TC01740

Appeal number: TC/2010/06795

VAT – requirement for security – whether original decision reasonably arrived at – on information forming basis for decision, yes – whether decision on review reasonably arrived at – no evidence from reviewing officer – refusal to discuss certain companies – reference to disputed liabilities – on available evidence, decision unreasonable – on facts, decision would inevitably be the same if review properly carried out – appeal dismissed

FIRST-TIER TRIBUNAL

TAX

PREMIER TELECOM SOLUTIONS LIMITED **Appellant**

- and -

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

TRIBUNAL: JOHN CLARK (TRIBUNAL JUDGE)
NICHOLAS DEE

Sitting in public at 45 Bedford Square, London WC1 on 18 November 2011

Charlotte Brown, The Khan Partnership LLP, for the Appellant

Bruce Robinson, Appeals and Reviews Unit, HM Revenue and Customs, for the Respondents

DECISION

1. The Appellant ("PTS"), appeals against the decision of the Respondents ("HMRC") to issue a notice of requirement to provide security for the payment of any VAT which was due or might become due from PTS.

The law

2. Paragraph 4(2) of Schedule 11 to the Value Added Tax Act 1994 ("VATA 1994") provides:

> "(2) If they think it necessary for the protection of the revenue, the Commissioners may require a taxable person, as a condition of his supplying or being supplied with goods or services under a taxable supply, to give security, or further security, for the payment of any VAT that is or may become due from—
>
> (a) the taxable person, or
>
> (b) any person by or to whom relevant goods or services are supplied."

3. The right of appeal is given by s 83 VATA 1994:

> **83 Appeals**
>
> (1) Subject to sections 83G and 84, an appeal shall lie to the tribunal with respect to any of the following matters—
>
> . . .
>
> (l) the requirement of any security under section 48(7) or paragraph 4(1A) or (2) of Schedule 11".

The facts

4. The evidence consisted of two bundles of documents, together with additional documents provided by both parties at the hearing. The second bundle contained very detailed information provided on behalf of PTS concerning the various companies and other entities referred to in the "chain chart" prepared by HMRC as part of their decision-making process. Witness statements were given by Darren Michael Ridge, a director of PTS, and by Janice Alyson Uzzell, for HMRC. Mrs Uzzell also gave oral evidence. From the evidence we find the following background facts; we consider disputed matters later in this decision.

5. PTS was incorporated on 4 January 2010 under the name Parkacre Management Ltd. It was registered for VAT with effect from 6 January 2010. Its main business activity, as stated on its application for registration, was stated to be telecommunications specialists. Its estimate of taxable supplies for the next 12 months was stated in the application to be £2,000,000.

6. Its name was changed by a special resolution dated 3 June 2010. The current directors of PTS are Darren Michael Ridge and James Robert Sanders.

7. On 4 June 2010 Mrs Uzzell, a higher officer of HMRC working in their Insolvency and Securities Team, considered and signed a recommendation sent to her from HMRC's Leeds office for security action in respect of PTS. The papers provided to her included the chain chart, which provided information relating to a number of companies with which either Mr Ridge or Mr Sanders, or both of them, or companies with which they were involved, appeared to have some connection. On 16 June 2010 this notice was served by HMRC on PTS under its previous name; the HMRC officer who served it was unable to see a director, so left it in a sealed envelope at the contact address shown in the VAT registration form. The security required was £56,750. If PTS submitted monthly returns, the security required was £37,830. The Companies House records as at the time of HMRC's decision to issue the requirement showed Mr Ridge and Mr Sanders as directors.

8. On receipt of this notice, the accountants for PTS telephoned HMRC to enquire about the basis for serving the notice; no record of that conversation was included in the evidence.

9. On 25 June 2010 the accountants wrote to HMRC, stating that as a result of the telephone call they understood the basis for serving the notice was HMRC's review of a number of VAT aspects of related entities. They commented that a substantial amount of the data on which the decision to require security had been based was either incorrect or out of date. They referred in detail to the circumstances of ten other companies. They referred to the transfer of the controlling interest in PTS to the Premier Telecom Communications Group. They requested an independent review of HMRC's decision.

10. On 23 July 2010 Mrs Parsons, a higher officer in HMRC's Insolvency and Securities Compliance Team, wrote to PTS's accountants setting out the result of her review. She stated that her review had to centre on whether the decision that had been made by Mrs Uzzell on 4 June 2010 was reasonable, based on the facts available at that time. She considered that at the time when the decision was made, it would appear that all of the information had been correctly considered. She noted the accountants' comments relating to the Premier Telecommunications Group, but had not been able to confirm from HMRC's records exactly what had been said with regard to its VAT obligations and could not therefore consider it as evidence with which to support a removal of, or reduction in, the requirement to provide security. She stated:

> "I therefore consider that your client Parkacre Management – now Premier Telecom Solutions Limited was, at the time of registration for VAT, a serious risk to the Revenue, and it continues to be a serious risk, and security action is wholly appropriate."

(We refer later to Mrs Parsons' specific comments relating to certain companies.)

11. Subsequently the accountants telephoned Mrs Parsons to discuss her letter; no record of that conversation was included in the evidence. On 9 August 2010 the accountants wrote to Mrs Parsons. They wished to establish that the information held upon which decisions were made was correct. They acknowledged that HMRC could

not discuss with them certain businesses for which they had not lodged forms 64-8. In relation to one company, Mobile Sourcing Ltd, it had been intimated to them that there was a substantial VAT liability; they disagreed, and requested a full breakdown of how HMRC had arrived at that company's liability.

12. On 17 August 2010 Mrs Parsons sent the accountants a ledger breakdown for Mobile Sourcing Ltd, but explained that any further discussion should take place with the relevant officer in HMRC's Leeds office. The correspondence between the accountants and HMRC continued until November 2010, with the accountants disputing the decision to request security on the basis that it had been made on the basis of erroneous information.

13. On behalf of PTS, the accountants lodged its Notice of Appeal to the Tribunal on 25 August 2010. The appeal was expressed to be against HMRC's decision dated 23 July 2010. The Notice stated that the latest time by which the appeal ought to have been made or notified was 22 August 2010. The reasons given for the delay were explained as follows:

> "Following letter from HMRC on 23/7/10 this office telephoned and wrote to HMRC checking the facts upon which the decision was made. This process is still ongoing and a breakdown of an associates [*sic*] company's VAT liabilities was not received in this office until 24 August."

Arguments for PTS

14. The grounds for appeal stated in the Notice of Appeal are:

> "It is not agreed that HMRC have made a correct decision on this case. It is further asserted that the information used in making the decision is not correct and therefore the decision itself cannot be reliable."

15. Ms Brown referred to paragraph 4 of Schedule 11 VATA 1994. The right of appeal against a decision to require security was given by s 83(1)(l) VATA 1994. The jurisdiction of a tribunal in such appeals was supervisory, and it could not exercise a fresh discretion. She cited *Mr Wishmore Ltd v C & E Comrs* [1988] STC 723, and *C & E Comrs v Peachtree Enterprises Ltd* [1994] STC 747, which had been followed in *Goldhaven Ltd v C & E Comrs* (1997) LON/06/1348. This involved asking whether HMRC had:

(1) acted unreasonably; or

(2) taken account of irrelevant matters; or

(3) disregarded any matter which should have been given weight.

(Ms Brown emphasised that it was only necessary for PTS to establish that any one of these conditions had been fulfilled, even though she submitted that this was the case for all three conditions.)

16. Asking this question involved a consideration of whether HMRC, in reaching the decision to issue a notice of requirement for security, had acted in a way which no

reasonable panel of HMRC could have acted. Ms Brown referred to *John Dee Limited v C & E Comrs* [1995] STC 941, CA.

17. The Tribunal must limit itself to considering facts and matters which existed at the time of the challenge to the decision of HMRC was taken (*Peachtree*, followed in *Goldhaven*). This included information available to HMRC as at the date of the original decision and the review, ie 16 June 2010 and 23 July 2010.

18. The following propositions were derived from the case law:

(1) The burden of proof to show that HMRC's decision to request a security was unreasonable lay with PTS, but HMRC, through their evidence, must demonstrate that they did not act unreasonably (*Colette Ltd v C & E Comrs*, (1992) VAT Decision 6975).

(2) In determining whether there was sufficient evidence from HMRC that the decision reached was a reasonable one, the non-attendance of the reviewing officer and the lack of any evidence from that officer pointed strongly in favour of PTS (*Sanleo Ltd & Zonin Restaurants Ltd v HMRC* (2010) TC00560).

(3) Whilst HMRC were entitled to take account the history of a director in relation to a business with which he had previously been concerned, it was too simplistic an approach for HMRC to infer a risk to the revenue from the fact that a particular person had previously been a director of, or otherwise involved in, a company which had been insolvent without first seeking an explanation of that person's role and responsibility in relation to a loss arising from the company's failure and the reasons for the company's failure (*Greyhound Transport (UK) Ltd v C & E Comrs* (1995) VAT Decision 13216).

(4) Further, HMRC should give PTS an opportunity to explain its position, and take account of representations made by PTS. It was only the most extreme of circumstances that could justify the taking of the decision without giving the taxpayer the opportunity to explain its side of the picture (*Restorex Ltd v C & E Comrs* (1997) VAT Decision 15014).

(5) PTS's own record, and the scale of its business as compared to the previous business, should also be taken into account (*Computer Cave Ltd v C & E Comrs* (1997) VAT Decision 15212).

19. The issue for determination in the present appeal was whether the decision by HMRC, requiring PTS to give security, was a reasonable decision, or whether in reaching the decision, HMRC took into account irrelevant matters or ignored relevant matters.

20. Ms Brown submitted, on the following grounds, that HMRC's decision to require security had been unreasonable:

(1) The decision had been based on factually inaccurate information and was a decision that no reasonable panel of HMRC could have made.

(2) In order to discharge its burden of proof, PTS must be provided with sufficient evidence which could be tested in relation to the reasonableness of the disputed decision (*Colette Ltd*).

(3) HMRC had not provided sufficient evidence relating to the decision-making process to enable PTS to do this or for the Tribunal to be satisfied that the decision was reasonable;

(a) Mrs Uzzell, the original decision-maker, referred in her witness statement to the documents which she had considered when making the decision as being "contained in the departmental systems for the trader and the records relating to the VAT returns and payments made". No further explanation of the decision-making process had been provided, nor were copies of the documents considered exhibited to her statement;

(b) The reviewing officer, Mrs Parsons, was not providing oral or written evidence and so PTS and the Tribunal could not know what matters were or were not taken into account, and the weight attached to them, in the decision-making process (*Sanleo* at paragraphs 20-21);

(c) The "chain chart" had not been provided to PTS and its advisers until it was served on them on 29 October 2010 as an attachment to HMRC's Statement of Case, months after the decision had been taken by HMRC. This chart was an incomplete list of alleged "associated companies" without any details of what weight HMRC placed on the alleged VAT risks in making their decision;

(d) HMRC's Statement of Case merely referred to Mr Ridge and Mr Sanders previously having been involved in a number of VAT registered entities which had a history of poor compliance, mentioning specifically two companies. (We consider these and other companies later in this decision);

(e) HMRC's skeleton argument shed no further light on the alleged risk that PTS posed.

21. Ms Brown also submitted that HMRC had not given PTS an opportunity to put forward representations prior to the disputed decision being made (*Restorex*). The accountants had made representations in their letter dated 25 June 2010, following receipt of the disputed decision, although it was unclear from HMRC's evidence whether this was properly taken into account as it should have been.

22. She contended that HMRC had taken into account matters which were not relevant, and referred to various factual issues which we consider below. Taking into account the factual information available to HMRC at the date of their decision, it had been based on factually incorrect information, which amounted to irrelevant matters.

23. In addition to taking into account irrelevant matters, HMRC had failed to take into account relevant matters (considered below). Had these matters, on which information had been available to HMRC at the date of arriving at the disputed decision, been properly considered by HMRC, it would have been clear that PTS posed no risk.

24. It was clear from the final sentence of the decision in *Colette Ltd* that it was for HMRC to give evidence to show that they had not acted unreasonably. *Sanleo,* in the second half of paragraph 20 and in paragraph 21, illustrated the effect of the absence of the reviewing officer from the tribunal hearing. Ms Brown submitted that as Mrs Parsons was not present, it would be difficult for HMRC to discharge the burden of proof falling on them.

25. The Notice of Requirement did not set out any grounds for requiring security. The chain chart had not been provided to PTS and its advisers until 29 October 2010. PTS's accountants had telephoned Mrs Uzzell on 25 June, and Mrs Parsons had referred in her letter dated 23 July 2010 to "all of the information that you have provided". However, it was not possible to tell from Mrs Parsons' letter what factors she had or had not taken into account, or what weight she had given them. Ms Brown submitted that the appeal covered the full decision-making process, so that information provided to HMRC before the date of the review should be taken into account in considering the reasonableness or otherwise of the review decision.

26. It was clear on the facts that HMRC had relied on erroneous information upon which they had based the disputed decision, taking into account irrelevant matters and failing to take into account relevant matters; this had led to an unreasonable decision. On this basis, Ms Brown submitted that as well as the decision being unreasonable, it necessarily followed that the amount sought as security was also unreasonable. She requested that the appeal be allowed and that the Tribunal should find that HMRC's decision to require security was unreasonable.

Arguments for HMRC

27. Mr Robinson explained the position relating to Mrs Parsons' non-attendance; she was not available. He had considered the balance between the timing of the hearing and the effect of postponement. Having considered her evidence and the review letter, he had decided that it was in the interests of justice to go ahead without her evidence. He commented that it would have been open to PTS to summon Mrs Parsons as a witness. Her letter did deal with a number of the companies. He explained that Mrs Parsons had given a witness statement, but he had taken the decision to exclude it.

28. He referred to paragraph 4(2) of Schedule 11 to VATA 1994, and to *Goldhaven Ltd*, particularly at paragraphs 13 and 15. He submitted that having regard to the legislation and the poor VAT compliance records of various entities with which Mr Ridge and Mr Sanders had been connected, at the time of its issue the notice of requirement was warranted. HMRC also submitted that they had acted reasonably in calculating the amount of security based on the estimated turnover figure provided by PTS. HMRC contended that they had not acted in a way in which no reasonable body of Commissioners could have acted, nor had HMRC taken into account irrelevant matters or disregarded matters to which they ought to have given weight.

29. HMRC were focusing on the position at 16 June 2010, the date of the issue of the notice of requirement. The explanation for the absence of reference in HMRC's skeleton argument to some of the companies was the date of the chain chart as

compared with that of the skeleton argument. The letter was based on the evidence as it stood at the date of the decision.

30. Mr Robinson submitted that the decision to require security had been based on the information available to HMRC prior to the decision being issued concerning VAT registered entities with which the directors Mr Ridge and Mr Sanders had been connected. The evidence showed that at the time of the decision being issued, a number of entities named in the chain chart had had records of poor compliance in relation to VAT. HMRC had considered that at the time of its issue the notice of requirement had been warranted on the basis that this was necessary for the protection of the revenue. This view was supported by the decision in *Goldhaven*, which also considered, by reference to other VAT cases, other principles relating to the tribunal's powers in relation to notices of requirement to give security.

31. HMRC also submitted that they had acted reasonably in calculating the amount of security based on the estimated turnover figure provided by PTS. It was open to PTS to submit monthly returns and so pay the lower amount of security.

32. HMRC contended that they had not acted in a way in which no reasonable panel of Commissioners could have acted, nor had they taken into account irrelevant matters or disregarded matters to which they ought to have given weight.

33. The onus of proof was on HMRC to demonstrate that requiring security from PTS was necessary for the protection of future revenue. The standard of proof was the ordinary civil standard of the balance of probabilities.

34. The findings sought by HMRC were that their decision to require security had been reasonable at the time when the notice of requirement had been served on PTS, and that the quantum of security required was not excessive but fair and reasonable. HMRC requested that PTS's appeal against HMRC's decision to require security and the appeal against the amount of security required should be dismissed.

35. Although the review officer was not present at the hearing, her conclusions could be seen from her letter dated 23 July 2010. Her decision-making had been correct. HMRC submitted that her letter was evidence that the matters raised in the accountants' letter dated 25 June 2010 had been considered.

36. Mr Robinson acknowledged that Mrs Uzzell had excluded various companies, leaving six to be taken into account in relation to the notice of requirement.

37. Reference had been made to the group which PTS had joined. This had been on 23 June 2010, as shown by Mr Ridge's witness statement. Mr Robinson submitted that all arguments regarding the group, as to finances and other matters, should not be taken into consideration, as PTS had not been part of the group at the time when the decision had been made.

Discussion and conclusions

38. As there was no objection from HMRC to the late appeal, we treated PTS's application for admission of its late appeal as impliedly granted, and continued with the hearing without expressly referring to the application. As a formal matter, we confirm that PTS's application was granted.

39. The appeal was against the decision of HMRC to require security from PTS, and specifically against the upholding of that decision by the Review Officer, Mrs Parsons. The result sought by PTS was: "There should be no requirement for security in this case". Thus PTS was not expressly raising the question of the amount of the security; the implication was that the amount should be nil.

40. We accept the parties' submissions that the principles which we should apply are as set out by the Tribunal in *Goldhaven* at paragraphs 14 and 15. In the latter paragraph the Tribunal referred to *John Dee v C & E Comrs* [1995] STC 941:

> ". . . where the Court of Appeal held that the tribunal had to consider whether Customs and Excise had acted in a way in which no reasonable panel of Commissioners of Customs and Excise could have acted, or whether they had taken into account some irrelevant matter, or had disregarded something to which they should have given weight. The tribunal could not exercise a fresh discretion; the protection of the revenue was not a function of the tribunal or the court. However, if it was shown that the decision of Customs and Excise was erroneous, because they failed to take some relevant material into account, the tribunal could, nevertheless, dismiss the appeal if the decision would *inevitably* have been the same had account been taken of the additional material."

We respectfully agree with the Tribunal's summary of the relevant passages in the judgment of Neill LJ in *John Dee*, which was the unanimous view of the Court of Appeal in relation to appeals under the predecessor to s 83(1)(l) VATA 1994.

41. The reference, both in *Goldhaven* and *John Dee* to "no reasonable panel of commissioners" makes it clear, in our view, that the tests to be applied in accordance with those cases to the making of decisions by HMRC relate to the actions of the particular officer or panel responsible for making the decision, rather than to HMRC as a whole.

42. If, on the facts, we consider that relevant material has not been taken into account, it is clear from *John Dee* that it remains open to us to dismiss the appeal if we find that the decision would inevitably have been the same had the relevant officer taken such additional material into account.

43. Although the Court of Appeal expressed the principle in the context of omitted material, it is clear that it is not confined to cases where the decision-maker has not taken additional material into account. At p 952 of *John Dee*, Neill LJ referred to the words used by Lord Lane in *C & E Comrs v JH Corbitt (Numismatists) Ltd* [1980] STC231 at the end of p 239:

> "Assume for the moment that the tribunal has the power to review the commissioners' discretion. It could only properly do so if it were shown the commissioners 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."

44. In relation to notices of requirement for security, it is clear that the tribunal has that power. It follows that the powers of the tribunal are wider than implied by the specific circumstances in *John Dee*, concerning only the failure to take additional material into account.

45. As in *Sanleo* at paragraph 20, we are required to consider the entire decision-making process. This involves examining HMRC's consideration both of the decision on review and at the earlier stage leading up to the issue of the notice of requirement to give security, ie the decisions made by Mrs Uzzell and later by Mrs Parsons. We examine these parts of the process in their chronological order.

Issue of the requirement to give security

46. Except where otherwise indicated in the following paragraphs, we accept the evidence of Mrs Uzzell as set out below relating to the various companies referred to on the chain chart and find, in the light of that evidence, that the results of her consideration of the companies named was as she described it. In arriving at our findings we have also taken into account relevant evidence from Mr Ridge's witness statement.

47. Mrs Uzzell explained that the case had been prepared for her in HMRC's Leeds office and passed to her to review the documents available. These included the chain chart, which had been completed on 14 May 2010, and which she said would have been the primary document which she had considered. She also had access to the compliance records of the businesses concerned; this was her other primary source of information on which she had based her decision. The companies in the chart were not necessarily connected; the object of the chart was to give her a broad picture of the involvement of the directors in other businesses. Where neither Mr Ridge nor Mr Sanders appeared in the list of "persons involved" relating to a particular company, she knew that she could disregard it. Where there was an apparent connection between PTS (either under that or its previous name) and another company, she would take such information into account.

48. Following this process, she had disregarded Voice Connections Ltd on the basis that there were no linked directors. That company had not been deleted from the chart, as it recorded that the possibility of a connection had been considered. She had taken ETC Communications Ltd into account, as PTS (under its previous name) had expressed interest in some of its assets following its insolvency; it had had a poor VAT compliance record and owed VAT and surcharges. She was aware that although Mr Ridge and Mr Sanders had been directors, they had not held that office at the time when the debts to HMRC had arisen; however, there might well have been a link.

49. Mr Ridge had been a director of European Systems Exchange Ltd at the time of the issue of the Notice of Requirement. At that time this company had owed VAT of £25,029.98 in respect of the VAT period ending 31 March 2010, and for part of the liability for period 07/09. Mrs Uzzell accepted that this debt had subsequently been discharged on 28 June 2010 and that this had been confirmed by Mrs Parsons in the review letter dated 23 July 2010. However, at the time when Mrs Uzzell had signed the Notice of Requirement, there had been a debt; she had been looking at the position as at that time. She was also aware that the 01/09 return had been paid late. HMRC's compliance record as subsequently prepared on 15 September 2010 showed that for period 01/09, the amount due had been £12,028.34, and that following an electronic payment on 28 February 2009, the amount outstanding had been £7,659.62; this had subsequently been almost completely paid on 4 June 2009. The liability for period 07/09 was £8,510.98, subsequently reduced by credits from periods 10/09 and 01/10 to £5,987.41. For period 03/10, the liability was £19,042.57, paid 47 days late together with the earlier balance for 07/09.

50. Mr Ridge had also been a director of Phonesdirect.com Ltd, which owed VAT of £2,325 at the time of the notice. This central assessment had been withdrawn on 27 July 2010 when its 01/10 return had been rendered.

51. Mr Sanders had been a director of Brinc Ltd, which as at the date the chain chart had been prepared, was shown as owing VAT of £5,872.85 in respect of its part paid return for period 02/10. We accept Mr Ridge's evidence that, according to Mr Sanders, a "time to pay" arrangement had been in force at the time in respect of these VAT arrears and that the liability had since been discharged in full. We find that the debt was outstanding at 16 June 2010, the date on which the notice was served; as shown on the record of compliance and statement of account subsequently completed by HMRC on 16 September 2010, the balance of the full sum of £17,619.69 due in respect of period 02/10 had actually been shown as "cleared" on 3 September 2010.

52. Mr Ridge was a director of Mobile Sourcing Ltd. The chain chart showed £182,301.75 to be due in respect of outstanding liabilities to VAT. Mrs Uzzell had been aware when considering matters at 4 June 2010 that the liabilities were under appeal. Subject to one issue, we are satisfied by reference to her evidence that she had deemed the liability of this company to be irrelevant, and by reference to the calculation set out below, that she did not base her judgment of the need to require security on this liability, as she was concerned in respect of other debts relating to other companies, and that this company's liabilities were not the reason for her decision to sign the notice. Our one reservation is the terms in which Mrs Uzzell expressed her oral evidence. She stated that she had been aware that the liabilities were under appeal, and that as she had been aware, she did not *solely* [our emphasis] base her judgment on this, given her concerns relating to other debts. She also referred to Mobile Sourcing Ltd's debts not being the prime reason for the notice. She then went on to make the statement that this (ie the liabilities of Mobile Sourcing Ltd) had not been why she had signed the notice of requirement; she had deemed the liabilities to be irrelevant. We comment further on this issue in our general conclusions on her evidence as set out below.

53. In respect of Telco Ltd, a VAT liability of £44,687.15 and a liability to penalty of £28 were shown on the chain chart as having arisen while Mr Ridge had been a director; the company had become insolvent and was eventually dissolved. (HMRC's compliance summary as at 16 June 2010 prepared on 20 September 2010 showed the liabilities as £51,534.45 VAT, interest of £658.55, and penalties of £28.) Mr Ridge stated in his witness statement that he had been a non-executive director, and that the liquidators had confirmed that no actions had been taken against the directors in relation to the matter. Our understanding is that the Companies Acts make no distinction between executive and non-executive directors, and we therefore find that this liability was appropriately taken into account by Mrs Uzzell.

54. We accept Mrs Uzzell's evidence that, although she considered Link Telecom Services Ltd, Contact Management Services Ltd and VVB Ltd, she did not take these companies into account in arriving at her decision to sign the notice.

55. In respect of Mobile Essentials Ltd, Mr Ridge was a director, and at the time of the notice being signed the chain chart showed that there was an outstanding liability of £1,034.66, consisting of VAT of £858.00 and default surcharge of £176.66. It was accepted by the accountants in their letter dated 25 June 2010 that this sum was late, having been paid on 23 June 2010. However, the return was late, and the chain chart had been prepared on 14 May 2010, so we find that in the light of the information before her on 4 June 2010, it was appropriate for Mrs Uzzell to take the apparent liability into account.

56. There was a difference between the figures shown for Mobile Essentials Ltd in the chain chart and those shown in the compliance record prepared by Mr Ianelli of HMRC on 29 September 2010. The latter showed the total outstanding as at 16 June 2010 to have been £7,010.08, consisting of £6,054.63 VAT owing, and default surcharge of £956.15. This difference is referred to below.

57. In respect of Capital Developments (Property) Ltd, of which Mr Ridge was a director, the chain chart had been completed on 14 May 2010 and the assessment in the sum of £6,600 had been withdrawn following its return submitted on 20 May 2010. Mrs Uzzell had not been aware of this at the time when she signed the notice of requirement. She accepted in evidence that the debt had not been outstanding at that time, but on the face of the chain chart, this sum had been outstanding. The evidence included a statement of account prepared by Mr Ianelli of HMRC on 22 September 2010, which shows the actual position to have been that in the light of that return, submitted 20 days late, a sum of £1,054.63 was repaid to that company. We are unable to conclude, in the absence of evidence as to the state of HMRC's compliance records for this company, whether Mrs Uzzell would have had reason to be aware that the information on the chain chart was out of date in this respect. In the light of her evidence as considered below as to the companies which she had taken into account in deciding to sign the notice, it appears that she may have omitted this company from the list of companies on which she based her decision.

58. Mr Ridge was also a director of Business Phones Direct Ltd. He accepted in his statement that HMRC were correct in indicating that there was an outstanding liability

to HMRC of £69,267.95 as at the time of the notice; this liability consisted of VAT of £59,352.12 and default surcharge of £9,915.83, relating to periods 9/09 (part paid and unpaid surcharge), 12/09 (unpaid surcharge) and 03/10 (central assessment plus unpaid surcharge). A "time to pay" arrangement had been agreed with HMRC.

59. In respect of Bowland (NW) LLP, at the time of issuing the notice of requirement this entity had owed VAT in respect of a central assessment amounting to £860, and the application for deregistration, of which Mrs Uzzell had not been aware, had been dated 24 June 2010. Thus this was after the date of service of the notice of requirement. Parkacre Management Ltd (ie PTS under its previous name) had been included in the chain chart because of the connection to Mr Ridge and the type of trade in which it was involved, although HMRC's records showed that no first return had been issued.

60. We accept Mrs Uzzell's evidence that if a company did not appear on the chain chart, she would not look at it and that if she had felt something more needed to be added, she would have requested this to be done. We also accept her evidence that it was not normal to have so many companies listed on a chart, and that matters would reach the point where no more companies needed to be listed on the chart.

61. We find that in arriving at her decision, Mrs Uzzell excluded irrelevant information, including cases where the directors had been appointed after VAT liabilities had been incurred, information concerning ETC Communications Ltd, and the liabilities of Mobile Sourcing Ltd. In relation to the latter, we find that her use of the word "solely" in oral evidence did not affect the general tenor of her evidence that she had excluded this company from consideration; we would have found it easier to consider this question if she had not used that word. As a result of her examination of the companies listed on the chain chart, she concluded that the total unpaid debt of the companies taken into consideration was approximately £156,000:

European Systems Exchange Ltd	£25,029 paid late
Phonesdirect.com Ltd	£ 2,325
Telco Ltd	£52,041
Mobile Essentials Ltd	£ 7,010
Business Phones Direct Ltd	£69,267
Bowland (NW) LLP	£ 860
	£156,532

62. We find that this calculation does not exactly match the information shown on the chain chart. Although Mrs Uzzell referred in her oral evidence to a figure of £29,500 for European Systems Exchange Ltd, the actual amount recorded on the chart as being owed by that company was £25,029.98; we find that to have been the amount which she took into account. (That amount is also confirmed by the compliance record as at 16 June 2010 prepared by S Courtney of HMRC on 15 September 2010.) The amount shown on the chart as having been owed by Mobile Essentials Ltd was £1,034.66, not £7,010; the latter figure was taken from the compliance record produced by Mr Ianelli on 21 September 2010, which stated this to have been the amount outstanding at 16

June 2010. Further, this calculation does not include the £6,600 which Mrs Uzzell thought at the time of signing the notice to be owed by Capital Developments (Property) Ltd. (It also omits Brinc Ltd's debt, as set out in the chain chart, of £5,872.85.)

63. In re-examination by Mr Robinson, Mrs Uzzell gave additional evidence relating to payments of some of these liabilities. She stated that European Systems Exchange Ltd's liability was paid late, on 28 June 2010. The central assessment of £2,325 shown as owing by Phonesdirect.com Ltd was withdrawn on 27 July 2010. Telco's liability remained outstanding, due to its insolvency. Mobile Essentials Ltd's outstanding liability was discharged on 23 June 2010. Business Phones Direct Ltd had a time to pay agreement and its liabilities were paid later. Bowland (NW) LLP applied later for deregistration, on 2 July 2010, as foreshadowed in the accountants' letter dated 25 June 2010.

64. We find that in the light of the information available to Mrs Uzzell at the time when she arrived at her decision to issue the notice of requirement for security, her decision was reasonable. However approximate the amounts were that she took into account, it was clear that a substantial amount of tax owed by companies with which Mr Ridge or Mr Sanders were involved appeared to her to be potentially at risk. We do not consider that she took into account any irrelevant matters; we accept that she excluded a large number of the companies in respect of which particulars had been included in the chain chart (including others not referred to above).

65. Further, we do not consider that she disregarded anything to which she should have given weight; various items of information were not provided until after she had signed the notice of requirement. That information came from PTS' accountants, first in a telephone call and subsequently in their letter written on the following day, 25 June 2010, in which they requested an independent review. In the notice of requirement dated 16 June 2010, Mrs Uzzell had said:

> "If you have any further information that you want me to consider, please forward it to me immediately."

The paragraph immediately following that sentence referred to the actions available to PTS if it did not agree with Mrs Uzzell's decision, namely to ask for an independent review, or to appeal to an independent tribunal.

66. From Mrs Uzzell's oral evidence, we understand that the wording of the notice of requirement followed a standard form. On that basis, we do not feel that this standard wording makes sufficiently clear that the recipient has the option, before taking either of those actions, to provide information which may have the effect of satisfying HMRC that the decision to require security should be withdrawn. Mrs Uzzell stated in cross-examination that HMRC were not required to issue a warning letter before serving a notice of requirement of security, and that there had been no prior contact with PTS before the notice had been issued. If those HMRC officers who issue notices of requirement are prepared to consider further information before the matter goes to independent review or on appeal to a tribunal, we suggest that this element of the decision-making process should be made properly clear in the notice itself.

67. The accountants' letter dated 25 June 2010 argued that the position of companies which had "time to pay" arrangements in being should be left out of account in considering the security position. We do not consider this to be correct. A company which has entered into such an arrangement remains in the position that it has failed to account for its VAT liabilities at the time or times when they have fallen due. In addition, such an arrangement does not remove the risk that ultimately the company in question may fail to account for some or all of that VAT liability.

68. The information in their letter relating to the transfer of PTS to the Premier Telecom Communications Group described events which had not yet occurred at the time of Mrs Uzzell's decision on 4 June 2010 to require security, or even on the date of service of the notice. As Mr Ridge explained in his witness statement, a controlling PTS was acquired by Premier Telecom Communications Group Ltd on 23 June 2010. Accordingly, it was not appropriate for Mrs Uzzell to take that information into account in arriving at her decision, whether or not it would have been appropriate to do so in any reconsideration of her decision in advance of a review.

69. In case any of our findings at paragraphs 64 and 65 above concerning the process followed by Mrs Uzzell are considered to be incorrect having regard to our earlier findings relating to specific companies, we record our general finding that, in the light of the overall level of liabilities disclosed by the chain chart as owed by the relevant companies, adjusted where appropriate to take account of compliance information taken from HMRC's records by her, her decision to issue the notice would inevitably have been the same.

70. In arriving at the latter conclusion, we have considered whether the Companies House information included in the second bundle concerning PTS under its previous name and its directors might be relevant, as it shows Mr Ridge's company appointments as: "Current: 20 / Resigned: 26 / Dissolved : 6". However, there is no evidence as to the date of these details, and we therefore consider that we must ignore them.

71. Having determined that the decision taken by Mrs Uzzell was reasonable on the information available to her as at 4 June 2010, we consider the next stage of the decision-making process.

The HMRC review

72. As Mrs Parsons was not available to give evidence, we have to consider whether this inevitably means that, as in *Sanleo*, we are unable to be satisfied that her decision to uphold the decision to issue the notice of requirement was one which was reasonably taken. Ms Brown argued that the absence of evidence from Mrs Parsons meant that HMRC had not provided sufficient evidence in relation to the decision-making process to enable this to be tested by PTS, or for us to be satisfied that the decision was reasonable. Mr Robinson submitted that Mrs Parsons' review letter did deal with a number of the companies, although his prime focus was on the earlier part of the decision-making process. In our view, the proper course is to examine the evidence available in documentary form, and to consider whether we are in a position

to arrive at a conclusion without the benefit of a witness statement and oral evidence from Mrs Parsons. Even in the absence of Mrs Parsons, if the evidence shows, in accordance with *John Dee*, that the decision on review would inevitably have been the same in the light of additional material which she did not take into account, we are able to dismiss the appeal.

73. The companies referred to in Mrs Parsons' review letter dated 23 July 2010 were:

(1) Mobile Sourcing Ltd;

(2) Brinc Ltd;

(3) Capital Developments (Property) Ltd;

(4) Phonesdirect.com Ltd;

(5) Business Phones Direct Ltd;

(6) Bowland (NW) LLP;

(7) Mobile Essentials Ltd;

(8) European Systems Exchange Ltd;

(9) ETC Communications Ltd;

(10) Telco Ltd – in Liquidation.

74. In relation to (2), (5), (6), (7) and (9), Mrs Parsons stated that HMRC did not have authority to discuss those businesses with the accountants. In the case of (6) and (9), Mrs Parsons noted the accountants' comments.

75. Her response in respect of Mobile Sourcing Ltd was:

> "As you have commented, this company has requested that their case is considered at tribunal in respect of input tax that has been disallowed. Until the Tribunal takes place, the debt is outstanding and I feel was correctly considered."

76. Although Mrs Parsons had stated that her review had to centre on whether the decision that had been made by Mrs Uzzell on 4 June 2010 was reasonable, based on the facts available at that time, she did not in express terms state that the decision to issue the notice had been reasonable. She did not refer in any detail to the information which had been supplied by PTS's accountants in their telephone call to Mrs Uzzell or in their letter dated 25 June 2010 to HMRC.

77. Without her evidence, we find ourselves unable to establish whether she took all the subsequent information into account, or whether her decision was based significantly on Mobile Sourcing Ltd's liabilities. If the latter was the case, this differed from the approach taken by Mrs Uzzell. We have considerable doubts whether it is generally appropriate, in deciding whether security is required, to take account of liabilities that are the subject of dispute and form the subject-matter of appeals to the Tribunal. In the absence of her evidence, we are unable to test the position.

78. In the same way, Mrs Parsons' refusal on confidentiality grounds to discuss various companies also presents us with a problem. We find ourselves unable to test the reasonableness of her decision so far as it related to those companies.

79. We regard the approach of refusing to discuss the position of companies which may or may not have been taken into account in reviewing the original decision to require security as, at best, distinctly unhelpful to PTS, its advisers and this Tribunal. It inevitably calls into question whether the review was properly carried out. Given the absence of evidence from Mrs Parsons, we cannot be sure whether this was the case. We therefore consider whether there were other matters referred to in her letter which call into question whether her review was reasonable, whether she took into account irrelevant material, or whether she failed to take into account any relevant material.

80. Our major specific concern is with her comments on Mobile Sourcing Ltd (see paragraph 75 above). Although we are not convinced that there should be a complete prohibition placed on consideration of disputed liabilities when arriving at the decision that security should be required, we consider that this will only be appropriate in a relatively limited number of circumstances, and that a very clear explanation of the justification for doing so must be given by HMRC when setting out their reasons for requiring security. We find that Mrs Parsons' letter does not adequately explain her reasons for taking Mobile Sourcing Ltd's liabilities into account.

81. A more minor concern is that we find ourselves unable to understand her comments on Capital Developments (Property) Ltd:

> "I agree that this business would not appear to have been a risk to the department at the time the requirement was issued, however, the supporting records do not indicate that it was considered to be a risk."

Had she given evidence, it would have been possible to hear her explanation of the intended meaning of this paragraph of her letter.

82. Having regard to these concerns, and in the absence of evidence from Mrs Parsons to explain her reasons for her decision, we find that her review was not properly carried out.

83. We have considered the implications of the decision in *Sanleo*. In the absence of the reviewing officer, the Tribunal found itself unable to find that the decision of the reviewing officer was a reasonable one, and allowed the appeal. It is not clear from the decision whether the Tribunal considered the further question whether, had the review been properly carried out, the reviewing officer's decision would have been the same. It is possible that the Tribunal concluded, in the absence of evidence, that it was not able to determine this question.

84. In the present case, we consider that there is sufficient evidence for us to apply this further *John Dee* test. We therefore go on to consider whether, if Mrs Parsons had carried out the procedure properly, her decision would inevitably have been the same.

85. The further information available to Mrs Parsons as at 23 July 2010, as compared with that available to Mrs Uzzell at the time of her original decision on 4 June 2010, was as follows:

(1) That Capital Developments (Property) Ltd did not owe £6,600, but was due to receive a repayment of £105.83, the total outstanding as at 16 June 2010 being £0.00;

(2) That as at 16 June 2010 Phonesdirect.com Ltd did not owe £2,325, but was due to receive a repayment of £602.24;

(3) That the VAT liability of £25,029.98 due from European Systems Exchange Ltd, although outstanding on 16 June 2010, was discharged in full on 28 June 2010;

(4) That a controlling interest in PTS had been acquired by Premier Telecom Communications Group Ltd on 23 June 2010.

86. We find that these additional items of information, although reducing the amount of the liabilities taken into account by Mrs Uzzell, do not do so to an extent which we regard as sufficiently reducing the tax considered to be at risk to justify removing the requirement for security. Further, as stated in Mrs Parsons' letter, she had not been able to verify from HMRC's records what PTS's accountants had stated relating to the position of the Premier Telecom Communications Group. (We note that the undated information relating to Parkacre Management Ltd contained in the second bundle states that: "There is no holding company recorded by Jordans as shareholder of this company." We also note that the further undated "Company Register Information" which was one of the exhibits to Mr Ridge's witness statement records the date of the change of name as 28 June 2010.) We find that, had Mrs Parsons properly carried out her review (including provision of information concerning those companies which she had refused to discuss with PTS and its advisers), her decision to confirm Mrs Uzzell's original decision to require security would inevitably have been the same.

87. In the light of the latter finding and our earlier findings relating to Mrs Uzzell's decision, we dismiss PTS's appeal.

Right to apply for permission to appeal

88. 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.

JOHN CLARK
TRIBUNAL JUDGE
RELEASE DATE: 12 January 2012