[2018] UKFTT 0245 (TC)

TC06477

Appeal number: TC/2016/06165

INCOME TAX – losses arising from individual dealing in financial instruments and securities – whether or not trading – held yes – whether or not on a commercial basis – held yes – whether or not with a view to profits – held yes – appeal allowed

FIRST-TIER TRIBUNAL
TAX CHAMBER

RAJESH GILL	**Appellant**
- and -	
THE COMMISSIONERS FOR HER MAJESTY'S REVENUE & CUSTOMS	**Respondents**

TRIBUNAL: JUDGE PHILIP GILLETT

Sitting in public at The Rolls Building, London on 9-17 April 2018

Imran Afzal, counsel, instructed by Gordon Dadds LLP, for the Appellant

Patrick Boch, counsel, instructed by the General Counsel and Solicitor to HM Revenue and Customs, for the Respondents

DECISION

1. This was an appeal against a decision of HMRC, contained in a closure notice dated 17 June 2016, that the appellant ("Mr Gill") was not trading, or alternatively if he was trading then he was not doing so "on a commercial basis" or "with a view to the realisation of profits" as required by s.66 Income Tax Act 2007 ("ITA 2007") for sideways or carry-back loss relief to be available.

Preliminary Issue

2. Prior to the hearing of the substantive appeal Mr Afzal, on behalf of Mr Gill, applied for a direction that HMRC should not be allowed to rely on a significant body of materials produced to the appellant shortly before the hearing.

3. The new materials consisted of:

(1) A macroeconomic textbook, which was over 600 pages long. This was disclosed in hard copy on 7 March 2018.

(2) Various academic articles which in total were over 300 pages long. Some were provided in hard copy on 7 March 2018. Others were provided electronically: some on 20 March 2018 and yet further articles on 3 April 2018.

(3) Various graphs which were disclosed electronically on 20 March 2018.

(4) A series of spreadsheets which fell into two categories. Those described as "non-fees" spreadsheets were disclosed on 22 March 2018 and those described as "fees" spreadsheets on 26 March 2018. I was asked to note the following points:

a. Many of the spreadsheets were printed double-sided such that, based on normal single-side printing, the materials were more than the existing 8 volumes of material which HMRC had previously prepared.

b. Moreover, HMRC specifically confirmed that everything had been printed out but in fact the entirety of the "fees" spreadsheets were not printed, and in respect of the "non-fees" spreadsheets it appeared that the electronic data contained a greater number of tabs than those in the hard copies, implying that the hard copy was incomplete.

4. Rule 15(2) of the Tribunal Procedure (First-tier Tribunal)(Tax Chamber) Rules 2009 ("Tribunal Rules") provides that the "Tribunal may…exclude evidence which would otherwise be admissible where - (i) the evidence was not provided within the time allowed by a direction or a practice direction, (ii) the evidence was otherwise provided in a manner that did not comply with a direction or practice direction, or (iii) it would otherwise be unfair to admit the evidence".

5. The Directions issued by the Tribunal set a deadline for HMRC to provide its List of Documents ("LOD"), which was 21 April 2017.

6. In this context Mr Afzal argued that:

(1) The book and articles should have been included in the LOD.

(2) The graphs and spreadsheets should either have been included in the LOD or at the very least should have been appended to a witness statement explaining how they were prepared.

7. On this basis Mr Afzal submitted that the disclosure was significantly out of time.

8. In addition, Mr Afzal argued that if HMRC knew that it was going to serve the new materials it should have applied for permission to adduce evidence out of time at the time when the hearing date was set, on 17 January 2018, and for the hearing window to be pushed back. Alternatively, if HMRC had only recently decided to adduce the evidence then that merely reinforced the fact that it should not be permitted to litigate by ambush and in breach of the applicable time limits.

9. Finally I note that HMRC accepted it should have disclosed the new materials earlier. In correspondence concerning these materials Mr Boch said "I concede the documents should have been provided to you earlier" (7 March 2018) and "I agree that it would have been better for the material to have been disclosed earlier" (21 March 2018). I can only agree.

10. It is also important to note that at a preliminary hearing Judge Brooks refused HMRC permission to adduce expert evidence because he considered that the evidence would not be helpful, because no expert could have a comprehensive view in relation to all types of trading strategies. However Mr Boch had said that HMRC wished to rely on this new material precisely because Judge Brooks had ruled against the use of an expert witness. I find the fact that these new materials were proposed to be used as a substitute for an expert witness, which was specifically ruled out by Judge Brooks, is somewhat disturbing.

11. For his part, Mr Boch encouraged the Tribunal to have regard for the over-riding objective and to deal with cases justly and fairly.

12. He explained that much of the raw data provided by the appellant was not useful in the way in which it had been presented and that the additional spreadsheets prepared by HMRC merely presented data which had already been provided but in a more accessible and useful format. Unfortunately there had been a number of errors in the data provided by the appellant, including decimal points in the wrong places, which had rendered the data unusable in its original form, and had also meant that it had taken HMRC staff a great deal of time to produce more usable data, which had led to the delay in providing the spreadsheets.

13. Mr Boch also referred to the fact that at times it appeared from the data provided that Mr Gill was holding negative amounts of various securities. HMRC had therefore assumed that some trades had been omitted and had inserted "dummy trades" to avoid this problem. It appears that the fact that these negative values might have been caused by some other, legitimate, factor, such as Mr Gill shorting a

particular security, had not been considered by HMRC and they may therefore have inserted dummy trades unnecessarily. This rendered the new material somewhat flawed and therefore open to challenge.

14. One figure from this new data which was agreed to be significant was the total amount of commission and other trading fees which Mr Gill had paid, but it was agreed that this would be provided to HMRC separately by Mr de Viggiani, Mr Gill's accountant.

15. As regards the textbook and articles, Mr Boch agreed that these were extensive but he believed that this factor was outweighed by their usefulness. He did however agree that they were neither evidence nor legal authority.

16. He also believed that the graphs HMRC had put forward were a reasonable response to elements of the witness statement of Mr Gill. Indeed he said that HMRC had specifically requested that the hearing room should have a television to enable HMRC to put other graphs to Mr Gill during cross-examination.

17. After considering the submissions made by both parties I found that:

(1) All the new materials had been provided late, and at the very least should have been included in the list of documents provided to the appellant, in accordance with the Tribunal's Directions, before 21 April 2017.

(2) Judge Brooks had ruled that no expert witness should be called by HMRC and much of this material appeared to be designed to circumvent this ruling.

(3) Much of the technical material dated from before the 2008 crash which had created a paradigm shift in the way many financial markets behaved, including in particular the impact of quantitative easing. This material was therefore of limited value in any case.

(4) As regards the recalculated data, it had already been agreed that there were numerous errors in this, including the addition of dummy trades which may not have been justified. The data were therefore flawed.

18. I therefore decided to grant the application made on behalf of Mr Gill that the new material should be excluded from the hearing and could not be relied upon by HMRC.

19. I also decided that HMRC's behaviour with regard to this material had been unreasonable and therefore, in accordance with Rule 10 of the Tribunal Rules, and on the application of the appellant, I DIRECT that HMRC shall bear the reasonable costs of the appellant in making this application.

20. I shall leave it to the parties to agree the quantum of these costs but if they are unable to agree then I further DIRECT that in accordance with Rule 10(6)(c) they shall be subject to assessment in accordance with Rule 10(7)(a) of the Tribunal Rules.

Substantive Hearing

Facts

21. I received witness statements and oral evidence, in cross examination, from Mr Gill, Clive Elms, his broker at ODL Securities Ltd ("ODL"), and Charles De Viggiani, an accountant who has known Mr Gill for a number of years and who prepared data and charts from Mr Gill's brokerage information, at the request of Mr Gill. I found them all to be credible and reliable witnesses.

22. I received a great deal of evidence. Mr Gill's witness statement alone amounted to over 100 pages and was accompanied by numerous exhibits.

23. I found the following as matters of fact:

24. The Appellant obtained a Bachelor's degree in Business Management from King's College London (1991-4), a Master's degree in Analysis and Design of Management Information Systems from the London School of Economics in 1996, and during the summers of 1996 and 1997 he attended courses in Investment Analysis and Corporate Governance at Harvard University.

25. Mr Gill first started buying and selling shares in 1995. He initially borrowed £3000 from his father for this purpose which subsequently increased to £15,000. He opened accounts with various brokers and used television systems called CEEFAX (BBC) and Oracle (ITV) as sources of information. There were initially some losses but he then consistently generated profits, and once he was able to trade independently using profits generated, without needing to borrow from his father, he decided that trading would be his full-time "job".

26. He viewed the initial period of trading, i.e. on a part time basis whilst a student, as a learning experience rather like an apprenticeship. Whilst at university studying for his Master's degree the Appellant traded in small amounts using Sharelink (a phone number he could call to obtain the price of stocks), and when he was not at university he traded from his father's home using a telephone.

27. After completing his full time education Mr Gill established a routine whereby he would work not only whilst the market was open (8am to 4.30pm) but also additional hours to be able to conduct research.

28. As the volume of his trading increased he could no longer rely on CEEFAX and Oracle and therefore, in 1997/98, he opened an account with Dealwise (which, at the time, was one of the largest brokerages in the City), and this was his main broker for the next three years.

29. After conducting research Mr Gill identified a system called PC Market Eye which was a web based service. The system was advertised in Investor's Chronicle, to which the Appellant had subscribed. This was a bespoke trading system, which connected to a computer and allowed the streaming of stock data. In 1998 this was a sophisticated trading tool suitable for a full time professional trader which Mr Gill

considered himself to be. The PC Market Eye system enabled the Appellant to see the price at which a stock held by a market maker was being traded on one screen, and on another screen he could see all of the market makers who were bidding (to buy) or offering (to sell). In turn if he wished to place a trade he would instruct his broker to go to one of the market makers, and this process was conducted with Dealwise on the telephone.

30. In these early years (and indeed until 2000) the Appellant only traded physical stocks, and by mid-1998 he had made quite sizeable profits by implementing his trading strategies and using the experience he had gained over three years. His key strategy was to identify trends in price movements of shares and to trade using what came to be known as a momentum strategy, which is explained in more detail below.

31. To maximise his profit Mr Gill gradually increased the volume of trading and he began trading on margin, ie, Dealwise offered an arrangement whereby he could put down 25% with the remaining 75% being granted by way of loan from the broker. In addition this increased his trading limits. These were exceptional arrangements which would not have been available to an amateur.

32. By the end of 1998 the Appellant had increased the funds in his original Dealwise account to approximately £830,000 and he also opened a second account, in 1998, with a deposit of £45,000 from his father. In 1998 the Appellant also started to trade the US markets using an established brokerage (Ameritrade) and made a profit of $65,740 on US stocks in the period to 31 December 1998.

33. The Appellant adopted a number of different trading strategies which (as set out above) led to him generating significant profits. These strategies are summarised below and Mr Gill continued to use these strategies in later years although he adapted these strategies to new circumstances.

34. Mr Gill never prepared a written business plan, but he had a business plan in his mind, which was to implement the strategies he developed between 1995 and 1998 and to adapt these to changes in the markets, with the aim of achieving profit.

Initial Years (1995-1998)

35. The strategies Mr Gill developed and used during the initial years were:

(1) Mr Gill initially dealt primarily in FTSE 250 stocks and would place trades based on the number of market makers who were bidding or offering on a particular stock, e.g. if the number of market makers bidding to buy a particular stock increased this would indicate that the price would increase and the Appellant would purchase the stock.

(2) He used a "momentum trading" strategy. Based on incremental changes in the price and a number of factors such as trading range and known patterns in stock prices the Appellant could predict whether the price of a stock was likely to rise or fall, or whether it had reached its likely maximum and he would trade accordingly. To make this strategy work he was monitoring the prices of 50-60

stocks during any given day, which he was able to do due to an "almost photographic" memory and he would trade in the region of 200 trades per day in the UK markets. This did not involve obtaining a deep understanding of the companies whose shares he was buying or selling. He was looking for trends in pricing and buying or selling on the basis of those trends.

(3) Momentum trading was quite unusual at that time although it has now become more common, and indeed is the underlying theory behind a number of computer-based traders/investment managers who use computerised algorithms to identify and predict trends.

(4) Importantly, although Mr Gill traded in high volumes, he would diligently apply "stop losses" in order to cut his losses as quickly as possible to try to mitigate against sustaining a significant loss. His practice was to set a stop loss limit slightly below his entry price which he would then move up as the price increased, keeping it slightly below the current value. If a stock fell below this limit he would sell the stock immediately. These stop loss limits were not generally written down but retained mentally. Mr Elms commented that he believed that Mr Gill's strict adherence to his stop loss policy was one of the key reasons why he was so successful.

(5) Mr Gill would also watch for announcements in relation to a company and trade accordingly. For example, if there was an update stating that results would be better than expected then typically the price would rise, dip slightly, and then rise again before the results, and the Appellant would purchase and sell against that background.

(6) In addition, he would monitor the FTSE as a whole. If the market moved down but a particular stock did not fall, or fell by less than the overall market, then this suggested that when the market moved upwards the stock would rise by a greater percentage than the overall market, and as such Mr Gill would purchase these stocks.

(7) Finally, it should be noted that towards the end of the Appellant's formative years (i.e. 1995-1998) he learnt that Initial Public Offerings ("IPOs") were very lucrative. Over-subscribed IPOs tended to lead to a rise in price after the initial listing in the market, ie, they would come to the market with "momentum". With this type of trading, Mr Gill researched and monitored the companies which were about to come to the market.

Subsequent Trading (1999-2000)

36. Mr Gill continued to use his existing trading strategies throughout 1999 with even greater success, but in order to increase his profitability he decided to expand his trading to the US markets.

37. Between 1998 and 2000 he spent six months per year in Boston, and when he was in the USA he traded both the UK and US markets. At this time he would rise at 4am (US time) so that he could be prepared for the opening of the UK market. He would conduct his UK trading activities by using PC Market Eye (which was

available over the internet) and Sharelink, and he would liaise with Dealwise on the telephone.

38. In addition to UK stocks the Appellant actively traded US stocks whilst residing in the US. His US market research included watching CNBC (a specialist financial subscription television channel devoted to US stocks) and reading CBS Market Watch (a website dedicated to US stock news). From his research it appeared that the US markets followed the same trends as the UK markets but on an amplified basis which he believed offered the prospect of even larger profits.

39. During 1998 and part of 1999 the Appellant was using the brokerage Ameritrade, but eventually he used Webstreet because trades could be placed online (which was not possible in the UK at the time) and trades were executed very quickly. Mr Gill was Webstreet's second most valuable client (in terms of trades placed and commission paid). He was placing approximately 100 trades per day, and he was given a reduced rate of commission ($5 instead of $15 per trade) and a dedicated broker (which was a facility reserved for elite clients all of whom would have been professional traders). As Mr Gill's trading volume increased he successfully challenged commissions and had them reduced, and also subsequently negotiated a reduction of his commissions in the UK.

40. Initially Mr Gill found the US markets difficult because the online nature of trades meant prices moved quicker but he became used to this and started to make profits.

41. Mr Gill's trading strategies resulted in high volumes of trade (an average of 100 trades per day in the US markets and 200 trades per day in the UK). Of particular interest are his investments in Colt Telecomm (on the London Stock Exchange). The price of this stock stood at £3 per share in 1998 but had reached £80 by March 2000. Importantly Mr Gill did not just buy and hold this stock, but bought into and sold out according to the movements and trends in its price. He estimated that had he executed a simple buy and hold strategy he would have made approximately £80,000 from Colt, but by buying into the stock during periods of strength and selling during periods of weakness, which involved up to 20 or 30 transactions per day, he made profits of approximately £1.5m on this stock alone in the 2 year period.

42. The consequence of trading both the UK and US markets meant that when he was in the UK he would continue working until 9pm (UK time) when the US markets closed. He would concentrate on UK markets until 2.30pm (UK time) when the US markets opened, by which time most of his work and analysis of the UK market was completed, between 2.30pm and 4.30pm (when the UK market closed) he would start to concentrate on the US markets, and from 4.30pm onwards he would dedicate the rest of his day to the US markets.

43. By early 2000 the liquidation value (i.e. the amount of money the Appellant would receive if all his open positions were converted to cash) of his principal account with Dealwise was approximately £7.89m. Further, the level of profits on his Webstreet account increased from c.$50,000 in 1999 to c.$350,000 in 2000.

Trading strategies 1999 to 2000

44. Mr Gill was aware that markets could change very quickly and he had to be ready to modify his existing strategies or to design new ones. In the first part of 2000 there was a sharp correction (ie, a sudden temporary price decline) and he concluded that his existing strategies in relation to physical stocks would not work since they were based on underlying rising prices. With Dealwise he could only “go long”, ie, hold actual stocks, but to profit from a market crash and a “bear market” he needed to be able to “short” stocks, ie, to sell stocks which he did not own.

45. By this time Mr Gill had a good understanding of the markets and so was able to react quickly. He realised that the small-cap and mid-cap markets were less susceptible to the global macro-economic climate and so he could deploy his momentum trading strategies. This enabled the Appellant to generate profits of over £1m in the UK though trading with Dealwise in the year to 31 March 2001.

46. Mr Gill’s trading strategy was primarily to seek to increase his trading profits, but in addition he also sought to reduce his overheads. He deliberately ran a lean and efficient business, whereby his main overheads were a telephone line, trading systems and commissions. He did not need “back office” assistance as this was a service which was effectively provided to him by the brokerages and for which they were paid through commission.

47. In early 2000 Mr Gill reviewed his business structure and decided to move brokers to maximise profits. There were various reasons for this including:

(1) wanting to negotiate lower commissions,

(2) needing a larger trading limit than Dealwise could offer, because by mid-1999 the Appellant’s fund with Dealwise had exceeded £7m given that he was extremely profitable,

(3) needing a more sophisticated system for checking his profitability and performance He received a daily spreadsheet from Dealwise and spoke to an accountant there twice weekly, and whilst this “manual” system initially worked well it was inefficient by the end of 1999 given the volume of trading, and it would be impractical and time-consuming for the Appellant to keep his own records,

(4) Dealwise’s “back office” was struggling to cope with the volume of trading. He now needed to know his open positions by 7.45am before the market opened but often there was a delay in receiving the information from Dealwise so he was not ready to trade at 8am,

(5) On a related note, the Appellant had been keeping a ledger of his trades which he could check to see if Dealwise had made any errors. Given that Dealwise were manually placing his orders, there inevitably were some errors in light of the volume of trades, and he considered that dealing with these was an inefficient use of his time, and

(6) Dealwise's method of execution was not efficient. Often Mr Gill would place numerous trades, and Dealwise had to contact a number of market makers which resulted in a delay during which the price might have moved.

48. Mr Gill made enquiries with other brokers, and he was introduced to Union Cal Limited ("Union") by Sanjeev Verma (a friend from university). He was referred to Matthew Bomford (a senior broker at Union) who persuaded Mr Gill that they could meet his needs.

49. A further advantage of moving to Union was that Mr Gill knew that with companies above a certain market capitalisation one could trade through Contracts For Difference ("CFDs"), and Dealwise did not offer this service but Union did. Mr Gill therefore decided to open an account with Union.

50. CFDs are derivatives that track the market value of a stock or other instrument, but the trader does not actually own the stock or other instrument. This means that the trader can go "long" or "short", and thus can make profits both in a bull market or a bear market. CFDs are also leveraged products, ie, the trader is afforded margin by the broker.

51. Around this time the Appellant was also considering how best to structure his business commercially, and in mid-to-late 1999 he was introduced to Coda Corporate Services Ltd ("Coda"), a corporate services company based in the Isle of Man. Coda recommended that Mr Gill should trade through offshore entities and thus in early 2000 he incorporated Parabola Investments Ltd ("Parabola") and Tangent Investments Ltd ("Tangent"), (which later became Aria Investments Ltd). These were both registered in the Bahamas.

52. Mr Gill was appointed as trading advisor to both companies and he carried out all trading activities on their behalf. The formation of the companies made very little difference to his activities since he was the person trading on behalf of the companies. He had been advised by Coda that this would be a legitimate way of reducing his tax liabilities and, knowing very little about tax, he believed his adviser at Coda.

53. Towards the end of 2000 Mr Gill opened an account with Union in the name of these companies and transferred the majority of his Dealwise funds there. He retained some funds with Dealwise so that did not have "all of [his] eggs in one basket" and this also enabled the continuation of the successful relationship with Dealwise, but at a level that worked within their structure.

54. Mr Gill relied heavily on Mr Bomford's guidance in relation to new types of trade and for information as to how the trades were performing, and his belief that the trades were performing well led to him increasing that type of activity. However, it emerged that Mr Bomford, who was a broker at Union and then subsequently at MF Global Ltd ("Man") to whom Union had transferred its business in mid-2001, had committed fraud including lying about the results of trades, placing unauthorised trades and failing to execute trades. In this respect Mr Bomford knew that Mr Gill would rely on him for information over the telephone because, given the volume of trading, it was not viable for him to keep his own records. Mr Gill had built up a

trading fund of several million pounds when he moved to Union, but in February 2002 he learnt from Mr Bomford's colleague that this had reduced to approximately £817,000, whereas a few months earlier on 26 October 2001 Mr Bomford had told him that the liquidated value was £9.27m.

55. This led to Mr Gill conducting extensive litigation (on behalf of Parabola and Tangent) in the High Court and Court of Appeal (the "Man Proceedings"), and he was ultimately awarded approximately £19.3m plus costs.

56. Following the High Court decision Mr Gill entered into a contract settlement with HMRC whereby he would pay approximately £5m in tax, primarily on the basis that he was an agent of the off-shore companies and as such constituted a permanent establishment of those companies through which they traded in the UK, and through which all their profits (most notably the damages awarded) had been generated. It was agreed between the parties for the purposes of reaching an agreed settlement that the companies would be taken to have carried on a trade in that period and would, through Mr Gill, pay corporation tax (approximately £4m) on those profits. In addition, Mr Gill was also to pay income tax on part of the costs awarded by the High Court (approximately £158,000) and capital gains tax on transactions involving financial instruments carried out in his own name (approximately £600,000).

Trading activities via Union/Man

57. The following is a summary of the trading strategies employed by Mr Gill when he traded via Union/Man, although he was of course being defrauded during this period.

58. Mr Gill started to "go short" on stocks which was appropriate in the prevailing market which was still falling after the dotcom crash in March 2000, and he applied momentum trading in reverse. He also traded FTSE futures and would "go long" if the market was rising and vice versa.

59. When the account with Union was opened Mr Gill was concerned that all the funds were in USD because he did not want to be over exposed to one currency. Mr Bomford therefore suggested that Mr Gill should take out a currency option and in turn Mr Gill spoke to a forex trader at Union and agreed for Mr Bomford to be the intermediary. He also realised that there was an opportunity to make profits from currency fluctuations and as such he performed simple forex trades, again implementing his momentum trading strategy.

60. Between mid-2000 and early 2002 Mr Bomford encouraged Mr Gill to trade through the Stock Exchange Electronic Trading Service, a system used on the London Stock Exchange for FTSE 100 shares and some FTSE 250 shares. Previously Mr Gill had rarely traded FTSE 100 shares due to their higher volatility which meant that they were harder to trade on the basis of momentum. Initially he kept the number of trades low, and despite making a loss in the first month, subsequently he believed that he was making profits based on what Mr Bomford told him, although this was a lie.

Trading during the Man Proceedings

61. Mr Gill continued trading during the litigation and the trading profits assisted in paying legal fees. However, much of his time between 2002 and 2009 was taken up with the litigation.

62. In order to continue trading Mr Gill found a new brokerage called Options Direct (Europe) Ltd ("ODL") and the broker he used there was Clive Elms. He also traded through another brokerage named GNI, as well as others, for a limited time. Although he changed brokers, his trading strategies and the way in which he communicated with his brokers remained consistent.

63. Around 2006/2007 Mr Gill had no funds in his trading accounts because they had largely been used to meet legal costs. At this time a brokerage named PA Dealings allowed him to trade on credit without giving any security and he produced trading income of £269,337. It was very unusual for a broker to extend credit in this way and Mr Gill assumes it was because of his profitable trading record.

Trading infrastructure after the Man Proceedings

64. During the summer of 2009 Mr Gill thought very carefully about the next stage of his business. He decided that he needed a "state of the art" trading room and he wanted to invest in the type of systems used by professional brokerages in the City or Wall Street.

65. Prior to the Man Proceedings he had used a number of different laptops and a system called Proquote (which was an updated version of PC Market Eye) but they were not powerful enough. Further, Proquote had serious limitations because it was optimised for the UK market only. He therefore decided that, using a new computer system, he would use Proquote and another system called E-Signal (which had a good data feed for streaming US stock prices). In addition at this time the Appellant was also researching Bloomberg. All of Proquote, E-Signal and Bloomberg provided "real time" information (including feeds, analysis and charts).

66. Mr Gill decided to locate his upgraded office environment in a separate room (which was approximately 200 square feet) at his home in London. The new system included a high powered computer, four screens, an office phone and a television with financial news channels such as CNBC. The need to upgrade his commercial infrastructure was particularly important given that he had by now made a decision to work towards setting up a hedge fund.

67. In relation to the selection of a new computer infrastructure, he involved Alpesh Patel (a well-known market commentator who had considerable experience in professional trading), Kevin Majunder (an expert in professional technology set-ups), Tilly Giladi (who helped design the Appellant's trading room), and Pantelis Kokkalis (the Chief Technology Officer at Eden Financial, a well-known City hedge fund). Further, Mr Gill had various laptops for use when travelling so that he had access to trading platforms, market data and feeds.

68. In addition to upgrading his technology Mr Gill also decided to upgrade his trading platforms (ie, information services) and in July 2010 he decided that it was better to have Bloomberg instead of Proquote and E-Signal.

69. Bloomberg is a leading global provider of business and market news, data and analysis and it included subscriptions to Businessweek and Bloomberg News which provided trading literature and news. Bloomberg provided Mr Gill with their EMSX multi-asset trading platform which gave access to almost 2000 broker-dealers, and also gave access to analytical tools from pre-trade through to post-trade (ie, technical analysis and charts for different instruments), plus news and real-time market and portfolio analytics so that he could monitor how quickly trades were executed and improve his trading decisions and performance.

70. A big advantage of Bloomberg was that it was broker-neutral, ie, Mr Gill would have direct access to the markets without the need for a broker (although Bloomberg also charged commission). However, Mr Gill still intended to work with brokers day-to-day as he was used to this, and also he wanted the broader range of services which brokers offered in monitoring his positions and alerting him of market news.

71. By 14 July 2010 the Appellant had signed up to Bloomberg and arranged for a "Bloomberg Anywhere" licence, which meant that he could access Bloomberg from anywhere including on his mobile phone.

72. Bloomberg came with a "B Unit" with a secure key card and finger print scanner to unlock the platforms, and a bespoke trading keyboard. The cost of a licence was $1590 plus VAT per month. Mr Gill is only aware of banks, professional brokerages and professional traders that own a Bloomberg Anywhere Licence, B Unit and bespoke keyboard.

73. Mr Gill also subscribed to numerous leading international exchanges beyond those provided as part of the standard Bloomberg contracts. These included, amongst others, the New York Stock Exchange ("NYSE"), where most S&P 500 stocks are traded, the Chicago Mercantile Exchange (for trading options), the Chicago Board of Trade (for trading currencies and commodities), NASDAQ Levels 1 and 2, which provided more detailed information in relation to technology stocks and the Bombay Stock Exchange. He also entered into a NASDAQ Subscriber Agreement in order to obtain the necessary market data and feed for the NASDAQ exchange, and his subscriber status was noted as "Professional".

74. In addition he was given complimentary access by ODL to a trading platform named PATS which was reserved for their best and most active clients. PATS enabled him to trade futures and options as well as to obtain access to international financial markets eg, the Dow Jones and S&P 500. Mr Elms stated that a single PATS licence cost ODL approximately £300/month "and so was reserved for their best and most active clients". Further, it was unusual for ODL to provide this service because PATS was "a sophisticated professional trading platform and was not easy to navigate or use if you were not familiar with trading these instruments" but in Mr Elms' experience Mr Gill was "clearly experienced in trading options and futures,

[and] more than capable of using and understanding this platform". ODL would not have granted access to "an amateur or inexperienced trader" because it would have been irresponsible and may have led to criticism from the FCA.

75. Mr Gill also had access to ODL's account management platform through their website which provided "real time" profit and loss figures and liquidation values, and it also showed commission and other charges and the net profit/loss on each trade at the prevailing price.

76. Mr Gill also subscribed to a number of newsletters including:

(1) Robert D McHugh's daily market newsletters between 27 June 2010 and 27 June 2012 at a cost of $459,

(2) Which Way Today, which is a "real time" trading room, ie, an online chatroom where market experts and professionals exchange "real time" views on FX trading. He initially subscribed to this on 5 January 2010 at a cost of £449/six months,

(3) Market Turning Points, which was a daily newsletter that forecast the likely movements of the S&P 500. Mr Gill subscribed to this on 27 July 2010 at a cost of $265/year and still does so today,

(4) Cycle News & Views, a newsletter that gave market turning points on the S&P 500, and Mr Gill subscribed to this on 7 August 2010 at a cost of $300/year,

(5) IPO Boutique which was a weekly newsletter giving recommendations on new IPOs on the US market. He subscribed to this on 22 October 2010 at a cost of $995/year,

(6) Active Newsletter which gave daily "real time" advice regarding short term trading and daily recommendations regarding US stocks and futures (Mr Gill would often receive up to 30 emails per day from this service), and

(7) Clive Maud Newsletter, which gave advice relating to the long term trends in the US stock and commodities markets.

77. In addition Mr Gill also monitored a financial website called ADVFN which gave the views of other market professionals and traders on UK small cap stocks and other financial products. He also had regular calls with his brokers at ODL, and HSBC enabled him to benefit from their insight into the markets and his trades. In the appeal year he incurred phone bills of £13,528 due to the substantial amount of time he spent talking to brokers. He used a number of suppliers to keep costs down.

78. He also had access to Sharescope (which was recommended by Alpesh Patel as a way to identify stocks that were "breaking out") at a cost of £1,069.

79. In relation to the Appellant's upgraded infrastructure, Mr Elms has commented that it was a "very significant investment (or overhead)" which "demonstrated Mr Gill's determination to trade professionally and profitably" and that the "majority of these systems and software in my experience would not have been comprehensible or

cost effective for private clients who were not full-time professional traders, who had a historic record of realising substantial profits and were commercially motivated to making profitable returns". He further stated that through "these working systems, and his own extensive trading experience, I consider that Mr Gill was well positioned to make informed and commercially sensible trading decisions".

Hedge Fund

80. As noted above, Mr Gill had an ambition to create a hedge fund. In order to achieve this aim he held meetings with Alpesh Patel (a well-known market commentator) and Rajeev Bhargava (who had direct experience of managing a hedge fund).

81. A company named Tejas Investments Ltd ("Tejas") was formed on 15 April 2010 for the purpose of creating a hedge fund.

82. Mr Gill's aim was to maximise his profits over a 12 month period to 2011 so that there would be sufficient capital to form a hedge fund and to demonstrate his performance to investors. Ultimately, however, the hedge fund did not proceed because the Appellant suffered losses in the appeal year. Tejas therefore remained a dormant company until it was voluntarily struck-off in 2014.

83. During the appeal year the Appellant traded on his personal accounts with ODL and HSBC, not through Tejas. Certain trading platforms, data and feeds were purchased in the name of Tejas but this was because Bloomberg preferred to enter into a contract with a company. However, the services were for his personal use and benefit and he was personally responsible for paying the invoices made out to Tejas.

Using HSBC after the Man Proceedings (including during the appeal year)

84. Mr Gill's experience with the Man Proceedings meant that he was cautious about the external entities with which he worked and he decided that it was sensible to have an account with a well-known and established bank. In 2009 the global economic climate was volatile following a financial crash in 2008 but Mr Gill believed that HSBC was less exposed.

85. Importantly, at that time, Mr Gill took a strategic decision to broaden the scope of his trading activity because of the changing commercial environment. The markets had changed since the 2008 financial crisis and he wanted to take advantage of this. He wanted to build on his established strategies and take what he described as a "prudent approach to introducing new strategies and products". He believed that he could achieve this by working with more sophisticated brokers who could provide access to a broader selection of different financial products.

86. During meetings with HSBC it appeared that they could provide a variety of different trading products including commodities. At this time (2009) Mr Gill was particularly interested in the ability to trade physical gold which he had been monitoring from 2006/07, because he believed that gold was a safe haven in times of economic uncertainty. He could not trade gold through his other brokers.

87. Mr Gill also wanted the ability to hold funds in multiple currencies to hedge against the volatile economic climate.

88. His initial trading portfolio with HSBC was £3.2m because at this stage he had only been paid an interim payment of £5m in relation to the damages awarded to him from the Man Proceedings.

Use of other brokerages after the Man Proceedings (including during the appeal year)

89. Following his experience with Man the Appellant decided that it was important not to rely on one institution or brokerage. As well as diversifying risk it would also enable the Appellant to place simultaneous orders with different brokers in order to maximise positions and profits. He had already engaged ODL as his principal brokerage for the limited trading he conducted during the Man Proceedings, and he had worked with Mr Elms at ODL since 2002/2003 and trusted him.

90. Mr Gill intended to use HSBC for longer term trades and commodity trading, and his initial plan was to focus on market maker stocks with ODL (using the same strategies that had been historically profitable) and also to trade certain other instruments with ODL. He intended to use ODL as his primary broker for day-to-day active trading because its commissions were lower than HSBC.

Typical trading day including during the appeal year

91. Mr Gill's typical trading day at this time was to commence work at 7.30am and his first step was to open live feeds from Proquote and later Bloomberg to check the performance of stocks, news and indices being monitored. He would also check his previous day's positons through ODL's account management system and read the financial news.

92. Trading on the UK markets began at 8am and from 2.30pm, when the US markets opened, he would also monitor those markets (initially using E-Signal and later Bloomberg). He would then work until 9pm when US markets closed. Further, on Sundays at 11pm (UK time) the Appellant would monitor the US futures market using PATS since this was a good indicator of Monday's trading.

93. Mr Gill was primarily based in his (home-based) London office at this time. He occasionally travelled overseas, and when he did he would take three laptops with him (one for Bloomberg, one for Proquote, and one to monitor emails and enter orders) as well as two telephones (he received calls on his UK number but would make calls to brokers using a local number since this was cheaper). Essentially he had a "virtual office" when he was abroad, and he would follow the same working day pattern as above even when he was on holiday. The only "real break" that the Appellant had from trading would be during Christmas when the markets were closed.

Trading relationship with ODL including during the appeal year

94. Having reviewed his positions from the previous day Mr Gill would call Mr Elms shortly before 8am each day, and they would go through the positions and Mr Elms would also provide technical analysis of the stocks the Appellant was holding or expressed an interest in. He would use Mr Elms as a "sense check" and they would create a "battle plan" for the day which was designed to balance risk and reward by operating within reasonable parameters. Mr Elms stated that "I found that Mr Gill was generally well aware of his opening positions given his extraordinary memory".

95. Part of the purpose for reviewing previous day's positions was to check for any errors which would be discussed with Mr Elms. Errors were infrequent and Mr Elms was seen as a "safety net", ie, Mr Gill trusted that between the two of them any errors would be picked up. Mr Elms confirmed that on the rare occasion that ODL had made an error Mr Gill "would invariably pick this up by using our routine procedures".

96. Typically Mr Elms would email analysis charts to Mr Gill and they would discuss these on the telephone, and with the benefit of this information Mr Gill would take his own decisions to buy or sell stocks. In addition, Mr Elms would often send him emails with helpful data regarding new instruments or existing positions, and also would provide purchase or sale alerts during the day if there was movement on a particular instrument that might be of interest. In relation to the analysis charts created by Mr Elms, I note that he had experience in relation to the preparation of complex technical charts and could produce these using ODL's Reuters software. Mr Elms explained in his witness statement that he would often send a few of these to the Appellant each day.

97. Mr Elms stated that Mr Gill was always confident regarding his trading ability and strategies but nonetheless he "bounced ideas off" Mr Elms to see whether there was technical data to support his research, and Mr Elms "found this to be a sensible approach which was consistent with what I would expect from a professional private client trader".

98. On an average day Mr Gill spent five or six hours on the telephone with Mr Elms. He valued Mr Elms' thoughts as the markets evolved, and this close analysis of the markets was particularly important at that time because of volatility and uncertainty in the markets caused by the Greek debt crisis. Although Mr Elms had other clients, the majority of his time was spent speaking with Mr Gill and it was not uncommon for him to spend most of his working day on the telephone with him.

99. In addition Mr Gill also monitored other news and developments that might affect his investment strategies, including macro-data concerning matters such as US GDP, US employment numbers and Federal Reserve meetings in relation to interest rates.

100. The Appellant would often speak with Mr Elms up to the close of the US markets or if the latter was unavailable with a colleague, and they would also normally discuss and critique the day's performance.

101. There was a potential risk when Mr Gill was unavoidably away from his office or travelling for any period of time, and on such occasions he instructed Mr Elms (and his other brokers) to telephone him with alerts with regard to any material movements in stocks he held or was interesting in purchasing. In addition, for times when he was unavailable, Mr Gill introduced a system of implementing "stop orders", or for making purchases at particular prices for specified amounts of stock. On such occasions Mr Elms had authority to sell/purchase within certain agreed parameters. ODL used an automated system and Mr Elms would input the details provided by Mr Gill. Mr Gill regularly monitored the "stop" positions on ODL's account management system and would call Mr Elms to make amendments if desired. This delegated activity was a small part of his overall trading.

102. The following comments by Mr Elms are worthy of note:

(1) "Mr Gill was "extremely disciplined, hard-working and focused" and had an "extremely consistent" daily routine.

(2) He and Mr Gill "worked together closely on a daily basis. Not only did I help him to monitor and execute his trades, he also consulted with me to obtain my views on various financial markets to help him make his trading decisions…I had a strong commercial and technical understanding of the financial markets and financial instruments in which Mr Gill was trading. I was able to analyse financial information about various trading opportunities and, amongst other things, prepare charts…in order to interpret the performance of particular companies, commodities, financial indices or financial instruments".

(3) Mr Gill's meticulous approach to implementing his trading strategies together with following his daily routine with me did not change during the appeal year (in comparison to the previous successful trading years when I acted as his broker).

(4) Mr Gill was "extremely disciplined at running his trading profits and cutting his losses and it was common for Mr Gill to place significant numbers of trades on a daily basis", and "the primary reason for the magnitude of daily trades was the Appellant's desire to make short-term profits together with quickly cutting his losses".

(5) Although Mr Gill had a greater trading fund following the Man Proceedings he continued to trade using the same day-to-day approach…and trading strategies which he had successfully deployed in previous years".

Trading relationship with HSBC including during the appeal year

103. Mr Gill's trading via HSBC was less active than that with ODL and instead consisted of longer term positions. Although the trading was less frequent it tended to be of larger monetary positions than with other brokers.

104. Mr Gill's primary broker at HSBC was Raphael Kunwar, with whom he had a different working relationship compared with that with Mr Elms. He would generally telephone Mr Kunwar after speaking with Mr Elms and go through his open positions in detail checking that there were no errors.

105. Mr Gill emphatically rejected any assertion by HMRC that he was not monitoring or reviewing whether his instructions were properly executed, or watching the commission rates charged by his brokers. On the contrary he maintained that he closely monitored the available data that concerned his daily trading. He also monitored liquidation values because this key performance indicator took into account relevant commissions.

106. Generally the Appellant would speak to Mr Kunwar or a colleague several times a day to provide instructions, discuss market news and obtain advice. This was mainly by telephone but sometimes email was used. Confirmation of trades was provided by email and sometimes instructions were also provided by email.

107. One of the benefits provided by HSBC was that they undertook their own market research and Mr Kunwar regularly discussed this with Mr Gill.

108. HSBC would regularly email "Statements of Assets" to the Appellant which provided a historical snapshot of certain aspects of his trading and results. They were a useful record of his trading, and reassured him about his overall balance. These Statements of Assets were also available to view online.

Market conditions during the appeal year

109. A number of global economic events led to great uncertainty and volatility in the markets in the appeal year and this made it difficult for Mr Gill to use his normal trading strategies profitably. He had not experienced such volatile market conditions previously.

110. The factors resulting in volatility and uncertainty included the repercussions of the 2008 financial crash and the Greek debt crisis. Of particular note, given the impact that it had on Mr Gill's trading, was a speech given by the Chairman of the US Federal Reserve, Ben Bernanke, on 27 August 2010 in which he indicated that there might be a second round of quantitative easing, which was followed by the formal announcement of a second quantitative easing programme on 3 November 2010.

111. Mr Elms commented that the economic problems meant that the UK and international financial markets "became volatile and presented difficulties to many of my clients during that time. For example I can recall that one of ODL's experienced clients suffered a margin call for circa £800,000 after being exposed to trading a leveraged product during the very volatile climate post the 2008 crash. This was only one example of several professional traders who suffered during this period". In relation to Mr Gill specifically, Mr Elms says that although he made losses in the appeal year "he was trading in a volatile and uncertain financial climate which made it difficult to deploy his tried and tested strategies successfully (especially his momentum strategy). Mr Gill tried to adapt his trading strategies to include different financial products and instruments but found it challenging to generate consistent profits".

112. An article in CNN Money which I was shown called "2010: the year of uncertainty and volatility" (dated 31 December 2010) set out some of the global

economic issues and the consequences for the financial markets. In particular 2010 was described as a "roller coaster ride" and the article stated that "extreme volatility and high uncertainty go together, and both are here to stay for a while longer". The article also listed some of the events which contributed to the volatile and uncertain markets, for example: continuing concerns regarding Europe's debt crisis, the "flash crash" of 6 May 2010, the Dow Jones closing on a seven month low in June 2010, a weaker than expected June jobs report in the US, and the indication and subsequent announcement of a second round of quantitative easing.

113. Another article from Vix and More (a trading website), dated 4 January 2011, also referred to several key economic "volatility triggers" taking place in 2010 which "seemed to arrive in recurring waves, each time apparently posing a different size threat". The article included a chart showing how these events impacted on the S&P 500, and stated that the US market rallied "for the last four months of the year due in part to a second round of quantitative easing". I noted that the chart in this article, and a similar chart by Macro Trends showing the performance of the S&P 500 show that the S&P 500 was generally declining from April until August 2010, until the speech from Ben Bernanke, following which there was a general upwards trend.

114. An article in Forbes, dated 22 Jan 2011, stated that "the market only rallied after Bernanke's August 27 speech". The article also stated that quantitative easing "distorted the stock market", which is an assessment with which Mr Gill agreed, since quantitative easing reversed the downward trend of the US markets and caused them to move upward, in complete contradiction to the underlying macro-economic environment.

115. A number of similar articles were shown to me, all expressing the same sentiments and the impact of the second round of quantitative easing.

Trading strategies following the Man Proceedings including during the appeal year

116. During the appeal year Mr Gill entered into trades in a number of different instruments.

Market Makers

117. Prior to the Man Proceedings Mr Gill had, as noted above, very successfully traded market maker stocks. In late 2009/early 2010 he continued to trade market makers through ODL because he "believed this was a tried and tested strategy". This included trading stocks, through CFDs, that he had previous experience of and in respect of which he considered he "had a wealth of market information and experience". Mr Elms stated that Mr Gill concentrated on stocks with which he had existing experience or in respect of which he had undertaken detailed research.

118. During the appeal year Mr Gill made a small profit trading market maker stocks, of £9,388.37, but various factors meant he was unable to generate the substantial profits as he had previously done. Mr Gill referred to the following difficulties:

(1) During 2010 the expected upward movement and momentum in stocks was not materialising to the degree he expected or at all. Prior to 2010 he had found that market maker stocks could move between 10-30% once they gathered momentum, but in 2010 this was reduced to 1-7%.

(2) Following the 2008 financial crash the way that market makers operated had changed, and this was the first time the Appellant had properly traded market makers since the crash. By way of explanation, Mr Gill would telephone Mr Elms, who had access to the Retail Service Provider ("RSP") system. This provided data on the number of bids and offers on a specific stock from competing market makers. Previously the stock prices had been reasonably predictable from the RSP system, ie, if demand exceeded supply then Mr Gill could reasonably conclude that the price of that stock was likely to increase. However during 2010 the information provided by the RSP had become unreliable, and it seemed that the market makers were aware that traders were using the system to gauge short term movement of stocks and in turn they had started to exert greater control over prices. This meant that the prices were harder to predict. In addition, even the information from the market makers about the demand for stock from the market makers themselves was less reliable.

(3) These problems were compounded by market volatility after the 2008 financial crash, often changing from bull to bear market in response to macro-economic and political news, with the consequence that Mr Gill's stop losses began to trigger in a way which was difficult to predict. His cautious stop loss strategy started to work against him because it meant that his stop loss trades were triggered more regularly and less predictably.

(4) A further difficulty was that the market makers controlled the price that would be offered when Mr Gill sought to dispose of stock, and if he needed to exit a trade rapidly (so as to mitigate losses) the market maker would offer a discounted price relative to that being offered on the actual exchange.

(5) In addition, during this period, the use of computer based algorithms, especially by big banks and hedge funds, became increasingly widespread. These could react to market trends much more quickly than Mr Gill and accelerated market movements, giving Mr Gill less time to react.

119. Mr Elms also commented on various difficulties with trading market maker stocks during the Appeal Year:

(1) The process of executing trades with market makers had largely been replaced with an automated electronic system ("SETS MM"). Although it was still possible for Mr Elms to telephone market makers instead of using the SETS MM system this was difficult because market makers had become agitated with Mr Gill's "style of trading".

(2) So far as the SETS MM system was concerned, Mr Elms states that this made it difficult for Mr Gill to employ his strategy of surveying market makers' prices and then momentum trading those stocks, and that the SETS MM system would often automatically and less predictably stop offering the desired

liquidity in a particular stock. Further, prior to the introduction of SETS MM the amount of stock that market makers were obliged to quote, called the Normal Market Size, was quite high which allowed Mr Gill to take large positions, but after the introduction of SETS MM the amount of the Normal Market Size was hugely reduced and this limited Mr Gill's ability to build positions at advantageous prices. The combination of the new SETS MM system and the lower Normal Market Size meant that market traders could make it extremely difficult for Mr Gill to take advantage of his previously successful strategy.

(3) In addition, previously it had not been unusual for Mr Gill to take a £50,000 position and so a price would not need to increase significantly for him to make a profit especially if he traded a stock a number of times, but under the new arrangements he was often limited to £5,000-10,000 positions which made it more difficult to make substantial short term profits. Also, whereas he could previously purchase £50,000 of stock at the quoted price, now, after purchasing the maximum available (say £10,000 of stock) the price would increase, which in turn made it harder for him to cover commission and other charges and still make a profit.

(4) A further consequence of the new SETS MM system was reduced liquidity, such that Mr Gill would have to sell in tranches, with each subsequent tranche generally being at a less favourable price, and with extra charges being incurred due to multiple transactions, or alternatively he would have to sell the entire amount for a lower price.

120. As a consequence of these changes his previous strategies were not working. He traded market maker stocks in low volumes from April to July 2010, and then in order to remain profitable he realised that he had to move away from market maker stocks and find alternative strategies. From July 2010 this activity was at a low level through to the autumn, although it increased from around October 2010 due to further changes in the market (in particular the Federal Reserve's quantitative easing announcement had resulted in a bullish trend).

Gold

121. Mr Gill had analysed the gold markets for a number of years. He believed gold would do well in economically difficult times and concluded that it offered a good opportunity to make profits. In this respect a Reuters article, dated 11 July 2017, refers to gold being an "inflation hedge" and also explains how gold has surged in price during times of uncertainty including from 2009 to mid-2011 in which period there was "a distinctly non-inflationary but very financially nervous environment". Mr Gill's understanding was that, in addition to being a safe haven, gold bullion was very liquid and this was confirmed by Mr Kunwar of HSBC.

122. Mr Gill regularly consulted websites such as Kitco.com and safehaven.com which gave useful information and guidance on commodities including gold.

123. Mr Gill started trading physical gold (bullion) in September 2009, and he continued making substantial purchases, ranging between c.£250,000 and c.£750,000,

during September and October. The price of the gold had risen by October 2009 and he considered selling and taking a profit, but he sought advice from HSBC in order to benefit from research conducted by their analysts. Mr Kunwar said that in the medium term (3-6 months) gold was likely to rally to new highs, and thus Mr Gill held his position.

124. At the end of October 2009 he further reviewed his position taking into account the macro-economic climate, which he thought looked bearish, and he was confident that the price would increase in the immediate future. Based on this analysis he thought an option strategy would be viable. The advantage of using options was that they were a leveraged product, and he therefore only had to pay a premium up-front, and the maximum loss was the amount of the premium.

125. In early November 2009 Mr Gill decided to sell his existing gold in order to realise a profit and obtain funds for other strategies. He sold on 12th and 17th November 2009 and realised a profit of £1,054,572 in a little over 2 months.

Gold options

126. Mr Gill undertook his own research in relation to gold options but as a sense check he sought Mr Kunwar's advice in October 2009, following which he started purchasing options on 3 November 2009.

127. On 5 November 2009 Mr Kunwar sent Mr Gill the HSBC Gold Market View which summarised a presentation given by HSBC's Chief Commodities Analyst, and his views were consistent with Mr Gill's, namely that the price of gold was likely to rise. In December 2009 the Appellant started to trade gold options more actively.

128. Mr Gill's ongoing trading decisions were based on regular analysis of the gold market and from this analysis he noticed that the gold market was becoming more volatile. He was applying his usual stop loss strategy to mitigate losses, and he would also use a sustained reduction in gold price as an opportunity to buy back in.

129. After active trading in the first quarter of 2010, by April 2010 it was apparent from regular research that the price of gold was falling, although Mr Gill still believed that due to underlying economic uncertainty the price would increase. He therefore purchased further options on 7, 9 and 14 April 2010.

130. On 6 May 2010 there was a "flash crash" in the US and the price of gold rose strongly, ie, perhaps validating Mr Gill's views, and he purchased more options. During June 2010 however, the market for gold remained volatile, in view of which Mr Gill reviewed his position and decided to sell the options. At this time he was actively looking at alternatives to gold to achieve profits.

131. Overall Mr Gill made a trading loss on this trading of gold options between November 2009 and June 2010 of £271,673. His overall analysis of gold may have been correct, as it did achieve an overall increase in price, but his stop loss strategy did not work in the market at the time due to its volatility. With the benefit of hindsight Mr Gill thought that he may have achieved a better result if he had taken a

longer term view. He explained this by saying: “In other words it was my sensitivity to losses that led me to not holding this position long enough to make overall profits”.

Gold FX and other instruments with HSBC

132. Towards the end of 2009 and early 2010 Mr Gill was discussing various opportunities with HSBC. In particular:

(1) In December 2009 he had a call with a HSBC FX analyst to ask questions on currencies, gold, hedging and forward strategies, and in turn HSBC sent him some details in relation to GBP/USD transactions.

(2) In January 2010 HSBC provided him with information in relation to Dual Currency Deposits and ways to trade platinum and palladium.

(3) In March 2010 HSBC sent him some information about prices to hedge sterling using options, because HSBC knew that he was concerned about holding a significant amount of funds in GBP.

(4) In June 2010 HSBC sent him an email highlighting various shares that might be of interest in relation to the gold sector, and attached substantial information in relation to the shares and the sector.

133. Following this, Mr Gill instructed Mr Kunwar to purchase Gold fx (a derivative of gold without an expiry date) and he traded this through to July 2010. However, he realised it was difficult to achieve consistent profits with this instrument and so he began formulating alternative strategies that he believed would enable him to achieve profit.

134. Mr Gill’s Gold fx trading produced a loss of £337,541 over the period from 3 March 2010 to 1 July 2010. This was primarily due to volatility in the markets which made it difficult to predict consistent trends and also triggered stop losses.

135. During the first half of 2010 Mr Gill was continually analysing the market conditions and undertaking research, and was looking to identify new, or modify existing, strategies in order to achieve profits in a falling market. In light of this research his view was that the markets were headed for further falls and this influenced his strategic planning.

Supergroup

136. Mr Gill had been researching Supergroup for some time prior to 2010 including looking at their accounting and financial data, reading reports in the financial press and discussing it with Mr Elms. The company floated on the London Stock Exchange in March 2010 and although Mr Gill was unable to participate directly in the IPO he applied his usual IPO strategy and began purchasing stock on the day of the flotation, through ODL, using CFDs because this meant that he only had to fund a relatively low deposit. This strategy seemed to work, since the price increased and in June 2010 he sold his stock for a cumulative profit of £126,796.55.

137. In Supergroup, Mr Gill believed that he had identified one of the few stocks that was rising in a falling market but he nonetheless tried to find others in order to achieve a profit in a falling market. He continued to build his position in Supergroup and by August 2010 his cumulative profit was £244,335.

138. He continued to build his position in Supergroup into 2011, and if he had sold on 16 February 2011 he would have made a profit of £758,011. He believed that the price was likely to keep rising because of a positive announcement by the company in August 2010, the technical analysis from Mr Elms and positive reports from Goldman Sachs. In relation to the latter, on 30 March 2011, Goldman Sachs emailed him with their thoughts in relation to Supergroup and attached a paper stating that Goldman Sachs "continue to believe Supergroup offers a compelling investment opportunity" and that Supergroup "remains on the Conviction Buy List".

139. There was an article in The Daily Telegraph, dated 5 February 2011, which referred to Supergroup's share price having tripled since inception, due to the fact that it had purchased a franchise partner in France for £34m in order speed up its European expansion, and to an analyst saying that the deal would "allow Supergroup to enhance its margins in Europe".

140. Mr Elms confirmed that Mr Gill regularly discussed Supergroup with him during the appeal year. In addition, he said that Mr Gill would build a large position in Supergroup, take a profit, and then upon recognising further potential, when presumably the price had fallen back, he would build a position again. He stated that Mr Gill's strategy for Supergroup differed from his market maker strategy in that he was building a position over a longer period, rather than day trading where he tended to take a quick profit, and this was because of his conviction that Supergroup would enjoy a sustained increase in price.

141. In March 2011 however there was a fall in price during which Mr Gill sold Supergroup shares and then he bought back in again as the price started to rise.

142. Mr Gill undertook additional research because, although he believed the company's results on 11 May 2011 would be good, he still wanted to learn more. He sought advice from Goldman Sachs, which was positive, and he also visited a Superdry store (Supergroup was the parent company of the clothing retailer Superdry) and spoke to the Head Buyer and this gave him further confidence that the results would be good.

143. On 6 April 2011, Mr Gill held 105,000 shares in Supergroup, and if he had sold them at that point he would have realised a profit of £400,524. Further, on 12 April 2011 (after the appeal year) Mr Gill sold the whole of his position and had a cumulative profit of almost £300,000.

144. Mr Gill continued to build up his position after this time but the company's results announced in May 2011 included a profit warning and this meant the price fell, but this was after the appeal year. Therefore, during the appeal year, Mr Gill made an overall profit in Supergroup of £306,499.916.

Proshares Ultrashorts, Proshares Stocks and Proshares CFDs

145. These three Proshares products are derivative instruments which effectively go short on the S&P 500. They were also geared or leveraged by a factor of two and thus they would change in price at twice the inverse of the S&P 500 (ie, they would increase by twice as much as the S&P 500 fell and vice versa).

146. Proshares Ultrashorts were traded through HSBC, they were inherently liquid, and there was no margin such that the maximum loss was the initial. Proshares Stocks were traded through ODL. Proshares CFDs were traded through ODL, and as a CFD were a leveraged product.

147. Mr Gill wanted to use two brokers with these products so that he could diversify risk, benefit from additional advice, and benefit from ODL's lower commissions.

148. As part of his market analysis in June 2010 Mr Gill concluded that, given the economic climate at the time, the US markets would fall. He had analysed the performance of the S&P 500 index, and between the end of April 2010 and the end of June 2010 it fell from a little over 1200 to a little over 1000. Mr Gill was convinced that the downward trend would continue in light of the underlying economic problems and his research. Mr Elms has confirmed that this "appeared to be a reasonable analysis at the time".

149. Prior to trading Proshares products Mr Gill subscribed to the McHugh's Financial Markets Forecast & Analysis Newsletter, which was a highly respected resource for. In addition he also took out various other subscription services such as Market Turning Points, Cycle News & Views, Active Newsletter and Clive Maud, as referred to above. In finalising his strategy he also took into account that whilst individual stocks could move anywhere between 10% and 50% in the short term, the S&P 500's short term movement tended to be only between 5% and 15%.

150. Mr Gill began purchasing Proshares products on 6 July 2010. The timing of the Proshares trading coincided with his decision to move away from market maker stocks. He sold out of his initial Proshares Stocks position on 7 July making a small loss of $4,640.81 as he became unsure of the position and thought it prudent to exit and reassess. He did not return to Proshares Stocks until October 2010.

151. During July and August 2010 he built a position in Proshares Ultrashorts and Proshares CFDs, and throughout this period he monitored the market data, including the newsletters and Bloomberg, all of which strengthened his conviction that the S&P 500 was going to fall. In addition, during this period, he regularly discussed the performance of the S&P 500 with Mr Elms. It may be noted that although the Proshares CFD involved trading on margin, and this involved some risk, Mr Elms states that "Mr Gill was experienced in trading in this manner". Mr Gill had been trading on margin since trading with Dealwise when he was first extended this facility, he considered that he had always been able to control losses by prudently applying a stop loss strategy, and he considers that the use of margin was one of the reasons why he made such large profits relative to his small initial trading fund.

152. On 3 August 2010 Mr Kunwar sent Mr Gill a market update from a highly regarded economic analyst, who referred to the markets becoming more volatile and to the complex involvement, real and perceived, of governments in the economy. This tied in with Mr Gill's thinking.

153. Then, on 27 August 2010, the Chairman of the US Federal Reserve gave a speech indicating that there might be a second round of quantitative easing, and this announcement had a major effect on the markets. The S&P 500 initially continued to fall for three days but then it jumped in price.

154. Mr Gill was unsure what impact the 27 August announcement would have on the Proshares products and rather than act immediately he felt that he needed to analyse how the market would react. He was concerned that the price of the Proshares products would fall and thus he sold all of his Proshares CFDs on 30 August 2010 making a small cumulative loss of $14,405, although he retained his other Proshares holdings.

155. However, Mr Gill noticed that the price started to rise again and so on 30 and 31 August he purchased more Proshares CFDs. He believed that any increase in the S&P 500 was a short term move and once the news of quantitative easing had been absorbed the price would fall dramatically in light of the economic problems. As a result he continued to trade Proshares CFDs.

156. This view was initially borne out because the S&P 500 fell between 20 and 23 September 2010, and he traded actively believing that there was a prospect of achieving a profit on his Proshares holdings. However he sold out his Proshares CFDs position completely on 11 October 2010 because he was concerned about the potential for sustaining greater losses since this was a leveraged product, and the cumulative loss at that time was $197,020.

157. He then reverted to Proshares Stocks because they were not a leveraged product. His strategy was to trade the instrument actively, attempting to deploy his momentum strategy, and applying stop losses to control losses and taking profits when available. He sold out of Proshares Stocks on 16 March 2011 because his strategy was not working. There was no dramatic fall in the S&P 500 as he had anticipated, probably as a result of the second round of quantitative easing, and there was a cumulative loss of $354,196.

158. Mr Gill took a different strategic approach with Proshares Ultrashorts because he held a substantially larger position, of the order of $8m. He sought daily advice from HSBC who thought the market was overbought and would fall, and he also sought advice from Rajeev Bhargava who agreed. Therefore, after 30 August 2010, Mr Gill decided to hold his Proshares Ultrashorts position.

159. He continued to carry out research (including reviewing newsletters and news feeds on Bloomberg), and he believed the market would correct itself after a substantial rise and there would be a period of profit taking during this time. However, by mid-September, it became apparent to him that the S&P 500 might be on

a longer upward trend despite the current macro-economic environment and so he began to sell Proshares Ultrashorts to reduce his exposure on a large position.

160. During October 2010 he sought to mitigate losses by applying his stop loss strategy, and he sought gains as the price varied, but towards the end of October 2010 he began a process of selling. By 4 November 2010 he had sold out completely making a cumulative loss of approximately $1.9m.

161. Thereafter during November 2010 the S&P 500 experienced some falls and Mr Gill saw an opportunity to make profits. However, in light of the Federal Reserve formally announcing the second round of quantitative easing on 3 November 2010, he concluded that the S&P 500 would rise for a sustained period, and therefore he fully sold his position on 1 December 2010. This decision was vindicated by the fact that that by February 2011 the S&P 500 had jumped significantly to 1340.

162. As at 1 December 2010 Mr Gill's cumulative losses on the Proshares Ultrashorts were $2,093,633. At the beginning of January 2011 however, he thought the S&P 500 was overbought and saw another opportunity to achieve a profit. This was a relatively small trade that made a small loss, and his final loss on the Proshares Ultrashorts was $2,105,747.

163. The indication on 27 August 2010 of a second round of quantitative easing, and its subsequent introduction, was not a development Mr Gill could have anticipated. It was an extremely rare and unpredictable event and it fundamentally changed the structure of the market. It was Mr Gill's view before the announcement that the S&P 500 would fall and it would be logical to assume that the Board of the Federal Reserve came to the same conclusion.

164. However, Mr Gill's previously successful strategies of momentum trading and stop losses, to which he reverted when his Proshares dealings failed, were not successful. Mr Gill subsequently reviewed the failure of these strategies, with the benefit of hindsight, and came to the conclusion that his stop loss policies had been too cautious, and had led him to closing out his positions too early. He believes that had he held these positions for longer they would have been profitable, but he was reluctant to widen his stop loss parameters at the time because of the exposure to the risk of losses.

Proshares Ultra and SSO-D

165. Two further Proshares products traded by Mr Gill were Proshares Ultra S&P 500 ("Proshares Ultra") and SSO-D CFD ("SSO-D").

166. In August and September 2010 when he realised that the S&P 500 was rising he analysed options to find alternative strategies and instruments with a view to mitigating his position on the Proshares products. HSBC recommended Proshares Ultra which involved "going long" on the S&P 500 and was a two times geared product.

167. He started trading Proshares Ultra in mid-September 2010 shortly before he started selling his Proshares Ultrashorts. He traded for approximately one month, and he made a loss of $56,268.62. He pursued a similar strategy through ODL using the SSO-D product which also reflected twice the daily performance of the S&P 500. He purchased this product during August to October 2010 for the same reasons as the Proshares Ultra as explained above, and he closed his position in early October suffering a cumulative loss of $46,482.75.

168. Mr Gill found it difficult to trade Proshares Ultra and SSO-D because short term movements on the S&P 500 were unpredictable due to market volatility. Although both products increased in price he again made losses because his stop loss strategy was not wide enough, but it was important for him to trade methodically applying tried and tested strategies, and he believed that widening the stop losses would have exposed him to a risk of larger losses.

169. Ultimately Mr Gill sold out of both positions in October 2010 because he considered the risks to be too high in light of the market conditions. He found he was unable to forecast the short term movements of the market. Quantitative easing had changed market dynamics and he was in a market environment he had not previously experienced. Mr Gill therefore concluded that his strategies were unlikely to generate profit and so he exited.

Proshares Options

170. Mr Gill also traded Proshares Options. HSBC had informed him about Proshares Put Options in September 2010 when he was becoming concerned about large positions and uncrystallised losses in Proshares Ultrashorts and Proshares CFDs. This was again a leveraged product which gave Mr Gill a greater exposure to the market than the price paid but the maximum loss was limited to the option premium.

171. Mr Gill was interested in Proshares Put Options because of the possibility of S&P 500 rising from September. It was a hedge against the Proshares Ultrashorts, Proshares Stocks and Proshares CFDs positions, because it involved “going long” on the S&P 500. Therefore from mid-September he started to sell Proshares Ultrashorts and to buy Proshares Put Options through ODL (because the latter had lower commissions than HSBC).

172. In September 2010 the Appellant made a profit of $21,259 on the Proshares Put Options, but he continued trading and subsequently made losses as a result of volatility in S&P 500 and his cautious stop loss strategy.

173. From November 2010 to March 2011 Mr Gill traded Proshares Call Options which were the direct opposite of Proshares Put Options, ie, they involved “going short” because the Appellant again believed the S&P 500 would decrease in value. The Proshares Call Options gave the same opportunity to make substantial profits as the Proshares Ultrashorts, Proshares Stocks and Proshares CFDs but Mr Gill only had to commit the option premium which was the maximum that could be lost.

174. He continued trading until March 2011 when he sold his positions, because he realised that quantitative easing had distorted the market to such an extent that he could not find any consistent trend in order to make sustained profits. His overall loss on the Proshares Put Options and Proshares Call Options was $348,561.

Stocks traded through ODL

175. During the appeal year Mr Gill also traded stocks through ODL. In the entire year he completed approximately 1400 trades in UK market maker stocks whereas in previous years it would have been 3,000-4,000 trades.

176. In response to the rise in the S&P 500, Mr Gill decided to start trading US stocks and IPOs (primarily through ODL). For research he was using CBS Market Watch (a website dedicated to US stock news) and a subscription to IPO Boutique as well as his other sources such as Bloomberg. Excluding the Proshares Stocks he completed approximately 3,300 trades in US stocks and achieved profits on some of these.

177. In addition, by November 2010, he had identified the Chinese technology sector (which was traded on US markets) as tending to outperform the market and he traded Chinese new issues from November.

178. Overall, through ODL, Mr Gill made a small profit on UK stocks of £9,388.67. However, he made a loss of $261,132 on US stocks (excluding Proshares Stocks).

CFDs traded through ODL

179. Mr Gill traded CFDs through ODL. The use of CFDs was advantageous because they were leveraged. CFDs are a sophisticated product which Mr Gill does not believe would have been available to an amateur dabbling in the market because the broker had to loan the margin to the trader.

180. Generally Mr Gill traded seven different CFD stocks per day. This was lower than his previous practice of 20 per day, because the volatile market conditions meant he decided to trade a limited number of stocks and to focus on those he had been trading since 2000 as he considered he was familiar with these stocks' patterns and trends. Mr Gill completed over 5000 UK CFD trades in the appeal year. He achieved profits on some of these UK stocks, but although he was trading in stocks he knew from past experience, he made losses because of changed market dynamics and the stocks not following consistent trends. Overall there was a loss on UK CFDs of £55,429.13.

181. Mr Gill also traded in a very limited number of US CFDs. There was a loss of $270,008 of which $243,502 was on the Proshares products.

Options traded through ODL

182. Mr Gill traded both put and call options through ODL during the appeal year. This was a small part of his overall trading strategy at a time when he was trying to

fine tune his strategy in light of volatile markets. As stated above, options were attractive because they were leveraged and losses were limited to the option premium. Mr Gill took a cautious approach by only trading well-known companies which he had previously traded profitably, but nonetheless volatility made it difficult to find consistent patterns and there was a loss of £80,456.28 on UK options.

183. In relation to US options Mr Gill focused on commodities such as gold and silver which he considered to be a safe haven. In relation to gold, the poor economic climate together with his belief that the financial markets were going to crash, supported his conviction that gold was a safe haven, and so he decided to trade and build a position in gold options. He was predominantly trading call options during the appeal year (save for one put option trade in February 2011 which made a profit of $8,260. During April and May 2010 he built a position in call options and he closed these in May for a profit of $14,150, which gave him confidence in trading gold call options.

184. There were some trades in June 2010, but he did not actively trade this product again until November 2010 because he was concentrating on other products. In November 2010 he purchased a call option with a view to benefitting from what he believed would be a sustained gold price rise over the next year. In this respect, after the second round of quantitative easing, it was widely publicised that there would be an increase in inflation which in theory should have a positive effect on the price of commodities.

185. Mr Gill used his momentum strategy to build a position during December 2010 but he found that as the option price started to increase over $100, in December 2010, there were significant and sudden falls in January and February. He continued to trade during February and March 2011 believing that the gold price would increase because of the ongoing economic uncertainty. However, although the price would rise it would fall dramatically just as he thought it was gathering momentum, and thus he crystallised losses of $186,212 on 24 March 2011 and ceased trading to avoid further losses. The cumulative position on the gold option product was a loss of $188,332.

186. Mr Gill also traded silver put options during October and November 2010 and call options in January 2011. He traded in put options following advice from Mr Elms that silver had reached a price which was unlikely to increase, and so he took a "short" position. However, as with gold, volatility meant that there were sudden and significant short term movements which amplified losses, and the Appellant closed out his position in January 2011 when he realised that price movements were too volatile and unpredictable for his strategies.

187. He also traded also traded another silver call option for a short period from February to March 2011 when he realised that the other silver options were too volatile and Mr Elms advised that this product was less erratic as it had diversification in different silver products. Mr Gill made a profit of $121,259 in six weeks and closed his position to crystallise profits and set them against other losses.

188. Ultimately Mr Gill made a loss of $555,636.04 on US options, the majority of which ($348,561.04) was on Proshares options, and the gold option product ($188,332).

Futures traded through ODL

189. Mr Gill also traded futures during the appeal year through ODL. He started these trades in April 2010, and they primarily related to commodities and currencies. His reason for using futures was that they were the only direct way to trade commodities (without buying the physical product) and it was most cost effective way because it attracted the lowest commissions. He frequently traded gold futures, which was approximately 50% of his futures trading.

190. Mr Gill continued to apply his stop loss strategy, but again it was too conservative and he kept getting stopped out of trades. Also, when the price of a future "broke out" he found that it did not obtain momentum as he would ordinarily have expected.

191. The price of the gold future increased from $1129 to $1434 during the period in which he traded which may show that his conviction was correct, but he made losses because he kept getting "stopped out" too early. In March 2011 he widened his stop loss and did make some profits in this period, but he ended with losses of $200,280 which was largest component of an overall loss of $292,207 in the appeal year on US futures trading through ODL.

Trading through HSBC from August 2010

192. After August 2010 Mr Gill changed his strategy with HSBC by trading stocks, gold and FX hedging, because he wanted to revert to his trusted formula of stock trading. He had been quite successful trading gold on this basis in 2009, and he wanted to hedge his currency exposure.

193. At the end of August and early September 2010 he bought physical gold and a product called Gold fx. He tried to apply the momentum strategy but again the price was too volatile and he could not achieve sustained profits and so he decided to stop trading gold.

194. By September 2010 Mr Gill had become increasingly unhappy with HSBC's service because of increased delays in placing FX trades, so he obtained direct access to the FX trading desk which he believes would not have happened if HSBC did not view him as an experienced and sophisticated trader.

195. He also decided to trade a limited number of IPOs through HSBC. His strategy with the new issue stocks was to purchase relatively modest amounts and to trade them more actively, with a view to achieving profit as he had done in the past: initially he was successful but again he realised that the market was too volatile and so he stopped this trading.

196. Towards the end of the appeal year Mr Gill decreased his amount of trading with HSBC because he was dissatisfied with their levels of expertise, experience and commission.

Move to Goldman Sachs

197. As stated above, Mr Gill's medium term strategy was to open a hedge fund and he wanted to do this with Goldman Sachs, such that various meetings were held with the bank.

198. On 4 November 2010 Mr Gill emailed Goldman Sachs to find out the requirements to become a private client of the bank; the reply stated that the minimum funds required were typically £5m-6m and as a client the Appellant would "have access to any business of the firm globally" and would "become part of a forum of our select client base whom we are dedicated to connecting to each other"; and in turn he decided to transfer from HSBC to Goldman Sachs.

199. Mr Gill thought that Goldman Sachs would be a good fit both for his personal trading activities as well as for the intended hedge fund. A major advantage was that Goldman Sachs's clients could participate in any IPO.

200. So far as Tejas and the intended hedge fund was concerned, although the Appellant had suffered losses on Proshares products, he remained confident that he would be able to fund the seed capital for the hedge fund, being £10m, and remained confident in relation to his Supergroup trading. However, Mr Gill was ultimately unable to proceed with the hedge fund and he never pursued any trading through Tejas. After making a loss with Supergroup in May 2011 there was a marked reduction in his trades and he realised he had to go back to the drawing board, having never traded in an environment where he made repeated losses.

Profit/Loss Figures

201. Prior to the appeal year Mr Gill had enjoyed considerable success as demonstrated by the profit figures recorded in the High Court Judgment regarding the Man Proceedings. The agreed profits for the pre-Man years, ie, prior to the period of fraud, which Flaux J agreed were accurate, were as follows:

Year Ended	*Trading Profit (£)*	*Percentage Profit*
31/03/95	(4,841)	(42)%
31/03/96	20,918	61%
31/03/97	71,397	165%
31/03/98	138,052	243%
31/03/99	740,446	495%

31/03/00	6,505,841	1006%
31/03/01	1,160,392	17%

202. As to the post-Man period, Flaux J stated that "As with the trading before the Man period, the post-Man trading has been successful and profitable", and the figures were as set out in following table.

Year Ended	*Trading Profit (£)*	*Percentage Profit*
31/03/03	302,960	10%
31/03/04	1,169,967	109%
31/03/05	239,930	29%
31/03/06	781,397	107%
31/03/07	190,592	22%
31/03/08	521,083	877%

203. The figures above represent profits actually generated. So far as the damages are concerned, ie, the amounts which Flaux J held Mr Gill would have made but for the fraud, in relation to the period of fraud itself it was held that damages should be calculated on the basis that but for the fraud Mr Gill would have made profits of 50%. Further, the judge stated that this was a conservative figure since it was less than the average profits in the pre-Man period even if one left out of account the "enormous 1006% profit in the year to 31 March 2000", and it was similar to the average for the post-Man period if one left out of account the 877% profit percentage for the year to 31 March 2008.

204. In addition to the foregoing, I set out Mr Gill's income and profit/loss figures as recorded in the self-employment pages of his tax returns over the years leading up to, and including, the appeal year:

Tax Year	*Trading Income*	*Profit/loss*
2003-04	£878,533	£618,204
2004-05	£223,562	(£12,462)
2005-06 (revised)	£781,462	£748,000
2006-07 (revised)	£269,337	(£28,773)
2007-08	£520,368	£133,911
2008-09	£6,919	(£1,126,355)

2009-10	N/A	N/A
2010-11	£15,057,982	(£4,625,670)

205. These figures are shown after the deduction of significant expenses in relation to the Man Proceedings. No figures are shown for 2009-10 because Mr Gill's profits were the subject of a negotiated settlement with HMRC, including the damages awarded as a result of the Man Proceedings. The precise details of this settlement are not relevant to this appeal but, as noted above, it was settled on the basis that part of the settlement was taxed as trading profits, which were deemed to have been earned by Mr Gill's two personal companies, trading in the UK through Mr Gill as a permanent establishment, and the balance as a mixture of income and capital gains realised by Mr Gill personally.

The Law

206. Section 989 ITA 2007 provides:

"The following definitions apply for the purposes of the Income Tax Acts -

"trade" includes any venture in the nature of trade"

207. Section 64 ITA 2007 provides:

"Deduction of losses from general income

"(1) A person may make a claim for trade loss relief against general income if the person -

(a) carries on a trade in a tax year, and

(b) makes a loss in the trade in the tax year ("the loss-making year").

(2) The claim is for the loss to be deducted in calculating the person's net income-

(a) for the loss-making year,

(b) for the previous year, or

(c) for both tax years."

…

(8) This section needs to be read with -

(b) sections 66…(restrictions on the relief)."

208. Section 66 ITA 2007 then provides:

"Restriction on relief unless trade is commercial

(1) Trade loss relief against general income for a loss made in a trade in a tax year is not available unless the trade is commercial.

(2) The trade is commercial if it is carried on throughout the basis period for the tax year-

(a) on a commercial basis, and

(b) with a view to the realisation of profits of the trade.

(3) If at any time a trade is carried on so as to afford a reasonable expectation of profit, it is treated as carried on at that time with a view to the realisation of profits."

209. I was also referred to a number of cases as below:

Graham v Green [1925] 2 KB 37

Cooper v Stubbs [1925] 2 KB 753

Inland Revenue Commissioners v Livingston 1927 SC 251

Lewis Emanuel & Son Ltd v White (1965) 42 TC 369

Ransom v Higgs [1974] STC 539

Marson v Morton [1986] 1 WLR 1343

Salt v Chamberlain [1979] STC 750

Cooper v C &J Clark Ltd [1982] STC 335

Wannell v Rothwell [1986] STC 450

Dr K M A Manzur v HMRC [2010] UKFTT 580 (TC)

Eclipse Film Partners No.35 LLP v HMRC [2015] STC 1429

Akhtar Ali v HMRC [2016] UKFTT 8 (TC)

Sir Keith Mills v HMRC [2017] UKFTT 378 (TC)

Seven Individuals v Revenue and Customs Commissioners [2017] STC 847

Discussion

210. The issues to be determined therefore are:

(1) Was Mr Gill trading during the appeal year, and, if so

(2) Was that trade being carried on throughout the appeal year

(a) on a commercial basis, and

(b) with a view to the realisation of profits.

Trading

211. I will start by considering the "badges of trade" set out in the report of the Royal Commission on the Taxation of Profits and Income (Cmd 9474) at para 116. In doing so I accept that none of the badges of trade is on its own evidence of trading and that it is important to look at the overall picture.

212. In the current appeal, four of the badges of trade - the length of the period of ownership, the frequency or number of similar transactions, the circumstances that were responsible for the realisation, and motive, are highly indicative of trading. The question of the subject matter of realisation is more mixed. Some of the assets in which Mr Gill dealt were conventional stocks and shares, and were therefore capable of producing income, and might be regarded as a characteristic of an investment, but many were derivative instruments which do not, in my view, have the character of investments. They are primarily short term assets from which a dealer might expect to make profits by regular buying and selling. The question of whether or not any supplementary work has been performed is not in my view applicable to the assets in question.

213. On balance therefore I consider that the badges of trade point in the general direction that a trade was being carried on.

Case Law

214. I was referred to a number of case law authorities and I will address each in turn.

215. The first case to which I was referred was *Lewis Emanuel*. There are some limitations on the applicability of this case to an individual dealing in financial instruments because it concerned the activities of a company, and the decision in that case did turn, to a large extent, on the legal nature of a company and whether or not it was permitted by its articles to indulge in purely speculative or gambling transactions. Nevertheless it provides some useful pointers as to what might and what might not be regarded as trading in securities.

216. The basic facts of this case are that Lewis Emanuel & Son Ltd had carried on a trade as a fruit importer for a number of years but, owing to a strike at London Docks, decided to carry out a series of transaction in financial securities. It had made losses on these transactions and the question for the Court therefore was whether or not these losses could be set against the profits of its fruit importing trade.

217. In *Lewis Emanuel* Pennycuick J attached significant importance to the number and size of the transactions:

"Having regard to the number and size of the purchases and sales, and to the rapid and continuous turnover, I agree with him that the only legitimate conclusion is that the Company was carrying on the trade of a dealer in securities. To quote the words of Pearce LJ in *J. P. Harrison (Watford), Ltd. v Griffiths*, 40 TC 281, at page 288:

"… if it is not trade, what is it?"

218. Pennycuick J also made an interesting comment on the use of the word "speculation", which is a word HMRC have used in the current appeal. He said:

"The word "speculation" is not, I think, as a matter of language, an accurate antithesis either to the word "trade" or to the word "investment ": either a trade or an investment may be speculative. On the other hand, it is certainly true, at any rate in the case of an individual, that he may carry out a whole range of financial activities which do not amount to a trade but which could equally not be described as an investment, even upon a short-term basis. These activities include betting and gambling in the narrow sense. They also include, it seems to me, all sorts of Stock Exchange transactions. For want of a better phrase, I will describe this class of activities as gambling transactions."

219. Importantly however, in the context of this appeal, he also said:

"I wish to make it clear that I am not expressing any view one way or the other as to the position of an individual who carries out comparable transactions. As I have sought to point out, the position of an individual may be quite different, in this connection, from that of a trading company."

220. This comment does perhaps therefore cast some doubt on the usefulness of this decision in the current appeal, but it is clear authority that the buying and selling of shares on the stock market may constitute trading in some circumstances.

221. Pennycuick J also made reference to the case of *Graham v Green*, in the context of whether or not these were gambling transactions, in the narrow sense of that word.

222. In *Graham v Green* Rowlatt J expressed the difference between trading and gambling as follows:

"Really a different conception arises, a conception of a trade or vocation which differs in its nature, in my judgment, from the individual acts which go to build it up, just as a bundle differs from its odd sticks. One may say, I think, without an abuse of language, that there is something organic about the whole which does not exist in its separate parts."

He went on to say:

"The following test may be applied: a person may organise an effort to find things. He may start a salvage or exploring undertaking and he may make profits. The profits are not the profits of the findings, they are the profits of the

> adventure as a whole. Applying the corresponding test: he may make a loss. It cannot be said that the loss was due to the failure to find. The loss was due to the trade. That tests it very well, because it shows the difference between the trade as an organism and the individual acts."

223. It is however common ground between the parties that Mr Gill's dealing does not amount to gambling in its narrow sense.

224. I will therefore move on to consider *Salt v Chamberlain*. This case concerned an individual dealing in shares and securities and options. It is therefore of more direct relevance to the current appeal. In this case Oliver J found that the taxpayer was not trading, but this was very much on the basis that the commissioners had found as a matter of fact that Mr Salt was not trading, and Oliver J did not consider that he could interfere with that finding of fact.

225. Oliver J did however make an observation which is of key importance in the current appeal:

> "Where the question is whether an individual engaged in speculative dealings in securities is carrying on a trade, the prima facie presumption would be as Pennycuick J suggested in the Lewis Emanuel case, that he is not. It is for the fact-finding tribunal to say whether the circumstances proved in evidence or admitted take the case out of the norm."

226. On this basis, it would appear that the burden of proof is on the taxpayer to prove that he was indeed trading and that his activities take the case "out of the norm."

227. More guidance can be found in *Cooper v Clark*. Again this concerned a company with an existing trade, that of manufacturing and selling shoes, which invested a short term cash surplus in a series of 13 transactions in securities. In that case, the commissioners took the view that the transactions were such that the company was indeed carrying on a separate trade in financial securities, and the Courts did not feel that they could interfere with that conclusion.

228. In reaching his decision however, Nourse J made some important observations which are of relevance to the current appeal:

> "First, marketable securities, being income-yielding assets usually capable of appreciating in value, are prima facie purchased and sold by way of investment and not by way of trade. Secondly, **<u>a series of purchases and sales may sometimes, if carried out pursuant to a deliberate and organised scheme of profit-making, amount to a trade</u>**. Thirdly, it is easier to characterise a series of purchases and sales as a trade in a case where they are made by a trading entity as opposed to an individual. Fourthly, in the case of a trading entity that characterisation is more easily made where the purchases and sales are substantial in relation to its other activities, all the more so where they are of frequent occurrence and extend over a long period of time. Fifthly, it is sometimes helpful, although not decisive, to ask whether a series of sales and

purchases is speculative or not. The reason why the question is sometimes helpful is that the answer may throw light in one direction or the other, but it is not decisive because according to the circumstances either a trade or a course of investment may be speculative."

229. In particular, the words "a series of purchases and sales may sometimes, if carried out pursuant to a deliberate and organised scheme of profit-making, amount to a trade" seem to me to be a very useful approach as to whether or not a trade is being carried on.

230. The third point made by Nourse J has been taken to mean that he was suggesting a simple comparison between a company, or perhaps a partnership, and an individual. However, earlier in his judgement, Nourse J made the following distinction:

> "Before I do so I must state the principal considerations which I deduce from those authorities as being material to the decision of a case where a series of purchases and sales of marketable securities are made by an individual or by a company not already engaged in a business of that kind. In referring to a company for this purpose I mean any corporation, **individual** or collection of individuals carrying on some form of trade. In Salt v Chamberlain (Inspector of Taxes) Oliver J used the description 'a trading entity' in order to distinguish corporations and individuals of that kind from private individuals and I propose to do the same."

231. In other words, in differentiating between trading entities and individuals, Nourse J did not have in mind a simple comparison between companies and individuals per se. He was instead distinguishing between companies, individuals and partnerships which were already engaged in a trade and those private individuals who were not. Nourse J's words are not therefore, in my view, an immutable authority for the proposition that individuals are unlikely to be trading.

Analysis

232. I have said above that I consider that the "badges of trade" point in the general direction that a trade was being carried on. I must now examine Mr Gill's activities against the framework of the case law set out above and must decide whether or not Mr Gill's activities did indeed amount to trading.

233. It is clear from *Lewis Emanuel* that dealing in securities can be a trade in certain circumstances, but in *Salt v Chamberlain* Oliver J also said that:

> "Where the question is whether an individual engaged in speculative dealings in securities is carrying on a trade, the prima facie presumption would be as Pennycuick J suggested in the *Lewis Emanuel* case, that he is not. It is for the fact-finding tribunal to say whether the circumstances proved in evidence or admitted take the case out of the norm."

234. In *Lewis Emanuel* Pennycuick J was very influenced by the size and frequency of the dealing activities, and to the rapid and continuous turnover, which are very much in point as regards Mr Gill's activities. He also quoted the words of Pearce LJ in *JP Harrison (Watford) Ltd v Griffiths*, 40 TC 281 at page 288:

> "…if it is not trade, what is it?"

235. Nourse J, in *Cooper v Clark*, also produced what I regard as a very helpful formulation as to what might constitute trading in the context of securities when he said:

> "…a series of purchases and sales may sometimes, if carried out pursuant to a deliberate and organised scheme of profit-making, amount to a trade."

236. It is clear from Mr Gill's evidence that he did indeed have a "deliberate and organised scheme of profit-making" and although that scheme may not have delivered profits during the appeal year, it had delivered profits during previous years, and was not therefore fundamentally mis-conceived in any way.

237. In *Livingston* The Lord President (Clyde) said:

> "I think the test which must be used to determine whether a venture such as we are now considering is, or is not, "in the nature of trade" is whether the operations involved in it are of the same kind, and carried on in the same way, as those which are characteristic of ordinary trading in the line of business in which the venture was made."

238. Mr Boch suggested that this meant that in order for Mr Gill to be regarded as trading he had to demonstrate that the operations in which he was involved were carried on in the same way as those which are characteristic of ordinary trading in that line of business. I do not agree.

239. The brief facts in *Livingston* were that a group of individuals had agreed to get together to renovate and sell an old boat. This was a one-of transaction and they had not carried out a similar activity before then. What The Lord president was, I believe saying, was that if the individuals in *Livingston* were carrying out operations which were of the same kind, and carried on in the same way, as those which were characteristic of ordinary trading in that line of business then they were trading. This is a very different proposition and is not I think of relevance to the current appeal.

240. In summary therefore, based on the size and frequency, and the rapid and continuous turnover of Mr Gill's transactions, and the fact that he did have a deliberate and organised scheme of profit-making, I consider that Mr Gill's activities do indeed take him "out of the norm" and that he was carrying on a trade for tax purposes.

On a Commercial basis

241. I now look to the meaning of "on a commercial basis" for the purposes of s66 ITA 2007. The leading case on this question is usually taken to be *Wannell v Rothwell* and the judgement of Robert Walker J.

242. Mr Wannell had worked for a number of years for a commodities trading company but had then left his employment and become an independent trader. Again, it appears that the commissioner had decided that, as a matter of fact, Mr Wannell was not trading and Robert Walker J considered that he could not interfere with this finding of fact. He did however make some very useful observations about the meaning of "commercial".

> "The deputy Special Commissioner seems to have concluded that because of his lack of commercial organisation the taxpayer, even if carrying on trading activities, could not have been doing so on a commercial basis. I was not shown any authority in which the court has considered the expression 'on a commercial basis', but it was suggested that the best guide is to view 'commercial' as the antithesis of 'uncommercial', and I do find that a useful approach. A trade may be conducted in an uncommercial way either because the terms of trade are uncommercial (for instance, the hobby market-gardening enterprise where the prices of fruit and vegetables do not realistically reflect the overheads and variable costs of the enterprise) or because the way in which the trade is conducted is uncommercial in other respects (for instance, the hobby art gallery or antique shop where the opening hours are unpredictable and depend simply on the owner's convenience). The distinction is between the serious trader who, whatever his shortcomings in skill, experience or capital, is seriously interested in profit, and the amateur or dilettante."

243. He also referred to a passage from the decision of the deputy Special Commissioner as below:

> "If in this passage the deputy Special Commissioner had in mind the external phenomena of organisation - office accommodation and equipment and staff - then he would, I think, have been in error in attaching so much weight to it. But it seems likely that he also had in mind the taxpayer's admission, in cross-examination, of some casualness and lack of self-discipline (which may, in this context, indicate a lack of internal or mental organisation)."

244. I will now move on to *Seven Individuals*. In this case the appellants were seven individual members of what were referred to "Icebreaker Partnerships". The Icebreaker Partnerships were limited liability partnerships ("LLPs"). In essence, individual members who participated in the partnerships contributed some of their own money and a larger amount of borrowed money to the LLPs, in order to provide finance for a range of creative projects. Each LLP claimed to have made a significant trading loss in its first year which the individual members sought to claim as an allowable loss against their income tax liability.

245. In this case Nugee J made reference to *Wannell v Rothwell* as below:

> "I agree that a trader can fail the commerciality limb either because of a lack of organisation … or because of a lack of any interest in making money … But I do not think it follows that as long as the trade is sufficiently organised and the trader hopes to make a profit … that is always enough. Let us assume a trade is well organised. The question whether such a trade is being carried on on commercial lines is not to my mind answered simply by pointing to a hope by the trader to make profits. A trade run on commercial lines seems to me to be a trade run in the way that commercially-minded people run trades. Commercially-minded people are those with a serious interest in profits, or to put it another way, those with a serious interest in making a commercial success of the trade. If therefore a trade is run in a way in which no one seriously interested in profits (or seriously interested in making a commercial success of the trade) would run it, that trade is not being run on commercial lines.
>
> "In other words, the concept of a trade carried on on commercial lines has an objective element to it, and cannot be satisfied by proof merely that the trade is well organised and that the trader had a purely subjective hope or desire to make a profit."

246. I note that the second paragraph above does not mean that a trade has to be well organised for it to be run on a commercial basis but is in fact saying quite the opposite, and is saying that the fact that a trade is well organised does not mean of itself that the trade is run on a commercial basis.

247. I was also referred to the cases of *Manzur* and *Akhtar Ali*, which both provided interesting analyses of the relevant case law but which to a large extent restate much of the case law set out above.

248. It was submitted by Mr Boch that Mr Gill's trading activity was not carried on on a commercial basis throughout the basis period for a number of reasons:

(1) the trading activity itself fell short of that of a professional financial trader in that:

(a) Mr Gill placed a disproportionately large proportion of his trading fund, approximately $9.5m, on a bet that the S&P 500 index was going to decrease in spite of clear indicators to the contrary;

(b) he maintained the resulting losing position for a long period of time, failing to respond to the fact that the market was moving in the opposite way to what he had anticipated;

(c) he risked a significant proportion of his trading fund on trading securities that fell outside his knowledge and experience, including gold and gold related CFDs, options and futures, the Proshares CFD, Proshares Stocks, and Proshares Ultra S&P 500, which he began purchasing after the announcement of the second round of quantitative easing;

(d) he traded a large number of securities he could not have known anything about in a haphazard and impulsive manner;

(e) he was overconfident and he overtraded;

(f) the activity was carried out in "real time" and "in his head", making it impossible or difficult for him to maintain an overview and make effective decisions;

(g) he did not use stop/losses that were appropriate to market conditions, including the level of volatility;

(2) the way in which he carried on his business was whimsical and haphazard in that:

(a) there was no clear plan or strategy (other than his market maker strategy). When one attempt failed he haphazardly jumped onto another in a reactionary manner and without first acquiring the appropriate knowledge and skills. For example, as a momentum trader he did not necessarily have the skills to trade as a traditional investor (in respect of his investment in Supergroup) or a macro-trader (S&P 500). A professional trader acting as a traditional investor would have invested smaller amounts in a number of different shares (not just Supergroup), and a professional trader acting as a macro-trader would have made his trading decisions on the basis of relevant economic data and market indicators, rather than vague notions about the S&P 500 being "overvalued";

(b) there was no effective risk management strategy, and, being "risk friendly" in the words of a letter from his tax adviser, took unnecessary and imprudent risks. For example, he bet a large proportion of his trading fund in the belief that the S&P 500 would fall;

(c) Mr Gill did not collect and analyse his trading data to determine what were his wins and losses, evaluate his trading strategies, learn from his mistakes, and continuously adapt his trading to changing market conditions. Further, he appears not to have seriously engaged in such evaluation and adaption processes;

(d) he continued trading market makers after it had become apparent his old strategy no longer worked;

(e) he did not review his brokerage data to determine whether his trading strategies were effective;

(f) he did not trial his new strategies with a small amounts or a 'demo' account before attempting to implement them;

(g) there was no reaction to mounting losses (other than haphazardly jumping to something else); and

(h) his method of carrying out the activity revealed a casualness and lassitude incompatible with a commercial business venture.

249. I do not accept that these submissions mean that the trade was not carried on on a commercial basis. He may have been over-confident, and admitted during cross-examination that he found it difficult to accept that he had made such large losses because he had been so successful in the past. This is what I might refer to as an

"infallibility syndrome" in that he had been very successful in the past and therefore believed that he would always be successful in the future. However, I can find nothing in the authorities suggesting that over-confidence means that the trade was not carried on on a commercial basis.

250. It is true that he put an enormous amount of money at risk on a view that the S&P 500 would fall. This was however a very well thought through position based on a number of external inputs as well as his own analysis of the economic situation. He described himself as having a strong conviction on this trade. He also considered that his holding in Supergroup, which was continuing to rise in value in spite of the economic environment, was in some respects a natural hedge against his position on the S&P 500. In this context I also note that it is perhaps of some significance that Ben Bernanke and his colleagues at the Federal Reserve Bank presumably came to the same conclusion as Mr Gill when they decided that there should be a further round of quantitative easing.

251. Mr Boch made much of the fact that one of the letters from his tax adviser to HMRC described him as "risk friendly". Almost all trading transactions involve some risk and those in the financial sector often seem to be very high risk by those not involved in the that sector, but at its heart, trading on a commercial basis, in almost any field, consists of taking risks after a proper evaluation of those risks and ensuring that the potential rewards justify the risks. I do not therefore regard being risk friendly as meaning that he did not trade on a commercial basis.

252. Mr Gill did change strategies when he realised that his initial strategies were not working, and indeed, he probably changed those strategies more quickly than larger organisations, whose very nature makes them less able to change direction rapidly. When his view that the S&P 500 would decline was thrown off course by the second round of quantitative easing he reverted to his tried and tested strategies based on momentum. These did not work however because the markets were far too volatile and, in addition, new computer-based traders had developed strategies using algorithms, possibly based on Mr Gill's original momentum strategies, which enabled them to utilise those same strategies, but much more quickly than Mr Gill. This reversion to previously successful strategies does not indicate recklessness to me, but a sensible response when new strategies were not working.

253. Mr Boch portrayed Mr Gill's activities subsequent to the reintroduction of quantitative easing as whimsical and haphazard, but in his evidence Mr Gill set out a clear rationale for his various moves. They were not whimsical or haphazard in his mind and, in my view, he had a clear commercial motivation for what he did.

254. He did carry out an evaluation of his trades in order to ascertain what had gone wrong and in fact came to the conclusion that his stop loss policies had been set too close to his entry price and had therefore stopped him out from trades which would have been profitable had he held them for longer. If anything therefore this showed that his risk management strategies were over-cautious rather than reckless. It did take some months before he realised this and he adapted his trading accordingly, but I do not regard this delay as a sign of haphazardness or casualness.

255. I accept Mr Gill's description of the markets at that time as more volatile and unpredictable than anything he had previously experienced.

256. Mr Boch also suggested seven characteristics which he suggested were indicative of good commercial practice:

- Sound processes
- Prudence/caution
- Control of risks/risk mitigation
- Continuous evaluation and adaptability
- Good administration
- Detachment/rationality, avoiding emotional decisions
- Formality/seriousness

257. As regards these seven characteristics I would agree with Mr Boch that these are all laudable characteristics which would be good to find in a normal commercial organisation, but I regret that I can find none of them in the case law to which I was referred. In fact, in *Wannell v Rothwell,* Robert Walker J specifically said:

> "If in this passage the deputy Special Commissioner had in mind the external phenomena of organisation - office accommodation and equipment and staff - then he would, I think, have been in error in attaching so much weight to it. But it seems likely that he also had in mind the taxpayer's admission, in cross-examination, of some casualness and lack of self-discipline (which may, in this context, indicate a lack of internal or mental organisation)."

258. I would note in this context that although Mr Gill did not have an office, other than at home, and did not keep his own accounts, he did have what has been described as a state of the art dealing room/computer system, including subscriptions to Bloomberg and other full professional systems. On this basis, I cannot find that the absence of the normal trappings of organisation and administration means that Mr Gill was not trading on a commercial basis. In addition he did not admit to any casualness or lack of self-discipline, or indeed a lack of internal or mental organisation, which may have damaged Mr Wannell's case.

259. In addition, as set out above, in *Seven* Individuals Nugee J said:

> "A trade run on commercial lines seems to me to be a trade run in the way that commercially-minded people run trades. Commercially-minded people are those with a serious interest in profits, or to put it another way, those with a serious interest in making a commercial success of the trade."

260. I would also refer back to the words of Robert Walker J in *Wannell v Rothwell* which I quoted above, where he said:

> "The distinction is between the serious trader who, whatever his shortcomings in skill, experience or capital, is seriously interested in profit, and the amateur or dilettante."

261. I have no doubt that Mr Gill had a serious interest in profits and a serious interest in making a success of his trade. It was the sole means of supporting his family, and had been for some time. In addition his eventual aim was to set up a hedge fund to which third party investors would be attracted. He therefore had a very serious interest in making a success of this trade.

With a view to Profits

262. Finally I turn to the question of whether or not Mr Gill traded with a view to realising profits. It is generally agreed that this is a subjective test and is a question of whether or not the taxpayer's motives were to make profits.

263. Trading financial securities had been Mr Gill's sole occupation since leaving education. It had also been a full time occupation, with considerable time being devoted to trading, to research or talking to his broker. This was not a part-time occupation or some sort of hobby. Mr Gill said that from the outset it was his intention to support himself and a family from his securities trading. There is no doubt therefore that his intention was to make profits.

264. It has been suggested that I should also consider whether or not there was a reasonable prospect of making profits from this activity since, if there were no such realistic prospect then this might cast doubt on Mr Gill's true motives. In *Sir Keith Mills* Judge Raghavan said:

> "… likelihood of profit may serve as an evidential factor (that may be rebutted) as to a person's motive – the less likely the profit, the more likely there is some other reason for undertaking the activity".

265. I accept this as wise counsel, although this was a case which concerned a venture to win the America's Cup, and the possibility of a mixed motive may have been a factor.

266. However, the simple fact is that in this case, until the appeal year, Mr Gill had been a very successful trader utilising many of the strategies used in the appeal year. On this basis alone I find that there was indeed a reasonable prospect of making profits from his trading activities. This does not therefore lead me to question Mr Gill's stated motive.

267. I therefore consider that Mr Gill was indeed trading with a view to making profits.

Conclusion

268. In summary therefore have found that Mr Gill was:

(1) carrying on a trade during the appeal year and,

(2) was carrying on that trade, throughout the appeal year,

(a) on a commercial basis, and

(b) with a view to the realisation of profits.

Decision

269. For the above reasons I have decided that Mr Gill's appeal should be ALLOWED.

270. 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.

PHILIP GILLETT
TRIBUNAL JUDGE

RELEASE DATE: 1 May 2018