



Neutral Citation: [2023] UKFTT 294 (TC)

Case Number: TC08765

**FIRST-TIER TRIBUNAL  
TAX CHAMBER**

By remote video hearing

Appeal reference: TC/2019/06399

*Residence of an individual – s2 TCGA 1992 - application of Gaines-Cooper and common law principles – s9(3) TCGA 1992*

**Heard on:** 19-30 September 2022

**Judgment date:** 9 March 2023

**Before**

**TRIBUNAL JUDGE BOWLER  
MS SHAMEEM AKHTAR**

**Between**

**DARRYN LYONS**

**Appellant**

**and**

**THE COMMISSIONERS FOR HIS MAJESTY'S REVENUE AND CUSTOMS**

**Respondents**

**Representation:**

For the Appellant: Amanda Hardy KC, instructed by Forsters LLP

For the Respondents: John Brinsmead-Stockham and Edward Hellier, of counsel, instructed by the General Counsel and Solicitor to HM Revenue and Customs

## DECISION

### INTRODUCTION

1. The Appellant (referred to in this decision as Mr Lyons) appeals against an assessment to capital gains tax of £1,087,413.68 in respect of the sale of various UK properties during the tax year 2012-2013 issued by the Respondents (“HMRC”) on the basis that Mr Lyons was resident in the UK. That tax year preceded the introduction of the statutory residence test (“the SRT”) and Mr Lyons’s residence for tax purposes therefore falls to be determined under the pre-SRT rules.

2. In essence, HMRC maintain that Mr Lyons was UK tax resident for at least one day in the tax year 2012/2013 whereas Mr Lyons maintains that he had ceased to be UK tax resident prior to 6 April 2012 and any presence in the UK thereafter fell within the provisions of s9(3) Taxation of Chargeable Gains Act 1992 (“TCGA”) on the basis that his presence in the UK thereafter was for some temporary purpose only and not with any view or intent to establish his residence in the UK.

3. For the reasons set out in this decision we have decided that Mr Lyons was resident in the UK for tax purposes for some part of the tax year 2012-2013 such that his appeal is dismissed.

### FORM OF HEARING

4. With the consent of the parties, the form of the hearing was V (video) using the Tribunal video hearing system.

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

### GROUND OF APPEAL

6. Mr Lyons’ ground of appeal is that he had sufficiently loosened his ties to the UK prior to 6 April 2012 such that he was not UK resident thereafter.

### BURDEN OF PROOF

7. The burden of proof rests with Mr Lyons and the usual civil standard of balance of probabilities applies.

### AGREED ISSUES

8. Was Mr Lyons UK resident during any part of 2012/13 for the purposes of section 2(1) TCGA 1992 under the test set out by the Supreme Court in *R (oao Davies) v HMRC* [2011] STC 2249, namely prior to 6 April 2012 did Mr Lyons “cease to have a settled or usual abode in the UK” in that before that date he “effect[ed] a distinct break in the pattern of his life in the UK”.

9. Did section 9 and, in particular, subsections (3) and (4), TCGA 1992, as in force during 2012/13, prevent Mr Lyons from being UK resident during any part of 2012/13, namely, was he in the UK:

- (1) “for some temporary purpose only”; and
- (2) “not with any view or intent to establish his residence there”?

### MR LYONS’ CASE

10. There are no procedural disputes in relation to this appeal.

11. Ms Hardy submits that a multifactorial enquiry based on the evidence clearly shows:

- (1) Mr Lyons had always intended to return to Australia when he moved to the UK to work here in 1988. For that reason, Mr Lyons purchased several properties in Australia and built up an Australian business alongside his UK business.
  - (2) It was always his intention to make one of the Australian properties his permanent home, in Geelong, Victoria, when he returned to Australia. This has been available for his occupation since 2005 and is now his home.
  - (3) Mr Lyons formed the intention to return to live in Australia in late 2010, expecting to do so during 2011, and made preparations there to facilitate this. The timing was driven partly by business reasons and partly by family reasons, as Mr Lyons's family is Australian resident.
  - (4) His departure was postponed while he took part in a television series in the UK and then had to be re-arranged so he could take part in a television series in Australia, so he left the UK on 30 October 2011. This was well before the start of the 2012/13 tax year.
  - (5) Mr Lyons remained in Australia for much of the next six months. He returned to the UK on 29 April 2012 simply to make final arrangements in respect of his UK assets.
  - (6) Consistently with this, during the course of 2011 and before 6 April 2012, Australia became the centre of Mr Lyons' domestic, cultural and business interests. He attained a significant degree of celebrity on Australian television and became involved in Australian politics. Much of his family already lived there and he spent more time with them as well as with old and new Australian friends. By contrast, he had significantly loosened his pre-existing ties with the UK in the same period.
12. In addition, section 9(3) TCGA 1992 applies. Mr Lyons, having left the UK in October 2011, was in the UK in the 2012/2013 tax year only for some temporary purpose (arranging for much of his UK situs property to be sold or shipped to Australia, and to wind down or withdraw from his remaining UK business interests); and not with any view or intent to establish his residence in the UK (he was here for the opposite purpose).
  13. Section 9(4) TCGA 1992 expressly disregards the fact that Mr Lyons had not yet sold his flat in the UK from being a material consideration for the purposes of section 9 TCGA 1992.
  14. The word “reside” was not statutorily defined prior to the SRT and, in general, the determination of the residence of an individual was made in accordance with the ordinary meaning of that word: *Levene v IRC* [1928] AC 217. Whether Mr Lyons was resident in 2012/2013 is a question of degree and therefore one of fact: see Viscount Sumner in *IRC v Lysaght* [1928] AC 234. The Tribunal should have regard to Mr Lyons’ conduct in years both previous, and subsequent, to 2012/2013, in considering whether he was resident in that year (*Levene*).
  15. The pre-SRT test is now encapsulated in the Supreme Court decision in *Gaines-Cooper*, where Lord Wilson analysed the general law of residence. Mr Lyons spent only 38 days in the UK in 2012/2013 for the purpose of packing up his belongings and moving his life to his established home and businesses in Australia. Although the multifactorial inquiry does not simply focus on day count (or any one factor) this should be taken into account.
  16. The question is, therefore, whether an examination of the multifactorial fact pattern shows that he had substantially loosened his social and family (and business) ties such that he

was not resident for tax purposes in 2012/2013 and in doing so regard should be had to preceding and subsequent years (*Levene*).

17. Further assistance as to the pre-SRT general law of residence can be found in the decision of David Richards J (as he then was) in *HMRC v Glyn* [2016] STC 1020 (at [43]-[50]) where he summarised the relevant legal principles surrounding “residence” and “ordinary residence” by referring to the decision of Lewison J (as he then was) in *Grace* [2009] STC 213. Applying those principles in this case:

- (1) The nature of Mr Lyons’ presence in 2012/2013 was to tidy up his remaining affairs and say goodbye to his friends. His remaining connections were wound up – he has returned very infrequently and for limited purposes;
- (2) Mr Lyons had no permanence of continuity or expectation in 2012/13 : quite the contrary;
- (3) Mr Lyons had very limited further visits, for medical, funeral and HMRC matters. His businesses in the UK were wound up and the majority of the UK properties were sold in 2012/2013, his UK home was rented out;
- (4) Mr Lyons was tax resident in Australia from 1 April 2012;
- (5) Mr Lyons’s business interests in the UK had declined rapidly and his interests in Australia were growing; and
- (6) Mr Lyons did not have his sole residence in the UK, however, it is agreed that the test is now the substantial loosening of ties.

18. As it is a multifactorial test, acquiring a permanent home and strong ties in Australia are relevant. Mr Lyons’ intentions are relevant as a factor in the multifactorial enquiry.

19. In assessing the evidence Ms Hardy submitted that the approach set out in the case of *Batten v HMRC* [2022] UKFTT 199 (TC) should be applied by us. Where it is evident that the documentary evidence gives less than a complete record, it will be important for the Tribunal to consider all the evidence including the witness statements as tested in cross examination.

20. In 2011/2012 the evidence shows that Mr Lyons substantially loosened his ties in the following ways:

- (1) He had always intended to return to Australia when he moved to the UK to work here in 1988 and purchased several properties in Australia and built up an Australian business in anticipation of his return; he had a home available to him since 2005; he considered running for Mayor of Geelong in late 2010 and by April 2011 his elderly parents both had significant health concerns;
- (2) In January 2011, one of his Australian companies purchased Growlers Restaurant in Geelong and a lease was entered into on 1 February 2011; Mr Lyons engaged Ms Bingle for promotion of the restaurant;
- (3) In March 2011, one of his Australian companies took a lease of the office premises in Geelong to enable him to run his expanding business interests;
- (4) Also, in March 2011 he signed a sponsor agreement with Geelong Racing Group which he sponsored for 2011 and 2012;

- (5) In May 2011, he began discussions with Goodsir Graham real estate in relation to marketing his former UK home and his UK residential and commercial properties and instructed them in relation to the sales;
- (6) In July 2011 he sought a valuation report for his UK properties with a view to sale;
- (7) Also, in July 2011 he bought a 10% interest in a racehorse syndicate in Australia to continue his love of racing in Australia;
- (8) In September 2011 he assigned/gifted his three UK polo ponies;
- (9) Mr Lyons' businesses in the UK were all winding down and his properties were being sold – that was a very significant loosening of his ties in the UK;
- (10) In October 2011 one of his Australian companies agreed to purchase the Elephant & Castle Hotel in Geelong, with completion in January 2012;
- (11) In October 2011 his Ferrari was shipped to Australia;
- (12) On 30 October 2011 he returned home to Australia to take part in “Excess Baggage” as part of his expansion of his Australian celebrity; he remained in Australia until the end of April 2012 and had taken a number of his important possessions home with him including his valuable jewellery with a value amounting to some “tens of thousands of pounds”;
- (13) He spent time renovating his Geelong home, the Geelong office, and the two new businesses, Growlers and the Elephant and Castle whilst in Australia during any available time he had in the six months between 1 November 2011 and April 2012 when he was not filming for the programme “Excess Baggage” or on a short 7 day holiday;
- (14) In November 2011 he instructed Thackerays to sell his UK home;
- (15) In November 2011 Goodsir Graham instructed Mr Vargo to give further valuations of all the properties for sale;
- (16) In December 2011 he began renovating the Eureka Hotel owned by him in Australia;
- (17) Also in December 2011, he began investigations regarding transporting Mr P (his parrot) to Australia and commenced investigations into shipping Amber (his dog) to Australia;
- (18) Amber had her preparatory blood tests to travel in January 2012. The process of shipping Amber began on 13 February 2012; and
- (19) He was tax resident in Australia from 1 April 2011.

21. Mr Lyons' departure was therefore the culmination of preparation and planning over the course of 2011/2012 and not a sudden or overnight event. The fact that he planned to return to the UK on 29 April 2012 to tie up his loose ends does not detract from this conclusion

22. Applying the reasoning of the Tribunal in *Batten* at [215], Mr Lyons' “‘home’ in the truest sense of that word, with all that encapsulates in the context of accommodation and a centre of life” was, during the 38 days spent in the UK in 2012/2013, no longer in the UK. He went “home” on 30 October 2011 to Australia.

## HMRC'S CASE

23. Mr Brinsmead-Stockham agreed on behalf of HMRC with the submissions made by Ms Hardy regarding the legal test to be applied as set out by the Supreme Court decision in *Gaines-Cooper*. However, HMRC said that this was an overwhelmingly clear case where Mr Lyons should be found to be UK resident up to and including 5 April 2012 so that for some part of 2012/13 he would remain UK tax resident. He submitted that the principles stated in *Gaines-Cooper* should not be modified by the case of *Grace* but even if those principles in *Grace* were applied, Mr Lyons should still be found to be UK resident up to and including 5 April 2012. Ms Hardy's reliance upon the First-Tier Tribunal decision in *Glyn* was misplaced given that the case had been set aside by the Upper Tribunal.

24. In relation to the evidence, Mr Brinsmead-Stockham also agreed with Ms Hardy regarding the application of the principles as set out in *Batten*. In this case Mr Lyons' evidence was flawed: there were a large number of errors made by him in his oral evidence and he could not recall much of the detail on matters included in his Witness Statement. He said that he had not seen a large number of the exhibits attached to his own Witness Statement. As a result the weight given to his evidence should be reduced and there was good reason to focus on contemporaneous documents. Ms Hardy had submitted that the documents provided a less than complete record of events, but relevant documents such as bank statements and travel plans were within Mr Lyons' control to produce. It was for him to prove his case.

25. In relation to the agreed issues Mr Brinsmead-Stockham submitted that if Mr Lyons won the dispute as to whether he ceased to be UK resident on or before 6 April 2012, there is no need to consider s9 TCGA 1992. HMRC accept that in such a situation there would be no charge because under general principles he would not be considered to have regained UK residence by virtue of his temporary return. If Mr Lyons does not win the dispute about whether he ceased to be UK resident on or before 6 April 2012, s9 TCGA 1992 cannot apply. In particular, that section treats a relevant person as being outside the scope of capital gains tax; it does not deem them to be non-resident. Therefore, contrary to Ms Hardy's submissions, s9 TCGA 1992 does not support Mr Lyons' case on the first issue.

26. Unusually, because this was a case concerning capital gains tax, it did not matter what date Mr Lyons became non-resident after 5 April 2012. Residence in the UK for any part of the year 2012-2013 sufficed to leave him liable for capital gains tax on the disposals made in that year. The low number of days spent in the UK in 2012-2013 was therefore irrelevant in and of itself. The harshness of this rule is usually helped by Extra Statutory Concession D2 but that is not applicable in this case because Mr Lyons had been UK resident continuously for more than 20 years.

27. Mr Brinsmead-Stockham submitted that the existence of available accommodation (especially a home) is very relevant in assessing whether the UK is a settled or usual abode for a person. The fact that Mr Lyons became non-resident in later years is not relevant to the question as to what he in fact did to cut his ties to the UK in 2011-2012.

28. Mr Brinsmead-Stockham submitted that Mr Lyons' actions prior to 6 April 2012 did not amount to a substantial loosening of ties to the UK. In particular, valuing or marketing his home in the UK was not sufficient to amount to an actual loosening of ties, which would require a more definitive step such as sale, contract for sale, leasing the property or even removal of all furnishings and personal items. His actions in increasing his links with and activities in Australia did not necessarily mean that he had loosened his ties in the UK. A person can be resident in two places at the same time.

## EVIDENCE

### **Application to admit the supplementary evidence**

29. On the first day of the hearing Mr Brinsmead-Stockham made an application to admit an additional bundle of evidence on behalf of HMRC. The bundle contained:

- (1) a witness statement provided to the Leveson inquiry;
- (2) a transcript of oral evidence given by Mr Lyons to the Leveson inquiry together with an exhibit thereto;
- (3) a witness statement of Mr Nigel Regan, CEO of Big Pictures UK provided to the Leveson enquiry; and
- (4) LinkedIn profiles for Mr Alan Williams and Mr Simon Samuels.

30. Ms Hardy objected to the application on the basis that it was unfair for the evidence to be produced at this late stage. Mr Lyons did not recall the documents and the Witness Statement said to be in his name was not signed. The evidence provided by Mr Regan could not be tested in this hearing and the LinkedIn pages were unreliable given that those concerned were not present to be questioned and people have various reasons for providing inaccurate information in their LinkedIn profiles.

31. Mr Brinsmead-Stockham expressed surprise that Mr Lyons did not recall the very high profile evidence given to the Leveson enquiry, but in any event the transcript recorded his evidence. The purpose of the evidence was to put matters to Mr Lyons himself and he could be expected to speak directly about the documents.

### ***Our decision to admit the evidence***

32. Rule 15 of the Tribunal Procedure Rules states that we may exclude late evidence where it would otherwise be unfair to admit the evidence. This is in the context of the wide case management role given to the tribunal in which we must have paramount regard to the overriding objective to act in the interests of justice and fairness. In accordance with the principles set out in decisions such as *First Class Communications v HMRC* [2013] UKFTT 342 (TC) we have considered that:

- (1) the application is very late and there was little reason given for the lateness by Mr Brinsmead-Stockham;
- (2) the transcript evidence is publicly available material;
- (3) the evidence was potentially very relevant as it related to the consistency of Mr Lyons' evidence about winding down his activity in the UK;
- (4) in so far as the evidence related to matters contained in a witness statement of a third party and LinkedIn profiles of others, there was no opportunity to test that evidence with the authors. However, Mr Lyons could be asked to comment upon those papers;
- (5) the transcript of evidence given to the Leveson inquiry was something which Mr Lyons should be in a position to address with no need to adjourn the hearing; and
- (6) in relation to the evidence relating to others, matters therein could be put to Mr Lyons but there was a separate issue as to the weight which should be given to that evidence.

33. We therefore concluded that we would admit the evidence. However, this left the question of what weight to give it.

34. As a starting point, evidence from a person which is not tested in cross-examination should be given less weight and we could see no reason to depart from that principle in this case in relation to the evidence of a third party witness statement. Similarly, the LinkedIn evidence could not be tested and there may be numerous reasons why a person's LinkedIn profile would be inaccurate. Therefore we would also give that evidence little weight.

35. Ms Hardy submitted that very little weight can be placed on the Leveson inquiry documentation. Mr Lyons's failure to explain the claimed demise of Big Pictures Ltd to the inquiry was explained in re-examination: "you would not want to send a negative message out in a very public situation". We agreed that the context of that evidence should be taken into account by us. That was a very public, highly reported inquiry which may influence the way in which Mr Lyons described his business, particularly at a time when he had concerns over its long-term viability. We have therefore given greater weight to the evidence of Mr Lyons and Mr Stanford, the latter of whom described very clearly the significant problems faced by Big Pictures Ltd in 2011-2012.

### **The evidence generally**

36. We were provided with a PDF bundle of 1047 pages and a supplementary bundle of 99 pages. We heard oral evidence from: Mr Lyons, Mr Andrew McMichen (a solicitor who advised Mr Lyons in 2011/2012), Ms Ebony Raby (who was Mr Lyon's executive assistant in Australia from 2012), Mr Paul Bongiorno (a partner in the accounting firm of MacMillan Cowan & Co in Australia who was advisor to Mr Lyons), Mr Zulfi Vargo (an estate agent in London), Ms Tania Slater (a friend of Mr Lyons), Mr Lindsay Stanford (a professional consultant and advisor to Mr Lyons in the UK) and Mr Mario Gregorio (the CEO of Mr Lyons' business operations in Australia).

37. In relation to the reliability of witness statements prepared some time after relevant events, we start with referring to the oft-quoted principles stated by Legatt LJ in *Gestmin SGPS SA v Credit Suisse (UK) Ltd* [2013] EWHC 3560 (Comm) (at paras 15-22) which, in particular, identify that:

"Memory is especially unreliable when it comes to recalling past beliefs. Our memories of past beliefs are revised to make them more consistent with our present beliefs... Considerable interference with memory is also introduced in civil litigation by the procedure of preparing for trial...

...[So that] "it is important to avoid the fallacy of supposing that, because a witness has confidence in his or her recollection and is honest, evidence based on that recollection provides any reliable guide to the truth."

38. Ms Hardy submitted that we should apply the approach adopted in *Batten v HMRC* [2022] UKFTT 199 TC and we agree. As stated there, the Court of Appeal made clear in *Kogan v Martin & Ors (Rev 1)* [2019] EWCA Civ 1645 (at para 88) that the *Gestmin* guidance does not prevent reliance upon witness statements.

"A proper awareness of the fallibility of memory does not relieve judges of the task of making findings of fact based upon *all* of the evidence."

39. The same emphasis on the duty to consider all of the evidence and determine the weight to be given to it was stated in *BXB v Watch Tower and Bible Tract Society of Pennsylvania and Trustees of the Barry Congregation of Jehovah's Witnesses* [2020] EWHC 156 (QB) although the fallibility of memory should be recognised.

40. We have therefore considered the evidence overall in assessing the weight to be given to matters in the Witness Statements. However in relation to Mr Lyons' evidence he made it clear on various occasions that he had never seen certain exhibits to his Witness Statement



before the hearing. This is a matter of concern. The Witness Statement should reflect the evidence of the witness and should refer to exhibited documents which the witness wishes to rely upon and can address. The fact that Mr Lyons stated that he had not seen some of the documents before clearly called into question the extent to which the evidence was truly his, or instead was a document prepared by professionals. While it is recognised that those representing parties will routinely draft documents such as witness statements, those drafts must reflect the evidence the witness wishes to give and not the evidence which the professional considers the witness should give.

41. In addition, Mr Lyons was not a good historian. There were numerous matters which he could not remember. While we recognise that Mr Lyons is not a person who is comfortable dealing with paperwork and administration, many of the matters about which he was asked in cross-examination were practical matters relating to the events in 2010-2012. On occasion his lack of memory strayed into the realms of being disingenuous; for example, when he said that he could not recall having other cars beyond his Ferrari and Range Rover despite the fact that we heard from Ms Bullock that he had several other cars including a Jaguar and a Lamborghini.

42. His Witness Statement failed to make clear (as became apparent during the hearing) that numerous matters were not matters within Mr Lyons' own knowledge but were statements of information provided to him by others; for example, Mr Lyons confirmed that any financial information including bank information in his Witness Statement should be read on the basis that it was information told to him by his accounts department.

43. On occasions Mr Lyons' evidence stretched the bounds of plausibility and/or was inconsistent with the evidence of others around him. For example, when asked why his UK tax adviser had worked on a Cypriot company structure to shelter the capital gains expected to arise on disposal of Mr Lyons' UK properties, assuming that he was UK resident, and had otherwise entered into correspondence (including correspondence with HMRC) on that basis, Mr Lyons had said that he had not told his adviser about his plans. He struggled to explain why this would be, suggesting that he had no knowledge of tax systems and therefore did not think it would be relevant even though it was clear that Mr Lyons had taken on board specific advice by his adviser to minimise his days in the UK in 2012-2013 for UK tax reasons. Another suggested reason given by Mr Lyons for not telling his adviser his plans was a concern about confidentiality, but Mr Lyons recognised that he had no reason to think that his adviser would breach his duty of confidentiality. The adviser, Mr McMichen, made clear that he had provided advice on the basis of information given to him at the relevant times, as we would expect.

44. We have therefore treated Mr Lyons' evidence at times with caution. Where it is inconsistent with other evidence we have relied upon that other evidence.

45. Given Mr Lyons' consistent evidence that he delegated all administrative matters and had no knowledge of even which bank accounts or credit cards were operated by him when, we have concluded that, for example, Mr Lyons' evidence about such matters should be given little weight so that where there are no contemporaneous documents showing the position at the relevant times we have declined to rely upon Mr Lyons' generally vague or broad brush assertions by themselves.

46. We found the evidence of the other witnesses to be generally internally consistent and reliable and we have given that evidence full weight. The evidence of Mr Stanford described some events (in particular the sale of the UK properties) in different terms to Mr Lyons. Mr Lyons' evidence was that the sale of the UK properties was in order to loosen his ties to the UK whereas Mr Stanford explained that the properties were sold in order to provide funds for

Mr Lyons to pay outstanding tax bills. Given our conclusions regarding the reliability of Mr Lyons' evidence and the fact that we found no reason to reduce the weight given to Mr Stanford's evidence, we have made our findings on that matter on the basis of the latter's evidence. Mr Sandford's evidence is consistent with the evidence in correspondence with HMRC in 2012.

47. At times some of the evidence of Mr McMichen strayed into opinion regarding Mr Lyons' residence status. Where that has occurred we have excluded that evidence from our consideration. Mr McMichen is not acting as expert and it is the preserve of this tribunal to decide Mr Lyons' residence status as a matter of fact at the relevant time.

#### **OUR FINDINGS OF FACT**

48. The parties provided an agreed statement of facts. We set out the agreed facts in italics in the following findings.

#### **Background and overview**

49. *Mr Lyons was born in Australia in 1965 and first came to the UK in 1987.*

50. He initially came to the UK on a holiday working visa and then continued to live and work here. In 2012 Mr Lyons had been living and resident in the UK for 24 years.

51. *Mr Lyons incorporated Big Pictures (U.K.) Ltd ("Big Pictures"), a UK photography agency, in 1996.*

52. Mr Lyons had initially started the business of Big Pictures in the UK in 1992. The business specialised in providing celebrity photographs to the media. During his time in the UK Mr Lyons himself acquired celebrity status, appearing on television and radio and writing magazine and newspaper articles. He became involved in various dot com businesses including his own Mr Paparazzi.com. In 2011 he took part in Celebrity Big Brother in the UK and in early 2012 he went to Australia to take part in a celebrity programme called "Excess Baggage".

53. *Mr Lyons set up an Australian arm of Big Pictures called Big Australia Pty Limited ("Big Australia") in 1996.*

54. He expanded his Australian business interests and in 2011 and 2012 acquired and developed a restaurant, hotel and nightclub with a view to his return to Australia to live there permanently.

55. However, all of the description of his business interests must be seen in the context of a person who did not enjoy paperwork, administration or the detail of day to day operations of a business. He employed others to carry out those activities and considered himself better placed to focus on the creative or design elements of businesses or more strategic decision-making.

56. Mr Lyons was married and divorced some years before the period with which we are concerned. A relationship started with Elissa Friday in 2010 who lived in the UK. She later became his fiancée. At the time of his return to Australia in June 2012, Ms Friday was studying in London. They did not live together on 6 April 2012. Ms Friday joined Mr Lyons in Australia on 8 June 2013 and they were engaged in August 2013. However, the engagement broke off at some point later.

57. Mr Lyons provided a domicile statement to HMRC in December 2003 in which he stated that:

(1) since moving to England he had travelled back to Australia approximately four or five times per year to spend time with his family and friends and to attend to various business interests;

(2) his ties to England were predominantly business-related: his celebrity image company and a number of UK commercial and residential properties as well as his home in Kensington and membership of a gentleman's club. He had retained considerable ties to Australia including the majority of his friends and most of his family as well as business interests, a newspaper column, a club in Geelong, an apartment in Sydney, an office building in Sydney and a large home in Geelong to which he intended to eventually settle; and

(3) he fully intended to return to his home in Australia and settle there permanently.

58. In the hearing Mr Lyons initially said that he did not return to Australia four or five times per year in 2003, but inconsistently he did not accept that the statement was therefore incorrect. Given our approach outlined to Mr Lyons' evidence, we have given greater weight to the domicile statement to conclude that Mr Lyons generally returned to Australia several times each year.

### **Plans to return to Australia**

59. Mr Lyons always planned to return to live in Australia eventually, but in 2010 he decided to work towards that and during 2011 he developed more concrete plans. Much of his success had derived from selling photographs to publications such as the News of the World. Its demise in the summer of 2011 was a major problem for the Big Pictures' business. Mr Stanford estimated it caused an 80% reduction in the business and led to the company being placed into administration in September 2012. That business was therefore dying and provided less reason to stay in the UK. On the other hand Mr Lyons' elderly parents (both of whom had health issues) were in Australia and were an added reason to return there as he had always planned.

### **Professional activities at the end of 2011**

60. *Mr Lyons appeared in Series 8 of Celebrity Big Brother (UK) from 18 August – 8 September 2011.*

61. In May/June 2011, Mr Lyons was invited to take part in the television programme "Celebrity Big Brother (UK)". His contract was entered into in July 2011 and he entered the Big Brother house in August 2011 for four weeks. He made it to the end of that series of Celebrity Big Brother on 8 September 2011.

62. Mr Lyons was then hired to take part in an Australian celebrity challenge series called "Excess Baggage".

63. *Mr Lyons flew to Australia on 30 October 2011 and signed a contract with Excess Baggage, an Australian television show, on 4 November 2011.*

64. *Mr Lyons completed the filming for Excess Baggage over the (Australian) summer period and filming stopped on 21 March 2012.*

65. *The flight bookings were originally made on 19 April 2011, on the basis that Mr Lyons would have flown to Melbourne, Australia on 1 October 2011, with the return flight to London, UK departing on 27 February 2012. Those bookings were made before the Excess Baggage work arose. Mr Lyons subsequently had the flights changed due to his Australian work commitments on the Excess Baggage production. Excess Baggage paid for the rearranged flights and the cost of a holiday which had previously been planned in the period*

in Thailand, The return flight was changed to 28 April 2012, arriving in the UK on 29 April 2012.

66. *Mr Lyons had a contractual obligation to remain in Australia until the end of April 2012. Although filming of Excess Baggage in fact finished on 9 March 2012, under the contractual arrangements Mr Lyons was required to remain in Australia for a month after the finale aired.*

67. Mr Lyons confirmed that the evidence in an email setting out a timetable for the filming of Excess Baggage was broadly correct. That showed that for the bulk of the time from 28 November 2011 Mr Lyons was working on the Excess Baggage Production. This was consistent with Mr Lyons' oral evidence that he recalled that filming took place on most days. The particular relevance of this is in the context of the extent of his activities in Australia at that time, which we come back to below.

68. *Mr Lyons' girlfriend, Elissa Friday, flew from the UK to Australia and they went on holiday, including visiting Lizard Island.*

### **Return to the UK**

69. *Mr Lyons returned to the UK on 29 April 2012.*

70. *Mr Lyons declared himself to be resident in Australia for Australian tax purposes from 1 April 2012 onwards on the advice of his Australian tax accountant.*

71. He was present in the UK for 38 days in the UK tax year 2012/2013 (between 29 April and 7 June 2012).

72. Mr Lyons returned to the UK on 29 April 2012 to deal with various matters involved in relocating to Australia. He was concerned to deal with his catalogue of photos himself as many of them were highly sensitive celebrity and royal images. He also had more than 20 years of belongings which he had accumulated to sort through. He worked with the packers in getting his belongings packed. However, as at 26 July 2012 when Mr Lyons had left the UK for a trip to France before relocating to Australia, there was still a substantial quantity of items to be transported to Australia from his offices in the UK and his Kensington home. A quotation was obtained for sole use of a 40 foot container to transport the items. Quarantine was arranged for his dog, Amber and he arranged the archiving of about 80 filing cabinets of archives.

73. An invoice issued by packers shows that the archive had been moved to a Watford warehouse in May 2012. It was then shipped to Australia in February 2014.

74. In the days spent in the UK between 29 April and 7 June 2012 Mr Lyons also said goodbye to friends and liaised with Goodsir Graham in relation to the potential sale of his UK property interests.

### **UK companies and other business interests**

75. *Big Pictures became insolvent and went into administration on 27 September 2012. The company went into creditors' voluntary liquidation on 10 January 2013.*

76. *Based on the records held at Companies House, as at 30 October 2011, Mr Lyons was a director of the following UK companies:*

- (1) *Big Pictures (UK) Ltd;*
- (2) *Big Pictures Productions Ltd;*
- (3) *Kangamedia Ltd;*
- (4) *Big Digital Media Ltd;*

- (5) *Mr Paparazzi.com Ltd;*
- (6) *Big Group Management Ltd;*
- (7) *Big Media International Ltd;*
- (8) *Big Publicity Ltd; and*
- (9) *Lyons Property Holdings Ltd.*

77. *Mr Lyons resigned as an employee from Big Pictures in May 2012.*

78. *Based on the records held at Companies House, Mr Lyons was at no time a director of Celebstock Limited. This was a company set up for a possible joint venture which did not come to fruition.*

79. *Mr Lyons became a director of Mr Paparazzi Online Limited, a UK company which was incorporated on 16 August 2012, with Nigel Reagan as a director and shareholder. Mr Lyons was appointed as a director on 28 May 2013 and the company was dissolved on 2 December 2014.*

80. The company was established by Mr Reagan to collect any revenue earned from copyright associated with the brand name “Mr Paparazzi”. It was dissolved on 2 December 2014, without ever having traded.

81. Mr Paparazzi.com Ltd operated MrPaparazzi.com which was an online celebrity blog, covering celebrity breaking news. Mr Lyons remained a director of Mr Paparazzi.com Limited until it was dissolved in August 2014.

82. Mr Lyons had attempted unsuccessfully to sell Big Pictures in 2008. It had started to face problems during the financial crisis, facing particular competition from a competitor company called Getty Images which was charging less for photographs.

83. Mr Lyons attempted again in 2010 to sell Big Pictures to Kit Digital in 2010, but the sale fell through in December 2010. The business had been valued at around £7 million in August 2010. However, an indicative term sheet for the acquisition showed a value of approximately £5.5 million plus future earn-outs. At the same time the sale of Big Pictures Australia had been envisaged. The sale did not proceed because of financial problems faced by Kit Digital.

84. At the hearing Mr Lyons consistently described delegating the running of his businesses in both the UK and Australia to others. While he enjoyed creative input he left all financial and administrative matters to others. His evidence was therefore consistent with that given to the Leveson enquiry (on 9 February 2012) where he said in relation to Big Pictures UK that there had been a consistent pattern over the past five years in that he was away a lot and trusted his management team to take necessary action in his absence. Mr Lyons sought to distance himself from this evidence given to the Leveson enquiry but given the consistency with the other evidence regarding the operation of his businesses we find that the description reflected Mr Lyons’ involvement with his company in the period 2007-2012.

85. However the evidence of Mr Stanford showed that there was another element to Mr Lyons’ distancing himself from the Big Pictures business in the UK: Mr Lyons had engaged Mr Stanford to work on the possibility of floating Big Pictures and Mr Lyons’ celebrity status and persona did not fit the mould for a public company. Brokers wanted to see particular types of people fronting a listed company.

86. Mr Stanford had only intended to work upon the digitisation of Big Pictures’ business and possible flotation, but he discovered that the company was in a financial and administrative mess. Mr Lyons did not have the necessary skills to sort out the problems and

lacked suitably skilled personnel to assist him. The company was not paying its VAT and income tax bills on time. So, Mr Stanford became more involved in the summer of 2011 in the hope that he could turn the company around because it was clear that it was “just a shambles”. At that time Mr Lyons held the position of both Chairman and Managing Director but he gave up the latter in 2011 because he was going to Australia and could not be involved in the business day-to-day. Mr Reagan was initially appointed as CEO and his appointment was later followed by that of Mr Samuels. However there was a time before June 2012 when the only person with any formal position in the company was Mr Lyons.

87. At some point in 2012 Mr Stanford reached the view that the Big Pictures business could not continue. He set this in the context of describing two main problems for the business: people no longer wanting to buy paparazzi pictures and the mounting outstanding tax liabilities. The closure of the News of the World in July 2011 and the shutting down of other news outlets caused a drop of over 80% of the company’s business overnight. The Leveson enquiry then destroyed Mr Lyons’ ability to recover any ongoing business and Sienna Miller was suing the business for around £750,000. Mr Lyons’ flamboyant lifestyle stopped overnight.

88. The Leveson inquiry took place, November 2011 to June 2012. It was therefore in the context of that timing that the most dramatic change to Mr Lyons’ business took place.

89. Mr Lyons resigned as an employee from Big Pictures in May 2012 on the advice of his UK tax adviser, Mr McMichen. Although Mr Lyons said that he had ceased being actively involved in the company or receiving a salary from sometime in 2011 (possibly August 2011) the evidence in the bank statements shows payments being made up to October 2011 at least. Unfortunately Mr Lyons was unable to identify what the payments were for. His 2012/13 UK tax return shows no employment income received from that company and by that stage the company was struggling so that ceasing to pay Mr Lyons a salary from some point between October 2011 and April 2012 is consistent with its financial problems. We therefore conclude that he was not receiving a salary at that time, but he remained involved with the company and its operation. His continued involvement with the business at some level is hardly surprising. Big Pictures had formed the core of Mr Lyons’ business activities for many years by 2011.

90. Big Pictures Ltd became insolvent and went into administration on 27 September 2012. Mr Lyons had not wanted to take this step because he perceived reputational loss, but he was advised by Mr Stanford that otherwise he would be liable as a director of a company which was trading whilst insolvent.

91. In December 2010 Mr Lyons’ archives of celebrity photographs in the UK and Australia were valued at around £10 million. A Jersey resident company called BPPG Ltd, the shares of which were owned 90% by Mr Lyons’ Jersey trust and 10% by Mr Lyons exercised an option to buy the archive for £164,000 from Big Pictures with a view to operating a digital database.

92. Big Pictures Ltd went into creditors' voluntary liquidation on 10 January 2013.

93. When Mr Lyons went to Australia for the Excess Baggage work in October 2011, although he was a director of 9 UK companies, each of the UK companies was either dormant or (in the case of Big Pictures) was in financial difficulties. Mr Lyons continued as before to leave the detailed operation and management of Big Pictures Ltd to others, and, in particular, to Mr Sandford.

94. Mr Lyons was a partner in the Monarch Film Partnership, a UK partnership generating significant amounts of income. The Partnership Return for 2012/13 recorded his address as 86A Kensington Court.

95. The annual returns filed in the period 26 November 2011 - 28 May 2012 for all of Mr Lyons' companies recorded that his address was 86A Kensington Court and that he was resident in England.

### **UK property ownership**

96. *Mr Lyons owned the following UK investment properties:*

<i>Property</i>	<i>Sale exchange date</i>	<i>Sale completion date</i>	<i>Sale price (£)</i>	<i>Acquisition date</i>	<i>Acquisition price (£)</i>
<i>5A Thackeray Street,</i>	<i>18/05/12</i>	<i>18/07/12</i>	<i>425,000</i>	<i>21/06/02</i>	<i>249,950</i>
<i>20 Ormonde Court</i>	<i>20/07/12</i>	<i>24/07/12</i>	<i>626,700</i>	<i>23/08/04</i>	<i>375,000</i>
<i>105 Hillfield Court</i>	<i>09/07/12</i>	<i>26/07/12</i>	<i>450,000</i>	<i>28/02/03</i>	<i>271,000</i>
<i>21 Carlingford Road</i>	<i>21/11/12</i>	<i>11/12/12</i>	<i>610,220</i>	<i>11/07/03</i>	<i>230,000</i>
<i>123 Haverstock Hill</i>	<i>15/01/13</i>	<i>29/01/13</i>	<i>350,000</i>	<i>07/04/03</i>	<i>230,000</i>
<i>50-54 Clerkenwell Road</i>		<i>21/12/12</i>	<i>3,750,000</i>	<i>15/11/96</i>	<i>628,625</i>

97. Mr Lyons instructed Goodsir Graham “*to do a full valuation of the properties*”. Mr Lyons received a valuation report for his UK properties from Goodsir Graham in July 2011. Mr Vargo gave evidence which showed that he was also instructed by Goodsir Graham to value the properties in November 2011 in preparation for sale.

98. Following valuation the UK investment properties were put up for sale, but the main reason for this was to raise funds to pay outstanding tax liabilities to HMRC.

99. *Mr Lyons entered into an agreement with Rokstone Ltd, on 19 September 2011, for Rokstone to act as joint sole agents with Goodsir Graham in respect of the sale of 50-54 Clerkenwell Road.*

100. The property was Big Pictures UK's office. It was put on the market as the company was in trouble following the News of the World revelations (see further below).

101. Mr Lyons also owned (and continues to own) 86a Kensington Court, London which was his home while he lived in the UK. It was a long leasehold interest purchased in December 2000.

102. *The property at 86a Kensington Court was not sold but was let furnished under a three-year assured short-hold tenancy from 15 February 2013.*

103. *Mr Lyons entered into a marketing agreement with Thackerays on 16 February 2012, in respect of his home at 86a Kensington Court.*

104. Mr Lyons had been thinking about selling 86a Kensington Court for a while and had been in discussions with Mr Vargo from before Christmas 2011 but was told that that was a very quiet time for sales. He was waiting for the “right” price and Mr Vargo had thought at times that Mr Lyons may then buy something smaller in London as a home. Although Mr Vargo had contacted people he knew who potentially might be interested before the property officially came to the market, his evidence also showed that the property was not in very good condition for sale before May 2012 when a potential sale fell through.

105. A cleaner visited Mr Lyons’ house on a casual basis. The cleaner occasionally stayed overnight at the property after Mr Lyons’ departure. The cleaner was retained during Mr Lyons’ time at home in Australia in 2011-2012 as there were viewings.

### **Australian property ownership**

106. From 1998 Mr Lyons owned a two bedroom flat in Sydney where he stayed from time to time when in Australia. He still owns this property which is now let.

107. Between 2001 and 2008 Mr Lyons acquired various Australian properties through property trusts.

108. *In March 2011, Mr Lyons’ Australian company, Celebrity Holdings Pty Limited, took a lease of office premises on the Ground Floor, 75-77 Moorabool Street, Geelong, Australia.*

109. In March 2011, Mr Lyons’ Australian company, Celebrity Holdings Pty Limited, took a lease of office premises on the Ground Floor, 75-77 Moorabool Street, Geelong, Australia to enable Mr Lyons to run his expanding business interests in Australia (which now included six staff) on his return. In addition, Mr Gregorio explained that Mr Lyons considered that the new offices would provide good advertising on the main street with signage. Furthermore, Mr Gregorio had been running Mr Lyons’ businesses from a room in Mr Lyons’ residential property in Australia and the office space would leave that home for Mr Lyons and Ms Friday alone.

110. Mr Lyons acquired various other Australian properties between 2001 and 2008 through Australian property trusts.

111. The further Australian properties were:

- (1) 17 Mount Street Walk, Pyrmont, Sydney, purchased in May 2001. This was being used commercially as Big Picture Australia’s offices in 2011 and 2012 and continued as such until 2014/15;
- (2) 40-42 Moorabool Street, Geelong, purchased in September 2002 and operated as the Home House nightclub under a rental agreement to Celebrity Holdings Pty Limited;
- (3) 11 The Esplanade, Geelong Vic 3220, Victoria, purchased in January 2003;
- (4) 1 Toorak Parade, Geelong, purchased in September 2006 purchased as an investment and rented out; and
- (5) Unit 1, 16 Horizon Court, Highton, purchased in February 2008.

112. 11 The Esplanade was a four bedroom house purchased and substantially renovated on purchase as Mr Lyons’ eventual home. It was rented out between February 2004 and March



2005 and subsequently refreshed for Mr Lyons' return at some point. The property was not occupied by a tenant after March 2005. It continues to be Mr Lyons' home now.

113. Mr Lyons further expanded his Australian property interests in 2014/2015 and 2019.

#### **Australian companies**

114. *Mr Lyons had interests in the following Australian companies, which were all owned prior to 6 April 2012.*

(1) *Big Australia (incorporated 20 February 1996) – the Australian branch of Big Pictures. Mr Lyons was the sole shareholder (from incorporation) and a director (from 6 January 1998). Mr Lyons remains a director and shareholder. It had 5 employees in 2011/2012 and operated out of its Sydney office until its demise in 2014/2015.*

(2) *Setuco Pty Ltd (incorporated on 2 April 2001) – acted as a trustee for Setuco No 1 Trust, which held a number of Australian properties. Mr Lyons was a shareholder (from incorporation) and director (from 6 April 2001). Mr Lyons remains a director and shareholder. Mr Lyons held 50% of the shares and Mr Gregorio held the other 50%.*

(3) *Celebrity Holdings Pty Ltd (incorporated on 7 June 2002) - the trading entity for Home House nightclub. Mr Lyons was a shareholder and director from incorporation and remains a director and shareholder.*

(4) *Big Media Productions Pty Ltd (incorporated on 3 February 2005) - the trading entity for Growlers Restaurant. Mr Lyons was the sole shareholder and a director from incorporation. The company was dissolved on 20 July 2020.*

(5) *Elephant & Castle Geelong Pty Ltd (incorporated on 17 October 2002) - the trading entity for the Elephant & Castle Hotel. This company was previously called Home House Pty Ltd, and Mr Lyons became a director on 6 June 2003. The name was changed to Elephant & Castle Geelong Pty Ltd on 22 November 2011. Mr Lyons remains a director.*

(6) *Amber Lyons Pty Ltd (incorporated on 4 September 2008) - the corporate trustee of a trust which held Eureka Geelong Pty Ltd and the Eureka Geelong Partnership, which held the Eureka Hotel. Mr Lyons was a director and shareholder from incorporation, and remains a director and shareholder.*

(7) *Dragon Capital Group Pty Ltd (incorporated on 25 November 2005) - a start-up that never traded. Mr Lyons was a director (from incorporation) and remains a director.*

115. Mr Lyons was also a director of three other companies set up in Australia at various times for potential business opportunities but which never traded.

116. *Big Media Productions Pty Ltd purchased Growlers, a seaside restaurant business in Geelong, Australia, in January 2011 and engaged Lara Bingle (an Australian celebrity) for promotional purposes. Big Media Productions Pty Ltd entered into a lease of the property for Growlers at 23 Esplanade, Torquay, Victoria on 1 February 2011. Big Media Productions Pty Ltd sold Growlers in December 2013.*

117. Mr Lyons took a particular interest in the interior design of the restaurant; for example, dealing with the contractors and choosing the tiles and paint. He was in Australia when the restaurant was purchased and remained there until 20 February 2011. For that period between purchase and his departure from Australia he was involved most days in the work to redesign the property and get it ready for opening, including arranging the celebrity involvement of

Ms Bingle. The restaurant opened for business in around March 2011, shortly after Mr Lyons returned to the UK.

118. Elephant & Castle Geelong Pty Ltd purchased the Elephant & Castle Hotel in Geelong, Australia on 17 January 2012 and subsequently refurbished it. *Renovation works at The Elephant & Castle hotel commenced in May 2012.* Mr Lyons was particularly involved in the design of the building and its interior.

119. *In December 2011, renovation works were undertaken at the Eureka Hotel.* This was a significant project with major building works undertaken. The creative design was undertaken with Mr Lyons' involvement when he was in the UK. He approved all matters connected to the look and feel of the building. The plans and drawings which formed the basis for the works that were done were dated from 22 June 2011 and issued for pricing from 25 October 2011. The works began while Mr Lyons was in Australia for Excess Baggage. He would attend site meetings in breaks between filming for that show.

120. Works were also carried out on the Home House nightclub. The works were less extensive than those for the restaurant and took a couple of weeks. Mr Lyons' involvement was again on the design side choosing interior décor.

121. Overall, it is clear that when Mr Lyons was not engaged with filming for Excess Baggage in Australia he would return to Geelong and spend much of his time reviewing and making decisions about the new businesses and buildings he had bought. The amount of that time varied considerably week to week dependant on the time allowed as a break from the television shows.

122. The evidence of Mr Lyons and Mr Gregorio show that Mr Gregorio acted as CEO for Mr Lyons' businesses in Australia. Mr Lyons added creative input, but Mr Gregorio dealt with day-to-day running of the businesses. Mr Lyons would call Mr Gregorio for updates on a daily basis when he was not in Geelong.

123. However, the evidence from an article written following an interview with him in March 2012 (and sent to his "right hand man" Mr Gregorio for approval) shows that at that point the focus of his future business was less the hospitality venues and more Mr Paparazzi.com which he planned to make the biggest celebrity destination online and on twitter.

#### **Mr Lyons' executive assistants**

124. Mr Lyons' executive assistant in the UK, Wendy Baldock, was particularly involved in the steps needed for Mr Lyons' move to Australia such as travel arrangements for his dog, Amber. She also entered into correspondence signing as "Executive Assistant to Darryn Lyons". Although Mr Lyons sought to minimise her role for him and suggested that she was primarily assigned to Mr Sandford, this was not supported by the other evidence before us. We have given greater weight to the documentary evidence.

125. An Australian executive assistant, Ms Raby, was not appointed until September/October 2012.

#### **Other personal belongings**

126. Mr Lyons took most of his jewellery to Australia in October/November 2011. This amounted to some tens of thousands of pounds worth of items.

127. *Mr Lyons arranged for various items to be shipped back to Australia, by "The British Shop Fine Art Packers and Shippers".* A quote was obtained in May 2012. The invoice was dated 26 July 2012.

128. *Some items owned by Mr Lyons were also packed up and moved to a warehouse in Watford in the period 21-26 May 2012. These items were part of Mr Lyons' photo archive. The packing was undertaken on 21 and 22 May 2012 and the invoice dated 29 June 2012.*

129. Mr Lyons oversaw the packing of his personal papers in the UK in May 2012.

130. *Mr Lyons prepared an "Unaccompanied Personal Effects Statement", which is an Australian customs form in respect of his flight from Dubai to Melbourne, Australia that landed in Australia on 5 September 2012. Mr Lyons did not tick the box as a returning Australian resident.*

### **Pets**

131. *Mr Lyons' pets in the UK were a parrot (Mr P), a dog (Amber) and three polo ponies. Amber was the only animal transported to Australia.*

132. *Mr Lyons did not take Mr P to Australia as he understood that it was against the law to import exotic birds into Australia. Mr Lyons was informed that this was the position in February 2012. From December 2011, Mr Lyons had been trying to ascertain the possibility of exporting Mr P.*

133. Mr Lyons's dog, Amber, was jointly owned with his ex-wife, Ms Whitehead, who lived in the UK.

134. *Wendy Baldock signed a contract with Pet Air on 25 July 2012 for Amber to be transported to Australia. Amber arrived in Australia on 22 November 2012.*

135. The Australian quarantine requirements included blood tests six months before Amber was shipped. She could not come with him to Australia during the 2011-2012 visit as he was working on Excess Baggage and no steps had been taken to prepare her for the necessary medical tests and quarantine.

136. In January 2012 steps were taken to arrange Amber's medical tests for her relocation to Australia and in February 2012 the process of shipping Amber started as recorded in an email saying that it would take 6 months.

137. *Mr Lyons took Amber with him on his trip to France. Mr Lyons returned her to the UK on 28 August 2012, to be cared for by Ms Whitehead and Ms Friday until she could come to Australia.*

138. Mr Lyons had two polo ponies in the UK: Silva and Fleur. They were maintained and managed by Cool Hooves Polo Ltd. Fleur was sold in September 2011 by Cool Hooves Polo Ltd. Saskia was sold to the daughter of the people running Cool Hooves in Spring 2012. Although there is some evidence suggesting that Mr Lyons owned a third polo pony he could not name it. The main evidence about the polo ponies is found in an email dated 15 January 2013 from Cool Hooves Polo Ltd. Notably, it updates Mr Lyons about ponies, including the sale of Fleur in 2011. The evidence shows that Mr Lyons had no direct involvement in the care and management of the polo ponies. They were not "pets" and at no times was there any suggestion of moving them to Australia.

### **Cars**

139. *Mr Lyons' Ferrari was arranged to be shipped to Australia in October 2011. The Ferrari was a car he used mainly at weekends and was what he described as his "pride and joy".*

140. It was picked up for shipping on 2 November 2011. Mr Lyons confirmed that it may have been used for publicity in Australia while he was participating in Excess Baggage.

141. Mr Lyons used a Range Rover in the UK as an everyday car, which was leased by Big Pictures. Mr Lyons used this car for his trip to France referred to below. It had to have an MOT on the day he returned to the UK and Ms Friday returned the car to the UK, leaving Mr Lyons to fly back to Australia. Mr Lyons notified the insurers that he had given up the car on 5 September 2012.

142. *Celebrity Holdings Pty Ltd subsequently purchased a new company car (a Range Rover) in Australia, and picked this up on 20 September 2012 in Melbourne, Australia.*

143. Mr Lyons also had a black Jaguar and a Lamborghini in Australia.

#### **UK notifications**

144. *The local council and the car insurers were not advised that Mr Lyons was leaving the UK.*

#### **Bank accounts**

145. Mr Lyons had at least three Barclays UK bank accounts at all relevant times. He also had at least one other UK account in his name (HSBC). The bank statements recorded his address as 86A Kensington Court.

146. During the year 2012-2013 Mr Lyons received income from the Monarch Film Partnership into his HSBC account.

147. Mr Lyons had seven UK mortgages with the Bank of Scotland and one with Halifax.

#### **Credit Cards and the Electoral Register**

148. *Mr Lyons had not removed himself from the electoral register by 6 April 2012.*

149. Mr Lyons did not attend to administrative matters himself. He relied heavily on staff and advisors to carry out such tasks for him. He had little memory of which bank accounts he used when.

150. The evidence does not show that he cancelled his UK credit cards on or before 6 April 2012.

#### **Life in Australia and plans on his return**

151. *After Excess Baggage, in March 2012, Mr Lyons was in touch with Cathie Scott from Freemantle Media in relation to future opportunities for work.*

152. Mr Lyons began to formulate more definite plans to return to Australia gradually from 2010. He felt that the role of paparazzi had finished as a result of social media and he wanted to see more of his parents.

153. *Mr Lyons was elected as mayor of Geelong on 25 November 2013 and was sworn into office on 26 November 2013.*

154. Legislation enabling the direct election of a mayor in Geelong came into force in early 2012. There was too little time after his return on 5 September 2012 for him to run in the election that year. However, he was elected Mayor of Geelong on 25 November 2013 and sworn into office on 26 November 2013.

155. *Mr Lyons signed a sponsor agreement with Geelong Racing Club in March 2011.*

156. *In July 2011, Mr Lyons purchased a 10% share in a syndicate racehorse in Australia called 'Zimmerman'.*

157. Mr Lyons became the Geelong Cup Ambassador in January 2012. That was a role promoting the race which took place in October 2012. Mr Lyons was therefore expected to be in Australia in order to carry out that activity, at least in the run up to the event. He would

be expected to participate in radio interviews and television coverage about the cup as well as events held at locations such as shopping centres and fashion parades.

158. Mr Lyons had also signed a sponsor agreement with Geelong Racing Club in March 2011 for promotional reasons and in order to advertise the Elephant & Castle Hotel on the winning post.

### **Travel from trip to Australia in 2011 to 6 April 2013**

159. *Mr Lyons' movements during this period were as follows:*

- (1) *30 October 2011: travelled from London to Australia, via Dubai;*
- (2) *29 April 2012: travelled from Australia to London;*
- (3) *7 June 2012: travelled to France; and*
- (4) *28 August 2012: returned from France, dropped car off in the UK and travelled to Australia, via Dubai (Mr Lyons did not spend a full day in the UK).*
- (5) *5 September 2012: arrived in Melbourne, Australia.*

160. *Mr Lyons then remained in Australia for the remainder of the period, other than a nine-day trip to Dubai in November 2012.*

161. *Mr Lyons spent 38 days in the UK in 2012/13 tax year.*

162. Mr Lyons visited France from 7 June to 28 August 2012 to say goodbye to local friends and to have a holiday. Mr Lyons has a property in St Tropez at which he stayed.

163. *Since 5 September 2012, Mr Lyons has made three trips back to the UK.*

- (1) *The first was for 14 days in from 13 July to 26 July 2015.*
- (2) *The second was from 1 February to 16 February 2016*
- (3) *The final trip was from 12 July to 1 August 2018. During his time in the UK, Mr Lyons attended a meeting with HMRC in relation to the subject of this appeal.*

### **Press articles**

164. In a press article dated 8 January 2012 it was said that Mr Lyons planned to spend much of 2012 in Australia especially with the launch of the local version of his Mr Papparazzi website, but there was no suggestion that he was planning to re-locate there permanently. We recognise though that an article in the press may not be accurate on such matters.

165. However, another article was sent to Mr Gregorio for his approval. Mr Gregorio was described by Mr Lyons as his oldest friend from age 12 who was his right-hand man in Australia. Given this description and Mr Gregorio's evidence before us we are satisfied that he would have been fully aware of Mr Lyons' plans regarding relocation to Australia. The draft of the article shows that it was prepared after meeting and speaking with Mr Lyons. It is stated that as at March 2012 Mr Lyons hoped to move back to his home in Australia later that year. It did not indicate imminent relocation to Australia.

### **Planning regarding potential UK capital gains tax**

166. In the autumn of 2011 Mr McMichen was giving advice to Mr Lyons about mitigation of his capital gains tax bill on sale of his UK properties on the basis that he would be UK resident at the point of sale. A Cypriot structure was proposed. There was no indication given to Mr McMichen that Mr Lyons was planning to leave the UK in the near future. For the reasons we have stated we do not accept that this was because Mr Lyons worried about confidentiality or did not understand the relevance of his residence. Although Mr Lyons did not understand the intricacies of the tax planning in the autumn of 2011 he was later aware of

what he understood to be key advice after he decided to return to Australia that he should be in the UK for less than 45 days in the year 2012-2013. The advice was wrong as it failed to take into account the capital gains tax rules, but it was at least part of his motivation for travelling to France and spending time at his property in St Tropez. He even took care to ensure that when he came back from France he left for Australia on the same day so that he minimised his UK day count. He therefore had some understanding of residence sensitivities.

### **Declarations and correspondence regarding residence**

167. On moving to Australia on 5 September 2012 Mr Lyons completed an Australian customs declaration. He did not fill out the part of that declaration which related to returning residents. That would have required him to have provided further details. The completion of the declaration as Mr Lyons in fact did is consistent with him not viewing himself as having become Australian resident before his return to the UK on 29 April 2012.

168. However, for tax purposes Mr Lyons was advised to complete his Australian tax returns as an Australian tax resident from 1 April 2012.

169. An internal HMRC emails shows that as late as 16 August 2012 Mr Lyons had told HMRC that he was staying in France for 2-4 weeks dependent upon his tax advisers' work on relocating him back to Australia and he would come to the UK to finalise things before moving to Australia permanently.

170. A letter signed by Mr Lyons dated 15 August 2012 to an inspector at HMRC described Mr Lyons as being in the process of permanently leaving the UK. A note of a telephone call between an HMRC inspector and an adviser at Mr Lyons' tax advisers dated 12 November 2012 confirmed that Mr Lyons had left the country in 2012-2013. A fax dated 2 January 2013 from Mr Lyons' tax advisors to HMRC said that Mr Lyons left the UK on 7 June 2012 noting that he spent some time in France before leaving for permanent residence in Australia.

171. As late as 18 February 2015 Mr Lyons' tax advisors were writing to HMRC saying that it was during his October 2011 trip to Australia that he decided that he wanted to return there on a permanent basis, he returned to the UK 29 April 2012 to organise his affairs and prepare to leave permanently and then left permanently on 7 June 2012.

172. In Mr Lyons' UK tax return for 2011-2012 there was no indication in the relevant part that he had left the UK during the year. In his UK tax return for 2012-2013 it was stated that he had ceased to be UK resident on 7 June 2012 (the date he travelled to France before relocating to Australia).

### **Australian capital gains tax**

173. When Mr Lyons became Australian tax resident he was treated as acquiring all of his assets at market value at that time for Australian tax purposes. Therefore sales of assets (including UK properties) shortly thereafter did not attract Australian capital gains tax.

### **Procedure**

174. *Mr Lyons filed his UK tax return for 2012/13 on 31 January 2014 ("the tax return").*

175. *HMRC opened an enquiry under the Taxes Management Act 1970 ("TMA 1970"), section 9A into the tax return on 12 December 2014.*

176. *On 14 June 2019, HMRC issued a closure notice in respect of the tax return under TMA 1970, section 28A. The closure notice amended the tax return to include a capital gains tax liability of £1,087,413.68.*

177. *Mr Lyons appealed against the closure notice by way of letter dated 27 June 2019 ("the appeal") and requested a statutory review.*

178. HMRC's statutory review conclusion letter, dated 6 September 2019, upheld the closure notice.

179. Mr Lyons appealed to the Tribunal by a Notice of Appeal dated 2 October 2019.

#### THE LAW

180. Section 2(1) TCGA 1992 (as it was at the relevant time) provides that a person is chargeable to capital gains tax in a year of assessment "during any part of which" he is resident or during which he is ordinarily resident in the UK."

181. Although this may appear to be a harsh rule we have been referred to no authority limiting the plain words which can therefore result in a person being chargeable to capital gains tax simply as a result of being resident in the UK for one day in the year of assessment in which disposals for capital gains tax purposes take place.

182. Indeed, that is why there is the Extra Statutory Concession D2 which provides that:

"An individual who leaves the UK and is treated on departure as not resident and not ordinarily resident here is not charged to capital gains tax on gains from disposals made after the date of departure, provided that the individual was not resident and not ordinarily resident in the UK for the whole of at least four out of the seven years of assessment immediately preceding the year of assessment in which he or she left the UK."

183. It is agreed by the parties that Mr Lyons cannot rely upon ESC D2 because he does not satisfy the proviso.

184. Reference has been made (in particular by Ms Hardy on behalf of Mr Lyons) to s9(3) and (4) TCGA 1992. That provision states (so far as relevant):

"(3)... An individual who is in the United Kingdom for some temporary purpose only and not with any view or intent to establish his residence in the United Kingdom shall be charged to capital gains tax on chargeable gains accruing in any year of assessment if and only if the individual spends (in total) at least 183 days in the United Kingdom.

(4) the question whether for the purposes of subsection (3) above an individual is in the United Kingdom for some temporary purpose only and not with any view or intent to establish his residence there shall be decided without regard to any living accommodation available in the United Kingdom for his use."

185. This is therefore a provision which could apply if Mr Lyons ceased to be UK resident prior to 6 April 2012. If so, s9(3) could be applied to his return to the UK in the period 29 April 2012 to 7 June 2012.

186. However, in this case HMRC have conceded that if Mr Lyons ceased to be UK resident prior to 6 April 2012 he would not be subject to capital gains tax on disposals made by him in the tax year 2012/2013.

187. Therefore the question before us is whether Mr Lyons ceased to be UK resident prior to 6 April 2012. If he did become non-UK resident prior to 6 April 2012 he would be non-UK resident for the whole of 2012/2013 and no charge would arise under s2(1) TCGA 1992 on disposals made by him in 2012/2013.

188. Section 9(1) TCGA provides that "resident" has the same meaning as in the Income Tax Acts. It is agreed by the parties that the Supreme Court decision in *Gaines Cooper*, and in particular the judgement of Lord Wilson, sets out the guiding principles to be applied by us in deciding whether Mr Lyons had ceased to be UK resident prior to 6 April 2012.

189. Lord Wilson set out the development of the common law regarding residence explaining (at [14]) that:

“an individual who has been resident in the UK ceases in law to be so resident only if he ceases to have a settled or usual abode in the UK...the phrase “a distinct break”... is not an inapt description of the degree of change in the pattern of an individual’s life in the UK which will be necessary if a cessation of his settled or usual abode in the UK is to take place.”

190. Lord Wilson explained that a distinct break “mandates a multifactorial enquiry”. The need for “severance of social and family ties” identified by Moses LJ in the Court of Appeal pitched the requirement at too high a level, although it encompassed a substantial loosening of social and family ties.

191. The core issue in this case is therefore what is required for there to be “a substantial loosening of social and family ties”.

192. Further guidance regarding the approach to be taken in cases concerning tax residence is given by *HMRC v Glyn* [2016] STC 1020 (at [43]-[50]), where David Richards J summarised the relevant legal principles surrounding “residence” and “ordinary residence” by referring to the decision of Lewison J in *HMRC v Grace* [2009] STC 213. The principles applying to ordinary residence are not relevant to this case but those relating to residence are as follows:

i) The word “reside” is a familiar English word which means “to dwell permanently or for a considerable time, to have one's settled or usual abode, to live in or at a particular place”: *Levene v IRC* [1928] AC 217 at 222. This is the definition taken from the Oxford English Dictionary in 1928, and is still the definition in the current online edition;

ii) Physical presence in a particular place does not necessarily amount to residence in that place where, for example, a person's physical presence there is no more than a stop-gap measure: *Goodwin v Curtis (Inspector of Taxes)* [1998] STC 475 at 480;

iii) In considering whether a person's presence in a particular place amounts to residence there, one must consider the amount of time that he spends in that place, the nature of his presence there and his connection with that place: *IRC v Zorab* (1926) 11 TC 289 at 291;

iv) Residence in a place connotes some degree of permanence, some degree of continuity or some expectation of continuity: *Fox v Stirk*; *Ricketts v Registration Officer for the City of Cambridge* [1970] 2 QB 463 at 477; *Goodwin v Curtis (Inspector of Taxes)* [1998] STC 475 at 481;

v) However, short but regular periods of physical presence may amount to residence, especially if they stem from performance of a continuous obligation (such as business obligations) and the sequence of visits excludes the elements of chance and of occasion: *Lysaght v IRC* [1928] AC 234 at 245;

vi) Although a person can have only one domicile at a time, he may simultaneously reside in more than one place, or in more than one country: *Levene v IRC* [1928] AC 217 at 223;...

...xiii) Where a person has had his sole residence in the United Kingdom he is unlikely to be held to have ceased to reside in the United Kingdom (or to have “left” the United Kingdom) unless there has been a definite break in his pattern of life: *IRC v Combe* (1932) 17 TC 405 at 411.



193. *Grace* also approved of statements in the case of *Shepherd v Revenue and Customs Comrs* [2005] STC 644 which identified that:

(1) the duration of an individual's presence in the UK and the regularity and frequency of visits are facts to be taken into account. Birth, family and business ties, the nature of visits and the connections with the UK may all be relevant;

(2) the availability of living accommodation in the UK is a factor to consider as shown by the case of *Cooper v Cadwalader*;

(3) the fact that an individual has a home elsewhere should be addressed in the multifactorial enquiry, but it must be recognised that a person may reside in two places (*Cooper* and *Levene*).

194. It was established by the judgment of Viscount Sumner in *Levene* that a taxpayer's tax residence should be determined on an annual basis, although it is legitimate to have regard to the taxpayer's situation in prior and subsequent years as part of "one continuous story" (Lord Sumner in *Levene* at [227]).

195. However, we note that all of these cases must be applied with care in the context of this appeal and the application of section 2(1) TCGA 1992. In this case it is not disputed by Mr Lyons that he was UK resident in prior to 2011/12 and had been for many years. It is not disputed by HMRC that at some point in 2012/13 Mr Lyons moved his tax residence to Australia. We therefore come back to the core principle which we must apply which is to assess whether there was a substantial loosening of Mr Lyons' UK ties before 6 April 2012.

196. One factor to which particular weight has been given by many of the authorities is the existence of a home in the UK. This was most notable in the case of *Cooper v Cadwalader* where an American, ordinarily resident in New York, rented a house and shooting rights in Scotland for about two months in each year and it was maintained available for his return at any time. The Lord President concluded that the decision of the Commissioners to allow the appeal was wrong, deciding that the taxpayer's occupation was not of a casual or temporary character, but was substantial and as regards some of its incidents continuous (at page 105); and further relied on the fact that the taxpayer had a residence always ready for him if he should choose to come to it. This case was described as an "overwhelming" one by Rowlatt J in *IRC v Zorab* in confirming that the nature of a taxpayer's connections with this country must be assessed. *Cadwalader* was also described by the Court of Appeal in *Grace v HMRC* [2009] STC 2702 as a case where only one result was possible on the facts as found.

197. That is not to say that availability of accommodation is somehow determinative in its own right. All of the circumstances must be considered. Therefore in *Levene* where the taxpayer did not have any fixed residence in the UK, but returned for about five months each year in order to obtain medical advice, visit relatives, take part in religious observances and deal with his income tax affairs, the Commissioners' decision that he was resident in the UK was confirmed as a finding of fact being sufficiently supported by the evidence. Notably, the House of Lords in *Levene* described *Cooper v Cadwalader* as being a "comparatively simple" case in contrast to the situation where a person has no home or establishment in any country, but lives his life in hotels or at the houses of his friends and in particular where such a person spends a part only of his time in hotels in the UK and the remaining and greater part of his time in hotels abroad.

198. Similarly, in the case of *Lysaght* the House of Lords confirmed that a decision of the Special Commissioners that a taxpayer was resident in the UK where he had previously been resident in England and had left to live permanently with family in Ireland and had no definite place of abode in England, but came to England solely for business meetings every

month, remaining here for about a week on each occasion, was a finding of fact sufficiently based on the evidence. It was observed by Lord Warrington that the strongest factor against the Special Commissioners' decision was that the taxpayer's permanent home was in Ireland.

199. In the case of *Grace* the court re-emphasised the importance of looking at all relevant factors together. That was in the context of a taxpayer who worked as an airline pilot who had bought a house in South Africa which he regarded as his home and in which he intended to retire and who came to the UK only to enable him to perform his duties as a British Airways pilot, but who had retained his house in the UK. As it was concluded that the Special Commissioners had misdirected themselves regarding the correct approach to be taken, the case was remitted (as it was not a simple case such as *Cadwalader*) and the balance between the evidence regarding the taxpayer's presence in the UK using the house he had retained here as well as related factors connecting him to the UK and his connections with South Africa needed to be carried out by the fact-finding court.

#### DISCUSSION

200. Ms Hardy submitted that the evidence of Mr Lyons' connections to and activities in Australia increasing substantially in the tax year 2011/2012 was a major component of his case that he had substantially loosened his UK ties. However, we are satisfied that this is not a zero-sum situation. A person can increase connections to, time spent in and activities in another country even to the point of becoming tax resident in that country without necessarily loosening their ties in the UK to such an extent that they cease to be UK tax resident.

201. The assessment of a person's UK tax residence comes back to an overall assessment. That includes consideration of his connections to, and activities in, Australia. In doing so we note in the context of this case that clearly Mr Lyons could only devote so much time to work and business. Increased time and effort spent on interests overseas was in the context of less time spent by him on UK-based interests.

202. Ms Hardy also submitted that a distinction should be drawn between a significant loosening of ties and severing of ties. The Supreme Court has made clear that the latter is not required. She submitted that, for example, the marketing of Mr Lyons' home involved a loosening of that tie. However, we do not consider that the "substantial loosening of ties" should be applied on a tie by tie basis. Instead, the case law has made clear that it is an overall evaluation of the circumstances which is required for a conclusion by us whether, as a matter of fact, Mr Lyons had substantially loosened his ties to the UK. That said, the simple act of marketing of his UK home is a factor which is at the lower end of loosening of ties.

203. It is recognised that Mr Lyons' focus was shifting in late 2011 and early 2012 from the UK to Australia where he was building up business interests and preparing his home for return (by, for example, obtaining office space so that Mr Gregorio would no longer use part of his home as an office); and that is entirely consistent with his intention to return to Australia and furthermore an intention to return to Australia during the calendar year of 2012. A person's intentions are one element of the overall assessment but are not in themselves determinative.

204. However, a much wider assessment of the circumstances is required in determining whether there was a substantial loosening of Mr Lyons' ties in the UK before 6 April 2012:

- (1) Mr Lyons put his UK home on the market in November 2011 although it did not sell before 6 April 2012 and he returned to that home on 29 April 2012. When he returned to the home at the end of April there was still what he described as a "tremendous amount of 20 years' worth of belongings" in the home;

- (2) in September 2011 Mr Lyons placed the commercial premises at Clerkenwell Road, used by Big Pictures UK and others on the market although this was not sold until 21 December 2012;
- (3) other investment properties were also put up for sale in order to raise funds to pay UK tax bills;
- (4) as a result of the News of the World collapse and the decline in demand for the type of celebrity material Mr Lyons had previously offered, his core UK business started to decline in 2011 and in September 2012 was placed in administration. However he remained Chairman of Big Pictures Ltd until 10 May 2012 and continued to be director and shareholder of Big Pictures UK Ltd until it was placed into administration. The demise of the business since the financial crisis in 2008, which was then accelerated by the News of the World collapse, meant that there was less of his core business for Mr Lyons to be involved with in the UK. However, he maintained his tie to it by virtue of the position as Chairman and shareholder. Indeed he resisted the advice that it should be placed into administration initially. It was consistent with his approach generally to his businesses that he left the day to day running to others. The tie to the UK in Big Pictures had undoubtedly diminished in monetary value by virtue of the business shrinking, but that is not the same thing as saying Mr Lyons' tie to it had loosened;
- (5) while Big Pictures Ltd was declining Mr Lyons hoped to build the Mr Paparazzi.com business operated through the UK company Mr Paparazzi.com Ltd to be a major celebrity news website;
- (6) at the end of April 2012 Mr Lyons still retained a large archive of around 80 filing cabinets' worth of pictures in the UK. Those pictures were items he valued highly. Not only were they sensitive materials but they were the core of the business he had set up and operated over many years. If they had simply been sensitive they could have been shredded when he moved but Mr Lyons preserved them;
- (7) Mr Lyons obtained significant income from being a partner in the Monarch Film Partnership, a UK Partnership;
- (8) he maintained in filings with Companies House until 28 May 2012 that he was resident in England and his address was 86A Kensington Court;
- (9) his girlfriend (and later fiancée) lived in the UK but was not living with Mr Lyons before 6 April 2012. She travelled to join Mr Lyons in Australia in June 2013;
- (10) Mr Lyons's dog, Amber, to whom he was extremely attached remained in the UK until some time after July 2012 although work had commenced in December 2011 to identify what steps were needed to transport Amber to Australia. None of the 6 month process for her shipping started until January 2012 which was therefore consistent with Mr Lyons moving to Australia after 6 April 2012 and not before;
- (11) Mr P the parrot remained in the UK, but was given to a friend as Mr Lyons could not take the parrot with him;
- (12) Mr Lyons had taken a large amount of jewellery to Australia and his prized Ferrari was moved there in November 2011;
- (13) Mr Lyons retained the Range Rover in the UK which he continued to use on his return on 28 April and which he used to travel to France on 7 June 2012;

(14) he had a UK Executive Assistant still actively engaged in handling paperwork for him as at 6 April 2012; and

(15) as at 6 April 2012 he continued to have UK bank accounts and mortgages. He also continued to be registered with a UK dentist and doctor. He had UK health insurance and a UK life insurance policy. He continued the use of a UK mobile telephone. He remained on the UK electoral register.

205. At times in the presentation of Mr Lyons' case Ms Hardy submitted that he left the UK on 30 October 2011 for tax purposes. We are clear that he did not sufficiently loosen his ties at that point. Nearly all of his ties remained in place at that point; indeed he had done little more than develop a clearer intention to relocate and put the commercial properties on the market.

206. Even if we treat the decline in Big Pictures Ltd's business as a loosening of Mr Lyons' ties in the UK by 6 April 2012, this list shows that the other most significant loosening arose from marketing of properties (including his home), and the removal of his Ferrari and jewellery to Australia. The loosening of his UK business tie in Big Pictures Ltd was set in the context of his increased focus on business activities Australia as well as the UK company and business of Mr Paparazzi.com Ltd. His home in the UK remained as the place to which he returned on 29 April 2012 and where he had accumulated so much of his personal possessions as well as much of his archive material. He continued as Chairman of Big Pictures Ltd and maintained investments such as the partnership interest and bank accounts in the UK as well as those matters connected with day to day life in a place such as doctor and dentist registrations and registration on the electoral role. His dog remained in the UK and his girlfriend was living here.

207. In assessing the facts as a whole we take into account that Mr Lyons had a home in Australia and was clearly building his business activities, connections and involvement in Australia from before 6 April 2012 with a view to relocating there. His focus of business interest going forward had moved from the UK to Australia prior to 6 April 2012. It was there that he saw his future.

208. It is relevant to take into account that Mr Lyons' intention was to move to Australia, although we consider that the evidence overall does not show that he intended to permanently move until after 6 April 2012 because:

(1) we do not consider that evidence that Mr Lyons planned to go to Australia in the autumn of 2011 and return to finalise his affairs in the UK before 5 April 2012 does more than show his general intention to leave the UK in 2012. Any intention to leave the UK permanently before 6 April 2012 was overtaken by events including the delayed return to the UK caused by the Excess Baggage work;

(2) steps were not taken to relocate Amber, to whom he was devoted, until January 2012;

(3) the article in March 2012, in particular, gave no indication of a planned imminent departure from the UK;

(4) Mr Lyons' capital gains tax advice incorrectly told him that he could spend up to 45 days in the UK in 2012/2013. This enabled him to take a more relaxed approach to relocation to Australia.

209. Overall therefore we conclude that while it is clear that Mr Lyons had set in motion various steps to enable him to relocate to Australia in 2012, those steps had not reached the

point of being a “substantial loosening of ties to the UK” until after 6 April 2012. As a result Mr Lyons was UK tax resident during a part of 2012/13.

**CONCLUSION**

210. The appeal is dismissed. The assessment to capital gains tax for the year 2012/2013 issued to Mr Lyons is confirmed.

**RIGHT TO APPLY FOR PERMISSION TO APPEAL**

211. 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.

**TRACEY BOWLER  
TRIBUNAL JUDGE**

**Release date: 09<sup>th</sup> MARCH 2023**