



Neutral Citation Number: [2024] EWHC 1812 (Ch)

Case No: CR-2021-001423

**IN THE HIGH COURT OF JUSTICE**  
**BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES**  
**INSOLVENCY AND COMPANIES LIST (CHD)**

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

Date: 12/07/2024

**Before :**

**INSOLVENCY AND COMPANIES COURT JUDGE BURTON**

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**Between :**

**THE SECRETARY OF STATE FOR BUSINESS  
AND TRADE**

**Claimant**

**- and -**

**(1) JAMES BERNARD LOW**  
**(2) SARAH KATIE MARIA BARTLETT**

**Defendant**

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**Raj Arumugam** (instructed by The Insolvency Service) for the **Claimant**  
**The First Defendant, James Low** appeared in person

Hearing dates: 13-15 November 2023  
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**Judgment**

Remote hand-down: This judgment was handed down remotely at 3.30pm on 12 July 2024 by circulation to the parties and their representatives by email and by release to the National Archives.

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**INSOLVENCY AND COMPANIES COURT JUDGE BURTON**

### ICC Judge Burton :

1. This is the hearing of the Secretary of State's claim issued on 5 August 2021 for an order to be made against James Bernard Low pursuant to section 6 of the Company Directors Disqualification Act 1986 (the "CDDA") disqualifying him from acting as a director or being concerned in the management of a company.
2. The two principal allegations of unfitness made against Mr Low are that:
  - i) he caused or allowed the Company to participate in transactions which were connected with the fraudulent evasion of VAT from the quarter ending 03/15 onwards. The Claimant alleges that this connection was something that he either knew or should have known about; and
  - ii) he caused or allowed the Company to make wrongful claims for VAT for 8 consecutive quarters ending 03/16 to 12/17 totalling £2,646,905.
3. This particular type of VAT fraud is known generically as missing trader intra-community fraud or "MTIC fraud". It involves the theft of VAT which should otherwise properly be paid to the public purse by parties exploiting, most commonly, the European Union VAT rules which, whilst in force in this country, provided that the movement of goods between Member States should take place without VAT being payable. Whilst such fraud takes many different guises, it is generally the case that at some point in a chain of transactions, a trader charges VAT on the sale of goods but then, instead of accounting to HMRC for that VAT, it absconds. The trader is then "missing".
4. A more detailed summary of the workings of a "plain vanilla" MTIC fraud were set out by ICC Judge Prentis at paragraph 28 of his decision in *Secretary of State v Selby* [2021] EWHC 3261:

"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.”

5. The proceedings were originally commenced also against Mr Low’s co-director, Sarah Katie Maria Bartlett. Following her failure to file an acknowledgment of service form or to take any active steps in the proceedings, following an uncontested disposal hearing on 4 May 2022, the court made a 12-year disqualification order against her.

### **Relevant legal principles**

6. Section 6 of the CDDA provides that the court must make a disqualification order against a person in any case where it is satisfied that the person is or has been a director of a company which at any time becomes insolvent (whether while he was a director or subsequently) and that his conduct of that company, whether taken alone or together with his conduct as a director of any other company, makes him unfit to be concerned in the management of a company.
7. Section 6(4) provides a minimum period of disqualification of 2 years and a maximum of 15 years.

8. The purpose of the director disqualification regime is to protect the public from directors whose conduct has fallen below the required standards of probity and competence and, as noted by ICC Judge Jones in *Secretary of State for Business Innovation and Skills v. Khan* [2017] EWHC 288 (Ch): “to some extent provide a deterrence and generally improve company management.”
9. In the same case, referring to the judgment of Mr Justice Blackburne in *Re Uno plc* [2004] EWHC 933 (Ch), [2006] B.C.C. 725, ICC Judge Jones emphasised that when considering disqualification claims, the court must recognise that directors have to make value judgments, often in pressurised circumstances and which may not be clear cut. Directors must nevertheless act in accordance with their duties including those codified in sections 172 to 175 of the Companies Act 2006. He continued:

“[17]. In the context of an insolvency, the court will assess whether a director has complied with his duty by asking what an intelligent and honest man in the position of that director would reasonably have done. This is an objective test which requires consideration of the interests of all creditors but will not permit the interests of a large creditor to be unreasonably overlooked. If the director can establish upon the evidence that he has considered and acted upon the matters identified by the objective test, the court will then decide whether the director acted reasonably in reaching the decision and carrying out the resulting action. This is a subjective test asking whether the director honestly believed he was acting in the interests of the creditors.”

10. Mere imprudence is usually insufficient to justify a disqualification order. The court must be satisfied, on the facts of the case before it, that the director’s conduct is serious. In *Re Bath Glass Ltd, The Official Receiver v Elliott and Sharp* (1988) 4 BCC 130, Peter Gibson J said of the standard of unfitness required for disqualification:

“To reach a finding of unfitness the court must be satisfied that the director has been guilty of a serious failure or serious failures, whether deliberate or through incompetence, to perform those duties of directors which are attendant on the privilege of trading through companies with limited liability. Any misconduct of the respondent qua director may be relevant, even if it does not fall within a specific section of the Companies Act or the Insolvency Act”.

11. It is clear, therefore, that the court must be satisfied that:
  - i) the company in question has become insolvent;
  - ii) the defendant was a director of the company at the time the company became insolvent or subsequently; and
  - iii) the conduct of the director is such as to make him unfit to be concerned in the management of a company.

12. Section 12C of the CDDA provides that when considering a claim for a disqualification order, the court shall in any case, have regard to the matters set out in paragraphs 1-4 of Schedule 1 to the CDDA and, in cases where the person concerned has been a director of a company, also have regard to the matters set out in paragraphs 5 to 7 of that Schedule.
13. As Mr Low was a director of the Company, in this case, all paragraphs of Schedule 1 will apply. They include the court having regard to the extent to which the person was responsible for the causes of any material contravention by a company of any applicable legislative or other requirement and the extent to which they are responsible for the cause of the company's insolvency; the frequency of that conduct; the nature and extent of any loss or harm caused, or any potential loss or harm which could have been caused by the person's conduct in relation to the company; any misfeasance or breach of any fiduciary duty by the director in relation to a company and the frequency of that conduct; and any material breach of any legislative or other obligation of the director which applies as a result of being a director of the company and the frequency of that conduct.
14. The provisions of Schedule 1 to the CDDA are not exhaustive but the court must focus exclusively on the allegations set out by the Secretary of State. *In Re Grayan Building Services Ltd* [1995] Ch 241, Hoffmann LJ said at paragraph 253:

“The court is concerned solely with the conduct specified by the Secretary of State or official receiver under rule 3(3) of the Insolvent Companies (Disqualification of Unfit Directors) Proceedings Rules 1987. It must decide whether that conduct, viewed cumulatively and taking into account any extenuating circumstances, has fallen below the standards of probity and competence appropriate for persons fit to be directors of companies.”
15. As regards the conduct which is alleged to make Mr Low unfit to be concerned in the management of a company, Mr Arumugam referred me to the decision of HHJ Hodge QC (sitting as a Judge of the High Court) in *Re Chapter 6 Ltd, Secretary of State for Business, Innovation and Skills v. Warry* [2014] EWHC 1381 (Ch) where the disqualification claim also focussed on alleged MTIC fraud. HHJ Hodge QC noted, at paragraph 27 of his judgment that:

“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”.
16. In relation to the director's personal knowledge, HHJ Hodge drew on several earlier judgments including Lewison J's summary of the law in *Revenue & Customs Commissioners v Brayfal Limited* [2011] UKUT 99 (TCC), reported at [2011] STC 1338, where he said at paragraph 38:

“ 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”.

17. Where the Court makes a disqualification order pursuant to s.6 CDDA, the minimum period of disqualification is two years and the maximum period is 15 years. In *Re Sevenoaks Stationers (Retail) Ltd* [1991] Ch. 164 the Court of Appeal held:

“I would for my part endorse the division of the potential 15-year disqualification period into three brackets ... (i) the top bracket of disqualification for periods over 10 years should be reserved for particularly serious cases. These may include cases where a director who has already had one period of disqualification imposed on him falls to be disqualified yet again. (ii) The minimum bracket of two to five years' disqualification should be applied where, though disqualification is mandatory, the case is, relatively, not very serious. (iii) The middle bracket of disqualification for from six to 10 years should apply for serious cases which do not merit the top bracket.”

18. In *Warry*, HH Judge Hodge QC stated that in light of the prevalence of MTIC fraud, it was desirable in the interests of legal certainty and for the purposes of facilitating settlements in other cases that there should be a consistency of approach to the disqualification of directors in MTIC fraud. Without wishing to provide what he described as a straitjacket for judges in later cases, he set out some guidance, noting that the threat and impact of MTIC fraud was then so persistent and pervasive that he could not conceive of any case in which disqualification for a period in the bottom bracket of two to five years would be appropriate. In his view, where a director has knowingly been involved in such a fraud or wilfully closed his eyes to MTIC fraud, their conduct would usually merit disqualification in the top bracket of over ten years, and for cases where the director did not actually know about and did not wilfully close his eyes to the obvious, an order in the middle bracket may be justified – usually, absent extenuating circumstances, in the top half of that bracket, between five and ten years.

### **Background giving rise to the allegation of unfitness**

19. In support of its claim and the two principal allegations of unfitness against Mr Low, the Secretary of State relies on the affidavit of Robert Sheils, Senior Investigator in the Companies Investigations team at the Insolvency Service dated 4 August 2021, and the first and second affidavits of Harilal Mandalia, a Higher Officer of HMRC who, before July 2021 worked on HMRC's Missing Trader Intra-Community Team. Mr Madalia's affidavits were sworn on 4 April 2022 and 2 August 2022.
20. Mr Sheils sets out relevant details of the Company's history. It was incorporated on 27 February 2009 by George and Wendy Bartlett to carry on a family business established in 1958. Following George Bartlett's death in 2012 the company passed to the Second

Defendant, Ms Bartlett who was appointed a director and remained so up to the date of liquidation.

21. The Company's last principal trading address was 175-177 Holloway Road, London N7 8LX. Whilst its business initially focused on the retail sale of audio and video equipment, in or around 2015 it expanded into the wholesale of computers, computer peripherals and software.
22. Mr Low was a registered director of the Company from 24 August 2015 to 24 April 2017, and from 2 May 2017 to 23 May 2017.
23. The Secretary of State claims that Mr Low knew or ought to have been aware that MTIC fraud was rife in the wholesale trade of electronic goods. Mr Sheils' evidence sets out the grounds for this claim, relying principally on the various steps taken by HMRC officers to contact the Company, speak to its directors, including Mr Low before he was formerly appointed a director, and to highlight to them (a) the risks of getting involved in MTIC fraud, and (b) some of the more common features of MTIC fraud that they should look out for. The Secretary of State claims that this information should have caused Mr Low to enquire about the legitimacy of the transactions that the Company was entering into.
24. At paragraph 7(a) of his affidavit, Mr Sheils summarises the steps taken by HMRC to educate and warn the Company and Mr Low of the risks of MTIC fraud in the wholesale trade of electronic items. His summary is supported by copies of the HMRC reports:

“i) Prior to commencement of wholesale trading in electronics goods, HMRC Officers spoke with Mr Low on 06/02/15 and established that he was operating the newly established wholesale side of the business. Mr Low showed a good basic understanding of Know Your Customer (KYC) checks and was warned that electronics goods were high risk items and due diligence measures were discussed with him. Officers then visited Bartletts Hi-Fi's premises on 11/02/15 and met Mr Low and discussed that KYC should not be a tick box exercise, warned about VAT hijacking, how to spot missing trader fraud and issued a copy of their PN726 information notice which gives detailed information on due diligence measures that companies can take to establish the integrity of supply chains.

ii) On 13/02/15 HMRC emailed Mr Low reiterating that fraud warnings and due diligence were discussed at the meeting on 11/02/15 and that it would be useful to read HMRC's publications How To Spot Missing Trader Fraud and PN726.

iii) On 07/07/15 HMRC wrote to Bartletts Hi-Fi and the company's accountants Tish Press & Co by email arranging a meeting at the company's premises on 10/07/15 adding a link to their publication How To Spot Missing Trader Fraud.

iv) On 14/07/15 HMRC sent an education and warning letter to Bartletts Hi-Fi with advice on risks associated with MTIC fraud

and procedures for validating VAT registration details of trading partners with HMRC's office at Bootle. The letter further warned about the use of Alternative Banking Platforms and Money Service Businesses which were used to avoid regulation and scrutiny by the UK's authorities and Bartletts Hi-Fi was warned that it could be made jointly and severally liable for the unpaid VAT of another VAT-registered business when buying or selling specified goods such as electronic goods and that more information could be found in PN726 – "Joint and several liability for unpaid VAT" and referred to read How To Spot Missing Trader Fraud.

v) On 30/07/15 HMRC Officers had a meeting with Mrs Elaine Ames (a director), Mr Low and the company's accountant at Bartletts Hi-Fi's trading premises where it was confirmed that the company was trading in high end audio equipment on the retail side, and from period 03/15 Mr Low was operating the wholesale side which traded in TVs, Solid State Drives, Iphones and Ipads and Mrs Ames was given a copy of How To Spot Missing Trader Fraud to read.

vi) On 20/08/15 HMRC emailed Bartletts Hi-Fi, Mrs Ames and the company's accountant providing feedback on the visit of 30/07/15. HMRC advised that their publications Notice 725 - "The Single Market" and PN726 should be read, that IMEI numbers for mobile phones should be kept and to take account of trading partner's geographical location and whether the director's residence was different to their company's as this can be a high risk indicator and to read the KYC advice and risk indicators in Excise Notice 196.

vii) On 25/11/15 HMRC Officer Brennan emailed Bartletts Hi-Fi and the company's accountants informing that she had been appointed as the company's VAT officer and attached a copy of HMRC's notification letter and VAT validation information which provided further information for companies operating in trade sectors deemed to be at high risk of VAT fraud."

25. At paragraph 7(b) of his affidavit, Mr Sheils summarises the common features of MTIC fraud (which HMRC had highlighted to the Company and Mr Low) and identifies those he considers were reflected in the Company's trading patterns:

"i) Goods traded were electronic and traded in bulk i.e. high MTIC risk goods such as TVs, Solid State Drives, Iphones, Ipads, Sony Playstations, Microsoft Xbox, Microsoft Office etc.

ii) In common with other companies trading in MTIC goods Bartletts Hi-Fi's accounts show that the turnover had a dramatic increase when the company entered wholesale trading in 2015. In 2014 the turnover from retail only sales was £565,518 which jumped nearly eight fold to £4,430,578 in 2015 and then doubled



again to £9,254,628 in 2016 and then jumped to £10,296,371 in 2017.

iii) At the meeting with HMRC on 30/07/15 Mr Low confirmed that all deals were carried out on back to back basis.

iv) There was no commercial reason to purchase European spec goods (e.g. Televisions) from Poland, importing them into the UK and then exporting them to the Czech Republic.

v) Bartletts conducted its wholesale trades in Euros even when goods were sold UK to UK, this did not make any commercial sense.

vi) HMRC informed Bartletts Hi-Fi that at least six of its trading partners had their VAT number cancelled and issued veto letters meaning that any Input Tax claimed in relation to transactions involving these suppliers which purport to have taken place after the effective date of cancellation of registration, may fail to be verified.”

26. At paragraph 7(c) of his affidavit, Mr Sheils sets out the contrived features of the wholesale transactions which took place during Mr Low’s directorship, which the Secretary of State claims should have put him on enquiry that they may have been part of an MTIC fraud arrangement:

“i) In period 06/16, 25 complete supply chains were identified and they show:

- 9 deals were completed on the same day on back to back basis.
- 15 deals had zero stock left over i.e. stock was matched exactly and 10 deals had between 1 and 568 units of stock left over.
- 16 deals were completed on a different day, however, in 9 of these deals the customer’s invoice pre-dated the supplier’s invoice from 1 day to 8 days thereby indicating pre-orchestration.
- Another anomaly noted is that 12 of the deals are showing a loss in the mark ups and profit which indicates that the deals were not genuine.

ii) In period 09/16, 19 complete supply chains have been identified and they show:

- 9 deals were completed on the same day on back to back basis.

- 13 deals had zero stock left over i.e. stock was matched exactly and 6 deals had between 10 and 568 units of stock left over.
- 10 deals were completed on a different day, however, in 6 of these deals the customer's invoice pre-dated the supplier's invoice from 3 days to 8 days thereby indicating pre-orchestration.
- Another anomaly noted is that 7 of the deals are showing a loss in the mark ups and profit which indicates that the deals were not genuine.

iii) In period 12/16, 10 complete supply chains have been identified and they show:

- 1 deal was completed on the same day on back to back basis.
- 6 deals had zero stock left over i.e. stock was matched exactly and 4 deals had between 42 and 500 units of stock left over.
- 9 deals were completed on a different day, however, in 2 of these deals the customer's invoice pre-dated the supplier's invoice by 1 to 4 days thereby indicating pre-orchestration.
- Another anomaly noted is that 3 of the deals are showing a loss in the mark up and profit which indicates that the deals were not genuine."

27. The types of losses caused to the public purse by some of these transactions entered into at a time when Mr Low was a director of the Company are summarised at paragraph 7(f) of Mr Sheils' affidavit:

"iii) In period 12/15 Bartletts Hi-Fi's supplier Trading Solution Ltd caused fraudulent tax losses of £10,010. Trading Solutions Ltd caused additional fraudulent tax losses of £335,230 in period 03/16.

iv) In period 06/16 Bartlett's Hi-Fi's supplier CPX Gateway Ltd caused fraudulent tax losses of £12,379.

v) In period 12/16 Bartletts Hi-Fi's EU supplier Wizard Trading caused fraudulent tax losses of £50,454."

28. Another common feature of MTIC fraud is the use of virtual financial institutions known as "alternative banking platforms" ("ABP") which operate free of the reporting and regulatory requirements of traditional banks. Before Mr Low was appointed as a director, but following his initial meeting with HMRC officers in February 2015, the education letter sent by HMRC to the Company noted that it was using an APB for its wholesale business.

29. In pursuing its claim that Mr Low knew or ought to have known that the wholesale transactions were part of an MTIC fraud, the Secretary of State also relies upon the Company's failure to ensure that it carried out effective due diligence checks on its trading partners. These are summarised at paragraph 7(e) of Mr Shiel's affidavit. Before setting them out, I remind myself that Mr Low was not noted on the register at Companies House as a director of the Company until 24 August 2015:

"i) At the meeting with HMRC Officers on 11/02/15 Mr Low was informed that the wholesale electronics sector was considered high risk for VAT fraud and he was asked about what he knew about KYC checks, of which he had a basic / good understanding.

ii) By letter dated 14/07/15 HMRC informed Bartletts Hi-Fi on risks associated with Missing Trader Intra Community Fraud and procedures for validating VAT registration details of trading partners with HMRC. Bartletts Hi-Fi ignored this requirement and only twice requested VAT validation on 15 and 16/12/15. On each occasion the validation request was on the supplier Green Office Supplies Ltd, which HMRC positively validated on 17/12/15.

iii) At the meeting with HMRC Officers on 30/07/15 Mr Low informed the Officers that he carried out KYC checks when he receives the customer's purchase order. He said he requested company documents such as VAT certificates, terms and conditions and UK and EU photo ID of the directors.

iv) In their input tax denial letters HMRC also confirmed that Bartletts Hi-Fi's due diligence was lacking.

v) Company records collected by the liquidator do not contain any due diligence, VAT validation requests, VAT certificates, terms and conditions, photo IDs etc.

vi) Bartletts Hi-Fi traded with several suppliers and customers with whom it carried out wholesale trade between 03/15 and 12/17 and should have validated each one before carrying out trade with them. This indicates that the directors were not worried about carrying out the validations because they knew that each trade was pre-determined and there was no chance of the trades failing."

30. Ultimately, HMRC rejected the Company's claims for input tax for the periods running from March 2016 to December 2017 totalling £2,646,905 on the basis that the trading documentation failed to demonstrate that it was engaged in legitimate transactions. Again, I remind myself that Mr Low was a director of the Company between 24 August 2015 and 24 April 2017 and between 2 May 2017 and 23 May 2017.

31. The Company had not provided written contracts nor any terms of business which might demonstrate how it sought to protect itself in the event that the purchased goods were

not supplied or were faulty. HMRC concluded that the purchase invoices which the Company supplied to HMRC did not contain the elements that would usually feature in a legitimate, commercial supply, such as retention of title clauses, payment terms or in some cases, even an accurate description of the goods being supplied. Among the limited books and records received on liquidation, there was no record of the Company's price negotiations. In HMRC's view, the Company's willingness to undertake such high-value contracts without the contractual protection that HMRC considered to be adequate, indicated that the Company's directors knew that the deals would not fail because they were all "pre-determined" and connected with fraud.

32. Following a formal review of its assessment of the Company's input tax claims, HMRC upheld its initial determination on the basis that there still remained insufficient evidence to support the Company's claim to input tax. The Company did not pursue its right to lodge an appeal within 30 days to the Tax Tribunal.
33. Between 27 June 2018 and 13 May 2019, HMRC issued seven assessments against the Company totalling £2,311,583.91. None of the assessments were paid.
34. On 10 August 2018 following the presentation of a winding-up petition against the Company by HMRC, (and again I note that this occurred more than a year after Mr Low ceased to be a director) the Company entered creditors' voluntary liquidation. Messrs Biscoe and Macpherson, both of Begbies Traynor were appointed as liquidators. HMRC submitted a proof of debt in the Company's liquidation for VAT of £1,353,829, PAYE of £64,055 and Corporation tax of £18,240.

#### **Mr Low's written evidence in defence**

35. Mr Low did not initially engage with these disqualification proceedings. He attended the first hearing of the claim on 9 November 2021 during which the Court noted that he had not filed an acknowledgment of service form but gave him a further opportunity to do so by 4pm on 23 November 2021 and to file evidence in answer by 4pm on 21 December 2021. The claim was adjourned to 7 March 2022. By that date, Mr Low had still not filed an acknowledgment of service form, nor any evidence. The court gave directions for the Secretary of State to file further evidence regarding the nature of the MTIC fraud that the Company was said to have been connected with and its role within the alleged chain of transactions. The claim was adjourned for an uncontested disposal hearing. However, on 4 May 2022 Mr Low emailed an acknowledgment of service form to the Claimant's solicitors and on 21 June 2022 provided them with a signed witness statement, describing it in the email as an affidavit dated 10 June 2022. He applied for and obtained relief from sanction, permitting him to rely upon the witness statement as evidence in these proceedings.
36. Mr Low's witness statement dated 20 June 2022 comprises only two pages of text. He states that at the time of his witness statement, he was taking medication for depression and anxiety. He exhibits two letters from his doctor who appears to be a general practitioner. The first is dated 25 May 2022 and explains that Mr Low has had symptoms of anxiety and depression since January 2019 through to the date of the letter and sets out details of the medication prescribed for him. The second letter is dated 5 August 2022 and explains that the pressure of ongoing custody proceedings regarding his children as well as these CDDA proceedings were provoking his anxiety and his

concern regarding the absence of legal aid and his need to represent himself. The doctor concludes saying:

“The legal action that is being taken is heightening his anxiety at a time when he is also under immense pressure. I would be grateful if this is taken into consideration.”

37. The medical practitioner’s statement did not suggest that Mr Low lacks capacity, nor that there was a need to adjourn the trial. He was given permission to file any further medical evidence that he wished to rely upon but no such further evidence was filed. The court therefore had no medical evidence to assist in determining whether any, and if so what reasonable adjustments might be needed during the trial. However, at the commencement of the trial, Mr Low was informed that he should let the court know if he felt that he needed any measures to be taken to assist his participation or, at any time, to take a break.

38. The remainder of Mr Low’s witness statement addresses how he came to be involved in the Company and his role. He explains that he agreed with Warren Bartlett (who I understand to be the son of the founding Bartletts):

“who was at the time a friend to do him a temporary favour” and:

“allow him to register me as a temporary Director of Bartletts Hi-Fi until he was able to find a suitable permanent Director”.

39. He states that although he was appointed as a director, he was:

“only an employee on a PAYE salary and did not receive any additional Directors benefits or fees”.

40. He describes his role as being

“an Admin Clerk responsible for looking after the Amazon (FBA) Account which was to ensure we had enough stock to fulfil orders.”

41. In relation to HMRC’s visits he states:

“HMRC made regular enquiries and visits during my Directorship and in particular by a senior VAT fraud investigator and as far as I was concerned they were satisfied with the documentation provided and certainly did not receive anything to the contrary. As far as I was aware the accountants submitted the VAT returns.”

42. In relation to the Company’s finances, he states:

“I confirm I had no access to any of the companies bank accounts although was asked to be signatory. I confirm although a signatory the bank accounts (GBP/EUR) were solely Warren Bartletts responsibility and he was the controlling mind of the business.”

43. Finally Mr Low attaches three sample forms: a customer application form; a supplier application form; and a supplier/customer checklist. He states that the format of the forms was approved by HMRC's officer Ms Brennan and used every time a new supplier or customer account was opened. He states that the checklist was approved and signed by:

“Finance Manager Warren Bartlett on every occasion and he then allowed us to commence trading with any company”.

### **Witnesses**

44. The Secretary of State's evidence relies upon several attendance notes of meetings and telephone calls conducted by HMRC's officers with the Company, principally those prepared by Anne-Marie Brennan. Ms Brennan has since retired from HMRC and was not called to give evidence. During his closing submissions, Mr Low expressed his concern that the Secretary of State had not included an additional note, which he anticipates might have been prepared by Ms Brennan, of a meeting he had with her at her office in Euston when he provided her with a folder containing the KYC documents prepared for the Company. However, Mr Low did not dispute the accuracy of Ms Brennan's detailed written notes of the matters discussed at the meetings that are included in the Claimant's evidence.
45. The Court heard evidence from Mr Sheils, Mr Mandalia and Mr Low. The Court recognises the difficulties encountered by litigants in person, unfamiliar with the court process, when seeking to cross-examine a witness. Mr Low's cross-examination of Mr Sheils and Mr Mandalia was brief.

### **Mr Sheils**

46. Mr Low asked Mr Sheils how he knew who was responsible for the Company's input tax claims. Mr Sheils replied that a company's directors are responsible for a company's affairs. When a company enters liquidation, its liquidator will report to the Insolvency Service whether there are any areas of concern regarding the directors' conduct and the Insolvency Service will then ask any relevant parties for further information. In this case, the Insolvency Service asked HMRC to make their documents available to them. Mr Low asked whether those documents showed that he submitted the VAT claims. Mr Sheils replied saying that he had understood from HMRC's discussions with Mr Low and Tish Press that the accountants, Tish Press had filed the relevant submissions based on the paperwork provided to them by the Company. Mr Low took this as an opportunity to make a statement in reply saying that he was only employed as a PAYE manager running the Company's Amazon account to check that the Company had the correct stock and to keep its prices competitive and that “I had no role outside of that”.
47. Mr Low next asked Mr Sheils why he is the subject of disqualification proceedings when Elaine Ames, who was also registered as a director of the Company, is not. Mr Sheils' affidavit already sets out the information provided by Ms Ames to the Official Receiver, with supporting documents, explaining the circumstances surrounding her appointment as a director and what is described as the subsequent theft of “her ID” resulting in two large business loans of £250,000 and £55,000 having been taken out

and a Smart car and Porsche purchased in her name. She reported the matter to the police and finance companies.

48. During cross-examination, Mr Sheils replied to say that the Claimant had relied upon Ms Brennan's notes of HMRC's discussions with Mr Low. He referred Mr Low to Ms Brennan's note of her meeting with him on 30 July 2015 during which Mr Low said that he had a free rein to run the wholesale business, and described the business in some detail. During the meeting, also attended by Ms Ames and the Company's accountant, Ms Brennan was informed that "Simon" and Jamie Harris ran the retail, ebay and Amazon side of the business. Mr Sheils stated that the meeting note recorded Mr Low as being in charge of the wholesale department and that is what caused him now to be subject to these proceedings.
49. Mr Low also asked Mr Sheils who submitted the Company's accounts as he did not. Mr Sheils replied to say that he did not have a note of the party who submitted them but that Mr Low was a director at the relevant times and had an opportunity to discuss VAT issues with HMRC during the meeting on 30 July 2015 when the Company's accountant was also present.

### **Mr Mandalia**

50. Mr Mandalia succeeded Ms Brennan in the MTIC team when she retired. His written evidence describes his work tracing the chain of suppliers involved in the Company's wholesale transactions. He referred to the first transaction which he traced concerning a tax loss during the September 2016 period. That chain of deals started with a company called Alingas S.P.ZOO and ended, after seven other transactions taking place on or around the same date, with Alingas S.P.ZOO at a higher price. He identified, in total, 108 transactions with 12 "defaulters". The Company was somewhere in the middle of each chain.
51. In his second affidavit, Mr Mandalia explained the basis upon which HMRC issued the tax assessments to the Company which it failed to pay before entering liquidation:

"In addition to tax loss notifications, where HMRC considers a company has been party to, and or involved in MTIC fraud, including making a fraudulent claim for a VAT refund, HMRC relies on legislation to raise assessments and or amend the value of any refund claim made.

Where HMRC conclude that despite the visits, the issuing of HMRC public notices and tax loss notifications and there is no indication of the company amending its trading activity, HMRC relies on the authority of *Axel Kittel v Belgian State v Recolta Recycling SPPRL* The European Court of Justice, in its judgment in the joined cases of *Aex Little V Belgian State and Belgian State v Recolta Recycling SPRL* (C-439/04 and C440/04), state that where a taxable person knew or should have known that it was participating in a transaction connected with fraudulent evasion of VAT, that taxable person's right to deduct input tax should be refused.

To deny any claims for input VAT by the company if the transaction is deemed to be involved in MTIC fraud whether that company knew or ought to have known, and this is irrespective of the fact the output tax may have been accounted for in the overall supply chain.” (sic)

52. He continues in his second affidavit to explain the type of work conducted by HMRC to investigate suspicious trading chains and the work he undertook in respect of the Company. HMRC denied the Company’s claim for input tax for eight periods between June 2016 and December 2017 on the basis that it had concluded, after taking into account the supply lines and the way in which the transactions took place, that it was more likely than not that the supplies led back to a fraudulent supply chain. When the supply chain was traced as far as possible, HMRC did indeed find evidence of tax losses because the suppliers in the chain were either “defaulters” or “missing”.
53. Mr Low’s cross-examination of Mr Mandalia’s evidence was similarly brief. He asked Mr Mandalia to confirm that he had never met Mr Low before, which Mr Mandalia did. He then asked Mr Mandalia what opinion he formed of Ms Ames and asked what the difference was between her role as a director and his that has resulted in him, but not Ms Ames, facing disqualification proceedings. Mr Mandalia replied that he could not provide an opinion of Ms Ames and that these proceedings are not against Ms Ames but against him.

#### **Mr Low**

54. Mr Low did not engage openly with all of the questions put to him during cross-examination. I shall refer to just some of the instances where his responses were far from fulsome. His evidence featured many inconsistencies, examples of which I shall set out in each of the following sub-sections.

#### *Mr Low’s failure to respond to the liquidator’s and Insolvency Service’s enquiries*

55. Mr Low’s reticence to engage openly with cross-examination was revealed very early on. He confirmed that his address and contact details used by the Claimant were correct but when asked why he had not responded to any of: the Insolvency Service’s initial email dated 19 January 2021; its letter of 25 January 2021 setting out the draft disqualification allegations; or a telephone message left on his mobile telephone number on 29 January 2021 (informing him that the deadline for responding to the letter of 25 January was due to expire and urging him to get in touch) or the liquidator’s request that he complete a preliminary information questionnaire, he simply said that he thought he had replied to the first letter and, in relation to the letter of 25 January 2021, that he would not have understood the allegations of unfitness. In my judgment, this fails properly to explain why, if he thought he had done nothing wrong, he would not have replied promptly to such important correspondence or why he would not have kept a copy or simply have remembered his reaction and response.

#### *Warren Bartlett’s involvement*

56. Mr Low recognised that he was represented for a short period by Ewings solicitors but that after the Claimant chased his solicitors for a substantive reply to the disqualification allegations, he terminated their retainer. Mr Low said that Warren Bartlett had



suggested that he consult Simon Ewing of Ewings solicitors, but that “as soon as I saw his approach, I didn’t trust him so I asked him to stop acting for me”. He said that he felt that Ewings were “safeguarding someone else’s interests”. This appeared to be a reference to Warren Bartlett’s involvement, behind the scenes, in the Company’s wholesale trading that fell within the MTIC fraud chain.

57. The difficulty for Mr Low in now seeking to lay at Warren Bartlett’s door the blame for the Company’s involvement in MTIC fraud is that Mr Low failed to mention that Mr Bartlett played any significant role in the Company’s business until his witness statement, served very late in these proceedings. He had plenty of opportunities to do so: not only in response to the Insolvency Service’s pre-action correspondence but as early as his meeting with Ms Brennan on 30 July 2015 when she specifically asked about “Warren”. Ms Brennan’s written record of her in-person meeting with Mr Low on 30 July 2015, attended also by Ms Ames and the Company’s accountant Nick Langley (abbreviated in Ms Brennan’s note to “NL”) refers to Mr Low being asked, towards the end of the meeting, about a “Warren” whose name appears on one of the UPS delivery notes. She recorded that:

“JL stated this was Warren Bartlett, who previously worked on the retail side, as a sales/shop assistant. He left (voluntarily) around February/March 2015. JL thought he was on the payroll. Company P35 for 2014/15 was requested, which NL confirmed he would supply.”

58. Mr Arumugam highlighted this stark inconsistency with Mr Low’s witness statement evidence. He asked Mr Low whether he did not disclose to HMRC the key role that Warren Bartlett apparently played in the wholesale side of the business because he knew that Warren Bartlett was disqualified from acting as a company director. Mr Low replied that he did not know that was the case at the time, but that he thought Warren Bartlett might now be disqualified. When asked whether he was Warren Bartlett’s “front”, Mr Low replied “That’s how it would look”.
59. During the second day of trial, when pressed further about Warren Bartlett’s alleged involvement, Mr Low was slightly more forthcoming. When asked whether he knew, when he agreed to be a director of the Company, that Warren Bartlett was subject to extradition proceedings for money laundering and drugs offences, he replied that he did not, but that he did know that Warren Bartlett “was in some sort of trouble”. He said that he learned about the drugs charges “later on”.
60. Despite having seen Ms Brennan’s report of the meeting on 30 July 2015 and having been asked about the explanation he provided to her regarding a “Warren” being involved in the business, during the second day of cross-examination, Mr Low stated that he had never been asked about Warren Bartlett’s involvement with the Company. After further cross-examination, Mr Low then admitted: “I was asked not to reveal Warren Bartlett was involved”. When asked whether he thought that was suspicious, he replied: “I can’t remember why he told me not to”. He then denied that he knew it was because there was something improper with the business and that he did not want HMRC to know the truth.

*Mr Low’s role within the Company*

61. Ms Brennan's note of her preliminary telephone call on 6 February 2015 with "Simon" who was described by another employee on the telephone as the retail shop manager, records that she was informed that Mr Low was "responsible for the wholesale side of the business". Her note of her first telephone call with Mr Low on 6 February 2015 records that Mr Low confirmed that he had been engaged by Ms Ames "to help the business diversify into wholesale of electronics 2 months ago".
62. Ms Brennan's note of the meeting on 30 July 2015, shortly before Mr Low was formally appointed as a director, records him providing Ms Brennan with detailed information about the manner in which he obtained suppliers' price lists and then called prospective customers to ask what their target price would be. He described the KYC checks he claimed to perform and the difficulties he encountered obtaining photographic identification from European traders. Ms Brennan recorded that:

"The maximum financial value he would commit the company to depended on the trade; he's trying to open doors. If it's a customer they have previously traded with then it would be approx. €200-€250k, but there would have to be some trading history, such as a couple of deals, as long as they went smoothly and no financial risk. JL stated he is like a broker in how it's run; the customer always pays up front so there's no financial risk, he goes by gut feeling, he wouldn't trade with them if he didn't feel it. The limit on a first deal would be £150,000."
63. These detailed notes directly contradict Mr Low's insistence during cross-examination that he was only ever responsible for the Amazon side of the business. His insistence was also contradicted by his own evidence of the various KYC checks that he was involved in. When asked specifically about Ms Brennan's note recording that he allegedly informed her that he was having difficulty obtaining photographic identification from European traders, and yet nevertheless the Company apparently continued to trade with them, he replied:

"I don't recall that. We wouldn't trade without doing KYC checks".
64. His statement that "we wouldn't trade" does not sit well with his insistence that he was not involved in the wholesale side of the business, other than to sell surplus stock on Amazon. That lack of involvement also did not fit well with his explanation of the way they traded. He explained that the client would ask for stock and that "we'd go to suppliers who could provide it". He stated that suppliers did not approach them, but that the customer asked whether they could get hold of the stock and that they would then go out to try to find a supplier. When asked how, then, the deals were conducted back-to-back, Mr Low replied that it was because they were acting almost as a broker, but that they weren't a broker. When Mr Arumugam highlighted that when giving evidence the previous day, Mr Low had recognised that sometimes the Company would not pay the supplier until the Company had been paid by its own customer, Mr Low sought to disclaim responsibility for such knowledge: "I don't know. I didn't oversee the wholesale business. It wasn't part of my role."
65. Mr Low was at pains during cross-examination to explain that he was satisfied that the Company's due diligence checks on its customers and suppliers were adequate. He

provided the blank forms exhibited to his witness statement and repeatedly referred to the alleged omission from the Claimant's evidence of a note of his meeting with Ms Brennan at her office in Euston when he apparently handed her a file of the checks and checklists the Company was using for its wholesale business. He repeatedly said during cross-examination that she confirmed that the checks were sufficient. However this is directly contradicted by HMRC's written guidance, which Mr Low stated he had read, stating that they could not advise on the adequacy of each company's checks and by Ms Brennan's email explaining that she similarly could not do so.

66. I have noted that Mr Sheils' evidence refers to HMRC's letter of 14 July 2015 advising the Company that VAT checks should be carried out via its VAT Validation Unit but that the Company only twice requested VAT validation information – on 15 and 16 December 2015. The Company nevertheless continued to conduct wholesale trade throughout 2016 and 2017 and was thus unable to confirm whether their trading partners were VAT registered at the time of the trades. When Mr Low was asked how this aligns with his insistence that KYC checks were completed for all customers, he replied that he would be surprised if that was the case because the KYC documents were always completed by either him or Warren Bartlett. He suggested that whilst they may not have checked the VAT registration at HMRC's Validation Unit, he thought they could have checked it "via Companies House". There is no obligation to maintain up-to-date VAT registration information with Companies House.
67. Mr Low said he had no knowledge of the contractual arrangements between buyers and sellers, no idea whether any of the goods that the Company was buying and selling were insured and that he never had any cause to inspect the stock being purchased, because he thought that was the responsibility of the freight company. When asked how he would know, from such scant checks, that the purchaser and supplier were not working together – as alerted to in HMRC's leaflet – Mr Low replied that he was not in control of the wholesale business.
68. When taken through the details of a chain of back-to-back sales, Mr Low highlighted that the Company sold 100 fewer units than it had purchased. He said that this is where he would come in: he would be responsible for selling the excess units via Amazon.

*Mr Low's knowledge of the Company's involvement in MTIC fraud*

69. Mr Low confirmed that he recalled the discussion at the meeting with Ms Brennan but when Mr Arumugam suggested that it should have put him on notice of the risk that the Company was involved in MTIC fraud he replied:

"Yes, but the whole industry was new to me. Bartletts had been going for a long time."
70. He recognised that they had to be careful who they dealt with but asserted that he put in place the "KYC" checks and that Ms Brennan said they were sufficient. Mr Low was unable to explain why the completed KYC forms were not delivered up to the liquidator.

71. Whilst I do not find credible that Ms Brennan would have approved the KYC forms, I do accept that Mr Low had left the Company over a year before it entered liquidation and could not therefore be expected to know what documents had, by then, been retained or delivered up by the Company to its liquidator.
72. Mr Low stated that he read HMRC's leaflet, "How to Spot Missing Trader Fraud", but then said that he didn't know how he could spot such a fraud:
- "I don't know how we'd spot it. We had offers of stock. I don't know how we'd spot it in the supply chain because we wouldn't know the chain."
73. His reply breathtakingly overlooked the detailed information provided during the meeting in July 2015 and set out in HMRC's leaflet which describes the features of transactions that might indicate to an unwary trading partner that they were getting involved in MTIC fraud.
74. Mr Low claimed not to know that HMRC had rejected the Company's input tax claim. He highlighted that HMRC's correspondence was mostly sent to the Company at its retail premises (from which he did not work) or to its accountant. He said that the accountants would deal with Warren Bartlett and that whilst some emails were sent to the wholesale email address, to which he had access, they might have been kept from him because he would not feel comfortable if he knew that anything was wrong with the Company's relationship with HMRC. He said: "If I saw a letter like that, alarm bells would be ringing".
75. However, even this was contradicted by other evidence. Mr Low explained the gap in his appointment as a director between 25 April 2017 and 2 May 2017 by saying that he intended to resign but the Company's accountant filed notice of his resignation sooner than he had intended. Consequently he was re-appointed. My detailed notes of the hearing record that during cross-examination, he explained his resignation in the following terms:
- "I came off because I wasn't being told what was going on. Then I told Warren I wasn't being told the truth. Then there was some funding being waited for and they asked me to come on to get the funding for the company. I got in touch with the accountants to ask if they could take me off. They did it the day I asked them instead of the date I was going to come off. I was not happy I was being told the entire truth."
76. His answer demonstrates that whilst he thought something was awry and that he was not being told the truth, he was nevertheless prepared to continue to act as a director of the Company in order to enable it to continue trading and to assist it in procuring further funding.
- Decision**
77. The first two requirements of the CDDA to disqualify a director are clearly satisfied. Mr Low was a director of the Company for the periods set out in paragraph 22 above

and the Company entered insolvent liquidation with a significant shortfall to creditors, the largest of which, by far, is HMRC.

78. Having reviewed the totality of the evidence, I am satisfied that Mr Low was or should have been aware that the risk of MTIC VAT fraud was rife in the sector dealing with wholesale trade of electronic goods. Even before he was appointed as a director, he was given ample opportunity to understand the potential risks of getting involved in wholesale trading of electronic equipment and the features to look out for. They were outlined to him:
- i) during a telephone call with Ms Brennan on 6 February 2015;
  - ii) at a meeting with Ms Brennan on 11 February 2015;
  - iii) by Ms Brennan's email to him on 13 February 2015 recording that they had discussed the risks at the meeting on 11 February 2015 and that she had left HMRC's leaflet "How to spot missing trader fraud" and HMRC Notice 726 "Joint and Several Liability" with him; and
  - iv) at the meeting on 30 July 2015.
79. Mr Low confirmed during cross-examination that he had read the leaflet "How to Spot Missing Trader Fraud". Having done so and following HMRC's warnings and engagement with him, having agreed to be a director of the Company, Mr Low should have been alert to, or at the very least taken steps to check whether present within the Company's wholesale trading, there were any of the relevant features. In my judgment, as he apparently knew that there was some reason Warren Bartlett did not wish his involvement to be disclosed and consequently that something was not quite right, he either knew and/or wilfully turned a blind eye to the features of the Company's business that would immediately have shown that the Company of which he was a director engaged in wholesale trading which bore almost all of the 'hallmark' features of MTIC fraud. At the very least, he failed despite the warnings, to take any steps to check whether they were present. If he had done so, it would have been strikingly obvious to him that the following features were present:
- i) the nature of the goods in question. Mr Low had been warned that MTIC fraud was rife in respect of electronic goods;
  - ii) deals were being conducted back-to-back, with mismatched payment dates and risk apparently being borne by suppliers. Mr Low was unable to explain why several of the deals featured the Company's customer paying for the goods, several days before the Company had even bought them. HMRC's leaflet expressly asks: "Does your supplier offer deals that carry no commercial risk for you – eg no requirement to pay for the goods or services until payment is received from the customer?". He simply said that he was new to wholesale trading and thought that was just the way it worked.
  - iii) high value deals were being offered to new trading partners. Mr Low said that they would not initially enter into a trade with a new trading partner for more than £150,000. He did not appear to appreciate that £150,000 is a significant value for a trade with an unknown party, particularly when he was not

apparently aware whether or how the prices had been negotiated, how the Company would know whether the goods that had been supplied matched their descriptions and were of the quality expected, nor what to do if they were not, nor further still whether the goods were insured by the Company.

- iv) Mr Low was unable to explain why the Company was trading in Euros, even when selling to UK customers, simply saying that he was not responsible for that part of the business;
  - v) the use of alternative banking platforms had been highlighted to Mr Low. He was familiar with the name Plutus FX. Even if he did not, as he claims, appreciate that the use of such a platform was yet another key indicator of MTIC fraud, having been warned about alternative banking platforms, he would have been able to check, for himself, what sort of entity was Plutus FX; and
  - vi) the lack of due diligence checks. Mr Low insisted that he had ensured that the Company sufficiently complied with its KYC obligations but was unable to provide a satisfactory explanation for why only two enquiries had been made via HMRC's VAT Validation line. He sought to rely on his claim or belief that Ms Brennan confirmed that the Company's checklists were sufficient and that adequate checks were made via Companies House. In light of HMRC's guidance expressly stating that it could not comment on the adequacy of specific checks and Ms Brennan having also set out in writing that she was unable to provide such assurance, there was no basis upon which he could reasonably have held such a belief.
80. Mr Arumugam highlights that whilst Mr Low now seeks to hold Warren Bartlett responsible, as the "controlling mind" for the Company's involvement in the MTIC fraud, the Court has been shown absolutely no evidence of that involvement. Mr Low has failed to produce any copy emails or other exchanges that he had with Warren Bartlett. In July 2015 he provided HMRC with an entirely contradictory explanation of Warren Bartlett's role in the Company, stating that it had come to an end. At no stage following the Company's liquidation did he take the opportunity to reply to the liquidators' or Insolvency Service's enquiries by explaining how Warren Bartlett was behind it all. It is only now that he is facing possible disqualification that he seeks to blame Warren Bartlett.
81. Despite the lack of any supporting documentary evidence, having heard Mr Low's evidence, I have concluded on the balance of probabilities, that he was indeed a "front" for Warren Bartlett or some other third party's illegal trading. I find that it is more likely than not that he knew that Warren Bartlett was facing some form of prosecution but he nevertheless agreed to be appointed as a director of the Company and then agreed deliberately to conceal Warren Bartlett's involvement.
82. I find it more likely than not that Mr Low was not aware of the communications sent by HMRC regarding the cancellation of its trading partners' VAT registration and including the Company's own VAT assessment notices. They were addressed to "FAO The Directors" and sent to the Company's retail premises, when Mr Low worked elsewhere. Although HMRC's emails were being sent to the Company's wholesale email address – the same address that Mr Low had given to Ms Brennan - if, as I have found, Warren Bartlett or some other third party was more likely than not the real

driving force behind the wholesale business, then it is also credible to the relevant degree, that (as he claims was the case) whilst Mr Low had access to that email account, he did not use it sufficiently often or to look at communications from HMRC – leaving such matters to the Company’s accountants and those who were principally behind the Company’s wholesale business.

83. Whilst I have accepted Mr Low’s evidence that there was a third party at all times behind the scenes, that does not absolve Mr Low of his responsibility for the Company’s part in supply chains that resulted in 12 missing trader claims and over a million pounds being lost to the public purse. He claims only to have been a director “at Companies House”. He appeared, up to and including the end of the trial, to fail to realise that his willingness to be appointed as a director of the Company whilst at the same time, deliberately and dishonestly concealing what he now claims was Warren Bartlett’s involvement, is precisely what enabled the Company to enter into and pursue its wholesale trading.
84. When Mr Low agreed to be a director of the Company he became responsible for all of the Company’s business, for all of the Company’s finances, for ensuring that it complied with its statutory obligations and that he complied with his statutory and common law duties to the Company’s members and its creditors.
85. I find on the balance of probabilities that Mr Low’s role in the Company’s wholesale trade was far greater than just dealing with the Amazon account. Whilst his evidence was inconsistent and self-contradictory it is nevertheless clear from the information he provided to Ms Brennan in July 2015 that he knew how the trades were conducted, he was apparently engaged in some level of due diligence checks, albeit they were clearly deficient and he was aware of the volume and type of goods being purchased and sold.
86. In my judgment, during the periods of his directorships, Mr Low both caused and allowed the Company to participate in transactions which were connected with the fraudulent evasion of VAT. For the reasons set out above, he either knew or should have known that those trades bore a striking number of the features which should have alerted him to their forming part of MTIC fraud chains.
87. Whilst I accept Mr Low’s evidence that he allowed himself to be excluded from the Company’s finances, that was his choice. By agreeing to be a director of the Company he nevertheless became responsible for those same finances. In my judgment he is consequently responsible for allowing the Company, during the periods when he was a director, to make wrongful claims for VAT for 8 consecutive quarters ending 03/16 to 12/17 totalling £2,646,905.
88. By:
- i) causing and allowing the Company to engage in transactions connected with the fraudulent evasion of VAT; and
  - ii) allowing the Company’s finances to be conducted in such a way that it made wrongful claims for VAT totalling in excess of £2.6 million,

Mr Low’s conduct as a director of the Company fell below the standards of probity and competence appropriate for persons fit to be directors of companies.

89. Having found that Mr Low's conduct makes him unfit to be concerned in the management of a company, the CDDA obliges me to make a disqualification order against him.
90. The Secretary of State seeks a disqualification order for 12 years. Taking into account (i) the guidance set out in *Re Sevenoaks Stationers (Retail) Ltd*; (ii) the consistency of approach recommended in *Warry*; and bearing in mind that I have found that it is more likely than not that Mr Low was not the mastermind behind the Company's wholesale trading but instead wilfully closed his eyes to and/or failed to take any steps to identify the glaringly obvious features of MTIC fraud reflected in the Company's wholesale trading as well as dishonestly misrepresenting his role in that trading to HMRC (maintain his silence right up until he finally served a witness statement in these proceedings) I consider that he should be disqualified for a period at the top end of the middle bracket. I shall make an order that he be disqualified for 10 years.