[2019] UKFTT 215 (TC)

TC07062

Appeal number:TC/2016/6219

Excise Duty - Revocation of excise duty approvals under the Warehousekeepers and Owners of Warehoused Goods Regulations (WOWGR) 1999 and s 92 CEMA–- whether review decision of HMRC could reasonably have been arrived at.

FIRST-TIER TRIBUNAL
TAX CHAMBER

KAMMAC PLC **Appellant**

- and -

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

TRIBUNAL: JUDGE CHARLES HELLIER
CHARLES BAKER

Sitting in public at Taylor House EC1N on 11 to 15 February 2019

James Pickup QC instructed by Bird & Bird LLP for the Appellant

Howard Watkinson, instructed by the General Counsel and Solicitor to HM Revenue and Customs, for the Respondents

DECISION

The Appeal

1. Kammac appeals against HMRC's review decision of 14 October 2016 to withdraw its approval as a warehousekeeper and the approvals for its excise warehouses under the Warehousekeepers and Owners of Warehoused Goods Regulations 1999.

Relevant Law

2. There was no dispute about the relevant law. The detail is set out in a number of decisions of this tribunal. A summary follows.

3. Pursuant to the Excise Directive 2008/118, the Customs & Excise Management Act 1979 ("CEMA") and the Warehousekeepers and Owners of Warehoused Goods Regulations 1999 ("WOWGR" or the "WOWG Regulations") the payment of duty on excise goods such as alcoholic beverages may be suspended in certain circumstances, and may remain suspended where the goods have been deposited by a *registered* owner (or an unregistered owner represented by an *approved* duty representative) in an *approved* warehouse managed by an *approved* warehousekeeper, and where they are transported from such a warehouse to another such warehouse (or to a warehouse in the EU similarly approved by another member state) by transport in relation to which an *approved* movement guarantee is in place[1]. When goods are held or moved without satisfying these conditions a duty point may arise and excise duty become payable.

4. CEMA provides that HMRC may at any time "for reasonable cause" revoke the approval or registration of such a warehouse, warehousekeeper or duty representative, or vary the terms of such approvals.

5. The regime for registration and approval imposes conditions for approval and detailed obligations on registered or approved persons once approved.

6. The WOWG Regulations provide that the approval of a warehousekeeper or duty representative shall be subject to the conditions published in a notice by HMRC. The relevant notice is EN 196. This was revised in November 2014 to include a new due diligence condition and in that form was applicable to the activities relevant to this appeal. The following provisions of EN 196 are particularly relevant to this appeal:

7. Section 2, which says that only persons who can show they are "fit and proper to carry out an excise business" will be approved or registered.

8. In our view, having regard to the purpose for which the notice is given force, "fit and proper" persons does not mean those who are fine, upstanding or well-

[1] See reg 39 Excise Goods (Holding Movement & Duty Point Regulations 2010

connected, but those who demonstrate behaviour of the type likely to assist, and not to hinder, the proper administration, collection and protection of excise revenue.

9. Although EN 196 does not expressly make being fit and proper a condition for the holding of an approval, in our judgement effect of the notice is that if a person cannot demonstrate that he is in this sense fit and proper that will afford reasonable cause for revocation of an approval or registration.

10. If a person fails to carry out due diligence in the sense described by the notice (see below), its actions will generally not assist and may hinder the achievement of the relevant purpose. Thus generally such a person will not be fit and proper. There may however be reasons for the failure which permit such a person to be regarded as fit and proper; and conversely reasons why a person who does carry out required due diligence, may yet not be fit and proper.

11. Section 5.1 of EN 196 provides that before it accepts any goods into its warehouse a warehousekeeper must make sure that either the owner is registered or, if it is an overseas owner, it has appointed a duty representative, or that registration is not required.

12. The Notice refers in section 6.4 to movement guarantees and indicates that details of the procedures for receiving and dispatching excise goods under duty suspension are contained in Notice 197. We understood that that notice explained the requirement for a movement guarantee on the dispatch of goods from a warehouse.

13. Section 10 of EN 196 imposes the due diligence condition. It requires an approved warehousekeeper to carry out checks and to evaluate the information it receives to identify the risk that an activity has a connection to excise fraud, and where such a risk is identified to take mitigating action.

14. The section gives examples of the kind of checks which might be conducted to provide effective control over the risk of connection to excise fraud and of the results of those checks which might lead to further enquiries. At section 10.4 it says:

> "If your due diligence procedures are considered insufficient to address fraud risks, we will carefully consider the facts of the case before taking further action, and where appropriate we will seek to support you to strengthen your procedures.
>
> "In more serious cases such as a failure to consider the risks ... or respond to clear indications of fraud we will apply appropriate and proportionate sanctions. For serious non-compliance, such as ignoring warnings or knowingly entering into high risk transactions we may revoke excise approvals or licences."

15. There is one aspect of this appeal to which the nature of the requirements imposed by the combination of the WOWG Regulations and the provisions of EN 196 in relation to due diligence is particularly relevant. That is in relation to the representations made to HMRC on behalf the company by Alan Powell (and we infer the advice received and acted upon by the company). As we describe in some

greater detail below, it appears that Mr Powell's view was that the due diligence requirements imposed through WOWGR on approved warehousekeepers such as Kammac were not for the purpose of assisting in the prevention of excise fraud. We do not share that conclusion (and neither did Mr Pickup or Mr Watkinson). EN 196 clearly specifies that an aim of an approved person's due diligence must be to avoid connection to excise fraud. The purpose of that due diligence must be to assist in the prevention of such fraud. There is nothing in its language not in that of WOWGR which suggests that the purpose of a warehousekeeper's due diligence should be different from or any lesser than that of any other approved person.

16. We also note that the Excise Goods (Holding, Movement and Duty Point) Regulations 2010 ("HMR") require that before excise goods are dispatched, the consignor must complete a draft electronic administrative document (the eAD) that complies with EU requirements and send it to HMRC using a computerised system, the EMCS (Excise Movement Control System). If the eAD is valid, the system assigns a unique administrative reference code (an "ARC") and notifies it to the consignor. The consignor is required to provide a printed copy of the eAD including the ARC to the haulier. One copy of the ARC must accompany the goods. When completing the eAD, the trader must enter the Trader Excise Number or VAT registration number of the person providing the guarantee for the movement.

The nature of the appeal

17. By section 15 FA 1994 read with section 13A(2)(j) and paragraph 2(1)(p) schedule 5, if HMRC notify a person of a decision to revoke an excise authorisation under section 100G CEMA they must offer a review of the decision. By section 15C HMRC must conduct a review if the offer is accepted in time. Section 15F provides:

> (2) The nature and extent of the review are to be such as appear to be appropriate to HMRC in the circumstances.
>
> (3) For the purposes of subsection (2) HMRC must, in particular, have regard to steps taken before the beginning of the review-
>
> (a) by HMRC in making the decision, and
>
> (b) by any person who is seeking to resolve disagreement about the decision.
>
> (4) The review must take into account any representations made [by the trader].

18. Subsection (6) requires HMRC to provide their reasoning with their conclusions on the review.

19. By section 16(1) an appeal against a review decision may be made to this tribunal. The decision which must attract our attention is therefore that made on review, not the original decision.

20. By section 16(9) read with section 16(4) the power of this tribunal on any such appeal is confined to a power, if we are satisfied that the decision could not reasonably have been made, to

(a) direct that the decision is to cease to have effect from such time as the tribunal may direct;

(b) require HMRC to conduct a further review in accordance with our directions; and

(c) where the decision cannot be remedied, to give directions to secure that repetition of the unreasonableness does not occur in future.

And by the tailpiece of section 16(6) the burden of proof in any such appeal is on the appellant.

21. It was common ground that the jurisdiction given to this tribunal is of a similar nature to that of judicial review. A decision could not reasonably have been made if relevant facts were ignored, irrelevant factors were taken into account, a material error of law was made or the decision was otherwise such that no reasonable body could have made it.

22. In *HMRC v Behzad Fuels Ltd* [2019] EWCA Civ 319 Henderson LJ, in a judgement given on 4 March 2019 after the hearing of this appeal but in reliance inter alia on *Balbin Singh Gora v HMCR* [2003] EWCA Civ 255 which was cited to us, accepted that the provisions of section 16 do not oust the power of the FTT to conduct a fact-finding exercise, with the consequence that it is open to the FTT on an appeal from a review decision to decide the primary facts and then determine whether, in the light of the facts it has found, the decision was one which could not reasonably have been reached.

23. We conclude that our obligation is to find the facts on the evidence presented to us and to determine, in the light of those facts, whether the relevant decision was reasonable. That, however, does not require us to assess the review decision in the light of events which occurred after it was made unless those events shed light on matters which were relevant to the decision at the time it was taken.

24. In *HMRC v Ahmed (t/a Beehive Stores)* [2017] UK UT 259 (TC) the Upper Tribunal provided guidance on the approach this tribunal should take to an appeal of this nature.

25. The Upper Tribunal noted, at [51], that those who were given the privilege of authorisation were also given the responsibility for assessing the risk of fraud; it said, at [52], that as the failure to carry out proper due diligence could result in a higher risk of such fraud, it was no surprise that EN 196 stated "that serious cases of failure can result in the revocation of" approval. But it then emphasised that there was a spectrum which HMRC would have to consider and that the guidance made clear that help would be given and opportunities provided to demonstrate that improvements had been made. It said:

"in our view, that would be a particularly appropriate course in cases where there is no evidence of the registered owner of being implicated in any actual fraud and where there is evidence that the registered owner is both able and willing to make the necessary adaptations".

26. It went on to say that the decision to revoke should not be taken lightly and ([54]) "must be proportionate in all the circumstances".

27. It said that the tribunal should carry out a fact-finding exercise as to the extent the due diligence condition had been complied with and then address whether HMRC had taken into account all relevant factors

> "the tribunal will also have to consider whether, in all circumstances, the decision to revoke can be regarded as proportionate" ([56]).

28. A conclusion that HMRC had ignored relevant factors or taken into account irrelevant factors did not inevitably mean that the tribunal should direct a new review: it should be borne in mind that such a direction should not be made where any new decision would inevitably come to the same result [57].

29. Mr Watkinson argued that where, as was the case here, in the primary legislation there was no lexicon of factors to be considered by the officer making her decision, the officer was liberty to decide what to take into account as relevant, being guided by the policy and objectives of the governing legislation (citing Laws LJ at [20] in *Jones & another v North Warwickshire Borough Council* [2001] EWCA Civ 315). The tribunal could intervene only if the officer failed to take into account something of "obvious" relevance.

30. Even if this principle were applicable in cases of this nature, it is not possible to apply it to the facts found by the tribunal which arise either from circumstances prior to the decision and unknown to the officer or from circumstances arising after the decision being reviewed and before the hearing of the appeal. The relevance of such facts can be judged only by the tribunal although their weights may be a matter for the (reasonable) judgement of the officer.

The Evidence

31. We heard oral evidence from Craig Olson, the Operations Director of Kammac, Carrie Blanchard, now the Operational Admin and Finance Director of Kammac, Paulline Loughridge, the officer of HMRC who made the review decision against which the appeal is brought, Michael Coy, the HMRC officer who liaised with, and conducted compliance visits to, Kammac until September 2015, Neil Smith, an officer of HMRC who participated in compliance visits to Kammac between May 2105 and January 2016 and John Campbell, an officer of HMRC who undertook the making of a reconsideration of the decision originally made on 8 January 2016 to revoke Kammac's approvals. We also had a witness statement from Paul Kamal, the managing director of Kammac and Aled Hack an officer of HMRC. In addition we had available 16 lever arch files of documents to some of which we were referred. We find as follows.

Findings of Fact

(i) A Brief account of relevant events

32. Kammac has for many years operated a warehousing, packaging and logistics business in Northern England. At times relevant to these appeal it had warehouses at Skelmersdale, Knowsley, Worksop and Burton-on-Trent where it held and repackaged, and from and to which it transported, a wide variety of food, drinks and consumer goods. Its customers were mainly large companies such as Heinz, Heineken, Holland and Barratt and for many years Premier Foods. When it despatched repackaged goods they would often be sent back to the supplier or to supermarkets.

33. Kammac obtained its first excise warehouse approval in 1999. This enabled it to extend its intervention services to alcoholic drinks. By 2014 it had approvals as a warehousekeeper and for all the sites at which it operated. Prior to April 2015 it had had a good relationship with HMRC and a good compliance record.

34. HMRC alcohol duty officers made periodic inspections of Kammac's premises, records and procedures. At an inspection made in May 2015 by Mr Coy, he expressed no concern about the company's procedures and was complimentary about the company's stock control and accounting procedures. Asked if Kammac could do anything better he suggested placing a copy of the credits checks carried out on customers in the due diligence file, and including in that file passport checks and company and internet searches. Mr Coy referred Kammac to the new due diligence requirements of EN 196 (the company's procedures had not been updated to embrace those new requirements). Miss Blanchard asked him if HMRC offered any training and Mr Coy said he would look into it.

35. In April 2015 persons said to represent Panache Trading Co Ltd (together "Panache") approached the company. Discussion with them lasted until June and from 15 June to 9 July 2015 a large number of loads of alcoholic goods passed through Kammac's warehouse for Panache. We discuss the detail of Kammac's involvement with Panache later but it is fair to say that Kammac failed to take reasonable care in assessing whether to deal with Panache and that this was because its business with Panache was a step into an area in which it had not dealt previously and for which its procedures and understanding were inadequate.

36. Previously, in early 2014, the company was engaged by Spendrups, one of the largest brewery and beverage groups in Sweden, to store its new product, Pistonhead lager. The detail of its involvement is set out later but the lager was received and released by Kammac without ensuring that Spendrups had a UK representative. This was not a deliberate failure by Kammac to observe the Regulations but the result of the lack of a well-managed comprehensive system staffed by people with adequate knowledge.

37. On 8 July 2015 Mr Coy paid a visit to Kammac with other officers. They knew that Kammac had despatched an unusually large amount of goods ostensibly to non UK

destinations. They concluded that the Panache goods had been received and despatched in contravention of the WOWGR Regulations. They detained and seized the goods held by Kammac for Panache. Thereafter the company had no dealing with Panache or its goods.

38. On 17 July 2015 HMRC paid Kammac a further visit. They gave Kammac a letter varying the terms of its approvals by imposing conditions which (i) limited its times of operation to between 9.00am and 4pm and (ii) required the company to give 48 hours notice to HMRC of 8 specified details of any despatch from, or receipt into, its warehouse of alcoholic drinks.

39. Following this meeting the company appointed Alan Powell Associates Ltd to act for it. We deal in further detail with Mr Powell's advice and approach later, but in broad terms it was to deny that the company had a due diligence obligation which it had failed in relation to Panache. This approach led the company not to address the inadequacies of its due diligence procedures for many months afterwards.

40. The company complied with the conditions of the approval set out in the letter of 17 July 2015 until they were lifted on 5 October 2015: HMRC confirmed this in a letter of 5 November 2015.

41. On 5 October 2015 HMRC delivered four letters to HMRC at a meeting which lasted 15 to 20 minutes. For current purposes there were two relevant letters:

    (1) A letter removing the additional (opening hours and reporting) conditions in the 17 July letter. This letter noted the steps that Kammac was taking to ensure that similar situations did not occur again, and said that in view of the measures taken – in particular the cessation of its trade with Panache - the additional conditions were being removed, but added a new condition requiring HMRC to be given prior notification of new alcohol accounts and drawing attention to the need to put procedures in place to comply with the rules; and

    (2) A letter indicating that HMRC were "minded to revoke" the company's approvals. This letter indicated that HMRC "were not satisfied with the quality of the due diligence you have undertaken thus far". The letter referred to three failures in relation to Panache said that HMRC were concerned that due diligence in relation to Panache was insufficiently robust to safeguard risks to the revenue. The letter continued:

        > "the purpose of this letter is to enable you to address the concerns set out above and to allow you time before a final decision is taken to put in place systems and procedures to ensure … [proper compliance with excise duty rules]".

42. The record of the meeting indicates that Mr Smith of HMRC said that the company had 10 days (until 19 October 2015) to demonstrate that it had such procedures in place.

43. We should note at this stage that we found these two letters hard to reconcile. One indicates that HMRC were so unsatisfied with what Kammac was doing that they proposed revoking its approvals; the other that they were so *satisfied* with what it was doing that they proposed to remove the conditions which must previously have been imposed for the protection of the revenue.

44. Mr Powell drafted a reply to this letter which was sent by the company on 16 October. The letter maintained the position that the due diligence conducted was satisfactory but set out the company's new policy which was to deal only with large companies trading in the UK, to restrict its services to warehousing and logistics in the UK and to refer all new business enquiries to HMRC. The letter made no attempt to set out the systems or procedures which the company might undertake to assist in the prevention of excise fraud. The new policy was said to put Kammac "back in the pre-Panache position" for which it had "an exemplary record".

45. HMRC replied on 27 November 2015 requesting further information about the steps taken to ensure compliance with Kammac's due diligence obligations.

46. On 11 December 2015 Kammac replied (in terms we believe drafted by Mr Powell) saying "we do not accept that we have any role as an unpaid investigation unit for HMRC…Having said that, we will carry out due diligence appropriate to our business and as agreed with [Mr Coy]" (This last remark we understood to be a reference to Mr Coy's visit on 15 May 2015). The letter then indicated that attempts to check on details of Kammac's customers for holding and movement matters "ties up its management resources" and "may be ineffective".

47. On 8 January 2016 HMRC replied to this letter. Having addressed some of the points made they said that they did not consider that the directors and management of Kammac were fit and proper and so were revoking its excise approvals with effect from 8 April 2015 and, for the run off period ending on that date, imposing further conditions

48. We deal later with the circumstances of Kammac's later contravention of the conditions in the approval for the run off period.

49. Following this meeting Kammac appointed PWC Legal to act for them.

50. On 13 March 2016 PWC sent its report to HMRC. This identified Kammac's failings and the gaps in its due diligence, and proposed a system of procedures and monitoring for the future. Mr Campbell and Miss Loughridge accepted that if these proposals were adopted and followed by the company that would ensure compliance with the due diligence requirements of EN196.

51. Following receipt of the PWC report Mr Campbell conducted a reconsideration of the revocation decision. He concluded that even after consideration of the PWC report the approvals should be revoked. He considered that the breach of the 8 January 2016 conditions did not give comfort in the company's ability to carry out due diligence and that the Panache and Spendrups issues lead him to the conclusion that Kammac did not meet the fit and proper test.

52. On 10 August Kammac sent HMRC the results of their application of the PWC due diligence policy to AB InBev, an existing customer. It had been conducted in accordance with the policy.

53. PWC sought a review of HMRC's decision. This was carried out by Miss Loughridge and delivered on 14 October 2016 upholding the revocation decision. We address that decision later. Against it the company appeals.

(ii) The Panache incident

54. Panache Trading Co Ltd was a company registered in Hong Kong. Panache first approached Kammac in early 2015 and the first substantive correspondence was on 24 April. Due diligence started on 6 May. Kammac first received goods for the Panache account on 8 June and the first despatch was on 15 June 2015. On 3 July, Kammac provided HMRC with their due diligence file on Panache in support of an earlier request to add Panache to the bond at the Knowsley depot. The last despatch from the Panache account was on 8 July and the next day HMRC arrived for an inspection and asked that there be no further despatches. The despatches from the Panache account were duty suspended. The potential duty on those despatches was approximately £4.5 million. From a translation of an Italian prosecutor's report it appears that Panache's transactions were part of a large scale organised pan-European criminal conspiracy. The goods despatched from the appellant's premises did not arrive at the declared destination.

55. The due diligence carried out by Kammac on Panache failed comprehensively. Panache claimed to be a Hong Kong subsidiary of an Indian based multi-national group with branch offices in New Delhi, Dubai and Malaysia. Panache said that the group finance headquarters would supply audited group accounts. Panache proposed to buy alcohol products in the UK for supply to South Asia. Kammac did not adequately check these claims, which proved to be false.

56. As Kammac acknowledges the failure of their due diligence it is not necessary for us to describe all the evidence presented to us. It is sufficient to mention the report from Dun & Bradstreet ("D&B") as one example. Kammac commissioned a report from D&B dated 21 May 2015. Three executives of Kammac received the D&B report by email on 22 May 2015. The D&B report identified several causes for concern. It is clear that nobody at Kammac gave the D&B report any serious consideration at all.

57. EN196 recommends "FITTED" checks: Financial Health, Identity, Terms, Transport, Existence of goods and the Deal. Section 10.5 lists indicators of risk in these categories. Many of these risks were evident from the D&B report and were either not noticed or not acted upon by Kammac. We set out the notice's indicators in italics:

    (1) *There are no or poor credit ratings, but the company is still able to finance substantial deals*. D&B gave no credit rating. Royal Bank of Scotland twice

declined to give a credit rating for a company supposedly nine years old, but see the next point.

(2) *They are a new company with little or no trading history*. According to D&B, the company was registered in 2013. This conflicted with the certificate of incorporation supplied by Panache that showed an incorporation date of 3 June 2006.

(3) *There is a lack of detail about the company identity*. There was no answer when D&B telephoned the number provided. The Hong Kong telephone directory did not list Panache.

(4) *They are dealing in high value goods from short term lease accommodation or residential address*. D&B visited three addresses. At one address the occupier refused to accept a letter for Panache. There was nobody present at the company secretary's address. The third address was residential.

(5) *There are unusual credit terms*. Panache offered to pay in advance for transport and storage.

(6) *The goods are to be moved in an unusual supply route*. The goods were despatched to Italy which seemed surprising if the ultimate destination was South Asia.

58. Kammac also took goods from Panache into storage, duty suspended, without Panache having a UK duty representative, contrary to WOWGR Regulation 9(2).

59. Kammac despatched goods for Panache without a valid movement guarantee. We have explained that before each movement, a trader must submit an eAD (electronic administrative document) to ECMS. Exhibited to Mr Smith's witness statements were printouts from the EMCS system showing despatches to La Cave SRL in Italy. In most cases, the Trader Excise Number was blank but in a few cases it showed an Italian Trader Excise Number. Although we were surprised that the system accepted entries with missing (or invalid) details of the movement guarantor, we conclude that the eAD was carelessly completed.

60. Panache provided an insurance document when asked for a movement guarantee. The insurance document was fairly plainly a forgery. Mr Olson told us that he was not sure whether he had seen a movement guarantee for any customer prior to May 2015; he assumed that someone had checked it. Ms Blanchard said she was not involved in movement guarantees. She only checked that the goods were going to an approved address. We concluded that Kammac had no robust system for checking movement guarantees or entering them on the EMCS. Whatever system it had, it clearly failed.

61. At the visit on 9 July 2015, HMRC officers asked to inspect Panache stock in the warehouse. They broke open one case of spirits and found the bottles with intact "duty paid" stamps. Mr Olson said that the appellant had only stored the product and so had not opened the cases. They had no reason to see the duty stamps. He accepted that Kammac had already despatched cases with an identical description to Italy. We concluded that Kammac despatched spirits to an overseas destination

duty suspended but with duty paid stamps on them in breach of the requirement to obliterate duty paid stamps before despatching goods to an overseas destination.

(iii) Spendrups

62. The Spendrups incident was different in nature and illustrated different flaws in the appellant's systems. Spendrups are the second largest brewer in Sweden. They decided to introduce their "Pistonhead" lager to the UK market and sub-contracted the brewing to the Burtonwood Brewery in Warrington. Kammac already dealt with the Swedish Cider Company and were introduced to Spendrups through the UK marketing agent who also acted for Spendrups.

63. Kammac first began storing goods for Spendrups in February 2014[2]. On 5 June 2015, the appellant supplied Spendrups with a stock list. Most of the stock had arrived in October 2014 and by June 2015 had already past its Best Before date. Spendrups arranged the collection of the in-date stock on 26 June 2015. On 23 July 2015 Kammac wrote to Spendrups asking them to arrange removal of the out-of-date stock because it needed more space in the Knowsley depot. There was more email correspondence on 27 July, 17 August, 20 August, 21 August, 22 August and 24 August. A planned collection of the out-of-date stock on 10 September did not happen. A further round of emails began on 28 September and the out-of-date stock finally left on 7 October, intended for destruction.

64. HMRC suggested that there were two breaches of the regulations:

    (1) Spendrups was an overseas company and HMRC say that it had no UK duty representative. Under Regulation 9(2), the appellant should not have taken dutiable goods into its warehouse unless it recorded the identity of Spendrups' UK duty representative. The appellant accepts that failure.

    (2) There was no movement guarantee in place for the movement on 7 October 2015 as required by regulation 39 HMR.

65. The appellant accepts that it did not consider the need for Spendrups to have a UK duty representative. HMRC suggest that Kammac breached this obligation in spite of HMRC's warning as a result of the Panache incident. We find that to be an unfair and inaccurate description. The appellant began accepting goods for Spendrups in February 2014 which was fifteen months before the first contact from Panache. The last deposit from Spendrups appears to have been on 15 April 2015, which was before the first contact from Panache.

66. A printout from the EMCS showed the movement guarantor for the 5 October movement to be "Owner of goods". As an overseas company, Spendrups could not give a valid movement guarantee. In his evidence to us Mr Smith confirmed he knew that the appellant had a movement guarantee allowing movements of alcohol for destruction. Although not referred to at the hearing, the bundles contained email correspondence to and from Mr Smith in late 2009 about reducing the value of the

[2] Although some documents refer to "early 2015", it seems clear that these are mistakes.

movement guarantee. We conclude that there was a valid movement guarantee in existence. Be that as it may, there was a failure to record on the EMCS the provider of a valid guarantee in advance of the movement.

67. There was no suggestion that Spendrups was not a legitimate trader or that any fraud had occurred or loss of duty had arisen. Nevertheless, the appellant failed in two regulatory duties of a warehouse keeper. It failed to ascertain the identity of a UK duty representative and it failed to identify a valid movement guarantee in advance of a despatch. Those failures were careless.

(iv) Contravention of the conditions attached to the 8 January 2015 run off approval

68. We have recorded that on 8 January 2016 HMRC wrote to Kammac indicating that its warehousekeeper and warehouse approvals would cease on 8 April 2016. Three other letters of the same date amended its approvals for the Skelmersdale, Burton and Knowsley sites in relation to the period up to 8 April 2016. These three letters contained annexes imposing additional conditions on the operations at these sites. The annexes differ in their details but each contained conditions that:

(1) receipts of duty suspended goods into the warehouse were not permitted,

(2) all movements of goods were to be notified to HMRC by fax 24 hours beforehand; and

(3) any removal of duty suspended goods must be duty-paid or to another UK authorised warehouse.

69. The annex relating to Knowsley contained the following conditions:

"1. Receipts of duty suspended goods into the warehouse are not permitted.

2. This approval allows you to store the following excise goods in duty suspension, restricted to carrying out specific operations relevant each customer as follows:

[there followed a table specifying for 4 customers the permitted products (beer, wine etc), the allowable operations (repacking, relabelling etc) and the permitted removals (duty-paid/suspended)].

3. All operations must be completed within 30 days of commencement of the first allowable operation, following which duty suspended alcohol products must be either duty-paid or removed to a General Storage & Distribution warehouse.

…".

70. These letters were delivered by HMRC at a meeting attended by Mr Smith and Mr Campbell of HMRC and Mr Olsen and Mr Clucas, the Chief Executive of Kammac. The meeting is recorded in one note as lasting 20 minutes although Mr Smith's note

indicated that it lasted from 11 o'clock to 11.15. Mr Olson's recollection of that meeting was that HMRC told him that the effect of the letters was that it was "business as usual" until the approvals expired on 8 April 2016. Mr Smith's note recorded: the delivery of the letter (together with various assessments), the officers imparting the conclusion that Kammac's due diligence was unsatisfactory and the revocation of the approvals. The note records:

> "Additional conditions discussed. Namely that Kammac cannot receive goods in duty suspension across the three sites, that goods can only be released to other UK warehouses or duty-paid."

71. Mr Campbell told us that he could not recall anyone saying that it would be "business as usual" up to 8 April 2016. He told us he recalled that it was a cordial meeting but that a "stack" of documents had been delivered which had shocked Mr Olsen and Mr Clucas.

72. Mr Smith told us that it was a short meeting, that he recalled saying that stock in the warehouses would be run down, that Mr Olson and Mr Clucas were concerned about the implications and that he did not recall it being said that it would be business as usual up to 8 April 2016. Mr Smith's short manuscript note of the meeting records: "issued new approvals 11.10 and explained conditions [undecipherable] if any question. Co advised that would be appealing".

73. Following this meeting the company instructed PwC Legal to act for them.

74. Between 8 January 2016 and 11 February 2016 some 145 pallets of duty suspended beer owned by AB InBev, one of the 4 customs listed in the table in the Knowsley additional conditions, were received in the Knowsley warehouse.

75. On 11 February 2016 Mr Smith and two other officers made an inspection at Knowsley. They noted the arrival of the new duty suspended goods. They had a meeting with Mr Olson and Mr Clucas. Later they were joined by another HMRC officer, Kath Ramsden. Notes of the meeting recalled that Mr Olson and Mr Clucas said that they considered that the conditions attached to the 8 January 2016 letter for Knowsley permitted the continuation of the specified operations for the four specified customers until 8 April 2016. On an examination of the conditions in the letter Mr Smith and Ms Ramsden said that they considered that conditions 1 and condition 2 could be regarded as contradictory. In his evidence Mr Smith accepted that he did not consider that Mr Olson and Mr Clucas were "trying it on" when they asserted that they believed that condition 2 permitted continuing specified operations for the four customers at Knowsley.

Discussion – breach of 8 January 2015 conditions

76. To our minds on the careful reading, the meaning of the Knowsley condition is clear. As a whole the conditions are directed to the winding down of duty suspended operations at the warehouses. The object is clearly to permit the orderly dispersal of the alcohol held at 8 January 2016. The 30 day period in condition 3 makes

allowance for the administrative difficulties which might arise in relation to the removal of all the stock, such as for example: dealing with out of date stock (as was the case with Pistonhead lager), finding a receiving warehouse or getting instructions for the completion of repackaging etc: it does not suggest to us that new stock might be taken in. We do not regard conditions 1 and 2 as contradictory: condition 2 (when taken with condition 3) relates to the completion of operations on stock already held, not a continuation of the activity of receiving stock. In our view these conditions prohibited the entry of new stock into the warehouse.

77. We recognise that at first sight a reader of condition 2 might wonder whether the meaning of the word "store" in that condition included “taking into store” rather than being restricted to “continuing to store”. But a careful reader would have read that condition in the context of the other provisions and either realised that it was not intended as an exception to condition 1 or at the very least that there was some ambiguity.

78. It appears that some of the customers listed in Knowsley condition 2 did not have stock in the warehouse on 8 January. This may have fuelled Kammac’s interpretation of the condition, but would not have convinced a careful reader that Kammac’s interpretation was clear because there was nothing to suggest that the writer of the letter knew of that fact.

79. The meeting on 8 January 2016 at which letters were delivered lasted only 15 minutes or so. It was not long enough for a careful consideration of the stack of documents which were delivered to the company. While we do not believe that Mr Smith or Mr Campbell said that the conditions being imposed permitted business as usual, we think it is quite plausible that they conveyed an impression to those at Kammac (who knew that some of the four customers did not have stock in the warehouse and that repacking generally involved the entry and despatch of the goods within a few days rather than 30 days) that the conditions permitted the winding down of the duty suspended business and that this was understood, in the absence of detailed scrutiny of the letter, as meaning that work for the four specified customers could be continued in winding down mode.

80. We conclude that Mr Olsen and Mr Clucas honestly believed that the conditions permitted the movement for the four specified customers of specified duty suspended goods into the warehouse in the period after 8 January and before 8 April 2016. However, we consider that they were careless in forming that view. A reasonably careful person would have taken letters and read them slowly. If they did not conclude that condition 2 was not an exception condition 1 they would have seen that there was at least some ambiguity in conditions 1 and 2. Such a person would not have relied on a recollection of statements made at a short meeting to resolve that ambiguity but would have raised it formally in writing with HMRC as soon as possible.

(v) The notification requirement

81. Conditions 7 and 8 of the 8 January 2016 letter required the advance notification by fax to HMRC at their Manchester office of any movements of duty suspended goods out of the warehouses. Eight pieces of information were required in each such notification.

82. Between 21 January 2016 and 5 February 2016 13 dispatches were made, all but one to Heineken. Mr Smith told us that he had found no fax or email record of notifications to HMRC of these movements. But Mr Olson told us that Kammac had complied with the conditions

83. We were shown an e-mail from Kammac to Mr Smith (who worked in HMRC's Manchester office) of 5 February 2016 which related to a pallet of Strongbow being "consumed in production" and then dispatched. The e-mail records damaged stock, its dispatch and the dispersal of the remaining goods (on the same date as the e-mail).

84. We were also shown an e-mail of 8 February 2016 from Kammac to Mr Smith notifying Mr Smith on 11 February 2016 that two loads of Leff Blon were to be dispatched.

85. Neither of these e-mails contained all the details required by condition 7 of the additional conditions.

86. We accept that the fact that neither email had been found by Mr Smith in his search of fax or email notifications from Kammac casts some doubt on the comprehensiveness of Mr Smith's search of HMRC's records.

87. Whilst we accept this and that copies of faxes can go astray and may be difficult to file neatly, we are not able to conclude from this evidence that Kammac had shown that it was more likely than not that fax or other notification containing all the required details of movements were sent to HMRC at least 24 hours in advance in compliance with the conditions 7 and 8.

88. It seems to us that either Kammac did not put in place a painstaking bureaucracy to record its compliance with these conditions or that it did not carefully read the conditions attached to the 8 January 2016. Either way it was careless.

(vi) The approach of Mr Powell

89. Following the meeting of 17 July 2015 Kammac instructed Alan Powell Associates Limited to act for it. Mr Powell took up arms in a letter to HMRC on 29 July 2015. The letter was long (34 pages) and learned. Mr Powell was clearly experienced in this field. It argued that Kammac had carried out satisfactory due diligence checks but that Kammac's management had become so used to dealing with major customers that a degree of complacency had set in which caused it to fail to check whether Panache had a UK representative. It then set out a number of detailed legal arguments in relation to:

(1) whether Kammac had a duty to obtain a copy of a duty representative certificates;

(2) when a duty point might arise or have arisen;

(3) penalties in relation to breaches of the alcohol stamp rules; and

(4) the due diligence required - or not required – from a warehousekeeper.

90. In relation to the last of these Mr Powell argued that the due diligence requirement which a warehousekeeper was required to comply concerned the reduction in the warehousekeepers's own possible exposure to duty and penalties, rather than being for the purpose of assisting the prevention of fraud in relation to alcohol duties. On this basis Mr Powell argued that Kammac's due diligence was adequate for the purposes of EN 196, and that the failure to check that Panache had a duty representative was not a failure of due diligence and could be corrected otherwise than by improving Kammac's conduct of due diligence.

91. Mr Powell drafted another letter which was sent under the hand of Mr Olsen on 11 August 2015 to HMRC seeking a reconsideration of HMRC's letter of 17 July 2017 (by which Mr Coy placed conditions of timing of operations and reporting on Kammac). This attributed Kammac's failure to check that Panache had a UK representative to complacency in Kammac's systems (but not in its due diligence), argued (as was then thought) that there had been no fraudulent diversion of purchase goods, indicated that Kammac intended to review its procedures and sought the lifting of the restrictions.

92. Mr Coy told us that he thought he recognised the hand of Mr Powell in the letters from Kammac to HMRC of 16 October (which was in response to the "minded to" letter of 5 October 2015) and 11 December 2015. We agree that it is likely that he drafted them. The letter of 16 October repeated the argument that due diligence was not required to protect the revenue and that the due diligence actually undertaken was satisfactory, but also set out Kammac's new policy. The letter of 11 December again argued that the problem with Panache was not inadequate due diligence but simply the failure to check that a UK representative had been appointed as required by WOGRA; and "was nothing to do with whichever obligation we may have under the due diligence condition".

93. Mr Campbell accepted that his response to these letters was that Kammac "just didn't get it". They were arguing that their due diligence had been satisfactory. They were not accepting the need to have systems in place which helped HMRC combat excise fraud.

Discussion – Mr Powell's approach

94. For the reasons we have set out earlier in this decision we do not consider that Mr Powell's approach is correct. One of the objects of the due diligence required from an approved person is to assist HMRC in combating excise fraud. Whilst we agree

that the failure to ensure that Panache had a UK duty representative was not a failure of due diligence, the due diligence Kammac undertook on Panache had been plainly inadequate not least because it failed to evaluate the documents and information received.

95. In the light of these letters we can understand and sympathise with HMRC's decision of 8 January 2016 to revoke Kammac's approval. Up to that point there had been no indication that Kammac would engage in due diligence activities which would assist HMRC in preventing excise duty fraud (and its inaction in relation to due diligence on Panache had allowed a fraud to slip through its warehouse).

96. When Kammac appointed PwC January 2016 we accept that there was a "sea change" in its approach. It no longer asserted that its due diligence was to be limited mainly to its own risks; it accepted that its approach to its due diligence had been inadequate set against the proper test; it acknowledged that a new system was required and it proposed a satisfactory system.

The Review Decision

97. Miss Loughridge's decision letter has two major sections. The first is entitled The Facts, and the second Review Findings.

98. The first of these sections starts with seven paragraphs relating to the Panache transactions, and then recites the 17 July 2015 imposition of, and the 5 October 2015 removal of, the opening time and notification requirements and the delivery of the "minded to" letter. There are then paragraphs dealing with the Spendrups transaction including the following:

> "Spendrup is a Swedish-based company, who do not have a duty representative in place. On 7 October 2015 you dispatched goods to Law Distribution without the necessary movement guarantee being in place."

99. The letter then recounts the 8 January 2016 revocation of Kammac's approvals and sets out a summary of the conditions imposed for the run off period. This summary is fair in relation to Skelmersdale and Burton but unfortunately omits the particulars of condition 2 (the storage condition for specified customers) in relation to Knowsley

100. There is then a one line acknowledgement of the PwC report followed by three paragraphs dealing with the contravention of the conditions of 8 January 2016. The remainder of this section deals with Mr Campbell's reconsideration of the original decision and the request for a review.

101. The section "Review Findings":

(1) addresses the duty representative point relevant to Panache and Spendrup;

(2) addresses the additional conditions in the 8 January 2016 run-off period concluding that "it is not considered that this condition is unclear in any way", and continues:

> "PwC explained that you had misunderstood the conditions, which as explained previously are quite clear in their instruction. PwC consider that the misunderstanding in terms of the conditions cannot reasonably lead HMRC to conclude that you would be unable to comply with the requirements or that you are not fit and proper. HMRC does not accept those contentions.
>
> "... When conditions were imposed on your approval on 6 January 2016 those conditions were breached approximately 4 weeks later when you received, on numerous separate occasions, duty suspended stock into your warehouse, despite it being a condition that receipts of duty suspended goods into the warehouse were not permitted.";

(3) deals with PwC's report thus:

> "PwC say that [in view of]the submitted a report on 13 March 2016 ... [it] should be considered that your procedures existing before you had reviewed the position and made recommendations, cannot reasonably be used to reach the conclusion that you are not fit and proper. Again HMRC does not accept those contentions;

(4) indicates that the decision is not based on one inadequacy but many;

(5) says in relation to Spendrup (after having related Kammac's failure in relation to both the duty representative and movement guarantee for Panache):

> "When these irregularities were highlighted to you in writing, 5 October 2015, in terms of Panache ... *you made the decision to do the very same thing,* this time in relation to Spendrup. In addition you e-mailed Law Distribution, the next day, on 6 October 2016 to state that the goods had to be removed that day ..." [our italics]

102. It concludes that the revocation decision should be upheld. "The decisions in dispute are found to be reasonable and proportionate ... HMRC have fully considered all information submitted and meaningfully engaged with your representatives throughout the process".

103. In her oral evidence to us Miss Loughridge made it clear, and we accept, that she had not merely considered whether Mr Campbell's decision was reasonable but had reached her own decision that the approvals should be revoked. She spoke of making sure that the decision was "legally and technically correct": we understood

this to mean that she agreed with it. She said, and again we accept, that although she had made no express reference to EN 196, she had let it guide her in her review. She accepted that, in accordance with that guidance, revocation was an action of last resort.

104. In relation to Spendrup Miss Loughridge said that she had understood at the time of her review that the goods had travelled at the relevant time without a movement guarantee. She had not been aware that they had travelled under Kammac's own movement guarantee.

105. In relation to the example due diligence provided on 10 August 2016 Miss Loughridge accepted that it complied with PwC's proposals. She accepted that if PwC's proposals were fulfilled that would provide adequate protection and fulfil the requirements of EN196. But she doubted that Kammac would follow them. We concluded from her oral evidence that she so thought because the following cast doubt on Kammac's ability or willingness to fulfil those proposals:

(1) Kammac's delay in engaging with the due diligence issue: it had been 16 months from the publication of the new EN 196 until Kammac put forward the proposals in PwC's report, and there had been five months delay in getting to grips with the issue after HMRC's identification of Kammac's failures on 5 October 2015;

(2) Kammac's behaviour in relation to the 8 January 2017 conditions;

(3) the failures in relation to Panache and Spendrups.

106. Miss Loughridge told us that she had considered whether, rather than revoking the approvals they could be made subject to further conditions but had not been convinced that such conditions would be followed. She thought that there was nothing the company could do which could change her conclusion.

Discussion – the Review Decision

107. We start by considering Miss Loughridge's concern that Kammac's delay in addressing its due diligence failure relevantly indicated that Kammac would not follow the PwC proposals and so were unfit to be approved.

108. We accept that if all that is known of a person is that it has been extremely dilatory in that regard it is reasonable - and right - to take that fact into account because it suggests that future lack of timeous action could result in an excise fraud slipping through. But if the reason for the tardiness is known, the position is different; the relevant fact is the reason for the delay, not the delay in itself, because it is the reason which is relevant to the nature of the company's behaviour and the likelihood of it not assisting the prevention of excise fraud.

109. In Kammac's case it was clear to us that there were two reasons for its delay in addressing the due diligence failures identified by HMRC. The first and most

important was the approach taken by Mr Powell which addressed the failure to check on duty representatives and movement guarantees but, by denying the obligation to do so, did nothing about the company's due diligence failures.

110. Mr Powell was replaced by PwC and the advice the company received, and the actions it proposed to take on the basis of that advice were radically different.

111. Mr Powell was recommended by the company's trade association. His letters reveal expertise and experience in these matters. It would not in our view be reasonable to regard the company's reliance on him before it appointed PwC as indicative of a likelihood of deliberate or careless non compliance.

112. Mr Watkinson says that the ordinary principle is that you should not divide the advisor from the person being advised. In these circumstances we do not agree: the judgement is to be made from the point of view of protecting the revenue – that requires looking at the actual circumstances not the legalistic amalgamation of advisor and advised. But, he says that even if that is the case, the problem for Kammac was not only Mr Powell, but that Kammac endorsed what he said. Even when Customs pushed back and said, "Just look at the notice, it says it applies to excise warehousekeepers", the response again was "no". Again we disagree: that was a response on the basis of reputable apparently expert advice. It does not speak to Kammac's willingness to comply. Indeed its willingness to rely on a reputable advisor suggests that it would follow the advice from PwC.

113. (This we emphasise is not to say that the reliance by a person on reputable advice is a bar on the revocation of approval. If HMRC revoked on the basis that advice received and acted upon was wrong, then if their view of the law is correct they should have a reasonable case for revocation where the reliance endangers the protection of the revenue.)

114. It seems to us that in these circumstances the fact that the company acted on the advice of Mr Powell cannot reasonably be taken as indicating that it would be dilatory in complying, or would be unwilling to comply with its obligations in future. Of course this leaves open the question of whether other factors indicate that it is likely that the company would comply in future, but the answer to that question cannot reasonably be judged on the basis simply of the delay.

115. The second, more minor, reason for the delay was the rosy glow obtained from Mr Coy's inspection in May 2015. It must have taken a few days for this to be dispelled by HMRC's visit on 5 October 2015.

116. In the light of our findings, there were a number of facts which were not, and in some cases could not have been (because the evidence in relation to them was not available to her as it was to us), taken into account by Miss Loughridge in making her decision. They were these:

(1) Spendrups' goods movements on 7 October 2015 were covered by Kammac's own guarantee;

(2) the breach of the conditions of the 8 January 2016 approval in relation to the acceptance of new goods was not intentional. Kammac honestly believed that it was not acting in contravention of the conditions. But its actions were careless;

(3) there was a careless failure to comply with the condition in the 8 January 2016 run off approvals that movements be faxed in advance to HMRC.

(4) the reasons for the delay in Kammac's adopting a proper approach to due diligence was not unwillingness or inability to comply with HMRC's rules but: (i) that it was advised that it did not have to. The change of advisers, the expense of the appointment of PwC, Kammac's willingness to adopt PWC's advice spoke not of a decision to delay or not to act, but a willingness to take advice from experts and to engage with HMRC and (ii) the impression the company gained in May 2015 that its due diligence procedures were good: that was an honestly held belief that the dispelling of which must have occasioned some delay.

117. It seems to us that all these are relevant considerations which could have changed the nature of the decision made: it is not inevitable that the same decision would, reasonably, have been made if these considerations were taken into account.

118. In relation to the Spendrups Miss Loughridge made a review finding that, having been told in writing of the Panache failings in relation to duty representative and movement guarantee Kammac made "a decision to do the very same thing". It seems to us that this was an incorrect and therefore irrelevant consideration. That is because:

(1) it was not the case that the appellant repeated the failure to identify a duty representative in relation to Spendrups after HMRC warned the appellant in relation to Panache. As we have related, the appellant received all the goods from Spendrups before the first contact from Panache. The failure predated the warnings; and

(2) the movement of the Pistonhead lager on 7 October 2015 was covered Kammac's own movement guarantee;

We would not regard this incident as "serious noncompliance [after] ignoring warnings".

119. Kammac's failing was that it did not have a reliable system in place which highlighted that Spendrup did not have a UK representative.

120. We conclude that the review decision was unreasonable on the basis of the facts as we have found them. On our findings of fact there were relevant matters which should have been taken into account and were not, and a matter which was taken into account (the "deliberate decision" in relation to Spendrups) which should not have been. We shall therefore set aside the review decision.

121. In addition the following circumstances did not appear among those Miss Loughridge's oral evidence indicated that she took into account or among those referred to in her letter. We accept that her review must be viewed in context and that the mere omission of a particular circumstance does not necessarily mean that she did not consider it, but the omission of the following factors, which are of some weight, from both the letter and her oral evidence indicated to us that they may have been overlooked or not accorded the weight which reasonably they should have been:

(1) The ability and the willingness of the company to operate the system of stock control of which Mr Coy had been complementary in May 2015;

(2) the company's compliance throughout the 3 months ending on 5 October 2015 with the conditions imposed by the revised approvals of 17 July 2015;

(3) the reasons HMRC gave for the removal of the 17 July 2015 conditions;

(4) the limitation of the company's activities to large companies and the nature of the main business of the company;

(5) the statement in the "minded to" letter that its object was to give Kammac a chance to mend its ways: that statement suggesting, contrary to the view expressed in Miss Loughridge's evidence to us, that there were things it could do to retain approval. (we accept that the reviewing officer may take a different position from that taken by the writer of that letter, but the reasons for the difference, if there is one, should be explained); and

(6) the statements in EN 196 that HMRC would work with the company to assist its procedures.

122. These are relevant considerations which should be taken into account in relation to the making of a decision whether or not to revoke. We shall therefore direct that they be taken into account in any fresh decision (whether or not they were taken into account in the review decision).

123. Paragraphs 7.4 and 7.5 of PwC's recommended procedures suggested a yearly audit of the effectiveness and implementation of the policy and also third party reviews. We asked Mr Watkinson whether a condition might have been imposed requiring for example a weekly audit by PwC of the company's due diligence. He said that that might be ultra vires but we could not think why and neither could he offer a reason. He suggested that it might be contrary to HMRC's policy; but there was nothing in EN 196 to suggest that such was the case, and indeed the statement there that revocation was a last resort resounded to the contrary. Miss Loughridge was not asked precisely the same question but she did say that she could think of nothing the company could have done which would have enabled it to obtain approval. We conclude that no consideration was given to given to a condition of this nature. HMRC say that there was no evidence that conditions could have been applied which would have achieved the aim of ensuring that Kammac would be compliant given its breach of the conditions of the temporary approvals of 8 January

2016; but the thoroughness of PwC's report suggests that regular audit by them would timeously disclose any lack of compliance. A condition as to third party audit was hinted at in PwC's recommendations, which, in pursuit of HMRC's policy of working with a warehouse to strengthen its procedures, could reasonably have been considered as a means of protection against possible failures. Any new decision should address whether revocation would be a proportionate response (in the sense that it was not the least which could have been imposed to achieve the aim of the protection of the revenue) if such a condition might be imposed.

124. More generally, PwC wrote at some length in their report of 13 March 2016 and Kammac followed that up with additional evidence of its application of the new policy on 10 August 2016. The review letter describes the representations by PwC in two short paragraphs. Each one concludes "HMRC does not accept these contentions". Apart from the principle that one of the features of good decision making is the giving of reasons, section 15F(6) expressly requires the giving of reasons for the conclusions reached. We accept from her evidence that Miss Loughridge did not dismiss PwC's representations out of hand as her written remarks might suggest. Nevertheless, any new decision should, if PwC's representations are dismissed, give clear reasons for so doing.

Disposition

125. We direct that the decision shall cease to have effect from the date 45 days after the release of this decision. We require HMRC to conduct a further review taking into account our findings in paragraph 116 to 119 above, addressing the matters in paragraphs 121, 123 and 124 above.

Rights of Appeal

126. 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.

CHARLES HELLIER
TRIBUNAL JUDGE

RELEASE DATE: 29 MARCH 2019