[2022] UKFTT 00049 (TC)

TC 08401

EXCISE DUTIES – Alcohol Wholesaler Registration Scheme – Appeal against refusal of approval – Part 6A Alcoholic Liquor Duties Act 1979 – extent of tribunal's jurisdiction on appeal under Section 16(4) Finance Act 1994 – whether tribunal can take into account events occurring after the date of the decision appealed against – effect of failure to specify all of the reasons for refusing approval in the letter of refusal

FIRST-TIER TRIBUNAL
TAX CHAMBER

Appeal number: TC/2017/03831

BETWEEN

CONTINENTAL CASH & CARRY LIMITED **Appellant**

-and-

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

TRIBUNAL: JUDGE ROBIN VOS
MR IAN SHEARER

Sitting in public at Taylor House, London on 10-12 January 2022

Mr Dinesh Dhingra (Director) and Mr Dev Dhingra (Lay Representative) for the Appellant

Mr Joshua Carey and Mr Colm Kelly, counsel instructed by the General Counsel and Solicitor to HM Revenue and Customs, for the Respondents

DECISION

INTRODUCTION

1. Excise duty fraud is a major problem. In March 2016, HMRC estimated that the illicit alcohol market cost the taxpayer approximately £1.2 billion a year. As part of its response to this issue, in 2015, the Government introduced a requirement for all wholesalers of alcohol to be registered.

2. The legislation is contained in Part 6A of the Alcoholic Liquor Duties Act 1979 ("ALDA") and the regime is generally known as the Alcohol Wholesaler Registration Scheme ("AWRS"). HMRC may only approve a wholesaler if they are satisfied that the person is a fit and proper person to carry on the activity (s 88C(2) ALDA).

3. The appellant, Continental Cash & Carry Limited ("Continental") has been a wholesaler of alcohol since 2014. Under transitional provisions, it was required to apply for approval under the AWRS by the end of March 2016. It made its application on 18 March 2016. HMRC refused approval on 1 March 2017 on the basis that Continental was not a fit and proper person. That decision was upheld on review (although with some changes to the factors taken into account in reaching the decision) on 19 April 2017.

4. Continental appealed to the Tribunal against the review decision on 8 May 2017, which it was entitled to do under s 16 Finance Act 1994 ("FA 94"). There are three main grounds of appeal:

> (1) The letter refusing approval did not set out the reasons for the refusal sufficiently clearly.
>
> (2) There was no proper basis for HMRC's conclusion that Continental was not a fit and proper person.
>
> (3) Even if there were matters relevant to the question of whether or not Continental was a fit and proper person, refusing approval was disproportionate and, instead, HMRC should have approved Continental subject to appropriate conditions.

5. Normally, where approval is refused, the trader cannot carry on the relevant business (although legislation has recently been enacted giving HMRC the power to grant temporary approval pending any appeal). However, in this case, Continental (along with a number of other wholesalers) brought judicial review proceedings in the High Court which resulted in a consent order dated 22 August 2017 requiring HMRC to approve Continental as a wholesaler of alcohol pending the decision in this appeal (the relevant part of the order ceasing to have effect 14 days after the determination of the appeal).

6. The consent order also contained a provision allowing HMRC to revoke Continental's approval prior to the determination of this appeal as long as they inform Continental that they are minded to revoke the approval and allow Continental 14 days to provide any representations prior to a decision being made. We were informed at the hearing that HMRC had written to Continental on 9 December 2021 revoking its approval under the AWRS. It was however accepted by Mr Carey, on behalf of HMRC, that this does not affect the decision which the Tribunal has to make in relation to this appeal, although it may of course generate a separate appeal.

PROCEDURAL ISSUES

7. Mr Dinesh Dhingra is the sole shareholder and director of Continental. He acted as the primary representative of Continental throughout the hearing. Continental had previously been represented by solicitors and a counsel. However, due to cost issues, they ceased to represent Continental late in 2021. Counsel had however prepared a skeleton argument in advance of a

hearing which was due to take place in July 2021 but which was postponed at the request of both parties. Mr Dhingra, to a large extent, adopted that skeleton argument.

8. Mr Dev Dhingra is Mr Dhingra's son and has some involvement in the business. Without meaning any disrespect, we shall refer to Mr Dinesh Dhingra as Mr Dhingra and Mr Dev Dhingra as Dev. Mr Dhingra requested, on behalf of Continental, that Dev should be allowed to assist him in presenting Continental's case. We agreed to this in accordance with Rule 11(5) of the Tribunal Rules.

9. Mr Dhingra required an interpreter throughout the proceedings. Unfortunately, the Tribunal was not able to secure an interpreter who was willing to attend the hearing in person. The interpreter therefore participated remotely by video. In addition, Dev assisted his father with translation throughout the hearing other than when his father was giving evidence.

10. Although the arrangements for interpreting were not ideal (given that Mr Dhingra and the interpreter were not in the same room) and this caused some difficulty when Mr Dhingra was giving evidence, we are satisfied that, although it took longer than might otherwise have been the case, Mr Dhingra was ultimately able to understand the questions which were put to him and the Tribunal was able to understand the answers which he gave.

11. When the hearing was postponed in July 2021, Continental was directed to prepare a supplemental bundle containing the additional witness evidence which, at the time of the postponement, the parties had been given permission to provide. Mr Dhingra stated that he had only received this bundle when it was sent to him electronically by HMRC on the Thursday before the hearing (6 January 2022). However, the bundle had been prepared by his own solicitors and sent by them to HMRC in October or November 2021. In light of this and, taking into account the fact that HMRC's witnesses would not be giving evidence until the following day (which would give Mr Dhingra and Dev an opportunity to review their witness statements in advance of cross-examination), we did not consider that this would prevent a fair hearing or provide a reason for postponing the hearing.

LEGAL FRAMEWORK

12. Before looking at the evidence and the facts, it is helpful to understand in a little more detail the requirements for approval under the AWRS and the powers that are given to the Tribunal in respect of any appeal against a refusal of approval by HMRC.

Alcohol Wholesaler Registration Scheme

13. The key provision is s 88C ALDA which prohibits a person from carrying on certain activities (including the wholesale of alcohol) unless they have been approved by HMRC. As already mentioned, a person may only be approved if HMRC are satisfied that the person is a fit and proper person to carry on the activity (s 88C(2)). HMRC are however given the power to approve a person subject to any conditions or restrictions which they think fit (s 88C(3)). Section 88C(5) contains the power for HMRC to revoke an approval which has previously been given.

14. HMRC are able to make regulations dealing with various matters including the approval process (s 88E(1)(A)). This power has been exercised in implementing the Wholesaling of Controlled Liquor Regulations 2015 ("the 2015 Regulations"). For present purposes, the only relevant provision is regulation 4(4) which, where an application has been refused, requires HMRC to notify the applicant and to give "the reasons for the refusal". It does not state what the consequences are if HMRC fail to comply with this requirement.

15. Neither ALDA nor the 2015 Regulations contain any definition of what constitutes a fit and proper person. HMRC have however provided guidance in Excise Notice 2002

("EN2002"). Except in a few respects (which are not relevant to this appeal), the guidance does not have the force of law. It simply sets out HMRC's approach to the AWRS.

16. The fit and proper test is dealt with in paragraph 6.10 of EN2002. HMRC explain that:

> "This means HMRC must be satisfied that the business is genuine and that all persons with an important role or interest in it are law abiding, responsible, and don't pose any significant threat in terms of potential revenue non-compliance or fraud."

17. In the context of a similar regime for the approval of businesses operating warehouses holding goods on which duty has not yet been paid, this Tribunal in *Safe Cellars Limited v HMRC* [2017] UKFTT 78 (TC) explains at [20] the fit and proper test in a slightly different way saying that:

> "it means persons who demonstrate behaviours of a type likely to assist, and not to hinder, the proper administration, collection and protection of the revenue."

18. For practical purposes, there is little difference between the two formulations and we are happy to adopt HMRC's explanation as an accurate interpretation of the test. There was no suggestion on the part of Continental that this was not the case.

19. One point we should make clear is that, bearing in mind the purpose of the AWRS, the test is concerned not only with wrongdoing on the part of the person applying for approval but also implies that an applicant should be aware of risks elsewhere in the supply chain and to have an attitude to their responsibilities, as well as processes and procedures, which will help them avoid becoming involved in supply chains where there is wrongdoing on the part of others.

20. Paragraph 6.10 of EN2002 goes on to identify a number of criteria against which HMRC say they will assess applicants. These include the following:

> "• There's no evidence of illicit trading indicating the business is a serious threat to the revenue, or that key persons involved in the business have been previously involved in significant revenue non-compliance, or fraud, either within excise or other regimes, some examples of evidence HMRC would consider are:
>
> o assessments for duty unpaid stock or for other under-declarations of tax that suggest there's a significant risk that the business would be prepared to trade in duty unpaid alcohol;
>
> o seizures of duty unpaid products;
>
> o penalties for wrongdoing or other civil penalties which suggest a business don't have a responsible outlook on its tax obligations;
>
> o trading with unapproved persons;
>
> o …
>
> • There are no connections between the businesses, or key persons involved in the business, with other known non-compliant or fraudulent businesses;
>
> • Key persons involved in the business have no criminal convictions which are relevant for example, offences involving any dishonesty or links to organised criminal activity - HMRC will normally disregard convictions that are spent provided there are no wider indications that the person in question continues to pose a serious threat to the revenue (an 'unspent' conviction is one that has not expired under the terms of the Rehabilitation of Offenders Act 1974);

> • The application is accurate and complete and there has been no attempt to deceive;
>
> • There haven't been persistent or negligent failures to comply with any HMRC record-keeping requirements, for example poor record-keeping in spite of warnings or absence of key business records;
>
> • The applicant, or key persons in the business, have not previously attempted to avoid being approved and traded unapproved;
>
> • The business has provided sufficient evidence of its commercial viability and/or credibility - HMRC won't approve applicants where they find that they cannot substantiate that there's a genuine plan to legitimately trade from the proposed date of approval;
>
> • There are no outstanding, unmanaged HMRC debts or a history of poor payment;
>
> • The business has in place satisfactory due diligence procedures covering its dealings with customers and suppliers to protect it from trading in illicit supply-chains, see s 12 for more information about due diligence."

21. HMRC go on to explain that a refusal may be based on other reasons which are not listed if they have concerns about the applicant's suitability.

22. Whilst HMRC's guidance as to whether a person may be fit and proper is not binding, it is a relevant factor for us to take into account in assessing the decision to refuse the application in this case.

23. There is one other matter dealt with in HMRC's guidance which we should mention. Where there are changes to the information supplied to HMRC in the application for AWRS approval, paragraph 6.12 of EN2002 requires the applicant to immediately update the electronic application form.

Requirement to give the reasons for a refusal

24. As we have mentioned, Regulation 4(4) of the 2015 Regulations requires HMRC to give the reasons for any refusal. The skeleton argument prepared on behalf of Continental in advance of the proposed hearing in July 2021 criticises HMRC's initial refusal letter dated 1 March 2017 on the basis that it states that the decision maker has "taken the following key points into account" in reaching their decision. This of course begs the question as to whether there are other points which were taken into account but which have not been mentioned.

25. The skeleton then goes on to refer to the decision of the Court of Appeal in *HMRC v Hare Wines* [2019] EWCA Civ 841 in which Rose LJ took the view at [59] that, in similar circumstances:

> "…the Refusal letter is inadequate and incomplete. The obligation placed on HMRC in Regulation 4(4) of the Wholesaling of Controlled Liquor Regulations 2015 is to give 'the reasons' not the 'key points' for the refusal. The applicant should be able to understand the reasons for the refusal of the application from the Refusal letter as a self-standing document."

26. The issue in *Hare Wines* was in fact related to what documents should be disclosed by HMRC and so the Court of Appeal did not give any guidance on the consequences of the perceived inadequacy of the reasons given in the refusal letter. There was however no suggestion that this somehow invalidated HMRC's decision. Rose LJ went on at [61] to say:

> "Given that the spent conviction is not mentioned in the Refusal letter there is, as I have said, a prior question whether HMRC are entitled to rely on that and other matters and so whether Hare Wines should be put to the expense of

> examining that disclosure. It seems to me better to resolve that procedural point before any disclosure exercise takes place."

27. It is clear then that the Court of Appeal considered that the only consequence of the failure to specify all the reasons for the refusal might relate to the matters which HMRC could rely on before the Tribunal in support of their refusal and not that the refusal itself was automatically invalidated.

28. Mr Carey referred the Tribunal to the decision of the House of Lords in *South Bucks District Council v Porter (No.2)* [2004] 1 WLR 1953 where Lord Brown expressed the view at [36] that:

> "The reasons for a decision must be intelligible and they must be adequate. They must enable the reader to understand why the matter was decided as it was and what conclusions were reached on the 'principal important controversial issues', disclosing how any issue of law or fact was resolved. Reasons can be briefly stated, the degree of particularity required depending entirely on the nature of the issues falling for decision… the reasons need refer only to the main issues in the dispute, not to every material consideration."

29. *South Bucks* dealt with a specific regime under planning legislation which allowed an applicant to challenge a decision of a planning inspector if it could be shown that a failure to comply with the requirements of the legislation (including a requirement to give the reasons for the decision) had substantially prejudiced the interests of the applicant.

30. Notwithstanding this, by analogy, our preliminary view is that the obligation to give reasons for a refusal in regulation 4(4) of the 2015 Regulations does not require every factor which has been taken into account to be mentioned. It is in our view sufficient for HMRC to explain the "key points" they have taken into account as long as this deals with all matters of significance. The ability for the applicant to appeal and for the Tribunal to assess the decision provides an opportunity for less significant matters considered by HMRC to be scrutinised and, if appropriate, challenged by the applicant.

31. However, given the very different context of the decision in *South Bucks*, (and, in particular, the different legislative provisions) we do not find it of assistance in relation to the question as to what (if any) consequences flow from a failure to refer in the refusal letter to all of the significant reasons for a refusal of approval under the AWRS.

32. We would tentatively agree with what appears to be inference from the decision of the Court of Appeal in *Hare Wines* that a failure to mention factors (even matters which are significant, as was clearly the case in *Hare Wines*) which may have been taken into account by HMRC in reaching their decision, but which are not mentioned in the refusal letter is, in the context of an appeal to the Tribunal, a procedural matter. As long as the matters in question were relevant considerations, such a failure would not, of itself, invalidate the decision or render it unreasonable (in the sense described below). If the factors are properly identified in HMRC's statement of case and can therefore be dealt with by the appellant in a way which is procedurally fair, there is no reason why they should not be relied on.

33. Although it is not a point mentioned by the parties, we note that this conclusion is consistent with the decisions of the Court of Appeal and the Supreme Court in *R(OAO Haworth) v HMRC* [2019] EWCA Civ 747 and [2021] UKSC 25). In that case, both courts agreed that a follower notice was defective in that it did not contain all of the information which, in accordance with section 206 Finance Act 2014, the notice "must" contain. As to the consequences of this, the Supreme Court agreed [at 86] with the conclusion of Newey LJ in the Court of Appeal who, having reviewed the authorities [at 55-57] (and in particular the

decision of Lord Steyn in *R v Soneji* [2006] 1 AC 340 and that of Burnett J in *North Somerset DC v Honda Motor Europe Limited* [2010] EWHC 1505 QB)), concluded [at 58] that:

> "… failures to comply with section 206(3)(b) of FA 2014 may vary enormously in their importance, from the egregious and damaging to the minor and inconsequential. I do not think Parliament can fairly be taken to have intended that total invalidity should result from *any* irregulatory, regardless of the extent of the default or the seriousness of its consequences. The fact that the word "must" has been used does not in the context of section 206 of FA 2014 seem to me to imply total invalidity."

34. Similarly, in the context of the AWRS regime as a whole, we do not consider that Parliament can have intended that any breach at Regulation 4(4) of the 2015 Regulations should lead to the total invalidity of HMRC's refusal decision. We accept that, if no reasons at all are given or the reasons are so deficient that it is impossible to tell what the reasons are for a refusal of authorisation, it may be that the breach of Regulation 4(4) would invalidate the decision. However, where there is substantial compliance and no evidence of any significant prejudice to the applicant, it is unlikely that the defect would invalidate the decision although this will no doubt depend on the precise facts in each case.

35. Having said this, in the absence of full argument on these points, we make no decision on the level of detail HMRC must go into in order to comply with Regulation 4(4) of the 2015 Regulations nor whether the reasons given in a refusal letter could be so deficient that the decision is automatically rendered either invalid or unreasonable.

36. Although Continental's grounds of appeal state that the refusal letter "does not make clear the reasons for the decision", we do not understand the skeleton argument prepared by Counsel on behalf of Continental to suggest that the refusal decision should be set aside purely on the basis of an inadequacy of reasons contained in the refusal letter. Certainly this was not a point put forward by Mr Dhingra at the hearing. Nor has it been suggested that HMRC should be unable to rely on matters which they might have taken into account but which are not referred to in the refusal letter. We do not therefore need to reach a concluded view on these matters.

37. We should note that, in any event, this is an appeal against the review decision made on 19 April 2017. The review conclusion letter does not refer only to the "key points" for refusal but sets out clearly and in detail the reasons relied on. As we will see there is one point which HMRC took into account but which is only referred to indirectly in the review conclusion letter but, on any basis, this would not in our view be sufficient to invalidate the decision reached by HMRC.

The powers of the Tribunal in relation to the appeal

38. The appeal rights in relation to this sort of decision are contained in FA94. An appeal may be made against a "relevant decision" (s 16(1B) FA94). Section 13A(2)(j) FA94 and paragraph 3(1)(p) of Schedule 5 to FA94 together confirm that a decision relating to approval under the AWRS is a "relevant decision" for this purpose.

39. The effect of s 16(8) FA94 is that a decision to refuse approval under the AWRS is what is referred to in the legislation as an "ancillary matter". The powers of the Tribunal in relation to an ancillary matter are set out in s 16(4) FA94 which, to the extent relevant, provides as follows:

> "(4) In relation to any decision as to an ancillary matter, or any decision on the review of such a decision, the powers of an appeal tribunal on an appeal under this section shall be confined to a power, where the tribunal are satisfied that the Commissioners or other person making that decision could not

> reasonably have arrived at it, to do one or more of the following, that is to say—
>
> (a) to direct that the decision, so far as it remains in force, is to cease to have effect from such time as the tribunal may direct;
>
> (b) to require the Commissioners to conduct, in accordance with the directions of the tribunal, a review or further review as appropriate of the original decision; and
>
> (c) ..."

40. As can be seen, the Tribunal has no power to make a new decision of its own. It may only take action if HMRC's decision is one which no other person could reasonably have arrived at, even if the Tribunal itself would have made a different decision. The burden of establishing this is on the appellant (see the final words of s 16(6) FA94). Even then, the only power of the Tribunal is to require HMRC to review its original decision.

41. The parties are agreed that, in determining whether the decision to refuse approval was one which could not reasonably have been arrived at, the principles to be applied are those derived from the decision of the House of Lords in *Customs and Excise Commissioners v JH Corbitt (Numismatists) Limited* [1980] 2 All ER 72 at [80] and the decision of the Court of Appeal in *John Dee Limited v Commissioners of Customs and Excise* [1995] STC 941 at [952]. Based on these authorities, it is uncontroversial that a decision will be unreasonable in the relevant sense if :

(1) the decision maker took into account irrelevant considerations;

(2) the decision maker failed to take into account any relevant considerations;

(3) the decision maker made an error in relation to a point of law;

(4) even though the right factors were taken into account and there was no error of law, the decision was one which no reasonable officer of HMRC could have reached in the circumstances.

42. Continental, in its skeleton argument, adds that it is relevant to consider whether the decision may give inappropriate or unjustified weight to a particular factor. However, in our view, this is simply part of the overall assessment in point (4) above as to whether the decision was one which no reasonable decision maker could have reached.

43. Even if the Tribunal identifies a flaw in HMRC's decision making, it should not allow the appeal if it is inevitable that, but for the flaw, HMRC would have reached the same decision. This principle is derived from the decision of the Court of Appeal in *John Dee*, Neill LJ stating at [953] that:

> "It was conceded by Mr Engelhart, in my view, rightly, that where it is shown that, had the additional material been taken into account, the decision would inevitably have been the same, a tribunal can dismiss an appeal."

44. It was also common ground that, in assessing whether the decision was unreasonable for the purposes of s 16(4) FA94, the Tribunal should make its own findings in relation to the primary facts including not only facts which were known to the decision maker but also facts in existence at the time of the decision, but which may not have been known to the decision maker. This is said to be the accepted interpretation of the decision of the Court of Appeal in *Gora v Customs and Excise Commissioners* [2003] EWCA Civ 525.

45. Mr Carey submits that the Tribunal may also make findings of fact in relation to (and take into account) matters arising after the date of the decision if this sheds light on the facts in existence at the time of the decision. Although the skeleton argument prepared by Counsel on

behalf of Continental for the postponed hearing in 2021 takes a similar view, Mr Dhingra's position at the hearing was that events occurring after the date of the decision should not be taken into account.

46. In *Gora* (which comprised a number of appeals), the appeals were against the Commissioners' refusal to restore goods which had been seized (or, in one case, to require a payment before restoration). As in this case, the provisions relating to the appeals were those contained in s 16(4) FA94.

47. It was accepted by the Commissioners in *Gora* at [38] and confirmed at [39] by Pill LJ that the Tribunal was not confined to considering whether the evidence supported the Commissioners' findings of fact on which they had based the decisions which were being challenged, but that the Tribunal should carry out its own fact finding exercise in order to decide for itself those primary facts. The Tribunal should then go on to decide whether, in the light of its findings of fact, the decision was reasonable.

48. The judgment of Pill LJ in *Gora* does not expressly address the question as to whether the Tribunal's fact finding jurisdiction is limited to those matters before HMRC at the time the decision was made or whether it extends to matters which were not known to HMRC and, if the latter, whether this can include facts which only come into existence after the decision has been made or whether it is limited to facts in existence at the time the decision is made. Indeed, the specific suggestion on behalf of the Commissioners at [38(3)(d)] (with which Pill LJ agreed) was that the Tribunal should satisfy itself that "the primary facts upon which the Commissioners have based their decision" are correct.

49. In *Prospect Origin Limited v HMRC* [2021] UKUT 51 (TCC), the Upper Tribunal expressed the view at [33] that:

> "… we do not consider that … Pill LJ was seeking to limit the scope of the primary facts that the FTT could find to those that have, as Mr Glover put it, 'exercised the mind of the decision maker'. Such a limitation would sit oddly with the remainder of Pill LJ's judgment. Pill LJ was concluding that the Tribunal had the power to decide as a matter of primary fact, whether the taxpayer was 'blameworthy' and determine, in the light of that finding, whether the administrative decision of HM Customs and Excise, to refuse to restore seized goods, was reasonable. Yet, on the Company's interpretation of Pill LJ's judgement, if HM Customs and Excise had completely ignored highly relevant indications of a lack of blameworthiness, the Tribunal would not be able to make factual findings as to the presence or absence of those indications because they had not 'exercised the mind of their decision maker'. That would be a strange conclusion which would deprive the Tribunal of any meaningful ability in such a case to determine that HMRC's administrative decision was unreasonable."

50. The appellant in *Prospect Origin* also drew attention to the observation of the Court of Appeal in *Hare Wines* at [19] that:

> "…the role of the FTT in these appeals will be to decide for itself any disputed primary facts on which HMRC's decision was based and then consider whether the refusal to grant approval was one which a reasonable officer could make on the basis of the facts as found."

51. Again, this indicates that, whilst the Tribunal must make findings of fact (and should not rely on HMRC's assessment of the facts), the facts in question are limited to those matters which were known to the HMRC officer taking the decision. The Upper Tribunal however, dismissed this at [36] for the same reason as they had dismissed the suggestion that the similar

words in *Gora* limited the ability of the Tribunal to make findings of fact in relation to matters which were not before the decision maker.

52. However, looking at paragraph [36] of the decision in *Prospect Origin*, all this demonstrates is that the Tribunal can and should take into account evidence which will assist in making findings of fact in respect of matters which formed part of the reasons for the decision (in *Gora*, the extent of the blameworthiness of the appellant) even if that evidence was not known to the decision maker. What it does not do is to suggest that a fact not known to the decision maker can be taken into account if it constitutes a completely separate reason for the decision which was unknown to the decision maker.

53. We note that, in *Prospect Origin*, the Upper Tribunal ultimately concluded at [36] that the additional findings of fact which had been made in that case related to the primary facts on which HMRC's decision was based and so, in any event, the Tribunal was not straying beyond its remit even on a narrower interpretation of the decision in *Gora*.

54. Although we accept that there are a number of decisions of the First-tier Tribunal which take the view that the Tribunal is able to make findings in relation to (and to take into account) facts which were not before the decision maker (see for example *Safe Cellars Ltd v HMRC* [2017] UKFTT 78 (TC) at [36] and *DHL Air Ltd v HMRC* [2021] UKFTT 0215 (TC) at [54]) and that it may even be, as submitted by Mr Carey the conventional view, we are not convinced, in the light of the decisions of the Court of Appeal in *Gora* and *Hare Wines* that the Tribunal's fact finding jurisdiction in appeals under s 16(4) FA94 extends to matters other than those of which the decision maker was aware or should reasonably have been aware.

55. We were referred by Mr Carey to the decision of the First-tier Tribunal in *BPF Tanks Limited v HMRC* [2019] UKFTT 621 (TC). That case related to a VAT appeal but the question for the Tribunal was whether a discretionary decision made by HMRC was one which no decision maker could reasonably have arrived at in the circumstances. As is the case with s 16(4) FA94, the principles to be applied are those derived from the decision of the Court of Appeal in *John Dee*. The Tribunal took the view at [4] that *Gora* was authority for the proposition that, in the context of s 16(4) FA94, the Tribunal can take into account facts which were not known to the decision maker. It noted however, that this was not the case in relation to VAT appeals citing at [3] the decision of Dyson J in *Customs & Excise Commissioners v Peachtree Enterprises Limited* [1994] STC 747 as authority for the proposition that, in relation to VAT appeals, facts and matters arising after the date the decision was made cannot be taken into account.

56. In fact, in *Peachtree*, Dyson J makes it clear at [751j] that, based on administrative law principles, the circumstances in which the court can take into account matters which are unknown to the decision maker are very limited going on to conclude at [752] that:

> "It would, in my judgment, be quite contrary to principle to allow a person seeking to impugn a decision by invoking the supervisory jurisdiction of a tribunal to rely on matters which the decision maker cannot be criticised for not having taken into account."

57. This is entirely consistent with the wording used by the Court of Appeal both in *Gora* and in *Hare Wines*. It is one thing to say that, as a fact finding tribunal, the First-tier Tribunal can test the factual conclusions of the HMRC decision maker. It is quite another to say that this allows the Tribunal to make findings of fact in relation to (and therefore to test the reasonableness of the decision by reference to) matters which were not before the decision maker and which should not reasonably have been known by the decision maker.

58. However, in this case, (subject to the next point which we shall come on to), we are not asked to make findings of fact in relation to matters which were not known to the HMRC

decision makers at the time the decisions were made. We do not therefore reach any conclusion as to whether the fact finding exercise which the Tribunal must undertake (in accordance with the decision in *Gora*) extends beyond those matters which were before the decision maker to include matters in existence at the time of the decision but which were unknown to the decision maker.

59. The matter mentioned above which we now come on to is whether the Tribunal can make findings of fact in relation to matters occurring after the date of HMRC's decision and to take those factual findings into account in determining whether HMRC's decision was unreasonable. HMRC invite the Tribunal to make such findings and to take them into account to the extent that that they shed light on the facts which were before the HMRC decision makers and also in relation to the question as to whether, if there were some defect in HMRC's decision making, it would nonetheless be inevitable that they would reach the same decision in the absence of any such defect.

60. Mr Carey submits that the settled approach of the First-tier Tribunal is to take account of facts and matters subsequent to the date of the original decision if this sheds light on the facts which existed at the date of the decision. In support of this, he refers to the decision of the First-tier Tribunal in *Safe Cellars* where the tribunal concluded at [40] that:

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

61. Unfortunately, the tribunal in *Safe Cellars* does not explain the basis on which it considered that subsequent matters could be taken into account if they shed light on matters which were relevant to the decision at the time.

62. The First-tier tribunal in *Whittalls Wines Limited v HMRC* [2018] UKFTT 36 (TC) however reached a similar conclusion at [109], referring in support of this to the decision of the Court of Appeal in *Birkett v DEFRA* [2011] EWCA Civ 1606 and the decision of the Supreme Court in *R(OAO Evans) v AG* [2015] UKSC 21. We invited the parties to provide submissions in relation to those authorities and we are grateful for the submissions provided by Mr Carey and Mr Kelly on behalf of HMRC.

63. Having reviewed the cases, HMRC accept that they provide no independent support for the proposition that subsequent matters can be taken into account if they shed light on the facts which were relevant to the decision. This is because, in those cases, the regime in question was one where the Tribunal was not simply reviewing the relevant decision and deciding whether the decision was (in the sense explained above) unreasonable; instead, the job of the Tribunal was to analyse the facts and to make its own decision. As Mr Carey and Mr Kelly accept, that power is not analogous to the Tribunal's function under s 16(4) FA94.

64. Nonetheless, Mr Carey and Mr Kelly submit that the Tribunal in *Whittalls* did not rely on those authorities in reaching its conclusion but instead relied on the earlier decision of the Tribunal in *Safe Cellars*. We cannot accept this. The Tribunal's conclusion in *Whittalls* was based on a submission made by HMRC in its opening. That submission is recorded in paragraph [109] of the decision and is clearly based on the authorities we have mentioned. It is true that the Tribunal in *Whittalls* accepts at [111] that there is little difference between the submission made by HMRC and the conclusion of the Tribunal in *Safe Cellars* and goes on to explain that it will follow the approach set out in *Safe Cellars*. The fact remains however, that there is no authority for this approach which has been drawn to our attention other than the

authorities mentioned in *Whittalls* at [109] which, as HMRC accept, are dealing with a very different situation.

65. Mr Carey also referred to the decision of the First-tier Tribunal in *Casa Di Vini Limited v HMRC* [2021] UKFTT 11 (TC). Like this appeal, that case was dealing with an appeal against HMRC's refusal to approve the appellant under the AWRS. The Tribunal accepted at [56] the approach adopted by the Tribunal in *Safe Cellars* and drew support at [57] from the decision of the Upper Tribunal in *Behzad Fuels v HMRC* [2017] UKUT 321 (TCC) where the Upper Tribunal commented at [28] that:

> "…the Tribunal exercises a measure of hindsight and a decision which in the light of the information available to the officer making it could well have been quite reasonable may be found to be unreasonable in the light of the facts as found by the Tribunal."

66. The Tribunal in *Casa Di Vini* went on to consider matters which had taken place after the date of HMRC's refusal decision (see for example paragraphs [181], [189] and [220]). As Mr Carey submits, this decision is clear authority for the proposition he puts forward in relation to the ability to take account of subsequent events.

67. In further support of his submission, Mr Carey relies on the wording of the concession made by the Commissioners in *Gora* at [38(3)(e)] as follows:

> "Strictly speaking, it appears that under s 16(4) of the 1994 Act, the Tribunal would be limited to considering whether there was sufficient evidence to support the Commissioners' finding of blameworthiness. However, in practice, given the power of the Tribunal to carry out a fact-finding exercise, the Tribunal could decide for itself this primary fact. The Tribunal should then go on to decide whether, in the light of its findings of fact, the decision on restoration was reasonable."

68. The suggestion from Mr Carey is that the requirement for the Tribunal to "go on to decide whether, in the light of its findings of fact, the decision … was reasonable" indicates that, having made findings of fact in relation to matters that were before HMRC, it should go on to consider matters which were not before HMRC (including matters arising after the date of the decision).

69. In our view, this is reading too much into the words used by the Commissioners. In context, it is clear that all that was being said was that the Tribunal should make its own determination as to whether the appellants in that case were blameworthy and, in the light of that determination, should then decide whether the restoration decision was reasonable. This passage does not therefore in our judgment provide support for the ability of the Tribunal to take into account subsequent matters.

70. At a case management hearing in July 2021 when the original hearing was postponed, the Tribunal referred the parties to the decision of the Court of Appeal in *HMRC v Behzad Fuels (UK) Limited* [2019] EWCA Civ 319 and to the decision of the First-tier Tribunal in *DHL Air Limited v HMRC* [2021] UKFTT 0215 (TC).

71. Although, like this appeal, it related to an appeal under s 16(4) FA94, the specific issue in *Behzad* was whether the Tribunal had power (having found that HMRC's decision was unreasonable) to direct HMRC to carry out a review based on HMRC guidance which had been issued after the date of the original decision or whether the review should be carried out on the basis of the HMRC guidance which was in force at the date the original decision was made.

72. The Court of Appeal concluded that the review must be carried out on the basis of the previous guidance which was in force at the date the original decision was made. In criticising

the Upper Tribunal's reasons for reaching the same conclusion, Henderson LJ explained at [67] that:

> "The real reason, to my mind, lies in the limited nature of the Upper Tribunal's jurisdiction under s 16(4), and the general principle that when a decision is reviewed, the review should be conducted by reference to the facts as they existed, and the law as it stood, at the date of the original decision. That is the critical distinction between the review of a previous decision, on the one hand, and the taking of an entirely fresh decision, on the other hand."

73. The facts in *DHL* are complicated and it is important to note that the decision related to an application to strike out part of HMRC's case. It was not therefore a decision on the merits of the appeal. However, one of the questions related to the relevance of a fact which post-dated HMRC's decision. The Tribunal concluded at [54-55] that:

> "54. The Tribunal's power to carry out a fact finding exercise is a fact finding exercise in respect of the primary facts, and I take that expression to mean, as submitted by Mr Fell, facts which were in existence at that time but which may have been unknown to the decision maker. It is difficult enough for the decision maker to be asked to take into account facts that he or she did not actually know about at the time of making the decision, but that is, to my mind, the correct reading of the Court of Appeal decision in *Gora*. The decision maker's position would be impossible if he or she had to take into account facts which were not in existence at the date of making the decision but which came into existence thereafter. Testing the reasonableness of that decision in light of all subsequent facts would be extremely harsh on the decision maker and I do not think that the decision in *Gora* can be taken as extending the ambit of the fact finding process to that extent.
>
> 55. I am fortified in that view by the sentiments expressed by the Court of Appeal in *Behzad* who, admittedly in a different context from the underlying legislation in this appeal, confirmed that the review of the decision must be conducted in accordance with the facts as they existed, and the law as it stood, at the time of the original decision."

74. As far as *Behzad* is concerned, Mr Carey points out that there was no question in that case of any subsequent facts being taken into account and that, in any event, the question related to what HMRC should take into account on any review and not what the Tribunal should take into account in assessing HMRC's decision. He observes that Henderson LJ said nothing about the possibility of subsequent facts shedding light on the facts which formed the basis of the decision.

75. As to *DHL*, Mr Carey distinguishes this on the basis that the relevance of the subsequent fact in that case was very different to what is said to be the relevance of the subsequent events in relation to this appeal. In this appeal, the subsequent events (for example, further seizures or due diligence failures) are relied on as shedding supportive light on the conclusions which the HMRC decision makers had reached based on the facts which were before them when they made their decisions. In contrast, in *DHL*, if the subsequent facts were taken into account, this would mean that a key factor taken into account by HMRC when they made their original decision (the appellant's compliance history) would simply become irrelevant, something which, on the basis of the facts as they were when the decision was taken, could not possibly have been known.

76. In our view, even if *Gora* is authority for the proposition that the Tribunal's fact finding jurisdiction in appeals under s 16(4) FA94 extends to facts which were in existence at the time of the relevant decision but which were not known by HMRC (in respect of which, for the reasons set out above, we have some doubt), there is nothing in *Gora* which provides any

suggestion that the Tribunal can make findings of fact in relation to matters which have occurred subsequent to the date of that decision, whether for the purpose of shedding light on the facts as they existed at the time the decision was made or for any other purpose. Given the very clear position (explained by Dyson J in *Peachtree*) that, based on administrative law principles, no account should be taken of facts or matters arising subsequent to the taking of the decision, we do not find this surprising.

77. We note that, in *Safe Cellars*, although the Tribunal concluded that events occurring after the decision was made might be taken into account if they shed light on the matters which were relevant to the decision at the time it was taken, there were, in that case, no such events.

78. Taking this into account and given the lack of any reasoning for the conclusion which it reached, we do not place a great deal of weight on what was said in relation to this in *Safe Cellars*. We do, however, note that the hearing in *Safe Cellars* took place at the end of 2016 whilst the hearing in *Whittalls* took place in the summer of 2017. It might not be surprising therefore if HMRC had made submissions in *Safe Cellars* similar to (and based on the same authorities as) those which it made in *Whittalls*.

79. In any event, although the Tribunal in *Whittalls* approved what was said in *Safe Cellars* it was again a case where there were no subsequent facts which were taken into account. Instead, our reading of what the Tribunal understood by what was said in *Safe Cellars* was that, in making its findings as to the facts which were in existence at the time the decision was made, it could take into account evidence which was not before the decision maker such as the oral testimony of witnesses and documents which, although in existence at the time of the decision, had not been provided to the decision maker. This is apparent from the statement of the Tribunal at [110] that it:

> "…agrees with the submissions of the appellant in opening, that the latter category, (ii), essentially encompasses evidence after the decision under challenge, which throws light on events upon which the decision was based."

80. It is also apparent from the Tribunal's summary of its conclusions at [10-11] that:

> "10. The basis for revocation becomes stronger as a result of the evidence heard at trial than it was at the time HMRC made the revocation decisions.
>
> 11. This is because events that occurred after the revocation decisions, principally the presentation of documentary and oral evidence by the appellants, have shed light upon them."

81. It is apparent therefore that the Tribunal only relied on the ability to take into account subsequent matters which shed light on the primary facts as they existed at the time the decision was taken in the sense of receiving evidence in relation to those primary facts which was not previously available.

82. This is very different from what HMRC invited the Tribunal to do in *Casa Di Vini* and which HMRC invite the Tribunal to do in this appeal, which is to make findings in relation to subsequent events such as seizures and the extent of due diligence carried out in respect of relationships entered into after the date of the original decision, on the basis that these events will somehow corroborate or reinforce the conclusions reached by HMRC's decision makers on the basis of the facts which were known to them at the time they took their decisions.

83. Like the Tribunal in *DHL*, we consider that the job of the decision maker would be impossible if they are put in a position where their decision is to be scrutinised on the basis of events which occur after the date the decision is made and which, on any basis, they could not possibly have known about.

84. Given the similarity of the Tribunal's jurisdiction to a judicial review function (although accepting, based on the Tribunal's fact finding role described in *Gora*, that the principles are different), it cannot in our view possibly have been Parliament's intention that the Tribunal's assessment as to whether HMRC's decision was unreasonable should take into account facts or matters which relate to the period after the decision was taken. If that had been the intention, it would surely have followed that the Tribunal would have been given power to make a new decision of its own.

85. Our conclusion therefore is that facts and matters which arise after the date of the decision which is being appealed cannot be taken into account whether or not they might be said to shed light on the facts on which the original decision was based.

86. Although we accept that *Behzad* was dealing with a different point and we do not rely on it in reaching our decision on this point, the comments of the Court of Appeal in that case are consistent with this approach. If it is right that any review which is to be carried out by HMRC, should their decision be found to be unreasonable, must be based on the facts as they existed at the time the original decision was made, this strongly supports the conclusion that the Tribunal cannot take into account facts which come into existence after the date of the decision. It would make no sense for the Tribunal to find, relying on such facts, that the original decision was unreasonable but for HMRC then to have to carry out a review which leaves such subsequent facts out of account.

87. In order to fulfil its fact finding role explained in *Gora*, the Tribunal can, however, (and should) take into account evidence relating to the primary facts at the date of the original decision even if that evidence only comes to light after the date of the original decision. This will, of course, include the witness evidence at the hearing of the appeal and will also include documents which were in existence at the time of the original decision but which were not in the possession of the decision maker.

88. It may also include documents which only come into existence after the date of the original decision if those documents provide evidence in relation to a fact which pre-dates the decision. An example of this might be a chain of email correspondence sent or received after the date of the original decision, but the contents of which provide evidence relevant to the question as to whether or not an appellant was involved in wrongdoing said to have taken place before the date HMRC's decision was taken.

89. One further objection from Mr Carey to our conclusion is that it could lead to a result where, based on events which occur after the date of the original decision (for example clear dishonest involvement in subsequent seizures), HMRC's decision to refuse registration would be shown to be reasonable and so should be upheld. However, if the subsequent events could not be taken into account, HMRC could be forced to conduct a review which might result in approval having to be given. Mr Carey suggested that this would make a nonsense of the system.

90. We do not agree with this. We accept that the inability to take into account subsequent matters may well mean that, on a review, the trader ends up being approved. However, it would be open to HMRC immediately to revoke that approval based on the subsequent events. Whilst this involves an extra administrative step for HMRC, it is not in our view an onerous one in circumstances where there is a clear case for revocation.

91. Based on our conclusion on this point, we have not therefore referred in this decision to the various events which took place after the review decision and in respect of which we heard evidence such as subsequent seizures and alleged failures of due diligence.

Inevitability

92. As we have mentioned at [41], even if the Tribunal identifies a flaw in HMRC's decision making, it should not allow the appeal if it is inevitable that, but for the flaw, HMRC would have reached the same decision.

93. Mr Carey submits that in assessing inevitability, the Tribunal should take into account events which have occurred after the date of the original decision up to the date of the Tribunal hearing.

94. In the skeleton argument prepared on behalf of Continental prior to the proposed hearing in July 2021, it is also suggested that, if the Tribunal finds that HMRC's decision is unreasonable, the appeal should be allowed unless the Tribunal is satisfied that it is inevitable that the same decision would be reached on a further review which takes account of subsequent material. In support of this, the skeleton argument refers to the passage in *John Dee* which we have mentioned in paragraph [41] and also to the decision of the First-tier Tribunal in *Corbelli Wines v HMRC* [2017] UKFTT 615 (TC). In *Corbelli*, the Tribunal noted at [313] that:

> "Section 16(4) does not require the Tribunal to order a further review if HMRC reach a decision on an unreasonable basis but the decision would have been the same on valid grounds."

95. The Tribunal raised with Mr Carey and Mr Kelly the basis on which the authorities supported the proposition that subsequent events can be taken into account in determining whether HMRC's decision would inevitably have been the same had whatever factors resulted in the decision being unreasonable been left out of account. Mr Carey noted that the Tribunal in *Casa Di Vini* appear to have accepted HMRC's submission that the question of inevitability is to be tested by reference to the position on a subsequent review by HMRC taking into account subsequent events (see paragraphs [221] and [235-236]).

96. We can, however, find no support for this from the decision in *John Dee*. In that case, the Commissioners had failed to take into account financial information in relation to the appellant company. The decision was therefore flawed. What the Court of Appeal accepted was that the appeal should not be allowed if the Commissioners' decision would inevitably have been the same had the financial information been taken into account. Neill LJ was, in effect, endorsing the approach of the VAT Tribunal in that case which he had referred to earlier in his decision at [948] and which was based on the judgment of Sir John Donaldson MR in *Commissioners of Customs & Excise v Secretary of State for Social Services, ex parte Wellcome Foundation Limited* [1987] 1 WLR 1166 who stated at [1175] that:

> "The jurisdiction of the courts to entertain applications for judicial review is a supervisory jurisdiction of an essentially practical nature designed to protect the citizen from breaches by decision makers of their public law duties. That there will be such a breach if the decision maker takes account of irrelevant matters or fails to take account of relevant matters, in the sense that his decision is affected thereby, is not in doubt. But, if his decision is not affected thereby, there is no reason why the jurisdiction should be exercised and every reason why it should not."

97. It is clear from this that, when considering inevitability, the question is whether it is inevitable that the decision maker would have reached the same decision at the time the original decision was taken had the defect in the decision not occurred. There is no suggestion that the question is whether a new decision maker, taking a completely new decision based on up-to-date facts, would have reached the same decision.

98. Therefore, should we find that there is a flaw in HMRC's decision, we should allow the appeal unless it is inevitable that, had the flaw not occurred, HMRC's decision would, at the

time of the original, have been the same. As noted by the Tribunal in *Casa Di Vini* at [219] and accepted by Mr Carey, this is a high hurdle.

Directing a Review

99. Should the Tribunal find that HMRC's decision as unreasonable, it has the power to direct HMRC to carry out a further review. In our view, there is an open question as to the basis on which the Tribunal can direct HMRC to conduct such a review. The Upper Tribunal decided in *R(OAO Ace Drinks Limited) v HMRC* [2016] UKUT 0124 (TCC) that such a review could be required to be undertaken on the basis not only of the facts as they existed at the time of the original decision but also taking into account subsequent events (see paragraphs [12-15]).

100. However, this decision was made before the comments of the Court of Appeal in *Behzad* which indicate that the Tribunal only has power to order a review based on the facts and circumstances in existence when the original decision was taken. It does not appear that the decision in *Ace Drinks* was brought to the attention of the Court of Appeal in *Behzad*.

101. As will become apparent, we have concluded that HMRC's decision was reasonable and so the question as to whether a review should be carried out and, if so, on what basis, does not arise. It would not therefore be appropriate for us to grapple with this question.

THE EVIDENCE

102. As well as bundles of documents and correspondence, we had three witness statements on behalf of Continental, two from Mr Dhingra and one from Continental's accountant, Mr Khan. We also had three witness statements on behalf of HMRC, two from the officer who made the original decision, Mr Fu Lam and one from the officer who conducted the review, Ms Carole Parish.

103. Mr Carey raised a concern about the fact that, although Mr Dhingra required an interpreter, his witness statements were in English. Mr Dhingra explained that he had told Mr Khan what to say and Mr Khan had then written the statements in English. Mr Khan had then read to him in Hindi what was written in English. On this basis, we were satisfied that the witness statements could be relied on as being Mr Dhingra's evidence.

104. All four witnesses gave oral evidence but, in the case of Ms Parish, she was not cross-examined but instead answered a small number of questions put to her by the Tribunal in order to clarify some aspects of her witness statement.

105. We have no hesitation in accepting the evidence given by Mr Khan, Mr Lam and Ms Parish. They were clearly doing their best to answer the questions put to them as best they could, bearing in mind, that, to a large extent, the evidence related to events which took place around five years ago.

106. Our assessment of Mr Dhingra's evidence is more mixed. We accept that his evidence may have been affected by the fact that English is not his first language and that, on occasion, this may have led to misunderstandings. However, even taking this into account, there are a number of areas where his evidence and the responses he gave during cross-examination reveal inconsistencies, either with the documentary evidence, with what he has in the past said to HMRC, with what he had said in his witness statement or what he had previously said in cross-examination.

107. In addition, on a number of occasions, Mr Dhingra asserted the existence of documents in Continental's files but which had not been produced by Continental as part of its evidence. Mr Carey and Mr Kelly drew attention to the decision of the Court of Appeal in *Wetton v Ahmed (re Mumtaz Properties Limited)* [2011] EWCA Civ 610 where Arden LJ said at [14]:

> "In my judgment, contemporaneous written documentation is of the very greatest importance in assessing credibility. Moreover, it can be significant not only where it is present and the oral evidence can then be checked against it. It can also be significant if written documentation is absent. For instance, if the Judge is satisfied that certain contemporaneous documentation is likely to have existed were the oral evidence correct, and the party adducing oral evidence is responsible for its non-production, then the documentation may be conspicuous by its absence and the Judge may be able to draw inferences from its absence."

108. We accept the relevance of this observation to the current situation. In many cases where Mr Dhingra asserted that documentation existed, it would have been straightforward for Continental to provide it. Until relatively recently, the company was legally represented. This was certainly the case when its list of documents was produced. It would therefore be expected that relevant documents supporting Continental's case would have been produced if they were available.

109. As we will explain in more detail when we review the evidence and make our findings of fact, we have, for these reasons, exercised some caution in relation to the evidence given by Mr Dhingra.

BACKGROUND FACTS

110. We will address the facts in more detail (and, in particular, make findings in relation to disputed fact) when considering HMRC's reasons for refusing approval under the AWRS. However, it is convenient to set out at this stage those background facts which are undisputed (either in the sense that they are agreed or have not been challenged).

111. Continental has, since 2014, carried on business wholesaling wine and beer. Mr Dhingra is the sole shareholder and the sole director of the company. Prior to setting up Continental, Mr Dhingra worked as a sales manager in a cash & carry and then ran his own off licence.

112. Between November 2014 and November 2015, almost 90 per cent of Continental's supplies were purchased from five suppliers who were subsequently deregistered for VAT:

(1) UKK Wines Limited – deregistered with effect from 14 June 2016. The sole director was imprisoned in May 2016 for offences involving criminal property.

(2) Allan Desmond Limited – deregistered on 5 January 2015 on the basis that it was using its VAT registration for fraudulent purposes.

(3) AK Suppliers Limited – deregistered on 22 March 2016 on the basis it was using its VAT registration for the purposes of VAT fraud.

(4) Drayton Traders Limited – deregistered on 3 August 2015 as a missing trader.

(5) PES Trading Limited – deregistered as a missing trader on 8 September 2016.

113. On 20 August 2015, HMRC seized 15 pallets of vodka, 13 pallets of beer and three pallets of wine from Continental's warehouse in Wembley. A letter challenging the seizure on behalf of Continental was sent to HMRC on 23 December 2015. The challenge was withdrawn by Continental's solicitor on 25 January 2016. The total excise duty for the goods seized was in the region of £88,000.

114. Mr Dhingra was charged with various criminal offences in relation to the seizure. At the time of HMRC's decision to refuse approval under the AWRS, the charges were outstanding. In the event, when it came to the trial in 2018, the Crown Prosecution Service did not offer any evidence and we infer that Mr Dhingra was, as a result, found not guilty of the charges against him.

115. We will go on to make other findings relating to the seizure in connection with matters in dispute. However, the facts set out above are not in dispute.

116. Continental vacated its warehouse in Wembley at the end of August 2015. For a period, it used a warehouse in Perivale. By the time of HMRC's visit in June 2016, Continental was operating from Mr Dhingra's home address in Harrow.

117. Continental submitted its AWRS application on 18 March 2016. The application showed the warehouse in Perivale as the business address. It listed five suppliers, PES Trading Limited ("PES"), UKK Wines Limited ("UKK") and three cash and carry companies, HT & Co Drinks Limited, Dhamecha Foods Limited and Millennium Cash & Carry Limited. Historically, the majority of its supplies had been sourced from UKK.

118. Between January-May 2016, Mr Dhingra withdrew approximately £55,000 from Continental. Of this, £47,000 was, in April/May 2016, lent by Mr Dhingra to a friend, Mr Dorgra to assist him in setting up a cash & carry business.

119. In June 2016, HMRC visited Continental on three occasions in relation to transactions with UK Food & Drinks Limited. As a result of this, it was established that Continental had issued a number of invoices to UK Food & Drinks Limited in March 2016 in respect of which VAT had not been accounted for. Mr Dhingra's explanation for this was that the invoices had been cancelled as Continental had not been paid.

120. Although Continental subsequently (in July 2016) issued credit notes in respect of the invoices, these were not accepted by HMRC as they took the view that a credit note cannot be issued simply because an invoice is unpaid and in circumstances where the customer has not rejected or returned the goods. For this reason, HMRC assessed Continental for VAT of £8,865 together with a penalty of £1,453. The assessments were issued on 22 September 2016.

121. As part of HMRC's investigations in June 2016, it was noted that Continental had not traded since the sales to UK Food & Drinks Limited in March 2016. HMRC therefore notified Mr Dhingra that Continental would be deregistered for VAT if there was no evidence of trading by 31 July 2016. As a result of this, Continental purchased approximately £400 of stock from Dhamecha Foods on 14 July 2016. However, no other purchases took place until January 2017.

122. In November 2016, Mr Lam wrote to Continental to arrange a visit to discuss the AWRS application. The letter listed the information which Mr Lam would need to see when the visit took place. That visit took place on 18 January 2017.

123. In the meantime, Continental had entered into a five year lease of new premises paying approximately £16,000 by way of a deposit and advance rent. Continental also acquired a forklift truck, shelving for the warehouse and a van costing in total approximately £22,000.

124. In December 2016/January 2017, Continental purchased approximately £30,000 of stock from two cash and carry companies (Booker and Millennium). It also made two small sales to local retailers totalling approximately £1,500.

125. Also in December 2016/January 2017, Continental started the process of opening an account with Seabrooks, an approved warehouse, which would enable Continental to purchase wine and beer on a duty suspended basis from the EU.

126. Following Mr Lam's visit on 18 January 2017 various exchanges of correspondence took place resulting in further information being provided by Mr Dhingra to Mr Lam.

127. On 1 March 2017, Mr Lam wrote to Continental refusing its AWRS approval application. Continental made further representations on 6 March 2017 and requested a review. The review

was carried out by Ms Parish who, on 19 April 2017, upheld Mr Lam's decision although made amendments to some of the factors taken into account by HMRC.

128. With this background in mind, we now need to go on to consider in more detail the decisions made by Mr Lam and Ms Parish and assess whether those decisions were unreasonable in the required sense explained above.

HMRC'S DECISIONS

129. Strictly speaking, the appeal is an appeal against the review decision of Ms Parish. However, Ms Parish structured her review by reference to the reasons given by Mr Lam, agreeing with some and disagreeing with others as well as having one or two additional reasons of her own. We do therefore need to consider the factors taken into account by both of them in considering whether or not the ultimate decision on review was reasonable in the sense which we have explained above.

130. In this section, we will examine the reasons given, consider whether any irrelevant factors were taken into account or whether any relevant factors were left out of account and make appropriate findings of fact based on the evidence available to us. As we have already mentioned, these findings of fact will relate only to matters in existence at the time the review decision was taken and will not relate to matters arising subsequently. There is no suggestion of any matters in existence at the date of the review decision which were unknown to Ms Parish. We do not therefore need to decide whether it would be proper for us to take into account any such matters.

131. HMRC's reasons for refusing approval were grouped in the refusal letter and the review letter into three broad categories:

(1) evidence of illicit trading;

(2) lack of commercial viability/credibility; and

(3) unsatisfactory due diligence.

132. We will carry out our review of Ms Parish's decision using the same headings.

Evidence of illicit trading

133. It will be remembered that one of the examples of illicit trading given by HMRC in EN2002 is "seizure of duty unpaid products". On this basis, Mr Lam and Ms Parish have both taken into account the seizure on 20 August 2015 as evidence of illicit trading. Mr Lam also referred to the pending criminal proceedings against Mr Dhingra but Ms Parish accepted that the criminal proceedings should not be taken into account.

134. It is accepted that there was a seizure of wine, beer and vodka from Continental's warehouse. It is also accepted that the wine and beer belonged to Continental. We agree that, in this context, the 2015 seizure is a relevant factor.

135. Mr Dhingra's position is that the vodka belonged to a friend of his who he had agreed could park his lorry at the warehouse as there was a mechanical problem with the lorry.

136. Mr Dhingra's evidence that Continental was not the owner of the vodka has been consistent from the day the seizure took place when the officer conducting the seizure spoke to Mr Dhingra on the telephone. Mr Dhingra's evidence is also that Continental has never dealt in spirits as they are too expensive. This is corroborated by the findings of the HMRC officer at the time of the seizure where the price lists which they found at the premises related only to beer and wine. There were no price lists for spirits.

137. In cross-examination, Mr Carey did not specifically put it to Mr Dhingra that Continental owned the vodka. He did however ask Mr Dhingra why, if the vodka was not owned by

Continental, it had applied for condemnation proceedings (in order to determine whether the goods were in fact liable to seizure) to be started in relation to the vodka as well as the beer and wine and for all of the goods to be restored. Mr Dhingra's response to this was that the challenge had only been in relation to the beer and wine. However, the letter from Continental's solicitors is absolutely clear that it relates to the vodka as well as the beer and wine.

138. Despite this clear discrepancy, given Mr Dhingra's consistent explanation in relation to the vodka and the lack of any price list for spirits, from which we infer that Continental did not trade in spirits, we find, on the balance of probabilities, that the vodka did not belong to Continental but, instead, was being stored on Continental's premises for a third party.

139. It was subsequently ascertained by HMRC that the vodka was counterfeit. Continental does not seek to challenge this. Mr Dhingra's evidence however is that he was unaware of this given that the vodka belonged to a friend and not to Continental.

140. As far as the beer and wine are concerned, Mr Dhingra's evidence was that he had subsequently provided invoices for the purchase of the beer and wine to the relevant authorities. His explanation under cross-examination for the paperwork not being available when the seizure took place was that he and his family were on holiday in Scotland and the only person at the premises was a security guard.

141. This is however contradicted by the notes of the HMRC officers who conducted the seizure which clearly show that the individual who they spoke to at the premises (Mr Siddiqui) was in charge of sales and was not a security guard. Mr Siddiqui told HMRC that Continental's accountant would have the invoices.

142. Mr Dhingra went on to say in cross-examination that having provided the paperwork for the beer and wine, the charges in relation to the beer and wine had been dropped so that, by the time of the proposed trial, the charges only related to the vodka. Unfortunately, we have no documentary evidence confirming Mr Dhingra's oral evidence. Having said that, Mr Dhingra's evidence was not challenged by HMRC. We therefore accept Mr Dhingra's evidence that he provided the relevant paperwork in relation to the beer and wine to HMRC so that its origin could be established. However, we have no evidence as to when that happened and so we make no finding as to whether it was before or after the decision in April 2017.

143. Despite being able to provide the relevant invoices for the beer and wine, Continental withdrew its application for condemnation proceedings and for restoration by a letter from its solicitor dated 3 February 2016. During the course of the hearing, three different explanations were given for why, notwithstanding the fact that the beer and wine belonged to Continental, it did not pursue the request for restoration and/or condemnation proceedings.

144. The first explanation (which had not, until the hearing, formed any part of the evidence provided by Continental) was that Continental's solicitor had misunderstood its instructions which were only to withdraw the request in relation to the vodka. The second explanation was that, by the time it would be restored, the stock would be out of date. However, it was clear that this comment was made in relation to the possibility of restoration after the collapse of the criminal proceedings in 2018 and not at the time the request for restoration was actually withdrawn in early 2016. The third explanation was that it would cost more in professional fees to obtain restoration than the value of the goods.

145. We make these points about the inconsistency in the evidence primarily to illustrate our cautious approach to Mr Dhingra's evidence. It is clear, as a matter of fact, that the restoration request and the application for condemnation proceedings were both withdrawn in relation to all of the goods in February 2016.

146. The result of this is that those goods are "deemed to have been duly condemned as forfeited" (paragraph 5 of Schedule 3 Customs & Excise Management Act 1979). The goods are therefore deemed to have been properly seized on the basis that no duty had been paid in relation to those goods at a time when duty should have been paid. Even if it were open to us to go behind this deeming in the context of an AWRS approval application, no evidence has been provided to us in relation to the payment of duty in respect of these goods.

147. That does not of course establish that either Mr Dhingra or Continental were guilty of any wrongdoing. We specifically asked Mr Carey whether HMRC were inviting the Tribunal to make a finding of wrongdoing. His response was that the Tribunal was not being asked to find that there was any criminal wrongdoing. Whilst it was not entirely clear what Mr Carey meant by this, we take it to mean that the Tribunal is not invited to find that Continental or Mr Dhingra were knowingly holding goods on which duty should have been paid but had not been paid.

148. In reality, the Tribunal does not have sufficient evidence to make any findings one way or the other in relation to this point and so we do not do so. We do however find as a fact that there was wrongdoing in a wider sense in that goods held at Continental's warehouse, some of which belonged to Continental, were duly seized and condemned as forfeited.

149. During cross-examination, Mr Dhingra accepted that, when his friend asked him for permission to store the vodka at Continental's warehouse, Mr Dhingra did not carry out any checks in relation to his friend or the goods in question before giving permission for the lorry to be parked at his warehouse. His only explanation for this was that he and his family were on holiday in Scotland. When asked why his staff could not make any checks, his response was that the only staff member was an outside security guard. As mentioned above, this is clearly not correct based on the notes of HMRC's visit when the seizure took place.

150. This again demonstrates the difficulties we have had with Mr Dhingra's evidence. We do not accept Mr Dhingra's explanation that he was unable to carry out any due diligence in relation to his friend's business and the particular load in question due to his family holiday in Scotland. He could have asked Mr Siddiqui to carry out any relevant due diligence.

151. In addition, Mr Dhingra's evidence (supported by Mr Khan) is that Continental's accountant, Mr Khan was primarily responsible for conducting due diligence. There is no evidence of any reason why Mr Dhingra could not have asked Mr Khan to ask any necessary questions or obtain any necessary documents. Based on this evidence, we infer that Mr Dhingra in effect turned a blind eye to his friend's activities in the sense that he simply paid no regard to the question as to whether or not those activities were legitimate. As it turns out, they clearly were not.

152. In 2016, HMRC had sent a "tax loss" letter to Continental relating to a transaction with PES. This letter warned Continental that HMRC had detected a fraud in the supply chain (although did not suggest that this related to any wrongdoing on the part of Continental). Mr Lam, in his original decision, took this into account as evidence of illicit trading. However, in her review, Ms Parish took the view that, whilst the tax loss letter was relevant (as it was evidence of unsatisfactory due diligence), it should not be taken into account as evidence of illicit trading. We agree that this adds nothing to the question of illicit trading and Ms Parish was right not to take it into account in this context.

153. Ms Parish also highlights a further point relevant to illicit trading which was not taken into account in this context by Mr Lam. This relates to the VAT assessment (and associated penalty) made in 2016 following the three visits by HMRC in June 2016 relating to transactions with UK Food & Wines Limited. Ms Parish considered that the issue of the VAT assessment and penalty was "indicative of poor compliance and an indicator of illicit trading".

154. When asked by the Tribunal about this, Mr Parish's response was that she had understood that Continental had made sales without accounting for the VAT.

155. Whether this could amount to illicit trading is debatable. Clearly, if supplies are made without VAT being accounted for, this would amount to illicit trading if the failure to account for the VAT was deliberate. However, in this case, Mr Dhingra's explanation when visited by HMRC was that the invoices had been cancelled as Continental had not received payment.

156. Mr Dhingra told the HMRC officer who visited him in June 2016 that he had left a voicemail message for UK Food & Wines Limited confirming that the relevant invoices had been cancelled. Formal credit notes were only issued in July 2016 after HMRC's visit but, as we have already explained, these were not accepted by HMRC as they took the view that, where goods have been supplied, an invoice cannot simply be cancelled purely on the basis that it has not been paid.

157. One of the examples of illicit trading given by HMRC in paragraph 6.10 of EN2002 is a civil penalty which suggests the business doesn't have a responsible outlook on its tax obligations. Whilst the failure to account for the VAT in this case may not have been a deliberate attempt to evade the payment of VAT, we accept that the circumstances of the VAT assessment and the penalty show that Continental did not have a responsible outlook on its tax obligations.

158. In our view, a trader with the experience of Mr Dhingra cannot have believed that simply leaving a message on an answerphone was sufficient to cancel an invoice so that the VAT did not have to be accounted for. This conclusion is of course supported by the fact that, following HMRC's visit, Continental did in fact issue formal credit notes.

159. Therefore, although this factor on its own might not carry a great deal of weight as far as illicit trading is concerned, it was in our view something which Ms Parish was entitled to take into account. It is however, apparent that Ms Parish did not give the VAT assessment and penalty a great deal of weight in relation to illicit trading as she had already concluded that "the seizure from the business premises is sufficient to fail this criteria of the fit and proper test."

160. Taking into account our own factual findings, we cannot say that HMRC's conclusion in relation to illicit trading was unreasonable. The factors which were taken into account were relevant. Even if Continental was not actively involved in any wrongdoing, the fact that it was willing to allow a third party to use its premises with no questions asked, in circumstances where there was clear wrongdoing involved (as shown by the load of counterfeit vodka), provides sufficient grounds for HMRC's conclusion that the business is a threat to the revenue.

161. Mr Dhingra, on behalf of Continental, makes the objection that there is no proof of actual wrongdoing in relation to the seizure. We accept this and, as mentioned above, have made no finding either way as to whether there was any wrongdoing (in the sense of knowing involvement in any wrongdoing). However, Continental's (and in particular Mr Dhingra's) lack of any regard to the legitimacy of his friend's trading activities makes it impossible to say that HMRC's conclusion on this aspect is unreasonable.

Lack of Commercial Viability/Credibility

162. Mr Lam and Ms Parish have relied on a number of factors in coming to a conclusion that Continental does not have a viable/credible business.

163. The first point is lack of evidence of credible suppliers. HMRC point out that two of the suppliers listed in Continental's AWRS application, UKK and PES are no longer trading. They draw attention to the fact that, historically, UKK has supplied almost 50% of the goods purchased by Continental. Mr Dhingra accepts this but points out that there is no reason why a business cannot evolve, resulting in changes to both customers and suppliers.

164. In a letter to Mr Lam dated 21 February 2017, Mr Dhingra mentions that he has opened accounts with four new suppliers, Seabrook, Temple Wines, SK Food and Navson. The Tribunal has copies of the documents relating to the establishment of an account with Seabrook. These show that, although the initial contact with Seabrook was in December 2016, the account was not active until 24 April 2017. In any event, it is apparent that Seabrook is not itself a supplier. Instead, it operates an authorised warehouse which enables those with an account to receive goods under duty suspended arrangements purchased from suppliers in the EU.

165. As far as the other three names are concerned, no evidence of the establishment of accounts with these suppliers was provided to HMRC and no documentation relating to such accounts has been provided to the Tribunal. Given that it would have been straightforward for Continental to provide such documents had the accounts been established at the time Ms Parish made her decision, we infer from the lack of evidence that, despite what Mr Dhingra said in his letter in February 2017, such accounts had not been established at that stage.

166. Ms Parish took into account the fact that Continental had purchased approximately £30,000 of stock from two cash and carry companies, Booker and Millennium, in December 2016/January 2017. However, on the basis that no evidence had been supplied of any further orders, letters of intent or contracts with any of the new suppliers since then, Ms Parish concluded that there was insufficient evidence of credible suppliers.

167. We have also seen no evidence of any further purchases made by Continental between January-March 2017. Again, it would have been straightforward to provide such evidence and so we infer from the lack of any evidence that there were no such purchases.

168. Mr Lam and Ms Parish also refer to the fact that, during the whole of 2016, the only purchase of stock made by Continental was a purchase of approximately £400 in July 2016. We accept Mr Dhingra's explanation that this was prompted by the threat from HMRC in June 2016 to deregister the business for VAT if it did not make any purchases.

169. Ms Parish's conclusion was that Continental was in effect proposing to re-launch its business. We would agree with this. From at least April 2016 until the new warehouse was rented towards the end of 2016, Continental had no premises. It made no purchases since November 2015 other than the purchase in July 2016 which we have just mentioned and made no sales after March 2016.

170. Mr Lam's evidence was that, in circumstances where a trader was establishing a new business, he would expect to see business and financial plans to demonstrate the viability of the business. No such information had been provided by Continental.

171. We accept that the matters we have referred to so far are all relevant factors to take into account.

172. Ms Parish noted that, as well as UKK (Continental's main supplier) having ceased trading, its main customer, Roman Trading Limited and, later, Roman Wines Limited had also ceased trading. During its previous period of trading, those companies accounted for almost 50% of Continental's sales. Whilst aware of the two small sales in January 2017 (totalling approximately £1,500) which we have previously mentioned and which were made to local retailers, Ms Parish came to the conclusion that no evidence had been provided to show that Continental had in place credible customers.

173. The Tribunal has evidence which makes it clear that Continental had a significant number of customers prior to 2016. However, the only sales of any significance in 2016 were to Roman Wines Limited and UK Food & Wines Limited, both of which ceased trading later that year. In the absence of any other customers for over a year, it was therefore in our view incumbent upon Continental to explain to HMRC who its customers were intended to be once it restarted

its trade. The lack of any such evidence is a relevant factor for HMRC to have taken into account.

174. In its representations to HMRC, Continental made the point that it had entered into a new five year lease commitment on a warehouse in December 2016 and that it had purchased equipment including a van, a forklift truck and shelving for the warehouse. The total cost of all of this was in the region of £40,000. This, said Mr Dhingra, was evidence of Continental's intention to carry on a viable and credible business.

175. It is clear from the review letter that Ms Parish has taken these factors into account as she lists them as part of the points put forward by Continental. We agree these factors are relevant but it does not of course follow inevitably that an investment in a business means that there is in fact a viable or credible business. These factors therefore needed to be weighed up against any other relevant factors.

176. HMRC have also taken into account the fact that, between January-May 2016, Mr Dhingra withdrew £55,000 from Continental and, out of that, made a loan of £47,000 to Mr Dorgra. Mr Lam makes the point that one result of this was that Continental was unable to pay the VAT assessment and the associated penalty in September 2016. Indeed, Mr Dhingra wrote to HMRC in November 2016 asking for the liabilities to be suspended on the basis that his "current circumstances financially are very difficult" and that he was "barely able to pay for rent and food".

177. Ms Parish agreed that, in these circumstances, taking the funds out of the business did not make commercial sense and resulted in the business not being viable.

178. Mr Dhingra however noted that when the money was withdrawn from the business it had, in effect, ceased trading and so the funds were no longer needed for the purposes of the business. Whilst it is true that there was a subsequent VAT and penalty assessment which Continental could not afford to meet, at the time the funds were withdrawn by Mr Dhingra, he says that there was no reason to suppose that a VAT liability would arise.

179. During cross-examination, much was made by Mr Carey of the fact that the loan was uncommercial, that the agreement between Mr Dhingra and Mr Dorgra was deficient in a number of respects, as well as the fact that it appeared only to have been created after the event for the purposes of satisfying Mr Lam's questions after his visit to Continental on 18 January 2017.

180. Mr Dhingra freely accepted that the written loan agreement had only been produced because Mr Lam asked for it. He used a template from the internet which he then filled out. We do not consider that there are any adverse inferences to be drawn from this. The terms of the loan may not have been commercial but, as Mr Dhingra points out, it was a personal loan.

181. Whilst Ms Parish mentions in the review letter that the loan agreement was undated and was not witnessed, it is clear that she has not taken that into account as one of the factors influencing her decision. As already mentioned, the point which has been taken into account is that money was withdrawn from the business resulting in Continental being unable to pay its liabilities. Although it is not mentioned specifically in the review letter, it is clear from Ms Parish's witness statement that she was concerned not only that Continental was unable to pay the VAT and penalty assessments but also that it would not have the working capital needed to re-launch its business which, Mr Dhingra had confirmed to HMRC in June 2016, was its intention.

182. As we have recorded, Continental originally had a warehouse in Wembley until 31 August 2015. Mr Dhingra's second witness statement says that the lease on that warehouse was "terminated forcefully" on 27 April 2016. When questioned about this, Mr Dhingra

accepted that this was a mistake and that the premises in Wembley had been vacated at the end of August 2015. In his discussions with the HMRC officer who visited in June 2016 Mr Dhingra confirmed that Continental had moved out of the Wembley warehouse at the end of August 2015 and had then moved to the warehouse in Perivale "for a very short while" after which the business address was changed to his home address.

183. We note that the address used on the AWRS application on 18 March 2016 was the Perivale warehouse. Based on this and the assertion in Mr Dhingra's witness statement that the lease on Continental's warehouse came to an end on 24 April 2016, we infer that the lease which came to an end in April 2016 was the lease of the warehouse in Perivale and not the original warehouse in Wembley. Mr Dhingra confirms in his second witness statement that, after the termination of the lease, Continental continued to look for new premises.

184. The loans to Mr Dorgra were made between 4 April 2016 and 16 May 2016, with a total of £25,000 being lent after 24 April 2016.

185. It is also notable that, during this period, Continental was waiting for payment by UK Food & Drinks Limited for goods supplied in March 2016 with a total value of almost £60,000. A payment of £5,000 was received from UK Food & Drinks Limited on 22 April 2016 but no further funds were received.

186. Taking all of this into account, we accept that the withdrawal of funds from the business together with the subsequent loans to Mr Dorgra was a relevant factor for HMRC to take into account in considering whether Continental's business was commercially viable. At the time the last two tranches totalling £25,000 were lent to Mr Dorgra:

(1) Continental would have been expecting to pay VAT on the supplies to UK Food & Wines Limited but had not been paid by its customer.

(2) It was looking for new premises and would of course need to pay a deposit and rent in advance once premises were identified.

187. As far as the loan to Mr Dorgra is concerned, Mr Dhingra accepts on his own evidence that there was no specific date for repayment. There is no evidence to suggest that Mr Dorgra would be able to repay the loan at short notice if funds were required by Mr Dhingra in order to enable Continental to meet its liabilities. Indeed, based on the fact that the funds were to be used to set up his new business, we infer that the prospect of early repayment was unlikely.

188. The next point relied on by Mr Lam and Ms Parish in relation to the lack of viability or credibility of Continental's business is its history of sales to Roman Trading Limited and Roman Wines Limited, two connected companies which were based in Glasgow. Continental supplied Roman Trading between November 2014-June 2015. Roman Trading applied to be deregistered for VAT with effect from 1 May 2015. Continental then made supplies to Roman Wines between November 2015-March 2016. Roman Wines was deregistered for VAT with effect from 31 October 2016. HMRC's question is why a customer in Glasgow would purchase wine and beer from a supplier in London rather than a supplier based more locally.

189. In his discussions with Mr Lam in early 2017, Mr Dhingra had two answers to this. The first was that Roman Trading/Roman Wines Limited paid for the cost of transport. The second was that Roman Trading Limited/Roman Wines Limited ordered specialised stock which was only available from UKK.

190. Taking the second point first, HMRC do not accept that the stock ordered by Roman is "specialised". On the contrary, they say that the wines ordered by Roman are very common, including, for example, brands such as Echo Falls, E&J Gallo, Hardy's and Barefoot.

191. In cross-examination, Mr Dhingra's explanation of this was that when he referred to the wines being "specialised" he simply meant that, looking at the regular suppliers used by Continental, the wines in question were only available from UKK and not from their other suppliers.

192. Whilst this may be true, it does not answer HMRC's question, which is why Roman would order commonly available wines from Continental in London rather than a supplier in Glasgow.

193. When it was put to Mr Dhingra in cross-examination that purchases by Roman in Glasgow from Continental in London did not make commercial sense, Mr Dhingra's response was that Continental provided free delivery. This is, of course, directly contrary to what he said to Mr Lam in January 2017. It is also contrary to the invoices for sales to Roman Wines Limited between November 2015 and March 2016 which clearly show that Roman Wines Limited were charged the cost of transport.

194. When confronted with this, Mr Dhingra's response was that if Continental had charged for transport then it would have given Roman a discount on the price of each case of wine, going on to say that sometimes Continental would charge for delivery (and give a discount) and sometimes they would deliver for free.

195. Again, this is an area where we have preferred to look at the documents rather than rely on Mr Dhingra's evidence. We have all of the invoices for the supplies to Roman Trading and Roman Wines. From these invoices, it is clear (and we find as a fact) that Continental did not make any charge for transport for the supplies to Roman Trading between November 2014 and June 2015. However, as we have just mentioned, the invoices show that Continental did make a charge for transport in respect of all of the supplies made to Roman Wines between November 2015 and March 2016.

196. The invoices however do not entirely support what Mr Dhingra is saying. For example, Roman Trading Limited purchased wine from Continental in June 2015 including cases of Echo Falls wine priced at £18.99 a case. No charge was made for delivery. The next invoice for a supply to Roman (in this case Roman Wines Limited) is dated 5 November 2015. This also includes Echo Falls wine at £18.99 per case. However, in this case there is a charge for delivery.

197. We accept that, given the different dates of the supplies, not too much can be read into these comparisons and that there are other examples shown on the various invoices of wines supplied at a higher price where there is no delivery charge than the price which is charged where delivery has also been charged on top. However, even if it is right that Continental charges a lower price if it also includes a charge for delivery, the net effect is that Continental is charging broadly the same price whether or not it includes a delivery charge.

198. This still begs the question as to why a customer in Glasgow would purchase commonly available wines from a supplier in London where, one way or another, it is necessary for the purchaser to factor in the cost of transport either by paying a higher price or by paying a delivery charge. Based on the invoices provided, the delivery charge works out at approximately 50p-60p per case. In circumstances where Roman had told HMRC that it operates on very small margins and Mr Dhingra's own evidence was that Continental's profit margin is £1-£2 a case, this is not an insignificant sum.

199. In our view, it is telling that, when HMRC questioned the commerciality of selling commonly available wines to a customer in Glasgow, Mr Dhingra's response focused on the transport costs. He did not say that the reason was that Continental was able to supply these wines more cheaply than a supplier in Glasgow. This was exactly the same approach he took

in his oral evidence where his initial response was that Continental provided free delivery. It was only when faced with the clear inconsistency between the response he had given to Mr Lam and the response he had given under cross-examination to Mr Carey that he referred at all to the price of the wine itself.

200. Given the inconsistencies in Mr Dhingra's evidence about who paid for transport, we accept that the history of making supplies to a customer in Glasgow of wines which are widely available potentially raises questions about the commerciality of the business and is therefore a relevant factor. We appreciate that it is possible that a supplier in London might be able to supply such wines more cheaply than a supplier in Glasgow even if transport costs are factored in but, in the circumstances we have described, we cannot say that this was an irrelevant factor and so should not have been taken into account.

201. Ms Parish (correctly, in our view) accepts in her letter that, in isolation, this point may not be a cause for concern. Nonetheless, she takes the view that it adds some weight to the conclusion that Continental's business is not viable or credible.

202. Mr Lam, in refusing approval, also relied on the fact that invoices addressed to Roman Wines Limited incorrectly used the VAT number for Roman Trading Limited. Ms Parish quite rightly makes the point that, whilst this is a relevant factor, it is relevant to the question of due diligence rather than commercial viability. We shall therefore consider this aspect below.

203. Mr Lam gave two other reasons which he considered to be relevant to the viability of the business. However, Ms Parish has rejected these reasons and does not rely on them. We agree that they are irrelevant and Continental does not suggest that they should have been taken into account.

204. Our conclusion in relation to commercial viability is that Ms Parish has taken all of the relevant factors into account, including Mr Dhingra's evidence of Continental's investment in its new business. However, given the fact that Continental's previous principal supply chains were no longer viable and the limited evidence of new suppliers and customers, we cannot say that her conclusion in relation to this aspect was unreasonable.

205. One other point we would note at this point is the requirement which we have highlighted to update the AWRS application if circumstances change. Despite being aware of the deregistration of both PES and UKK, Continental did not make any changes to its AWRS application. It was only when Mr Lam raised the issue at the meeting on 18 January 2017 that Mr Dhingra subsequently suggested that Continental had opened accounts with alternative suppliers. As we have said, we do not accept on the balance of probabilities that such accounts were in place given that no documents have been provided to support this.

206. The failure to update the AWRS application form is a further factor which is in our view relevant and which supports the overall conclusion reached by HMRC. Although not mentioned in these terms by HMRC, Mr Lam referred in his letter to the fact that two of the traders listed in the AWRS application form were no longer trading, a point which was repeated in Ms Parish's letter. The point is therefore one which was in their minds.

Unsatisfactory due diligence

207. Due diligence is dealt with in paragraph 12 of EN2002. It warns at [12.1] that:

> "Without effective safeguards in place, all businesses are exposed to considerable risks along alcohol supply chains and may become implicated in illicit trading."

208. HMRC go on to explain that this means that traders must assess the risk of fraud in supply chains, carry out checks to identify transactions which may involve goods on which duty has

been evaded, have procedures in place to take mitigating action where a risk of fraud is identified, to document the checks the trader intends to carry out and have appropriate governance in place to make sure that these checks are in fact carried out.

209. Paragraph 12 of EN2002 contains reasonably detailed examples of the sort of checks which should be carried out and possible indicators of risk. The checks cover areas such as the identity of the counterparty, its financial health, the terms of any deals, the transport arrangements and the provenance of the goods.

210. Ms Parish identifies a number of failings in relation to Continental's due diligence in relation to its suppliers and customers.

211. The first point Ms Parish notes is that no evidence of due diligence has been provided by Continental in relation to its new suppliers and customers. As far as the suppliers are concerned (Booker & Millennium), Mr Dhingra's explanation for this in cross-examination is that these are large, well-known cash and carry companies and so it is not appropriate or necessary to carry out any significant due diligence. This may well be true. However it does not explain the lack of any due diligence in respect of the two new customers, Quality Food & Wine and Achint UK Limited.

212. No evidence has been provided to the Tribunal of any due diligence checks in relation to these businesses. Given the specific criticism in Ms Parish's letter, we would have expected such evidence to be provided in support of this appeal had the checks been carried out, given that the supporting documents should be easily available. We infer from the fact that such documents have not been produced that they do not exist. This was therefore a relevant factor for Ms Parish to take into account.

213. In response to Mr Lam's questions in January/February 2017 Mr Dhingra produced a written due diligence policy on behalf of Continental. In his oral evidence, Mr Dhingra confirmed that this had been produced around the time of the request but stated that Continental had previously had a written due diligence policy.

214. Mr Khan's evidence was that he had assisted in putting together the written due diligence policy sent to HMRC in February 2017. He could not remember whether this was done in early 2017 as a response to the request from Mr Lam or whether it had been prepared earlier. He was however clear that there was no written due diligence policy in place before this.

215. Given the problems we have identified with Mr Dhingra's evidence, we prefer Mr Khan's evidence in relation to this point. Our finding is that the first written due diligence policy Continental had was the one produced to Mr Lam in early 2017 and that it had been produced at around that time in response to his request. There was no previous written due diligence policy.

216. As we understand it, Ms Parish's point in relation to the lack of due diligence in respect of the new suppliers and customers was not only that there was no evidence of due diligence having been carried out but that this was particularly stark in the light of the written policy which had just been supplied as well as a statement made in a letter from Continental to Mr Lam dated 21 February 2017 giving a list of documents which Continental required from their counterparties including:-

(1) certificate of incorporation

(2) VAT certificate

(3) letterhead of the business

(4) bank statements

(5) proof of address

(6) proof of directors' address

(7) photo ID for the directors

(8) references

(9) annual accounts

(10) contractual agreements.

217. There is no evidence that any of these documents were obtained for the new suppliers and customers which Continental traded with in January 2017.

218. Looking at past suppliers and customers, Ms Parish refers specifically to the 2016 tax loss letter in relation to a transaction with PES and takes account of the fact that the due diligence checks which Continental had in place were insufficient to mitigate its involvement in that supply chain or to establish the provenance of the goods.

219. In his refusal letter, Mr Lam comments more generally that the due diligence carried out when Continental was last trading in 2015 "does not demonstrate any understanding or need for proportionality of the due diligence process, thus not meeting s 12 of Excise Notice 2002. There is no evidence that the business is critically checking the financial health of all businesses you are trading with."

220. When asked by Mr Lam to produce evidence of due diligence in respect of past customers and suppliers, Continental produced a folder of documents obtained from the EU's VAT Information Exchange System ("VIES") which is the established way of checking for valid VAT numbers. The only counterparties in respect of which additional documents were produced are Roman Trading Limited/Roman Wines Limited, UKK and PES.

221. In relation to Roman Trading Limited, the due diligence consisted of an introductory letter dated 17 September 2014, information from Companies House, a VAT certificate, a bank statement, utility bill and a passport copy for the director.

222. The due diligence for PES consisted of a certificate of incorporation on change of name, a VIES VAT number validation, a VAT registration certificate, a certificate of registration for money laundering regulations, a bank statement, copies of passports of the directors and a copy of PES's money laundering policy.

223. As far as UKK is concerned, the due diligence comprised a change of name certificate, a VAT registration certificate, a bank statement, a money laundering registration certificate, copy passport of a director and a letterhead.

224. Mr Lam's key concerns in relation to these documents were that they show nothing about the financial health of the businesses Continental was dealing with nor were sufficient to enable Continental to make any real assessment of the risk of becoming innocently involved in fraudulent supply chains. This was of course a point echoed by Ms Parish in her comments relating to PES and the tax loss letter.

225. Based on the documents provided, it is clear that Continental did not, prior to 2017, routinely obtain all of the documents listed in its letter of 21 February 2017. For most counterparties, it did not obtain any of the documents other than the VIES verification. Even for UKK, PES and Roman, it did not obtain accounts or keep copies of contractual agreements. No references were obtained in relation to PES or UKK. It is not clear whether the introductory letter relating to Roman Trading Limited was a reference.

226. In cross examination, Mr Dhingra asserted that Continental had obtained financial information for PES and that this would have been provided to HMRC had they made clear that they wanted this information. However, Mr Lam's letter of 30 November 2016 arranging the visit to Continental which ultimately took place on 18 January 2017 specifically asked for details of Continental's due diligence checks on (amongst other companies) PES and also referred Continental to the relevant paragraphs of EN 2002 including those dealing with financial health. We do not therefore accept Mr Dhingra's evidence on this point.

227. Both Mr Dhingra and Mr Khan in their evidence accepted that Continental's due diligence prior to 2017 left something to be desired. They both stressed the fact that due diligence procedures had been improved after 2017. Mr Khan in particular accepted in cross-examination that any due diligence carried out by Continental prior to 2017 would not have allowed it to assess a counterparty's financial health as credit reports and accounts were not obtained.

228. In relation to the historic due diligence, we find that, in most cases, Continental's due diligence checks were limited to obtaining the VIES VAT validation document. No credit checks or accounts were obtained. Although Mr Dhingra referred to Continental setting up an account with Experian and Due Diligence Exchange, there is no evidence that such accounts existed prior to 2017 and we find as a fact that they did not given that no such reports relating to the period up to April 2017 have been made available to HMRC or to the Tribunal. In the few cases where additional material was obtained, this was insufficient to allow Continental to assess the financial health of the counterparty or to assess the risk of fraud in the supply chain.

229. Based on these findings, we accept that it was relevant for Mr Lam and Ms Parish to have concerns about Continental's historic due diligence as well as its current due diligence in relation to the new suppliers and customers. Whilst Mr Dhingra and Mr Khan referred to anticipated improvements in the due diligence process, Mr Dhingra stated in the evidence he gave that Continental had historically carried out the checks similar to those outlined in its letter of 21 February 2017 and set out in the written due diligence policy. Based on our findings, this is clearly not the case and this is a relevant factor to take into account in considering, at the time the review decision was taken in April 2017, whether there could be any confidence that Continental's due diligence procedures would improve.

230. Ms Parish acknowledges that Continental had stated in its correspondence with Mr Lam that it intended to employ a full time compliance officer. Her concern with this was that no explanation had been provided as to how this would improve the process.

231. Mr Khan's evidence was that he was engaged by Continental both to provide book keeping services and to undertake due diligence checks on suppliers and customers. He had undertaken this role since the company commenced business in 2014. Given the previous involvement of a professional such as Mr Khan in relation to Continental's due diligence process and given the historic due diligence failings, we can understand that Ms Parish was not persuaded that the engagement of a full time compliance officer would make any significant difference.

232. In addition to the specific points mentioned by Mr Lam and Ms Parish in their respective decision letters, it is apparent, both from his witness statement and his oral evidence, that Mr Lam took into account the fact that, between November 2014 and November 2015, almost 90% of Continental's supplies had been purchased from businesses which had subsequently been de-registered for VAT in circumstances where there was evidence of fraud in the relevant supply chains. The circumstances are summarised in the background facts section set out above.

233. These five suppliers included UKK and PES. In relation to two of the other three suppliers, the only due diligence provided by Continental is the VIES VAT confirmation document. No due diligence material at all has been provided by Continental in relation to the fifth supplier, Drayton Traders.

234. In relation to one of the suppliers, Allan Desmond, Mr Dhingra gave evidence that he had carried out checks in relation to that company at Companies House. No evidence of such checks have been provided to HMRC or to the Tribunal. However, the bundle of evidence before the Tribunal included Companies House documents obtained by HMRC. These show that the company started life as "Sakhi Medico Legal Limited", was a dormant company during 2012, 2013 and 2014, and was the subject of an application for compulsory strike off in 2015. Mr Dhingra was unable to explain why, if he had checked the entries at Companies House, this had not prompted him to ask further questions.

235. To be fair to Mr Dhingra, the evidence shows that the purchases from Allan Desmond were in December 2014. The evidence of the strike off application would not therefore have been available at that time. However, the dormant company accounts for 2013 had been filed in January 2014 and dormant company accounts for 2012 had been filed in July 2013. It would therefore be expected that the Companies House records, had they been inspected, would have prompted a responsible trader to ask further questions.

236. In evidence, Mr Dhingra stated that many suppliers would be unwilling to reveal the provenance of the goods on the basis that they would consider this to be commercially sensitive information. Whilst this may be true, the response would of course need to be considered by Continental which would then need to assess whether, in the light of the information provided (or lack of information) it was concerned about any possible risks in the supply chain. It may even need to consider whether to look for alternative suppliers.

237. In any event, based on the evidence before us, we find as a fact that Continental did not in fact make any enquiries as to the provenance of the goods supplied to them by any of its suppliers. Continental's apparent lack of concern in relation to the origin of its supplies is not only contrary to HMRC's clear guidance but has also led it to obtain most of its stock from suppliers who have been involved in fraudulent supply chains.

238. Although not mentioned directly in either of HMRC's decision letters, we accept that this was a relevant factor for HMRC to take into account in reaching their decision. It was also mentioned indirectly by Ms Parish in her review letter when she referred to the fact that, in relation to PES, "the due diligence checks that you have in place were not sufficient to mitigate your involvement in the potentially illicit supply chain or to establish the provenance of the goods".

239. We have discussed in paragraphs [24-37] above the potential effect on the validity of a decision to refuse AWRS authorisation of the omission of a significant reason for that decision from the refusal letter. It is clear from Mr Lam's evidence that, although not referred to in his refusal letter, his concern about Continental's main suppliers was a significant factor in his decision. As we have observed, Mr Dhingra did not suggest in his submissions that any such omission invalidated the decision or rendered it, of itself, unreasonable. This is not therefore a point which we have to decide.

240. However, for completeness, our conclusion is that, to the extent that there is any omission, it would not invalidate HMRC's decision or render it unreasonable. The refusal letter and the review letter make it quite clear that one of the reasons for refusal relates to deficiencies in due diligence. Whilst the decision letters may be defective in failing to refer to one of the significant reasons supporting HMRC's conclusion in relation to Continental's due diligence, there is no evidence that this has caused any prejudice to Continental. The position

has been clearly set out in HMRC's statement of case and in Mr Lam's witness statement and so Continental has had a fair opportunity to address HMRC's concerns.

241. One final point relied on by Mr Lam and Ms Parish in relation to due diligence is that, when Continental started supplying Roman Wines Limited in place of Roman Trading Limited starting in November 2015, it continued to quote the VAT number for Roman Trading Limited on the invoices addressed to Roman Wines Limited.

242. This was brought to Mr Dhingra's attention by HMRC during their visits to Continental in June 2016. The notes of those visits record that, when the matter was raised with him, Mr Dhingra telephoned the director of Roman Wines Limited who gave him the correct VAT number. Mr Dhingra's explanation at the time was that he had not realised that the VAT number changed.

243. However, in his oral evidence, Mr Dhingra gave a rather different explanation. He first of all gave evidence that the director of Roman Wines Limited had contacted him to bring the mistake to his attention. He then explained that the incorrect VAT number was an error on the part of the individual who prepared the invoices as Continental's electronic record system had two entries for Roman Wines Limited, one with the old (Roman Trading) VAT number and one with the new (Roman Wines) VAT number. As the old entry appeared first in the list, the individual had simply clicked on that entry when preparing the invoices.

244. Whilst we accept that issuing invoices between November 2015 and March 2016 to Roman Wines Limited with the incorrect VAT number was a mistake, we do not accept Mr Dhingra's explanation that Continental in fact had the right number but, due to an error, used the wrong number. It is clear to us from the documentary evidence that Mr Dhingra was unaware of the correct VAT number until the matter was drawn to his attention by HMRC in June 2016. Clearly, Continental should have carried out checks to verify the correct VAT number for Roman Wines Limited. The fact that this was not picked up over a period of five months is in our view relevant to the assessment of Continental's due diligence procedures.

245. Taking all of these factors into account as well as our own findings of fact, there is ample evidence for a conclusion that Continental's due diligence was (and was likely to continue to be) a cause for concern.

HMRC Decisions - Overall Assessment

246. We have analysed HMRC's decisions using the same broad headings as they have used in their decision letters. We have concluded that, in relation to each of those headings, the decision they have reached is not unreasonable. However, we need to look at the overall position in order to determine whether Continental has satisfied us that Officer Parish's decision is one which, based on the facts which we have found, is one which she could not reasonably have arrived at.

247. We have established that Officer Parish took into account all relevant factors and did not take into account irrelevant factors. We are satisfied that she did not give undue weight to any particular factor.

248. Taking these factors into account in the light of the findings of fact which we have made, we cannot say that the decision which was made was one which no person making that decision could reasonably have arrived at. In reaching this decision, we would highlight the following:

> (1) Whilst there was no finding of no wrongdoing in relation to the 2015 seizure, there was wrongdoing in the sense that Continental was holding goods on which no duty had been paid or which are deemed to have been duly condemned as forfeited;

(2) The lack of any questions from Mr Dhingra to his friend about the nature or provenance of the goods which he wanted to store at Mr Dhingra's warehouse shows a disregard for any concern about possible evasion of excise duty;

(3) The termination of Continental's previous main trading relationships left the business in a position where, without evidence as to its future trading intentions, it was impossible to say that it was either viable or credible;

(4) The approach to due diligence in relation to previous suppliers and customers demonstrates a lack of any concern about possible involvement in illicit supply chains. Given Mr Dhingra's mindset in relation to this, it would be impossible to be confident in April 2017 that, despite Continental's assurances, anything would change thereafter.

APPROVAL SUBJECT TO CONDITIONS

249. Ms Parish confirmed in her review letter that she had considered the possibility of approval subject to conditions. Her conclusion was that, given the number of reasons for refusal, this would not be appropriate. In oral evidence she explained that the main reason for this was that HMRC's policy is not to approve an application subject to conditions where one of the reasons for refusal is that the business is not commercially viable. This is, of course, understandable given that the imposition of conditions or restrictions is very unlikely to make a business commercially viable. We cannot say that this was an unreasonable conclusion.

250. Continental however, in its grounds of appeal, has raised the question as to whether outright refusal as opposed to approval subject to conditions is disproportionate for the purposes of Article 1 to the first Protocol of the European Convention on Human Rights ("A1P1"). This provides for the peaceful enjoyment of possessions although allows a state to impose restrictions which are necessary in the general interest or to secure the payment of taxes or other contributions or penalties.

251. Mr Carey submits on behalf of HMRC that, in these sorts of cases, there is no property which is protected by A1P1. He draws attention to the decision of the First-tier Tribunal in *Safe Cellars* as authority for the proposition that the approval itself is not property (as it is not transferrable) and that the only relevant property could be any marketable goodwill in the business (see paragraphs [187] and [195]). In that case, there was also reference to approval for the use of the appellant's warehouse as an excise warehouse. As that approval directly affected the warehouse, the premises themselves were property for the purposes of A1P1. That is not however the case in relation to the AWRS where the approval relates to the activities of the trader rather than the use of the warehouse.

252. On this basis, we accept that the only relevant property for the purposes of A1P1 is the goodwill in the business. As Mr Carey submits, there is no evidence of any goodwill in Continental's business as it had, in effect, ceased trading in early 2016 and in early 2017 was in the process of restarting its trade. On the basis of limited purchases from two major cash and carry companies and two sales totalling only £1,500 to local retailers, it is impossible to say that Continental, at the time of the decision, had any goodwill which was capable of protection under A1P1. For this reason alone, this ground of appeal must fail.

253. In any event, even if there were property within A1P1 capable of protection, Mr Carey submits that refusal of approval rather than approval with conditions was not disproportionate. In relation to this, he refers to the test set out by Lord Sumption JSC in *Bank Mellat v HM Treasury* (No 2) [2013] UKSC 38 stating that the four questions to be determined in relation to the measure in question are:

> "(i) whether its objective is sufficiently important to justify the limitation of a fundamental right;

(ii) whether it is rationally connected to the objective;

(iii) whether a less intrusive measure could have been used; and

(iv) whether, having regard to these matters and to the severity of the consequences, a fair balance has been struck between the rights of the individual and interests of the community."

254. There can be no doubt that the first two requirements are satisfied. Clearly, the prevention of excise duty fraud is sufficient to justify a limitation of rights and refusal of approval, even if it affects the goodwill of a business, is rationally connected to that objective. The key question is whether approval subject to conditions (being a less intrusive measure) would, in this case, have struck a fairer balance between the rights of Continental and the interests of the community.

255. Mr Dhingra told us that if approval is refused, he stands to lose in excess of £1 million and livelihoods of Continental's four or five employees will be affected by their loss of employment. We understand this is a serious matter and have taken these points into account.

256. Had the only complaints related to due diligence, we would have had some sympathy for the argument that approval subject to conditions might have been a more proportionate response. It is clear from EN2002 (see paragraph 12.5) that HMRC expect to work with traders to enable them to improve their due diligence. Conditions or restrictions which might assist them to do this might therefore have been appropriate.

257. However, taking into account Continental's apparent lack of concern about possible involvement in illicit supply chains, as evidenced by its approach to the events leading to the 2015 seizure and to its other supply chains, and HMRC's concerns about the viability of Continental's business, we have concluded that outright refusal rather than approval subject to conditions is not, on the facts of this case, disproportionate for the purposes of A1P1. We are not persuaded that there are workable conditions which could mitigate these risks. Indeed, Continental has not suggested any appropriate conditions which could have been imposed which would have made this a viable course of action.

CONCLUSION

258. Continental's appeal is dismissed. We are not satisfied that the decision made by Officer Parish is one which, in the light of the facts which we have found, could not reasonably have been arrived at by any other person.

259. The decision to refuse approval rather than to approve Continental subject to conditions or restrictions is not disproportionate for the purposes of A1P1.

RIGHT TO APPLY FOR PERMISSION TO APPEAL

260. This document contains full findings of fact and reasons for the decision. Any party dissatisfied with this decision has a right to apply for permission to appeal against it pursuant to Rule 39 of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009. The application must be received by this Tribunal not later than 56 days after this decision is sent to that party. The parties are referred to "Guidance to accompany a Decision from the First-tier Tribunal (Tax Chamber)" which accompanies and forms part of this decision notice.

ROBIN VOS
TRIBUNAL JUDGE

Release date: 10 FEBRUARY 2022