Neutral Citation: [2025] UKFTT 97 (TC)

Case Number: TC09423

FIRST-TIER TRIBUNAL
TAX CHAMBER

In public by remote video hearing

Appeal reference: TC/2023/08792

CUSTOMS DUTY AND VAT – strike out application by HMRC – importation of maltodextrin – HMRC decision to give it a commodity code under Chapter 17 of the Tariff – appeal on grounds it contains no sugar and should be classified under Chapter 19 – decision appealable – tribunal jurisdiction? Yes – reasonable prospect of success? – only if sugar content is less than 10% – appeal struck out but suspended pending chemical analysis – directions given

Heard on: 24 January 2025
Judgment date: 3 February 2025

Before

TRIBUNAL JUDGE NIGEL POPPLEWELL

Between

APPLIED NUTRITION LIMITED

Appellant

and

THE COMMISSIONERS FOR HIS MAJESTY'S REVENUE AND CUSTOMS

Respondents

Representation:

For the Appellant: Joe Pollard director of the Appellant

For the Respondents: Esther Hickey litigator of HM Revenue and Customs' Solicitor's Office

DECISION

INTRODUCTION

1. This decision deals with a strike out application which has been brought by HMRC. The underlying appeal concerns their decision which was issued on 2 May 2023 relating to import duties on goods which were declared by the appellant between 5 May 2020 and 22 December 2022. The goods comprised a substance called maltodextrin which the appellant had imported under commodity code 17 02 90 95 00. HMRC consider that the product should have been imported under commodity code 17 02 90 50 00 and have issued post clearance demands totalling £91,305.61 to recover the customs duty and associated input VAT which, in their view, should have been paid by the appellant on importation.

2. The appellant has appealed against those post-clearance demands. It does so on the basis that maltodextrin should be classified under 19 01 90 99 90.

3. In HMRC's view this is an attempt to place maltodextrin under a code which is not permitted by primary legislation. This is contrary to the clear intention of Parliament and the tribunal does not have power to rewrite the legislation or revise the Tariff. Consequently, the tribunal has no jurisdiction to consider the appeal which must be struck out.

4. In the alternative, the appeal has no reasonable prospect of success.

THE LAW

5. There was little dispute about the relevant law. I have set out the law in relation to striking out in the Appendix. The detailed legislation, both European and domestic, relating to the correct customs code is fiendishly complicated. I am indebted to Ms Hickey for guiding me through it. I have set out below the law which I consider to be relevant to the underlying dispute in this appeal.

6. In order to impose customs duty on cross-border trade, countries have established systems for the classification of goods based on international law. When the UK was part of the EU, this system was based on the Combined Nomenclature ("**CN**") of the EU. Following the withdrawal of the UK from the EU, the UK Tariff system was established by the Customs Tariff (Establishment) (EU Exit) Regulations 2020 ("**the Exit Regulations**").

7. Under both the CN and the Tariff established by the Exit Regulations, numerical codes called commodity codes, are allocated to goods which are classified accordingly. This code then determines the rate of duty applicable to the goods.

8. That classification process takes account of a number of characteristics using legally binding rules known as the General Interpretive Rules ("**GIR's**").

9. Rule 1 states "The titles of Sections, Chapters and sub-Chapters are provided for ease of reference only; for legal purposes, classification shall be determined according to the terms of the headings and any relative Section or Chapter Notes and, provided such headings Notes do not otherwise require, according to the following provisions…".

10. Under regulation 3 of the Exit Regulations:

(1) For the purposes of determining the commodity codes within which goods most appropriately fall, the rules of interpretation contained in the following have effect—

(a) Part Two (Goods Classification Table Rules of Interpretation) of the Tariff of the United Kingdom; and

(b) notes to a section or chapter of the Goods Classification Table".

11. The Goods Classification Table means the table so named in the UK Tariff which in turn means the document entitled "the Tariff of the United Kingdom" ("**the Tariff**"). The original version of this was dated 7 November 2023, but it is revised on an annual basis.

12. What this essentially means is that where goods, or a product, is specifically identified by a heading or a Chapter note, that heading or Chapter note has the rule of law and it is obligatory that the product is classified under that Chapter.

13. Goods are classified by way of a numerical code containing 10 digits. The first two digits relate to the Chapter and the next two to the heading within that Chapter number.

14. In this case there are three Chapters within the Tariff which are under consideration.

15. Chapter 35 of the Tariff deals with, amongst other things, Albuminoidal substances and modified starches.

16. Under code 35 05 which describes "Dextrins and other modified starches…" Chapter note 2 states:

"For the purposes of heading 35 05, the term 'dextrins' means starch degradation products with a reducing sugar content, expressed as dextrose on the dry substance, not exceeding 10%. Such products with a reducing sugar content exceeding 10% fall in heading 1702".

17. Chapter 17 is headed "Sugars and sugar confectionery" and contains four headings. Heading 17 02 is entitled "other sugars, including chemically pure lactose, maltose, glucose and fructose…".

18. When using the online version, if you click on this heading, it takes you to a screen which contains a number of headings and subheadings. Under the heading "Other, including invert sugar …" there is a subheading entitled "Maltodextrine and maltodextrine syrup", against which is the commodity code 17 02 90 50 00, and the appropriate duty rate.

19. Chapter 19 is entitled "Preparations of cereals, flour, starch or milk; pastrycooks' products". It contains (substantially paraphrased) five headings. Malt extract etc; pasta; tapioca and substitutes; prepared foods obtained by the swelling or roasting of cereals; and bread pastry cakes and biscuits.

20. The first of these headings, 19 01, which is where the appellant asserts the maltodextrin should be classified, describes the classification more fully as follows:

"Malt extract; food preparations of flour, groats, meal, starch or malt extract, not containing cocoa or containing less than 40 % by weight of cocoa calculated on a totally defatted basis, not elsewhere specified or included; food preparations of goods of

headings 0401 to 0404, not containing cocoa or containing less than 5 % by weight of cocoa calculated on a totally defatted basis, not elsewhere specified or included".

21. Explanatory notes to aid interpretation of the GN called the Harmonised System Explanatory Notes ("**the Explanatory Notes**") are not binding but on the authority of the ECJ decision in *British Sky Broadcasting Group Limited* (C-288-09) published 14 April 2011, "may be an important aid to the interpretation of the scope of the various headings…" [63].

22. The explanatory notes relating to Chapter 17 deal with maltodextrin at subsection (6) under the heading "Other Sugars", in the following terms:

> "Malto-dextrins (or dextri-maltoses), obtained by the same process as commercial glucose. They contain maltose and polysaccharides in variable proportions. However, they are less hydrolysed and therefore have a lower reducing sugar content than commercial glucose. The heading covers only such products with a reducing sugar content, expressed as dextrose on the dry substance, exceeding 10 % (but less than 20 %). Those with a reducing sugar content not exceeding 10 % fall in heading 35.05. Malto-dextrins are generally in the form of white powders, but they are also marketed in the form of a syrup (see Part (B)). They are used chiefly in the manufacture of baby food and low-calory dietetic foods, as extenders for flavouring substances or food colouring agents, and in the pharmaceutical industry as carriers".

THE EVIDENCE AND THE FACTS

23. I was provided with a bundle of documents from which I find the following:

(1) The appellant imported maltodextrin on 9 occasions between 5 May 2020 and 22 December 2022 under commodity code 17 02 90 95 00. This code has a duty rate of £0.3 per 100 kg/% saccharide. Prior to 1 January 2021 the rate was €0.4/100 kg/% saccharide.

(2) In February 2023, HMRC requested relevant paperwork to carry out post clearance checks on these imports. The appellant provided the relevant documentation.

(3) HMRC concluded, based on this information, that the imported product fell under commodity code 17 02 90 50 00 covering "maltodextrine and maltodextrine syrup".

(4) In a letter dated 14 April 2023, Grant Thornton LLP, acting on behalf of the appellant, said this:

> "We have looked at the ATR decisions that you are provided, one of which is quoted as "Maltodextrin with High DE. The product is a scentless, white powder-polysaccharides, oligosaccharides. It has a dextrose equivalent minimum of 15% and maximum of 20%. The product is within bags made of Laminated polypropylene food grades".
>
> Whilst we agree that the products fit into the correct dextrose equivalent range, our argument for the goods to be classified within 17 0290 9500 centres around the fact product is a dextrin and not a maltodextrin as described in the tariff.…".

(5) On 3 May 2023 a decision letter was issued to the appellant as were the post clearance demands. In HMRC's view, the product should have been classified under code 17 02 90 50 00, and were therefore subject to a duty rate of £16/100 kg (pre-1 January 2021 this was €20/100kg. They assessed the appellant to customs duty and import VAT of £91,305.61.

(6) On 9 May 2023, Grant Thornton LLP, on behalf of the appellant, requested a statutory review.

(7) The statutory review upheld the decision that the product should have been classified under 17 02 90 50 00, and revised the amount due by reducing it by 8p.

(8) On 29 June 2023 the appellant filed a notice of appeal with the tribunal.

(9) In its grounds of appeal, the appellant states that:

> "Maltodextrin should not fall under the 1702 heading, due to not being sugar and being a starch product. This is the reason why we initially opted for a commodity code within the same chapter as 1702905000 'Maltodextrin', but one which stated 'other' as we did not believe our product satisfied the conditions set out in the 1702 heading description.
>
> After receiving the RTBH and further investigating this product, we now understand that the product should not have been classified within the 'sugar and sugar confectionery' heading at all.
>
> Our argument is that specifically Maltodextrin should not fall into chapter 17 as it does not satisfy the 2 digit heading title in itself 'Sugar and sugar confectionery'.
>
> We accept that we describe the product as 'Maltodextrin' or 'Sugar Free Maltodextrin' on our commercial documents, specifically on our invoices. This does not change the fact that our Maltodextrin does not fit into chapter 17, due to Maltodextrin having a low DE account and it should as such be classified as a starch (and not a sugar) …
>
> Based on the above, we now understand that our product should not fall within the 1702 chapter and should be classified under commodity code 1901 1909 990 as it is a starch and not a sugar.
>
> It does not make any logical sense for this product to fall into chapter 17 'Sugar and sugar confectionery' as it does not contain any sugar".

DISCUSSION

Submissions

24. In summary Ms Hickey submitted as follows:

(1) Maltodextrin is listed specifically in the subheading within Chapter 17 of the Tariff. Accordingly, in accordance with the interpretation provisions in the GIR's and the Explanatory Notes, the correct commodity code is that which HMRC have now confirmed to the appellant, namely 17 02 90 50 00.

(2) The Chapter notes to Chapter 35, which are legally binding, specifically state that products with a reducing sugar content exceeding 10%, fall within heading 1702. Grant Thornton, on behalf of the appellant, have admitted that the maltodextrin imported by the appellant had a sugar content exceeding 10%.

(3) Although there is nothing specifically excluding maltodextrin from being included within Chapter 19, it is evident there is no need for any specific exclusion given that maltodextrin is specifically identified within Chapter 17.

(4) Furthermore, the notes in Chapter 19 at 1901, which deal with starch or malt extract, are subject to the provision that they are "not elsewhere specified or included". And maltodextrin is specified or included within the Chapter notes in Chapter 35 and, more importantly, as a specific subheading in Chapter 17.

(5) In asking the tribunal to classify the maltodextrin under Chapter 19, the appellant is asking me to interpret primary legislation in a way which is contrary to the clear intention of Parliament and is tantamount to rewriting the legislation. I have no judicial review power, and if the appellant considers that the legislation is something which could be challenged by way of judicial review, then he must bring that challenge in the High Court.

(6) Furthermore, if the tribunal does have jurisdiction, then the appellant's challenge has no reasonable prospects of success in light of the admission by Grant Thornton that the maltodextrin had a sugar content (or dextrose equivalent ("**DE**")) of between 15% and 20%.

25. In summary Mr Pollard submitted as follows:

(1) Maltodextrin is a starch and not a sugar by any accepted standards. It is a polysaccharide. This is borne out by a considerable body of authoritative literature. It has a very low DE which justifies its categorisation as a starch.

(2) Chapter 17 and Chapter 35 both deal with sugars. Maltodextrin, not being sugar, cannot be categorised within either Chapter. This is notwithstanding that it is identified in Chapter 17, and the appellant describes the product as maltodextrin in its commercial documents, in particular invoices presented to the appellant by its supplier.

(3) Maltodextrin is most appropriately categorised in Chapter 19 which deals with starches. There is nothing in Chapter 19 which prohibits it being classified within that Chapter.

(4) It is not certain where the admission that the maltodextrin has a sugar content of between 15% and 20%, came from. If this matter was to further, he would have the product chemically analysed.

My view

26. In her oral submissions, Ms Hickey stated that three things are not in dispute. Firstly, that the product is maltodextrin. Secondly, that HMRC have classified the maltodextrin as liable to duty under commodity code 17 02 90 50 00. Thirdly, the post-clearance demand is not an appealable matter but has been issued as a result of HMRC's decision to so classify the maltodextrin. It is that underlying decision which is the appealable matter.

27. Clearly, if I have no jurisdiction in relation to the proceedings, I have no alternative but to strike them out.

28. And HMRC submits that this is the case in that the appeal essentially asks me to accept that the categorisation of the maltodextrin under Chapter 19 is tantamount to rewriting the legislation and interpret it in a way which is contrary to the evident intention of Parliament. And I have no power to do this.

29. I do not see it in the same way. It is clear from the appellant's grounds of appeal as supplemented by subsequent correspondence and in his oral submissions, that he is simply challenging HMRC's decision to categorise the maltodextrin under Chapter 17. Although I was

taken to no authority on this, my understanding is that it is clearly within the ambit of a jurisdictional appeal for him to so challenge it in this way. The appeal is against the decision to classify the maltodextrin under Chapter 17.

30. However, I am entirely in agreement with Ms Hickey that, subject to what I say below regarding the DE content, maltodextrin which has a DE content of more than 10%, must be classified and given a commodity code, under Chapter 17. I say this largely for the reasons that she has provided in her submissions.

31. The rules of interpretation under both the GIR's and the Explanatory Notes make it clear that headings and Chapter notes in both the GN, and the Tariff have legally binding effect. So that, in essence, where an item, such as maltodextrin, is specifically identified in a heading or a Chapter note, it becomes part of the GN, or of the Tariff, and so comprises primary law.

32. In this case there are three factors which support the classification of the maltodextrin as being within Chapter 17. Firstly, there is a subheading within that Chapter of "maltodextrin and maltodextrin syrup". Secondly, there are the Chapter notes in Chapter 35 which say that where dextrins have a sugar content of less than 10%, they fall in heading 1702. Finally, there are the Explanatory Notes which explain that maltodextrins which have a sugar content of more than 10% should be categorised under Chapter 17, but those with less, should fall within heading 35 05.

33. Mr Pollard contends that it is generally accepted that maltodextrin is a starch. And since it is not a sugar, neither Chapter 17 nor Chapter 35 is applicable. I do not accept that. Whilst there is some literature suggesting that maltodextrin is a starch, the issue for categorisation under commodity code, is not whether it is a pure starch, but whether it has a sugar content (monosaccharide and disaccharides) as well as the starch, of more than 10%. If so, as appears to be the case here, then notwithstanding that the Chapter headings might be slightly misleading, the provisions in Chapters 17 and 35 which have legally binding effect, oblige HMRC to give maltodextrin a commodity code under Chapter 17. And this is the case notwithstanding what other people, no matter how eminent, might describe maltodextrin.

34. If Parliament has got the description "wrong" in the eyes of those people, then that is a matter for Parliament. Both HMRC and myself have to apply the law as it stands. And as it stands, we are obliged to categorise maltodextrin with a sugar content of more than 10% under Chapter 17. In these circumstances HMRC's decision to allocate a commodity code of 17 02 90 50 00 to maltodextrin is correct.

35. However, the more difficult issue for me is the apparent conflict between the admission made by Grant Thornton, on behalf of the appellant, namely that the maltodextrin had a sugar content of between 15% and 20%, and Mr Pollard's oral submissions that he did not know where this figure had come from, and that if the matter proceeds to trial, he would have the product analysed.

36. I do not think that simply because the maltodextrin has been commercially described as such, it is axiomatic that it must be categorised within Chapter 17 as there is a subheading for "maltodextrin" within that Chapter. And so even if the product is described as maltodextrin on an invoice, and yet it contains, for example, gunpowder, it must automatically fall within Chapter 17.

37. I say this because the Chapter notes in Chapter 35, which deal with dextrins with a sugar content of more than 10%, state they fall in heading 17 02. This implies that dextrins with a

sugar content of less than that fall within Chapter 35. This is borne out by the Explanatory Notes which specifically say that dextrins with a reducing sugar content not exceeding 10% fall within heading 35 05.

38. So it is entirely within the ambit of a permissible challenge to HMRC's decision, for the appellant to argue that the sugar content of the maltodextrin was less than 10% and thus should not be categorised under Chapter 17. It is true that in this case the appellant does not suggest that the maltodextrin should be categorised under Chapter 35, but under Chapter 19. This may be misguided for the reasons I have already given. But that does not prevent it challenging the categorisation asserted by HMRC. If, as a matter of fact, the maltodextrin contains sugar of less than 10%, then it seems to me, as a matter of law, that it must be categorised within Chapter 35. That is irrespective of what the parties assert.

39. I have no doubt that this tribunal has jurisdiction to consider this. It is simply a challenge to the decision made by HMRC to categorise the maltodextrin under Chapter 17.

40. But as I say, the more difficult issue is the ostensible contradiction between Grant Thornton's admission that the maltodextrin did have a sugar content of more than 10%, and the appellant's assertion that he did not know where this came from and that if the matter proceeded to trial, he would obtain a chemical analysis.

41. If this had been the first time that the appellant had raised the issue, I would have rejected it. The ambit of his appeal is governed by its pleadings which are primarily in the grounds of appeal.

42. The appellant does raise this in its grounds of appeal. It does so generally in its broad assertion that the maltodextrin contains no sugar. And specifically, where it says that the maltodextrin has a "low DE count and it should as such be classified as a starch …".

43. These grounds of appeal are then repeated in the appellant's response to HMRC's application to strike out, dated 21 May 2024. So it has always been the appellant's case that the sugar content of the maltodextrin is either non-existent or sufficiently low as to justify that it should not be given a commodity code under Chapter 17 which deals with sugars.

44. I am conscious that strike out is a draconian remedy. I am equally conscious that I must deal with cases fairly and justly. To my mind, if it turned out that the maltodextrin did have a sugar content of less than 10%, it would not be fair and just for HMRC's decision that it should be classified under Chapter 17, to stand.

45. The sugar content of the maltodextrin is at the heart of this dispute. Whilst there is some ambivalence about it, I am not prepared to strike out the appellant's appeal. However, if the sugar content is less than 10%, then it is my decision that the decision by HMRC to allocate commodity code 17 02 90 50 00 is entirely correct. And the appellant's prospects of succeeding in its appeal are fanciful. And so the appeal should be struck out.

46. We cannot move forward unless and until a chemical analysis has been undertaken on the maltodextrin which was imported and which is the subject matter of this appeal. I am assuming that the product which is the subject matter of this appeal is still available for chemical analysis.

47. So, the fairest thing to do is to adopt a wait-and-see approach. I shall strike out the appeal but that will only apply in 60 days' time. If, within that time, the appellant can provide a

chemical analysis of the product which was imported and which is the subject matter of this appeal, which demonstrates that its sugar content is less than 10%, then the strike out will not apply and the matter should proceed to trial.

DECISION AND DIRECTIONS

48. It is my decision that the tribunal has jurisdiction to consider the appeal.

49. I Direct that this appeal shall be struck out on a date falling 60 days after the date of release of this decision unless, before that date, the appellant provides to HMRC, prima facie evidence by way of a chemical analysis from an independent expert, that the goods which are the subject matter of this appeal had a sugar content (DE) not exceeding 10%.

50. Either party may apply for the foregoing Direction to be amended, suspended or set aside or for further Directions.

RIGHT TO APPLY FOR PERMISSION TO APPEAL

51. 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.

NIGEL POPPLEWELL
TRIBUNAL JUDGE

Release date: 03rd FEBRUARY 2025

APPENDIX

STRIKE OUT

The F-tT Rules

1. The relevant Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009 (the "**Rules**") are Rules 2 and 8:

Rule 2(3) requires us to give effect to the over-riding objective when exercising any power under the Rules. The overriding objective, as set out in Rule 2(1), is as follows:

> "The overriding objective of these Rules is to enable the Tribunal to deal with cases fairly and justly".

Rule 8 deals with strike out:

> "**8. Striking out a party's case**
>
> (1) …
>
> (2) The Tribunal must strike out the whole or a part of the proceedings if the Tribunal—
>
> (a) does not have jurisdiction in relation to the proceedings or that part of them;…
>
> (3) The Tribunal may strike out the whole or a part of the proceedings if—
>
> (a) the appellant has failed to comply with a direction which stated that failure by the appellant to comply with the direction could lead to the striking out of the proceedings or part of them;
>
> (b) the appellant has failed to co-operate with the Tribunal to such an extent that the Tribunal cannot deal with the proceedings fairly and justly; or
>
> (c) the Tribunal considers there is no reasonable prospect of the appellant's case, or part of it, succeeding.
>
> (4) The Tribunal may not strike out the whole or a part of the proceedings under paragraphs (2) or (3)(b) or (c) without first giving the appellant an opportunity to make representations in relation to the proposed striking out…".

Case law

2. The legal principles which we must consider have been neatly set out in the Upper Tribunal in *The First De Sales Limited Partnership and others v HMRC* [2018] UKUT 396:

> **"Approach to applications to strike out - legal principles**
>
> 31 At [30] of the decision, the judge applied the summary of principles set out by the Upper Tribunal in *HMRC v Fairford Group plc* [2014] UKUT 329; [2015] STC 156 ('*Fairford Group plc'*). The Upper Tribunal held (at [41]) that:

"In our judgment an application to strike out in the FTT under r 8(3)(c) should be considered in a similar way to an application under CPR 3.4 in civil proceedings (whilst recognising that there is no equivalent jurisdiction in the FTT Rules to summary judgment under Pt 24). The tribunal must consider whether there is a realistic, as opposed to a fanciful (in the sense of it being entirely without substance), prospect of succeeding on the issue at a full hearing, see *Swain v Hillman* [2001] 1 All ER 91 and *Three Rivers* [2000] 3 All ER 1 at [95], [2003] 2 AC 1 per Lord Hope of Craighead. A 'realistic' prospect of success is one that carries some degree of conviction and not one that is merely arguable, see *ED & F Man Liquid Products Ltd v Patel* [2003] EWCA Civ 472, [2003] 24 LS Gaz R 37. The tribunal must avoid conducting a 'mini-trial'. As Lord Hope observed in *Three Rivers*, the strike-out procedure is to deal with cases that are not fit for a full hearing at all".

32. It was common ground that the application should be considered in a similar way to an application under CPR 3.4 in civil proceedings (whilst recognising that there is no equivalent jurisdiction in the FTT Rules to summary judgment under Part 24).

33. Although the summary in *Fairford Group Plc* is very helpful, we prefer to apply the more detailed statement of principles in respect of application for summary judgment set out by Lewison J, as he then was, in *Easyair Ltd (t/a Openair) v Opal Telecom Ltd* [2009] EWHC 339 (Ch) at [15]. This was subsequently approved by the Court of Appeal in *AC Ward & Sons v Caitlin Five Limited* [2009] EWCA Civ 1098. The parties to this appeal did not suggest that any of these principles were inapplicable to strike out applications.

"i) The court must consider whether the claimant has a 'realistic' as opposed to a fanciful prospect of success: *Swain v Hillman* [2001] 1 All ER 9;

ii) A 'realistic' claim is one that carries some degree of conviction. This means a claim that is more than merely arguable: *ED & F Man Liquid Products v Patel* [2003] EWCA Civ 472 at [8];

iii) In reaching its conclusion the court must not conduct a 'mini-trial': *Swain v Hillman*;

iv) This does not mean that the court must take at face value and without analysis everything that a claimant says in his statements before the court. In some cases it may be clear that there is no real substance in factual assertions made, particularly if contradicted by contemporaneous documents: *ED & F Man Liquid Products v Patel* at [10];

v) However, in reaching its conclusion the court must take into account not only the evidence actually placed before it on the application for summary judgment, but also the evidence that can reasonably be expected to be available at trial: *Royal Brompton Hospital NHS Trust v Hammond (No 5)* [2001] EWCA Civ 550;

vi) Although a case may turn out at trial not to be really complicated, it does not follow that it should be decided without the fuller investigation into the facts at trial than is possible or permissible on summary judgment. Thus the court should hesitate about making a final decision without a trial, even where there is

no obvious conflict of fact at the time of the application, where reasonable grounds exist for believing that a fuller investigation into the facts of the case would add to or alter the evidence available to a trial judge and so affect the outcome of the case: *Doncaster Pharmaceuticals Group Ltd v Bolton Pharmaceutical Co 100 Ltd* [2007] FSR 63;

vii) On the other hand it is not uncommon for an application under Part 24 to give rise to a short point of law or construction and, if the court is satisfied that it has before it all the evidence necessary for the proper determination of the question and that the parties have had an adequate opportunity to address it in argument, it should grasp the nettle and decide it. The reason is quite simple: if the respondent's case is bad in law, he will in truth have no real prospect of succeeding on his claim or successfully defending the claim against him, as the case may be. Similarly, if the applicant's case is bad in law, the sooner that is determined, the better. If it is possible to show by evidence that although material in the form of documents or oral evidence that would put the documents in another light is not currently before the court, such material is likely to exist and can be expected to be available at trial, it would be wrong to give summary judgment because there would be a real, as opposed to a fanciful, prospect of success. However, it is not enough simply to argue that the case should be allowed to go to trial because something may turn up which would have a bearing on the question of construction: *ICI Chemicals & Polymers Ltd v TTE Training Ltd* [2007] EWCA Civ 725"".