



Neutral Citation: [2023] UKFTT 00724 (TC)

Case Number: TC08913

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

Taylor House
88 Rosebery Avenue
London EC1R 4QU

Appeal reference: TC/2022/00006

EXCISE DUTY - Alcohol Wholesaler Registration Scheme - appeal against refusal of application for registration – whether Respondents could not reasonably have decided that Appellant not ‘fit and proper person’ to carry on activity of wholesale of dutiable alcoholic liquor - appeal dismissed

Heard on: 25 April 2023

Judgment date: 17 August 2023

Before

**TRIBUNAL JUDGE GREG SINFIELD
TRIBUNAL MEMBER JO NEILL**

Between

**IFEOMA NWADEI
T/A CHANTEL-MARIE BUSINESS SERVICES LIMITED**

Appellant

and

THE COMMISSIONERS FOR HIS MAJESTY’S REVENUE AND CUSTOMS

Respondents

Representation:

For the Appellant: Ifeoma Nwadei in person

For the Respondents: Esther Hickey, litigator of HM Revenue and Customs’ Solicitor’s Office and Legal services

DECISION

INTRODUCTION

1. The Appellant, Ms Ifeoma Nwadei, has made an in-time appeal to the First-tier Tribunal ('FTT') against a decision by the Respondents ('HMRC') to refuse Ms Nwadei's application to be registered under the Alcohol Wholesaler Registration Scheme ('AWRS') as an approved wholesaler of alcoholic goods. HMRC refused the application because they were not satisfied that Ms Nwadei was a fit and proper person to carry on the activity of a wholesaler of dutiable alcoholic liquor.

2. This is an appeal under section 16 of the Finance Act 1994 ('FA 1994') and the FTT's powers to deal with such an appeal are limited by section 16(4). The FTT can only review HMRC's decision to determine whether it was reasonable. The only issue in this appeal is whether HMRC's decision to refuse Ms Nwadei's application for approval under the AWRS as a wholesaler of alcoholic goods was one that the decision maker could not reasonably have made.

3. For the reasons set out below, we have decided that it was reasonable of HMRC to conclude that Ms Nwadei had not met the fit and proper requirement in section 88C of the Alcoholic Liquor Duties Act 1979 ('ALDA'). Accordingly, HMRC's decision to refuse Ms Nwadei's application for approval to carry on the activity of a wholesaler of dutiable alcoholic liquor stands and Ms Nwadei's appeal is dismissed.

APPLICATION TO POSTPONE THE HEARING

4. On 24 March 2023, the FTT notified the parties that this appeal was listed to be heard on Tuesday 25 April. In accordance with the FTT's directions dated 5 October 2022, the parties were required to serve their skeleton arguments on each other and the FTT not later than 4 April.

5. On 30 March, HMRC applied for a seven day extension to serve their skeleton argument on 11 April. The FTT granted the extension unless Ms Nwadei objected. Ms Nwadei did not make any objection or any application for an extension of time in which to serve her skeleton argument at that time. HMRC served their skeleton argument on 11 April.

6. On 17 April, Ms Nwadei applied to the FTT for "an extension of time for three weeks to enable me arrange myself and get a barrister to assist me prepare a response to my skeletal (sic) argument." In her application, Ms Nwadei stated that she had been unable to comply with the FTT's direction to provide her skeleton argument by 4 April because she had received a link to access HMRC's Hearing Bundle by email on 20 February 2023 but the link had expired after one week and before she could access it. Ms Nwadei said that she only obtained a new link to access the bundle on 13 April which did not allow her sufficient time to instruct a barrister to assist with the skeleton argument or seek legal advice. She also referred to a family bereavement and explained that she had had to attend a funeral which a document attached to her email showed took place between 13 and 16 April.

7. Read literally, Ms Nwadei's application appeared to be asking for an additional three weeks from 4 April in which to serve her skeleton argument. Three weeks from 4 April was 25 April, ie the day of the hearing. In a letter dated 19 April, I granted the application on the aforementioned basis in order to avoid the hearing being cancelled with the inevitable delay that would follow before it could be re-listed.

8. In the same letter, I stated that Ms Nwadei's application could be read as an application to postpone the hearing for three weeks. I stated that, if that was what Ms Nwadei was asking for then I was not prepared to grant the application. My reason for refusing to postpone the

hearing was that it seemed to me that Ms Nwadei had not shown any grounds which justified postponing the hearing. She had not explained why she had not accessed the Hearing Bundle within one week of receiving the link on 20 February. Ms Nwadei had also not explained why she had not instructed a barrister at that stage to assist her. Ms Nwadei had been notified of the hearing on 24 March and that should have prompted her to obtain access to the Hearing Bundle and, if she needed it, legal advice to prepare her skeleton argument. She did not say when she contacted HMRC to ask for the link to be re-sent but it seemed to me that it would have been no earlier than April. I also considered that, as Ms Nwadei was familiar with the nature of the appeal and the reasons given by HMRC for their refusal of her AWRS application, there was no reason why she could not have instructed a barrister to start to assist her at any time before the link was sent on 13 April, eg when she was notified of the hearing in March, and in good time for the hearing.

9. Accordingly, I directed that the time for Ms Nwadei to provide her skeleton argument was extended until 09:00 on 25 April, the day of the hearing, but I refused any application to postpone the hearing of the case on that day.

10. Ms Nwadei did not provide a skeleton argument by 09:00 on the day of the hearing. At the start of the hearing, Ms Nwadei renewed her application for it to be postponed. She stated that she had an appointment with her barrister. She explained that HMRC had sent her a link but she had been unable to use it as it was too much for her. She said that when she wanted to see the barrister the link had expired. Ms Nwadei said that she had arthritis and her daughter was ill with skin cancer. She stated that she just wanted support in making the appeal and did not necessarily want to instruct a barrister to represent her. Ms Nwadei said that she was not prepared for the hearing but if we wanted the hearing to go ahead, we could just ask her questions and she would answer them. In response to a question from the Tribunal, Ms Nwadei said that she had contacted the barrister in April.

11. Ms Hickey, who presented the case for HMRC, opposed Ms Nwadei's application to postpone the hearing. She submitted that the fact that Ms Nwadei could not access the electronic hearing bundle was irrelevant as HMRC had sent Ms Nwadei a paper hearing bundle on 2 February 2023. Ms Hickey said that she had a spare clean copy of the paper bundle which Ms Nwadei could use at the hearing.

12. Ms Nwadei stated that she could not remember whether she had received the paper hearing bundle in February or not. Ms Nwadei produced a Royal Mail 'We could not deliver your parcel' card dated 14 April which was shown to the Tribunal and HMRC. Ms Hickey said that the date showed that the parcel was the authorities bundle.

13. We adjourned the hearing for a few minutes to see if HMRC could produce a signature for receipt of the paper hearing bundle in February. After the short adjournment, HMRC stated that they had found a signature acknowledging receipt of the paper hearing bundle but it was not possible to determine whose signature it was.

14. The Tribunal decided that there was no good reason why the hearing should be postponed and Ms Nwadei's application should be refused for the reasons given in the letter refusing the original application by email. Accordingly, the hearing proceeded with Ms Hickey opening HMRC's case and calling their only witness.

EVIDENCE

15. Ms Nwadei produced a witness statement of 8 pages dated 16 January 2023 for her appeal. HMRC Officer Caroline Ames produced a witness statement of 8 pages dated 29 November 2022. In addition, we were provided with a hearing bundle of 807 pages containing various documents produced as exhibits in the case. There was also a bundle of authorities.

16. At the hearing, the witnesses' statements stood as their evidence in chief. Officer Ames was asked questions by the FTT and by Ms Nwadei. Ms Hickey cross-examined Ms Nwadei. The panel asked Ms Nwadei to provide further information in relation to certain deposits by the Department of Work and Pension ('DWP') into Ms Nwadei's bank account and to clarify her answers to the questions asked by HMRC on 12 October 2021 (see [40.] below).

17. Much of Ms Nwadei's witness statement and several exhibits dealt with matters that are not relevant to the issues in this appeal such as an allegedly unlawful eviction from rented accommodation in 2005 and allegedly wrongful convictions for assault and obstructing a police officer. The details of those matters are completely irrelevant to the issue in this appeal and we do not describe them further and have disregarded them in reaching our decision.

18. On the basis of the witness statements and documents produced in evidence, the evidence given by Ms Nwadei and Officer Ames at the hearing and the information and comments submitted by the parties subsequently, we find the material facts to be as set out below.

FACTUAL AND PROCEDURAL BACKGROUND

19. Ms Nwadei was born in Nigeria and came to the United Kingdom in 2001. She has lived in the United Kingdom since then and is a British Citizen.

20. Before coming to the United Kingdom, Ms Nwadei worked as a Sales Dealer with Siemens, a German communications company with branches in Nigeria. Ms Nwadei was selected to receive training in Germany as a business researcher for Siemens with a view to representing them in Nigeria and Africa as a whole. After training in Germany in 2000, Ms Nwadei was invited to go to the United Kingdom by a Siemens company for business research purposes which is how she came to move to the United Kingdom in 2001.

21. Ms Nwadei ran a hotel in Nigeria and distributed beer. She said that she had noticed bars and restaurants in the UK and decided that she would start an alcohol wholesale business.

22. Ms Nwadei first applied for AWRS approval on 22 January 2021. The application was dealt with by HMRC Officer Farah Aslam. After an exchange of correspondence and a telephone interview, Officer Aslam rejected the application in a letter dated 14 April on the ground that the "business, the legal business entity and other key persons within the business are not 'fit and proper' to carry out a controlled activity, in this case the wholesale of alcohol". The letter set out eleven points which caused HMRC concern and led to the conclusion that the fit and proper requirement had not been met. None of the points mentioned anything about Ms Nwadei's previous convictions but in evidence at the hearing she said that Officer Aslam said that she was not a fit and proper person because of her criminal record. We do not accept Ms Nwadei's evidence on this point for two reasons. The first is that if Officer Aslam had considered that Ms Nwadei's criminal record was a reason to conclude that she was not a fit and proper person then we would have expected her to mention it in her letter of 14 April. The second reason is that Ms Nwadei's evidence is contradicted by the AWRS Pre-registration Aide Memoire completed by Officer Aslam

before she issued the decision letter and included in the hearing bundle. That document clearly stated in box 3 of section 4 'Fit and Proper Tests' that:

“PNC results revealed 2 spent convictions. These are considered not relevant.”

23. Ms Nwadei requested a review of Officer Aslam's decision. On 21 June, HMRC issued their review conclusion letter to the Appellant, upholding the refusal of 14 April.

24. Ms Nwadei made a second application for AWRS approval on 2 July. This application was considered by Officer Ames who realised that Ms Nwadei had previously applied for AWRS and been refused.

25. On 27 July, Officer Ames sent Ms Nwadei an email explaining that her new application would only be considered if she supplied the information previously requested by Officer Aslam. Officer Ames asked for a response by 4 August. On 5 August, when nothing had been received, Officer Ames telephoned Ms Nwadei on the number provided on the application. The number was not available. Officer Ames then sent an email to Ms Nwadei saying that if no response was received by 9 August the application would be rejected.

26. On 10 August, as no response had been received from Ms Nwadei and it appeared that the previous reasons for refusal had not been addressed, Officer Ames sent Ms Nwadei a rejection letter.

27. Ms Nwadei contacted Officer Ames on 10 September. She said that she had been out of the country. After a further exchange of emails and a telephone conversation, Ms Nwadei asked Officer Ames to reconsider her decision of 10 August.

28. On 14 September, Officer Ames emailed Ms Nwadei and asked her to provide:

- (1) an updated business plan with financial projections;
- (2) evidence of funding in place, eg bank statement;
- (3) evidence of suppliers and customers, ie intent to trade statements; and
- (4) a due diligence plan showing the risk assessments that she would make.

29. On the same day, Ms Nwadei emailed the following documents to Officer Ames:

- (1) a business plan;
- (2) a Santander bank statement for the period May to September 2021;
- (3) a due diligence policy document;
- (4) a pro-forma invoice dated 26 February 2021 for the supply of alcohol from Kato Enterprises Ltd; and
- (5) a letter from Ms Nwadei to Lush Bar African Restaurant stating her intent to supply them with alcohol.

30. Officer Ames replied to Ms Nwadei by email on 16 September stating that the intent to trade letters should be from her potential customers. Officer Ames asked Ms Nwadei to provide the intent to trade letters as soon as possible.

31. Ms Nwadei telephoned Officer Ames on 17 September. She explained that she was finding it difficult to get her potential customers to supply a letter of intent. Officer Ames explained that they were necessary for the application and required as evidence that she had potential customers for the products she intended to sell. Ms Nwadei stated that she would write a statement and get the customers to sign it.

32. On 19 September, Ms Nwadei emailed Officer Ames two identically worded letters of intent from potential customers, Lush Bar African Restaurant and Ecowas Kitchen. Ms Nwadei also gave contact details of other potential customers who had either agreed verbally to purchase from her or in respect of which she would “supply letters from soon”. Officer Ames emailed Ms Nwadei to acknowledge receipt of the information and inform her that she was awaiting further intent to trade statements.

33. Ms Nwadei telephoned Officer Ames on 21 September and told her that she would like the application to go ahead with the information that had already been supplied. Officer Ames asked Ms Nwadei where her funding would come from and she replied that she was training in law and worked for Graceland Solicitors. Ms Nwadei’s bank statements showed that she had received amounts described as pay from Graceland on 18 June and 24 August. Ms Nwadei explained that a £20,000 payment received on 14 September was for a student loan which she intended to put into her business. Officer Ames asked for evidence of the student loan.

34. On 21 September, Ms Nwadei emailed Officer Ames with confirmation of a student loan of £11,222 and a Santander bank statement for the period March to April 2021 which she said included a deposit of £5,000 by Stella Ezedebe-Odia on 15 April.

35. Officer Ames submitted her initial recommendations to her manager on 23 September. This included an aide memoir document and a ‘Fit and Proper Test’ document which stated that, at that time, Officer Ames considered that Ms Nwadei had met the fit and proper person criteria.

36. Officer Ames had a case discussion with her manager and reviewed the application again on 1 October, 2021. They decided that the information that had been provided by Ms Nwadei was not sufficient to meet the fit and proper test described in Excise Notice 2002: Alcohol Wholesaler Registration Scheme (‘EN 2002’) and that further information was required. At the hearing, Officer Ames told us that they always had a second pair of eyes, ie the manager, look at the figures and when they discussed the information that had been provided, they realised that the calculations of profits did not stack up and that the initial start-up figure had not been shown to be money available to the business.

37. After the meeting with her manager, Officer Ames sent an email to Ms Nwadei on 1 October asking for more information to enable her to consider the approval. The information requested included the following:

- (1) details of how the business plan figures were calculated;
- (2) evidence of any storage facilities;
- (3) a breakdown of Ms Nwadei’s self-employment income figure which was declared to HMRC as £142,500;
- (4) information about the DWP loan mentioned by Ms Nwadei as part of her initial application;
- (5) bank statements to show where the student loan has been received;
- (6) information about certain entries on Ms Nwadei’s bank statements which appeared to show that she may have other income, including regular large cash deposits, nine of which were on 19 August 2021 alone; and
- (7) bank statements for 2021 for Ms Nwadei’s Metro bank account for the purposes of additional income and payment checks.

38. Ms Nwadei responded by email on 1 October stating that she had been unable to open a business bank account without AWRS approval and forwarding an email from Santander requesting confirmation of AWRS to progress.

39. On 5 October, Ms Nwadei sent Officer Ames an email with answers to the questions in her email of 1 October and ten attached documents. Ms Nwadei provided:

(1) a breakdown of the projected figures on her business plan which was based on market sale potential and making the assumption that she could sell to 3-4% of the population in the area where she lives and quoting an average selling price of £18.30 per box;

(2) in answer to the question about her declared self-employment income, Ms Nwadei stated “I completely have no clue of any income of £142,500 declared to HMRC and I kindly ask your help to provide me with details of where you obtained this number”;

(3) confirmation that DWP would not approve her loan for £7,000;

(4) an explanation of the entries on her bank statement as relating to her being a third-party agent for UK higher education institution and she therefore paid school fees and also payments for jewellery which she bought and resold; and

(5) bank statements from Metro Bank and Barclays Bank showing two student loan payments received (Ms Ames said the end balances of these accounts were less than the payment received showing a lack of viability to start up a new alcohol business).

40. On 12 October, Officer Ames emailed Ms Nwadei to ask for clarification of the information she had provided. The further information requested was as follows:

(1) details of the 12 different products she intended to sell and reasons why her customers would not buy direct from her supplier;

(2) an explanation why the figures in her breakdown did not agree with those in her business plan;

(3) a list of exactly what funding Ms Nwadei had and where it had come from; and

(4) sales and turnover details for Ms Nwadei’s jewellery business and copies of invoices for the sales she had made.

41. Ms Nwadei replied by email on 14 October. The answers given by Ms Nwadei to Officer Ames’s questions were as follows. Ms Nwadei provided a list of 12 products but not all of them were alcohol, eg some were fruit juice and one was rice. She stated that there were no direct sellers of the Nigerian brand products that she proposed to sell so customers would be unlikely to buy them direct (although her supplier of Nigerian brands of alcohol was based in the UK). Her response in relation to funding was vague, referring to £7,000 from her friend and her student finance loan. Ms Nwadei stated that the sales of watches and bracelets were a one-off transaction.

42. On 19 October, Officer Ames had a further case discussion with her manager. Officer Ames considered that the information provided by Ms Nwadei did not indicate a credible business and they considered rejecting the application. Officer Ames decided to give Ms Nwadei another opportunity to supply information and evidence of a potential viable alcohol wholesale business. On the same day, Officer Ames sent Ms Nwadei another email requesting further information, a list of all of Ms Nwadei’s sources of income in a month and explanations of some figures previously provided.

43. Officer Ames had not received a reply from Ms Nwadei by 15 November so she sent a reminder email stating that if she did not hear from Ms Nwadei by 22 November, she would assume that Ms Nwadei no longer required AWRS approval and would reject the application.

44. In a letter dated 6 December 2021, Officer Ames informed Ms Nwadei that, having reconsidered it as requested by Ms Nwadei on 13 September, the decision of 10 August to reject Ms Nwadei's application for AWRS approval was maintained. Officer Ames stated that she remained unclear about eight points:

“1. On your email of 05/10/21 you state that you ‘completely have no clue of any income of £142,500’, however on your 2019/20 Self-assessment return your authorised agent VG & Co Accountants & Management Consultants Ltd, have submitted the following figures: Turnover £142,500, Expenses £132,834 and Net Profit £9,666. You have not explained what this income relates to, or provided a copy of your accountant's workings, as requested in my email of 19/10/21.

2. On the 19/10/21 I also requested a list of ALL of your sources of income in a month. I have not received this.

3. In your business plan you indicated that the start-up capital needed is £32,000, however you have not been able to explain where the start-up capital will be funded from. Initially you said that the start-up loan of £7,000 was to be provided by the DWP, but this is no longer the case. You said that you have your student loan of £11,222, but according to your Barclays Bank Statement dated 13/09/2021, you have a balance left of £3,926.44 remaining. You have not explained how you anticipate the £7,000 loaned to you from Stella Odiah to be enough? Nor what agreement has been made to pay this off.

4. In the business plan provided, under potential customers you indicate that your monthly revenue is £454. And your yearly income would be £65,435 respectively. 12 times monthly income of £453 equates to a yearly turnover of £5,448. No explanation of this has been received.

5. The business plan mentions that you have secured 6 customers who have restaurants, drinking bar, shops in the area. I have only received evidence from Ecowas Kitchen and Lush Bar African Restaurant. You have not provided letters of intent, as requested, from the remaining 4 potential customers on their business headed paper to confirm that they would be interested in purchasing alcohol from you.

6. In the costings break down you have provided in your email dated 14/10/2021, you have shown prices for the Guinness – product 1 and product 2 in Schedule 1. The price that you have shown is the net price, once you add VAT onto this price, you will be selling the goods at below the price inc. VAT that you will have paid for the goods. You have the cost price of 325 ml Guinness at £26.40, this price excludes VAT at 20%. The cost to you is therefore £31.68, your selling price is shown as £30.00, the same applies for the 600ml, the cost price inc. VAT is £30.32, your selling price is £29.77.

These figures are therefore not credible.

7. You have said that there are no direct suppliers. The pro-forma invoice you have provided is from Kato Enterprises Ltd, who are located at Croydon, you have not explained what is to stop potential customers going direct to Kato Enterprises or other stores and buying the product from them.

8. It is important that we assess the credibility and viability of the potential alcohol business. You have not explained how you will be able to run an

alcohol supply business alongside your solicitor work/training third party agent UK higher Education institution and the other businesses you have mentioned i.e., jewellery supply and catering.”

45. On 3 January 2022, Ms Nwadei submitted her notice of appeal to the FTT to which she attached HMRC’s decision of 6 December 2021. In the space for stating the grounds of appeal, Ms Nwadei wrote:

“Application for AWRS since 5th November 2020 have been refused. The decision has been reviewed by Ms. Farah Aslam have reviewed and ask that I reapply which I have done. I don’t want more to do.

Its all about criminal record for an offence I did not commit. Due Diligence.

I was told I am not a fit and proper person”

46. The grounds of appeal did not address the reasons given by Officer Ames in the decision letter, which is the subject of this appeal, and referred to the first refusal letter in April 2021 (see [22.] above) which was not appealed. The grounds also refer to a criminal record and due diligence which were not matters mentioned by Officer Ames in the decision letter. At no point in her correspondence with Ms Nwadei did Officer Ames refer to any criminal record. Her evidence was that, although she was aware that Ms Nwadei had two spent convictions, she did not take them into account when making her decision to refuse the AWRS approval because she considered that they were not relevant. We accept Officer Ames’s evidence on this point.

47. In the Notice of Appeal, Ms Nwadei stated that her desired outcome of the appeal was as follows:

“I want to be issued with AWRS approval to do my business properly. I have been paying for storage, Website etc for over a year without a business.”

48. On 6 May 2022, HMRC submitted an application to the FTT for a direction that Ms Nwadei provide further and better particulars, essentially asking Ms Nwadei to respond to the eight points raised in Officer Ames’s letter of 6 December 2021.

49. The FTT made the direction for further and better particulars and, on 19 July 2022, Ms Nwadei responded as follows (using the same numbering as in HMRC’s letter of 6 December 2021):

“1. I registered online for AWRS on the 6th of August 2020, HMRC alerted me to this issue where an accountant had misrepresented my tax returns and gave me the information above. I told them I did not have a clue about what they were saying. I am a caterer and love cooking. I was a student at the University of East London and finished in May 2016. It was church harvest for Celestial Churches in the UK. I was contracted by Late Julius Shebioba who was the Head of Administration in CCC UK/Northern Island [sic] for catering services from May 2016 to September 2016. I was self-employed, and I should pay my tax myself. He got an accountant to help me. The earlier returns were a mistake and indicate the church expenditure, not mine. I was paid £9666.00 at the end of the contract. I had to trace the accountant, met him Mr. Sam Goffrey for the first time on 18th November 2021 and he sent the document as enclosed, See NWADE Tax Returns.

2. I don’t have a source of income. I was a Detention Custody Officer, with Serco at the Gatwick Immigration Detention Centre. My only source of income would have been supplying alcohol wholesale but waiting for registration.

3. I reported to Jobcentre after my ordeal with IRC to report myself jobless and that I wanted to start a business. All documentation have been supplied to this question.
4. There was a typo error which have been corrected to you.
5. All calls were recorded HMRC requested two when I explained the stress going through having to disturb Clients without an active business.
6. I am going to get my supply in pallet as a wholesaler and the more quantity I buy the price becomes lower.
7. When in Nigeria I owned hotels with my partner and it is a business I am used to. I personally went to Nigerian Guinness, Breweries to inquire about my new business abroad as I was their distributor years back. They introduced me to Kato to do business with. The barriers are the connections which I established years of networking and relationship building.
8. I don't do jewelry [sic], I help some buy jewelry [sic] when it was on sales, UK higher education agent is part of my law job. I am a student and no maintenance allowance. I have to work/do my AWRS business to survive."

50. In her witness statement, dated 16 January 2023, Ms Nwadei purported to clarify the points made in her response to the direction to provide further and better particulars. Ms Nwadei's statements in relation to points 1, 2, 4, 6, and 8 were materially the same as those in her response of 19 July 2022. In relation to point 3, Ms Nwadei said in her witness statement that she had not been able to obtain business loans from banks but her children and a friend would provide funds and were only waiting for the AWRS license to be approved. In relation to point 5, Ms Nwadei said in her witness statement that she had only provided two letters of intent from potential customers and had not provided such letters from the other four persons referred to in her business plan because they were not, at present, willing to supply any documentation. In relation to point 7, Ms Nwadei said in her witness statement:

"[HMRC] is asking me 'why can't my propose [sic] customers buy directly from them?' the respondent's questions here is neither understood nor make any arguable sense. Are they saying that everyone who trades in alcohol must buy directly from Kato?"

51. In her witness statement and at the hearing of the appeal, Officer Ames set out her reasons for refusing Ms Nwadei's application to be registered under the AWRS as an approved wholesaler of alcoholic goods on the ground that she was not a fit and proper person. The different reasons why Officer Ames concluded that Ms Nwadei was not a fit and proper person to carry on the activity of a wholesaler of dutiable alcoholic liquor may be summarised as follows.

(1) Failure to provide sufficient evidence of the commercial viability and/or credibility of the proposed alcohol business - In her email of 5 October 2021, Ms Nwadei stated that she 'completely has no clue of any income of £142,500' notwithstanding the fact that her 2019/20 Self-assessment Tax Return, submitted by her accountant, showed that she had a turnover of £142,500 against which she set expenses of £132,834 leaving a net profit of £9,666. At the time of the refusal decision, Ms Nwadei had not explained what the income related to or provided a copy of her accountant's workings as requested in Officer Ames's email of 19 October 2021. Officer Ames considered that it was not credible that Ms Nwadei was unaware of the income figures that her own agent submitted in her name to HMRC.

(2) Failure to provide a list of all of her sources of income in a month – Despite being asked in the email of 19 October 2021, Ms Nwadei did not provide a list of all of her sources of income in a month. Officer Ames required these details to assess the commercial viability of the alcohol business, ie if there is other income to support it, and to enable checks to be made on any associated businesses for any persistent or negligent failures to comply with any HMRC record-keeping requirements.

(3) Failure to explain how the start-up capital of £32,000, as shown in Ms Nwadei’s business plan, would be funded – Ms Nwadei has offered different explanations of how she would obtain funding at different times. Initially, Ms Nwadei said that the start-up loan of £7,000 was to be provided by the DWP in the form of loan but later she said that she had a student loan of £11,222. However, according to her Barclays Bank Statement dated 13 September 2021, Ms Nwadei had a balance of only £3,926.44 remaining. Ms Nwadei also referred to a loan of £7,000 from Stella Odiah but never explained how that would be enough.

(4) Confusion over the predicted monthly and annual income figures in her business plan – In the business plan, Ms Nwadei indicated that she expected her monthly revenue to be £454, giving an annual income of £5,448, but also stated that her yearly revenue would be £65,435 and had never explained the discrepancy between the two figures.

(5) Failure to provide satisfactory evidence of a credible alcohol business - Ms Nwadei’s business plan stated that she had secured six customers who had “restaurant, drinking bar, shops”. Ms Nwadei only ever provided evidence from two potential customers, Ecowas Kitchen and Lush Bar African Restaurant. Despite being asked to do so, Ms Nwadei has never provided letters of intent from the remaining four potential customers on business headed paper confirming that they would be interested in purchasing alcohol from her.

(6) Failure to provide credible purchases and sales figures - In the list of products with their purchase and sales prices provided in an attachment to her email dated 14 October 2021, Ms Nwadei showed VAT exclusive purchase prices for two Guinness products but appeared to show VAT inclusive figures for the sales prices because she was not (and had not applied to be) registered for VAT. As stated, the figures meant that Ms Nwadei would be trading at a loss.

(7) Failure to explain why potential customers would buy from Ms Nwadei and not direct from her supplier - Ms Nwadei had said that there were no direct suppliers of the Nigerian brand products that she proposed to sell but the pro-forma invoice she provided showed that her supplier, Kato Enterprises Ltd, was based in Croydon. Ms Nwadei has never explained why customers would not buy direct from Kato Enterprises or other suppliers. This indicated that there was no place in the alcohol supply chain for Ms Nwadei’s business and that it was therefore not credible.

(8) Failure to explain how the business would be run – Ms Nwadei stated that she was employed by a firm of solicitors as a case worker and was a student training in law as well as a third-party agent for a UK higher education institution as part of her job with the solicitors. She also bought and sold jewellery and worked as a caterer. Ms Nwadei never explained how she would be able to run an alcohol supply business alongside her other work and studying.

52. Having considered the points above, Officer Ames did not believe that there was enough evidence to show that the proposed alcohol business was credible or financially viable. Officer Ames said that she refused Ms Nwadei’s AWRS application because, when

considered together, the points above showed that neither Ms Nwadei nor her business met the fit and proper test. Officer Ames referred to section 6.9 of EN 2002 which states that “HMRC will not approve applicants where they find that they cannot substantiate that there’s a genuine plan to legitimately trade from the proposed date”.

53. In her grounds of appeal and in her witness statement, Ms Nwadei said that her application for AWRS approval had been refused because of her criminal record for an offence that she did not commit. In her evidence, Officer Ames confirmed that, although she was aware of Ms Nwadei’s criminal record, it did not form part of her decision to refuse the AWRS approval because she did not consider that it was relevant. We accept Officer Ames’s evidence on this point. If she had considered that Ms Nwadei’s spent convictions meant that she was not a fit and proper person then we would have expected Officer Ames to mention it in the decision letter but she did not do so.

54. Officer Ames also considered the further and better particulars provided by Ms Nwadei on 19 July 2022 (see [49.] above). Officer Ames stated that she did not consider that the information provided affected her decision to refuse Ms Nwadei’s application for AWRS approval for reasons which may be summarised as follows (using the same numbering as Ms Nwadei):

- (1) Ms Nwadei had never amended her incorrect tax returns and provided evidence of the catering contract and final payment of £9,666 to verify her explanation that her tax return mistakenly included church expenditure, not hers.
- (2) Ms Nwadei’s statement that she had no source of income was contradicted by the evidence which she had provided, eg banks statements showing wages paid by Graceland Solicitors and other payments to her by third parties for bills and for bills and over 60 deposits of cash during the period 27 May to 14 September 2021.
- (3) Ms Nwadei had still not provided any evidence that the required start-up capital of £32,000 would be available or about the loan agreement with Stella Odiah.
- (4) In relation to the inconsistency between the monthly and annual revenue figures, which Ms Nwadei explained was a typo, Officer Ames had not been able to find any evidence that revised and corrected figures had ever been received by HMRC.
- (5) Officer Ames’s team did not record telephone calls and she had never recorded any calls with Ms Nwadei.
- (6) Ms Nwadei had never provided figures for purchase prices for larger supplies on pallets.

55. In summary, having considered the further information provided by Ms Nwadei, Officer Ames was not satisfied that Ms Nwadei was a fit and proper person to be approved under the AWRS due to the conflicting information received and the lack of any reasonable evidence of a credible and viable business.

LEGISLATIVE CONTEXT

Statutory test for approval for AWRS

56. Part VIA of the ALDA, which was inserted by the Finance Act 2015 with effect from 26 March 2015, provides for the regulation of the wholesale of alcoholic liquor upon which duty is charged under that Act. The selling of alcohol wholesale is a controlled activity under that Part.

57. In so far as relevant to this appeal, section 88C ALDA provides:

“88C Approval to carry on controlled activity

(1) A UK person may not carry on a controlled activity otherwise than in accordance with an approval given by the Commissioners under this section.

(2) The Commissioners may approve a person under this section to carry on a controlled activity only if they are satisfied that the person is a fit and proper person to carry on the activity.

(3) The Commissioners may approve a person under this section to carry on a controlled activity for such periods and subject to such conditions or restrictions as they may think fit or as they may by or under regulations made by them prescribe.”

58. It follows from section 88C(2) ALDA that if HMRC are not satisfied that a person is a fit and proper person to carry on the activity of a wholesaler of dutiable alcoholic liquor they cannot approve that person under the AWRS.

AWRS application requirements

59. EN 2002 sets out details about the AWRS and how it applies to persons who sell (or offer to sell or arrange to sell) alcoholic products subject to excise duty to businesses. Although some parts of EN 2002 have the force of law, the paragraphs quoted below do not. EN 2002 is useful because it shows how HMRC view the law and also how they approach the issue of determining whether a person is a fit and proper person to be approved under the AWRS.

60. The information that HMRC require a person to provide when applying for approval to carry on a controlled activity is set out in Section 6.6 of EN 2002. The list includes the following as a minimum:

- legal entity name
- trading name
- VAT registration number if registered
- Self Assessment or Corporation Tax Unique Taxpayer Reference (UTR) number if registered
- registered business address and how long at that address
- contact telephone number
- email address and postal address
- your estimated annual turnover (for new businesses)
- types of customer you sell to, for example pubs, restaurants
- products sold
- how many trading premises you operate and their addresses
- business names, addresses and VAT numbers (if registered) of main suppliers
- whether or not you import or export alcoholic goods”

61. In addition, HMRC require sole proprietors, such as Ms Nwadei, to provide the following:

- National Insurance number
- date of birth
- Self Assessment UTR (if they have one)
- VAT number (if they have one)

62. The above lists are not exhaustive and HMRC may request additional information.
63. When HMRC receive an application for approval, they carry out a series of checks (see EN 2002 section 6.8).

Meaning of fit and proper

64. There is no definition of “fit and proper person” in the ALDA. EN 2002 contains non-statutory guidance on whether a person is regarded as fit and proper by HMRC. Section 6.9 of EN 2002 states:

“6.9 The fit and proper test

Only applicants who can demonstrate that they’re fit and proper to carry on a controlled activity will be granted approval. This means HMRC must be satisfied the business is genuine and that all persons with an important role or interest in it are law abiding, responsible, and do not pose any significant threat in terms of potential revenue non-compliance or fraud.

HMRC will assess all applicants (not just the legal entity of the business but all partners, directors, and other key persons) against a number of ‘fit and proper’ criteria to establish:

- 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:
 - 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
 - seizures of duty unpaid products
 - penalties for wrongdoing or other civil penalties which suggest a business do (*sic*) not have a responsible outlook on its tax obligations
 - trading with unapproved persons
 - previous occasions where approvals have been revoked or refused for this or other regimes (including liquor licensing, and so on)
 - previous confiscation orders and recovery proceedings under the Proceeds of Crime Act
 - key persons have been disqualified as a director under company law
- there are no connections between the 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 disregard convictions that are spent under the terms of the Rehabilitation of Offenders Act 1974. Where the person in question has a spent conviction, HMRC will disregard the conviction and assess that person on the remaining fit and proper criteria in this paragraph
- the application is accurate and complete and there has been no attempt to deceive

- there have not been persistent or negligent failures to comply with any HMRC record-keeping requirements, for example poor record keeping in spite of 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 will not 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 section 12 for more information about due diligence.

This list is not exhaustive. HMRC may refuse to approve you for reasons other than those listed, if they have justifiable concerns about your suitability to be approved for AWRS.

HMRC is also unlikely to approve an application if the applicant has previously had their application for AWRS approval refused if the reasons for the previous refusal are still relevant.”

65. In this case, there are no ‘other key persons’ as the only person who plays a key role in the operation of the business and is its ‘guiding mind’ in the sense of being responsible for directing and controlling the activities of the business and its day to day management is Ms Nwadei.

Jurisdiction of the FTT on appeal

66. If HMRC refuse an application for approval under the AWRS and the applicant wishes to challenge that decision then the applicant can either appeal immediately to the FTT under section 16 FA 1994 or ask for the decision to be reviewed by another HMRC officer not previously involved in the matter and then, if the decision is confirmed on review, appeal to the FTT.

67. Section 16 FA 1994 provides that an appeal against a ‘relevant decision’ may be made to the FTT. Section 13A(2)(j) FA 1994 defines ‘relevant decision’ by reference to Schedule 5 to FA 1994 which includes, in paragraph 3(1)(p), any decision for the purposes of Part 6A ALDA as to whether or not a person is to be approved and registered for the wholesaling of controlled liquor. Section 16(8) FA 1994 provides that, subject to an irrelevant exception, any decision described in Schedule 5 to the FA 1994 is an ‘ancillary matter’. Accordingly, a decision to refuse an application for approval under Part 6A ALDA is a decision as to an ancillary matter for the purposes of section 16 FA94.

68. Section 16(4) provides that the FTT has a supervisory jurisdiction in relation to decisions as to ancillary matters 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) in the case of a decision which has already been acted on or taken effect and cannot be remedied by a review or further review as appropriate, to declare the decision to have been unreasonable and to give directions to the Commissioners as to the steps to be taken for securing that repetitions of the unreasonableness do not occur when comparable circumstances arise in future.”

69. Section 16(6) FA94 provides that the burden of proof in an appeal under the section is on the appellant, ie Ms Nwadei. The standard of proof is the ordinary civil standard, ie the balance of probabilities.

70. Whether HMRC are satisfied that a person is fit and proper to carry on the activity of a wholesaler of alcoholic goods is a matter for the administrative discretion of HMRC. The FTT’s powers to interfere with a decision by HMRC that a person is not fit and proper are limited and can only be exercised where the decision is one which could not reasonably have been arrived at (see *CC & C Ltd v HMRC* [2014] EWCA Civ 1653 at [15] – [17]). The House of Lords in *Customs & Excise Commissioners v JH Corbitt (Numismatists) Ltd* [1980] STC 231 set out the approach for the FTT (then the VAT Tribunal) to follow where it has a supervisory jurisdiction at page 239 where Lord Lane stated that the tribunal could only review the decision if it were shown that the Commissioners (now HMRC) had acted in a way which no reasonable panel of Commissioners could have acted; if they had taken into account some irrelevant matter or had disregarded something to which they should have given weight. In *Balbir Singh Gora v Customs & Excise Commissioners* [2004] QB 93, [2003] EWCA Civ 525, Pill LJ accepted that the tribunal could decide for itself primary facts and then go on to decide whether, in the light of its findings of fact, the decision was reasonable.

ISSUE IN THE APPEAL

71. The only issue to be determined in this appeal is whether Ms Nwadei, who bears the burden of proof, has established that the decision by Officer Ames to refuse her application to be approved as a wholesaler of alcoholic goods for the purposes of the AWRS was a decision which no reasonable officer of HMRC could have reached. In order to do so, Ms Nwadei must show, on the balance of probabilities, that Officer Ames failed to consider matters which should have been taken into account or took into account some irrelevant matters when she made the decision or otherwise reached a decision that was so plainly wrong that no officer of HMRC, acting reasonably, could have reached it.

DISCUSSION

72. In considering whether to grant or refuse Ms Nwadei approval as a wholesaler of alcoholic goods under the AWRS, Officer Ames took into account the matters at [51.] and [54.] above. Having considered those matters, Officer Ames concluded that she was not satisfied that Ms Nwadei was a fit and proper person to be approved due to the conflicting information received and the lack of any reasonable evidence of a credible and viable business.

73. Ms Nwadei did not argue that Officer Ames had failed to take any relevant matter into account but simply that she, Ms Nwadei, had answered all the questions asked of her and provided everything requested. In effect, she contended that Officer Ames had reached the

wrong conclusion on the material available to her and should have been satisfied that Ms Nwadei was a fit and proper person to be approved to carry on a controlled trade in alcoholic liquor. Ms Nwadei also contended that that her application for AWRS approval had been refused because of her criminal record for an offence that she did not commit but we found that there was no evidence to support that submission (see [53.] above).

74. We consider at [75.] to [86.] below each of the reasons relied on by Officer Ames for refusing Ms Nwadei's application.

75. Officer Ames considered that it was not credible that Ms Nwadei was unaware of the very large income and expenses figures in her self-assessment tax return for 2019/20. These figures (£142,500 income and £132,834 expenses) were said by Ms Nwadei to relate to the church for which she provided catering services and that her accountant had somehow included the Church's revenue and expenditure in her Self-Assessment Tax return by mistake. Officer Ames considered that it was unsatisfactory that, if her explanation were true, Ms Nwadei had been completely unaware of the income and expenditure figures that her accountant had submitted to HMRC on her behalf. Officer Ames also noted that Ms Nwadei had not amended her incorrect tax return and had never provided any evidence of the catering contract and payment of around £9,000 for her services.

76. We agree that the errors, if that is what they are, in Ms Nwadei's tax return for 2019/20 are significant as is her failure to take steps to correct them. We do not need to determine the correct treatment for tax purposes of the amounts shown in Ms Nwadei's tax return or whether she or her accountant were wrong to include them. It is sufficient for the purposes of this appeal if we conclude that it was reasonable for Officer Ames to take the view that the errors showed that Ms Nwadei was not a fit and proper person to carry on a controlled activity. We consider that these errors and the lack of any convincing explanation of how they occurred and why they went undetected and uncorrected for so long cast serious doubt on Ms Nwadei's ability to carry on a controlled activity such as the wholesale of alcohol which requires careful record keeping and transparency when there have been errors. In the circumstances, we consider that Officer Ames was fully entitled to consider that Ms Nwadei had not satisfied the fit and proper test.

77. Officer Ames was also concerned that Ms Nwadei had not provided a complete and accurate statement of her sources of income. Ms Nwadei made inconsistent statements about her income and failed to provide satisfactory explanations for payments, including multiple large deposits of cash, into her bank account. In her email of 5 October 2021, Ms Nwadei stated in response to HMRC's question regarding regular large payments of cash made into her Santander bank account that she bought and re-sold jewellery:

“A lady named Angela Ohis travels from France with costume jewellery which I usually buy for resale purposes. I had a customer for Love Bangles whom I sold some of the jewellery to and I also buy from Cassidy Jewellery, my customer paid me in cash. This cash was then paid in at the ATM inside Santander bank in Woolwich.”

78. The payments into the account were explored at the hearing in cross-examination. When asked about deposits of cash (totalling £10,000 in December 2020 and £1,910 in January 2021) paid into her Santander account via an ATM and significant transfers of money (totalling £5,374 in December 2020 and £5,222 in January 2021) from a beauty parlour, Ms Nwadei said that she did not explain them to Officer Ames as she had not asked questions about the payments. Ms Nwadei could not really explain them to us at the hearing either.

79. In relation to her Metro Bank account, Ms Nwadei acknowledged that all payments into the account during September 2021 were made by her apart from credits of £488.80 on 14 and 28 September and of £250.20 on 24 September which were from the DWP. The deposits by Ms Nwadei amounted to £27,200 in total. In response to questions about the credits by the DWP, Ms Nwadei said that the Metro Bank account was not entirely hers, despite being in her sole name. She stated that the payments from the DWP were not for her but for someone else. Ms Nwadei said that she acted as a third party for that person and the DWP paid them through her. Ms Nwadei could not or would not name the third party at the hearing. Other Metro Bank statements showed that Ms Nwadei had received payments from the DWP in June, July and August 2021. Following the hearing, Ms Nwadei provided information about the DWP payments. She said that she was an appointee to Mr Isaac Asemah and she was responsible for overseeing his care. She maintained that the payments by the DWP into her Metro Bank account were for his care and his National Insurance number was stated as a reference on the payment details. Ms Nwadei also provided a statement of account of payments which she claimed to have made to the care home in which Mr Asemah resides. The statement of account from the London Borough of Lewisham was addressed to Mr Asemah c/o Ms Nwadei and showed regular (mostly monthly) payments of £608.80 for residential and nursing services between May 2021 and May 2022 when the payments increased to £627.80 and continued into 2023. The statements for the Metro Bank account showed that there were payments by Ms Nwadei to the London Borough of Lewisham in the amounts shown on the Borough's statement of account.

80. Although Ms Nwadei has provided some explanation for the payments which she received from the DWP, she has not provided any details about her relationship with Mr Asemah and how she is involved in his care or why the DWP pays money to her and not direct to him. Whatever the situation in relation to the DWP payments, there are also the large payments into both of Ms Nwadei's bank accounts which have never been explained by her. The deposits strongly suggest that Ms Nwadei's statement in her witness statement that she had no other sources of income apart from monies earned during her brief work with Serco as a detention custody officer between August and November 2020 is not true. We do not, however, have to decide whether Ms Nwadei was being truthful when she stated that she had no sources of income. It is sufficient that we find, as we do, that Officer Ames was justified in forming the view that Ms Nwadei had not provided a complete and accurate statement of her sources of income and there remained unanswered questions about her income. In the circumstances, it was reasonable for Officer Ames to conclude that Ms Nwadei's failure to provide full and frank disclosure of her sources of income meant that she was not a fit and proper person for the purposes of the AWRS.

81. Officer Ames considered that Ms Nwadei had never satisfactorily explained how she would obtain the start-up capital of £32,000 which was required by her business plan. In her witness statement Ms Nwadei said that she had not been able to obtain business loans from banks but her children and a friend would provide funds. There was, however, no evidence from her children or her friend that supported Ms Nwadei's assertion that they had the money and were willing to make a loan of £32,000 to her. In the absence of any evidence, we consider that it was reasonable of Officer Ames to take the view that the proposal to fund the business lacked credibility and, as a result, Ms Nwadei did not satisfy the fit and proper test.

82. Officer Ames asked Ms Nwadei to explain why the monthly revenue figure of £454 and annual projected revenue figure of £65,435 in the business plan were inconsistent (see [82.] above). In her further and better particulars and when asked in the hearing, Ms Nwadei said it was a typo although she did not suggest what the true figure should be. She also said that the error had been corrected but could not say when or where such correction could be found

in the documents. At the hearing Tribunal Member Neil commented that it looked as though there was a '5' missing from the monthly amount and £454 should have been £5,454 although that gives a slightly higher figure than £65,435 shown in the business plan. We accept that the inconsistency was the result of a slip and should not count against her in any consideration of whether she was a fit and proper person to be approved as a wholesaler of alcoholic goods for the purposes of the AWRS. It was, however, troubling that Ms Nwadei could not explain the error herself or point out where and when it had been corrected. We could not find anything in the hearing bundle to support her claim that she had provided HMRC with a corrected monthly revenue figure and we find that she did not do so. By itself, we would not consider that a clerical error would justify a conclusion that someone was not a fit and proper person. However, the inability of Ms Nwadei to explain the error and the mistaken assertion that she had informed HMRC of the correct figures, for which there was no evidence, all suggest that Ms Nwadei was not fit to carry on a controlled activity.

83. Ms Nwadei's business plan stated that she had secured six customers but she only ever provided evidence from two. In her witness statement, Ms Nwadei said that the other four potential customers were not, at present, willing to supply any documents to show that they intended to trade with her. Officer Ames considered that the fact that Ms Nwadei had not been able to provide evidence of more potential customers showed that the business was not credible. While it is obvious that a brand new business is unlikely to have many confirmed customers, we agree that the fact that Ms Nwadei had said in her business plan that she had identified six potential customers but could only provide evidence in relation to two undermines the credibility of the business plan and the business.

84. In relation to the figures provided by Ms Nwadei and the profitability of the proposed alcohol wholesale business, Officer Ames considered that Ms Nwadei's projected sales and purchases figures were not credible. In particular, Officer Ames focussed on the costings provided by Ms Nwadei as an attachment to her email dated 14 October 2021 which showed VAT exclusive purchase prices for two Guinness products but appeared to show VAT inclusive figures for the sales prices because she was not (and had not applied to be) registered for VAT. At the hearing, Officer Ames said that she could not remember why she thought that the sales price was VAT inclusive while the purchase prices were VAT exclusive meaning that it would cost Ms Nwadei more to buy the Guinness products than she would obtain for selling them. There was no doubt that Ms Nwadei was not registered for VAT but she said that she thought she was registered. If so then the figures might both have been expressed as VAT exclusive. At the hearing, Ms Nwadei told us that she had registered for VAT when she wanted to be a child minder. It was not clear if Ms Nwadei ever traded and accounted for VAT but it was clear that she was de-registered on 22 March 2016. Ms Nwadei said (and we accept) that she was not aware that she had been de-registered. Ms Hickey confirmed that HMRC were not saying that Ms Nwadei had sought to mislead when she put her old VAT number on the AWRS application form.

85. Even though we accept that Ms Nwadei thought that she was still registered for VAT, notwithstanding the fact that she had not made any VAT returns or accounted for VAT for several years (if ever), she had not carried out any investigation into whether her sales and purchases figures were VAT inclusive or VAT exclusive and could not explain how she proposed VAT would apply to the proposed business. There was no evidence that Ms Nwadei had considered how her proposed sales prices compared to those of competitors except for a reference in her updated business plan provided to HMRC on 14 October (see [41.] above). The business plan referred to two competitors and, in both cases, described their average prices as "more expensive" without any detail. In relation to the second competitor, the business plan stated that one of their strengths was "product is superior to

other competitors” while also identifying one of their weaknesses as “competitors’ products are superior or cheaper”. When asked about her profit margins by Officer Ames, Ms Nwadei simply responded by saying that she would buy larger quantities by the pallet load but she never provided any figures to show how the unit price reduced or explain what the effect on her profit margins would be. In our view, it was entirely reasonable for Officer Ames to conclude on the evidence that Ms Nwadei had failed to provide credible purchases and sales figures and, as a result, she did not satisfy the fit and proper test.

86. In her email of 14 October (see [41.] above) Ms Nwadei had said that there were no direct suppliers of the Nigerian branded products that she proposed to supply but Officer Ames pointed out to her that her intended supplier, Kato Enterprises Limited was based in Croydon. Ms Nwadei’s response in her witness statement (see [50.] above) was that HMRC’s query did not make sense and she asked whether HMRC were saying that everyone who trades in alcohol must buy directly from Kato. In our judgement, there was nothing unclear about Officer Ames’s question. Ms Nwadei has never explained why her customers, which were all businesses such as bars and restaurants, would buy products from her when they could obtain them more cheaply from another wholesaler only a few miles away. In some cases, it may be that a wholesaler can purchase large quantities from a manufacturer or distributor at a significant discount and supply them in smaller lots to retail outlets, who are not able to purchase in bulk, at a higher unit price and thus make a profit. Ms Nwadei’s updated business plan suggested that she would buy in bulk but also that she intended to make bulk sales to supermarkets. There were no figures that showed the purchase and sales prices for the bulk model of the business. We agree with Officer Ames that the business model put forward by Ms Nwadei lacked credibility and this was reinforced by her inability to understand HMRC’s question about why her customers would not bypass her and buy direct from her supplier.

87. Having considered the points above individually, we must now consider them as a whole in the context of all the evidence in the case. In our view, taking everything into account, Ms Nwadei has not demonstrated on the balance of probabilities that Officer Ames’s decision to refuse her application for approval under the AWRS because she was not satisfied that Ms Nwadei was a fit and proper person was unreasonable. In summary, we conclude that Officer Ames was entitled to conclude on the information available to her that she was not satisfied that Ms Nwadei was a fit and proper person to carry on the controlled activity of the wholesale of alcoholic liquor. In view of the lack of clarity and credibility of some of Ms Nwadei’s answers in correspondence (and at the hearing) we do not see how Officer Ames could have reached any other decision. It follows that we do not consider that Officer Ames’s decision to refuse to approve Ms Nwadei under the AWRS was so plainly wrong that no officer of HMRC, acting reasonably, could have reached it. Accordingly, we confirm that HMRC’s decision stands.

DECISION

88. For the reasons set out above, Ms Nwadei’s appeal is dismissed.

89. Although our decision means that Ms Nwadei is not approved to carry on the activity of a wholesaler of dutiable alcoholic liquor, she is able to apply again. If she can address HMRC’s objections to her approval and satisfy them that she is a fit and proper person to carry on a controlled activity then she should be able to obtain the approval she seeks.

DELAY IN PRODUCING DECISION

90. Ms Nwadei provided some further information on 28 April 2023 in response to the panel’s request (see [16.] above). HMRC responded with their comments on the further information on 4 May. Unfortunately, Ms Nwadei’s further information and HMRC’s

comments were not forwarded to the panel until the end of June. Due to other matters, Judge Sinfield has not been able to consider the further material and incorporate it into the decision until recently. Judge Sinfield apologises to the parties for the delay in finalising and issuing the decision in this case.

RIGHT TO APPLY FOR PERMISSION TO APPEAL

91. 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.

**JUDGE GREG SINFIELD
CHAMBER PRESIDENT**

Release date: 17th AUGUST 2023