

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
INSOLVENCY AND COMPANIES LIST (ChD)
RE: X E SOLUTIONS LTD (no.07025602)
AND RE: THE COMPANY DIRECTORS DISQUALIFICATION ACT 1986

Royal Courts of Justice, Rolls Building,
Fetter Lane, London EC4A 1NL

Date: 08/12/2021

Before :

ICC JUDGE PRENTIS

Between :

**THE SECRETARY OF STATE FOR BUSINESS, ENERGY AND INDUSTRIAL
STRATEGY**

Claimant

- and -

- 1. DAVID IAN SELBY**
- 2. AL SAYED**
- 3. TAHIR AWAN**
- 4. STEPHEN JAMES BAMFORD**

Defendants

Jennifer Newstead Taylor (instructed by **Gowling WLG (UK) LLP**) for the **Claimant**
Max Cole (instructed by **Moriarty Law Limited**) for the **Third Defendant**
The **Second Defendant** and the **Fourth Defendant** appeared in person
The **First Defendant** did not appear

Hearing dates: 4-8, 11-15 October 2021

JUDGMENT

ICCJ PRENTIS:

Introduction

1. Xziox and its sister products are used in the purification of water, particularly in agriculture and horticulture, and as decontaminants, particularly in the oil industry. Despite the merits of the product, and the averred success of the company which is currently marketing it, its exploitation has left a wake of failed companies. These disqualification claims concern one of those, X E Solutions Ltd (the “Company”). They arise not from its trade in Xziox but its alleged involvement in a Missing Trader Intracommunity (“MTIC”) fraud on Her Majesty’s Revenue and Customs.
2. The first defendant is David Ian Selby, also known as Ian David Selby and as David Selby and as Ian Selby. Against him is alleged by the Secretary of State, through the evidence of Michael Smith, Deputy Chief Investigator at the Insolvency Service, that:

“Between at least 3 September 2012 and 12 March 2013... [he] caused or allowed [the Company] to participate in transactions which were connected with the fraudulent evasion of VAT, such connections being something which Mr Selby either knew or should have known about”;

and that he:

“caused or allowed [the Company] wrongfully to claim at least £1,129,579 from HM Revenue & Customs in relation to the VAT periods 09/12, 12/12 and 03/13 (inclusive)”.
3. Mr Selby was not a registered director of the Company at those times, although he became one later, but he is said to have acted as a shadow and/ or de facto director.
4. As with the other defendants, the “at least” tag was dropped by the Secretary of State in closing. It had apparently been intended to refer both to the start and end dates of the relevant periods. Without more explanation in the

evidence it would have been insufficiently precise to have founded relief outside the specified periods.

5. The allegations against the second defendant, Al Sayed, also known as Altaf Sayed, are in the same form but with different dates: “Between at least 17 October 2012 and 12 March 2013” for the first part, and the VAT returns of 12/12 and 03/13 for the second: those amount to £995,812. The dates are different because Mr Sayed did not become a registered director until 1 October 2012.
6. That was the date on which the third defendant, Tahir Awan, was recorded at Companies House as having resigned as a director. The first ground against him therefore has the dates “Between at least 3 September 2012 and 24 September 2012”; the second ground has now been withdrawn, as no relevant VAT returns were filed during his directorship.
7. The allegations against the fourth defendant, Stephen James Bamford, are different. He was registered a director of the Company between 22 September 2009 and 1 October 2016. However, whether over that appointment period an executive or, as he says, non-executive director, between 3 September 2012 and 12 March 2013 he was not involved operationally. The claim against him is one of abrogation:

“Between at least 3 September 2012 and 1 January 2016 [he] abrogated his responsibilities as a director of [the Company]. During this period:”

and there then follow five bullet points:

- “[the Company] participated in transactions which were connected with the fraudulent evasion of VAT;
- [the Company] wrongfully claimed at least £1,129,579 from [HMRC] in relation to the VAT periods 09/12, 12/12 and 03/13;
- On 8 May 2013 Mr Bamford was involved in authorising Mr Selby, who was not formally appointed as a director, to deal with the financial affairs of [the Company];

- Mr Bamford signed the financial statements for the period ended 28 February 2014 despite them carrying a warning from the auditors. It is not clear what action, if any, he took in relation to the auditors concerns;
 - Mr Bamford only met with HMRC once during the period from 24 October 2013 to liquidation; he did not respond to numerous HMRC enquiry letters despite them being addressed to him and hampered HMRC’s investigation into the fraudulent transactions by not engaging with it.”
8. The first two points are not happily worded: they ought to have set out the ways in which Mr Bamford was said to have abrogated his responsibilities in those respects. Mr Bamford, though, who was represented until shortly before trial, has not said that he was confused, or would have put in further evidence on the points.
9. I will address Mr Awan’s understanding of the scope of the allegations below.

The claim: procedure

10. Notices under s.16 *Company Directors Disqualification Act 1986* (“CDDA”) were sent out on 27 April 2018. The claim was issued in the Manchester District Registry on 24 January 2019, being transferred to this court by order of District Judge Bever of 9 December 2019. That same order dismissed the application for a stay which had been made by Mr Selby, Mr Sayed and Mr Bamford but was no longer pursued.
11. This trial was listed by order of ICCJ Jones of 22 September 2020. Among his orders were that, absent agreement, all deponents to affidavits were to attend for cross-examination failing which their evidence would not be read or used without permission of the court. He also gave directions for further exchanges of evidence.

12. A pre-trial review was held before DICCJ Addy QC on 20 May 2021 at which each of the defendants was separately represented, albeit that Mr Selby, Mr Sayed and Mr Bamford were then represented by the same solicitors. As now, Ms Newstead Taylor appeared for the Secretary of State, and Mr Cole for Mr Awan.
13. Over the course of trial, and for reasons then given, I rejected the application of Mr Sayed to rely upon further evidence, and permitted reference to be made to his and Mr Selby’s convictions. I also confirmed that trial would proceed in the absence of Mr Selby. He did not seek to explain his non-attendance until day 6, when he sent a medical report from Dr SA Mohiddin, a consultant cardiologist at the London Independent Hospital in Beaumont Square. The report was dated 16 July, the day after Dr Mohiddin had examined him. Mr Selby had told his consultant “that there is an option for him to provide evidence in the form of written statements”, which the consultant considered “preferable” to appearing in person. The report outlined other possible mitigations, including “shorter sitting days, regular breaks, ensuring he maintains good hydration, and that he is able to halt proceedings if he develops symptoms”. Had a request been made, those options could easily have been incorporated into this hybrid trial, in which there were regular breaks anyway for the transcriber. Despite Mr Bamford confirming that he had been in contact with Mr Selby a few times over the trial, no application of any sort was made by Mr Selby. I permitted the parties to make reference, though, to his proposed evidence, a 21-paragraph affidavit; and he had also filed a CPR part 18 response.

Law: disqualification of directors

14. By s.6(1) CDDA:

“The court shall make a disqualification order against a person in any case where, on an application under this section, it is satisfied (1) that he is or has been a director of a company which has at any time become insolvent (whether while he was a director or subsequently), and (b) that his

conduct as a director of that company... makes him unfit to be concerned in the management of a company”.

15. By s.6(2)(a) insolvency includes a company which “goes into liquidation at a time when its assets are insufficient for the payment of its debts and other liabilities and the expenses of the winding up”.
16. By s.6(3C) director includes a shadow director. s.22(5) gives a definition: “a person in accordance with whose directions or instructions the directors of the company are accustomed to act”, but not encompassing “advice given by that person in a professional capacity”: (5)(a). As indicated by the definition, the necessary directions or instructions need not be as to the entirety of the company’s business.
17. Also within s.6 is a director who while not formally appointed as such in fact fulfils the functions of a director: by s.22(4) “‘Director’ includes any person occupying the position of director, by whatever name called”. A comprehensive account of the law in this regard has recently been provided by Falk J in *Re Keeping Kids Company* [2021] EWHC 175, [153-167]. Her summary of conclusions at [167] includes at (b)

“There is no single test, but an important starting point is the company’s corporate governance structure. The court is seeking to identify functions that were the sole responsibility of a director or board of directors... Those who assume and exercise powers and functions that can only properly be exercised or discharged at that highest level of management will, consistent with the purpose of the disqualification legislation, be within its scope as de facto directors. Those who are subordinate and accountable to that highest level of management will not be. (c) The test has been described as whether the individual was participating, or had the ability to participate, in decision-making as part of the corporate governing structure (which I take to mean the highest level of management decision-making)... (d) There is a distinction between being consulted about, advising on or otherwise being involved in, decision-making in some other capacity (even in circumstances where real

influence is exerted) and actually participating in making a decision as a director. (e) The question is one of fact and degree...”.

18. The same person may at times be a shadow director, and at times a de facto director. The “same sort of evidential indicia are likely to be relevant to establishing both shadow and de facto directorship”: Hildyard J, *Re UKLI Ltd (No.2)* [2013] EWHC 680 (Ch).
19. By s.6(4) “the minimum period of disqualification is 2 years, and the maximum period is 15 years”.
20. The *Re Sevenoaks Stationers (Retail) Ltd* [1991] Ch 164 banding of the 2-15 year period will apply. That has been subject to discussion in the particular context of MTIC fraud by HHJ Hodge QC, sitting as a High Court Judge, in *Re Chapter 6 Limited; Secretary of State for Business, Innovation and Skills v Warry* [2014] EWHC 1381 (Ch) at [48-52], seeking to provide legal certainty through consistency of approach “without seeking to provide a strait jacket for judges”. He said this:

“[49] ...the threat of MTIC fraud is so persistent, and so pervasive, and the loss to the revenue to the state is potentially so great, that I cannot conceive of any case in which disqualification for a period in the bottom bracket (of 2 to 5 years) would be appropriate.

“[50] In any case where the respondent director has been knowingly involved, and has played a significant role, in MTIC fraud, then a period of disqualification in the top bracket (of over 10 years) should be imposed. This is also likely to be appropriate in cases where the director has wilfully closed his eyes to MTIC fraud...

“[52] In any case where it is proved that the respondent director did not actually know but (without wilfully closing his eyes to the obvious) ought to have known of the MTIC fraud, the period of disqualification should be within the middle bracket (of more than 5 and up to 10 years). Absent extenuating circumstances, in my judgment, in such a case the

disqualification period is likely to fall in the top half of that bracket, and thus between seven-and-a-half and 10 years.”

21. In the same case he parsed the approach of HHJ Pelling QC, sitting as a High Court Judge, in *Secretary of State for Business, Innovation and Skills v Corry* (9 January 2012). At [7] HHJ Pelling QC stated that “the Secretary of State is entitled to demonstrate unfitness by establishing first that the company concerned is to be treated as knowingly involved in MTIC fraud by carrying out the steps that would normally be expected in a *Kittel* inquiry, and then that such knowledge as is to be attributed to the company was, in fact, knowledge of the relevant director for the purpose of bringing a disqualification application”. That passage was expressly adopted by HHJ Hodge QC in *Warry* at [27]. HHJ Hodge QC continued: “the question of whether the relevant company is to be regarded as a participant in a transaction or transactions connected with the fraudulent evasion of VAT is only the first stage of the inquiry, with the court then having to move on to consider the extent of the respondent director’s personal knowledge of, and involvement in, that fraud, and how that impacts upon his fitness to be concerned in the management of a company”.
22. The allegations against Mr Selby, Mr Sayed and Mr Awan track that two-stage process, and Ms Newstead Taylor and Mr Cole agreed that that was the appropriate approach for the court. It must be recognised, though, that where the relevant company has few directors a rigid demarcation between the two elements is not always helpful. Here, Mr Sayed and Mr Awan each expressed perfectly understandable difficulties with abstract questions about what the legal person which was the Company knew. It is for the Secretary of State to prove the knowing participation of the Company in the wrongful transactions but, while there are arguments over the individuals’ precise roles and knowledge, the Company’s knowledge could only come through one or more of these few defendants.
23. Given the date of conduct in issue, the matters for determining unfitness before 1 October 2015 will include those set out in Schedule 1 to the Act as it stood before substitution by the *Small Business, Enterprise and Employment*

Act 2015. By paragraph 1, among those is “Any misfeasance or breach of any fiduciary or other duty by the director in relation to the company, including in particular any breach by the director of a duty under Chapter 2 of Part 10 of the Companies Act 2006 (general duties of directors) owed to the company”. From that date, paragraph 1 finds its place in the new Schedule 1 paragraph 5. Another relevant paragraph may be the new paragraph 7, which directs attention to the frequency of such conduct.

24. Of relevance to these allegations, by s.174(1) of the *Companies Act 2006* (“CA06”) a “director of a company must exercise reasonable care, skill and diligence”, meaning that (2) “exercised by a reasonably diligent person with (a) the general knowledge, skill and experience that may reasonably be expected of a person carrying out the functions carried out by the director in relation to the company, and (b) the general knowledge, skill and experience that the director has”. It follows that the onus will be greater on a more experienced director.
25. The burden of proof rests on the Secretary of State, to the ordinary civil standard but its application reflecting the nature of the allegations: “the seriousness of the allegation is reflected in the need for evidence of appropriate cogency to discharge the burden of proof” Etherton J, *Secretary of State for Trade and Industry v Swan* [2005] EWHC 603 (Ch) at [76]. Once the facts are established to that standard, “the court must be satisfied that the conduct alleged is sufficiently serious to warrant disqualification”: *ibid* at [77]. The purpose of the legislation, directed both at the individuals concerned and directors as a whole, is both to protect the public and to encourage higher standards in corporate management.

Law: non-executive directors

26. In common with the CA06, in treating directors’ duties the CDDA draws no explicit distinction between the duties owed by executive and non-executive directors. But if the duties are the same, their application need not be. As indicated by the wording of s.174 CA06 the objective and subjective

requirements are circumscribed by the actual role of the director. It follows that, as with the law concerning directors generally, the title the director carries is not necessarily conclusive as to function. To quote from Hoffmann LJ in *Bishopsgate Investment Management v Maxwell* [1993] BCC 120, 139, the extent of what is now the s.174 duty “must depend upon how the particular company’s business is organised and the part which the director could reasonably have been expected to play”. In many cases, not least because of the extensive risks they would run otherwise, the precise role of the particular non-executive director will be formalised in written terms of engagement, so director and company are clear about their duties and obligations. Absent that, the court must seek to discern the role from objective factors. Whatever the ambit of a non-executive’s role, it cannot properly be discharged without at the least an ongoing enquiry into and knowledge of the company’s business which pertains to it: in other words, a restrictive modification of one of the basic duties on a company director.

27. Where there has been a prescription or, put another way, delegation of roles between the directors then it is the long-standing law that a director is “entitled to rely upon the judgment, information and advice, of the chairman and general manager as to whose integrity, skill and competence he had no reason for suspicion”: Lord Davey in *Dovey v Cory* [1901] AC 477, 492. Teased out, the director whose functions have been circumscribed remains under duties to supervise that delegation (see *Kids Company* at [859]: “Proper delegation does not involve abdication”) and to assess its product (see Norris J in *Sharp v Blank* [2019] EWHC 3096 (Ch) at [628]: “reliance must in the particular circumstances be consistent with the discharge of the duty of reasonable skill and care”).

Law: MTIC fraud

28. Christopher Clarke J in *Red 12 Trading Limited v HMRC* [2009] EWHC 2563 (Ch) provided this lucid exposition of MTIC fraud. As will be seen, we are (apparently) concerned in our case with a “plain vanilla” fraud.

“[2] This case concerns what is called “Missing Trader Intracommunity Fraud” (“MTIC fraud”). Anyone reading this judgment is likely to be familiar with this expression, which has been explained in several tribunal and High Court decisions. The classic way in which the fraud works is as follows. Trader A imports goods, commonly computer chips and mobile telephones, into the United Kingdom from the European Union (“EU”). Such an importation does not require the importer to pay any VAT on the goods. A then sells the goods to B, charging VAT on the transaction. B pays the VAT to A, for which A is bound to account to HMRC. There are then a series of sales from B to C to D to E (or more). These sales are accounted for in the ordinary way. Thus C will pay B an amount which includes VAT. B will account to HMRC for the VAT it has received from C, but will claim to deduct (as an input tax) the output tax that A has charged to B. The same will happen, *mutatis mutandis*, as between C and D. The company at the end of the chain – E – will then export the goods to a purchaser in the EU. Exports are zero-rated for tax purposes, so Trader E will receive no VAT. He will have paid input tax but because the goods have been exported he is entitled to claim it back from HMRC. The chains in question may be quite long. The deals giving rise to them may be effected within a single day. Often none of the traders themselves take delivery of the goods which are held by freight forwarders.

“[3] The way that the fraud works is that A, the importer, goes missing. It does not account to HMRC for the tax paid to it by B. When HMRC tries to obtain the tax from A it can neither find A nor any of A's documents. In an alternative version of the fraud (which can take several forms) the fraudster uses the VAT registration details of a genuine and innocent trader, who never sees the tax on the sale to B, with which the fraudster makes off. The effect of A not accounting for the tax to HMRC means that HMRC does not receive the tax that it should. The effect of the exportation at the end of the chain is that HMRC pays out a sum, which represents the total sum of the VAT payable down the chain, without having received the major part of the overall VAT due, namely the

amount due on the first intra-UK transaction between A and B. This amount is a profit to the fraudsters and a loss to the Revenue...

“[5] A jargon has developed to describe the participants in the fraud. The importer is known as “the defaulter”. The intermediate traders between the defaulter and the exporter are known as “buffers” because they serve to hide the link between the importer and the exporter, and are often numbered “buffer 1, buffer 2” etc. The company which export the goods is known as the “broker”.

“[6] The manner in which the proceeds of the fraud are shared (if they are) is known only by those who are parties to it. It may be that A takes all the profit or shares it with one or more of those in the chain, typically the broker. Alternatively the others in the chain may only earn a modest profit from a mark up on the intervening transactions. The fact that there are a series of sales in a chain does not necessarily mean that everyone in the chain is party to the fraud. Some of the members of the chain may be innocent traders.

“[7] There are variants of the plain vanilla version of the fraud. In one version (“carousel fraud”) the goods that have been exported by the broker are subsequently re-imported, either by the original importer, or a different one, and continue down the same or another chain. Another variant is called “contra trading”, the details of which are explained in paragraphs 9 and 10 of the judgment of Burton J in [*R \(on the application of Just Fabulous \(UK\) Ltd\) v HMRC \[2008\] STC 2123*](#) . Goods are sold in a chain (“the dirty chain”) through one or more buffer companies to (in the end) the broker (“Broker 1”) which exports them, thus generating a claim for repayment. Broker 1 then acquires (actually or purportedly) goods, not necessarily of the same type, but of equivalent value from an EU trader and sells them, usually through one or more buffer companies, to Broker 2 in the UK for a mark up. The effect is that Broker 1 has no claim for repayment of input VAT on the sale to it under the dirty chain, because any such claim is matched by the VAT accountable to HMRC in respect of the sale to UK Broker 2. On the contrary a small sum may be

due to HMRC from Broker 1. The suspicions of HMRC are, by this means, hopefully not aroused. Broker 2 then exports the goods and claims back the total VAT. The overall effect is the same as in the classic version of the fraud; but the exercise has the effect that the party claiming the repayment is not Broker 1 but Broker 2, who is, apparently, part of a chain without a missing trader (“the clean chain”). Broker 2 is party to the fraud.”

29. Mr Selby, Mr Sayed and Mr Awan are said to have “caused or allowed” the Company’s participation in such transactions. The addition of the concept of allowing avoids the dispute in issue before HHJ Roger Kaye QC, sitting as a High Court Judge, in *Kappler v Secretary of State for Trade and Industry* [2006] EWHC3694 (Ch), being whether causing required positive action, to be sidestepped. While, as the judge found, causing may be made out through inaction, when known or obvious facts are ignored, allowing makes the allegation of inaction in the face of duty, if not actual knowledge, plain.
30. It is also contended that those defendants “knew or should have known about” the transactions’ connections to VAT fraud. Again, these are ordinary words and phrases on which legal construct has been placed, in this context through *Axel-Kittel v Belgium* [2006] ECR 1-6161. At [56] the ECJ stated that “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 purpose 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”. Where that test was met, the right to deduct input VAT on the transaction through (in this jurisdiction) ss.24-26 of the *Value Added Tax Act 1994* and regulation 29 of the *VAT Regulations 1995* would be foregone: the *Kittel* principle.
31. In *Mobilx Ltd v HMRC* [2010] EWCA Civ 517 Moses LJ said this at [59]:

“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 fraud and if it turns out that the transaction was connected with fraudulent evasion of VAT then he should have known of that fact...”.

32. At [52] Moses LJ had said this:

“If a taxpayer has the means at his disposal of knowing that by his purchase he is participating in a transaction connection 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... 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”.

33. It is clear from paragraph [52] that the reference to “only reasonable explanation” is to an example, not a test; and that is how it was treated by the Upper Tribunal in *AC (Wholesale) Ltd v HMRC* [2017] UKUT 191 (TCC).

34. In meeting the *Kittel* test it is not necessary that there should be knowledge or imputed knowledge of the details of the fraud. As Briggs J said in *Megtian Ltd v HMRC* [2010] EWHC 18 (Ch) at [37-38]

“... there are likely to be many cases in which a participant in a sophisticated fraud is shown to have actual or blind-eye knowledge that the transaction in which he is participating is connected with that fraud, without knowing, for example, whether his chain is a clean or dirty chain, whether contra-trading is necessarily involved at all, or whether the fraud has at its heart merely a dishonest intention to abscond without paying tax, or that intention plus one or more multifarious means of achieving a cover-up while the absconding takes place.

“[38] Similarly, I consider that there are likely to be many cases in which facts about the transaction known to the broker are sufficient to enable it

to be said that the broker ought to have known that his transaction was connected with a tax fraud, without it having to be, or even being possible for it to be, demonstrated precisely which aspects of a sophisticated multifaceted fraud he would have discovered, had he made reasonable inquiries.”

35. What was known or ought to have been known may be determined by looking “at the totality of the deals effected by the taxpayer (and their characteristics), and at what the taxpayer did or omitted to do, and what it could have done, together with the surrounding circumstances in respect of all of them”: Christopher Clarke J in *Red 12 Trading* at [111].
36. These dicta are all directed at the taxpayer, not the individual directors of the taxpayer. I agree with Mr Cole’s submission that in this context what they ought to know is conditioned by the requirements of s.174 CA06.

Witnesses

37. The witnesses for the Secretary of State who were cross-examined were Mr Smith, who adopted the earlier evidence of Kenneth Beasley, since retired; and HMRC officer Gavin Stock. The evidence of both was careful and straight. Each sought to give the court the fullest account of matters which were largely second-hand. The remaining HMRC witnesses attended to approve their evidence without being questioned.
38. Mr Selby, Mr Sayed and Mr Awan are at loggerheads as to their respective roles and knowledge. Each has tried in their own self-interest to minimise his own role and burden the others’. None has told anything close to a full or even coherent story, a position not explained by their reconstructing events from many years ago.
39. Both Mr Sayed and Mr Awan are men of qualities. Mr Sayed came over as a polite and highly intelligent man, the charm overlaying obvious steel. He was clever enough, often through fluent answers to questions which had not been

put, to adhere to his pre-prepared role: somebody who from his appointment on 1 October 2012 took his time learning the ropes of the business in which he had no real prior involvement, and who was reliant on Mr Selby. For the reasons I will give, that is an impossible position. I can have very little faith in what he told me.

40. Mr Awan too was polite, and clearly an assiduous and diligent worker. In closing Mr Cole characterised his client's evidence as "honest", "helpful", and "consistent", and coupled with appropriate concessions as to his own role. It was none of those. Mr Awan was a deeply unsatisfactory witness. Another motivation behind his account of the respective roles besides self-interest was his poisonous dislike of Mr Sayed. There had been no sense from the latter's evidence that there had been any serious breakdown, but Mr Awan was forthright in expressing his fear and loathing. A result was that while Mr Awan definitely ascribed most roles to Mr Selby, he would nearly always add that he "would think" that Mr Sayed was doing the same. More troublingly, as I will describe, his evidence was subject to tectonic shifts. Among these was his recanting from a denial that he had sent emails including those setting up deals 1 and 2, and his off-the-cuff averral that the challenged deals concerned the same equipment as previous deals, and that there was therefore nothing untoward in them. Had that been the truth he would have been proclaiming it from the rooftops throughout.
41. Mr Bamford is a distinguished city man and gave his evidence as such, with a tendency to lecture the court on aspects of city practice and the role of a non-executive as against executive director. He was an honest witness, even if I think him mistaken in some aspects of his recollection, in particular his supposed questioning of the Company's suddenly-expanded turnover and the answers he received. He also persisted in professed anger based on an unbalanced view as to the demise of the Company which he attributed to HMRC's removal of its VAT number. I shall say more about that below.

The Company

42. The Company was incorporated on 22 September 2009 as Ximax Environmental Solutions plc, changing to its present name on 8 January 2016. On 31 March 2011 it received its certificate under s.761 CA06 permitting it to do business. Although it does not matter, how it was entitled to that is not clear to me: its accounts to 30 September 2011, like its filed accounts for the period to 30 September 2010, showed as the only entries issued share capital of 500,000 £1 shares and “called up share capital not paid” of the same, giving it a positive balance sheet in that amount. Mr Awan apparently signed off the 2010 accounts, and Mr Bamford the 2011.
43. The Company filed a nil VAT return for the 3/12 period, and commenced business on 1 June 2012. It traded as “Ximax Water Solutions”, which was the style of the previous company, Ximax Water Solutions Ltd (“XWS”), whose business it took over.
44. On 1 March 2014 it sold the intellectual property and associated rights in the chemicals to Ximax Oil & Gas Solutions Limited, and on 20 January 2015 re-registered as a private company. According to HMRC it ceased to trade on 21 September 2015. It entered CVL on 28 January 2016, the appointed liquidator being William Antony Batty. The statement of affairs, drawn up by Mr Selby, showed a deficiency to creditors of £4,141,090. It was dissolved on 30 November 2019.
45. Nobody disputes that the Company has become insolvent within the meaning of the CDDA.
46. Mr Awan and Mr Bamford were appointed directors on incorporation, together with John William Sutherlin. No allegations are brought against Dr Sutherlin, who is an American academic and environmental scientist who has long been assisting with the Xziox product. Dr Sutherlin left his post as director on 1 April 2013 by when, on 1 October 2012, Mr Awan had resigned to be replaced by Mr Sayed. Mr Sayed held office until 1 October 2014, when Dr Sutherlin was re-appointed and Dean Anthony Cook and Michael Hunter were appointed. Those three remained in their offices until 16 February 2015.

47. Mr Selby was appointed director on 9 November 2015. Mr Bamford remained in post until 1 January 2016, having acted as sole director between 16 February and 9 November 2015.
48. None of Mr Sayed, Mr Awan or Mr Bamford now dispute the dates they held office; nor that over those dates they were directors for CDDA purposes.
49. No annual accounts were filed for a 2012 date as on 5 March 2013 the accounting period was extended from 30 September 2012 to 28 February 2013. Those accounts, which therefore cover 8 months of non-trading as well as, save for the last transaction, the period of alleged defalcation, were signed for the board by Mr Bamford on 13 March 2013 and filed on 24 May 2013. They contain a clean auditor's report, from Brian Leighton of Accura Accountants Ltd. Profit was £210,194 on turnover of £10,944,806.
50. The Company's last filed accounts, to 28 February 2014, were signed for the board by Mr Bamford on 17 February 2015. Turnover had fallen to £2,080,927 but profits had risen to £323,531. This time Mr Leighton's report was qualified, which I shall come onto as it is one of the bullets concerning Mr Bamford. Although nobody sought to make anything of it, and Mr Bamford could not explain it, these accounts also restated the 28 February 2013 figures such that every entry is different from the filed accounts: profit for that year was now said to be £514,069 on a turnover of £11,583,414.
51. The 2014 accounts are no more representative of the Company's trade at any point in the period than the 2013 accounts: the Company ceased to trade after HMRC cancelled its VAT registration on 23 May 2013, and according to Mr Bamford was unable to resume when the registration was reinstated on 20 December 2013.

The previous and surrounding companies

52. Even to Mr Sayed and Mr Awan, who were involved, the previous companies and what business within the exploitation of Xziox they may have carried out

was bewildering. Both frequently confused the Company with the immediate predecessor XWS: “names were constantly morphing into one another” observed Mr Awan. Even Mr Bamford was uncertain of the identity of the Company’s successor. The similarity of names and of trading styles, no doubt to give the impression of continuity of business, has felled not just clients but participants.

53. All were sure that the immediately previous company was XWS. It had been incorporated on 21 February 2006 as City & Home Counties Registrars Ltd, changing to Ximax Water Solutions Ltd on 30 July 2008, and changing again to Enviro Water Treatment Ltd on 11 September 2012. The adoption of the XWS style may have been the trigger for its commencing business. Its last filed accounts, to 31 July 2011, showed an apparently healthy position: a positive balance sheet of £1,248,461 and net current assets of £408,063. On 29 July 2013 it entered CVL with Martin Armstrong as liquidator. Its statement of affairs, signed by Mr Selby, disclosed no assets but liabilities of £196,307. With a share capital of £1m, the deficiency to members was therefore £1,196,307.
54. Despite his attestation of its statement of affairs Mr Selby was never a registered director of XWS. Mr Sayed was, from 29 July to 1 October 2008, and again from 25 November 2008 to 10 March 2010, and again from 9 April 2012 to 1 May 2013. So too was Mr Awan, from 1 October 2008 to 4 June 2012, nearly all its trading period. Dr Sutherlin was also a director, as were one or two others. Hilary Hilditch, Mr Selby’s wife from 1 May 2010 until divorce or separation in February 2018, was secretary from 1 November 2008 to 1 May 2012.
55. It was Mr Selby who spoke to officer Nairn of HMRC on 15 December 2008 about XWS’s business and VAT returns; and who attended the officers’ visit of 29 June 2009; and who on 21 December 2009 telephoned HMRC after its VAT registration had been cancelled; and who represented XWS at meetings with HMRC of 7 December 2011 and 29 February 2012. In the notes for the latter two meetings Mr Selby and Mr Awan are listed as XWS’s contacts for HMRC.

56. Mr Selby and Mr Awan were also, among others, directors of what from incorporation on 28 June 2001 until 12 March 2010 was known as Kamera Investments Limited and thereafter until dissolution on 5 February 2013 as Organichem Ltd (“Organichem”). Mr Selby was a director from 13 August 2001 to 28 May 2004, and again from 1 August 2011 onwards; Mr Awan between 1 May 2008 and 5 March 2010. Organichem traded in Xziox.
57. Medi-Serve Supplies (UK) Limited (“Medi-Serve”) was visited by HMRC on 26 October 2006. Mr Awan was present at that meeting as an “Administrator-to become co sec”, though he had already been appointed on 1 August 2006. The company dealt in medical products, but was looking into selling Twinoxide, the predecessor to Xziox.
58. Another distributor of Twinoxide was Ximax Limited (“Ximax”), incorporated on 5 April 2006 and liquidated through a CVL, with Mr Armstrong as liquidator, on 6 November 2009. Mr Selby was registered secretary from 1 March 2007 to 4 July 2008, when he was succeeded by Mr Awan. Mr Sayed was director from 1 March 2008. Again there were others as well, including Dr Sutherlin. Mr Selby was present at HMRC’s visit of 18 December 2007. Although Mr Awan could not recall if it had traded, further HMRC visits of 24 June and 3 July 2008 confirmed its dealings in Twinoxide.
59. Xziox Limited, incorporated on 24 April 2008 and dissolved on 19 August 2014 had only two directors: Mr Awan from incorporation to 1 March 2010, and Mr Sayed from then until 9 September 2013.
60. Mr Bamford was a director of Ximax Oil & Gas Solutions Limited (“XOG”) from its incorporation on 19 January 2011 to 1 February 2016. Mr Selby was its director from 23 November 2015 to 27 April 2017. It had two other directors, Dr Sutherlin and another. It changed its name to XOG Limited on 1 March 2017, and was dissolved recently.
61. Xziox Distribution Ltd was incorporated on 19 June 2012 and wound up on 21 March 2016 on an HMRC petition. Mr Selby was a director from 5 July 2013. There were two other directors, one being his son.

XWS's business: scope and value

62. The Company started to trade from 1 June 2012 as no more than the fresh exploiter of XWS's business. The turnover of the business it took over cannot be quantified precisely. Not only are there no filed XWS accounts after 31 July 2011, but it had failed to file any VAT returns after the period 07/11. Turnover on its last four returns before then was a total of about £1.15m in taxable supplies, with around £70,000 of exempt supplies to the EU.
63. The Company's VAT return to 06/12, covering its first month's trading, declared outputs of £28,111.
64. On 19 April 2011 the Company had filed a VAT1 form, in the erroneous name of "XimaxEnvironmental Solutions PLC", seeking VAT-registration. The applicant was Miss Hilditch, as company secretary; the nominated agent was Mr Selby, whose relationship to the Company was described as "Financial Consultant". It estimated taxable supplies in the next 12 months at £1m, and exempt supplies to the EU of £300,000. Its area of intended business was to be "Water collection, treatment and supply".
65. On 9 June 2011 Mr Selby sent HMRC a "PowerPoint presentation which provides considerable information regarding the business" of the Company, which was at that stage intended to be a holding company. "This company is to be listed as a quoted public company on the AIM stock Market later this year once all the activities are consolidated and the structure is complete". The trading business which the PowerPoint describes is that of XWS, "a dynamic water treatment company focusing on developing niche and environmentally friendly disinfection products". It was said to have been "established" in 2006, have 10 employees, and a turnover of £750,000; 45 customers were in the UK, but export sales of 55% of turnover were made to 15 countries. The size of the export market is not one which accords with XWS's returns, although XWS was proclaimed to have "developed a chlorine dioxide product range that is being used across the globe to disinfect water and improve the quality of life of millions of people". Also, even assuming that

each UK customer ordered only once a year, and that there was no real export market, order values would be an average of less than £17,000.

66. The business described is one of product rather than equipment. On 2 December 2013 Liban Ahmed of CTM Litigation & Tax Services wrote to Mr Bright at HMRC in the first full response to the removal of the Company's VAT registration in May. It was approved by Mr Selby and Mr Sayed.

“The idea for trading in chemicals stems from an approach to Mr Sayed by a Dutch company that offered him the distribution rights for the supply of chemicals in the UK. This Dutch company wanted Mr Sayed to trade their products as their official UK distributor.

“Mr Sayed spoke to his long established business associate Ian Selby who was, at that very time, looking to import chloride in bulk...

“After substantial research, Mr Sayed decided that there was a lucrative market in certain chemicals and he decided to manufacture his own product and build his own brand. Mr Sayed caused to be produced a chemical that kills bacteria in water and was designed for the fresh produce market during the washing process...

“The product was manufactured under licence...

“Further research discovered that Xziox not only killed bacteria in the water supply, it also killed bacteria on the produce and poultry during the washing process. Mr Sayed had clearly created a product that had huge commercial value and potential. From that moment, he and others, have worked tirelessly to take the product worldwide and into many other industries”.

67. Mr Sayed, Mr Awan and Mr Bamford all agree that the original Dutch product, known as Twinoxide, was subsequently modified. It was this modification which impressed Mr Bamford at his first meeting with Mr Selby and Mr Sayed at The Goring in June 2009 as showing “shrewdness”: the powdered product, disliked by farmers as it blew around, was adapted to liquid

form. Mr Awan described the original Twinoxide as a “terrible product and very difficult to handle and apply”, and the initial liquid version, made by a third party, as very expensive at about €1 (or £1) a litre. He says, and I accept, that it was he who contacted a company in Runcorn with whom he reverse engineered the product, reformulating it and taking the price down to about 15p a litre. After initial resistance from Mr Selby and Mr Sayed, this was the product which was then exploited.

68. By June 2012 the product was marketed under three brandnames: Xziox for purification of water in agriculture and horticulture, sold in the UK and abroad; BFR, a biofilm remover used to decontaminate pipelines and bodies of water, mostly sold in the UK; and Flowexel, used in the oil industry and mostly sold abroad. The products were manufactured by Superfine Manufacturing in Scotland, from where they would also be delivered.
69. Besides some small trade in chlorine dioxide, the other aspect of the business which the Company took over was, as Mr Sayed put it, “the supply of equipment relating to the chemical trade or water supply, such as tanks, pumps, pipes, meters and so on”. These were not manufactured by the Company but bought from “companies such as Pipekit or MWA”. They would be installed at the customer’s site by the Company’s engineers. This same aspect of the business was described at a meeting with Mr Bright and a colleague of HMRC on 16 July 2014 attended by Mr Sayed (as “Director”), Mr Selby (as “Shadow director”: HMRC’s view, rather than his self-description) and Sue Harvey as bookkeeper. The “core product” was Xziox, but there were also “Supplies of related equipment (pumps and tanks, water meters and pipes)... bought from Emmic or MWA or Pipekit and... installed on-site by [the Company’s] engineers”.

The pumping equipment

70. The interview notes continue:

“As for large scale equipment for the various projects, [Mr Selby] said that they were no longer taking part in this after the problems in the past... [Mr Selby] remarked (in respect of the issue with EU Traders UAB) ‘We feel we got sucked into something and are now being very cautious’”.

71. That distinction between the equipment which the Company ordinarily sold, related to the use of its products and bespoke-installed, and that which it sold under the challenged transactions is one which until Mr Awan’s, and to a lesser extent Mr Bamford’s, oral evidence was consistently drawn.

72. The CTM letter of December 2013, seeking to explain the Company’s position comprehensively and with a view to restoration of its VAT registration, said this:

“In brief, there are three main areas of business that have been undertaken by the company. The manufacture and supply of chemicals, the purchase and sale of the equipment relating to the use of those chemicals and the purchase and sale of other equipment connected to this industry. As we understand it, it is alleged that tax losses have been discovered in the supply chains relating to the sale of other equipment...”.

73. Mr Selby’s trading history provided to the creditors of the Company before the liquidation meeting of 28 January 2016 confirmed that the “average size of contract was £10,000” before stating that:

“The business traded successfully until 2012 when it became engaged in a business sector connected to the supply of water treatment equipment for use in the process for fracking...”.

74. Mr Sayed’s evidence speaks of how

“In or around 2012, we decided to expand [the Company’s] business into a related area- that of the supply of water-treatment equipment for the use of fracking.”

75. There is no doubt that even if there were some overlap between certain of the items which the Company customarily sold and those sold under these

disputed invoices, this was a new and distinct business. Even Mr Awan acknowledged that the large-priced items within the orders, being certain pumps, were not items which the Company had sold before. Moreover, as will be seen below, this was a business of an entirely different character from the Company's ordinary business, involving different suppliers and customer. I will adopt the phrase used in the evidence of "pumping equipment" when describing the equipment sold under the challenged deals, whatever the particular function of each item; the equipment previously sold is sometimes referred to as "dosing equipment".

The alleged fraud

76. The alleged fraud consisted of 28 transactions, 27 carried out between 3 September 2012 and the end of December 2012, and the 28th in March 2013. In each the final customer was EU Traders UAB ("EUT"), a Lithuanian-incorporated company. In each the Company was, in MTIC parlance, the broker: the final UK company before sale into the EU. Each was for pumping equipment apparently related to fracking, with considerable overlap between the particular items ordered.
77. The immediate supplier to the Company was, for the first two deals, both in September 2012, P.H.B.S. Distribution Ltd ("PHBS"). For deals 3-9, between the end of September and the middle of October 2012, it was Revolution Trade Ltd ("Revolution"), which was also the immediate supplier in deal 27, for which its invoice is from mid-October but the Company's invoice to EUT 27 December 2012. The immediate supplier in the remaining 18 deals, from the end of November 2012 onwards, was Innocent Wholesale Limited ("Innocent").
78. Owing to its failure to provide any paperwork, who supplied Innocent is not known. PHBS was supplied by Revolution. For deals 1 and 3-7 Revolution was supplied by H.M. Foam Distributors Limited ("HM Foam"). For deal 2 Revolution was supplied by TP Foods Ltd ("TP Foods"). HMRC believe, and I accept, that TP Foods was also its supplier for its other deals, 8, 9 and 27.

79. Looking at the companies involved from the bottom up, HM Foam was incorporated on 2 November 1983. It has two directors and shareholders, Barrie and Pamela Lane, although it is now run by their sons, George and Daniel. On 1 July 1985 it applied for a transfer of the existing partnership's VAT number, with the classification of "furniture and floor coverings"; from 5 September 2003 this was changed to "other wholesale".
80. HMRC visited HM Foam on 18 February 2014 and met Mrs Lane and her sons. HM Foam had four staff, all family friends. It supplied foam, wholesale and retail, and provided upholstery services in the local Wiltshire area. It had never done anything else. None of the Lanes had ever heard of Revolution, or PHBS, or the Company. The purported invoices from HM Foam to Revolution contained errors in its address and postcode, and a different heading from HM Foam's own. The telephone and fax number were also wrong, as was the numbering sequence. Payment was sought not into HM Foam's UK account, but to DBS Bank in Hong Kong.
81. HMRC regards HM Foam's identity as having been "hi-jacked" for use in these transactions. I agree.
82. The same is true of TP Foods, which was incorporated on 1 November 2010. Its sole director and shareholder is Timothy John Pearce. It was registered for VAT on 3 December 2010, its business activity being "Importing and wholesaling of fine foods". It traded under the name "GR Fine Foods", which was a business it had taken over. When HMRC visited its premises in Devon on 8 January 2013 it found foodstuffs, soft drinks, and chocolate. On a further visit on 6 March 2014 Mr Pearce was shown purported TP Foods invoices to Revolution with VAT totalling £623,146. He said none were his. They were in the wrong format, with the wrong address (Slough, not Devon), and signed by someone called Narayan Kumar who was never a director. The products, silver grain, the particular soft drinks, and pumping equipment, were not sold by TP Foods. He had never heard of Revolution.
83. Revolution was incorporated on 24 October 2011 and wound up on 24 April 2015 on an HMRC petition. It never filed any accounts. Its sole director and

holder of the single issued share was Mahfuj Ahmed. Its invoices to the Company for pumping equipment, which were paid, totalled £1,585,542, according to the invoices disclosed by the Company; Revolution's own have different figures, and slightly different reference numbers. Its business activity for VAT purposes was "wholesale confectionary items", and it gave PHBS a VAT certificate with the trade classification of "Wholesale Fruit/Veg Juices & Soft Drink". Other than pumping equipment, of which these were its only deals, and in both of which it purchased from hi-jacked companies, it traded in precious metals and confectionary. It filed no VAT returns from 5/12. On 15 October 2012, before deals 7 and onwards, its VAT registration was cancelled. That same day HMRC officers visited its registered office in a block of flats in E14. The lady who answered the door said that Mr Ahmed had been the previous tenant, but had moved out about 6 months before. Post was still received for him. Officers visited again on 4 February 2013. A man answering the intercom said that Mr Ahmed had left about 8 months before, with no forwarding address. On 10 April 2013 HMRC wrote to the flat notifying an assessment of £411,711, which in November 2014 was increased to just over £4m. They were contacted by Mr Ahmed on 29 August 2013, and he later provided some incomplete documents. He said that actually he had been at the flat during the February 2013 attempted visit.

84. PHBS was incorporated on 24 October 2002 when its trade classification was "purchase and selling of general fancy goods, golf equipment, bikes and other sports equipment". When HMRC officers visited on 3 September 2012 its Peter Harpham confirmed that it was trading in silver. On the next visit, eleven days later, officers met Mr Harpham and the sales manager, Zulfiwar Mahmood, who said that the main business activity was now purchasing raw precious metals. It had in fact just raised the invoices for deals 1 and 2 to the Company for £81,874 and £200,254 respectively, plus VAT, on 3 and 12 September, although neither they nor the two related purchase invoices of the same dates and for £81,242 and £198,872 plus VAT were included in PHBS's own VAT return. Mr Harpham said they "would do anything to make a profit". After a further visit on 26 September 2012 it was deregistered for failure to provide evidence of its trade, or of intention to trade.

85. It is possible that the Company had traded with PHBS before deals 1 and 2. There exists a distribution agreement dated 26 August 2010 by which XWS allows PHBS to distribute Xziox within the UK. This apparently bears the signature of Mr Awan, but having confirmed in cross-examination that it looked like his signature he later said he could not remember signing it, and if put to choice then he would say that he didn't. There is no positive evidence of such trade, and anyway it would relate to Xziox rather than pumping equipment. PHBS filed dormant accounts for the year ends 13 October 2009, 2010 and 2011, and none thereafter.
86. On 15 November 2013 Mr Harpham wrote to the Company, as "Dear Sirs", having received an "Information request" from it. He confirmed the "listed transactions", presumably deals 1 and 2.

"As to the nature of the business, we were approached by your employee Mr Mark Tidswell regarding the sourcing and supply of bespoke dosing equipment for your water disinfection business. We had many discussions over some period of time attempting to supply your company's requirements although ultimately we failed to come to a mutually satisfactory conclusion...

I proposed to Mark that [the Company] take over chemical & equipment supply to some of our existing contracts, pending my forthcoming retirement. This was ultimately agreed whereby Ximax would secure an agreeable commission against each transaction processed".

87. So far as anything can be gleaned from that, it seems to be concerned not with pumping equipment but the bespoke equipment which the Company supplied anyway. It bears no relation to the distribution agreement.
88. Innocent had been incorporated on 4 April 2012. It never filed any accounts and was wound up on 20 January 2014 on an HMRC petition presented in October 2013. Its trade classification was "Wholesale of confectionary items", in which according to HMRC officer Pearce it did trade. On registration for VAT on 14 May 2012 it estimated its taxable supplies over the next 12 months at £100,000. Its returns between 08/12 and 2/13 declared sales

of more than £10m. The last contact from its director and sole shareholder, Masum Rahman, who operated from his home in a block of flats in E2, was on 29 April 2013. It was de-registered the next day. On 5 April 2013 Mr Rahman had told HMRC that its only supplier was TP Foods.

89. EUT was incorporated in Lithuania with effect from 27 August 2008, and was registered there for VAT from 27 September 2010 with the trade classification “Wholesale of Tobacco Products”. In 2011 HMRC made a Standard Committee on Administrative Co-operation (“SCAC”) request of the Lithuanian authorities in connection with EUT’s trade with another UK company. They replied that EUT was submitting its VAT returns “and declares only very small input VAT. This company shows almost no economic activity”. In May 2013 another SCAC request was made. Although the Company’s last invoice to EUT, for deal 28, was dated 18 March 2013 it had de-registered for VAT three days earlier. On 15 April 2013 EUT made an application to be re-registered, which was declined as it could not prove its area of economic activity. According to its VAT returns, there had been no economic activity since June 2011 “except [a] small amount of purchases in Lithuania (stationery items, bills for mobile, and other current expenditures)”. Its only declared sales were between October 2010 and May 2011, totalling €256,671, with inputs of €235,059. “We suspect” said the Lithuanian authorities “UAB ‘EU Traders’ of being a missing trader”.
90. In September 2013 there was a further SCAC request. In answer, the Lithuanian authorities said that they had asked EUT for explanations of its transactions with the Company. A written answer had been provided, signed by its director Nadeem Ahmed, to say there had been no such transactions.
91. The Company had billed EUT about £5.7m for the 28 deals, all or most of which was paid.
92. In 2013 Mr Ahmed was found to have been knowingly involved in the illicit deduction of VAT in 6/06 and 12/06, in sums of around £2.4m: *Face Off South Ltd v HMRC* [2013] UKFTT 358 (TC).

93. The Company carried out little effective due diligence on its new trading partners. Mr Sayed said that for PHBS, Revolution and Innocent it had received copies of certificates of incorporation, letters of introduction, their VAT registration, personal identification “and other documents”; “In the industry we were working in, it was reasonable for us to believe that such was ample and sufficient”.
94. No critical eye seems to have been applied to those documents. As above, the VAT documents evidenced areas of business activity for each of PHBS, Revolution and Innocent far removed from the specialist world of fracking equipment. The PHBS introductory letter of 28 August 2012 was signed off by “Frank” as “Sales Manager”, not Mr Harpham as director or Mr Mahmood who was the sales manager. It was said that PHBS “specialises” in the “sourcing and distribution of a wide variety of commodities and products” which were identified as including “oil, metal, metal ore, scrap, HMS1 and HMS2 and water products along with their various chemicals and treatment equipment... we have a wide spectrum”. Curiously, the letter was addressed not to the Company but to Ximax Water Solutions Ltd.
95. Innocent provided additionally its standard terms and conditions of sale. They related to food rather than pumping equipment: “The company will not accept return of refrigerated lines”.
96. Further, despite the size of these contracts, there was no other verification which might be considered standard: checks at Companies House or with credit reference agencies, or third party references.
97. No more was done on the customer, EUT, even though its ability to perform was critical to the contractual chain: although the Company ordered the pumping equipment, it would pay its suppliers only once paid. The certificate of registration EUT provided was in Lithuanian. Its undated letter of introduction, to which Mr Ahmed had not affixed his signature and which was not addressed to the Company, or anybody, gave a different address from that which was to appear on its purchase orders. The letter did at least describe a general trade “in the sourcing and distribution of a wide variety of

commodities and products specifically relating to the water treatment and purification industry”. There does exist a 13 September 2012 written memorandum between EUT and the Company, but that concerned not the pumping equipment but a right to act as distributor of Xziox; Mr Awan also said that his signature on it was forged.

98. Nor was additional due diligence on EUT thought necessary despite the pumping equipment being delivered not to one of the given Lithuanian addresses, but to France. The delivery address provided for each shipment was on the outskirts of Paris: “EU Traders, 45 Rue Pierre Curie, 93120, La Courneuve”. No checks were made as to EUT’s connection with this address to which the valuable pumping equipment was being sent. In August 2013 the French authorities provided a formal response to a SCAC request. The only business at the address dealt in wholesale textiles, and had no knowledge of EUT or of deliveries for it at the premises.
99. The firm entrusted with delivery of the valuable pumping equipment was described by the Company as being Pulse Logistics. No firm of that name was ever VAT-registered. It seems that it became Pulse Logistics Limited when incorporated on 31 January 2013, which was VAT-registered from 1 February 2013. Its director, Arif Suleman, produced records for its deliveries for the Company at an officers’ visit of 1 October 2013. Mr Suleman confirmed that the goods had been delivered to France “by his driver”, and said that that driver had been paid by the company receiving the goods in France. Mr Suleman “describes himself as a Logistics Driver delivering small packages (1kg) local area”, being Balsall Heath, Birmingham.
100. No due diligence was carried out on Pulse, which was an unexpected choice for delivery of the pumping equipment. It was apparently collecting, transporting and delivering the pumping equipment, yet there were no enquiries as to its insurance position, nor systems in place to ensure that it was collecting and delivering goods which matched the orders. It was apparently for Pulse’s driver, also unascertained, to ensure that on each delivery the pumping equipment was in proper condition: its invoices to the Company include itemised descriptions of the transported goods, matching the pumping

equipment within each deal, with a condition report: “Pristine” was, for example, entered for deal 1. Either the Pulse driver was writing that, or whoever received the goods in France.

101. To evidence the deliveries being made Pulse also provided HMRC officers with Eurostar booking details for each journey. Several of those show a journey time less than the 7 hours 35 which the French authorities consider the round trip from Eurostar to La Courneuve would take.
102. More seriously, because despite reservations expressed by Mr Stock it is expressly not part of the Secretary of State’s case that the pumping equipment did not exist, as evidence of its receipt someone apparently from EUT applied to the delivery note and/ or packing list stamps: one which just reads “Recus”, and the other which reads “EU Traders UAB, 45 Rue Pierre Curie, 73120, La Courneuve, France” and then gives its Lithuanian VAT registration number. 73120 is in the Alps. Nobody at the Company noticed the discrepancy. It is strange that a company should go to the trouble of having a stamp made, to authenticate documents on its behalf, with the wrong department code.
103. Declared outputs in the Company’s VAT return to 9/12 (filed on 7 November 2012) leapt by more than £1m from 6/12 to £1,051,052; and again to £10,476,149 for 12/12 (filed on 23 April 2013). Only about half of that jump was attributable to the pumping equipment deals, the rest to an expansion of the Xziox trade with Surfachem Limited (“Surfachem”) which is not challenged in these proceedings. Even without that, the increase was substantial and obvious. The 28 deals were invoiced at £5,757,663, and therefore averaged more than £205,000 each as against the previous average of £10,000. EUT paid all or most of this amount: while some invoices were paid exactly, there were many payments made in round and unextrapolated figures. Certain payments came from Hong Kong, through Commodity Solutions.
104. Despite the large turnover, the Company’s profit was minimal. Its purchases were £5,648,034 plus VAT of £1,129,579, a margin of less than 2%. The VAT on those purchases was reclaimed by the Company on its VAT returns for 9/12, 12/12 and 3/13 (filed on 5 June 2013).

105. There was never any written contractual documentation as to any part of the deals, whether between the Company and its supplier, or its customer, or the transporter.

A Kittel Fraud?

106. HMRC has a number of internal indicators of MTIC fraud, which it considered met by the Company. They include back-to-back deals with large turnover but small profit margin, over which there has been a lack of ordinary commercial care and due diligence, including as to inspection of goods, insurance and written contractual terms.
107. As the Defendants say, that the HMRC indicators are met does not mean that there was an MTIC fraud. There are here present certain high level indications that these were genuine commercial transactions: they concerned real goods, shipped and delivered, and bought and sold for money paid. But against those are a plethora of unusual aspects. These deals were between parties with no, or no meaningful, previous trading relationship. They concerned specialised equipment which had never previously formed part of the business of any of the companies, except that the Company had dealt with certain of the items before, and was outside the business activities which each had declared to the relevant tax authorities. Despite the lack of previous relationship or experience the deals were high value, back-to-back, and conducted with no sensible due diligence and no written contracts. The pumping equipment was not inspected and not insured. These deals were for the same or similar equipment, for the same end client, yet placed as multiple orders from different suppliers. Revolution and Innocent were newcos trading from blocks of flats. A phonecall to HM Foam or TP Foods would have revealed that they had no knowledge of what was being done in their name.
108. This is a case in which the only reasonable explanation for each of these transactions, because no distinction is to be drawn between them, is that they were connected to fraud. That was something which given the unusual aspects the Company knew or should have known about. The Kittel test is therefore

met. An additional reason for that finding is that if these really were legitimate trades then at least one of the defendants would have been able to provide full justification. Absent that, Mr Sayed's rhetorical wondering about how such fraud would benefit anyone at the Company, especially as it was looking to raise further monies through listing, cannot be sufficient displacement.

HMRC's treatment of the fraud

109. As mentioned, HMRC withdrew the Company's VAT-registration following the meeting of 23 May 2013 between its Mr Bright and Mr Selby and Mr Sayed, and restored it on 20 December 2013 after receipt of the CTM letter. At the same time it created an extended VAT period of 1 April to 31 December 2013. On 18 February 2014 it notified the Company that it would carry out extended verification for that period.
110. The result of that was an assessment letter of 29 September 2014. The first, and relevant, assessment was to disallow the Company input tax on the 28 deals, totalling £1,129,579, for Kittel reasons. The Company appealed this to the FTT on 8 October 2014, but withdrew the appeal on 17 December 2015 as liquidation beckoned.
111. On 21 December 2015 the Company's VAT registration was again cancelled, because it had ceased to trade on 21 September 2015. By then further penalties and assessments had been raised.
112. On 28 July 2016 Mr Selby was issued with a personal liability notice for £1,650,817 for deliberate inaccuracies in the Company's returns and knowing participation in transaction chains linked to fraud. That is subject to ongoing appeal.

The roles of the Defendants, and their knowledge of MTIC fraud

113. Mr Selby, Mr Sayed and Mr Awan may not have wanted to say much about the genesis of these 28 deals or how they were carried through but, however tarnished, they were real deals put together and approved by individuals.
114. Mr Selby and Mr Sayed have each acknowledged that, as must have been the case, both the commencement of this new area of business and its cessation were deliberate decisions.
115. In his report to the Company's creditors at the CVL meeting Mr Selby stated that:

“The business traded successfully until 2012 when it became engaged in a business sector connected to the supply of water treatment equipment for use in the process of fracking. This business was introduced through a third party contact of an ex-employee, and although it was not in line with the normal core business... it seemed to offer a simple opportunity to make a small profit without the need to tie up any working capital as it was virtually self-funding.

“The trade continued for about eight months and produced a turnover of several million pounds, but the extremely small profit being generated in relation to turnover was having a detrimental effect on the company as it was seriously distorting the otherwise high gross profit margin. This meant that statistically a false impression of the company's performance was being created and on that basis it was decided to discontinue with the low margin trade”.

116. It may be observed that Mr Selby has typically melded the Company's business with XWS's, and his description of the introducer both removes the Company's directors and leaves a number of candidates. The working capital point is on its face only partially true, although, sensibly, none of the parties has sought to investigate this as a matter of accounting at trial: as the supplies to EUT were VAT-free and the Company's profit margin thin, more fell to be paid on any deal by the Company to its VAT-registered supplier than it received from EUT.

117. Mr Sayed's evidence falls into the same pattern. I have already quoted the first sentence of this, from his witness statement:

“In or around 2012 we decided to expand XES's business into a related area- that of the supply of water-treatment equipment for the use of fracking. We structured our trade in this area to be largely self-funding and accordingly we were fully aware that the profit margins would be low. However, given the growth of unconventional fossil fuel extraction around the world, we thought that this was potentially a major growth market for our products. We genuinely believed that it was an opportunity to gain a small profit for limited risks attached”.

118. Mr Sayed's answer in cross-examination by Mr Cole that “we” just meant the Company was not just crafty but fails to draw away from these plain statements: there was a deliberate decision, by someone, of the strategic type which ought to be made by the Company's directors. He agreed with Ms Newstead Taylor that he was a part of the decision-making process to sell pumping equipment, which was a new area of business for the Company; but maintained that he was not involved in the decision to cease. As he was a director by then, that is most unlikely.

119. In his opening, Mr Sayed was as keen as Mr Selby to obfuscate the origins of this business.

“Like I say, it's not clear when the companies in question were onboarded and by whom. It's not clear under what circumstances these 24 transactions took place, like who dealt with them, what was the process of that.”

120. He then developed one of his themes:

“It's not clear how and when I would have been expected to know that there's something wrong, given that it's a short period of time in terms of five months from my directorship to the last allegation, if you like”.

121. Mr Awan's evidence has been constricted by his depiction of himself as an ordinary employee. In his first affidavit he said this of the four deals which concern him:

“Although my tenure as director is linked to 4 deals... I would state that I have never met with any of the companies mentioned, and any contact I may have had was to simply service an enquiry that I was asked to do, as any employee of a company would do when asked to do so by their respected [sic] line managers”.

He then denied sending the emails which we will look at below initiating the transactions, a denial which has now been withdrawn.

122. On 28 November 2017 he was interviewed under oath and with a Perjury Act warning by the Official Receiver. He said:

“In respect of the pumping equipment, the suppliers were obtained from the list compiled by Mark Tidswell and I sourced the client”.

123. The client would be EUT. Contrary to what Mr Awan said in cross-examination that passage clearly relates to the pumping equipment: it starts by reference to the pumping equipment to distinguish that from the previous dosing equipment sales which he had just been discussing.

124. The PowerPoint which Mr Selby sent HMRC on 9 June 2011 “provides considerable information regarding the business”, as he wrote in his covering email, including the roles of the participants.

125. First among the personnel to be described were himself and Mr Sayed, under the heading “Company Founders”, Mr Selby as “Corporate Consultant”, Mr Sayed as “Chief Operations Officer”. Mr Selby had “35 years of management experience”, “Member of the Institute of Commercial Management”; “Past Fellow of the Institute of Financial Accountants”. Mr Sayed had “20 years of International Business Development & Sales Management experience; “Providing Leadership & Direction”; “Oversees business development, marketing, human resource and administrative affairs”.

126. Next listed were “Key Personnel”. Mr Bamford was first, as “Chairman of the Ximax Group of Companies”, whatever that was. Then Mr Sayed came again, followed by Dr Sutherlin; then a Ray Taylor, being a “Technical Director” and Mark Tidswell, “Technical Services Director”; he was a qualified chemist, with 25 years of experience, and a “Specialist in Chlorine Dioxide”. Mr Awan followed as “Group Operations Director” with “20 years of Sales Management and operational experience”; “Specialist in corporate strategy development and implementation”. Mohsin Farhat was “Director International Distribution & Marketing” and Emma Kingsley, “Business Development Manager”.
127. This PowerPoint separates the founders, Mr Selby and Mr Sayed, from the rest. Neither was a registered director of the Company at the time: they were Mr Bamford, Mr Awan and Dr Sutherlin. Other non-directors also carried a job description including the epithet “director”.
128. Although in his affidavit Mr Sayed agreed he was a founder of the Company, in cross-examination he explained that he was a founder of the business only. Where the Company was to be the vehicle for the business that is a distinction without a difference. The Company was founded with its 500,000 issued shares split equally between Hilary Hilditch, shortly to be married to and representing Mr Selby, and Sonia Edwards, Mr Sayed’s wife. By the annual return to 22 September 2012 they had been joined by other shareholders including Mr Bamford, but still held c.34.5% of the shares each. Ms Hilditch’s holding was transferred to Oil and Gas Chemical Holdings Ltd by the time of the 2014 annual return, but that too held its shares for Mr Selby. There was no other alteration.
129. Mr Sayed protested that his wife had invested £30,000 in the Company and held her shares for herself and not him. As I have said above, the Company’s first two filed annual accounts do not support any money having been paid for the shareholdings, and there is no later evidence of payment by these two ladies. It is also notable that Mr Selby’s statement of affairs on liquidation identifies only 2 issued £1 shares, one each to himself and Mr Sayed. That is wrong, as the annual returns show, but his belief demonstrates the underlying intent. It was Mr Bamford who raised the other investments for the Company

in a subscription period which ended on 30 November 2011. In this, as in other matters, Mr Bamford's independent evidence is of assistance. "I was perfectly well aware that the two wives held the stock for their respective husbands" he says. Other investors and raisers of investment, Giles Bark-Jones, a solicitor of Bark & Co, and Scott Kinnear-Nock, a former head of Nomura Singapore, who had both been on board since before 2009 also knew this, he said: "It was no secret".

130. Since Mr Sayed introduced Twinoxide to Mr Selby they had exploited it together. It would only be expected that each would be involved in the strategic decisions concerning that exploitation. Aside from them and Mr Awan, no names for other directors actively involved in trading have been suggested.
131. Mr Selby and Mr Sayed were, as the CTM letter stated, "long established business associate[s]". Neither's affidavit addressed that association, but in evidence Mr Sayed said they had first met in about 2000 at a networking event in London. Mr Selby was 20 years his senior, being born in 1947, and Mr Sayed believed he was an accountant: he had a certificate in his office which seemed to justify that (and on the 1 November 2012 HSBC mandate form, Mr Selby so described himself). Mr Sayed viewed him as "more professional" than he was, surrounded by "credible people" like lawyers and ex-bankers.
132. Mr Awan also saw in Mr Selby an image of the experienced business man: he was "a sort of grandfather figure... he was a person of influence that we did look up to... inspiring" and "motivating". He managed to agree with Mr Sayed that for both of them Mr Selby was the closest figure they had for experience and guidance. Like Mr Sayed, Mr Awan considered Mr Selby as an accountant or "financial person".
133. The Twinoxide opportunity was one Mr Selby and Mr Sayed seized after they had been released from prison, when other opportunities were unlikely to be flowing.
134. On 7 May 2004 both Mr Selby and Mr Sayed were convicted in the Birmingham Crown Court for roles in the theft of the Cheney pension fund.

Mr Selby was sentenced to 54 months imprisonment and disqualified as a director for seven years. Mr Sayed was sentenced to 42 months imprisonment and was disqualified for five years. Mr Sayed said, and I accept, that while they were both involved in the same crime, they had not had much contact and knew each other only “a little bit”. That may have been because on 18 October 2001 Mr Sayed had been convicted of six offences of conspiracy to defraud and five offences of money laundering, for which he was sentenced to five years imprisonment. Those derived from his involvement in a mortgage fraud in which, according to HMRC's statement of case in the FTT proceedings, false paperwork had been used to obtain mortgage advances totalling some £6.5 million.

135. On 6 July 2004 Mr Selby suffered a further and more material conviction of 12 months imprisonment for money laundering in relation to VAT carousel fraud. Although not mentioned in his evidence, his knowledge of MTIC fraud cannot sensibly be denied. When HMRC visited XWS on 29 June 2009, Mr Selby is recorded as telling them “that he was well aware of this type of fraud. Selby added that he knew Officer Barry Patterson who had visited him in the past about other companies”. On HMRC’s visit to Ximax on 18 December 2007 Mr Selby had been given notices including “How to Spot VAT Missing Trader Fraud”; the notes record him as stating “he knew all about carousel fraud and said that he though we (HMRC) had put a stop to all that”.
136. Mr Sayed denies being aware of MTIC fraud until after these transactions were first queried. By July 2014 he could, as he told HMRC, give the bookkeeper a “thorough knowledge of carousel fraud claiming that he knew this inside out. He had realised that first orders should not just be seen as a sales opportunity but should ring alarm bells”, but that was only because of his recently-acquired knowledge. He emphasised that unlike Mr Selby he had never been convicted for MTIC fraud, which is right. He did appear in what is probably the prosecution’s case summary for a hearing at Horseferry Road Magistrates Court on 28 March 2003 concerning Mr Selby, which refers to Mr Selby’s saying that Mr Sayed had “pestered him to become involved in the business”, and that he had done Sonia Edwards, now Mr Sayed’s wife, a

“favour” in giving a letter of reference. Mr Selby had also apparently attended Horseferry Road to “assist” Mr Sayed’s own bail application in July 2000. These are thin matters to set against the fact that, although named, Mr Sayed’s role did not lead to his being charged along with the five defendants.

137. They are, though, indications of the sheer unlikelihood that Mr Sayed, as he avers, remained unaware of Mr Selby’s conviction for MTIC money-laundering. He had been on the fringes of what was going on. Once out of prison each had the common experience of prison to talk about. Together they decided to direct their efforts to trading Twinoxide, and founded a series of businesses to do so. Mr Sayed is right to say that at the time of Mr Selby’s MTIC conviction he was in prison, but that is an example of his building evidential compartments for himself.
138. Mr Awan and Mr Bamford also say that they were aware of the convictions of Mr Selby and Mr Sayed, but not the details. I accept what Mr Bamford says, but not Mr Awan. Although not to the same extent as Mr Sayed, and never as a shareholder, Mr Awan was embedded in this organisation. From 2008 he had been a director of XWS, and was so through most its trading life; also from 2008 he had been a director of Organicchem and of Xziox Limited, and secretary at Ximax. Mr Selby’s evidence carries little weight, but he says in his Part 18 response that he told all the others of his convictions: “it was never kept a secret”. That reflects what one would expect over the years, between the executive directors. It also seems to me most unlikely that the HMRC visit of 29 June 2009 to XWS, in part to discuss the risks of MTIC fraud, was not discussed by Mr Selby with the director, Mr Awan. Mr Awan was a diligent man, and would have wanted to know. Similarly, even if he were right, which I do not think he is, that he had left the 26 October 2006 meeting at Medi-Serve early, so had missed the advice as to due diligence and third-party payments, and had then not seen the 31 October follow-up letter addressed to the director, Mr Hamid, including MTIC advice, he would have been anxious to know what HMRC had been saying. He may have professed in evidence that “I didn’t buy that company”, but the HMRC note is clear: “This company was purchased by Mr Awan and Hamid in April 06 for £2,500-£3,000 as

TOGC”, or trading as a going concern. The adviser to Medi-Serve’s customer in Dubai was Mr Awan’s brother.

139. The approach to Mr Bamford in June 2009 was what led to the incorporation of the Company, on his advice, as a “clean company” to be a suitable vehicle for investment and ultimately floatation. He was avowedly a non-executive director from incorporation until January 2016, shortly before liquidation and long after the Company had ceased to trade. He had 30 years management experience, and had been a winner of the Public Investment Award, and a Fellow of the Chartered Institute for Securities and Investment, which is by election only. “I took no active part in the day-to-day management of the Company” he says; “I invested in the Company. However, my actual role was to leverage my contacts and my reputation in order to expand the Company by attracting investors. I had no other role or involvement”; “I was never involved in any trading decision”. He says that he spent the first two years after appointment getting to know the product and the business “and how I would profile it as an investment”, the business then being run through XWS. £230,000 was raised for the Company in an offer window ending on 30 November 2011. Why there was then a delay of 6 months before the Company started to trade is not explained. He was a co-signatory on the bank accounts with Lloyds and HSBC, because of his role as chairman: he did not use his powers save perhaps once to pay for a shareholder lunch.
140. Mr Bamford had been told by Mr Selby and Mr Sayed that “they had served prison sentences... and they both made it very clear that they wanted to rebuild their lives” through the product, which Dr Sutherlin thought “probably the best water disinfectant in the world”, and Mr Tidswell thought in the top three. Mr Bamford considered the potential for the product “enormous”, and in closing described his pride in backing “a world class water treatment product”: “my efforts, advice and guidance have financially allowed it to happen”. As a member of the Roman Catholic church, Mr Bamford said he believed in giving people a second chance. Save to rule out “something really grotesque”, he did not ask what the sentences were for, but he did tell Mr Selby and Mr Sayed that they could not be directors were the Company to

float. He thought they were not likely to breach the law again as “I think they had hopefully learned their lesson by going to prison”. He was comforted by the quality of people who had invested money, including Mr Bark-Jones and Mr Kinnear-Nock.

141. Mr Bamford’s description of his role is supported by others. Mr Selby says he was “a non-executive Director and took no part in the day to day running of the company”; he “had absolutely no involvement in the day to day running of the business and was there only to assist with Investors”. Mr Awan says that Mr Bamford was “responsible for shareholders and the general raising of the profile of the company”. The only example of ordinary management which has been pointed is that on 13 March 2013 it was Mr Bamford who informed HMRC that the Company’s name on its VAT registration required correction. “I was probably helping out”, he said.
142. Mr Bamford stands apart from the other defendants in the credibility of his evidence. He says that it was Mr Selby who incorporated the Company, and that everybody else- Mr Sayed, Mr Awan, Dr Sutherlin and Mr Tidswell- agreed. In cross-examination by Mr Cole he said he would call those five “the team”. He perceived Mr Selby and Mr Sayed, who had presented themselves to him as the founders, as “joint chief executives” who were “kind of on a par”, Mr Selby’s role being akin to a finance director, Mr Sayed’s to a sales director. Mr Awan he viewed as an executive director, with a “lower management role” than Mr Selby and Mr Sayed, dealing as he was with poultry and very seldom at meetings (he later said he had never met him), “but I still perceived him to be somebody who had a management role in the Company”. He thought that all three dealt with customers.
143. With the assistance of various bookkeepers, it was Mr Selby who managed the accounts and made payments and dealt with statutory filings. Mr Sayed and Mr Awan agree with that. Mr Bamford and Mr Sayed each stated that when at a (purported) company meeting attended only by the two of them on 8 May 2013 it was resolved that “Ian David Selby be authorised on behalf of the Company to deal with and sign all and any financial and legal documents including all company bank accounts”, that was no more than a formalising of

the existing position. The extent of Mr Selby's control even before then is shown by his signing the 1 November 2012 HSBC mandate as chairperson of the (purported) directors' meeting at which the resolution was proposed, a far remove from Mr Selby's averred position as a "part-time... self-employed financial consultant", assisting Mr Sayed and Mr Awan with unspecified "discrete, individual projects". HSBC confirm him as the "founder" and the "main point of contact" in the Company. He it was who sent HMRC the PowerPoint in which, even if under the tag "Corporate Consultant", he is first-named. Mr Sayed and Mr Awan both balked at the descriptions of themselves in that document, and certainly it seems that the 20 years of experience ascribed to each is exaggerated. Their appearance and their roles, though, accord with Mr Bamford's perception of them as directors, even if the details differ, Mr Sayed being "Chief Operations Officer", Mr Awan "Group Operations Director".

144. Mr Sayed agrees that he was operations director from the time of his appointment in October 2012, and meaning, at least before 2013, operations in the field rather than the office. That distinction was not in his written evidence, and in my view his role is more aptly shown in his being named as "Operations Director" of the Company on the 26 July 2012 Lloyds mandate. He said he was just asked to be on that mandate, as it was better to have multiple signatories so more were available to carry out the business. The choice was him, though, rather than Mr Awan who was a registered director, even if, as he said, he was only to make payments if Mr Selby were away. Mr Sayed was also giving a guarantee to HSBC on 8 August 2012, up to £6,000, although not a registered director: "As I remember I was the only person at the time that passed the credit and I was willing to commit to this for a period of time as I totally believed in the business".
145. That ignores that this was his business, and always had been. Like Mr Awan, he was already an experienced director of companies dealing in the same product. No doubt, as he said, he was on the road sometimes two or three days a week selling, but that would not prevent him from having oversight of what was happening to the business otherwise. I can accept that when he

became a director of XWS in 2008 he did not fully understand his responsibilities, and had a better understanding by October 2012 when appointed to the Company, but his evidence on this hides behind two facts: first, he says that Mr Selby had set up XWS, which as to paperwork is probably right, but chooses to ignore that Mr Sayed must have been a part of that decision, as shareholder in a company dealing in Twinoxide/ Xziox; secondly is his needing time after formal appointment to the Company in October 2012, when the first few deals had already occurred, to pick up the reins and understand its business. As Mr Bamford said, Mr Sayed was always intimately involved in the project which was intended to make his fortune.

146. Mr Awan was not on the bank mandate and was not a shareholder. In September 2017 he told the Insolvency Service that “I was a director of this company in name only... I had no powers or authority, and only remained a director as I was promised shares, bonuses and promotion etc. When I realised nothing was ever going to materialise, I resigned my directorship and left their employment as soon as I could”. What promotion was available from being a director is not clear. He remained employed by the Company for a further 11 months, until September 2013.
147. As with Mr Sayed, I accept that when Mr Awan first held directorships in 2008 those were new roles in which he was inexperienced. But, as also with Mr Sayed, by 2012 he had significant experience as a director, in companies connected to Twinoxide and Xziox. He had been a director of XWS throughout its trading life; and it was that business which was segued into the Company. He had also given two personal guarantees for XWS to Bibby Financial Services Limited (“Bibby”): the first, on 23 April 2010 for £25,000, the second on 1 December 2010 for £50,000. Whether they were cumulative nobody could recall, but Bibby later presented a bankruptcy petition against him, which was met by payments by, I understand, the Company. Mr Awan said that he had been coerced into giving the guarantees by Mr Sayed, but his example of coercion was that Mr Sayed had told him that “Well, you’re not a player, then”.

148. Mr Awan’s account of himself as a mere employee at the Company is incompatible with the account he gave the Official Receiver, and with the evidence of others. In his first affidavit he stated that “My initial role in the [Company] was in sales and marketing, assisting in creating marketing and content for the website. My role then evolved into primarily a sales focused role in cold calling clients... My role then developed further into specialising in the poultry sector”. That may have been true of how he started at XWS, but not at the Company.
149. By his second affidavit he was saying that “my role was... purely an advisory one in respect of the technical side of the business, focusing on the poultry industry and equipment procurement under the guidance of Mark Tidswell, who reported to [Mr Sayed]”; “equipment was sourced under the guidance of Mark Tidswell, with the supervision of [Mr Sayed]... Any dealings with suppliers were initiated by Mark Tidswell under the supervision of [Mr Sayed]”; “My position in the [Company] was limited to technical assistance and I had no other authority whatsoever... I had no authority whatsoever to oppose any decision made by” Mr Selby and Mr Sayed.
150. That last point I accept to an extent: Mr Selby and Mr Sayed were the main individuals and shareholders, who had originally interviewed Mr Awan together, and two against one. That did not prevent Mr Awan from participating in management, or persuading them, as he had over the creation of Xziox.
151. By his third affidavit, while still denying directorial responsibility and loading it onto Mr Selby and Mr Sayed, Mr Awan was more open about what he was actually doing: “my role... was focussed on sales and marketing and also helping customers with technical matters”. He maintained that it was Mr Tidswell rather than himself who sourced suppliers; and that due diligence on them and on customers was the responsibility of Mr Selby and Mr Sayed (in cross-examination he accepted that actually he had seen the PHBS due diligence, but had not noticed anything wrong).

152. It was only in this affidavit that Mr Awan acknowledged that he had had dealings with PHBS, limited to “some contact”. As we will see, it was Mr Awan who put together the first two deals.
153. In cross-examination Mr Awan agreed that his specialist area was sales and marketing, “with a high degree of quite technical support as well”, and that he was a director with no express limit on his role who ought to have been more active. He also managed to say “My role was primarily sourcing equipment...”, before contesting that, as always, sign off would be required by Mr Selby or Mr Sayed.
154. As with Mr Sayed, a constant theme of Mr Awan’s evidence is not telling it how it was. He has marched through three affidavits giving different accounts of his role, and done the same in cross-examination, denying his clear averment to the Official Receiver on 28 November 2017 that it was he who sourced the client in the challenged transactions. As to his role, a month before, on 23 October 2017, he had written to Zoe Hughes at the Insolvency Service stating that “I was a director in a technical capacity my day to day role was to assist clients in technical matters and to liaise with certain suppliers in respect to sourcing equipment... In my role as a director in technical matters I met with various clients both in the UK and abroad, assisting them with technical issues, this was predominantly in the poultry sector in the UK which also involved selling chemical solutions for this particular sector”.
155. Mr Awan’s repeated obfuscations are deliberate, and with the intent of avoiding disclosure of his real role in the challenged transactions. He dealt with customers and technical issues and suppliers and had large autonomy in the field of poultry. His finding of EUT as a client was consistent with Mr Sayed’s description of him as responsible for “sourcing equipment, engineering and international contacts/ customers”, even if “hand on heart” he could not say that Mr Awan had sourced the pumping equipment “and understood those trades and sold them”. That seems to me an example of Mr Sayed’s own cloudings of the waters: EUT was not a client of the Company for anything but pumping equipment. Mr Awan’s involvement as a director, although with less voice than Mr Selby and Mr Sayed, is also consistent with

Mr Bamford's informed views. No doubt, as with everything else, Mr Selby and Mr Sayed had to approve the movement into this new area of business; but I am satisfied that Mr Awan was involved in that decision too.

156. I am also satisfied that from the time he was appointed director of the Company (and indeed, although this is immaterial, before) Mr Sayed was, as he himself described, operations director or, as Mr Bamford put it, sales director, but also with Mr Selby joint chief executive. On 19 September 2017 Melvyn Langley of the auditors, Accura Accountants, emailed Catherine Taylor at the Insolvency Service: "Main contact Ian David Selby, Selby in control of all finances, Sayed was principally the sales operation, however Selby did defer many issues to Sayed, especially when discharging debts, however it was crystal clear from instructions and information sent... in connection with audit that Selby was the principal provider of information. The audit files clearly state that Selby was the main person and instrumental in connection with assisting auditors". I bear in mind that this relates to a period after the challenged transactions, but it demonstrates Mr Selby and Mr Sayed working together, and Mr Sayed's control over sales.
157. The evidence of Mr Selby being with Mr Sayed joint chief executive, finessed by Mr Bamford as including the role of finance director, is overwhelming, and I am satisfied that he was until formal appointment as a director of the Company a de facto director. His fingers are all over every aspect of this business, and had been since Twinoxide was first exploited: to be expected as he was a founder. Mr Stock of HMRC described Mr Selby as "the one constant presence during contacts with both [the Company] and its 'predecessor' companies". Although not formally a director, it was he who attended HMRC meetings for whichever company was involved; and, to reiterate a startling example already mentioned, he it was who signed off the statement of affairs for XWS having never been a director. All agreed that Mr Selby was a director of the Company in all but name. Mr Bamford, the last remaining director before Mr Selby took over to oversee the Company's entry into liquidation, said that decision had been Mr Selby's. In August 2017 Mr Bamford had completed an Insolvency Service form asking him to identify

who was responsible for eleven different functions, from dealing with customers and suppliers through to hiring and firing of staff, the preparation and submission of VAT returns, and payments to suppliers. His answer to each was Mr Selby. When Mr Awan resigned as director it was Mr Selby he emailed. After he left as employee, it was Mr Selby who signed the “Confidentiality Non Disclosure Agreement” of 16 December 2013.

158. There can be no doubt that Mr Selby and Mr Sayed were also involved in the decision to trade in the pumping equipment, and they who decided to cease that trade.

The pumping equipment deals

159. I have already given an overview of these, and concluded that they were each transactions connected with MTIC fraud. So far as can be discerned, how did they come about, and who effected them?
160. Again, what is remarkable is how little Mr Selby, Mr Sayed and Mr Awan have to say. No doubt that is again deliberate. Together with the Surfachem deals of around the same time, these were the largest deals the Company had ever done, both individually and collectively. The small office must have been buzzing. No, said Mr Sayed, who professed himself not involved on a day-to-day basis and certainly not with these deals, of which he was unaware until the “back end of 2012”, there was no real excitement: these were just commodity deals, though with very high turnover he had been told. No, said Mr Awan, who had “not in the slightest” been involved in the decision to enter this market, nor (as he initially professed) been involved in any of the deals, and was unaware of the decision beyond hearing things “being mooted around” in the office, such that he only knew there was “activity taking place” around pump sales.
161. As already mentioned, Mr Selby’s CVL report identified a third party contact of an ex-employee having introduced the pumping equipment deals. In

common with his fellow directors he professes not to have known of the deals at the time. He lays responsibility at the feet of Mr Sayed and Mr Awan.

“The Company sold pumping equipment used for fracking, for which commission was earned. As I understand it, in terms of the sale process, the sales staff would first set the specifications for the supply. In turn, the buying clerk would source what was needed from a designated pool of suppliers, the members of which were determined by [Mr Sayed and Mr Awan]. The sales staff would then carry out marketing on the Company’s behalf to potential customers. Engineers would then survey the envisaged work sites. Equipped with the results of the survey, the sales staff would then price the job and hopefully close the deal”.

162. That sounds like an amalgam of the pumping equipment sales, and the ordinary dosing equipment: Mr Selby seems to refer both to bespoke equipment (for a surveyed site) and standard equipment (the specifications already prepared). As we have seen, the pumping equipment sales were not on a commission basis and involved no surveys. Mr Selby does not explain who the sales staff were, or what training they had in this specialised field, nor who the suppliers were. It can be noted that the Company was marketing equipment which it had already specified and sourced before finding a client.
163. Mr Selby does identify “another individual who played an important role in [the] trades... Mark Tidswell, a technical engineer employed by the Company at the relevant time and who has since died. He set up the trades which HMRC later disputed”.
164. Mr Awan says that it was Mr Tidswell who “developed” the suppliers list for the pumping equipment together with Mr Sayed. He was pivotal to “engineering and sourcing equipment”, being a “highly regarded chemical engineer who had immense technical knowledge”. Mr Selby describes him as a “senior person with the [Company who] reported to the directors”, and had him in the PowerPoint as “Technical Services Director”. None of these tasks obviously align with setting up the pumping equipment deals or marketing.

Also, Mr Tidswell committed suicide in, says Mr Awan, mid-2012. Even taking that date up to September or October, the majority of the deals took place without him.

165. Mr Sayed's account in oral evidence was that he assumed that Mr Tidswell had been gullible and taken in by PHBS; the pumping equipment was not bespoke; it was possible that EUT had contacted the Company, as although the Company did not supply this sort of equipment its website advertised its involvement in oil and gas; and PHBS had not sold direct to EUT as it did not know them. He recognised that the pumping equipment would have to be sourced "from major players", even if the immediate suppliers were not those. So, he seems to think that these deals were initiated either by EUT or the supplier to the Company on the first two deals. Why EUT would not just go straight to the manufacturers of the pumping equipment is not explained by anyone.
166. We do have most of the email chains for the first two deals (and only those). These were the emails which in his first two affidavits Mr Awan denied sending. His retraction in his third affidavit was so subtle that it may have been missed: "I had some contact with [PHBS] on behalf of [the Company] in August and September 2012 as referred to in Mr Beasley's first affidavit... I dealt with PHBS in good faith under the instruction of Ian Selby and Al Sayed. I had no reason to believe that PHBS was anything other than a bona fide supplier of pumping equipment". PHBS was apparently on the list compiled by Mr Tidswell, with assistance from Mr Sayed. Until the retraction, it was Mr Awan's case that someone else had sent these emails using his name falsely.
167. Prompted by we do not know whom or what, it was Mr Awan who initiated the deals.
168. At 15.44 on 29 August 2012, Frank, the sales manager at PHBS emailed Mr Awan with a heading "Request for company documents": "Thankyou for your email of yesterday". Frank asked to be sent "your company details for our records (VAT certificate and Company registration documents)". It does not

therefore sound as though there had been any recent trading relationship. “Upon receipt we will be in a position to quote you a price on the items that you requested”.

169. So, Mr Awan had approached PHBS asking it to supply particular goods, being pumping equipment. The only explanation we had in the written evidence for why it had gone to PHBS for this specialised equipment, especially as they had had no recent (if any) dealings, rested in the Tidswell/Sayed list of suppliers. In cross-examination Mr Awan said for the first time that Mr Sayed had asked him to contact PHBS. “As I understood it, [PHBS] were supplying ProMinent gear, ProMinent is a well-known manufacturer of dosing equipment. Mark Tidswell had some involvement in it, which was a cushioning factor...”. Asked if he had found PHBS from the Tidswell list, Mr Awan stated that he “would have given us some direction on the manufacturing side”; that I take as a negative. There would be no need to deal direct with the manufacturer said Mr Awan because “this industry is well known for working through distributors”; which does not explain why PHBS, which no-one says was an authorised distributor, would count. Mr Awan said that he did not contact any other suppliers on the list over this potential order because Mr Tidswell “would have gone through that process to identify who the best people were, the best prices, etc”.
170. Mr Awan also denied that his contact with PHBS was because he had been approached by EUT, although that would at least tally with what he told the Official Receiver in 2017 about his locating EUT as client.
171. Mr Awan stated that the Tidswell list covered both ordinary dosing equipment and the pumping equipment.
172. At 16.09 Mr Awan emailed Frank at a different address from the one Frank had just used, so they probably crossed. “Further to our recent conversation please send me an updated product list together with prices as we are in the process of supplying for a project”. The project had therefore come first. Mr Awan now could not recall if it was for EUT. “...if your prices are suitable we may well be able to use your company, also in order to expedite matters I

will send you our company information together with our requirements for this particular project”. Where the “conversation” fitted in we do not know. Unlike Frank’s of 15.44, this email indicates that the initial enquiry was outline only, rather than being for specific equipment; it also seems that prices had not been settled. The Tidswell list was not, therefore, conclusive. Mr Awan said that he would discuss the products with Mr Tidswell.

173. At 16.38 Frank emailed attaching a quotation, on non-headed paper, “on the specific products discussed”; he reiterated that he required copies of the Company’s documentation for KYC purposes; and warned there would be no release of goods before payment.
174. Any doubt that EUT was actually the client vanishes with the next email, at 16.44, from Mr Awan as “Operations Director” to Nadeem at EUT. “Further to our recent conversation please bear with me as I am awaiting pricing for your dosing equipment and analysers together with associated peripherals, I will endeavour to get you this by close of business today”.
175. Mr Awan maintained that he had not found EUT as a customer. The Official Receiver interview was put to him: “In respect of the pumping equipment, the suppliers were obtained from the list compiled by Mark Tidswell and I sourced the client”. Mr Awan’s deflection was that he understood pumping equipment and dosing equipment to be the same; and that he had sourced dosing equipment for his poultry clients. The interview is clear in what it is dealing with; and if Mr Awan had been intending to refer to poultry clients, the plural would have been used.
176. He also denied that he had ever spoken to EUT: it would be Mr Selby or Mr Sayed: “our” conversation means the Company’s. That is implausible.
177. The next day at 12.26 Nadeem Ahmed emailed “Mr Tahir” asking if he now had his list of products and prices.
178. At 12.56 Mr Awan sent Mr Ahmed a quotation for pumping equipment.

179. Mr Ahmed replied at 13.41, to say he had reviewed the list of products, and was interested; he wanted to know if there was further movement on the prices, and whether delivery would be included: it will be to “France in which we will advise you of the delivery address”.
180. At 14.41 Mr Awan confirmed that prices were final. He enclosed a revised quote with delivery to France, and lead times 14 days from cleared funds.
181. In cross-examination Mr Awan said for the first time that he thinks that EUT contacted Mr Sayed and tried to negotiate with him, as it was Mr Sayed who had introduced them. As to the pricing, which Mr Awan seemed to have concluded, “I would have spoken to Mr Sayed and he would have provided further instruction in that department”. Delivery would be arranged by Mr Selby or Mr Sayed, who would relay the answer to Mr Awan. Mr Awan could not explain how there could be a quotation for delivery to France without a delivery address. He agreed that as he was the contact for EUT and PHBS, all information was flowing through him, but Mr Selby and Mr Sayed were “100% aware” of these emails. This is a series of implausible answers, especially as neither of the other two operational directors were parties to or copied into this correspondence.
182. At 16.46 on 30 August Mr Ahmed sent Mr Awan a purchase order dated 31 August.
183. On 31 August at 10.41 Mr Awan emailed Frank at PHBS. “Further to our recent discussions” he attached a purchase order; “as mentioned time is of the essence and would appreciate a rapid response as I would not like to lose this client”. “I will let you know a delivery address as soon as I receive it”.
184. Mr Awan said the discussions would have been with Frank or Peter Harpham. The purchase order would be created by Mr Selby or the accounts department.
185. At 10.56 Frank sent Mr Awan a pro forma invoice, directing payment to DBS Bank, Hong Kong; account name Commodity Banco Limited. It was for £81,874 + VAT, totalling £98,248 and including £5,000 marked “contingency”.

186. Mr Awan agreed a contingency was odd in an equipment supply; and that he had not noticed payment to Hong Kong. He would have given the invoice to Mr Selby.
187. At 11.53 Mr Awan sent Mr Ahmed the Company's pro forma, telling him that no action would be taken until cleared funds had been received. The Company's pro forma named "Tahir", Mr Awan, as the "Sales Person". It was for £83,512 and itself included a contingency, now at £5,100. This pro forma simply uplifted each figure in PHBS's by 2%, and would again have been prepared, said Mr Awan, by Mr Selby and the accounts department.
188. Mr Awan now said that he had "been asked to deal with certain parties at the request of Mr Selby, Mr Sayed. I'm not acting as some Lone Ranger on my own here". The last remark I agree with.
189. At 13.52 on 31 August Frank sent Mr Awan product lists.
190. On 3 September 12.08 Mr Ahmed confirmed to Mr Awan that payment of £83,512 had been made. He asked him to "check and confirm so that I can forward you delivery details".
191. "That's great news" Mr Awan replied at 12.31, "and yes the money has been received in our account", so he wanted the delivery address. Mr Selby and Mr Sayed would have told him about the receipt of money, he said.
192. The next day Mr Ahmed provided Mr Awan with a delivery address: 218 Rue Dugay Trouin, 62100 Calais. "Please advise of any more products for sale" he said. At 12.24 Mr Awan thanked him for the information. "Will get back to you shortly".
193. The Pulse delivery note for this deal has a date of 5 September, with a goods received date of 25 September and a delivery date of 26 September. The reference is "XMX261". It looks as though it was dealing with the Company, and delivery was arranged on that date. Mr Awan said that he did not deal with delivery, or with the change in delivery address to La Courneuve at some point between 4 and 26 September. Neither was he aware that the pumping

equipment was for onward delivery to the Middle East. The EUT due diligence would have been dealt with by Mr Selby, he said; and, when pressed, he assumed by Mr Sayed as well.

194. Mr Awan also confirmed that EUT had not specified a maker for the pumping equipment. It could, he said, deduce it from the references on the Company's pro-forma invoice: so, DME/ DMI would signify Grundfos equipment, a "highly regarded manufacturer". That adds to the commercial unreality of this deal, and the disquieting silence over how it came about. Despite his contention that he thought the pumping equipment the same as dosing equipment, he agreed that the highest-value pump, reference DMX at £16,121, was not a typical dosing pump, and was "quite specialised".
195. As Mr Cole acknowledged, Mr Awan caused this deal to be effected; and so too deal 2.
196. This deal was initiated by EUT at 17.48 on 5 September, when Mr Ahmed emailed Mr Awan: "Enclosed is a list of products, can you please return the list with the prices and the availability".
197. By 12.50 on 6 September Frank was emailing Mr Awan referring to his "request of earlier" and enclosing a quote.
198. At 16.59 Mr Awan sent Mr Ahmed a quote: "If you require any further information or assistance please do not hesitate to contact me". As is clear, Mr Awan was Mr Ahmed's contact point at the Company.
199. On 7 September at 14.58 Mr Ahmed sent Mr Awan a purchase order totalling £204,270.
200. At 15.53 Mr Awan told Frank at PHBS that the Company would like to go ahead with quote; and at 16.04 Frank sent through a pro forma, at £200,264 plus VAT, now seeking payment to the Chapeltown branch of Yorkshire Bank. Mr Awan said he did not notice that change at the time, but he would have passed the document to Mr Selby (and, again when pressed, Mr Sayed).

He said later he would more often given documents to Mr Selby than to Mr Sayed.

201. On 10 September at 10.55 Frank asked Mr Awan for a purchase order for deal 2, which Mr Awan sent at 11.23. Frank also thanked him for the payment of the balance of the invoice for deal 1.
202. Over the next two days there followed further communication between the two regarding invoices.
203. Mr Awan protested “I didn’t put these [deals] together”, but he did: he is not telling the Court that they were pre-packaged; instead we see him negotiating with the supplier and the customer. He was the contact for both. There is no documentary evidence of anybody else at the Company approving the deal.
204. On 24 September Mr Awan wrote to Mr Selby, notifying him of his intent to leave the Company and asking for the removal of his name from “any official documentation” at Companies House or elsewhere “with immediate effect”. He said that there had been discussions ongoing for several months before. He would have left earlier, but the Company was his only source of income, and the Bibby petition was still on foot which was to be settled by the Company. He notified Mr Selby as the one who dealt with Companies House. He agreed that he resigned as a director on 1 October, but remained with the Company as employee.
205. For deals 3 and 4, the other two deals which form part of the allegations against Mr Awan, the supplier was Revolution. For both, its invoices are dated 24 September, and the Company’s 25 September. The Company’s pro forma invoices for these deals and each of the 28 deals named Mr Awan as salesperson, by typing in “Tahir”. For deal 28, while Mr Awan was identified on its first page, “Sue” was typed into the second, being one of the bookkeepers; but Mr Selby crossed that out and wrote in “Tahir”.
206. Just as he had said for PHBS and deals 1 and 2, Mr Awan said “I had no contact” with Revolution. “It would have to be either Selby or Sayed. It would have to be one of them”.

207. Mr Awan must know. He was still in the office for deals 3 and 4, and all the rest. He had been instrumental in deals 1 and 2. His name was on the pro forma invoices as sales person. EUT was the client putting huge business the Company's way, and which Mr Awan was so keen not to lose. Yet he could not recall any hand-over to anyone, or say why he should not still be involved after 1 October. He admitted that he had never told EUT that he would no longer be dealing with them.
208. In my view, the likelihood is that Mr Awan continued to be the Company's man for all these deals, as director for 3-4, and as employee for the remainder.
209. It is further inconceivable, given the way the Company was structured and the relationship between the parties, that Mr Selby and Mr Sayed did not also approve the pumping equipment deals, as an area of business and individually. It was they who, with an eye to listing, took the decision to end them as they were, as Mr Selby said in his CVL report and Mr Sayed confirmed, creating a misleading picture of high turnover and low profit, when the Company's Xziox business was actually, although of much more modest turnover, also considerably more profitable.
210. The 28 deals were each connected to MTIC fraud. Each of Mr Selby, Mr Sayed and Mr Awan was already aware of MTIC fraud. These pumping equipment deals were manifestly not genuine commercial transactions. Mr Selby, Mr Sayed and Mr Awan have each chosen not to give a true and full account of them.
211. In my judgment, each knew that these transactions were connected to the fraudulent evasion of VAT, as is the Secretary of State's primary case.
212. Each is therefore unfit within the meaning of the CDDA.
213. I must address two other matters before considering period.
214. First, Mr Awan says he understood the allegation against him as being that while the Company's purchases were in issue, the onward sales to EUT were not; and hence his affidavits had not dealt with them. That derived from

infelicitous wording in Mr Beasley's second affidavit, which had intended to clarify that the denying of input tax on the EUT sales was not relied on. There could be no proper understanding of the allegation in that limited way, as the final sale was an integral part of each transaction and, as Mr Cole agreed, the way in which it was carried through would be evidence of the fraudulent, or otherwise, nature of the transactions. Although I have taken this into account, it does not assist Mr Awan as he has not dealt properly with the stages of the transactions which he did consider live; and he has now had the opportunity to give his evidence fully orally.

215. Secondly, there is the further part of the allegations against Mr Selby and Mr Sayed that they caused or allowed the Company wrongfully to claim VAT inputs on the deals. As Ms Newstead Taylor accepted, this does not add anything material. That the Company later completed VAT forms including them is an aspect of the transactions. The forms themselves are not alleged to be wrong. The denial of the input claims is a matter for HMRC consequent on its view of the nature of the transactions. At most there is a factual issue raised over who caused or allowed these claims to be made. Here, Mr Selby effected them, and Mr Sayed allowed them.
216. Looking at the *Warry* classification these are top bracket cases.
217. The main protagonists were Mr Selby and Mr Sayed. Mr Selby is 74, and a top bracket disqualification will probably end his business career. But as he has not appeared that is speculation, and anyway would probably be true of any disqualification period. The evidence is that he was the leading protagonist, though camouflaging his role by taking no formal appointment. The evidence is also that at least in the early, pre-Company, stages both Mr Sayed and Mr Awan looked up to him as a guide in the world of business. I accept that that remained a tinge in his relationship with Mr Sayed, and a weightier factor with the more retiring Mr Awan.
218. I will disqualify Mr Selby for 14 years.
219. Those distinctions mean that Mr Sayed's disqualification should be for a slightly shorter period. I accept his evidence that he is now a more

knowledgeable director than he was then. Although I was given no details, he also said that he was a director of the now-successful exploiter of Xziox. Like the other defendants, he has open to him an application under s.17 of the CDDA. Also like them, a small reduction in the period is not going to alter those consequences.

220. I will disqualify Mr Sayed for 13 years and 6 months.
221. Mr Awan was only involved in four of the 28 deals, but they were the first four. Again, I am sure that he is now a much more capable director than he was then, but his evidence at trial has been profoundly unsatisfactory.
222. I will disqualify Mr Awan for 11 years.

Mr Bamford

223. Mr Bamford was a director of the Company for all its trading life, and nearly all its life, formally handing over to Mr Selby only for the liquidation. He was sole appointed director from 16 February to 9 November 2015. His own description of his functions, as a highly experienced non-executive director and chairman, with a fine level of investment management knowledge, bears repeating. “I took no active part in the day-to-day management of the Company”. “I was never involved in any trading decision”. “I invested in the Company. However, my actual role was to leverage my contacts and my reputation in order to expand the Company by attracting investors. I had no other role or involvement”. His first two years after appointment were spent in getting to know the product and the business “and how I would profile it as an investment”, albeit that he was gaining that knowledge by looking at the business carried on through XWS and probably XOG. He had no service contract defining his role.
224. In his very short witness statement Mr Bamford confirms that “I took the decision to delegate the active operations of the Company to my fellow directors which was entirely reasonable for me to do”. Those directors he

names as Mr Sayed and Mr Awan, though in his oral evidence he was clear that the delegation was also to Mr Selby.

225. He had invested £75,000 in the Company, and was rewarded modestly for his day a month in the office: £56,650 in total. His role did not change after raising the initial tranche of monies in November 2011, as “I was looking to the next stage of the process”, being building the Company towards a listing.
226. Mr Bamford emphasised his role as looking after the interests of the shareholders and ensuring the Company’s duties to them were fulfilled: “...my responsibility was to the shareholders as much as to the management”; as the non-executive chairman, he was “the person that shareholders would be willing to put money into a company [with], to raise that money, and to eventually list the company on the London Stock Exchange. That was the plan”; “you keep forgetting the shareholders... the main role of running a company is [that of] the chief executive and the executive team, and the... main responsibility of the non-executive chairman is the relationship between the company and its shareholders. I think it’s really important for you to understand that”. So, while Mr Bamford agreed that he had to “make sure that they are running the business properly”, it was for the executives to “supervise and control” the Company’s affairs.
227. Mr Bamford assisted with the expansion of the Company’s business where he could. He made introductions to the Centre for Environment, Fisheries and Aquaculture Science, to Lloyd’s of London, and to Denbies vineyard. He also described reading a Schlumberger report on the volumes of water used in oil production, and the problems which that industry encountered with bacteria creating flow-restricting biofilm. He sensed an opportunity, and contacted Dr Sutherlin to ask if he had tried Xziox in secondary-recovery wells. Dr Sutherlin proceeded to carry out tests in Oklahoma, with positive results, and Mr Selby and Mr Tidswell were brought into the discussions about where this might be taken.

228. As part of his functions Mr Bamford saw management accounts occasionally, and whenever he saw Mr Selby he would discuss the business with him. The management accounts showed, among other things, turnover and profit.
229. I have not seen Mr Selby, but Mr Sayed and Mr Awan depicted him as a man of some charisma. Whatever, despite his background, including the two convictions of which Mr Bamford did not ask the details, and his unwillingness to act formally as a director of the Company or its predecessors, and to hold his shares in the names of others, Mr Bamford has been accepting of what he says, both in relation to the Company and this litigation. After a letter from the Insolvency Service of 11 October 2017 outlining matters being considered as to unfitness, and sending a reply averring his strongly disputing the allegations, later the same afternoon Mr Bamford wrote that “Mr Selby has always agreed to represent us in this matter... he would like to meet you to resolve this matter”, and Mr Bamford provided his formal authorisation to allow Mr Selby to deal with it on his behalf. Mr Bamford explained that that was because Mr Selby was telling him that there had been no VAT fraud. In the same vein, Mr Bamford failed to answer any of the Part 18 questions save to say that “I refer to the Replies provided by the First and Second Respondents”, which he confirmed, while apologising for this approach, he had not read. Mr Bamford was also a party to the 8 May 2013 formal authorisation of the existing position through the appointment of Mr Selby to deal with the Company’s financial affairs.
230. Despite his functions, including his acknowledged obligation to ensure that the business was being properly run, his preparation of the Company as a clean investment vehicle, and his protection of shareholders, Mr Bamford was blind as to what was actually happening. He was not aware of the pumping equipment deals until the 24 October 2013 meeting with Clive Bright, HMRC officer, which he attended with Mr Selby, Mr Sayed, Mr Langley and Mr Leighton.
231. He had by then on 13 March 2013 signed off on behalf of the board the Company’s accounts for the period to 28 February 2013 which encompassed 27 of the deals. The directors’ report recorded that “...following the

acquisition of development assets from [XWS]” the business is now “fully integrated”, which is reflected in the accounts. It noted that because of the change in accounting period included were three historically slow months. The change in period had been “required in order for the company to raise fresh capital on the GXG Market”. Then this: “We have spent time and money on a number of experimental trial contracts relating to High Volume Waste Water, and although high volume and low on margin, they were self funded by way of pre-paid order”; but the “focus” was on developing and promoting the “core business activities”, being the Xziox product, with “potential ‘brand name’ companies” on the horizon.

232. This report was written by Mr Selby. Mr Bamford first said he thought the “High Volume Waste Water” was a reference to the Sutherlin trials, but next said that these were trials subsequent to those, which Dr Sutherlin had told him generated small profits on large turnover. I do not think that this honest witness had any clear recollection of what he had thought or been told. He did remember going through the figures in the accounts to look for rounding errors.
233. In the same way, he had no convincing or consistent recollection about what he had done with the management accounts he saw. He assumed, as must have been the case, that he saw the huge leap in outputs from September 2012 onwards. He first said that he thought that this was connected with the product’s being used in the secondary recovery of oil, as a result of Dr Sutherlin’s investigations. Next, avoiding the question put as to what attempts he made to find out, he recalled that “I was told that there was a trial going on in the oil sector, to prove the oil sector. It was low margin, I was told, low margin/ high turnover but it was a trial” which he “assumed” the executive directors were running to follow up on recommendations made by Dr Sutherlin and Mr Tidswell. He agreed that he had just assumed that the purpose of the trial was “to create proof of principle in the oil recovery sector”. He did not know where it was being held.
234. Not to investigate with thoroughness this extraordinary uplift in the Company’s turnover is, in my judgment, a reprehensible abrogation of duty;

and that is actually so whether the uplift was owing to business which was legitimate or not.

235. Mr Bamford was in his position, as he insists, to protect the shareholders' investment. Finding out why there had been such a leap is obviously a part of that duty, just as it would inform his role in ensuring that the Company was in a position to be taken to market. He needed to know what this represented so he could explain to existing and potential investors all aspects of the Company's business, to convince them of its ongoing merit or to sell it to them; but also so that he could advise the Company on how from a listing view it would be perceived, and how it could best be exploited. He knew he needed to know this: that was why he took two years to familiarise himself with the business before seeking investors in 2011.
236. On his day a month allocated to the Company the effort to ask what business it was which had led to this vast expansion was minimal; indeed, it seems to me basic information which any non-executive director would require to inform themselves as to how the business was being run by those to whom it had been delegated. Even were his recollection that he had been told that this was related to trials correct, in fulfilling his roles he would still be bound to ask what those trials were; what product areas they related to; and how as trials, which are normally an expense, they had generated both large turnover and profit. Moreover, having been the instigator of the Sutherlin trials, he would have an especial interest in that.
237. In contrast, the Secretary of State's complaint that Mr Bamford failed properly to follow up the auditors' warning in the accounts to the year end 28 February 2014 is not justified. Mr Bamford signed these for the board, by now himself, on 17 February 2015. Mr Leighton of the auditors noted that there was limited evidence as to stocks, as there had been no physical counts; and that the Company's records were not such as to assess their quantity, condition, value, or existence. Mr Bamford said he talked about this with Mr Selby, who said he was dealing with it. More cogently, the Company was no longer trading, so Mr Bamford's failure to investigate further is understandable.

238. Finally, the Secretary of State alleges that Mr Bamford abrogated his duties in his failure to engage with HMRC.
239. The 24 October 2013 meeting was the only one which he attended. He confirms that he had not seen the HMRC letters to the Company referred to at that meeting, nor asked to see them. It was at this meeting that for the first time he discovered the pumping equipment transactions and that they might have been connected to MTIC fraud. Despite expressing himself as very concerned he made no arrangements to receive HMRC correspondence from thereon. Instead, he left these matters in the hands of Mr Selby and Mr Sayed and told them to sort it out. “I agree, this looks bad” admitted Mr Bamford. He insisted that Mr Bright had told him that he did not need to attend more meetings.
240. Though addressed to the directors, Mr Bamford therefore did not see HMRC’s follow-up letter of 26 November 2013, complaining about “vague replies” and listing outstanding issues.
241. On 24 June 2015 HMRC emailed a letter to Sue Harvey the bookkeeper, but cc’d to Mr Bamford, to whom the letter was addressed. It told him that the current VAT debt was £3,731,926. Mr Bamford was “of course” concerned. So he telephoned Mr Selby and asked “how are we getting on dealing with it; and he obviously satisfied me”, although he could not now remember how. He did not check what Mr Selby was doing, nor take any steps to ensure that the up-to-date VAT reports requested by HMRC had been provided.
242. On 29 July 2015 Mr Bright wrote to Mr Bamford chasing information “first requested over 7 months ago” from the Company. Failing a satisfactory response by 14 August, he would issue a number of assessments, together with a notice to produce records which, if not complied with, could lead to daily default fines. He told Mr Bamford that Mr Selby had made some “cursory attempts” to explain some of the transactions; and while Sue Harvey has been
- “...extremely helpful (and to a degree successful)... there are certain matters that, as she has indicated, require input at director level. Whilst Ian Selby’s involvement is acknowledged this has

generally failed to provide the necessary information and consequently I would therefore welcome a meeting with you (as the sole appointed director of the company) to discuss my ongoing enquiries into the VAT affairs of your company... May I ask at this stage that you kindly contact me in order that we can agree a suitable date, time and venue for a meeting (my telephone number and email address appear at the top of this letter)?”

243. Mr Bamford agreed he must have received that letter, but that he did not reply nor make any attempt to arrange a meeting. That was because “I had passed that over to Mr Selby and I didn’t have the necessary information that they were wanting”.
244. Mr Bright had actually hand-delivered this letter at the Company’s offices. He met Ms Harvey and asked her to hand it to Mr Bamford. It is a sign of how matters were that she said she would give it to Mr Selby; Mr Bright repeated his request; Ms Harvey was not to be shaken; Mr Bright insisted. On 3 August, after Mr Bright had chased, Ms Harvey emailed to tell him that “the letter has been passed on to Mr Stephen Bamford, by Mr Ian Selby”, so she got her way.
245. Around an hour and 20 minutes before Ms Harvey’s email, Mr Bright had emailed Mr Bamford directly, attaching the 29 July letter. “I would appreciate your response within the timescale set out in my letter. In the absence of a satisfactory response... I will proceed with the actions proposed in my letter. Your confirmation of receipt of this message would be appreciated”. It was not forthcoming.
246. Mr Bright sent another letter to Ms Harvey, copied to Mr Bamford, on the same date, 3 August. The email asked for a VAT report for July 2015. The letter contained detailed requests as to the VAT periods 3/15 and 6/15; it asked for copies of documentation, and explanations of transactions; and a response by 21 August. Were it easier, Mr Bright was happy to visit.
247. Mr Bamford agrees that he did not reply, as he “wouldn’t have had any of the information”. He would have taken it up with Mr Selby and asked him to

provide the information to HMRC, rather than to himself: “that has to go down as my mistake”.

248. At the visit on 1 September 2015 Mr Bright asked about his 29 July letter, as he had received no reply. Ms Harvey said she passed all correspondence to Mr Selby, Mr Sayed and Mr Bamford. Mr Bamford told the Court, it was not to him.

249. These are few, but sorry, exchanges between HMRC and the Company’s only registered director, Mr Bamford. He has abrogated his duty in favour of the person who, he now knows, has behind his back conducted the pumping equipment transactions which HMRC are alleging are connected with MTIC fraud, and in respect of which they are assessing the Company for millions of pounds. He has continued to do so even though he is being told that Mr Selby is not providing the required information. The purpose of the requests is to obtain that information not through Mr Selby, but specifically through Mr Bamford as director; and who as director could compel Mr Selby or Ms Harvey or anyone else still connected with the Company to produce it. It is because he is the director that he is being appealed to. Yet at most he turns again and again to Mr Selby.

250. This is also in my judgment a serious dereliction of duty. It would be so even on the large and most beneficent assumption that now he was sole registered director Mr Bamford’s role remained as limited as it had been before, as Mr Selby was dealing with everything else. Mr Bamford has lost sight of the interests which even on his own account he was there to represent.

251. Each of these grounds leads to a conclusion of unfitness.

252. The effect on Mr Bamford, who supported Mr Selby and Mr Sayed in part from charity, and whose career has been one of distinction, is more pronounced than it would be on many directors. I have therefore considered whether a period at the bottom of the lower bracket is appropriate.

253. Why I think not is that Mr Bamford still evinces no real appreciation of what went wrong, or the seriousness of it. He still insists on the fact that he was not

running the business, and so because of his own lack of knowledge attendance on Mr Bright would have achieved nothing. More troublingly, despite what he now knows, he blames HMRC for the demise of the Company in the removal of its VAT-registration after the meeting of 23 May 2013. His closing reads:

“At no time in this trial has the Claimant ever admitted that this action was catastrophic to [the Company], based on unproven allegations, and a direct attack on the shareholders of the Company. In my opinion they have much to answer for... Whatever the motives of HMRC, the effect was to create the inevitable insolvency of [the Company]”.

254. What created that situation were the actions of Mr Selby, Mr Sayed and Mr Awan, exacerbated by Mr Bamford’s abrogation of duty.
255. I consider the period suggested by the Secretary of State of 4 years is appropriate.