Neutral Citation: **[2022] UKUT 00327 (TCC))**

Case Number: UT/2022/000012

UPPER TRIBUNAL
(Tax and Chancery Chamber)

The Royal Courts of Justice, Rolls Building,
London

National Insurance Contributions – Personal Liability Notice – company in creditors voluntary liquidation – was the company "liable to pay" NICs – whether notice issued out of time – no – General Rolling Stock principle applied – appeal dismissed

Heard on: 25 November 2022
Judgment date: 6 December 2022

Before

MR JUSTICE MICHAEL GREEN
JUDGE GUY BRANNAN

Between

GARY WAGSTAFF

Appellant

and

THE COMMISSIONERS FOR HIS MAJESTY'S REVENUE AND CUSTOMS

Respondents

Representation:

For the Appellant: Sam Brodsky, Counsel

For the Respondents: Giselle McGowan, Counsel, instructed by the General Counsel and Solicitor to His Majesty's Revenue and Customs

DECISION

INTRODUCTION

1. This is an appeal against the decision of the First-tier Tribunal ("FTT") (Judge Anne Scott) released on 19 August 2021 ("the Decision"). Mr Wagstaff, the Appellant, appeals against the FTT's Decision dismissing his appeal against a Personal Liability Notice ("PLN") dated 13 March 2019 in the sum of £301,941.10 issued to Mr Wagstaff by the Respondents ("HMRC") pursuant to Section 121C of the Social Security Administration Act 1992 ("SSAA") in respect of National Insurance Contributions ("NICs") payable by Warehouse Holdings Limited ("WHL").

2. The relevant facts were agreed before the FTT. The sole issue before the FTT was whether the PLN was issued out of time in relation to all but a small percentage of the NICs liabilities therein. On behalf of Mr Wagstaff it was contended that any NICs in respect of periods prior to the tax month ending 5 March 2013 were statute barred by virtue of Section 9 of the Limitation Act 1980 ("LA 1980") at the date that the PLN was issued, those amounts having fallen due more than six years prior to that date. Accordingly, Mr Wagstaff argued that WHL was not "*liable to pay*" these sums at that date within the meaning of Section 121C(1) SSAA.

3. The FTT considered that the PLN was not time-barred and, accordingly, dismissed Mr Wagstaff's appeal. Mr Wagstaff now appeals to this Tribunal with the permission of the Judge Scott.

4. For the reasons given below, we dismiss this appeal.

THE FACTUAL BACKGROUND

5. As we have already mentioned, the facts were agreed before the FTT. The agreed facts were recorded by the FTT in the Decision at [4]-[11]:

> "**Agreed Facts**
>
> 4. [Mr Wagstaff] was a director of WHL between 26 August 2005 and 1 October 2015 and he was the sole director between 16 November 2009 and 30 July 2015.
>
> 5. WHL set up a PAYE scheme on or about 21 December 2009. This PAYE scheme was active throughout the period from on or about 21 December 2009 to August 2013. During this period WHL made deductions of PAYE income tax and NICs from its employees' salaries.
>
> 6. WHL filed its end of year P35 Return for the tax year 2009/10 on 20 March 2012, almost two years after the deadline of 19 May 2010, declaring NICs due of £13,238.26. WHL failed to submit end of year P35 Returns for the tax years 2010/11 to 2012/13. Following the change to Real Time Information ("RTI") in April 2013, WHL failed to submit monthly RTI returns for the tax year 2013/14.
>
> 7. In the period June 2012 to October 2013 WHL made four payments to HMRC in respect of PAYE income tax and NICs totalling £22,258.68. Of these payments, HMRC allocated £11,129.34 to NICs for the period 2012/13 with the remainder allocated to PAYE income tax for the same period. WHL has failed to pay any further sums in respect of NICs deducted from its employees for the periods 2009/10 to 2013/14 to HMRC.
>
> 8. WHL provided HMRC with computerised P11 Deduction Working Sheets recording deductions from its employees' salaries for the tax years 2009/10 to 2013/14 from which HMRC has been able to ascertain that the NICs that

WHL deducted from its employees' salaries for these tax years were as follows:

Period NICs deducted	
2009/10	£13,238.26
2010/11	£82,230.25
2011/12	£87,775.22
2012/13	£77,347.37
2013/14	£23,248.16
Total:	£283,839.26

9. On 20 November 2015 WHL entered Creditors' Voluntary Liquidation ("CVL").

10. On 7 October 2016 HMRC submitted a proof of debt in WHL's liquidation for £1,124,910.57 including a claim for unpaid NICs for the tax years 2009/10 to 2013/14.

11. On 13 March 2019 HMRC issued the PLN on the basis that WHL's failure to pay the NICs due was a result of the neglect of the appellant, the sole director at the relevant time. The amount claimed in the PLN of £301,941.10 is made up of the NICs which WHL had failed to pay to HMRC and interest thereon as set out below:

Date	**NICs Due £**	**NICs Paid £**	**Unpaid NICs £**	**Interest £**	**Unpaid Contributions £**
2009/10	13,238.26	0	13,238.26	2,220.76	15,459.02
2010/11	82,230.25	0	82,230.25	11,327.50	93,557.75
2011/12	87,775.22	0	87,775.22	9,431.41	97,206.63
2012/13	77,347.37	11,129.34	66,218.03	5,147.24	71,361.27
2013/14	23,248.16	0	23,248.16	1,108.27	24,356.43
Totals	283,839.26	11,129.34	272,709.92	29,231.18	301,941

6. To this we should add that we were informed that the CVL of WHL was completed and the company dissolved in the months immediately prior to the hearing before us.

THE RELEVANT STATUTORY PROVISIONS

Personal Liability Notices

7. Section 121C(1) of SSAA relevantly provides:

Liability of directors etc. for company's contributions.

(1) This section applies to contributions which a body corporate is liable to pay, where –

(a) The body corporate has failed to pay the contributions at or within the time prescribed for the purpose; and

(b) The failure appears to the Inland Revenue to be attributable to fraud or neglect on the part of one or more individuals who, at the time of the fraud or neglect, were officers of the body corporate ("culpable officers").

(2) The Inland Revenue may issue and serve on any culpable officer a notice (a "personal liability notice")—

(a) Specifying the amount of the contributions to which this section applies ("the specified amount");

(b) Requiring the officer to pay to the Inland Revenue —

(i) a specified sum in respect of that amount; and

(ii) specified interest on that sum; and

(c) where that sum is given by paragraph (b) of subsection (3) below, specifying the proportion applied by the Inland Revenue for the purposes of that paragraph.

(3) The sum specified in the personal liability notice under subsection (2)(b)(i) above shall be—

(a) in a case where there is, in the opinion of the [Inland Revenue], no other culpable officer, the whole of the specified amount; and

(b) in any other case, such proportion of the specified amount as, in the opinion of the Inland Revenue, the officer's culpability for the failure to pay that amount bears to that of all the culpable officers taken together.

(4) In assessing an officer's culpability for the purposes of subsection (3)(b) above, the Inland Revenue may have regard both to the gravity of the officer's fraud or neglect and to the consequences of it.

…

(9) In this section— "officer", in relation to a body corporate, means —

(a) any director, manager, secretary or other similar officer of the body corporate, or any person purporting to act as such".

8. Section 121D of SSAA 1992 relevantly provides:

"**121D.— Appeals in relation to personal liability notices**.

(1) No appeal shall lie in relation to a personal liability notice except as provided by this section.

(2) An individual who is served with a personal liability notice may appeal against the Inland Revenue's decision as to the issue and content of the notice on the ground that—

(a) the whole or part of the amount specified under subsection (2)(a) of section 121C above (or the amount so specified as reduced under subsection (7) of that section) does not represent contributions to which that section applies".

Limitation

9. Section 9(1) of LA 1980 provides:

> "**Time limit for actions for sums recoverable by statute.**
>
> (1) An action to recover any sum recoverable by virtue of any enactment shall not be brought after the expiration of six years from the date on which the cause of action accrued."

10. Section 37 of the LA 1980, so far as material, provides:

> "**Application to the Crown and the Duke of Cornwall.**
>
> (1) Except as otherwise expressly provided in this Act, and without prejudice to section 39, this Act shall apply to proceedings by or against the Crown in like manner as it applies to proceedings between subjects.
>
> (2) Notwithstanding subsection (1) above, this Act shall not apply to—
>
> (a) any proceedings by the Crown for the recovery of any tax or duty or interest on any tax or duty…."

Insolvency

11. Section 107 of the Insolvency Act 1986 provides that the property of a company in a CVL shall be applied "*in satisfaction of the company's liabilities*" as at the date that the company enters CVL, albeit a creditor can prove in the insolvency in respect of some future liabilities.[1] When a company goes into liquidation the process of proof of debt normally applies for the liquidator to establish the debts and liabilities of the company. In a CVL, a creditor can issue a claim against the company without the consent of the liquidator or the permission of the court. In a compulsory winding up, a creditor needs the permission of the court to start proceedings against the company.

THE FTT'S DECISION

12. We summarise the Decision below and references in square brackets are to the relevant paragraphs of the Decision unless the context otherwise requires.

13. At the outset, the FTT noted at [17] that, by virtue of Section 121D SSAA, the power of the FTT was limited to either dismissing the appeal or remitting the case to HMRC to consider whether to vary their decision as to the issue and content of the PLN.

14. The FTT also observed at [18] that it was common ground that in order for Section 121C of SSAA to apply, three conditions must be fulfilled, namely:

> (1) the company must be "*liable to pay*" the NICs and that the liability must exist when the PLN is issued against a director;
>
> (2) the company must have failed to pay the NICs within the required time; and
>
> (3) the failure must appear to HMRC to be attributable to the fraud or neglect of an officer of the company.

15. At [19] the FTT recorded that it was common ground that WHL had failed to pay its NIC liabilities and that that was as a result of the neglect of Mr Wagstaff. The issue was, therefore, one of liability (i.e. the issue in paragraph 14(1) above). Mr Wagstaff conceded that he was liable for the NICs in respect of the tax month ending 5 March 2013 and later months.

[1] Rule 14.1(3)(b) of the Insolvency (England and Wales) Rules 2016 ("the Insolvency Rules")

16. At [24] the FTT observed that limitation periods "*did not apply to everything*", referring to the decision of Lewison J, as he then was, in *Painter v Hutchinson* [2007] EWHC 758 (Ch) at [133]. In addition, the FTT noted at [25] that Section 37(2)(a) LA 1980 provides that there are no limitation periods applicable to proceedings by HMRC for recovery of tax or duty or interest thereon. The FTT at [26] accepted that NICs were not a tax but a contribution and, therefore, were not within s.37(2)(a) LA 1980 and so would be subject to the six-year limitation period under s.9 LA 1980.

17. Therefore, the FTT accepted at [26] that, if WHL had not gone into CVL, HMRC would have had to have issued a PLN before the expiry of six years because, WHL would no longer have been liable for the NICs after six years had elapsed since the NICs became due. HMRC have always agreed that this is so.

18. At [29] the FTT disagreed with the proposition put forward on behalf of Mr Wagstaff that WHL's entry into CVL had only the effect that HMRC could prove for the NICs in the liquidation but had no other consequence. HMRC could, and did, prove in the liquidation.

19. The FTT considered at [30] the effect of entering CVL as described by Lloyd LJ in *Financial Services Compensation Scheme Limited v Larnell (Insurances) Limited* [2005] EWCA Civ 1408 ("*Larnell*") at [13]: "*In effect, so far as the operation of the winding-up is concerned, limitation periods cease to run at that date [the commencement of the winding-up]*". The FTT rejected the argument for Mr Wagstaff that this supported his argument that the impact of the CVL was confined to the liquidation alone, agreeing with HMRC that that was too limited an interpretation.

20. At [32]-[33] the FTT noted that Section 121C SSAA was expressed in unequivocal terms. The section applies to contributions which the body corporate *is* liable to pay. WHL was liable to pay in 2015 when it entered CVL but it was also liable to pay in 2019 when the PLN was issued. The FTT considered that there was no lack of clarity in that section. The draftsman of the SSAA must be assumed to have been aware of the workings of the insolvency legislation not least because recourse to a PLN would only usually arise where the company does not have sufficient assets. There was no requirement to look at more general policy considerations.

21. Finally, at [34] the FTT considered section 9 LA 1980 in the light of the argument advanced for Mr Wagstaff that "*…the proper approach is to apply the rules of limitation in the ordinary way at the date of issue of the PLN*". The FTT concluded that until the PLN was issued HMRC had no cause of action in relation to Mr Wagstaff. The time bar on the PLN ran from the date of issue of the PLN. Mr Wagstaff had no cause of action because before then he only faced a potential liability. He had no claim against him. He had no right to litigate until the PLN was issued.

22. Accordingly, the FTT dismissed Mr Wagstaff's appeal.

GROUNDS OF APPEAL

23. There was only one ground of appeal, viz the FTT was in error when it held that WHL was "*liable to pay*" amounts in respect of NICs when the PLN was issued (13 March 2019) because WHL had entered into CVL on 20 November 2015.

SUBMISSIONS AND DISCUSSION

24. Mr Sam Brodsky, appearing for Mr Wagstaff, essentially repeated his submissions made to the FTT, arguing that WHL was not liable to pay the NICs to HMRC on 13 March 2019 (the date of issue of the PLN) because more than six years had elapsed since the NICs accrued due and that HMRC were statute-barred by section 9 LA 1980 from recovering those amounts. Mr Brodsky accepted that when WHL went into CVL on 20 November 2015 it was

liable to HMRC in respect of the relevant NICs. However, he submitted that section 121C SSAA asked a different question that was outside of the liquidation and its particular processes, namely whether WHL was "*liable to pay*" the NICs at the date of issue of the PLN.

25. Mr Brodsky said that the FTT had wrongly relied on what he described as the "*special rule*" of limitation that applied in insolvency such that creditors of a company in CVL were not subject to any period of limitation, so long as their debts were not time-barred at the date that the CVL commenced. This special rule, according to Mr Brodsky, applied only to creditors seeking to prove their debts in the liquidation. Those debts are ascertained as at the date of liquidation and then administered and distributed *pari passu* by the liquidator in accordance with the insolvency rules. Thus, whatever happens to the debt after the date of liquidation is irrelevant but only for the purposes of the liquidation. For example, a debt in a foreign currency would be valued as at the date of the liquidation, whatever fluctuations in the rate happened thereafter – see *In Re Lines Bros Ltd* [1983] Ch 1. Similarly, if a debt became statute-barred after the date of liquidation, this would be irrelevant – see *In re General Rolling Stock Company* (1872) LR 7 Ch App 646 ("*General Rolling Stock*"). Mr Brodsky contended that the *General Rolling Stock* principle applied only to claims in the insolvency and that the present case did not involve such a claim. Instead, he argued that section 121C SSAA looked at the liabilities of WHL at the date of the issue of the PLN and that the *General Rolling Stock* principle had no application to establishing liabilities of WHL at that date.

26. We have no hesitation in rejecting these arguments.

27. When a company, such as WHL, enters into CVL it is well-established that the liabilities of the company are determined at the date of the commencement of the CVL. It is equally well-established that limitation periods in respect of those liabilities, to the extent that they have not already elapsed, cease to run from the date of the commencement of the CVL.

28. This is clearly established in *General Rolling Stock* where the Court of Appeal in Chancery held that a claim which was still in time at the date when the winding up commenced but which was not asserted by way of proof until after the normal period of limitation had expired was to be admitted to proof, because it was in respect of something which had been a liability at the commencement of the winding up. In relation to the winding up, limitation periods cease to run at the date of the commencement of the winding up date, so long as they have not already elapsed. When considering what liabilities should be discharged by the liquidator of the company James LJ said at pages 648-649:

> "A duty and a trust are thus imposed upon the Court, to take care that the assets of the company shall be applied in discharge of its liabilities. What liabilities? All the liabilities of the company existing at the time when the winding-up order was made which gives the right. It appears to me that it would be most unjust if any other construction were put upon the section. After a winding-up order has been made, no action is to be brought by a creditor except by the special leave of the Court, and it cannot have been the intention of the Legislature that special leave to bring an action should be given merely in order to get rid of the Statute of Limitations. It must have been intended that such leave should be given only in cases where the Court thought that an action was the most proper means of determining the question as to the liability of the company. In the present case it is not disputed that at the time of the winding-up order the company was liable to the holders of these bills, and the winding-up order enures to the benefit of the holders. No possible mischief or inconvenience can arise from this, for a day is fixed for creditors to come in and prove, and the Act expressly

> provides that any creditor who does not come in within the time named shall lose the benefit of any dividend that has been paid in the meantime. No mischief, therefore, can be done to the other creditors by reason of the delay or laches of any creditor, since if he delays beyond the proper time he must take his chance of what assets he can find for payment of his debt, not disturbing any former dividend."

29. At page 149-150, Mellish LJ said:

> "In these cases the rule is that everybody who had a subsisting claim at the time of the adjudication, the insolvency, the creation of the trust for creditors, or the administration decree, as the case may be, is entitled to participate in the assets, and that the Statute of Limitations does not run against this claim, but, as long as assets remain unadministered he is at liberty to come in and prove his claim, not disturbing any former dividend."

30. Mr Brodsky sought to argue that *General Rolling Stock* was confined to debts and liabilities provable in the liquidation and that it provides no answer to whether WHL was "*liable to pay*" the NICs on the date the PLN was issued. He was effectively saying that there are two parallel liabilities of WHL: one in the liquidation that is assessed at the date of liquidation; and one outside the liquidation which is subject to all the normal rules of limitation. It is only the latter that is relevant to the meaning of "*liable to pay*" in section 121C SSAA.

31. However, this argument fails to take into account the Court of Appeal decision in *Larnell*. In that case the claimant was an assignee of a claim in negligence against the defendant company which had subsequently entered into CVL. The claimant issued proceedings against the defendant company with a view to establishing the defendant company's liability in negligence as a preliminary to claiming against the defendant company's insurers under an insurance policy (which became vested in the claimant under the Third Parties (Rights against Insurers) Act 1930 ("1930 Act")). The defendant company applied to strike out the claim on the basis that it was statute barred. At first instance, David Steel J struck the claim out but the Court of Appeal allowed the claimant's appeal and restored the claim. At [13]-[14] Lloyd LJ, referring to the *General Rolling Stock* principle, said:

> "13. In a voluntary winding up, the liquidator's duty is to apply the company's property "in satisfaction of the company's liabilities pari passu": see section 107 of the Insolvency Act 1986. Similar provisions apply in a compulsory winding up and in bankruptcy. An obligation which, at the relevant date, is barred by limitation, so that no action can be brought to enforce it, is not a "liability" for the purposes of the insolvency legislation: see *In re Art Reproduction Co Ltd* [1952] Ch 89. In that case Wynn-Parry J relied on the decision of the Court of Appeal in Chancery in *In re General Rolling Stock Co* (1872) LR 7 Ch App 646. The court held that a claim which was still in time at the date when the winding up commenced but which was not asserted by way of proof until after the normal period of limitation had expired was to be admitted to proof, because it was in respect of something which had been a liability at the commencement of the winding up. In effect, so far as the operation of the winding up is concerned, limitation periods cease to run at that date, so long as they have not already expired.
>
> 14. That case has been followed ever since, whatever the type of insolvency, and whether the claim is disputed or not…."

32. At [18] Lloyd LJ continued:

> "In so far as it is necessary to ascertain what the creditor's rights are, they have to be established in contract, tort, or otherwise as the case may be. The creditor's cause of action remains as it was before, so that, for example, the claimant correctly sues in tort in the present case. It is only as regards giving effect to those rights in the insolvency that the rights are subjected to the statutory trust resulting from the duty of distribution imposed on the liquidator or trustee in bankruptcy. Correspondingly, it is as regards giving effect to those rights in that way that, by virtue of the principle established in *In re General Rolling Stock Co* …, the period of limitation ceases to run when the liquidation or bankruptcy commences."

33. At [57] Moore-Bick LJ, after referring to *In re General Rolling Stock* (and noting that section 98 of the Companies Act 1862 did not differ materially from section 107 of the Insolvency Act 1986), said:

> "That decision... is binding on us, [and] establishes that the rights of a person who seeks to enforce a claim against the assets of the company in the liquidation are to be ascertained as at the date of the commencement of the liquidation. It is to the satisfaction of *all* such liabilities that the company's property must be applied and therefore … provided his claim is not time-barred at the date of the winding up, the right to prove in the liquidation is not thereafter lost by reason of the operation of the Limitation Act."

34. Mr Brodsky relied on three cases in particular that he said showed that limitation periods continue to run despite the defendant going into bankruptcy or liquidation. These were: *In Re Benzon* [1914] 2 Ch 68; *Cotterell v Price* [1960] 1 WLR 1097; and *Anglo Manx Group Ltd v Aitken* [2002] BPIR 215. These cases were all discussed by the Court of Appeal in *Larnell*, which decided that they did not apply to the case before it. In *Larnell*, the purpose of the proceedings was to establish the right to an indemnity against the insurers under the 1930 Act. (Similarly in this case, it is to establish the liability for the purposes of issuing the PLN.) In order to do so, the claimant first had to establish the "*liability*" of the defendant company to it. This duality of purpose led the Court of Appeal to conclude that the same rules of limitation must apply to both purposes. Lloyd LJ at [37] said:

> "In my judgment Mr Tolley's proposition faces insuperable difficulties. Given that the first stage for a third party such as the claimant is to establish the liability to it of the insured, which is necessarily being administered in insolvency, it seems to me that the third party's claim against the insured is one to which the normal principles apply, namely that, if it is not time-barred at the commencement of the bankruptcy or winding up, it does not become time-barred by the passage of further time thereafter. I therefore respectfully disagree with the judge on this, the main point in the case."

And Moore-Bick LJ to the same effect said at [64]:

> "Mr Tolley submitted that since the purpose of the proceedings is to enable the claimant to enforce rights against the insurers, the claim should be held to be time-barred for those purposes even if it cannot be held to be time-barred for the purposes of establishing its right to prove in the liquidation. However I find it impossible to accept that the same claim can be time-barred for one purpose but not for another. Either the claim can be brought or it cannot."

35. We see no basis for distinguishing *Larnell* and it is fatal to Mr Brodsky's argument. As Ms Giselle McGowan on behalf of HMRC put it, the issue can be tested by reference to the situation if HMRC brought a claim for the NICs against WHL after the expiry of the limitation period. HMRC could in theory do that because WHL is in CVL not compulsory liquidation. It is clear that WHL would have no limitation defence to such a claim because of the *General Rolling Stock* principle. Mr Brodsky accepted that that was so but argued that

because HMRC's claim would necessarily be limited to the outstanding liability as at the date of the liquidation, it does not affect whether WHL is actually liable to pay the NICs as at the later date and for the purposes of section 121C SSAA. This somewhat contorted argument falls foul of *Larnell* and purports to apply a limitation period for one purpose but not another, even though it is the same liability.

36. When a company enters into CVL, its unsecured liabilities are inevitably in and to be determined within the liquidation. There is no other regime that applies to determine the existence of WHL's liabilities and their enforceability for limitation purposes. Similarly all the company's assets are within the liquidation. Once all the assets are administered and distributed to creditors, the company is normally dissolved. Subject to restoration to the register, a company cannot ultimately survive after it has gone into liquidation. This should be contrasted with bankruptcy, where bankrupts are discharged from bankruptcy and there are special rules concerning liabilities that can survive the bankruptcy. That is partly why the Court of Appeal distinguished *Re Benzon* and *Anglo Manx Group Ltd* because they could not have happened in a company liquidation. Moreover, as the FTT observed, it must be assumed that the drafter of section 121C SSAA was aware of how the insolvency legislation worked.

37. We consider that the words "*liable to pay*" in section 121C SSAA refer to the one liability that WHL has to pay the NICs. It remained liable to pay the NICs after it went into CVL but such liability would inevitably be administered within the liquidation and HMRC may receive no dividend in respect of it. It makes no sense to us to say that WHL is liable to pay for one purpose but not for another, and that a limitation period is running in the background despite the CVL and the *General Rolling Stock* principle. The fact that WHL would have no limitation defence to a claim brought by HMRC shows that it remained liable to pay the NICs even after the limitation period would otherwise have expired and it is irrelevant that the liability would be valued as at the date of liquidation rather than any later date.

38. Therefore, when the PLN was issued on 13 March 2019, WHL was liable to pay HMRC its unpaid liabilities in respect of NICs. That liability was the same as the unpaid liability in respect of NICs which existed on 20 November 2015 when WHL entered CVL (and in respect of which HMRC submitted a proof of debt in October 2016). It was the same liability and it continued to exist on 13 March 2019 and beyond.

39. Mr Brodsky also raised some forensic policy considerations principally about the unfairness of HMRC being able to issue a PLN for an indefinite period of time if the company has gone into liquidation. He noted that the CVL of a company could last for an unspecified period of time and observed that, by comparison, section 36 Taxes Management Act 1970 imposed a time limit of 20 years in the case of a loss of tax brought about deliberately. In this case, Mr Wagstaff's default was merely one of neglect.

40. That may be so, but in our view it does not affect the operation of the time limits in this case. There is no inherent unfairness in a culpable director remaining liable so long as their company is. And in any event, limitation periods are often extended, for example if the debt is acknowledged. Furthermore, when the company is dissolved, it is no longer liable to pay and so a PLN could not be issued.

41. Accordingly, we consider that the FTT's decision discloses no error of law and, therefore, we dismiss this appeal.

MR JUSTICE MICHAEL GREEN
JUDGE GUY BRANNAN

Release date: 06 December 2022