Neutral Citation: [2024] UKFTT 00082 (TC)

Case Number: TC09047

FIRST-TIER TRIBUNAL
TAX CHAMBER

Manchester

Appeal reference: TC/2019/01393
TC/2019/02150
TC/2019/02151

VAT - Denial of entitlement to deduct input tax claimed on the purchase of labour on the basis that the Appellant knew or should have known that the transactions were connected to the fraudulent evasion of VAT –Kittel considered – appeals against the decision to refuse to register the companies for VAT on the basis that VAT registration would be used for fraudulent purposes – appeals dismissed

Heard on: 11, 12, 18, 19, 21, 24, 25 & 27 July 2023
Judgment date: 19 January 2024

Before

TRIBUNAL JUDGE JENNIFER DEAN
MR DEREK ROBERTSON

Between

MINSTRELL RECRUITMENT LIMITED
MINSTRELL RECRUITMENT (NORTH) LIMITED
MINSTRELL RECRUITMENT (SOUTH) LIMITED

Appellants

and

THE COMMISSIONERS FOR HIS MAJESTY'S REVENUE AND CUSTOMS

Respondents

Representation:

For the Appellant: Mr T. Brown, Counsel

For the Respondents: Mr J. Carey, Counsel, leading Mr S. Way, Counsel, instructed by the General Counsel and Solicitor to HM Revenue and Customs

DECISION

INTRODUCTION

1. These appeals concern the following:

(1) An appeal by Minstrell Recruitment Limited (hereafter "MRL" or "the Appellant") against decisions by HMRC dated 12 December 2018 and 4 June 2019 to refuse the Appellant's entitlement to deduct input tax claimed on the purchase of labour from three supplier companies; and

(2) An appeal by Minstrell Recruitment (South) Limited (hereafter "MRSL") against HMRC's decision dated 19 March 2019 to refuse to register MRSL for VAT on the basis that MRSL would use its VAT registration solely or principally for fraudulent purposes; and

(3) An appeal by Minstrell Recruitment (North) Limited (hereafter "MRNL") against HMRC's decision dated 19 March 2019 to refuse to register MRNL for VAT on the basis that MRSL would use its VAT registration solely or principally for fraudulent purposes.

2. In this Decision we will refer to the appeal by MRL as the "*Kittel* appeal" and the appeals by MRSL and MRNL as the "registration appeals".

3. HMRC's decision in the *Kittel* appeal, to deny input tax recovery, was made on the basis that the transactions in question were connected to the fraudulent evasion of VAT and the Appellant either knew or should have known that that was the case (see *Axel Kittel v Belgian State and Belgian State v Recolta Recycling SPRL* (C-439/04 and C440/04) ("*Kittel*"). The decisions in the registration appeals were made on the basis that the companies are phoenix companies set up to continue to facilitate the fraud or abuse of the VAT system which, HMRC allege, has been carried out by MRL.

4. The appeals involve three supplier companies (together the "Three Companies"):

(i) Crystal Clear Contract Services Limited (hereafter "Services")

(ii) Crystal Clear Contracts Limited (hereafter "Crystal") and

(iii) Clarity All Trades Limited (hereafter "Clarity")

5. We are grateful to the parties for their indication at the hearing that the various applications by both parties to admit a number of additional witness statements had been agreed.

ISSUES TO BE DETERMINED

6. The parties agreed, in relation to the *Kittel* appeal, that the test to apply is as follows:

(i) Was there a VAT loss?

(ii) If so, was it occasioned by fraud?

(iii) If so, were the MRL's transactions connected with such a fraudulent tax loss? and

(iv) If so, did the MRL know, or should it have known, of such a connection?

7. The Appellant accepted in response to the Tribunal's Fairford Directions dated 15 October 2021 that the transaction chains with the Three Companies had been accurately traced and that there were tax losses at the start of each of the relevant transaction chains. The

Appellant did not accept that the tax losses were fraudulent or that MRL knew or should have known that its transactions were connected with the fraudulent evasion of VAT.

8. The burden of proof rests with HMRC on the balance of probabilities (*Mobilx* at [81] and [82]).

9. In relation to the registration appeals, there was no dispute between the parties that they stand or fall with the *Kittel* appeal and in those circumstances the parties focussed their submissions and evidence on the latter.

ANCILLARY MATTER

10. In closing Mr Brown objected to HMRC's reliance on the findings of Snowden J (as he then was) in *Minstrell Recruitment Services Limited v Lockett & Lion Recruitment Services Solutions Limited* [2020] EWHC 3537 (Ch).

11. We indicated to the parties that we would consider the objection and reasons for our decision would be provided within this decision.

12. We consider that we would be entitled to take the Judgment into consideration as it formed part of HMRC's pleadings. However, we did not feel it necessary to do so and we consider that the evidence before us was sufficient to determine the issues in this case without regard to it.

OVERVIEW OF THE PARTIES' CASES

13. HMRC contend that MRL knew that its transactions were connected with the fraudulent evasion of VAT or, in the alternative, MRL should have known of the connection to fraud. HMRC rely on a number of factors which, they submit, when viewed in totality support their case including (but not limited to) the close links between MRL and the Three Companies, the absence of contemporaneous documentation to show how the transactions occurred, involvement of company officials in previously defaulting companies, the lack of commercial rationale for the transactions and the quality of the evidence given on behalf of the Appellants.

14. MRL contends that the evidence relied on by HMRC is insufficient to reach a finding that the tax losses were fraudulent. MRL does not accept, in relation to any of the transactions, that it knew or should have known that its transactions were connected to fraudulent tax losses. It disputes the features relied on by HMRC and asserts that MRL had no involvement in the running of the Three Companies. The Grounds of Appeal can be summarised as follows:

(i) MRL entered into the relevant transactions on a genuine arm's length basis;

(ii) MRL carried out all reasonable checks in respect of suppliers and supplies to it;

(iii) MRL did not know nor could it have known that VAT would be incorrectly accounted for by its suppliers;

(iv) MRL was not given sufficient notice that its suppliers had been de-registered.

(v) HMRC have placed undue emphasis on circumstantial evidence.

THE LAW

15. Although this is not a "typical" *Kittel* case, in that there are no buffer traders in the transaction chains and the transactions occurred directly between the alleged defaulters (the Three Companies) and MRL, the parties agreed that the provisions and authorities set out below are applicable.

Kittel and input tax

The right to deduct

16. Articles 167 and 168 of Council Directive 2006/112/EC of 28 November 2006 on the common system of VAT (the "2006 Directive") provide as follows:

> "Article 167
>
> A right of deduction shall arise at the time the deductible tax becomes chargeable.
>
> Article 168
>
> In so far as the goods and services are used for the purposes of the taxed transactions of a taxable person, the taxable person shall be entitled, in the Member State in which he carries out these transactions, to deduct the following from the VAT, which he is liable to pay:
>
> (a) the VAT due or paid in that Member State in respect of supplies to him of goods or services, carried out or to be carried out by another taxable person…"

17. The provisions set out above are reflected in domestic law at Sections 24, 25 and 26 VATA 1994.

18. The regulations referred to in VATA 1994 are The Value Added Tax Regulations 1995 (SI 1995/2518) (the "VAT Regulations").

19. Regulation 29 of the VAT Regulations provides:

> **"29 Claims for input tax**
>
> (1) …save as the Commissioners may otherwise allow or direct either generally or specially, a person claiming deduction of input tax under section 25(2) of the Act shall do so a return made by him for the prescribed accounting period in which the VAT became chargeable…
>
> (2) At the time of claiming deduction of input tax in accordance with paragraph (1) above, a person shall, if the claim is in respect of-
>
> (a) a supply from another taxable person, hold the document, which is required to be provided under regulation 13;…
>
> provided that where the Commissioners so direct, either generally or in relation to particular cases or classes of cases, a claimant shall hold or provide such other documentary evidence of the charge to VAT as the Commissioners may direct."

20. The effect of the provisions is that if a taxable trader has incurred input tax that is properly allowable, he is entitled to set it against his output tax liability and, if the input tax credit due exceeds the output tax liability, the taxable person is entitled to make a claim for a repayment of VAT.

Loss of entitlement, Authorities and General application of the legal principles

21. The principles to be applied in appeals involving *Kittel* denials are well established**.** The salient points are summarised below.

22. The CJEU in *Kittel* confirmed that a taxable person who "knew or should have known" that the purchases in which input tax was incurred were connected with the fraudulent evasion of VAT would not be entitled to claim a credit in respect of that input tax (at [56]):

> "a taxable person who knew or should have known that, by his purchase, he was taking part in a transaction connected with fraudulent evasion of VAT must, for the purposes of the Sixth Directive, be regarded as a participant in that fraud, irrespective of whether or not he profited by the resale of the goods."

23. The CJEU explained the rationale at [57] and [58] as follows:

> "That is because in such a situation the taxable person aids the perpetrators of the fraud and becomes their accomplice.
>
> In addition, such an interpretation, by making it more difficult to carry out fraudulent transactions, is apt to prevent them."

24. The CJEU concluded at [59]:

> "it is for the referring court to refuse entitlement to the right to deduct where it is ascertained, having regard to objective factors, that the taxable person knew or should have known that, by his purchase, he was participating in a transaction connected with fraudulent evasion of VAT, and to do so even where the transaction in question meets the objective criteria which form the basis of the concepts of 'supply of goods effected by a taxable person acting as such' and 'economic activity'."

25. The Court of Appeal addressed the issues raised by *Kittel* in *Mobilx Limited (in Liquidation) v The Commissioners for Her Majesty's Revenue and Customs* [2010] EWCA Civ 517 ("*Mobilx*"). In relation to the test of "should have known", Moses LJ said (at [52] & [59]):

> "If a taxpayer has the means at his disposal of knowing that by his purchase he is participating in a transaction connected with fraudulent evasion of VAT he loses his right to deduct, not as a penalty for negligence, but because the objective criteria for the scope of that right are not met. It profits nothing to contend that, in domestic law, complicity in fraud denotes a more culpable state of mind than carelessness, in the light of the principle in Kittel. A trader who fails to deploy means of knowledge available to him does not satisfy the objective criteria which must be met before his right to deduct arises."
>
> "The test in Kittel is simple and should not be over-refined, it embraces not only those who know of the connection but those who "should have known". Thus it includes those who should have known from the circumstances which surround their transactions that they were connected to fraudulent evasion. If a trader should have known that the only reasonable explanation for the transaction in which he was involved was that it was connected with fraudulent evasion of VAT then he should have known of that fact..."

26. Moses LJ went on to explain that the "should have known" test encompasses a taxable person who has the means of knowledge but chooses not to deploy it, for instance by ignoring obvious inferences surrounding the circumstances in which he has been trading. He explained at [64] that where a trader "should have known that there was no reasonable explanation for the circumstances in which the transaction was undertaken other than that it was connected with fraud, then such a trader was directly and knowingly involved in fraudulent evasion of VAT". (See also Christopher Clarke J in *Red12 v HMRC* [2009] EWHC 2563 at [109] – [111]).

27. Moses LJ emphasised (at [81] & [82]) that although the burden of proof rests with HMRC, that:

> "…is far from saying that the surrounding circumstances cannot establish sufficient knowledge to treat the trader as a participant ...Tribunals should not unduly focus on the question whether a trader has acted with due diligence. Even if a trader has asked appropriate questions, he is not entitled to ignore the circumstances in which his transactions take place if the only reasonable explanation for them is that his transactions have been or will be connected to fraud."

28. HMRC do not have to prove that the Appellant knew or should have known either the details of the fraud or the identities of the fraudulent traders (*Megtian Ltd (In Administration) v The Commissioners for HM Revenue and Customs* [2010] EWHC 18 (Ch) (at [37] – [38])). Furthermore, HMRC do not allege, nor do they need to prove that those at the MRL who carried

out or supervised the relevant transactions were dishonest (*The Commissioners for HM Revenue and Customs v Citibank NA, E Buyer UK Ltd* [2017] EWCA 1416 (Civ) at [90]).

29. The test of constructive knowledge was considered in *Davis & Dann & Another v The Commissioners for HM Customs and Excise* [2016] EWCA Civ 142 ("*Davis & Dann*") in which Arden LJ held that in considering "the no other reasonable explanation standard" the Tribunal needs to consider the totality of the evidence and be wary of "over-compartmentalisation" (see [60] - [65]). It is not sufficient for HMRC to show that the taxpayer should have known that either it was running the risk that by its purchase it might be taking part in a transaction connected with fraud or that it was taking part in a transaction which was likely to have been connected with fraud.

30. There was no dispute between the parties that a company acts through its directors, whether that be directors formally appointed, a de facto or a shadow director. The precise status of a person in any of these roles is relevant but not determinative of whether a person's knowledge can be attributed to a company. In MRL's appeal, HMRC contend that the knowledge of Mr Andrew Parish, Mr Mark Hagen and Mr Jonathan Parish can each be attributed to MRL and each of the Three Companies.

31. In assessing the issue of dishonesty in relation to the alleged defaulters, HMRC cited *Ivey v Genting Casinos (UK) Ltd t/a Crockfords* [2017] UKSC 67 per Lord Hughes who set out the two-stage process of determining as a matter of fact the relevant individual's state of mind followed by an assessment of whether it is honest or not on an objective basis, at [74]:

> "…When dishonesty is in question the fact-finding tribunal must first ascertain (subjectively) the actual state of the individual's knowledge or belief as to the facts. The reasonableness or otherwise of his belief is a matter of evidence (often in practice determinative) going to whether he held the belief, but it is not an additional requirement that his belief must be reasonable; the question is whether it is genuinely held. When once his actual state of mind as to knowledge or belief as to facts is established, the question whether his conduct was honest or dishonest is to be determined by the fact-finder by applying the (objective) standards of ordinary decent people. There is no requirement that the defendant must appreciate that what he has done is, by those standards, dishonest."

32. HMRC also rely on *Victoria Walk Ltd v HMRC* [2016] UKFTT 0687 (TC), in which the company assessed under the *Kittel* principle did not seek to argue that its knowledge of a tax loss was in any way different to that of the defaulting company, which was noted to be "hardly surprising" given that there was a single director of both companies (see [83]).

33. The legal provisions relevant to the Registration appeals are as follows: Paragraph 1 of Schedule 1 to the Value Added Tax Act 1994 ("VATA") states:

> "**Liability to be registered**
> **1.—**
> (1) Subject to sub-paragraphs (3) to (7) below, a person who makes taxable supplies but is not registered under this Act becomes liable to be registered under this Schedule—
>
> a) at the end of any month, if [the person is uk-established and] the value of his taxable supplies in the period of one year then ending has exceeded [£83,000]; or
>
> (b) at any time, if [the person is uk-established and] there are reasonable grounds for believing that the value of his taxable supplies in the period of 30 days then beginning will exceed [£83,000]."

34. Paragraph 9 of Schedule 1 to VATA states:

> "**Entitlement to be registered**
> **9.**

Where a person who is not liable to be registered under this Act is not already so registered satisfies the Commissioners that he—
(a) makes taxable supplies; or

(b) is carrying on a business and intends to make such supplies in the course or furtherance of that business,

they shall, if he so requests, register him with effect from the day on which the request is made or from such earlier date as may be agreed between them and him."

35. Paragraph 13 of Schedule 1 to VATA states:

"Cancellation of registration
13.—
(1) …
(2) Subject to sub-paragraph (5) below, where the Commissioners are satisfied that a registered person has ceased to be registerable, they may cancel his registration with effect from the day on which he so ceased or from such later date as may be agreed between them and him.
…

(5) The Commissioners shall not under sub-paragraph (2) above cancel a person's registration with effect from any time unless they are satisfied that it is not a time when that person would be subject to a requirement, or entitled, to be registered under this Act."

36. There is no express domestic provision to deal with a refusal of registration, or of deregistration, on the basis that the trader has misused its VAT number. The power to deregister a taxpayer on the basis that the trader has misused its VAT number is based on the CJEU decision of *Valsts ieņēmumu dienests v Ablessio SIA* Case C-527/11 ("*Ablessio*") (see also *Halifax plc, Leeds Permanent Development Services Ltd and County Wide Property Investments Ltd -v- Commissioners of Customs and Excise* Case C-255/02 ("*Halifax*") at [68] – [71]).

CHRONOLOGY

37. The following facts are not in dispute.

38. MRL was incorporated on 2 August 2007. It declared its main business activity to be "temporary employment agency activities". MRL applied for a VRN from 3 August 2007, giving its email address as "mark@pavillionpayroll.com". Its business activities were described as "construction recruitment"

39. The business activity of MRL is a recruitment agency, and its supply is one of workers. It uses a payroll company to pay its workers.

40. HMRC wrote to MRL on 11 October 2007 shortly after MRL registered for VAT. The letter advised of the existence of fraud within the VAT system and that VAT registrations were being made with the deliberate intent to commit fraud.

41. On 21 February 2013, Andrew Parish, a director, was advised in a meeting with HMRC of the importance of due diligence and the need for appropriate checks to be made.

42. On 2 April 2015 Mark Hagan, also a director, was sent a letter by HMRC advising of a number of false applications for VAT registration designed to commit VAT fraud.

43. On 28 February 2017 HMRC visited MRL. Andrew Parish, among others, was present at the meeting. Andrew Parish explained that MRL had purchased Spectrum from administration, a company that had gone into liquidation owing £5.2million to HMRC which,

Andrew Parish explained, had caused cash flow problems for MRL. Input tax claimed by Spectrum was denied on a *Kittel* basis in the sum of £3,710,895 on 7 September 2017.

44. HMRC officer Jayne Holden was responsible for issuing the *Kittel* decisions to MRL. There was some dispute as to the level of cooperation received from the Appellant. Ms Holden stated that when she tried to make arrangements to check the company's VAT returns for quarter ending 02/18 she was told by Mr Tully of Integra Advisers, the representative of the Appellant, that there was no way another visit would take place as the Directors had already been interviewed several times and records had been provided. Ms Holden confirmed that a visit had taken place on 28 February 2017 but that this only covered the quarterly period 11/16. Ms Holden requested a detailed VAT report for 02/18 together with the supplier and customer account codes. The VAT report was received however Ms Holden was adamant that the codes were not and she explained that they were needed to identify the customers and suppliers shown on the report. She was told by Mr Tully that the codes had already been provided and must have been lost by HMRC. Having checked HMRC's records Ms Holden confirmed that the codes had not been provided. In the absence of the account codes, Ms Holden used information on HMRC's CIS database to identify the suppliers used. Ms Holden explained that the CIS returns submitted by MRL showed that its main supplier for the period covered by the 2/18 VAT return was Crystal.

45. On 24 July 2018 HMRC wrote to MRL to advise that Crystal had been deregistered for VAT purposes from 11 July 2018.

46. On 16 August 2018 HMRC wrote to MRL to advise them of the deregistration of Services and Clarity each from 1 August 2018.

47. On 3 September 2018 HMRC wrote to MRL to advise of tax losses in the supply chain in relation to supplies from Services and Crystal. The estimated tax losses, derived from information held on the CIS systems, were calculated at £1,976,784.

48. Ms Holden attended a meeting on 18 October 2018. No company officers were present, but MRL was represented by its agent, Mr Tully. At the visit Ms Holden was shown supplier accounts from Crystal and Services. At the visit Mr Tully showed Ms Holden records which indicated that MRL had made supplies to Services to June 2017 despite Services having entered liquidation in May 2017. Ms Holden noted that MRL had also declared sales to Services on its CIS returns for the months ending 5 June 2018 and 5 July 2018, however Mr Tully was unable to provide any further information about those transactions.

49. Ms Holden also noted that the input tax claimed by MRL in period 02/18 relating to Crystal was far in excess of the amounts shown on MRL's CIS return. The figures on the CIS return showed the VAT at 20% of the payments made would be around £154,000. However, the VAT report showed £522,000 input tax had been claimed. Mr Tully could not provide any information on this during the visit.

50. In relation to Clarity, Mr Tully agreed to obtain the supplier account. Ms Holden highlighted that the company was de-registered for VAT purposes. Mr Tully confirmed that Clarity was still trading and that he assumed they were sill charging VAT. He stated that the director of Clarity was Stuart Sexton who is a chartered accountant. When Crystal went into liquidation, Jonathan Parish did not have a job and wanted to carry on the trade of Crystal but he had no business experience. He stated that Mr Sexton was an 80% shareholder and Mr Parish was a 20% shareholder (although in fact it was the other way around).

51. Mr Tully subsequently provided additional records from which Ms Holden identified further tax losses relating to the Three Companies. On 12 December 2018 Ms Holden issued

the decision to refuse entitlement to deduct input tax of £3,551,645 for VAT periods 05/17 to 08/18. The decision was upheld on review.

52. On 4 February 2019 HMRC received the applications for VAT registration from MRNL and MRSL.

53. Further records were therefore requested, and Mr Tully advised that Mr Alan Nolan of Aspire Business Partnership had been appointed to deal with the matter and enquiries should be directed to him. Ms Holden received no response either from Aspire or MRL and consequently the information on HMRC's CIS database was used to estimate the values of input tax claimed in relation to Clarity and a decision was issued refusing entitlement to the right to deduct in the sum of £1,176,000 for VAT periods 11/18 and 02/19. The amount was subsequently reduced on 12 February 2020 after Clarity submitted a late VAT return and paid £141,380 of a liability of £188,944.48.

Services

54. HMRC officer Ms Chilwan-Solkar took over as case officer with responsibility for Services in December 2021 following the retirement of HMRC officer Mr Maclean. She adopted the statements of Mr Maclean which set out the following information.

55. Services was incorporated on 12 July 2012 and registered for VAT from 1 November 2012. The directors on incorporation were Kevin Bradley and TGL Solutions Limited ("TGL"). Mark Hagen was the majority shareholder and Director of TGL.

56. At the time of its registration at Companies House, the shareholders of were Kevin Bradley (1 share), Andrew Parish (33 shares), TGL (33 shares) and Paul Moran (33 shares).

57. TGL resigned as director on 1 August 2012 but remained a shareholder in 2013 and 2014.

58. Services' Annual Return, submitted to Companies House on 13 May 2015, shows a change in ownership, with Mr Bradley retaining 1 share, Mr Andrew Parish increasing his shares to 66, and Mr Paul Moran retaining his 33 shares.

59. The VAT1 application signed by Mr Badley and dated 14 July 2012 recorded the business activity as "Construction Industry Provision of Labour" with an estimated turnover of £800,000.

60. HMRC sent a letter to Mr Bradley dated 19 October advising that correspondence issued to the PPOB stated on its VAT1 had been returned. The letter asked for further information to process Service's VAT registration application and requested clarification of the PPOB trading address. On 2 January 2013, HMRC received a faxed letter from Mr Bradley on behalf of Services providing further information to HMRC.

61. The letter dated 2 January 2013 accompanied a completed questionnaire in which the business activity of Services was stated as being "providing payroll processing fees for a fee". The information provided by Services on 2 January 2013 also states that MRL is its only current customer. The questionnaire was signed by Mr Bradley on 31 December 2012.

62. HMRC wrote to Services on 9 January 2013, following its application for VAT registration. The letter explained that, in recent years, the VAT system has been attacked by fraudsters who apply to register for VAT with the intention of committing frauds.

63. The first contract obtained by Services was from MRL on 1 November 2012, the date Services became registered for VAT. Services' subsequent CIS records show payments received from other customers, however MRL remained its largest customer, receiving 98% of its total CIS payments in period 01/17 and 95% in 08/17.

64. Services entered into a Creditors Voluntary Liquidation on 5 June 2017 with a debt of £1.81m to HMRC, of which £1.23m related to VAT.

65. Alan Fallows and Peter James Anderson of Kay Johnson Gee Corporate Recovery Limited ("KJG") were appointed as joint liquidators of the company.

66. Following its liquidation, HMRC officer Mr Mills carried out a compliance check in 2018. Officer Mills identified errors of VAT output tax under-declared from the analysis of payments made to Services under the CIS scheme in relation to amounts it had declared on the VAT returns. Officer Mills also provided KJG a schedule of the errors identified as under-declared VAT output tax, which shows the related VAT due as a result of his analysis of the CIS amounts paid to Services. Assessments were raised in the sum of £620,715 for periods 01/17, 07/17 and 01/18. In evidence Ms Holden confirmed that an amended assessment for 07/18 was subsequently reduced to nil following information that MRL had referenced payments to Services on its CIS return which in fact were made to Crystal. MRL subsequently amended the return to show the supplier as Crystal. A central assessment was issued for period 04/17 as no return was received.

67. Services' VAT registration was cancelled with effect from 1 August 2018.

Crystal

68. HMRC officer Janet Morris provided evidence in relation to Crystal, having taken over responsibility from HMRC officer Patricia Ainsworth following the latter's retirement from HMRC.

69. Crystal was incorporated on 9 February 2017 and registered for VAT from 1 April 2017. The trade class for Crystal recorded at Companies House is "temporary employment agency activities". It's registered office was in Edinburgh.

70. The initial director of Crystal was Mr Kevin Bradley, appointed on 9 February 2017 until his resignation on 22 May 2017. From 22 May 2017 Ms Lesley Igo was appointed as a director.

71. Andrew Parish was a 75% shareholder and Mark Hagan was a 25% shareholder.

72. Crystal applied to register for VAT on 4 July 2017 and was registered from 1 April 2018. On its VAT1, Crystal indicated that its turnover was below the current VAT registration threshold. However, it also stated that its turnover was £100,000, which was above the VAT registration threshold then in force of £85,000.

73. Crystal defaulted on its VAT obligations from the first periods of 11/17 and 02/18; returns were submitted but the VAT was not paid in full.

74. A visit was arranged to examine business records and check VAT returns. Mr Tully of Integra, Crystal's agent, advised on 9 July 2018 that his firm had been discharged as agents as Crystal had entered Members Voluntary Liquidation and would not be attending the visit arranged for 11 July 2018.

75. HMRC Officers Mills and Glover attended on that day and were met by Jonathan Parish, brother of Andrew Parish, who identified himself as an employee and stated that the Director Lesley Igo was unavailable and the company was in liquidation. Jonathan Parish did not know who the Insolvency Practitioner was. He stated that the successor business to Crystal was Clarity who he would continue to work for and that the Director was called Stuart but he knew nothing more.

76. On the basis that there was no evidence of trade, HMRC issued an immediate deregistration letter.

77. On 11 July 2018, Ms Lesley Igo signed a statement winding up the company and appointing, as joint liquidators Alan Fallows and Peter James Anderson of KJG.

78. On 11 July 2018, a letter was issued to Companies House by KJG enclosing Crystal's Statement of Affairs. A nominal amount of £1 was entered as the amount owed in respect of VAT as the Liquidators had been unable to obtain records to include the actual amount due.

79. HMRC compared figures declared on VAT returns to payments received under the CIS scheme and issued a letter to the liquidators on 7 August 2018 notifying them of the assessments made to VAT, totalling £458,126 for the periods 11/17 and 02/18. A further assessment was issued on 12 December 2018 for additional VAT due totalling £643,867 for the periods 02/18, 05/18 and 08/18. Officer Morris subsequently reviewed and amended the assessments.

80. On 20 November 2018 the liquidators advised HMRC that they had advised the Director to bring outstanding returns up to date and requested information from HMRC as to which returns were outstanding and for a breakdown of the assessment figures.

81. HMRC confirmed in evidence that there was a CIS credit of £943,447.26. It was explained that this was not actioned as an actual CIS return was not received and this was the reason why HMRC rejected Crystal's request for it to be set off against its liabilities. HMRC explained that the overpayment could not be processed until the year end (5 April 2018) and the amount for 11/17 was due on 7 January 2018, therefore, payment should be made. The agent requested a time to pay arrangement until that could be actioned but, due to the time period involved, it was refused by HMRC. The payment can be reallocated if the final return has been submitted and the company has paid all PAYE/CIS amounts due to HMRC for the year. At the point where the company was entering into liquidation, the repayment could not be set-off because all the CIS returns had not been submitted, therefore, the extent of the liability could not be ascertained.

82. The liquidator informed HMRC on 21 December 2018 that they had not received books and records from Crystal and therefore could not comment on the assessments.

Clarity

83. HMRC officer Simone Glover took over responsibility for Clarity from Ms Chilwan-Sokar. She provided the following background evidence.

84. Clarity was incorporated on 5 December 2014 as "Minstrell Recruitment (All Trades) Limited". Its name was changed to Clarity All Trades on 9 May 2018. On incorporation the sole shareholder, company secretary and Director was Mark Hagan, who resigned as director and company secretary on 16 May and 11 June 2018 respectively.

85. On 2 April 2015, HMRC sent a letter to Mr Hagen, following his application for VAT registration of Minstrell Recruitment (All Trades) Limited. The letter advised of a significant number of false applications for VAT registration designed to commit VAT fraud. Mr Hagen was asked for further information about the company

86. Mr Stuart Sexton was appointed as a director on 10 May 2018 with a 20% shareholding. On 14 June 2018 Jonathan Parish became 80% shareholder.

87. From incorporation until 19 June 2018 Clarity's registered address was an address previously used by MRL. Mr Tully was also the agent for the company.

88. Clarity was registered for VAT from 1 July 2018. According to the VAT1 signed by Mr Sexton, Clarity's estimated turnover for the coming 12 months was £600,000, and the declared business activity was described as "Payroll Bureau".

89. It was deregistered for VAT from 31 July 2018, before any VAT returns were due, following a visit at which HMRC were unable to confirm that taxable supplies were being made from the principal place of business which appeared to the officers to be unoccupied as the blinds were down and there was no signage for the business. A recruitment consultancy next door confirmed that the premises was empty and that the company had left in January or February 2018.

90. No return was received for the period of registration, and therefore an assessment was issued on 29 August 2018 in the sum of £141,380. Payment was made on 18 December 2018.

91. MRL traded with Clarity between 4 July 2018 and 10 October 2018.

92. At a visit by HMRC on 16 November 2018 at which Mr Tully and Mr Sexton were present, HMRC formed the view that no evidence of trade could be seen at the office and the officers noted that Stuart Sexton was unable to provide details of how the business was being run; he stated that Jonathan Parish knew the day to day running on the company.

93. Clarity did not provide all of the documents that had been requested in advance of the visit and further request were made. Bank statements received on 3 January 2019 showed that between July 2018 and October 2018 Jonathan Parish received £19,445.15 by bank transfers for which no explanation was provided.

94. At a visit on 7 February 2019 HMRC found the building shut, the letterbox had mail coming out and there was no evidence of trade at the premises.

95. Correspondence ensured with HMRC requesting documents which had not been provided and the company requested a formal review of HMRC's decision to de-register the company. Delay was caused due to Mr Alan Nolan asserting that the form authorising him to act had been provided which it transpired had not. It also appears that officer Glover did not refer the request for a review but instead requested records such as purchase orders and sales invoices, from the company which she believed were necessary for a review to be carried out.

96. On 22 March 2019 HMRC visited Clarity's principal place of business. Further information was requested, but no response received. A letter was sent by Alan Nolan which provided details of the roles and responsibilities of each officer.

97. On 11 April 2019 HMRC issued the decision to remove Clarity from the register on the basis that the company had used its VRN solely or principally for fraudulent purposes.

98. Clarity continued to transact with MRL after de-registration and failed to declare those sales to HMRC. Bank statements showed an estimated £4 million was paid by MRL to Clarity between September 2018 and February 2019.

99. In oral evidence Ms Glover explained that the company was assessed on the basis of MRL's CIS returns which showed payments from MRL to Clarity. The figures did not specifically show VAT figures, but invoices obtained from a company called Stallion Recruitment Ltd that received supplies from Clarity. Invoices were provided from 01 August 2018 to 24 April 2019 that showed that Clarity had charged VAT throughout this period after deregistration. Without the records from Clarity or additional records from MRL HMRC had based their decision on the limited information available and Ms Glover explained that VAT should not have been charged when the company was de-registered. Clarity could have amended its final return to reflect VAT but it failed to submit a return.

100. Ms Glover clarified in evidence that large payments shown to have been made by MRL to Clarity, are not shown in Clarity's bank accounts as not all payments went into the account for which HMRC received records and statements for only a small period were provided.

101. The assessment which was issued by Officer Chilwan-Solkar for £141,380 to Clarity in August 2018 was paid by the company on 18 December 2018. The further assessment in June 2019, which is for the same period for £59,416 to date has not been paid.

EVIDENCE AND FINDINGS OF FACT

102. Given the number of witnesses on behalf of the Appellant and their associations with the Three Companies with which the Appellant traded, we consider it helpful to set out the evidence in some detail to assist the reader in understanding our assessment and analysis of that evidence.

MARK HAGEN

103. Mr Hagen has been a director of TGL Solutions Limited since its incorporation on 16 June 2011. TGL is not involved in providing services in the payroll or recruitment industries.

104. TGL was a director of Services from its incorporation on 12 July 2012 to 1 August 2012. TGL had a 33% shareholding until this was transferred to Andrew Parish in May 2016.

105. Mr Hagen was a director of MRL from 7 August 2007 to 13 January 2021.

106. He was a director and company secretary of Clarity from 5 December 2014 to 16 May 2018 and 11 June 2018 respectively.

107. Mr Hagen is also a director of MRNL and MRSL.

108. Mr Hagen previously worked at Pavillion Associates Limited from 2005 to 2007 and Pavillion Management Services Ltd from 2007. Both were payroll companies and Mr Hagen's involvement came about through his relationship with Andrew Parish. He was later invited by Andrew Parish to act as a company officer in associated companies as follows:

- Company Secretary of Pavillion Property Limited
- Company Secretary of Pavillion Consultancy Limited
- Director of Pavillion Business Support Ltd
- Company Secretary of Pavillion Management Services Ltd.

109. Mr Hagen's evidence was that:

> "later – it would appear from Companies House that I also accepted the position of Director as Pavillion Management Services Ltd…however, in respect of this appointment, I would say there was an error when the forms were filed. I only ever acted as a Secretary, and the form filed wasn't signed by me. I didn't have any concerns about the form – admin errors happen."

110. Mr Hagen stated he had no in-depth involvement with Pavillion Associates Limited or Pavillion Law Limited and only carried out administrative duties. He added that most of the companies in which he held a directorship were dormant and the names were retained to ensure that if Pavillion Management Services Limited decided to expand then suitable company names were held.

111. Mr Hagen explained that there were a number of reasons for Pavillion Management Services Ltd entering liquidation; firstly, a time to pay request in relation to VAT was refused, secondly, a member of the payroll team had falsified employees' names to collect salaries for himself and thirdly, there were business difficulties between Andrew Parish and Paul Bell who ran the company. These difficulties combined with the economic crash and costs arising from HMRC's investigations meant it was not viable to continue. From recollection, Mr Hagen

believed the VAT debt had initially been stated by HMRC to be £1.1 million rather than £2.8 million.

112. Mr Hagen completed the application for VAT registration for MRL. He clarified that the email address provided was mark@pavillionpayroll.com however, despite appearances this was not a Pavillion email address, but a generic email address set up on his computer which must have "just been pulled up". At that time, in August 2007, Mr Hagen did not have an email domain set up for MRL as the company had just been incorporated.

113. Mr Hagen explained that MRL is a successful business which steadily grew and tapped into the blue and white collar construction industry boom. He added that there would be no good reason to jeopardise the business by committing fraud and there is no reason for HMRC to think that the company cannot meet its tax liabilities.

114. Mr Hagen explained that Andrew Parish's family connection to Services was an attractive factor given the importance of reliability of payroll providers, although he disagreed that this indicated a direct link between MRL and Services or that MRL was responsible for any tax losses incurred by Services. Mr Hagen had no involvement in Services once TGL's directorship ceased on 1 August 2012. He did not provide guidance to Mr Bradley but occasionally would call in to Mr Bradley's office for a cup of tea as the pair had a positive relationship. He stated:

> "I was aware- at the time of incorporation- that [Kevin Bradley] had no experience acting as a Director and that his previous employment was at Royal Mail. He was leaving a stable position of 20 years- he wouldn't have done that with the intention of messing up the business. It didn't strike me as inappropriate- he had plenty of support from [Jonathan Parish] and others running things on the ground and knew the correct professionals to approach if required. [Andrew Parish] took an interest- as Minstrell sent some clients through the company (to help [Kevin Bradley] get started). I remember thinking that [Kevin Bradley] was very brave to take the decision to move from a stable job- with pension benefits etc- and, thought it was really positive that he wanted to improve himself."

115. Mr Hagen understood Mr Bradley's focus to be generating new clients which is typically done within the industry by holding lavish hospitality and entertainment events. MRL had its own entertainment budget to generate new clients and as far as Mr Hagen was aware, entertainment provided by Mr Bradley was entirely for his company's benefit.

116. In cross examination, Mr Hagen confirmed he did not carry out due diligence on Mr Bradley as he knew him personally through Andrew Parish. He was aware that Mr Bradley had worked at Royal Mail for 20 years and that he wanted to better himself which led to his involvement in Services. Mr Hagen added that his day to day role was concerned with MRL and not Services and that he was not sure why he had put TGL down as a director rather than himself. He did not agree that Services had fraudulent VAT debts.

117. A document from Services which was undated and addressed "To whom it may concern" confirmed the company's PPOB and stated the company:

> "was successful in obtaining its first contract on 1st November 2012 with Minstrell Recruitment Limited when the head of agreement was signed."

118. Mr Hagen believed that the document was signed by Mr Jonathan Parish and concerned a tender from Services. Mr Hagen thought he recalled that Mr Bradley or Mr Jonathan Parish may have done a presentation but he could not recall any negotiations. He agreed that the companies were closely linked but denied that he was aware of fraud or that fraud was the purpose of the transactions, stating he did not get involved in that area.

119. Discussions with Andrew Parish led Mr Hagen to understand that the demise of Services was the result of issues with HMRC's gateway IT system and also Mr Bradley's personal issues.

120. Mr Hagen did not know Ms Lesley Igo particularly well but he understood that she had been keen to take over from Mr Bradley when he resigned as director of Crystal. He believed that Ms Igo would be a suitable director as she had worked at Services and then at MRL.

121. Mr Hagen explained that his 25% shareholding in Crystal was an administrative error and that he had no involvement in Crystal beyond MRL sending some payroll work to the company.

122. Mr Hagen was the sole director and the company secretary of Clarity upon incorporation from which he resigned in 2018 and was replaced as director by Mr Stuart Sexton at the suggestion of Mr Tully. He explained that although Mr Sexton had not operated a payroll company previously, Jonathan Parish could manage the day to day running of the company which seemed an excellent suggestion given the personal connections. However, Clarity was to be run by Mr Sexton as a completely independent venture.

123. Mr Hagen was unaware that MRL incorrectly claimed VAT when Clarity was de-registered for VAT as "operations on this level would not have [been] something brought to my attention at the time". He believed that the administrative staff had worked on the basis that Clarity was VAT registered and it was a very simple mistake. He added:

> "Further to the above, having a VAT registration number is a sign of "good trading" in the industry. Usually, without this, a company would have difficulties trading- as other companies would be concerned about its business operations. In this case, Minstrell Recruitment Limited had been involved in the creation of Clarity All Trades enough to know fraud wasn't intended and was aware that it had recently applied for VAT registration and a response from HMRC was expected and that it intended to appeal HMRC's decision to refuse this (when this was confirmed). I suspect- upon that basis- Minstrell Recruitment Limited was happy to trade with Clarity All Trades Limited without a VAT number and had intended to do so from the beginning."

124. In January 2021 Mr Hagen's appointment as director of MRL was terminated following a fallout with Andrew Parish and his decision to focus on TGL.

125. Referring to fraud in the industry, Mr Hagen confirmed in evidence he and Andrew Parish "were absolutely aware of this risk at the time" and tried to minimise any risk by using the same accountants and financial/tax advisers such as Integra Advisors LLP and Aspire Business Partnership LLP. Professional advise was taken in relation to all major decisions by MRL. He had never discussed fraud with Jonathan Parish as he did not generally have day to day contact with him.

126. Although Mr Hagen had access to the company bank account along with staff members, he stated he did not check it on a daily basis and had no control over it. The company also received money into a trust account which he received reports about. He was not aware that MRL had made payments to Clarity at a time when Clarity had no bank account nor was he aware that Clarity had been refused a bank account although he would not necessarily have seen this as a red flag and it was not an area he was involved in. His role was to collect the ledger which involved over 200 clients; it took a substantial amount of time to make calls, write emails and check bank statements to see if payments had been received when promised. He did not carry out any checks on suppliers as this was not in his remit. He stated that the accounts/payroll staff had bank details and dealt with payments to suppliers and although he did not personally do it, the company would verify a company with HMRC by checking its

registration, name and contact details and VAT number. He stated that Andrew Parish oversaw most of the business activities. Mr Hagen claimed he did not check if due diligence was carried out and he had not asked any questions of Andrew Parish.

127. Mr Hagen was not aware that Mr Steve Moran, an employee of MRL was responsible for the bank account used by Clarity and into which MRL made payments, although he was aware that Mr Moran had another business. He was not surprised as many people in the industry have other businesses. He stated that there could be a reason that the bank account of a separate company was used, although he could not think of one. He highlighted that the business was not just his and that he was a minority shareholder.

128. Mr Hagen believed that Mr Andrew Parish probably attended meetings with HMRC and he could not recall if he had meetings with the company advisers in the lead up to those meetings. He could not recall what information Mr Tully had relayed to him regarding HMRC's involvement, they had paid advisors and lawyers for advice and if he had been told to attend any meetings he would have. He could not recall any discussions with Mr Andrew Parish. He added that his responsibilities lay elsewhere; it was a multi-million pound business with two directors and numerous employees who all had tasks. His role did not involve these matters. He was paid well to carry a lot of responsibility ensuring the workers' safety, insurance and that invoices were paid.

129. Mr Hagen did not recall seeing a letter from HMRC dated 21 November 2018 regarding a tax loss in excess of £3million relating to the Three Companies. He stated that he was aware of *Kittel* notices as he had not been familiar with the expression and it stood out. The letter was addressed to Mr Andrew Parish who may have seen it and given it to MRL's advisor. He did not discuss the matter with Mr Andrew Parish as he was not interested in the Three Companies and tried to distance himself as soon as he could, as his appointments as company officer were errors and had no relevance to his day-to-day work. He was aware of a *Kittel* issue and a CIS issue but advice would have been sought from Integra. He did not recall the letter notifying MRL about Crystal's de-registration, although it would have surprised him as it is not "an everyday letter". He said MRL would probably have spoken to advisors, he would possibly have spoken to Mr Andrew Parish and that he would have been worried if the same individuals involved then started trading as Clarity. Similarly in respect of a de-registration letters relating to Services and Clarity he agreed he would have found the letters concerning.

130. Mr Hagen could not recall if Mr Tully/Integra had advised MRL that Clarity, which it also represented, was de-registered but may still be charging VAT. He stated that although this was a concerning issue, he did not deal with such matters on a day-to-day basis as they were dealt with by Mr Andrew Parish and the company's advisors. He did not recall Mr Andrew Parish having a discussion with him that Clarity was de-registered but still charging VAT which MRL paid.

131. Mr Hagen could not recall the details but presumed that he had spoken to advisors after the *Kittel* letter was received from HMRC. He would have wanted to know how to defend the allegation and how MRL could move forward. He disagreed that there was any fraud involving MRL and the Three Companies, stating there may be other explanations which the individuals involved in the Three Companies could give.

132. Mr Hagen could not explain why MRL had received a loan of £40,000 from Crystal on 8 February 2018 or why £60,000 was given to MRL by Crystal over the course of 2 days which was then repaid. He stated that a director's loan of £10,000 did not relate to him so must relate to Mr Andrew Parish. He could not recall receiving £15,000 from Crystal as a loan on 3 May 2018 which he repaid on 4 and 8 May 2018 although he believed it may have related to his purchase of a house.

133. Mr Hagen stated he had not seen an invoice dated 13 December 2017 from Crystal which MRL overpaid, although he stated that the additional amount could be the VAT element but that this was not done deliberately so that MRL could reclaim the VAT.

JONATHAN PARISH

134. Jonathan Parish gained his experience in the industry working at Pavillion Management Services where he was eventually promoted to a company director. He had also been a director at Pavillion Consultancy Ltd and Pavillion Business Support Limited, although he did not recall being appointed as a director of the latter.

135. When Pavillion Management Services was taken over by FS Commercial he continued as an employee for about one year. He knew Paul Bell was involved with both companies but did not know him well. When his brother fell out with Mr Bell and left FS Commercial, Jonathan Parish found his situation difficult due to his connection with his brother. When Andrew Parish suggested a role at Services he agreed to join the company.

136. He began employment at Services in the summer of 2012. He was more hands on than Mr Bradley and described the latter's role as arranging client entertainment. Jonathan Parish was responsible for the practical side of the business which included the accounts, liaising with the bank and software. He also checked supplier and customer details including VAT registration. He confirmed that Mr Bradley remained employed at Royal Mail until his health declined and that Mr Bradley was "hands off" within the company describing his role as trying to get new business by cold calling and researching payroll companies and what they do. He stated Mr Bradley was mistaken when he said that Mr Andrew Parish had taken control at that point and that he had been the one to take control although he would have consulted his brother on relevant matters.

137. He confirmed that the document addressed "To whom it may concern" was signed by him and that the reference to obtaining a contract was referring to his brother's company engaging Services. He disagreed that the letter was intended to give the impression of an arm's length transaction and denied that the companies were closely connected. He explained that the negotiation would have involved his brother asking if Services could take on the payroll and Services agreeing. He could not recall any negotiations about costs and stated there was no charge to MRL as far as he was aware. He could not assist as to what was in the "head of agreement" document which was referred to, but he would have spoken to a tax advisor and he presumed that the document existed but could not recall 12 years ago and did not know why it had not been provided to HMRC.

138. He believed his brother had engaged Services because he wanted to use a new company and did not know why Mr Bradley believed that Andrew Parish's intention was to give him an opportunity but stated that people have different opinions. He could not recall if he had kept his brother informed regarding the company's financial health but did not think he had, although he probably consulted his brother in 2016/2017. He said his brother would have asked how the financial problems had occurred and that he would have explained that there was an issue when HMRC moved the company on to VAT quarters.

139. Mr Jonathan Parish stated he had not seen the company's Financial Statements although he had been running the company. He stated that Mr Bradley, who had signed the document, would probably obtain the information from the accountant and that he would have told Mr Bradley who they were trading with. He noted the related party transactions and payments to Andrew Parish in the sums of £144,000 and £304,000 and that the document recorded that the company was "controlled by Andrew Parish" but stated he did not believe that to be the case and could not explain why the document stated that. He agreed that he was in charge of the banking but stated that he would not have known the amount of payments to his brother

although he recalled sending payments to him for entertaining clients. With reference to Mr Andrew Parish's evidence that companies such as Laing O'Rourke were entertained, he claimed that many clients had their own clients which Mr Bradley would not have been aware of, or perhaps Mr Bradley did not remember where the money was spent.

140. Jonathan Parish claimed that although he understands that Services is in liquidation with a VAT debt to HMRC, he was not a director of the company and was not actively involved in the liquidation. He believed he first became aware of a problem in 2016 which was a reconciliation problem with the accounts software. He explained:

> "We used a system called Merit. I operated this system and also the company's bank accounts. HMRC were increasing on our case about unpaid amounts of tax due under the Construction Industry Scheme (income tax) and also VAT, which they claimed was outstanding. However, our package of software, did not show outstanding payments. I am not a software engineer and I do not know the technical details but I did contact Merit on the phone on a number of occasions to discuss the problems. As I recall, Merit informed me that there were problems with the way in which their system talked to HMRC's system…
>
> Contact between HMRC and [Servics] was now taking place very regularly but it did not appear to me that we were resolving the situation. We had frequent contact with our accountants, Integra Advisers, and they arranged support for the business from Kerry Chadwick, who worked with the business and tried to sort out the company's books. Unfortunately, this did not resolve matters successfully and the decision was taken to place the company into liquidation and salvage the business by transferring it to another company."

141. Mr Jonathan Parish explained that Mr Bradley developed an alcohol problem and mental health issues and letters were addressed to Mr Bradley as director, who found dealing with the insolvency increasingly difficult. Ms Igo, who worked at Services, indicated she would like to run the business and so she and Mr Bradley formed Crystal to take over Services' work.

142. He denied that there was a fraud or that payments were made to his brother as part of that fraud. He stated that all VAT due was paid as far as he was aware. He denied that VAT was charged to and paid by MRL and then kept. He stated that the analysis by HMRC showing discrepancies between Services' records and VAT returns were due to issues with the software as far as he recalled. Jonathan Parish denied that Services failed to provide all information to the liquidator and stated he only communicated with the liquidator by email when requested. He could not say why the liquidator went to his brother if he was not running the company and denied that he had acted dishonestly.

143. As far as Jonathan Parish understood, Crystal suffered from the same problems as Services; HMRC said that debts were owed but the systems showed the company to be in credit. He could not explain the reference on Crystal's bank statements to "loan" in the sum of £40,000 and "MRL loan" in the sum of £20,000 dated 8 and 9 February 2018 respectively and could not be sure that references to "AP loans" were payments made to his brother, stating that it could refer to other things although he could not think of any off the top of his head. He could not recall what the loans were for as it was a long time ago. He claimed that the business had problems and could have gone into liquidation for other reasons such as ill health or a relationship breakdown although he subsequently agreed that he had not been ill and he did not believe his relationship with his brother had broken down. He agreed that the reason was financial and added that those problems came from HMRC's system which did not accept the company's returns.

144. He did not believe that Services had renewed football season tickets at a time it had financial problems and he was not sure if Crystal purchased a racehorse.

145. Jonathan Parish believed he had supplied all records to the liquidator and he could not recall what the "unallocated" loans referred to in the Joint Liquidator's Annual Report for Services dated 4 June 2019 related to.

146. After the demise of Crystal, Mr Tully introduced Jonathan Parish to Mr Sexton. Jonathan Parish explained that Mr Sexton had "lots of experience working with payroll companies" and they agreed they could run a company together. He stated:

> "I was confident that a number of clients, including Minstrel, would transfer. We used Clarity All Trades Limited ("Clarity"). In fact, I think that Clarity already existed as a company that had been set up as part of the Minstrell group of companies."

147. He stated that he had not told HMRC at their visit because he had only had a telephone call with Mr Sexton at that point and did not know his feelings about Clarity. He told HMRC he knew nothing about Mr Sexton because he only had limited information. He did not give Mr Sexton's surname to HMRC as he didn't need to and might not have known it as he had only spoken to him once.

148. At Clarity, Jonathan Parish continued to process the payroll however HMRC withdrew the company's VAT number about one month after it started trading. This surprised Jonathan Parish and led to the end of the company. He stated that the shareholding (he held 80 shares and Mr Sexton held the remaining 20) reflected the time they would spend on the business; Jonathan Parish is listed as being the Person with Significant Control and confirmed he received £19,445.15 between July and October 2018 as his salary. He did not know whether Mr Sexton received smaller amounts but noted that Mr Sexton did not work full time. He agreed that the majority of the responsibility for filing was his but stated that he was not in control of Clarity, he simply advised Mr Sexton and he could not explain why Mr Tully is recorded in an HMRC visit report dated 16 November 2018 as stating "the business is Jonathan's in effect".

149. He subsequently conceded that both he and Mr Sexton controlled the business. They would speak a couple of times a week and he would advise Mr Sexton about numbers and new clients. He stated he did not control the business, he "ran it under" Mr Sexton. He denied that Mr Sexton was installed in the company which was set up to continue the fraud committed by Services and Crystal.

150. In relation to a telephone call to HMRC's CIS helpline on 9 January 2019 which was purportedly made by Mr Sexton, Jonathan Parish claimed in oral evidence that he did not know why Mr Sexton had said that the company's activities were "general building all trades", he may have been confused but it was something that Mr Sexton would have to answer.

151. He was referred to his witness statement dated 9 January 2019 in which he had stated:

> "…to the best of my recollection and belief, I did phone HMRC in the way that is described. For speed, I may have informed HMRC's operative that I was the director, Stuart Sexton. The true position, of course, is that this is incorrect. But I did have Stuart Sexton's authority to phone HMRC on his behalf and I wanted to obtain the information without any delay given how important it was to try and help Minstrell regain its GPS."

152. In oral evidence Mr Jonathan Parish did not agree he had lied to HMRC by claiming he was Mr Sexton and stated he would have asked Mr Sexton if he could call HMRC on his behalf. He stated there were a few calls which Mr Sexton may have made, and it was confusing. He agreed he had confirmed his witness statement as true and accurate but explained he had not read it in depth and should have amended his witness statement to clarify that the call was made on Mr Sexton's behalf.

153. In relation to Clarity's use of a different company's bank account, Mr Jonathan Parish recalled that there was a problem with Clarity's bank account and it was agreed that the account of Clarity All Trades (NE) Ltd could be used, which was a dormant company. He thought Mr Sexton had problems setting up an account but believed one was granted although he did not know when. Jonathan Parish said Mr Sexton would have dealt with this matter and although he dealt with the finances, Mr Sexton would have just given him the login details. He stated that any questions regarding the coincidence that Steve Moran of Clarity All Trades (NE) Ltd was an employee of MRL should be directed to Mr Sexton.

154. He stated that Andrew and Nicola Parish were engaged by the Three Companies which were "principally established to service Minstrell's payroll" which is why expense payments were made to them. He stated that Andrew Parish was heavily involved in business development and client entertainment.

155. Jonathan Parish could not remember if Clarity submitted any VAT returns, but he presumed that it did. He believed HMRC had been provided with all records and stated that Mr Nolan's advice was followed in relation to making taxable supplies over the VAT threshold without a VAT number. Mr Nolan provided advice in relation to day-to-day business. He claimed he had not received a de-registration letter but that Mr Nolan would have made him aware although he did not know how Mr Nolan would be aware if the letter was sent to the company and stated perhaps Mr Sexton was aware. He stated he would not have told his brother in depth as that would be between Mr Nolan and MRL and he assumed that Mr Nolan would have made his brother aware. VAT was charged under Mr Nolan's advice even though he was aware that VAT should not be charged, and he did not know why he had not told his brother that the company was de-registered. He confirmed that Clarity continued to charge all of its clients VAT and believed HMRC would have been paid although he would have to look at the bank statements. He denied that Clarity was acting fraudulently.

156. Jonathan Parish stated that his brother received £13,000 per month for entertaining clients which was still necessary even if the company was de-registered. He denied that his brother was paid as part of a fraudulent criminal enterprise. He did not know who "N Parish" was to whom £2,500 per month was paid but conceded that it could be his brother's wife and it could be their joint bank account or a typo as Nicola Parish had no involvement with the company. In relation to the payments which were just to "N Parish" and not "A N Parish" he subsequently stated that that Nicola Parish was a life coach but not for the company but he did not believe that his brother had lied when he claimed she was paid for providing life coaching for the company. He stated there would be valid reasons for the payments made and denied that he and his brother were running the Three Companies or that they were involved in fraud.

157. Mr Sexton was paid £29.50 per month which Jonathan Parish assumed was for expenses as Mr Sexton did not want to take a salary out of the business. He did not agree that Mr Sexton earned nothing as he did nothing within the business and said that the reason why he did not want a salary was a question for Mr Sexton.

158. He did not believe that the Three Companies were fraudulent and stated that he did not run the companies "in layman's terms" he just worked for them and tried to make a business. He agreed that he carried out the majority of the work.

ANDREW PARISH

159. Mr Andrew Parish's business experience began in recruitment and payroll. He met Mr Paul Bell in or around 2005. In 2012 Mr Andrew Parish decided to part company with Mr Bell; separating the business affairs took until about 2016 and the parting was acrimonious. During the business relationship, Mr Andrew Parish had owned shares in FS Commercial which bought Pavilion Management Services when it went into liquidation. Mr Andrew Parish had

worked for a short time with FS Commercial, which is part of a group of companies in which Mr Bell has an interest. The parting led to litigation as a result of which Mr Andrew Parish and his wife were arrested in 2015 over an allegation of mortgage fraud which was ultimately dismissed but the handling of which by HMRC caused Mr Andrew Parish a substantial amount of stress and, as he explained, led to his feelings of animosity towards HMRC.

160. He was a director of Pavillion Associates Ltd, a payroll company, from 28 April 2005. He and Mr Bell were equal shareholders although Mr Andrew Parish was the principal person running the company while Mr Bell took charge of business strategy, accounts and finance. The company was subsequently struck off as a result of an HMRC enquiry and the company's representative, Mr Alan Nolan, reached a settlement with HMRC which was the principal creditor.

161. Mr Andrew Parish was Company Secretary of Pavillion Management Services from 2 March 2010. His brother was made director in 2007 as a result of his family connection. The company went into liquidation owing VAT to HMRC in the sum of £2.8 million, although Mr Andrew Parish believed the correct figure was £1.2 million. He claimed that as company secretary he was not aware if the debt was paid, although he believed that time to pay was requested but refused by HMRC. He believed there was an assessment but that it was the insolvency practitioner who would know.

162. Mr Andrew Parish accepted that Pavillion Law, of which he was a director, was made insolvent, but he believed the debt was about £24,000, not £154,000 as alleged by HMRC.

163. As a result of HMRC's interest in Mr Bell and the experience he had built up, Mr Andrew Parish decided at that point he wanted his own business which was completely independent of Mr Bell. MRL was incorporated on 3 August 2007 as a labour recruitment company. Mr Bell was initially involved as was Mr Hagen and Ms Rowland; the latter was referred to during the evidence as responsible for MRL's finance/accounts. In 2011 the shareholding changed and Mr Bell and Mr Andrew Parish parted company.

164. Mr Andrew Parish explained that he has always been concerned that he was sending work to payroll providers that could send the labourers elsewhere and for that reason he assisted with the incorporation of Services, Crystal and Clarity because they were additional payroll providers that MRL could use.

165. Mr Bradley and Mr Andrew Parish had started discussing Mr Bradley running his own business for about a year usually during family gatherings. He was aware that Mr Bradley had no previous experience as a director and "that his previous employment was at Royal Mail".

166. Mr Andrew Parish claimed that Mr Bradley had wanted the opportunity to try other ventures and despite having no experience he was intelligent and had ideas. He denied that Mr Bradley was put in place to mask the fraud and that as part of Mr Parish's family he gave him the opportunity as he had good personal qualities and was a decent person. However, Mr Andrew Parish had confidence that his brother could manage the day-to-day functions and the intention was that Services would take over MRL's payroll from FS Commercial, although a small amount of MRL's payroll remained at FS Commercial until 2016.

167. Mr Andrew Parish denied that Mr Bradley had been sacked or that he had removed him from his position. He claimed employing Mr Bradley increased the costs to the business and that he had suggested that Mr Bradley move on. Both had taken a reduction in salary after the pandemic and Mr Bradley was working less at MRL and doing more with TGL. He denied that there had been any disagreement although he had believed Mr Bradley took a finder's fee for obtaining funding for MRL as a one-off, but he continued to take a percentage for as long as the funding continued. Given their relationship, Mr Andrew Parish did not think Mr Bradley

would have taken the continued fee as he was paid a lot by MRL. Although the pair no longer speak, he remains godfather to Mr Bradley's children and would still take a call from him.

168. Mr Andrew Parish explained that his day-to-day involvement with Services was fairly minimal; he spoke to his brother on a weekly basis to ensure the workers were paid, and he liaised with Mr Bradley to mentor him about running a business. As a shareholder, Mr Andrew Parish was not made aware of any problems with HMRC prior to Autumn 2016 at which point he was told that there was a system issue relating to software and the HMRC gateway which his brother dealt with.

169. When Mr Andrew Parish became aware that Services had financial difficulties which Mr Bradley was unable to resolve due to his personal difficulties, he contacted Mr Fallows for assistance. Mr Fallows took over from that point and contacted Mr Bradley.

170. In relation to the allegation of excessive expenses, Mr Andrew Parish explained that the industry at that time revolved around hospitality and as a shareholder he used his contacts to help with a view to winning new business. However, Mr Andrew Parish disputed the figure deemed by Mr Fallows to be attributable to him as he was only "a smaller percentage of the so-called total". Mr Andrew Parish stated that he agreed to remove any claim by MRL against Services to reach a settlement, although he did so without confidence and because he was told by Mr Fallows that HMRC wanted this.

171. Mr Andrew Parish denied that he controlled Services, repeating in response to questions that he was the majority shareholder and that the expenses related to hospitality. He denied that he received in excess of £300,000 cash because he controlled the company and had extracted the VAT.

172. Mr Andrew Parish's involvement with Crystal continued in a similar manner; he called weekly to ensure that the workers were paid. He was not aware who put the company into liquidation; as he understood the position, Ms Igo did not factor pension contributions into her business plan which led to a funding issue and Mr Fallows was contacted in June 2018.

173. Mr Andrew Parish denied that he controlled Crystal and highlighted he had not been at the meeting with HMRC on 20 November 2018 which was attended by the liquidators and at which HMRC's visit notes recorded the following:

> "[A Fallows] started the meeting by giving an update on his progress so far in [Services'] liquidation and advised that the co accountant confirmed that AJP was 100% running both companies."

174. He denied that the company's financial problems arose as a result of the monies paid to him or that it fraudulently defaulted on its tax liabilities.

175. Mr Andrew Parish described Clarity as "originally a non-trading shelf dormant company under the name of Minstrell Recruitment All Trades". He stated that as the company's bank account was never used it was closed. Clarity then bought a company called Xander Fox and "changed its banking details to Clarity All Trades NE" to ensure the workers were paid.

176. Mr Andrew Parish denied that MRL knew that Clarity did not have a VAT number and stated that MRL always checked VAT registration before it traded with a supplier or customer. He claimed that MRL's systems and processes would not necessarily have picked up the de-registration.

177. Mr Andrew Parish denied being in business with his brother and denied that MRL traded with him as his brother was not a director of Clarity.

178. Mr Andrew Parish claimed that Mr Hagen did have some responsibility for the transactions undertaken by MRL although this was predominantly dealt with by him. However, he disputed Mr Hagen's evidence that he controlled the bank accounts stating that an employee Emma Rowlands had control and that he never had log-in details. He trusted Ms Rowlands to tell him what was going on as she had worked for MRL since it began. The "girls in the office". would receive time sheets and pay invoices; it was their responsibility to deal with the Three Companies day to day and his brother dealt with the technical side of the payroll. When asked about the business relationship between MRL and the Three Companies (as opposed to the administrative side), he added that no due diligence was carried out because they were new companies and Mr Bradley was director. He stated that none of the Three Companies needed a relationship with MRL day to day as the time sheets were put in and invoices paid.

179. When asked how MRL started trading with Services and Crystal, Mr Andrew Parish stated that MRL provided the timesheets, he and his brother spoke to Mr Bradley. In respect of Clarity, it was his brother who spoke to Mr Sexton. He did not recall how the relationship happened, but his brother probably approached him to offer the payroll services. He denied being in control of the Three Companies as in the first 3 – 4 years of MRL he was busy with Pavillion Associates so whilst he took some responsibility at MRL, Mr Hagen was there.

180. He stated he did not get involved with Mr Sexton being appointed as director of Clarity; he believed he had met him once but left it to his brother, Mr Hagen and Mr Tully.

181. Mr Andrew Parish was aware of fraud in the industry, describing that the industry had "notoriously always been under HMRC scrutiny".

182. Mr Andrew Parish claimed to be unaware of The MRL Financial Statements for Y/E 2020 which were signed by him. He stated he may not have read them when he signed them. The document records:

> "Minstrell Recruitment (All Trades) Limited is a company controlled by Mr M S Hagen…
>
> Crystal Clear Contract Services Limited is a company controlled by Mr A J Parish and TGL Solutions Limited…
>
> Crystal Clear Contracts Limited is a company controlled by Mr A J Parish…
>
> Clarity All Trades Limited is a company controlled by Mr M Hagen until 14 June 2018…
>
> …
>
> 25. Controlling party
>
> The company is controlled by Mr A J Parish"

183. Mr Andrew Parish was unable to recall any information regarding the undated document signed by his brother and addressed "To whom it may concern" which referred to Services having been "successful in obtaining its first contract" with MRL. He did not know what the "head of agreement" document was, how the contract came about or how it was negotiated.

184. A labour supply questionnaire for Minstrell Recruitment (Facilities Management) Ltd completed on 21 February 2013 at a meeting between HMRC, Mr Andrew Parish and Mr Tully recorded in relation to MRL:

> "Any Previous History In Trade / How got into trade / What doing before

Mr Parish is a director of Minstrell Recruitment Ltd (sister company), he is not a hands on director but has placed sales team and accounts etc so that he can monitor and step in when necessary."

185. The note was at odds with Mr Hagen's evidence that Mr Andrew Parish was a hands-on director. Mr Andrew Parish stated he could not answer for Mr Hagen and did not recall the meeting although he probably became more involved with MRL later at about the time when Spectrum was purchased out of administration.

186. Mr Andrew Parish denied that he received hospitality paid for by Services and Crystal even though at a meeting with HMRC on 20 November 2018 the liquidators were recorded as confirming the following:

> "An analysis of the bank statements suggest that football tickets etc. were for corporate entertaining & that this would have been used for "entertaining" Minstrell Recruitment Ltd (MRL) – a company of which Andrew Parish is a director and which is CCCS Ltd's only customer."

187. He stated that there were other customers which as shareholder he was aware of, although he could not name any.

188. The settlement agreement dated 8 July 2020 between Services, Crystal, the liquidators, Mr Andrew Parish and MRL stated:

> "…
>
> 3. Mr Parish is the controlling shareholder of both CCCSL and CCCL.
>
> 4. The Liquidators in their own right on behalf of both CCCSL and also CCCL have made various claims against Mr Parish in respect of outstanding loans due from Mr parish to CCCSL and CCCL. Mr Parish denies that he owes any monies to either CCCSL or CCCL.
>
> 5. The Parties have now agreed terms of settlement in respect of the various claims by the Liquidators, CCCSL and CCCL against Mr Parish as recorded in this Deed.
>
> …
>
> Settlement Sum: the total sum of £100,000
>
> …
>
> 2.2 In further satisfaction of the Claims and also in satisfaction of any claims that [Services], [Crystal] or the Liquidators may have against Minstrell, Minstrell will waive any claims, which it might have as a creditor in the liquidations of CCCSL and CCCL for dividends or otherwise."

189. Mr Andrew Parish said he was not aware of any claim MRL had which he agreed to waive as part of his £100,000 settlement, and noted that the settlement agreement stated "might have" as opposed to "did have". He stated that Mr Fallows had dealt with this matter and the information is contained in the liquidator's report which he was not a party to.

190. Mr Andrew Parish was referred to the notes of the meeting between the Liquidators and HMRC on 20 November 2018 which recorded:

> "AF quoted the recent settlement…assumes that AJP's resources may be limited. If AJP wants to negotiate an offer/ settlement, then AF advised that due to the amount of entertaining receipts/payments identified & on the basis that a) these are in relation to the only customer - MRL & that b) AJP is the director of MRL, he will ask that the MRL claim in the liquidation of CCCS, is withdrawn as part of any settlement of the ODLA, which would leave HMRC as the only creditor receiving a greater dividend."

(AF – Alan Fallows

AJP – Andrew Parish)

191. Mr Parish conceded that there may have been a claim by MRL but gave no further explanation. He also did not know anything about the "unallocated 3rd party payments" referred to in the "Joint Liquidators Progress Report to Creditors and Members" for Services dated 4 June 2019. He stated that the liquidator had been provided with information which is how the reports were generated and denied failing to provide records requested.

192. In relation to payments from Crystal to Mr Andrew Parish, referenced "loan to AP", Mr Andrew Parish stated that the money would be for client entertainment which could include events such as tennis and the World Cup. He had provided no receipts as part of his evidence as he was never asked to do so. He stated that he looked after clients and hospitality but did not agree that the amount was excessive. He named clients that were entertained as Laing O'Rourke and Countryside Properties**.**

193. In relation to bank statements showing a loan from Crystal to MRL on 8 and 9 February 2018 in the sums £40,000 and £20,000 respectively, Mr Andrew Parish could not explain what the amounts were for but was sure that the money would "tie up" as he trusted the people around him. He stated if the figures did not match it would have brought to his attention by Integra or Mazars who audited the accounts and although the audited accounts had not been produced, they should be in the public domain. He did not agree that the reason for the arrangements would not be a matter for Integra or the auditor, saying it would be connected to paying contractors and he disagreed with Mr Hagen's evidence that it was all attributable to him, saying that Mr Hagen had more access to the account.

194. Mr Andrew Parish was unable to assist with the invoices from Crystal which did not charge VAT but which was paid by MRL, stating he would need more analysis and would have to look into it.

195. Mr Andrew Parish denied running Clarity. He believed that his brother may have become a major shareholder but stated that he did not recall a conversation although it may have been mentioned. He stated that:

> "I understand that Clarity had a VAT Registration number when we started trading with them but Minstrell's system and processes would not necessarily have picked up that the registration had been removed."

196. He claimed he was unaware that Clarity had been de-registered and that his brother did not tell him this information noting that his brother is based in Edinburgh and may not have known. He stated that payments of £50,000 between July and October 2018 to "A N Parish", "Andrew Parish Tickets", "Andrew Parish Loan" and "Andrew Parish" were for entertainment to win new business.

197. In respect of payments from Clarity to his wife, Nicola Parish, of about £9,000, Mr Andrew Parish stated it must be an error although they have a joint account in the name "A N Parish". He said that his wife had no role within the company but may have done some work for the company advising as a life coach to clients. He agreed there was no witness evidence from his wife nor had this been raised in his witness statement but stated that it would have been paid as a salary that went through the system.

198. Mr Andrew Parish claimed he was not aware that Clarity did not have a bank account when MRL traded with it and queried how payments were made if there was no bank account.

He stated that the employees at MRL should have checked but he personally made no checks, and he was not told by his brother that the company did not have a bank account. He agreed that MRL employed Mr Steven Moran but was not aware that SJ Moran, as director, held the bank account of Clarity All Trades NE Ltd into which MRL paid.

199. In answer to a question from the Tribunal member, Andrew Parish explained that it was necessary for the Appellant to use a different company for payroll services as there was not enough money in the margin for MRL to carry out the task. He also referred to employment law but did not expand any further on this.

Kevin Bradley

200. Mr Bradley was a director of Services and Crystal which provided MRL with payroll services. His fiancé is the sister of Mr Andrew Parish's wife and the group often socialised which is how his relationship with Mr Andrew Parish grew. When Mr Bradley met Mr Andrew Parish he was working for Royal Mail where he had worked since he was 17 years old.

201. Mr Bradley's written evidence explained:

> "I was looking to change my career to better myself and discussed this informally with [Andrew Parish] over family meetings."

202. Mr Andrew Parish suggested the payroll industry and Mr Bradley explained:

> "Around 2010/2011, I decided that I felt confident enough to make the career change formally and approached [Andrew Parish] about this. At the time, I didn't get the impression that [Andrew Parish] wanted a new payroll company for Minstrell – he was just trying to help me out".

203. It was explained to Mr Bradley that payroll companies were used to avoid the additional administrative activities. He stated his business plan was "to make a profit and grow the business as much as possible".

204. Mr Bradley stated that Mr Hagen's company TGL was also appointed as a director "to help guide me through the initial stages..." Mr Hagen's involvement only lasted for the duration of TGL's directorship. In oral evidence Mr Bradley could not recall what reassurance TGL's directorship for two months provided. He explained:

> "In becoming a Director, I was – obviously- very much aware that I didn't have much experience in running a company or being in business. However, after discussing things with A[Andrew Parish] I felt reassured that this would be possible. The payroll system was (and, remains) a very computer-based business. I could get a few employees to run this for me- a large number of staff was unnecessary as the system would manage things. [Andrew Parish] suggested- as [Jonathan Parish] needed a new role, and had experience running payroll- that he should join my business and run that side of things on a day to day basis. It was also suggested that Leslie Igo…should join to help run things on the ground. The proposals made sounded ideal, and made me feel reassured that I would have help until I understood things better. [Andrew Parish] stressed that the company would be what I could make of it, and said he would support the initiative initially by allowing Minstrell to use my payroll company. I was really grateful for the help offered, and liked that [Andrew Parish] was stressing the company was very much my own (as opposed to an extension of his own)."

205. Mr Bradley recalled that Mr Jonathan Parish was heavily involved in Services and offered to share the contacts he had made at Pavillion Management Services Ltd and FS Commercial. Mr Andrew Parish provided a lot of guidance, about one telephone call per week.

206. Mr Bradley explained that Mr Andrew Parish requested an email address at Services to ensure that he would obtain prompt responses about payroll for MRL. Mr Bradley explained

in oral evidence that it helped Mr Andrew Parish to identify his emails and prioritise the ones sent by Services, and he denied that it was because Mr Andrew Parish was running Services. He assumed that an MRL email would used for the workings of MRL but he could not recall any conversation about it.

207. Mr Bradley explained that Mr Andrew Parish was initially given 33 shares for his help in starting the business by sending MRL's work. The shares of TGL were subsequently transferred to Mr Andrew Parish in 2016 because, Mr Bradley stated, Mr Hagen wanted to focus on TGL, and it seemed reasonable to Mr Bradley that he should have the shares for giving such good assistance at the start of the business.

208. Mr Paul Moran also held 33 shares. Mr Bradley had minimal contact with Mr Moran who was introduced by Mr Andrew Parish. Mr Bradley stated that this was another person in the payroll business he could approach for advice. He was aware that Paul Moran and Steve Moran were employed by MRL but he was unaware that Steve Moran operated Clarity's bank account.

209. Mr Bradley explained his role as follows:

> "Obviously, I knew that I couldn't just "be" a Director and would need to do something to grow the business (which, was my intention). [Andrew Parish] suggested- whilst I gained experience/ a reputation in the area- that I might want to focus on building business relationships. I am a personable person and enjoyed the idea of going to events to socialise with clients. [Andrew Parish] had explained that payroll companies tended to arrange events at venues for clients (i.e. football, boxing and horse racing), and that I would be able to pick up business by organising that type of event and attending myself. I didn't feel that building business relationships wasn't a particularly difficult role. [Andrew Parish] confirmed he, and [Jonathan Parish], would help ease me into the industry by introducing me to some of his friends/ contacts- so I felt reassured that it would be possible to make the necessary links to build up the business."

210. In cross-examination Mr Bradley stated that to learn about the payroll industry before he commenced work he had looked at the role generally and Googled what is expected of a director. He carried out internet searches about the services provided by payroll companies and why it was outsourced. He also had numerous chats with Andrew and Jonathan Parish and knew he would pick up more knowledge as he went along which led to his confidence in giving it a go. Mr Bradley disagreed that he had been inserted into Services by Andrew and Jonathan Parish.

211. A labour provider questionnaire dated 31 December 2012 completed on behalf of Services by Mr Bradley for HMRC recorded:

> "Please state your previous experience in this type of business:
>
> In addition to the experience of the shareholders we have employed a payroll manager with significant experience of this type of business…"

212. Mr Bradley explained that the phrase "in addition to" was answering on behalf of the company as opposed to speaking personally because he was new to the business and had very little experience, but he did not mean that Andrew and Jonathan Parish were running the company. He had not referred to his employment at Royal Mail as "you wouldn't put something like that on this form" and that is why he put down the shareholder and manager's experience which is what he believed the form was asking for.

213. Mr Bradley claimed that he "was the first one in the office most days" and that "he was in my place of business most days". He progressed his role organising events but accepted he

may have been naïve to think business would be so simple, and he noticed that although clients attended the events, they did not always provide business to Services.

214. Mr Bradley relied on others such as Mr Jonathan Parish to flag up when any deadlines for filing approached although he was careful about the documents he signed and took his role seriously. He had daily meetings with Mr Jonathan Parish who had knowledge about commission and also took care of the figures with support from Ms Igo. Day to day problems could include IT issues although Mr Bradley accepted this was not a daily occurrence. At the meetings he would be informed about the number or workers paid which differed each week.

215. During the course of his evidence, Mr Bradley subsequently clarified that he was not at the office all day because he remained in fulltime employment at Royal Mail. His intention was to step away from Royal Mail if the post went well, which he did in 2015. Mr Bradley agreed that this had not been mentioned in his witness statement, but disagreed that his written evidence was misleading. He clarified that his reference to his "day to day role" meant he was opening up and went there on his way to his job with Royal Mail. He then returned to the office after his shift. He added that although a postman's contract could be 35 hours per week or 7 hours per day, the working hours may be shorted. He stated that Mr Andrew Parish was aware that he remained employed.

216. Services gained additional clients to MRL in the first couple of years although at the time when Mr Bradley signed the VAT1 questionnaire for HMRC, MRL was its only customer.

217. His business plan was to use profits to obtain business through hospitality, but he did not establish if there was a budget as he believed Jonathan Parish and those helping him would warn him if he overspent. He had daily meetings with Jonathan Parish to establish whether there were any issues but none were raised and Mr Bradley was informed that the tax position was fine. In retrospect, Mr Bradley accepts that too much was spent on business development.

218. In cross examination Mr Bradley clarified that his business plan consisted of informal notes to himself which involved hospitality and building a team around him as he was not the best with figures. He only had a skeleton idea when he started, but once up and running he could see how it worked. Mr Bradley stated he did not need to document minor details so there was no plan regarding the day-to-day operations. He said it was a very simple plan that did not need to be over-elaborate.

219. Mr Bradley stated that he would pick an event and ask a client or potential client if they wanted to attend which was usually done by telephone or email although he had not produced any emails in evidence. He could not recall the names of clients he had brought as a result of the passage of time.

220. Mr Bradley was unsure of who had signed an undated document from Services addressed "To whom it may concern" which referred to Services being "successful in obtaining" its first contract with MRL. He stated that if it was not his signature it must be that of Jonathan Parish. When asked how the business was won, he stated that MRL was his brother-in-law's business and he had offered it to start Services off, it was not a case of winning the business. He stated that he had convinced Andrew Parish to give him a chance and given him assurances that he was invested in being a director. Mr Bradley could not recall a written document entitled "head of agreement" referred to in the undated document and stated that he had not been asked to produce that document.

221. Mr Bradley explained that Jonathan Parish would have attended the meeting with HMRC on 23 January 2013 because, more than likely, he would have been working for the post office. His recollection of events after 2014/15 is poor due to family problems which caused him stress and alcohol problems and which ultimately led him to refer himself for therapy in 2016.

222. At some point towards the end of 2016 Mr Jonathan Parish had mentioned that finances were becoming an issue, however Mr Bradley believed that the industry was quiet over the Christmas period and thought it would pick up in the New Year. In 2017 HMRC sent a winding up letter and Mr Bradley was advised by Mr Tully that he would need to instruct an insolvency practitioner. Mr Bradley does not recall the circumstances in which Mr Fallows was appointed and he explained that when it became clear that he could not manage the situation Andrew Parish took over.

223. Mr Bradley stated that when the liquidator took over, he was not very contactable, and he agreed he did not give much information regarding the company however he denied that this was because others such as Andrew and Jonathan Parish and Mr Hagen were in control or that he had acted dishonestly. He denied that Services failed to declare and account for VAT. He agreed that MRL was Services' largest customer providing 95 – 98% of its work but denied that the trading was fraudulent or that he was aware of any fraud.

224. Mr Bradley was surprised at the amounts owing to HMRC. He stated he was paid a monthly dividend which started at £500 per month and then increased to £750 per month. He stated that in 2016 when he had personal issues Andrew Parish stepped up as majority shareholder and took the business on. He agreed that Andrew Parish had control in 2017 which related to the period of input tax denial. The company's financial statement for the year ended 31 December 2015, which were signed by Mr Bradley, recorded Mr Andrew Parish as controlling the company and as the controlling shareholder however Mr Bradley disagreed that Andrew Parish ran the company. He claimed that all the figures would be audited and accounted for, and the audit would show what payments were for. Although he was the director, Mr Bradley stated he could not recall every transaction due to the passage of time. In comparing Mr Bradley's £500 p/m to the payments of £12,000 p/m received by Andrew Parish, Mr Bradley stated that the audit would show the answer as he could not recall. He stated that Jonathan Parish controlled the finance side of the business as it was not Mr Bradley's strong point. He did not agree that Services was used by Mr Andrew Parish as a bank or that it was a "closed shop" for MRL used as a means to defraud the revenue. He did not agree that Andrew Parish was extracting funds. He reiterated that Mr Jonathan Parish controlled the financial side, and he could not comment on what occurred during the period he was ill.

225. Mr Bradley claimed that entertainment was not only provided to MRL but that it also provided staff incentives for recruitment agents in MRL to push business towards Services. He did not agree that there was no sensible reason to spend the money on MRL when there was a family relationship. Mr Bradley did not recall Laing O'Rourke being entertained by Services, as was claimed by Andrew Parish. He confirmed that in 2015 when the company had a turnover of £15 million there were three employees: himself, Jonathan Parish and Ms Igo. He added that a fourth employee called Marius joined in 2016 but he could not recall his surname.

226. In relation to the notes recorded at the meeting with HMRC and the Liquidators on 20 November 2018 which stated that Mr Tully had confirmed to Mr Fallows that Andrew Parish was "100% running both companies", Mr Bradley noted the date of the meeting which was at a time when he was unable to run Services. At the meeting mention was made of racehorse related payments found in the records. Mr Bradley could not recall if Services bought a racehorse, and he denied being asked by the liquidator and stated he had referred the liquidator to the accountant.

227. Mr Bradley was appointed director of Crystal in February 2017. He could not recall the reasons for this but perhaps thought he was well enough to run another company. It quickly became apparent to him that he could not, and Ms Igo became the director when he resigned. He denied that Andrew Parish controlled the company or that he had been appointed in name

only to continue the fraud. He stated he had let Andrew Parish down with the first company and it was a "last stab" to mend a broken friendship.

228. He was unable to help with Crystal's bank statements which contained numerous references to "AP loan" which totalled in excess of £69,000 in the period 6 July 2017 to 3 April 2018. Mr Bradley stated that he had not seen the information on the bank statements before. He confirmed that Nicola Parish, the wife of Andrew Parish, had no involvement with Crystal. He did not recall her acting as a wellness coach for the company and could not explain a reference to "Salary AP NP" in the bank statements. He agreed that it appeared that only £3,000 was left in the company at the time of liquidation despite a significant turnover and the substantial sums spent on entertainment but stated he could not recall that period of time. He stated that prior to 2016/2017 he had been responsible for authorising expenditure but after that time Mr Andrew Parish had taken control, but he believed there would have been good reasons behind Mr Andrew Parish's actions and could not comment on a matter about which he knows nothing.

Liquidation

229. Mr Fallows is an insolvency practitioner and partner at KJG who specialises in corporate recovery and insolvency. He is the liquidator for Services and Crystal.

230. Mr Fallows explained he was approached by Andrew Parish in the spring of 2017 to assist in liquidating Services. Mr Fallows was informed by Andrew Parish that the director, Mr Bradley, was ill and might not be able to be a first point of contact. Andrew Parish gave two reasons for the insolvency. The first related to recording problems with HMRC's gateway for the PAYE scheme which meant that there were unreconciled balances. The second reason was that HMRC had not granted Services time to pay following VAT falling into arrears.

231. Mr Fallows explained that there were difficulties securing Mr Bradley's co-operation as he did not always respond to requests although he understood that Mr Bradley was unwell. Integra Advisers who represented Services were helpful but did not provide all of the records required. As a result, Mr Fallows was unable to conduct a full reconciliation of the accounts. He noted that the spending on expenses was excessive.

232. In the spring of 2018 Andrew Parish contacted Mr Fellows again to assist with the liquidation of Crystal. The director was Ms Igo who, along with Jonathan Parish, were co-operative and provided records. An independent business review provided by Integra gave the reason for insolvency as business dwindling, greater compliance costs and the company had not made sufficient arrangements for pension payments.

233. A statement of affairs for Services was signed by Mr Bradley and the Liquidators on 31 May 2017. It shows unsecured, non-preferential claims made by HMRC (PAYE and National Insurance) for £220,000, and by MRL (stated as 'Trade and Expense Creditors') for £250,000.

234. The Liquidators' Progress Reports show that during their investigations the Liquidators discovered that Mr Andrew Parish had overdrawn on the Director's loan account by £304,751. It also shows that attempts by the Liquidators to secure settlement of the loan repayment had not been successful at the time of the report and it stated that the conduct of the Director has been reported to the Department of Business Energy and Industrial Strategy with the report being confidential.

235. HMRC's record of the meeting with the Liquidators on 20 November 2018 records Mr Fallows as stating that it had been confirmed to him by the company accountant, Mr Tully, that Andrew Parish was "100% running both companies", referring to Services and Crystal. The visit report also states that Mr Fallows' understanding in relation to Mr Andrew Parish was as follows:

> "that he had recently been involved in a large litigation case with RSM agreeing a settlement of @ £600k, "I believe this is in the public domain" because of this he felt it appropriate to appoint others as directors in these 2 companies - in case he wasn't able to as a result of the settlement case."

236. Mr Fallows also advised that the records they had requested were not complete as Andrew Parish had advised that the company had been broken into on four occasions and all records had been stolen as held on the server and that they had police crime numbers. He was satisfied with the explanation. However, a letter from the liquidators which threatened legal action to require disclosure was issued in relation to other records dating from the date of the robbery to cessation of the company. He could not recall if they were ever provided.

237. The report also states that, from an analysis of Service's bank statements that were available, Mr Fallows considered that some entries related to entertainment expenses for Mr Andrew Parish's associated company, MRL. In response to HMRC's query as to why football season tickets had been purchased after the date of liquidation, Mr Fallows stated that he expected these to have been paid for by Services' successor company, Crystal and he thought they were auto renewals through Services' bank account.

238. Following a review of the company's books and records the Liquidators established that Andrew Parish had an overdrawn loan account to the value of £304,751.

239. In oral evidence Mr Fallows confirmed that the first he knew of the allegations in this appeal was in the Tribunal hearing. He explained that once appointed, the directors' responsibilities are to co-operate with the liquidator, and he would expect full and frank disclosure. He agreed that the directors should have informed him but had not.

240. Mr Fallows confirmed that he identified a large number of unknown amounts and unallocated third-party loan transactions which may have been to Andrew Parish or a company officer. He confirmed that when he used the term "director" in the Joint Liquidators' Annual Progress Report to Creditors and Members for Services, he was referring to Andrew Parish.

241. In relation to Crystal, Mr Fallows could not explain how the company accountants could carry out a review as referred to in the Report to Creditors and Members dated 11 July 2018 as he did not know what documents they would use given that the report also stated that management accounts were not maintained, and no draft accounts were prepared. He did not check the veracity of the reasons given for the company's liquidation because, he explained, it was not the job of the liquidator to compile accounts if they were satisfied that the company was insolvent.

242. Mr Fallows stated that having reviewed Crystal's books and the outstanding DLA, he could find no evidence of repayments plus items appeared to be personal and therefore even though Andrew Parish was not a director he came to the conclusion that it was Andrew Parish who owed the outstanding DLA. He agreed that technically Andrew Parish had given up MRL's claim as a creditor to settle a personal issue even though he disputed the amount said to be owed by him to Services.

243. Mr Fallows confirmed that the liquidators have submitted a report on the conduct of the directors to the Department for Business Energy and Industrial Strategy. As this is a confidential report, they are unable to disclose the contents but Mr Fallows stated that he had some concerns regarding accounting issues as personal expenditure appeared to have been taken out of the company and there were items that appeared to be personal in nature such as horse feed. In such circumstances, questions are asked, however the Director was unwell and not very responsive. Mr Fallows recollected that in respect of some items he was directed to Andrew Parish; he was not aware who made the purchases, but they were attributed to him.

Clarification was sought from Andrew Parish along with a request for a proposal to repay the sums. Mr Fallows stated that some items were for entertaining; a question that is asked is whether those items are business or personal. Andrew Parish accrued a large outstanding DLA even though he was not a director. In the absence of a response, he would assume that the items were personal until the assumption was rebutted.

244. Offers were received by Andrew Parish in the sums of £10,000 and £25,000 in full and final settlement for both but the offers were deemed by the liquidators to be too low. At a meeting with Andrew Parish and Mr Tully in March 2019, Andrew Parish claimed that the majority of the sums were expenses incurred for the benefit of the company and not recoverable in full from him.

245. A settlement of £100,000 was agreed with a non-cash element that MRL and Services and Crystal would reciprocally disclaim any claims they may have against one another. The arrangement resulted in HMRC being the sole creditor and significantly reduced Mr Fallows' time costs which enhanced the monies available. The settlement was approved by HMRC before it was executed. The total outstanding balance of HMRC's insolvency claim against Services was £1.81 million, of which £1.23 million relates to a VAT debt which was written off by HMRC in the absence of repayment funds.

246. Mr Fallows explained that although he is entitled to rely on the loan amounts shown as due in the accounts, a debtor is entitled to dispute the amount. The settlement reduced the cost of litigation which Mr Fallows wanted to avoid. He was also aware that Andrew Parish had settled a liability around that time in the sum of approximately £600,000 in relation to two dissolved companies and Mr Fallows was concerned that the full amount shown on the accounts would not be discharged even if a judgment was obtained.

247. Mr Fallows explained that there was no commercial rationale for submitting VAT returns as in both cases HMRC was the sole creditor. Although Mr Fallows was unclear in relation to some aspects of the assessments relating to Services and Crystal, and was aware they could be disputed, he could not see any practical or commercial benefit to the creditors in doing so.

248. Mr Fallows was shown HMRC's visit note from the meeting on 20 November 2018 which recorded him as saying that Andrew Parish was "100% running both companies". He stated that they were not his notes, and he would have to check but he would not have used that phrase although he may have said that Andrew Parish was connected with both. His understanding was that Andrew Parish controlled both companies as he was taking out funds, although in re-examination Mr Fallows stated that although he was aware that Andrew Parish was bound up in all of the claims, he was not aware that Andrew Parish controlled the companies.

249. Mr Fallows confirmed that he had no involvement with Clarity and that he would have felt uncomfortable with a third phoenix company within a short period of time which may have caused perceived conflict issues for him.

General observations on the evidence

250. Due to the significant volume of evidence before us, we have not referred to each and every aspect of the evidence but rather we have focussed on those aspects of the evidence which were relied on by the parties and highlighted to us. However, we considered all of the material before us in carrying out our assessment of the evidence as a whole.

251. We have set out the evidence in some detail above which we consider necessary to understand the links between the Three Companies and MRL. The reasons for our decision are based on both features specific to each of the Three Companies and the Appellant individually and also looking at the cumulative picture.

252. We found the evidence of the HMRC officers credible and we accepted it. The officers' evidence, in the main, set out the background to the decisions under appeal and there was no real dispute about those facts, which we found consistent with the documentary evidence and which we accepted.

253. Where officers proffered opinions, we adopted the approach in *Megantic Services Limited v HMRC* [2013] UKFTT 492, at [15] that such evidence:

> "… is not a matter of fact but a matter of opinion. It is merely a view of a witness on a matter on which the tribunal itself must reach its own conclusion, and as such is of no value as evidence. Such evidence may rightly be excluded on that basis. In most cases, however, we would not see it as necessary, or indeed proportionate, for a forensic exercise to be undertaken, either by the parties or by the tribunal, to identify any such matters in each witness statement and for the tribunal formally to direct that they be excluded. Generally speaking, we think that the parties can rely upon the good sense of the tribunal to disregard purported evidence that represents conclusions that the tribunal itself must reach. That can usually conveniently be the matter of submission at the substantive hearing, rather than a formal application to exclude."

254. We agreed with Mr Brown that the opinions of the officers should be disregarded. By way of example, there was an issue regarding Ms Holden's view that the Appellant had been obstructive during her investigation in respect of which we reached our own conclusion.

255. There was also an issue regarding the involvement of HMRC officers who did not give evidence, for instance HMRC officer Mr Mills. We are grateful to Mr Brown who confirmed that he did not pursue the invitation that we draw adverse inferences from the absence of witnesses on behalf of HMRC and we did not draw any such inferences. We also concluded that the actions of HMRC officers which were not set out in their evidence did not have any material effect on the issues for us to determine or our conclusions thereon.

256. The evidence on behalf of the Appellant was poor. The witnesses were inconsistent, evasive, vague, at times misleading and, in our view, untruthful and we consider that these features significantly undermined the credibility of their evidence as a whole. By way of example, we were left with very little cogent evidence regarding the day to day running of the Appellant and the Three Companies and no compelling evidence to explain the commercial rationale for the trading relationship between them.

257. We agree with the observations of Judge Cannan in *Tasca Tankers Ltd v v Revenue & Customs* [2023] UKFTT 372 (TC) at [64]:

> "Mr Brown submitted that the evidence of Tasca's witnesses must be tested to establish what exactly they knew at the time the transactions took place and in the light of that knowledge whether there was any other reasonable explanation for the transactions. I disagree. The onus is on Tasca's witnesses to set out in their witness statements the evidence they intend to give. If witnesses do not take the opportunity to answer HMRC's case in their witness statements, they cannot simply rely on adducing evidence either by way of supplementary oral evidence given in chief or in the course of cross-examination. It is not for HMRC to draw out Tasca's case in cross-examination. The purpose of cross-examination is to challenge Tasca's case on the evidence given in chief."

258. In this appeal, there was a notable absence of evidence to address the issues raised by HMRC in the statements of the Appellant's witnesses. By way of example, Andrew Parish's statement contained four paragraphs concerning this appeal. His answer was to claim that there was reference to MRL throughout the statement and that he was "here now". However, the fact remained that his statement did not address the matters which, as director of the Appellant, we would have expected him to have detailed knowledge of and his oral evidence was vague and evasive. Mr Hagen's evidence was no better; he accepted in cross-examination that he had set

out his day-to-day role at Pavillion Management and Crystal within his statement, but had failed to do so in respect of MRL of which he was a director. We found his answer that he had simply answered questions when making his statement reflected the vague nature of his evidence overall.

259. HMRC invited us to draw adverse inferences in respect of individuals who were not called to give evidence on the Appellant's behalf, per Lord Leggatt in *Royal Mail Group Ltd v Efobi* [2021] 1 WLR 3863 at [41]:

> "The question whether an adverse inference may be drawn from the absence of a witness is sometimes treated as a matter governed by legal criteria, for which the decision of the Court of Appeal in *Wisniewski v Central Manchester Health Authority* [1998] PIQR P324 is often cited as authority. Without intending to disparage the sensible statements made in that case, I think there is a risk of making overly legal and technical what really is or ought to be just a matter of ordinary rationality. So far as possible, tribunals should be free to draw, or to decline to draw, inferences from the facts of the case before them using their common sense without the need to consult law books when doing so. Whether any positive significance should be attached to the fact that a person has not given evidence depends entirely on the context and particular circumstances. Relevant considerations will naturally include such matters as whether the witness was available to give evidence, what relevant evidence it is reasonable to expect that the witness would have been able to give, what other relevant evidence there was bearing on the point(s) on which the witness could potentially have given relevant evidence, and the significance of those points in the context of the case as a whole. All these matters are inter-related and how these and any other relevant considerations should be assessed cannot be encapsulated in a set of legal rules."

260. We agreed with HMRC's submission that the same principles apply to the absence of evidence given by a person who has given evidence, as to the complete absence of any evidence from a relevant witness and the fact that a represented party has failed to address relevant areas of factual dispute in witness evidence is itself a relevant fact which affects the inferences that should be drawn from the documentary evidence.

FINDINGS OF FACT ON THE EVIDENCE

261. Although the issues to be determined in relation to the Three Companies are separate and distinct from the issue of knowledge or means of knowledge on the part of the Appellant, the close links between the companies and those involved means that the evidence in respect of the issues overlaps to the extent that they cannot be considered in isolation. We noted and agreed with the comments of the FTT in *Victoria Walk Ltd* at [113]:

> "The statements of that principle (in *Mobilx* and *Kittel*) are referring to persons who, absent the extension of the basic principle, would otherwise be entitled to claim to recover the input tax. Where the two parties to the transaction in question are intimately connected – as in this case, where HPL and VWL are both ultimately owned by the same person and have the same director – the knowledge and motives of one cannot sensibly be distinguished from the other. If at any stage in the transactions or their reporting, one of them is engaged in conduct which would be regarded as the fraudulent evasion of VAT (which might vitiate its rights under the VAT system), the other must equally be regarded as being so engaged. That is not so much an application of the *Kittel* extension to the basic principle, but of the basic principle itself."

262. We have therefore approached the issues by reference to the evidence as a whole, but in doing so we have kept in mind the separate questions to be considered in determining this appeal.

263. We were satisfied, and MRL accepted, that there were tax losses associated with the Three Companies:

- Services entered into a Creditors Voluntary Liquidation on 5 June 2017 owing £1.81 million to HMRC including a VAT debt of over £1.2 million which was written off by HMRC in the absence of repayment.
- Crystal entered into a Creditors Voluntary Liquidation on 11 July 2018. In the absence of records to determine the VAT liability due on liquidation the liquidators entered the sum of £1 in the statement of affairs. Assessments were subsequently issued by HMRC in excess of £1.6 million, calculated by comparing the figures declared on VAT returns to the payments received under the CIS scheme, which remain unpaid.
- From 1 August 2018 Clarity was deregistered for VAT purposes however it continued to charge VAT on its transactions totalling in excess of £1.4 million which it failed to declare or pay.

264. The question for us to determine in relation to the Three Companies, is whether the tax losses were fraudulent. For the following reasons we have no hesitation in concluding that they were.

265. In relation to the Three Companies generally, we are satisfied that there was a common level of control. We also consider that the companies were deliberately systematically set up for the purpose of facilitating the fraud by leaving unpaid tax losses with the successor companies immediately taking up the same role. We concluded, for reasons we will set out, that the companies were under the control of Andrew Parish and Mr Hagen.

266. As we have stated, the evidence on behalf of the Appellants was vague, inconsistent and, in our view, wholly unconvincing. We agreed with and adopted the approach per Leggatt, J. in *Gestmin SGPS SA v Credit Suisse (UK) Ltd* [2013] EWHC 3560 (Comm) at [[22]:

> "In the light of these considerations, the best approach for a judge to adopt in the trial of a commercial case is, in my view, to place little if any reliance at all on witnesses' recollections of what was said in meetings and conversations, and to base factual findings on inferences drawn from the documentary evidence and known or probable facts. This does not mean that oral testimony serves no useful purpose – though its utility is often disproportionate to its length. But its value lies largely, as I see it, in the opportunity which cross-examination affords to subject the documentary record to critical scrutiny and to gauge the personality, motivations and working practices of a witness, rather than in testimony of what the witness recalls of particular conversations and events. Above all, it is important to avoid the fallacy of supposing that, because a witness has confidence in his or her recollection and is honest, evidence based on that recollection provides any reliable guide to the truth."

267. In those circumstances, we preferred the contemporaneous documentary evidence including visit reports and notes of meetings which we concluded was more reliable. By way of example, Mr Fellows was recorded by HMRC Officer Ms Henshaw at the meeting between HMRC and the liquidators on 20 November 2018 as confirming that Andrew Parish was 100% in control of both Services and Crystal (see [170], [223] and [232]) and that he had appointed two other individuals as directors as a result of ongoing litigation which may affect his position as an officer of any subsequent companies. We considered the assertion by Mr Fallows that he would not have used the words "100% running both companies". However, we noted that in oral evidence Mr Fallows accepted that he may have said that Andrew Parish controlled both companies, although he later appeared to resile from this statement (see [245]). We concluded that Mr Fallows' evidence was not as reliable as the documentary evidence and for that reason we preferred the evidence contained in the contemporaneous visit note.

268. Our view was reinforced by the Financial Statements. The notes to the Abbreviated Financial Statements for Services Y/E 31 December 2015 record Andrew Parish as "a director

and controlling shareholder" and state "the company is controlled by Mr A J Parish" (see [265]). The notes for the Appellant's Financial Statements for Y/E 27 February 2020 record Andrew Parish as controlling Services and Crystal. In those circumstances, we rejected Andrew Parish's claim that he was unaware of the information set out in MRL's financial statements; the statements were signed by him and we found his claim that he may not have read them entirely implausible.

269. Each of these factors both in isolation and as a whole led us to conclude that Andrew Parish was the controlling mind of the Three Companies, to which we now turn.

Services

270. We found the evidence of Mr Bradley as to the circumstances in which he was appointed director, namely that he wanted to better himself and convinced Mr Andrew Parish to give him an opportunity (see [198]) was entirely implausible. Only when Mr Bradley gave evidence did it transpire that he remained employed full time at Royal Mail until 2015. We found his written evidence that "I was greatly helped on the ground by [Jonathan Parish]" and "In terms of my day to day role, I was the first one in the office most days…I was in my place of business most days…" was entirely misleading. From the oral evidence it was clear that while Mr Bradley may have been the first at the office to unlock the doors, he then went to his full-time job with Royal Mail, only returning when his rounds were finished.

271. When viewed against the evidence of the other witnesses on behalf of the Appellant, we concluded that there was a deliberate attempt to mislead the Tribunal by overstating the role and involvement of Mr Bradley. By way of example, Mr Hagen's written evidence gave the impression that Mr Bradley's role at Services was his sole occupation which was not true:

> "I was aware- at the time of incorporation- that [Kevin Bradley] had no experience acting as a Director and that his previous employment was at Royal Mail. He was leaving a stable position of 20 years- he wouldn't have done that with the intention of messing up the business….I remember thinking that [Kevin Bradley] was very brave to take the decision to move from a stable job- with pension benefits etc- and, thought it was really positive that he wanted to improve himself."

272. Similarly, the statement of Andrew Parish referred to Mr Bradley's "previous employment" at Royal Mail which we consider wholly misrepresented the true position, as did the evidence of Jonathan Parish, who stated in his written evidence that "Kevin and I ran the business between us but I was more hands on and Kevin's role was more in terms of arranging client entertainment". In cross-examination Jonathan Parish accepted that Mr Bradley was hands-off due to his full time employment elsewhere.

273. Moreover, Mr Bradley clarified in oral evidence that he was paid £500 p/m which later increased to £750 p/m (see [221]). In our view, this is indicative of the fact that Mr Bradley was inserted into the company to act as Director in name only and the level of payment reflected the fact that he had little to no responsibility within the company.

274. Our view was reinforced by Mr Bradley's evidence regarding his role in the company which was vague and unpersuasive. The evidence amounted, at best, to an assertion that he dealt with the entertainment side of the business, yet despite saying the purpose of this was to win business, on his own evidence no business was won (see [206]). Mr Bradley provided no detail as to the events he was responsible for or who specifically, other than MRL, was involved in those events. He also claimed he had not been aware that there was a budget for such expenses which we found implausible. In the absence of any documentary evidence in support of the vague assertions we rejected his evidence as lacking credibility.

275. We found Mr Hagen's evidence that he could not recall why he had put down TGL, of which he was sole director and shareholder, as a director of Services, instead of himself, unconvincing. When viewed against the evidence of Mr Bradley, that he was reassured by Mr Hagen's involvement and support, we consider the evidence was implausible in circumstances where TGL was only a director for a short period of time and neither Mr Hagen nor Mr Bradley could provide any cogent evidence as to what Mr Hagen actually did.

276. The evidence of Mr Bradley that Andrew Parish took over Services in 2016/17 when he became unwell was inconsistent with that of Jonathan Parish who said it was he who had taken control, consulting with his brother from time to time.

277. The combination of inconsistencies, misleading and vague evidence led us to prefer the documentary evidence which all recorded Andrew Parish as controlling the company. The evidence on behalf of the Appellants was unconvincing and the only reasonable inference we could draw was that Mr Bradley was simply inserted as Director when in fact Andrew Parish and Jonathan Parish were running the company; the former as the controlling mind and the latter carrying out the day-to-day tasks. We should add that in relation to Jonathan Parish, he appeared to us at pains to minimise his involvement as restricted to an "employee". However, in our view this was not borne out by the evidence which indicated that he played a significant role in all Three Companies handling the finances, payments and day to day running of the companies.

278. Furthermore, Jonathan Parish claimed in evidence that there was no charge for the service provided to the Appellant. In those circumstances, and in the absence of any explanation from the Appellant, we queried what Services did in order to make a profit and the commercial rationale behind this.

279. Furthermore, Mr Andrew Parish received loans to the value of £304,751 in the period before the appointment of the liquidators which he claimed was incurred for entertainment on behalf of Services. However, there was no cogent evidence as to who the entertainment was for and we found the evidence confused; Mr Andrew Parish claimed that companies such as Laing O'Rourke were involved, yet Mr Bradley had no knowledge of such companies as clients of Services (see [136], [189] and [222]).

280. There was no clear evidence as to what the payments were for other than "events" such as sporting fixtures. However, it remained unclear why Andrew Parish was given such substantial sums when Mr Bradley claimed that he was in charge of entertainment. The evidence of Jonathan Parish, who controlled the bank accounts and made the payments was vague and he could not recall how much was paid to his brother or why.

281. Similarly, there was no cogent evidence from the witnesses in relation to the other loans, recorded by Mr Fallows as unidentified third party loan transactions, as to what they were or why they were made.

282. In relation to the liquidation, it was clear to us that Mr Fallows made no checks to assess the veracity of information provided to him by Andrew Parish and Mr Tully. He did not check whether the reasons given for the company entering into liquidation were accurate nor did he seek to identify to any real degree what the payments or loans were for. We were satisfied that Mr Fallows had proceeded on a pragmatic cost-based approach and simply tried to recoup some of the losses.

283. We noted that there was a lack of assistance from all who were involved with Services in assisting to identify the correct amount outstanding or recover repayments. Even if we were to accept that Mr Bradley's state of health prevented him from providing information, there

was no reasonable explanation as to why full records were not provided after the date of the robberies (see [233]).

284. The reference to a "Head of Agreement" document signed when Services "won" its first contract with MRL was, we consider, an attempt by Services to portray its relationship with MRL as being at arm's length. Again, the evidence on this issue from the Appellant's witnesses was poor. None could explain what the document was or why it had not been disclosed and we concluded that the only reasonable inference to draw was that the document did not exist and that the reference to it was deliberately misleading.

285. We rejected Jonathan Parish's evidence that software failings were the cause of the company's demise. We found the evidence vague, and the assertion that there was regular contact with HMRC was at odds with the evidence of HMRC that their systems only showed contact in relation to a default surcharge. In the absence of any further evidence in support of the assertion by Jonathan Parish, we did not accept it.

286. Taking into account all of the findings above, we consider that there is no credible explanation for Services defaulting on its obligations to declare and account for tax. We consider that the lack of meaningful assistance to the liquidator is indicative of the attempt to conceal the deliberate conduct by all those involved on the company and the only reasonable conclusion we can draw is that the tax losses were deliberately fraudulent.

Crystal

287. Despite the claim that Mr Bradley's health issues prevented him from running Services from around 2016/2017 to the extent that he was unable to respond to the liquidator, he nevertheless was appointed as a director of Crystal.

288. We found his evidence that this was a last attempt to make a success of a company and repair relations with Mr Andrew Parish (see [224]) wholly unconvincing in circumstances where Services had gone into liquidation with a substantial tax debt which Mr Bradley claimed no knowledge of as a result of being too unwell to run the company.

289. Again, Mr Bradley was unable to provide any cogent evidence or detailed information about his role at Crystal for the period during which he was Director.

290. The evidence as to who Ms Igo was and we she was deemed suitable to take over was limited and vague; Jonathan Parish's evidence was that she had worked at Services and indicated she would take over, Mr Hagen stated that he did not know Ms Igo well but she had worked at Services and the Appellant and was keen to take over, and Mr Bradley's evidence was that it was suggested she take over Crystal which seemed an ideal solution. None of the witnesses explained why Ms Igo was deemed suitable nor was there any evidence of checks made or consideration given as to her suitability. We found the absence of any detailed explanation surprising given that Ms Igo had previously worked at Services and MRL which, we consider, would have given the witnesses a good knowledge of her working practices and capabilities. As we heard no evidence from Ms Igo, we were left with limited evidence on the matter, for instance there was no evidence as to who made the decision, whether there were any discussions about it and who had those discussions. Given this was a company with a significant tyrnover, we would have expected there to be evidence on these issues either from the witnesses for the Appellants or Ms Igo herself.

291. Moreover, as with Services, the contemporaneous documents recorded Mr Andrew Parish as running Crystal and we preferred the documentary evidence.

292. The bank statements provided by MRL show loans between the Appellant and Crystal. The bank statements of Crystal show additional loans: between 6 July 2017 and 3 April 2018

Crystal received credits described as 'loans' totalling £57,000. Over the same period, payments were made from Crystal described as 'loans' totalling £364,000. Included in the £364,000 are payments totalling £69,500 described as "A P Loan". Additional payments were also recorded in the statements as made to "AP" and "AP and NP" and we inferred these all related to payments made to Andrew Parish or Andrew Parish and his wife Nicola Parish.

293. Andrew Parish received payments from Crystal in the sum of £39,500. Again, the witnesses claimed this was for entertainment, but we found that there was no clear or cogent evidence as to how the money was used, whether there were any clients other than MRL involved or how it was said to benefit the company. There was also a striking absence of any documentary evidence to support any of the claims made by the witnesses for the Appellant regarding the loans and payments which, given the vague nature of the evidence, we rejected as wholly unconvincing.

294. Jonathan Parish agreed he was responsible for the accounts but, as with Services, he could provide no explanation for the payments made to his brother despite the fact that he had made them. Mr Bradley could provide no further detail and, as stated above, we did not hear evidence from Ms Igo.

295. In all the circumstances, we concluded that there was no credible explanation as to why Crystal defaulted on its obligations to declare and account for tax and we were satisfied that the only reasonable conclusion was that the tax losses were deliberate and fraudulent and that Crystal acted as a phoenix company, the sole purpose of which was to carry on the fraud perpetrated by Services following the latter's liquidation. We were also satisfied that Mr Bradley and Ms Igo were directors in name only and that the company was, in reality, controlled by Andrew Parish.

Clarity

296. Clarity immediately took over when Crystal entered liquidation. We noted from the visit report dated 11 July 2018 that at the time when officers were attempting to check the veracity of Crystal, preparations were already in place for Clarity to pick up where Crystal left off. The visit report notes that Jonathan Parish claimed he would continue working for Clarity and that he only knew the director of Clarity's name as Stuart and nothing more (see [293]). We found this wholly implausible when viewed against the documentary records which show that Mr Stuart Sexton was appointed director of Clarity on 10 May 2018 and Jonathan Parish became shareholder on 14 June 2018, and we inferred that at the time of HMRC's visit Jonathan Parish deliberately withheld information about the running of Clarity and the fact that he was not just an employee but also a shareholder at that time.

297. We also noted that Jonathan Parish's evidence that Stuart Sexton had "lots of experience in working with payroll companies" was inconsistent with the evidence of Mr Hagen who stated that Mr Sexton had not operated a payroll company previously and we consider that the inconsistency between the witnesses undermined their credibility.

298. At a visit by HMRC on 16 November 2018 at which Mr Tully and Mr Sexton were HMRC recorded:

> "[HMRC] asked about payroll SS replied £200,000. PA asked about employees. SS replied Jonathan was. Returns queried, Stuart replied that Jonathan does those.
> …
>
> [HMRC] What is your role
> SS I am Director I liaise with Jonathan.
> [HMRC] What's your role.
> SS I oversee

[HMRC] What do you oversee
SS I oversee the records and accounts.
[HMRC] He isn't anywhere near?
CT Sorry the business is Jonathans in effect."

299. In our view, the evidence of Jonathan Parish was misleading and lacked credibility. We formed the view that he had and continued to try to minimise his involvement in the company and his oral evidence was inconsistent and contradictory, having first claimed that he did not control Clarity but simply advised Mr Sexton, he subsequently conceded that both he and Mr Sexton controlled the business but that he "ran it under" Mr Sexton. It was clear to us from the evidence that Jonathan Parish was the person with the experience of running a payroll company day to day. In our view, the evidence demonstrated that Mr Sexton had very little involvement in Clarity and we concluded that this was another company which was controlled by Mr Andrew Parish with Jonathan Parish being responsible for the day to day running. The contemporaneous documents show that Mr Sexton had little to no knowledge of the company, and we were satisfied that he was a director in name only. We were satisfied that the evidence that Mr Sexton received only small payments from Clarity and was not on the payroll reflected this fact and we, in the absence of any evidence in support, we rejected Jonathan Parish's claim that Mr Sexton did not want to take a salary as unconvincing.

300. We also found Jonathan Parish's evidence regarding the telephone call to HMRC (see [147] – [149]) was contradictory and untruthful and we concluded that this undermined his credibility and the reliability of his evidence as a whole. Jonathan Parish telephoned HMRC on 9 January 2019 purporting to be Mr Sexton. In oral evidence Jonathan Parish sought to direct questions regarding the call to Mr Sexton, however his witness statement of the same date confirmed that he had made the call and not Mr Sexton. He subsequently accepted that he had made the call but claimed it was done with the authority of Mr Sexton.

301. There was no cogent evidence as to why the following payments were made to Andrew Parish, which we concluded could only have been made by Jonathan Parish who accepted he dealt with the finances:

- £7,500 on 20 July 2018
- £1,250 on 26 July 2018
- £3,000 on 31 August 2018
- £8,500 on 14 September 2018
- £7,500 on 5 October 2018
- £5,000 on 26 October 2018

302. There was also no cogent explanation regarding payments made by MRL to Clarity and the bank account used. Payments totalling £585,085 were shown in MRL's bank statements but were not shown in the bank statements of Clarity. We found the explanation provided, namely that the payments were not made directly to Clarity but to the subcontractors and employees of the company because Clarity's application for a bank account had been refused, lacked any commercial rationale as it effectively rendered Clarity's role in the transactions redundant.

303. We also found it highly implausible that a legitimate company would start trading with a business which did not have a bank account. The evidence on this issue was, in our view, vague and unconvincing. The bank statements provided by Clarity were for a bank account in the name of a completely separate company, Clarity All Trades (NE) Limited. The sole

shareholder and Director of Clarity (NE) was Steven Moran who was also an employee of MRL. Jonathan Parish claimed that it was agreed that this account could be used but failed to provide any detail as to why this was agreed or by whom. He also stated that questions regarding the account should be directed to Mr Sexton, however Mr Sexton was not called to give evidence.

304. MRL continued to trade with Clarity after its de-registration from VAT on 31 July 2018. Clarity failed to declare these transactions on any VAT returns. As a result of Clarity failing to provide complete records to HMRC, there was no direct evidence that VAT was charged and paid on these transactions with MRL. However, we were satisfied that this was the case from the evidence of Ms Holden's visit to Clarity on 18 October 2018 at which Mr Tully stated he assumed VAT was being charged and Jonathan Parish's oral evidence during which he admitted this was the case and he was aware that Clarity should not have charged VAT when it was deregistered.

305. Clarity failed to pay the VAT which was due on these sales and the assessments have not been paid. There was no credible explanation for the failure to declare and account for the VAT due and we were satisfied in all of the circumstances that the tax loss was fraudulent.

CONCLUSION ON THE THREE COMPANIES

306. We consider that there was no credible explanation for the commercial rationale behind the Appellant employing any of the Three Companies. In response to a question from the member Mr Robertson, Andrew Parish and Jonathan Parish gave vague responses about employment rights and small margins in the industry, neither of which provided a clear or intelligible answer. In our view there was a complete failure to explain any commercial reason for the existence of the Three Companies or the reason for the Appellant trading with them. Having taken into account all of the evidence we concluded that there was a system in operation which required setting up companies for the purpose of charging VAT to the Appellant and leaving fraudulent tax losses.

MRL

307. The findings of fact set out above upon which we concluded that the tax losses were fraudulent are also relevant to the issue of whether the Appellant knew or should have known that its transactions were connected to fraud.

308. We have set out above the roles of the various company officers within the Three Companies and the Appellant, and we formed the view that Mr Bradley, Mr Sexton and Ms Igo were directors in name only with no involvement of any substance in the companies. We are satisfied that the controlling mind of the Three Companies and the Appellant was Andrew Parish and Mr Hagen and that Jonathan Parish carried out day to day activities including handling the financial aspects such as payments to his brother.

309. We nevertheless considered whether there could be any other reasonable explanation such that the Appellant was not aware of the fraud.

310. Mr Hagen accepted that he and Andrew Parish were well aware of fraud within the industry and the evidence demonstrated that Andrew Parish had significant experience in the industry, as did Mr Hagen and Jonathan Parish. All three had previously been involved in companies, most of which, on the material before us, appeared to operate in a similar manner to the Three Companies, leaving tax debts to HMRC. We consider that an awareness of fraud in the industry is not, of itself, indicative that the Appellant knew or should have known that its transactions were linked to fraud, but we take the view that their actions should be viewed against the background of the company officers' significant experience and knowledge of fraud generally within the industry.

311. Andrew Parish was company secretary of Pavilion Management Services Ltd, Jonathan Parish was a director of the company as was Mr Hagen. We did not accept Mr Hagen's assertion that his appointment was an administrative error which we found unconvincing in the absence of any explanation as to how such an error came about and taken together with his evidence that his shareholding in Crystal was also an administrative error. Pavilion Management Services Ltd went into liquidation on 25 July 2011 owing £2.8million to HMRC in unpaid VAT.

312. Andrew Parish was Company Secretary of Pavilion Law Limited from 10 November 2005 to 20 December 2012, and a 50% shareholder. The company went into insolvency on 2 December 2010 owing £154,799 to HMRC.

313. Andrew Parish was director of Pavilion Associates Ltd from 28 April 2005 and 50% shareholder. Company was dissolved and a winding up petition was settled in 2011 for £1million of which £111,219.66 was transferred to the VAT ledger.

314. We found this evidence indicative of a method of operating companies by Andrew Parish, Mr Hagen and Jonathan Parish which led to unpaid VAT debts due similar to the manner in which the Three Companies were operated.

315. The transactions in this appeal concerned direct supplies between the Three Companies and the Appellant. Given the close associations of Andrew Parish, Jonathan Parish, Mr Hagen and Mr Bradley who were all either related or longstanding friends, we find it entirely implausible that, as the Appellant claimed, there were no discussions between them regarding the supplies or manner in which the companies were operating.

316. Moreover, we found the evidence of Andrew Parish in this regard entirely unconvincing. He asserted in evidence that he did not trade with his brother as Jonathan Parish was not a director of Clarity, although he believed he may have been a major shareholder but could not recall a conversation about it. He claimed not to know that Clarity continued to charge VAT when it was deregistered and that he had not been made aware of the problems Services had prior to 2016 when he was told there was an issue with software.

317. We found it wholly implausible that Andrew Parish, as a shareholder in Services and Crystal and director of the Appellant had no discussions regarding the business between the Appellant and the Three Companies. We found his evidence deliberately evasive, for instance he could not expand on the software issue he claimed caused the demise of Services, stating that his brother dealt with it. We formed the impression he was trying to distance himself from accountability, for instance by attempting to make a distinction in asserting that he did not trade with the Three Companies but the Appellant did. In our view this was inconsistent with his evidence that the Appellant's transactions were predominantly dealt with by him and the fact that the evidence clearly demonstrated that Jonathan Parish ran the Three Companies on a day-to-day basis.

318. Despite being the directors of the Appellant, both Mr Hagen and Andrew Parish denied responsibility for and control over the company bank accounts. Andrew Parish denied Mr Hagen's assertion that he controlled the accounts and asserted that the accounts were under the control of an employee, Emma Rowlands. We rejected this evidence as inconsistent and implausible. We did not hear evidence from Ms Rowlands, however even if we were to accept that members of the Appellant's staff made payments, we found it nonsensical that they would do so without the knowledge and authority of one of the directors. The members of staff may have made payments to the Three Companies but, as the person with responsibility for the transactions, we inferred that Andrew Parish authorised those payments.

319. We found Mr Hagen's evidence vague and unreliable. We have already noted our finding that Mr Hagen's evidence regarding Mr Bradley "leaving a stable position of 20 years" at Royal mail was wholly misleading. We found Mr Hagen's evidence regarding the running of the Appellant vague and evasive; he could not answer questions about the business and repeatedly claimed that he was only aware of his own specific responsibilities of collecting debts and keeping the ledger accurate despite having accepted that he was aware that his role as director gave him obligations and responsibility for the business as a whole.

320. Mr Hagen could not explain why the Appellant traded with the Three Companies or how they were chosen. He accepted he had not attended meetings with HMRC but provided no reason for this despite having been aware of *Kittel* notices. He could not recall any discussions with his co-director about HMRC's involvement and repeatedly referred to the facts that professional advice would have been sought yet he could not recall any of that advice. Mr Hagen was also unable to provide clear information regarding the loans received by the Appellant from Crystal. We formed the impression that Mr Hagen was unable to provide cogent evidence regarding the Appellant as he had little involvement in the running of the company.

321. We have already set out findings in relation to the "Head of Agreement" document that none of the witnesses associated with the Three Companies could explain (see [114], [134], [180], [217] and [281]). The evidence of Andrew Parish and Mr Hagen added no more. Given that this was said to be signed by the Appellant when Services "won" its first contract, we would have expected at least one of the directors to explain what it was in the absence of a copy of the document. The fact that they could not do so reinforced our finding that the document simply did not exist.

322. The evidence that it was Andrew Parish who instructed the liquidators on behalf of Services and Crystal indicated to us that, contrary to the evidence of Jonathan Parish, it was Andrew Parish who controlled the affairs of those companies. We found Andrew Parish's evidence that he was not aware who had put Crystal into liquidation unconvincing and we were satisfied that the evidence clearly indicated that he had contacted Mr Fallows on both occasions and that Mr Fallows viewed him as the person controlling the companies.

323. There was no documentary evidence of any due diligence having been undertaken which contradicted the information provided by Mr Tully at the visit on 18 October 2018 that MRL completed due diligence checks on all the payroll companies. Whilst this could be understood in the context of the close relationships between all those associated with the Three Companies and the Appellant, no such assertion was made. Andrew Parish's evidence that the Appellant always checked VAT registration numbers before trading with a supplier was not supported by any other evidence of such checks having been undertaken and we rejected his claim that the Appellant's "processes and systems" would not necessarily have picked up Clarity's deregistration in the absence of any evidence to support there being a process or system in place. Viewing the evidence in totality we concluded that there was no assessment of the Three Companies because no consideration of their legitimacy was necessary; the companies were vehicles through which Andrew Parish could control the fraud perpetrated by the Appellant.

324. There was no contemporaneous documentation to show how the transactions took place. Even with the close level of familiarity between those associated with the Three Companies and the Appellant we would have expected some record of discussion or arrangements.

325. We found the evidence regarding the Appellant's payments to the bank account of a separate company, Clarity All Trades (NE) Ltd, compelling in indicating to us that the transactions between Clarity and the Appellant were not legitimate and that the Appellant was aware of this. We have set out our finding on this issue (see [300]). The witnesses on behalf of the Appellant provided no plausible evidence as to why the Appellant would make payments

into the account of a purportedly separate company and we were wholly satisfied, given that Andrew Parish was responsible for the transactions and Jonathan Parish was running the financial side of Clarity, that the Appellant was fully aware of the situation.

326. As we have already stated, the evidence regarding loans and payments to Andrew Parish by the Three Companies was vague and evasive. None of the witnesses provided a clear or cogent explanation as to why such substantial payments were made. We found the evidence of Andrew Parish and Jonathan Parish, the persons who received and made the payments respectively, evasive and the assertion that the payments related to "entertainment" were completely unsupported by any documentary evidence. In those circumstances, we rejected the Appellant's evidence and concluded that the payments represented dishonest and fraudulent extractions of monies from the Three Companies, following the approach set out in *Wetton v Ahmed* [2011] EWCA Civ 610 per Arden, LJ. (as she then was) at [14]:

> ''In my judgment, contemporaneous written documentation is of the very greatest importance when assessing credibility. Moreover, it can be significant not only where it is present and the oral evidence can be checked against it. It can also be significant if the written documentation is absent. For instance, if the judge is satisfied that certain contemporaneous documentation is likely to have existed were the oral evidence correct, and the party adducing oral evidence is responsible for its non-production, then the documentation may be conspicuous by its absence and the judge may be able to draw inferences by its absence''

ADVERSE INFERENCES

327. As set out at [256], HMRC invited us to draw adverse inferences from the Appellant's failure to call evidence from a number of witnesses. Mr Brown submitted that it would be inappropriate to draw such inferences in this case.

328. Having carefully considered the principles to be applied as set out in *Wisniewski v Central Manchester Health Authority [1998] PIQR 324* and more recently clarified in *Royal Mail Group Ltd v Efobi,* we concluded that it was appropriate to draw adverse inferences from the failure of Ms Igo and Mr Sexton to give evidence. We consider that it is reasonable to conclude that Mr Sexton could have potentially had relevant evidence to give regarding his role within Clarity and its transactions with the Appellant, particularly given Jonathan Parish's repeated statements in oral evidence that questions should be directed to Mr Sexton. We were told that Mr Sexton was "prepared to provide a statement" but was "currently not well enough to do so". There was no further explanation provided and the information was dated 13 August 2021, almost two years prior to the hearing. The inference we drew from Mr Sexton's absence reinforced our conclusion that he did not have any substantive involvement with Clarity and was a director in name only. We were satisfied that the day-to-day operations of the company were carried out by Jonathan Parish, under the supervision and direction of Andrew Parish.

329. Similarly, we consider that Ms Igo could have given relevant evidence on the issues in this appeal. Ms Igo was an employee of the Appellant from 1 January 2018 to 16 November 2018 and director of Crystal until it went into liquidation. An email from Mr Tully dated 24 May 2021 indicated that she had been asked to be a witness but declined as she has "moved on". We inferred from the absence of any evidence from Ms Igo that she too was a director in name only and that the de facto director of Crystal was Andrew Parish.

CONCLUSION

330. We were satisfied HMRC had established fraudulent tax losses and that there was an orchestrated scheme for the fraudulent evasion of VAT connected with the transactions which form the subject of this appeal.

331. For the reasons set out above, we had no hesitation in concluding that the defaulting companies were under the control of Andrew Parish and Jonathan Parish and that the Appellant, though Andrew Parish and, to a lesser degree Mr Hagen, were fully aware that its transactions were connected with the fraudulent evasion of VAT. Given the intimate connections and common control over all of the companies, we consider that the knowledge attributable to Andrew Parish and Mr Hagen cannot sensibly be considered on the basis of the means of knowledge test and we have concluded that the Three Companies were set up to facilitate the VAT fraud of the Appellant.

332. The appeal is dismissed.

CONCLUSION ON THE REGISTRATION APPEALS

333. In view of our findings set out above, the registration appeals must also be dismissed.

RIGHT TO APPLY FOR PERMISSION TO APPEAL

334. 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.

JUDGE JANNIFER DEAN
TRIBUNAL JUDGE

Release date: 19th JANUARY 2024