



TC07837

*PAYE – Personal Liability Notice – s
121 Social Security Administration Act
1992 - Appeal Dismissed*

Appeal number: TC/2018/7752

FIRST-TIER TRIBUNAL

TAX CHAMBER

BETWEEN

Mr DAVID J UNWIN

Appellant

-and-

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

Respondents

**TRIBUNAL: JUDGE PETER KEMPSTER
MR JOHN ADRAIN**

Sitting in public at Centre City Tower, Birmingham on 2 March 2020

Mr Gary Chadwick (DJH Accountants Ltd) for the Appellant

Mr Muhammad Khan (HMRC Solicitor's Office and Legal Services) for the Respondents

DECISION

Introduction

1. The Appellant (“**Mr Unwin**”) appeals against the issue to him by the Respondents (“**HMRC**”) on 22 March 2018 of a Personal Liability Notice (“**PLN**”) in the amount of £232,942.95 (being £213,822.00 Class 1 NICs plus £19,120.95 interest thereon) in respect of unpaid NICs owed by HCL Equipment Contracts Limited (“**HCLEC**”) for the tax year 2010-11.

Statutory Provisions

2. Section 121C Social Security Administration Act 1992 provides (so far as relevant):

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

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

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

(2) The Inland Revenue may issue and serve on any culpable officer a notice (a “personal liability notice”)–

(a) specifying the amount of the contributions to which this section applies (“the specified amount”);

(b) requiring the officer to pay to the Inland Revenue–

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

(ii) specified interest on that sum; and

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

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

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

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

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

(5) The interest specified in the personal liability notice under subsection (2)(b)(ii) above shall be at the prescribed rate and shall run from the date on which the notice is issued.

(6) An officer who is served with a personal liability notice shall be liable to pay to the Inland Revenue the sum and the interest specified in the notice under subsection (2)(b) above.

...

(9) In this section–

...

“officer”, in relation to a body corporate, means–
(a) any director, manager, secretary or other similar officer of the body corporate, or any person purporting to act as such; ...”

Witness Evidence

3. We took oral evidence from the following witnesses:

(1) For HMRC:

(a) Mr William Richardson adopted and confirmed a formal witness statement dated 13 June 2019.

(b) Mr Graham Lickorish adopted and confirmed a formal witness statement dated 31 May 2019.

(2) Mr Unwin adopted and confirmed two formal witness statements dated 12 June 2019 and 16 August 2019.

4. **Mr Richardson’s evidence** included the following:

(1) He was the case officer who investigated possible PAYE and NIC liabilities of HCLEC.

(2) In 2015 HMRC were investigating the affairs of Caledonian Mining Ltd (“CML”) and its director/shareholder Mr R Weaver. HMRC suspected the issue of false invoices to generate fraudulent VAT repayments; one of the companies implicated was HCLEC.

(3) He became aware of a letter dated 27 February 2010 from CML trading as Payroll Management Services to David Unwin at HCLEC. The letter was written by Mr Weaver, although he did not become a director of CML until March 2011. At the time of the letter the directors of CML were Mr DG Unwin and Ms HR Green; Mr DJ Unwin had previously been a director until July 2009. The letter stated:

“Dear David,

RE: Payroll Service

Further to our telephone conversation today, I write to confirm that Caledonian Mining Ltd trading as Payroll Management Services, will take on all of the payroll responsibilities for HCL Equipment Contracts Ltd as from 1st March 2010.

We will invoice you on a weekly basis, if you can pay this every Wednesday, we will then in turn send payments to the employees and HMRC.

We will also invoice you an administration charge at the agreed rate of £1000 per month.

Should you have any queries please do not hesitate to contact me

Yours sincerely
Mr R Weaver”

(4) A further letter dated 25 February 2011, also from Mr Weaver at CML trading as Payroll Management Services to David Unwin at HCLEC, stated:

“Dear David,

RE: Payroll Service

Thank you for meeting with myself this morning, further to our discussions I confirm that Caledonian Mining Ltd trading as Payroll Management Services, took over all of the payroll responsibilities for HCL Equipment Contracts Ltd as from 1st March 2010.

I have calculated that you owe the following:

- 1st March 2010 - 31st May 2010 £125551.68
- 1st June 2010 – 28th Feb 2011 £304005.94
- 1st March 2010 – 28th Feb 2011 £12000.00 (Admin fees)

I understand from our conversation that £302944.29 will be remitted to us before 28th February 2011. Could you please confirm once this payment has been actioned so that I can trace the funds.

Going forward we will invoice you the Gross amount on a weekly basis, if you can pay this every Wednesday, we will then in turn send payments to the employees and HMRC.

We will also send you an invoice for administration fees at the agreed rate of £1000 per month.

Could you please confirm your agreement with the above by return.

Should you have any queries please do not hesitate to contact me.

Yours sincerely
Mr R Weaver”

(5) HCLEC’s wage records for the period showed an analysis of PAYE, employer NIC and employee NIC. These deductions should have been accounted for to HMRC monthly but HMRC records showed no receipts.

(6) HCLEC’s accounts for y/e 31 December 2011 showed a current creditor of £699,014 for “Taxes and Social Security Costs”. No corporation tax was due (because of brought forward losses) and Mr Richardson had seen no evidence of VAT or CIS debts for the period.

(7) There was no evidence that the employees had been transferred by HCLEC to CML, so Mr Richardson concluded that the PAYE and NIC responsibilities remained with HCLEC. HCLEC was in liquidation¹ and the liquidator was

¹ During the hearing HCLEC was referred to having been liquidated; it appears more likely that it was placed into administration and then dissolved; nothing turns on this formality as it is clear that HCLEC was wound up insolvent.

approached. Protective determinations were issued, in view of impending assessment deadlines.

(8) One of the documents provided by the liquidator was a bank statement from Santander for an account in the name of “HCL Equipment Contracts Ltd Trading as Caledonian Mining”. On 28 February 2011 there was a payment to CML for £302,944.29, which was in accordance with the letter referred to at [4(4)] above; on the same day £289,200 was paid back by CML to HCLEC. On 30 March 2011 there was a payment to CML for £125,551.68, which was in accordance with the letter referred to at [4(4)] above. On the same day £123,600 was paid back by CML to HCLEC. The liquidator advised that there were no detailed records relating to these transactions.

(9) Review of the accounts of CML indicated that it did not hold funds to meet the purported tax and NIC liabilities.

(10) Mr Richardson formed the view that PAYE and NIC liabilities had remained throughout with HCLEC, and he recommended to colleagues that Mr Unwin was the officer of the company with the knowledge and responsibility for ensuring that the company complied with its obligations.

(11) In response to questions in cross-examination:

(a) The liquidator had confirmed that there were no payroll records for 2010-11.

(b) He had seen HCLEC’s VAT return for period 12/11. He was not aware of any VAT liability or adjustments.

(12) In response to questions from the Tribunal:

(a) The HCLEC accounts in evidence had been sent to HMRC as part of the company’s CT return.

(b) He took the difference between the payments to and from CML as relating to the administration charges referred to in the letters from CML.

5. **Mr Lickorish’s evidence** included the following:

(1) He was the case officer who issued the PLN to Mr Unwin.

(2) HMRC had formed the view that:

(a) HCLEC had employees in the tax year 2010-11. Those individuals had not been transferred to CML. The statutory accounts stated 55 employees.

(b) During the period in question HCLEC made no payments of PAYE or NIC to HMRC, and filed a Nil employer return (Form P35).

(c) During the period in question CML made no payments of PAYE or NIC to HMRC, filed no PAYE returns, and had submitted accounts as a dormant company.

(d) A payroll analysis for the period showed NIC (employer liabilities and employee deductions) totalling £213,822. None of those amounts had been paid to HMRC by HCLEC (or indeed by CML).

(e) HCLEC's accounts for years ended December 2010 and 2011 showed employees, and a tax creditor.

(f) Mr Unwin had been a director of HCLEC from 16 September 2004 to 1 July 2009. During the tax year 2010-11 the directors were David George Unwin (also sole shareholder at September 2010) and Hazel Green. Mr Unwin had been made a director again on 1 July 2010, and HMRC considered he was an "officer" of HCLEC throughout tax year 2010-11. Mr Unwin was an experienced company director, who had since been disqualified.

(3) Mr Lickorish noted that the actions taken by HCLEC appeared consistent with the statements made by Mr Unwin in the undertaking he gave in October 2013 in respect of his disqualification from being a company director for a period of ten years, following an Insolvency Service investigation of a company Wrekin Construction Company Limited:

"In November 2008 I caused Wrekin to enter into an arrangement with Britannia Management Services Limited ("BMS") ostensibly for BMS to administer and pay Wrekin's payroll from 3 November 2008 onwards and to pay all sums due to HMRC in respect of PAYE/NIC. I caused Wrekin to enter into the arrangement with BMS in an effort to pass the responsibility for payment of Wrekin's PAYE/NIC liability to BMS which was in turn an attempt to avoid sanctions being applied by HMRC to Wrekin, namely the removal of its CIS certificate. When making the payments to BMS under the terms of the agreement as described in paragraph 13 below I intended that there would be a default in the payment of Wrekin's liability to HMRC for PAYE/NIC in that any monies paid by Wrekin to BMS in respect of Wrekin's PAYE/NIC liability would not be paid by BMS to HMRC as and when payment fell due, but rather the said monies (or the bulk thereof) would be utilised amongst other companies of which I was a director and ultimate controlling party."

(4) He had requested records from the liquidator and the auditors of HCLEC but had received little information in response.

(5) He had obtained confirmation from the officers of HCLEC (including Mr Unwin) that:

(a) Mr Unwin was both the chairman and managing director of HCLEC.

(b) Mr Unwin alone was responsible for the strategic and financial matters of the company, authorising the payroll costs, setting up and signatory to the company bank account, managing creditor payments, and authorising the payment of wages based on the reports made by CML.

(c) Management accounts were prepared for Mr Unwin only.

(6) The letters from CML referred to regular weekly payments to cover gross wages; this was not evidenced by the bank records. When a payment was eventually made, there was an immediate contra payment back in almost the same amount. The bank records show that HCLEC was paying net wages to the employees. HCLEC's accounts show wages and salaries, and also a creditor for taxes and social security.

(7) Mr Lickorish concluded that HMRC was owed significant unpaid NIC by HCLEC; that the failure to pay was due to Mr Unwin's negligence; that he was an officer of the company throughout 2010-11; that he was an experienced director (aware of the responsibility to account for PAYE and NIC to HMRC); that he had exhibited similar behaviour in relation to Wrekin (the action resulting in his being disqualified as a director for ten years); and that he was the sole culpable officer.

(8) He had issued the PLN to Mr Unwin. Mr Unwin had requested a formal internal review, which had upheld the issue of the PLN. Mr Unwin had appealed against the PLN.

(9) Review of HCLEC's VAT account at 31 December 2010 and 2011 revealed that the only outstanding amount on those dates was an unpaid surcharge of £550.22 at December 2011; VAT payable during 2010 was about £5,340, and during 2011 about £34,000. There was also no corporation tax payable, because of brought forward losses. Therefore the balance sheet liability for taxes and social security must relate to PAYE and NIC.

(10) In response to questions in cross-examination: If there was an accrued VAT liability relating to undelivered sales invoices then that would be reflected in subsequent VAT returns.

(11) In response to questions from the Tribunal:

(a) HMRC had no tax records from CML.

(b) He obtained the director disqualification report from the Insolvency Service; he regarded the behaviour in that report mirrored the purported relationship between HCLEC and CML.

6. Mr Unwin's evidence included the following:

(1) HCLEC had suffered enormous cashflow difficulties, which eventually caused the business to fail.

(2) The employees had been outsourced and the debt due to CML was eventually cleared. Any liability for employee deductions belonged to CML.

(3) He felt he was being victimised for a debt he did not rightly owe, and did not have the means to pay.

(4) HCLEC used agency staff operated by CML. Any liability regarding employee deductions was that of CML, not HCLEC.

(5) The amounts in the accounts include agency staff to represent the labour used by HCLEC. The amount in the accounts headed "taxes and Social Security costs"

is a standard prescribed term used to cover any taxes owed by the business at the balance sheet date, and does not imply a knowledge of outstanding NIC liabilities. The amount includes HCLEC's VAT liability, which increased significantly based on an increase in turnover of £4 million in that financial year. HCLEC did a lot of work for UK Coal and British Gypsum which could only be invoiced later after verification of tonnage, perhaps a six week delay.

(6) He had not been able to access company records, as they were held by the liquidator.

(7) He accepted his previous failures as described in his disqualification as a director; but that did not make a pattern of noncompliance. He did not want the same thing to happen with HCLEC as with Wrekin, so he set up a separate arrangement with CML where CML was responsible for the tax liabilities.

(8) The February 2011 letter clearly states that CML "took over" the payroll responsibilities from 1 March 2010.

(9) The payment back from CML was in relation to equipment sold; he believed Mr Weaver may have sold the equipment straight away. As he did not have access to HCLEC's records, he was unable to substantiate the transaction.

(10) CML may have been having financial difficulty and HCLEC may have agreed to settle the employees' net pay directly should CML fall short, with any monies paid to be deducted from amounts falling due to CML.

(11) He was not a director of CML during the period in question.

(12) The agency staff were used by HCLEC. The payroll was not operated for HCLEC.

(13) In response to questions in cross-examination:

(a) He was MD of HCLEC and was responsible for the financial affairs of the company; he authorised payment of the invoices from CML.

(b) He had been a director of CML previously for five years but was not there responsible for financial matters. CML took options on sites in Scotland with the intention of obtaining planning permission for opencast mining, but no permissions were granted. As it never traded, there were no employees at that time. The intention had been to use HCLEC's machinery to operate the mines.

(c) He had worked for years with Mr Weaver; Weaver had lots of overseas business and then returned to the UK. He bought equipment from HCLEC.

(d) The employees were previously with HCLEC but the company did not want the hassle and so they were transferred to CML. There was an agreement prepared by a solicitor; TUPE applied; the staff had to be consulted and informed; there had been two companies called HCL; he did not have any documents, they must all be with the liquidator. CML also provided agency staff for particular projects. The only contract was the letter quoted at [4(3)] above. The number of staff varied from 20 to

50, depending on how much work was received from UK Coal; there was a permanent requirement for 30 staff.

(e) The liquidator of HCLEC took possession of all the business records and Mr Unwin had not had access; the liquidator could have provided information to HMRC. He could not comment on the absence of mention of any employee transfer agreement on the document list provided by the liquidator.

(f) He and his son signed off weekly time sheets for workers provided by HCLEC, and passed these to CML. Making payments to HMRC was the responsibility of CML. His own payslips were from CML. He agreed that the letters did not refer to agency staff. The arrangement took administrative responsibility away from HCLEC.

(g) HCLEC sold equipment to CML and offset the money against the payroll bill from CML. HCLEC invoiced CML every two or three months. It was correct that the company should have paid every week; also that the total wages in year ending 31 December 2011 were £1.66 million. He did not know why the accounts showed 55 employees in the year ended 31 December 2011.

(h) CML asked for fees greater than the £1,000 per month; it said it needed over £20,000 pa.

(i) He had chosen CML to run the payroll because they were cheap; they used a lot of HCLEC's equipment and exported it; Mr Weaver's daughter and son-in-law had done payroll before. He did not know who "Payroll Management Services" on the letters was.

Appellant's case

7. Mr Chadwick submitted as follows for the Appellant.

8. The liquidator took over all the business records of HCLEC, and the unavailability of those documents to Mr Unwin should not count against him. Mr Unwin had no access to the records of CML.

9. HCLEC did not have any employees during the relevant period; as such it could not have any NIC liability. It was correct not to submit a Form P35.

10. The reference in the accounts to employee numbers and costs included agency staff, to reflect the labour used by the company. The descriptors used were from data and labels in the computerised trial balance, and no great weight should be placed on the exact wording. The reason for the tax creditor in the accounts was the VAT liability of the company, which had a sizeable increase in turnover; there would also be cut-off and other timing differences.

11. Mr Unwin had accepted his previous failures at the time of his disqualification proceedings, but this did not make a pattern of non-compliance.

12. HMRC's own figures were based on information extracted from the records of CML, which showed CML's involvement in preparing and calculating the payroll for that tax year.

13. The letters between CML and HCLEC specify that CML has taken on all payroll responsibilities, from 1 March 2010; they do not say that CML offers only a payroll processing service.

14. Mr Unwin recalls that CML may have been having financial difficulties, and due to the need for the agency staff he had agreed to settle the employees' net pay directly should they fall short, with any monies paid to be deducted from amounts falling due to CML.

15. HMRC have accepted that HCLEC did pay £302,944.29 to CML to clear its debt. Mr Unwin recalls (but has no access to records) that CML paid HCLEC for equipment sold.

16. Mr Unwin could not comment on the behaviour of CML. HMRC must have been aware that no deductions were being made by CML.

17. HCLEC outsourced its labour requirements to CML. Mr Unwin cannot be neglectful for payments of deductions from employees of CML.

Respondents' case

18. Mr Khan submitted as follows for the Respondents.

19. Having fully investigated the case, HMRC had concluded:

(1) HCLEC did have employees in the 2010-11 tax year and paid them wages, as recorded in the accounts.

(2) HCLEC went into administration on 11 April 2014 and was dissolved on 23 April 2018.

(3) A tax creditor was shown in the accounts, and could only relate to a recognised PAYE/NIC liability. From the best records available, the unpaid NIC due from HCLEC was £213,822.00.

(4) Mr Unwin was an "officer" of HCLEC in the relevant period. HCLEC's failure to pay the NIC was due to Mr Unwin's negligence, and he was the only culpable officer.

(5) The PLN had been issued validly, within the statutory time limits.

(6) Interest added to the NIC due had been calculated in accordance with the statutory provisions.

20. The PLN was not a penalty; it was a means of recovery of unpaid NICs from a culpable officer.

21. Mr Unwin was an experienced company director and would be well aware of the responsibility of an employer to properly account for and pay to HMRC correct PAYE and NIC deductions and liabilities. His statements in relation to the Insolvency Service investigation of Wrekin were highly relevant.

22. In the letters between CML and HCLEC there was no reference to "agency staff". It was stated that payment would be made weekly, which it was not. When payment was made, it

was immediately repaid to HCLEC (bar an “administration charge”); there was no evidence to support a sale of equipment.

23. The records which HMRC had managed to retrieve demonstrated that wages were paid to workers net of PAYE and NIC, but those amounts were not paid to HMRC. This situation continued for twelve months.

24. The responsibility to ensure that HCLEC complied with its statutory duties to pay to HMRC the NIC liability lay with Mr Unwin as the director responsible for financial matters, and he had neglected to do that. The test of negligence in this context should follow the authorities of *O’Rorke v RCC* [2013] UKUT 199 (TCC) and *Blyth v Birmingham Waterworks Co* (1856) 11 Exch 781. Even if HCLEC had delegated certain payroll matters, it retained the statutory obligation: *John Peter Smith v HMRC* TC02110.

25. A reasonable person acting in Mr Unwin’s position would have ensured the company made the payments due under statute to HMRC, thereby acting to prevent the company’s liability to the Crown from increasing. From the information provided by the other directors of HCLEC, and not contradicted by Mr Unwin, Mr Unwin was the director with responsibility for financial matters; he was thus the sole culpable director for the purposes of s 121C, and was liable for the full NIC liability.

Consideration and Conclusions

26. It is not disputed that £213,822 NIC was not accounted to HMRC. The first question for us to determine is whether that liability was one of HCLEC, or instead of CML. Having carefully considered all the evidence, we conclude that the NIC liability properly belongs to HCLEC.

27. The audited statutory accounts of HCLEC for year ended 31 December 2011 contained:

(1) In Note 18 a statement that the average number of employees was 55 (2010: 55).

(2) In Note 18 a statement that the wages and salaries were £1,678,487 (2010: £1,566,078).

(3) In Note 11 a statement that the current creditors included “Taxes and social security costs” of £699,014 (2010: £114,439).

(4) In Note 20 a statement that CML is a related party (as defined by FRS8) with a balance due to CML of £53,400, sales to CML £521,578 and purchases from CML £225,323.

28. We do not accept the suggestion that the tax creditor of HCLEC is somehow accounted for by VAT on undelivered invoices; no documentary evidence was produced to back that up; the verbal explanations were unconvincing and implausible; Mr Lickorish took the trouble to check the company’s relevant VAT returns and could find nothing to support the suggestion of a timing difference. HMRC records show (and this is evidenced by the accounts) that there was no corporation tax liability as the company had brought forward (and carried forward) tax losses. We conclude that the audited accounts correctly record that almost £700,000 was due by HCLEC to HMRC at 31 December 2011 in respect of unpaid PAYE and NIC.

29. We conclude that the disclosure in HCLEC’s accounts of the number and costs of employees is exactly what it states; there is no gloss to be added in relation to purported agency staff.

30. We find that Mr Unwin is not a reliable witness. He originally told us that the only document relating to the alleged transfer of the employees to CML was the letter agreement dated 27 February 2010. After the lunch break he claimed that instead there had been a full TUPE consultation process with the employees and a formal contract prepared by solicitors; he was unable to give any particular details and had not produced any documentary evidence to this effect. It is not mentioned in either of his witness statements. There is nothing in the statutory accounts referring to what would have been a significant event for HCLEC, if it had taken place. Other than subsequently filing a blank Form P35, there is no evidence of an explanation being provided at the time for why the company’s wages passing through PAYE had fallen from over £1.5 million pa to (effectively) Nil.

31. We note that our above conclusions are consonant with Mr Unwin’s earlier course of action in relation to Wrekin Construction Company Limited, which was investigated by the Insolvency Service and (together with other matters) resulted in his being disqualified from acting as a director for ten years. By his own admission, in 2008 he caused Wrekin to enter into an arrangement with a connected company BMS, ostensibly for BMS to administer and pay Wrekin’s payroll and to pay all sums due to HMRC in respect of PAYE/NIC; that was done in an effort to pass the responsibility for payment of Wrekin’s PAYE/NIC liability to BMS; when making payments to BMS he intended that there would be a default in the payment of Wrekin’s liability to HMRC for PAYE/NIC in that any monies paid by Wrekin to BMS in respect of Wrekin’s PAYE/NIC liability would not be paid by BMS to HMRC as and when payment fell due, but rather the monies would be utilised amongst other companies of which he was a director. Substituting HCLEC for Wrekin and CML for BMS, that is what happened two years later with HCLEC’s PAYE/NIC liability – in fact, here almost all the payment to CML was immediately paid straight back to HCLEC.

32. Having concluded that the unpaid NIC liability properly belongs to HCLEC, the second question for us to determine is whether the failure to pay that liability is attributable to neglect on the part of a culpable officer of HCLEC – see s 121C Social Security Administration Act 1992 (cited at [2] above).

33. Mr Unwin confirmed that he operated as Managing Director of HCLEC throughout the period, with full responsibility for the financial affairs of the company. He was a statutory director of the company for most of the relevant period. We find that Mr Unwin was an “officer” of HCLEC for the purposes of s 121C (9) throughout the relevant period, being either a director or a “person purporting to act as such”.

34. We conclude that the failure to pay was attributable to the neglect of Mr Unwin. He was an experienced company director and was aware of the responsibility of any company of which he was an officer to pay to HMRC all NIC liabilities of the company. A company director taking reasonable precautions would have ensured that the NIC liabilities were paid to HMRC in the correct amounts on the due dates – per Alderson B in *Blyth v Birmingham Waterworks Co* (1856) 11 Exch 781:

“Negligence is the omission to do something which a reasonable man, guided upon those considerations which ordinarily regulate the conduct of human affairs, would do, or doing something which a prudent and reasonable man would not do. The defendants might have been liable for negligence, if,

unintentionally, they omitted to do that which a reasonable person would have done, or did that which a person taking reasonable precautions would not have done.”

35. We conclude that the proportion of the NIC liability to be applied to Mr Unwin is the full amount. He is the officer who was fully responsible for the financial affairs of HCLEC.

36. For those reasons, we determine that the PLN is correctly made in the assessed amount on Mr Unwin.

Decision

37. The appeal is DISMISSED. The PLN is confirmed in the amount assessed.

Right to apply for permission to appeal

38. 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.

**PETER KEMPSTER
TRIBUNAL JUDGE**

RELEASE DATE: 07 SEPTEMBER 2020