) he would also have noticed that, in many cases, there was a discrepancy between the PPOB of a relevant supplier as shown on the VAT register and the registered office of that supplier for company law purposes;

(6) the cumulation of these points ought to have led Mr Harford to visit the premises shown on the invoices, the registered PPOBs of the relevant suppliers for VAT purposes and/or the registered offices of the relevant suppliers for company law purposes. In saying that, we accept the general principles advanced by Mr Watkinson that:

(a) businesses can, on occasion, trade out of premises which are not their registered PPOBs for VAT purposes;

(b) many businesses have registered PPOBs for VAT purposes which are different from their registered offices for company law purposes; and

(c) many perfectly respectable business meetings take place in coffee shops.

However, that is to view each of the above factors in isolation and in a vacuum. As Arden LJ pointed out in *Davis* – see paragraph 19 above – it is necessary in these cases to consider the totality of the evidence and not to examine each factor in the relevant transaction in isolation and in a piecemeal fashion;

(7) we agree that there is not necessarily anything untoward in a business's having more than one set of premises so that the address shown on its invoices is different from its registered PPOB for VAT purposes or that its registered PPOB for VAT purposes differs from its registered office for company law purposes. We also agree that the occasional meeting in a coffee shop is not, when viewed in isolation, grounds for suspicion. However, when all of these factors are taken together, we think that it was reasonable to expect Mr Harford to have visited at least once the addresses shown on the invoices, the registered PPOBs shown on the VAT register and/or the registered offices for company law purposes, particularly given the warnings which he had received from the Respondents and the material provided to him by the Appellants. Had he done so, he would have noticed that the relevant suppliers were not trading out of the addresses which were shown on the invoices;

(8) the best example of how such a visit would have aroused suspicion is the fact that 31 Langley Park was occupied by the HCHA and that no-one at that address was aware of either Mr Maguire, Instant or KWD. That address was quite clearly not the place where

either of Instant or KWD was carrying on business and Mr Harford should have ascertained that fact by visiting those premises, particularly given the prominence of 31 Langley Park in relation to both Instant and KWD. The same could be said for 72 Bardsay Road, which Mr Harford also did not visit;

(9) if Mr Harford had carried out the appropriate due diligence, he would have discovered that Mr McMahon, about whom he had been expressly warned by the Respondents at the meeting on 20 October 2016 and whose company had been the subject of the tax loss letter on 5 January 2017, was a director of Instant. (Technically, Mr McMahon had resigned as a director of Instant on 1 January 2017 but, at the time when the Appellant began dealing with Instant, no notice to that effect had been sent to Companies House and therefore Mr McMahon remained on the record as a director at that time). That would have served to alert him to the fact that the Appellant should not purchase vehicles from Instant;

(10) similarly, if Mr Harford had carried out the appropriate due diligence, he would have discovered that Mr Maguire, with whom he had dealt at Instant, was the owner of 100% of KWD and a director of KWD. (Again, technically, Mr Maguire ceased to own 100% of KWD on 11 March 2017 and resigned as a director of KWD on 10 November 2016 but no notices to that effect had been sent to Companies House at the time of the transactions with KWD and therefore a search at Companies House would not have revealed that cessation or resignation. In addition, it was Mr Maguire with whom the Respondents corresponded in March and April 2017 and he was clearly very much in control of KWD at that time.) Since Mr Maguire was connected to Mr McMahon through Instant, the fact that Mr Maguire was the owner and director of KWD would have alerted Mr Harford to the fact that the Appellant should not purchase vehicles from KWD;

(11) instead, Mr Harford claimed that he did not know:

(a) that Mr McMahon had any connection to Instant;

(b) that Mr Maguire had any connection to KWD;

(c) the name of the person with whom he had dealt at KWD; or

(d) the name of the person who had introduced that person and Mr Maguire to him.

We think that Mr Harford would have known all of this information if he had done the appropriate due diligence (and, as we have said in paragraph 65(6)(a) above, we have found as a fact that Mr Harford did know some of this information);

(12) the searches at Companies House and on VIES would also have alerted Mr Harford to other connections between each of Instant and KWD. For example:

(a) Instant's registered office for company law purposes was 72 Bardsay Road between 2 September 2016 and 26 January 2017 and 31 Langley Park between 26 January 2017 and 28 March 2017 whilst KWD's registered office for company law purposes was 72 Bardsay Road between 13 July 2016 and 16 November 2016 and 31 Langley Park between 16 November 2016 and 5 October 2017;

(b) Instant's registered PPOB for VAT purposes was 72 Bardsay Road between 2 September 2016 and 8 February 2017 and 31 Langley Park from 8 February 2017; and

(c) each of Instant and KWD was registered for VAT on the basis that its business involved "[business] consultancy services", as opposed to the sale of used cars, in itself a ground for suspicion; and

(13) finally, we referred in paragraphs 106(3) and 106(4) above to the fact that, as a general proposition, in the context of the used car market:

(a) the fact that there was no written record of negotiations preceding the purchases did not mean that negotiations did not occur and that prices were therefore pre-determined or fixed in advance; and

(b) the fact that the written documentation recording the purchases was scant did not mean that the parties had no interest in the nature and quality of the vehicles sold.

However, we do think that it is noteworthy that the Appellant has not provided the Respondents with a single written record, whether in the form of an email, text or hand-written piece of paper, which described the specifications of the vehicles purchased and their condition at the time of purchase. Even if the negotiations preceding each purchase were conducted by telephone, one would have expected to see some sort of written record of these details prepared by Mr Harford for his own benefit, not least because Mr Harford was not dealing with established companies with proven track records but was instead dealing with people who were new to him. We would hesitate to draw from this the conclusion that the specifications and condition of the vehicles were of no moment to the Appellant but the entire absence of any written record of those details, whether on the face of the invoices or by way of a communication between the parties or by way of an internal note serving as an aide memoire for Mr Harford, is noteworthy and contributes to the overall impression that the transactions with these suppliers were inappropriate.

111. The position in relation to the vehicles purchased from DLL is slightly different from the position in relation to the vehicles purchased from the other three relevant suppliers because:

(1) there was not the same discrepancy between the addresses shown on the invoices rendered to the Appellant by DLL and DLL's registered PPOB for VAT purposes;

(2) neither 72 Bardsay Road nor 31 Langley Park features as a relevant address in DLL's case; and

(3) there is no record of any involvement of Messrs McMahon or Maguire with DLL.

112. However, we have found as a fact that, on the balance of probabilities, DLL was not represented by Mr Paul Donnelly at the time when the Appellant purchased vehicles from DLL. Had Mr Harford done the appropriate searches, he would have discovered that the company had no connection to Mr Paul Donnelly or the Donnelly family's car dealership at the time of the Appellant's transactions with DLL. Any such involvement would have ceased by July 2016 as Mr Donnelly had resigned his directorship on 3 May 2016 and that would have been apparent from the search at Companies House. Moreover, Mr Donnelly had written to the Respondents on 7 July 2016 to say that he had transferred his shareholding in the company to Ms McNulty and she was now the sole director and shareholder of the company. This calls into doubt the evidence of Mr Harford that his contact at DLL at the time of the purchases made by the Appellant from DLL was Mr Donnelly. It inevitably means either that Mr Harford's testimony cannot be accepted (and he dealt with someone other than Mr Donnelly in effecting those purchases without ascertaining the identity of, or doing any due diligence in relation to, that person) or that Mr Harford did deal with Mr Donnelly but Mr Donnelly had no authority to represent DLL at the relevant time and some rudimentary due diligence on the part of Mr

Harford would have alerted him to that fact, or, at the very least, prompted some additional questions from Mr Harford as to Mr Donnelly's relationship with DLL.

113. We have found it difficult to reach a conclusion on the question of whether the Appellant should have known that its purchases from the relevant suppliers were connected with fraud. In considering that question, we have been cognisant of the very high bar laid down by the authorities cited above, to the effect that, after taking into account all of the relevant factors associated with the transactions, the connection with fraud must be the only reasonable explanation for the transactions and not simply one possible explanation. After weighing up the position in relation to each purchase from the relevant suppliers on the basis of applying the "no other reasonable explanation standard", we have concluded, on balance, that, for the reasons set out in paragraphs 110 to 112 above, the only reasonable explanation for each purchase was that it was connected with fraud. We think that the position is clearer in relation to the purchases from each of Mohawk, Instant and KWD than the purchases from DLL, for the reasons set out in paragraph 111, but we have concluded that, even in the case of DLL, there are sufficient grounds in paragraphs 110(1), 110(2), 110(13) and 112 to conclude that the only reasonable explanation was the connection with fraud.

114. It follows from the conclusion that the Appellant should have known of that connection with fraud that the Respondents have satisfied us that they were right to disallow the input tax credits arising out of those purchases.

115. We do not reach a similar conclusion in relation to the sales by the Appellant of the four vehicles to Hayes. The Respondents have not provided us with any evidence to suggest that the Appellant ought to have known of the fraud that was subsequently committed by Hayes in relation to those vehicles. The sole piece of evidence on which the Respondents sought to rely was the fact that the bank statement obtained by the Appellant in relation to Hayes showed a negligible balance. However, given that the bank statement was being sought only as evidence of identity and not as evidence of creditworthiness – because the vehicles sold to Hayes were not the subject of credit but were paid for in advance of delivery – it was no different in evidential terms from a bank statement with all entries redacted, which is common practice in the market. We do not think that the negligible balance on the account is sufficient to justify the conclusion that the connection with VAT fraud was the only reasonable explanation for the sales of the four vehicles to Hayes. We have therefore concluded that the Respondents have not satisfied us that, on the balance of probabilities, the Appellant should have known that its sales to Hayes were connected with fraud.

CONCLUSION

116. Our conclusion in relation to the appeals is therefore that:

(1) in relation to each of the purchases by the Appellant from Mohawk, Instant, KWD and DLL which is a subject of the appeals, the relevant vehicle gave rise to a VAT loss caused by fraud, the relevant purchase was connected with that fraud and the Appellant should have known that of that connection. The appeals are therefore dismissed to the extent that they relate to the input tax claimed on those purchases; and

(2) in relation to each of the sales by the Appellant to Corr, Lee, Cottrell, Greasemonkey, Ivymill, McGurk, Solum, Actron and Hayes which is a subject of the appeals, the appeals against the Respondents denial of the right to zero-rate the relevant sales succeed because:

(a) in the case of each of the sales by the Appellant to Corr, Lee, Cottrell, Ivymill, McGurk, Solum and Actron, the Respondents have failed to make adequate pleadings in the CSOC in relation to the relevant sale;

(b) in the case of each of the sales by the Appellant to Greasemonkey and seven of the sales by the Appellant to Hayes, the Respondents have failed to satisfy us that, on the balance of probabilities, the relevant customer committed fraud leading to a VAT loss in respect of the relevant vehicle; and

(c) in the case of each of the remaining four sales by the Appellant to Hayes, whilst the Respondents have satisfied us that, on the balance of probabilities, Hayes committed fraud leading to a VAT loss in respect of the relevant vehicle, they have failed to satisfy us that, on the balance of probabilities, the Appellant knew or should have known that the relevant sale was connected with that fraud.

RIGHT TO APPLY FOR PERMISSION TO APPEAL

117. 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 Rules. 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.

TONY BEARE
TRIBUNAL JUDGE

RELEASE DATE: 11 AUGUST 2021

APPENDIX

EXTRACT FROM THE RESPONDENTS' CONSOLIDATED STATEMENT OF CASE

"56. The Appellant's customers that have been found to have been involved in fraudulent transactions or were the subject of deregistration action in the Republic of Ireland are as follows:

Mr Kevin Francis Corr - IE1729281SA. This customer received supplies of cars from the Appellant during VAT periods 10/16 to 01/17. This trader was deregistered for VAT in the Republic of Ireland with effect from 11 January 2017. Mr Corr is a missing trader, the Irish authorities having been unable to contact or locate him at the last known address provided.

Mr Leon Lee - IE8418786R. This customer received supplies of cars from the Appellant during VAT period 01/17. This trader was deregistered for VAT in the Republic of Ireland with effect from 31 January 2017. Mr Lee is a missing trader, attempts to contact him and obtain further information from him have been unsuccessful and his phone numbers are no longer active. Attempts to visit his premises have also been unsuccessful with there being no sign of any activity at his address. The trader also confirmed to the Irish Revenue Services that he resold the cars he purchased to Northside Motorpark Limited (Mr Harford's other business). Mr Lee was also involved with Ivymill Limited (see below)

Mr Wayne Cottrell - IE 6930627L. This customer received supplies of cars from the Appellant during VAT periods 01/17 to 03/17. This trader was deregistered for VAT in the Republic of Ireland with effect from 19 April 2017. Mr Cottrell is currently being investigated for VAT fraud.

Greasemonkey Motorworks Limited - IE3433096LH. This customer received supplies of cars from the Appellant during VAT periods 02/17 to 03/17. The company was deregistered for VAT in the Republic of Ireland with effect from 14 March 2017. It is believed that the company's VAT registration was hijacked, the owners of the business having advised that they had never purchased any cars from the United Kingdom nor had they heard of or met Northside Fleet or Mr Harford.

Ivymill Limited - IE3447978CH. This customer received supplies of cars from the Appellant during VAT periods 03/17 to 05/17. The company was deregistered for VAT in the Republic of Ireland with effect from 12 May 2017. The company's director is Mr Leon Lee (referred to above). This company is a missing trader, attempts to contact the company and obtain further information from it have been unsuccessful and its phone lines are no longer active. Visits to the company's premises were undertaken on several occasions but there was never any sign of activity.

Mr Paul McGurk - IE1732559IA. This customer received supplies of cars from the Appellant during VAT periods 02/17 and 03/17. This trader was deregistered for VAT in the Republic of Ireland with effect from 28 February 2017.

Solum Limited - IE3340130PH. This customer received supplies of cars from the Appellant from the period 02/17 to 03/17. On several occasions Solum Limited sold these same cars back to customers in the United Kingdom on the same day as it purchased them from Northside

Fleet. The company was deregistered for VAT in the Republic of Ireland with effect from 21 February 2018. This trader is being investigated for VAT fraud.

Actron Distribution Limited - IE3448724WH. This customer received supplies of cars from the Appellant in the VAT period 03/17. The company was deregistered for VAT in the Republic of Ireland with effect from 22 May 2017.

Hayes & Healy Transport Limited – IE3415190BH. This customer received supplies of cars from the Appellant in the VAT periods 06/17, 07/17 and 99/99. The company was deregistered for VAT in the Republic of Ireland with effect from 28 February 2018 and failed to account for VAT on the purchase and sale of the vehicles in question."