Neutral Citation Number: [2025] EWHC 264 (Ch)

Case No: CR-2019-002993

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
INSOLVENCY AND COMPANIES LIST (ChD)
RE: ANDERSON SECURITY & TRADING LIMITED (in Liquidation) (CRN.04005640)
AND RE: THE COMPANY DIRECTORS DISQUALIFICATION ACT 1986

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

Date: 13/02/2025

Before :

ICC JUDGE PRENTIS

- -

Between :

THE SECRETARY OF STATE FOR BUSINESS AND TRADE	**Claimant**
- and -	
ZAFAR ALI KHAN	**Defendant**

- -
- -

Lucy Wilson-Barnes (instructed by the Insolvency Service) for the **Claimant**
Andrew Young (instructed by Dumonts Solicitors) for the **Defendant**

Hearing dates: 20-24 January 2025

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JUDGMENT

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ICC JUDGE PRENTIS :

Introduction

1. On 4 December 2013 HMRC wrote to Anderson Security & Trading Limited (the "Company") as part of its national taskforce project on the use of sub-contractors in the security industry. The wider purpose was not mentioned. The letter notified its intention to "undertake a review of the Company's trading activities in relation to its VAT, PAYE and NIC requirements" and its bookkeeping records. A visit to its premises was proposed for 10 January 2014, later put to 28 January; and records for the period 6 April 2012 to 31 December 2013 were requested for production, including daybooks, sales and purchase invoices, contracts, and wage records including timesheets.

2. After a number of meetings and interviews, on 23 June 2015 HMRC through its officer Simon Campbell, who had been dealing with the VAT enquiry since February 2014, notified the Company of its decision to refuse entitlement to the right to deduct input tax of £412,825 claimed in the 13 VAT returns from 03/11 to 03/14 (the "Refusal Letter"). Two alternative reasons were given.

> "(i) Primary reason for input tax denial- No taxable supply
>
> The commissioners are satisfied that a supply for taxable services did not take place between AST Ltd and the purported sub-contractors Capital Zone UK Ltd, Aliance Security Ltd, NUHA Connections Ltd and BRM Harolds Ltd. Therefore the commissioners have refused… [the Company] the entitlement to deduct input tax for the periods set out…
>
> (ii) Alternative reason for input tax denial- the Kittel principle
>
> In the alternative, HMRC have concluded that the Kittel principle can be applied to these supplies.
>
> The European Court of Justice… [there] stated that where a taxable person knew or should have known that it was participating in a transaction concerned with the fraudulent evasion of VAT, that taxable person's right to deduct input tax should be refused.

Having undertaken an extended verification of the invoices, records and purported services, the Commissioners are satisfied that the invoices and purported services are connected with fraudulent evasion of VAT. Furthermore, the Commissioners are satisfied that Anderson Security and Trading Ltd knew or should have known that this was the case.

In the making of this decision, for both the primary and alternative reasons, the Commissioners have taken into account the following features evident from reviewing the trading activities of Anderson Security and Trading Ltd:

• AST Ltd provides mainly manned security services to clients around the UK.

• AST Ltd purportedly used the services of several subcontractors despite the fact they had a substantial workforce on their payroll who were paid national minimum wage. HMRC systems confirm that AST Ltd have a valid PAYE scheme 073/SZ24606 and have maintained a staffing level of between 20-49 guards, mainly on zero hour contracts.

• Payment is made mostly in weekly round sum cash payments of £9,500. It is an unusual commercial practice to make payments this way, especially given the lack of due diligence checks carried out on AST's suppliers. Furthermore there is a lack of evidence of receipt of payment for most of these supplies.

• There are no timesheets in relation to these supplies, which we would normally expect to see if a genuine commercial service was being provided.

• There are no contracts or written terms of agreement between AST Ltd and its subcontractors for the alleged supplies. We would normally expect there to be some form of contractual agreement.

• If one of the purported sub-contractors failed to provide a guard, then one of AST's own guards would be sent to cover that site. It was noted

> that AST's customers are located around several geographical sites including London, Devon & Dumfries.
>
> • The Director of AST Ltd Mr Zafar Khan stated that if guards are asked on sites who they work for they would say they work for AST Ltd.
>
> • None of the purported sub-contractors PAYE position support the conclusion that they had a labour force to make the supplies listed in schedule of invoices contained in the attached annexes.
>
> • Mr Khan has informed HMRC that AST Ltd did not conduct any due diligence checks on the purported sub-contractors who allegedly approached AST Ltd offering their security services. Therefore, if services were supplied to AST (it is the Commissioners view that nothing was supplied) AST does not appear to have acted with reasonable diligence when entering into these transactions."

3. As permitted by the Refusal Letter, by letter of 13 October 2015 the Company through its accountants, Affinity Associates Ltd ("Affinity"), requested a review of the decision (the "Affinity Letter"). By letter of 29 January 2016 (the "Review Letter") the review officer, Mrs Di Champion, concluded that Mr Campbell's decision should stand. Her summary was this:

> "Affinity maintain that information exists by way of contracts and time sheets that Officer Campbell has not had sight of. Without sight of this information, Officer Campbell could only reach the conclusion that he has. I therefore recommend that his decisions are upheld in full.
>
> It would be beneficial to all parties for the information mentioned within [the Affinity Letter] to be sent to Officer Campbell as soon as possible as this may enable matters to be fully or partially resolved without recourse to the Tax Tribunal".

4. The last paragraph was in bold.

5. As a result of the refusal and an 18 May 2016 warning by HMRC of its intent to present a winding-up petition, the Company entered creditors' voluntary

liquidation on 29 June 2016, Nedim Patrick Ailyan being appointed liquidator. The sole creditor listed was HMRC with liabilities of £753,618 for VAT and £1,515,023 for PAYE/ NIC; assets were £14,523 in the bank and £1,000 "goodwill".

6. On 12 March 2018 the Secretary of State for Business, Energy and Industrial Strategy (now the Secretary of State for Business and Trade) sent the Company's sole director Zafar Ali Khan notification under section 16 of the *Company Directors Disqualification Act 1986* (the "Act") that a disqualification order was intended to be sought against him.

7. On 1 May 2019 the Secretary of State brought this claim against Mr Khan under section 6 of the Act (the "Claim"). Its basis was set out in the original affirmation of Christopher Leo, which affirmation has subsequently been adopted through the 29 April 2024 affidavit of Kevin Read, a Chief Investigator in the Insolvent Investigations Directorate of the Insolvency Service. Through his counsel, Andrew Young, Mr Khan has taken issue with the scope of the allegations; so their current iteration must be set out in full.

> "9. Between 2011 and 05 April 2015 [Mr Khan] caused [the Company] to falsely claim input tax on Value Added Tax Returns submitted to [HMRC] resulting in fraudulent evasion of VAT. The above action has resulted in additional liabilities to HMRC of £748,672.
>
> 9.1 ASTL submitted VAT Returns to HMRC for thirteen consecutive VAT quarters ended from 03/11 to 03/14 disclosing a total of £112,461 was due to HMRC, for which full payment was made;
>
> 9.2 On 23 June 2015, following visits made by HMRC to inspect ASTL's books and records on 27 February 2014 and 30 June 2014, HMRC issued a Notification to refuse entitlement to deduct input VAT totalling £412,825 to ASTL in respect of the VAT quarters from 03/11 to 03/14;
>
> 9.3 The Notification on 23 June 2015 offered a primary reason that a supply did not take place between the company and the purported sub-

contractors. The alternative reason quoted the Kittel principle that the invoices and services were connected with the fraudulent evasion of VAT;

9.4 On 23 July 2015, HMRC issued an Officer's Assessment to ASTL totalling £412,825. In addition HMRC applied Civil penalties totalling £288,972 and interest of £46,875;

9.5 At the date of liquidation the sole creditor of ASTL is HMRC with liabilities totalling £3,509,513 including Regulation 80 Determinations for the tax years 2009/2010 and 2014/2015 totalling £13,145 and Regulation 80 interest of £163,668".

8. As Lucy Wilson-Barnes for the Secretary of State acknowledged in her skeleton, the relevant period is actually between 2011 and 31 March 2014; so aligns with the Refusal Letter.

9. Mr Read's affidavit foreswore a further ground of the original claim, which was that:

"Additionally Mr Khan caused the company to deliberately under declare its… PAYE and… NIC liabilities by making direct payments to employees of the company and not subjecting those payment to PAYE and NIC…

9.5 HMRC's investigations found that gross wages were paid to employees and that these should have been subject to PAYE and NIC;

9.6 On 30 September 2015, HMRC issued Regulation 80 Determinations to ASTL totalling £1,360,965 in respect of unpaid PAYE/NIC in respect of wages paid by ASTL to its employees for the tax years 6 April 2010 to 5 April 2014;

9.7 Subsequently, on 10 February 2017 HMRC imposed a Penalty charge of £1,088,772 in respect of Potential Lost Revenue".

10. It will be noted that while the PAYE and NIC grounds have been dropped within the Claim, HMRC currently retains its proof for them within the liquidation.

11. In her skeleton Miss Wilson-Barnes confirmed that the PAYE/ NIC ground was now no part of the Secretary of State's case against Mr Khan. Its withdrawal was, as Mr Campbell said in his evidence, consequent on a re-consideration of the Claim in light of comments of ICC Judge Barber in [2023] EWHC 568 (Ch), handed down on 23 March 2023 and explaining her reasons for adjourning the trial of the Claim then listed to commence on 7 February 2023. They centred on Mr Khan's health, which will be addressed below; but Judge Barber also stated that as within the FTT proceedings, initiated by Mr Khan in respect of the Personal Liability Notice issued against him consequent on the determinations in respect of the Company, HMRC had withdrawn its opposition to the appeal insofar as it dealt with PAYE/ NIC, there was a risk of the Claim being prolonged by a likely application to strike out or for reverse summary judgment on the basis that such withdrawal would give rise to an estoppel or (more likely) an abuse of process; the withdrawal apparently followed a request by Mr Khan for the tax documents for the relevant individuals, with a view to showing that they were self-employed.

12. It is the existence of those FTT proceedings, now, as I understand it, before the UTT for an application for their continuation out of time, which is the large explanation for the large lapse of time between the issue of the Claim and this its trial: when those proceedings looked as if they would be determined expeditiously, it was a sensible course to allow these to await them; that no longer being so this trial must proceed, neither side having sought a further adjournment.

13. Mr Young outlined certain arguments which were never filled out. One was to be that this court had no jurisdiction to determine the Kittel point, and would be bound to await the FTT's decision. That would come as a surprise to a number of judges who have disqualified persons under the Act on the grounds of Kittel activity without a prior FTT determination, and would have been wrong: this court is not carrying out the same exercise as the FTT but is,

between non-identical parties but on (I envisage) largely the same facts, deciding whether grounds of unfitness within the meaning of the Act have been made out and therefore that Mr Khan ought to be disqualified.

14. Nor is the abandoned PAYE/ NIC aspect the basis for Mr Khan's concern about the scope of the allegations in the Claim; and again, a sketched defence that the withdrawal led to an unassailable inference that the Claim was on the facts bound to fail was not pursued. Instead, Mr Young begins with the proposition that as sole director of the Company Mr Khan was entitled, and from his duties bound, to complete its VAT returns claiming to recover all input tax within the definition of section 24 of the *VAT Act 1994* which it was treated as bearing within the period, by providing full information under section 26 of that Act and under regulation 25 of the *VAT General Regulations 1995*; reasons that a VAT Return so completed cannot be said to claim falsely; accepts that this would not apply where no supplies by the relevant sub-contractor were made; but avers that it applies to exclude later treatment of the relevant return under the Kittel principles, or at the least the second Kittel limb which is not founded on actual knowledge.

15. This argument must be rejected.

16. First, the allegation is that VAT was falsely claimed. The falsity is not in terms limited to the time a return was completed, or indeed the time thereafter.

17. Secondly, where Kittel applies, on either of its bases there may be later disallowance of relief otherwise properly claimed.

18. Thirdly, Kittel has been an issue between HMRC and the Company since at the latest the Refusal Letter, and is so within the FTT proceedings.

19. Fourthly, it is clear from the wording of the allegation, the evidence in support, and Miss Wilson-Barnes' skeleton that it remains foundational to the allegations at trial; indeed, Mr Young also addresses it in his skeleton.

20. However, I would observe that this is another case in which the Secretary of State's allegations could have been expressed with greater precision, indeed

precision akin to a pleading, so that this argument could never have been raised.

The law

21. The Act is directed both at the individuals concerned and directors as a whole, with the purposes of protection of the public and encouraging higher standards in corporate management.

22. By s.6(1) of the Act:

> "The court shall make a disqualification order against a person in any case where, on an application under this section (a) the court is satisfied (i) that the person is or has been a director of a company which has at any time become insolvent (whether while the person was a director or subsequently)… and (b) that his conduct as a director of that company… makes the person unfit to be concerned in the management of a company".

23. By s.6(2)(a) insolvency includes where a "company 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".

24. Unfitness is an ordinary word, fitness being measured (to put it in broad terms) against the standards to be expected of one holding the office of director. Given that the conduct in issue pre-dates 1 October 2015, the matters to which the court must have regard for determining unfitness will by section 12C include those set out in Schedule 1 to the Act as it stood before substitution under the *Small Business, Enterprise and Employment Act 2015*. By paragraph 1 to the Schedule that includes "Any misfeasance or breach of any fiduciary or other duty by the director in relation to the company", and by paragraph 6 the extent of the director's "responsibility for the causes of the company becoming insolvent".

25. If unfitness is shown, the court must make a disqualification order. By s.6(4) "the minimum period of disqualification is 2 years, and the maximum period is 15 years".

26. The *Re Sevenoaks Stationers (Retail) Ltd* [1991] Ch 164 banding of the 2-15 year period will apply. Miss Wilson-Barnes referred me to HHJ Hodge QC's observations 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 in MTIC cases, "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."

27. Although Mr Young did not submit that it would be wrong to have regard to those dicta, they seem to me of only oblique directional assistance here: while also for this purpose assumedly founded on Kittel, and while also concerning missing traders and hence the first two letters of "MTIC", what is not in issue is an MTIC fraud; thus the same policy considerations cannot simply be read over. Clearly, though, if there is a finding of actual fraud, whether on the first

Kittel basis or otherwise, then absent very special circumstances the top *Sevenoaks* bracket would be engaged.

28. Counsel agreed this encapsulation by HHJ Cawson KC in *Re Walmley Ash Ltd (formerly Balmoral Ltd)* [2023] EWHC 1181 (Ch) at [31]:

> "The burden of proof in disqualification proceedings is on the applicant. The standard of proof is the civil standard. However: (a) I bear in mind that where there is an allegation of fraud, or involvement in fraudulent activity, the burden remains the same, and the standard remains the same civil standard. However, if a serious allegation is made, then more cogent evidence may be required to overcome the unlikelihood of what is alleged, at least to the extent that it is incumbent on the party making the serious allegation to prove it. This is on the basis that the more serious the allegation, the less likely it is that the event occurred and hence the stronger should be the evidence before the court concludes that the allegation is established on the balance of probability… (b) In disqualification proceedings, the defendant director bears an evidential burden in respect of matters raised in his defence…".

29. The Kittel principle is named from the decision of the European Court of Justice in the cojoined appeals *Alex Kittel v Etat Belge* (C-439/04) and *Etat Belge v Recolta Recycling SPRL* (C-440/04). The relevant reasoning begins at [55], following an analysis of the right to deduct:

> "55. Where the tax authorities find that the right to deduct has been exercised fraudulently, they are permitted to claim repayment of the deducted sums retroactively (see, inter alia, Case 268/83 *Rompelman* [1985] ECR 655, paragraph 24; Case C-110/94 *INZO* [1996] ECR I-857, paragraph 24; and *Gabalfrisa*, paragraph 46). It is a matter for the national court to refuse to allow the right to deduct where it is established, on the basis of objective evidence, that that right is being relied on for fraudulent ends (see *Fini H*, paragraph 34).

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

57. That is because in such a situation the taxable person aids the perpetrators of the fraud and becomes their accomplice.

58. In addition, such an interpretation, by making it more difficult to carry out fraudulent transactions, is apt to prevent them.

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

60. It follows from the foregoing that the answer to the questions must be that where a recipient of a supply of goods is a taxable person who did not and could not know that the transaction concerned was connected with a fraud committed by the seller, Article 17 of the Sixth Directive must be interpreted as meaning that it precludes a rule of national law under which the fact that the contract of sale is void – by reason of a civil law provision which renders that contract incurably void as contrary to public policy for unlawful basis of the contract attributable to the seller – causes that taxable person to lose the right to deduct the VAT he has paid. It is irrelevant in this respect whether the fact that the contract is void is due to fraudulent evasion of VAT or to other fraud.

61. By contrast, where it is ascertained, having regard to objective factors, that the supply is to a taxable person who knew or should have known that, by his purchase, he was participating in a transaction

> connected with fraudulent evasion of VAT, it is for the national court to refuse that taxable person entitlement to the right to deduct".

30. As Moses LJ observed in *Re Mobilx Ltd* [2010] EWCA Civ 517 at [41]-[42], the decision

> "extended the category of participants who fall outwith the objective criteria [which permit deduction] to those who knew or should have known of the connection between their purchase and fraudulent evasion. Kittel did represent a development of the law because it enlarged the category of participants to those who themselves had no intention of committing fraud but who, by virtue of the fact that they knew or should have known that the transaction was connected with fraud, were to be treated as participants. Once such traders were treated as participants their transactions did not meet the objective criteria determining the scope of the right to deduct.
>
> [42] By the concluding words of [59] the court must be taken to mean that even where the transaction in question would otherwise meet the objective criteria which the Court identified, it will not do so in a case where a person is to be regarded, by reason of his state of knowledge, as a participant".

31. Moses LJ went on to say this, at [52]:

> "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".

32. And 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…".

33. That knowledge need not extend to the precise details. 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."

34. However, rejected in *Mobilx* was any notion that knowledge, actual or imputed, of running the risk of being involved in fraud would be sufficient to meet Kittel: that would "infringe the principle of legal certainty": [55].

35. So, for Kittel purposes, both the person who knew that by his purchase he was participating in the fraudulent evasion of VAT, and the person who ought to

have known that he was so participating, are treated alike. But a finding of Kittel liability does not equate to a finding of unfitness for the purposes of the Act. 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], who continued with the observation 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".

36. Counsel are agreed that the Kittel questions are on the authorities conveniently summarised as four: (1) Was there a tax loss? (2) If so, did this loss result from a fraudulent evasion? (3) If so, were the transactions which are the subject of this proceeding connected with that evasion? (4) If so, did or should the director have known that the transactions were so connected? If those four are passed, then assuming the Act applies the fifth is whether the director's conduct was unfit within its meaning.

37. In that regard there is a distinction between the director with Kittel actual knowledge and the director with Kittel imputed knowledge. As Briggs J warned in *Megtian*:

> "[41] It is important to bear in mind, although the phrase 'knew or ought to have known' slips easily off the tongue, that when applied for the purpose of identifying the state of mind of a person who has participated in a transaction which is in fact connected with a fraud, it encompasses two very different states of mind. A person who knows that a transaction

> in which he participates is connected with fraudulent tax evasion is a participant in that fraud. That person has a dishonest state of mind. By contrast, a person who merely ought to have known of the relevant connection is not dishonest, but has a state of mind broadly equivalent to negligence.
>
> [42] The distinction between dishonesty and negligence is of fundamental importance, even in cases such as the present where proof of either of them will suffice for the opposing party's purpose. For that reason, an allegation of dishonesty in civil litigation must be clearly and specifically pleaded, and, if the person against whom dishonesty is alleged gives oral evidence, it must be specifically put in cross-examination".

38. Here, both limbs of Kittel are relied on, and have been put. But Miss Wilson-Barnes was right to concede that were the Secretary of State to succeed on imputation rather than actual knowledge, the appropriate period of disqualification would inevitably be reduced; and might not be in the top bracket.

The witnesses

39. Mr Campbell's affidavit of 18 October 2019 adopted three statements he had given in the FTT. He is an experienced HMRC officer, having worked there since 1990, and a Higher Officer in the Fraud Investigation Service, allocated to the Company in February 2014. He is also an HMRC Penalty Champion, which as he confirmed is a title attained neither by numbers nor value of penalties issued but competence as a point of contact on the subject.

40. He was a slightly nervous but excellent witness, listening to and dealing with Mr Young's unusually-informed questions (Mr Young himself having worked for HMRC). He confirmed that he was experienced in labour markets, including the provision of security guards, albeit on the VAT rather than PAYE/ NIC side, which was for others; that his work was necessarily dependent in part of the information gathering and conclusions of other teams; and that the extended verification process was not directed at denying tax, but at understanding what was happening. He agreed that there was nothing

inherently wrong in paying cash, which was instead a red flag; that there was no definition of a missing trader of which he was aware; and that often within the industry the immediate supplier would have no staff of their own but rely on sub-contractors, and therefore the absence of anyone on PAYE was neither conclusive as to staff available nor itself more than another red flag. He was left in no doubt as to the correctness of his conclusion that of the Company's four sub-contractors in dispute, none had any staff available.

41. Mr Read was also an excellent witness. As is clear from his reworking of the allegation, he has applied an independent reviewing mind to the Claim and from the Secretary of State's view the propriety of its continuing; and he told the court that that included consideration of Judge Barber's judgment and Mr Khan's health issues.

42. Mr Khan was born in 1973 in Afghanistan. As Mr Young extracted from him in re-examination he came to this country as an illegal immigrant with Pashto as his language; he first learned English at 21, and his immigration status is now regularised. He gave his evidence standing, in an engaged way; and I reject the suggestion from Mr Young, not supported by any examples, that Mr Khan may have answered misunderstood questions: when he did not understand, he asked. His English was excellent, including idioms; his written and oral evidence was in English; and his occasional glitch tended to derive from a word in his evidence which was lawyerly rather than his own. He is a dignified and intelligent man.

43. He was also a very poor witness, incapable of giving a direct answer to a direct question even when told to do so, and too often giving an account of what he wanted rather than what had been asked. I emphasise that was not owing to misunderstanding. Instead, as will be seen below, his evidence presented impossible factual varieties: at one point in it the Company had no guards of its own; and unlikely and self-serving expansions: he now recollected seeing BRM's VAT trade classification of "wholesale of fruits and vegetables", and asked them to change it; and withdrawals of previous certainties: what he had called time sheets were actually lists of hours for which the Company had contracted with its customer. He never told all he

knew about why he had caused the Company to use the four sub-contractors, three of whom were previously unknown and had just walked in off the street offering labour. His evidence was simply not a full honest account.

44. As to his health, at the outset Mr Young told the court that Mr Khan was a vulnerable witness. Asked for the content of the vulnerability he said that Mr Khan had had serious mental health issues in the past; and that he and his solicitors, who have been dealing with him for some years (although very lately instructed for trial), continued to have concerns about him. By the end of trial Mr Young had a professional report which he said spoke to continuing issues, but which he was unable to disclose. Mr Young was right to bring to the court's attention those ongoing concerns and Judge Barber's judgment, which gives more details of Mr Khan's more acute situation two years ago. It was agreed between the court and counsel that rather than provide for a different programme, by extra breaks or suchlike, all would keep an especial eye on Mr Khan during his evidence and adapt as need be; but it was only at the end of it (and actually, after reference had been made to the existence of the report) that he suddenly became very upset (a matter raised by Miss Wilson-Barnes); and he was unable to remain in court through all of closing. This did not affect his evidence, which he was able, and indeed anxious, to complete.

Facts and findings

45. The Company was incorporated on 1 June 2000, and was dormant to 30 June 2001. Its single issued £1 share has passed from Akhtar Hussain, who was also its director from incorporation until 1 October 2006; to Amir Ali Khan, who was director from 1 April 2006 to 21 September 2008; to Mr Khan who became its director from 22 September 2008. From a date unknown Mr Khan was also the proprietor of its registered office at 730B High Road, Leytonstone E11.

46. The Company was registered for VAT with effect from 1 February 2002 with a trade class of 76402, the provision of security services. That is what it did. It filed its VAT returns quarterly, originally on a flat rate scheme.

47. Mr Khan acquired it having himself been one its guards, also known as "security consultants", for which he held the necessary SIA (Security Industry Authority) licence. At the time the Company was not doing well: it was "in a bad shape… I saw this as a major opportunity as I had some experience in sales". He decided to "change the model… and get our own work in. We bought leads and followed up 5,000 to 8,000 leads a week. I had 4-7 students at any one time to make cold calls, emails and faxes and chase the leads". "I focussed on trying to turn Anderson around and build Anderson into a national brand".

48. The Company under Mr Khan was apparently successful. It had to leave the flat rate scheme, with which Mr Khan had been "at ease" as the paperwork was simpler, because its turnover came to exceed the threshold. Its approved accounts show turnover for the year ends 2011-2014 of, respectively, £851,022, £1,049,288, £776,706 and £669,915; its balance sheet for those years was £73,416, £67,042, £35,612 and £97,042; despite losses of £6,374 and £31,430 in 2012 and 2013, it always had net current assets: £70,661, £64,887, £33,925 and £95,727.

49. Mr Khan's new and momentary evidence that the Company did not have its own guards was flatly inconsistent with what came before. This is his witness statement: "Because most of the work we got in was nationwide, was for hours which my staff couldn't cover or was outside the skills set of the staff we had, I started subcontracting that work to other firms. I had no fulltime security guards of my own… The students were only able to work limited hours and were all local. Given that they were mainly in full time study, they could not cover wider areas. This was not a problem for us as the word quickly got out that we had our own contracts and we soon started getting approaches from other security firms seeking subcontracting work from us". There were guards; and there were skills required of guards, which they might or might not have, depending on the type of job.

50. On 28 January 2014 Mr Khan had his first meeting with HMRC, at Affinity, and with his accountant Dharmesh Amin present. He told HMRC that his number of staff "varies from day/ week/ month. All his staff are on temporary

contracts… Zero hours… They are given jobs as and when available which could be months/ days/ weeks etc as per requirement… He is responsible and in control of them. He decides when they start, what time, where, pay and what work is to be done… He does not pay cash to any one of his employees. They are all paid national minimum wage".

51. On 27 February 2014 was another meeting, again at Affinity and with Mr Amin present. Mr Khan told Mr Campbell that the Company mainly supplied construction sites; was contacted for staff, mainly through word of mouth; and had around seven SIA-licensed staff.

52. At the 23 June 2014 meeting Mr Khan completed questionnaires on the sub-contractors in which Mr Amin is recorded as saying that "Anderson have 20 staff on payroll cover if subcon fails to provide a worker".

53. The Affinity Letter averred that "when a med sized company like AST gets huge contracts to service, they cannot keep a large supply of security guards at their behest and call because the cost would be uneconomical. Therefore they have to use subcontractors, who have guards… Of course the contract is always AST's and if the contract gets firmed up AST then eventually brings in its own guards". Later it had this: "The work force that they have on the payroll are the managers and the full-time staff. The other people are mainly security guards, who are on contract basis or hired at the time when a large contract is obtained".

54. In his history for the CVL Mr Khan referred to his plan for the Company on taking it over. "The director's focus was on introducing more sales to the Company and services were expanded from local to national level. This process of chasing a higher amount of sales left the Company with less time to pay any attention to employing a higher number of staff and keeping little profit margins so all work was forwarded to sub-contractors".

55. That was qualified by its continuation: "As sub-contractors are paid 30, 60, 90 days after they have completed the job, the director was not worried and concentrated on introducing more business and leaving the guarding to the sub-contractors… As the director couldn't have the ability to call security

guards all night or do random visits, he introduced most of the work to sub-contractors to enable him to keep on concentrating on sales as large security companies do eg G4S etc.".

56. His statement said more about the students: "my staff were mostly full-time international students… Some worked 10 hours a week and some worked 20 hours a week. They could not have undertaken work outside our immediate locality".

57. The vagaries of Mr Khan's accounts of the Company's staff and staffing levels over the years is manifest; and that despite the formality of each occasion. But his 2014 meetings were contemporaneous with events in the Claim and speak both to the availability of the Company's own staff and his control over them.

58. As part of his investigations, Mr Campbell prepared a calculation of the Company's staffing levels from its PAYE annual returns. He treated five staff as attributable to the office, the balance to security. That balance for April to September 2011 varied between 9 and 13; for October 2011 to September 2012 19 and 25; for October 2012 to May 2013 17 and 19; and from June 2013 to February 2014 15 and 11; there were 6 for March 2014. Mr Khan said that this failed to recognise that most workers were part time, a point he has raised before the FTT; his evidence in the Claim does not take issue with the calculation, and there was no direct cross-examination on it. Further, it is consistent with the weight of the evidence that throughout the period the Company did have security staff available to it, not just through sub-contractors, whether those were on PAYE or otherwise. Notably what there is not is any evidence as to what its own security staff were doing; or, say, a list of the jobs for which the four sub-contractors were billing, accompanied by a list of what jobs the Company and the other sub-contractors were fulfilling in a particular month. Mr Campbell's calculations do not go so far as to show that the Company could always have fulfilled all the disputed sub-contractors' work itself; but do show that over many months it had its own staff available to fulfil all or some of that work. It also had access to other sub-contractor companies.

59. It is not in dispute that the Company under Mr Khan used ten sub-contractors; nor that there is no issue as to six of those; nor that somebody fulfilled the jobs purportedly supplied by those four; nor that the Company was paid for them; nor that the Company made sizeable payments on the invoices rendered by the four sub-contractors.

60. The controversial four are Capital Zone UK Ltd ("Capital"); Aliance Security Ltd ("Aliance") which itself had two sub-contractors, Azora International Limited ("Azora") and Greitai Ltd. ("Greitai"); NUHA Connections Ltd ("NUHA"); and BRM Harolds Ltd ("BRM"). It is the input tax in respect of their invoices which was disallowed by the Refusal Letter, for the reason that they made no supply, alternatively on either Kittel ground.

61. Capital, NUHA and BRM rendered a chronological chain of invoices. Capital's were from 31 January 2011 to 31 December 2011; NUHA's from 31 January 2012 to 31 March 2013; BRM's from 30 April 2013 to 31 January 2014. Aside from that chain, over that time the other six were making their unchallenged supplies; and so, through its own sub-contractors, was Aliance, its invoices running from 30 June 2011 to 31 October 2013.

62. Capital was incorporated under number 06692111 on 9 September 2008, and dissolved on 2 August 2016. The only accounts it ever filed were on 6 January 2010, for the period to 30 September 2009. They showed a profit of £2,324 on a turnover of £248,791, and described its business as "Security services recruitment". From 12 October 2009 its sole director was Aslam Alam.

63. Its contract with the Company was signed and with effect from 9 September 2010. The contracts for each of the four were materially the same, and we will come to the terms below. For the moment it will be recalled that the Review Letter was of 29 January 2016 and recommended immediate provision of the contracts to HMRC; despite that, and despite his investigations since 2014, Mr Campbell first saw them exhibited to Mr Khan's statement within the FTT on 15 September 2017.

64. Capital was registered for VAT from 15 September 2008.

65. Its invoices to the Company charged £131,043 VAT on £655,217 of supplies. These were paid. As with the other four, the Company reclaimed the input tax on the invoices, which reduced the net amount it was otherwise to pay to HMRC.

66. However, Capital's last filed VAT return was to the period 04/10.

67. It also made no PAYE returns for 2010-2011/ 2011-2012, which covers the period of supply. So there is no evidence of its having any employees to fulfil the contract; nor, indeed, of its having anyone else to do so. The contract was to provide from its effective date "various security services at rate and in locations as detailed on the order (for the purposes of this contract an order could be an order form, faxed or emailed instruction or verbal instruction from an authorised member of [the Company's] staff)". It was to comply with the Company's health and safety policy and all statutory requirements; "Ensure that your security officers and other staff are SIA licensed and are capable of carrying out the service, able to interact well with our management and with visitors on site"; it had to have "a valid insurance policy for employer and public liability", and was responsible for paying its staff and for providing cover.

68. On 17 October 2011, so within the year of its supply to the Company, there was a request by another company to verify its VAT number, which prompted Elaine Nash of the Wigan office to email colleagues: "The VAT Certificate submitted for Capital Zone appears incorrect, there are spelling mistakes, incorrect wording and typing variations from a usual VAT Certificate". Capital was then characterised as a "new MTIC trader".

69. On 8 November 2011 two HMRC officers visited its notified trading address in Palmers Green to find it was a "residential property converted into three flats"; the contacted resident did not know Mr Alam. It is fair to note that (a) the address had been Capital's registered office (its third since incorporation) between 3 February 2010 and 11 February 2011; (b) by November 2011 there had been another in-between it and its present address in Barking; (c) when on 13 April 2012 Mr Alam applied to strike Capital off the register (which was

repeatedly suspended), he used yet another contact address, not being any of the registered offices; (d) Mr Young was right to characterise this as another red flag, in the sense that a failed visit did not by itself prove that a company had no trading address. However, there was no response to the letter put through the Palmers Green letterbox nor any declaration by Capital to HMRC that its trading address had changed; and it remained in active use as its business address. Other than Palmers Green, to this day there is no known alternative.

70. As it and its officers were untraceable Capital was compulsorily de-registered for VAT with effect from 7 November 2011. It was notified of that by letter of 15 November 2011. It may have had no knowledge of that letter and its contents, we do not know; but it continued to render invoices to the Company and be paid on them, while apparently having no intention of filing VAT returns. Notably, each of its invoices was from the Palmers Green address. It never accounted for the VAT on its invoices to the Company, or ever paid any.

71. There are more indications of fraudulent evasion below, especially its receipt of cash and the timing of payments; but it is clear even so far there was a tax loss to HMRC; which resulted from fraudulent evasion; and that the Company's invoices were connected with that.

72. Next in the chain was NUHA, incorporated on 8 October 2010 under number 07401123. It was dissolved on 13 May 2014. Its director from incorporation until 5 December 2011 was Dawar Sani. We will come across him again, as from 4 August 2011 he was the director of BRM. A few days after his cessation as director and replacement by Zeeshan Masood Khan, on 21 December 2011 the contract with the Company was signed; it was effective from the day before. During the supplies to the Company, on 16 May 2012 Mr Masood Khan was replaced by Martin Johnson, who on 8 August 2012 was replaced by Heiki Lilloja. We know nothing of them from the evidence.

73. NUHA filed accounts for the period to 31 October 2011 and the year to 31 October 2012, for 10 months of which it had been purportedly supplying the Company. Both sets of accounts were dormant.

74. Its invoices to the Company between 31 January 2012 and 31 March 2013 totalled £548,571 of which VAT was £91,428. Miss Wilson-Barnes tracked £530,000 of payments against them. Although its invoices are for 65,420 hours, which indicates 19 guards, it was never registered for PAYE.

75. It registered for VAT on 15 December 2011, so shortly before the contract. Its main business activity was listed as "information technology consultancy services", within the category "Business and domestic software development (main activity)". As mysteriously, its nature of business at Companies House was "trade of electricity" and "non-specialised wholesale trade".

76. NUHA's VAT returns declared outputs of £3,749. Its returns for 04/12, 07/12 and its last period ending 22 November 2012 were all nil.

77. It was de-registered for VAT on 6 December 2012 in the same circumstances as Capital: a validation request made of HMRC as to its VAT number; an inability to verify; identification as a potential MTIC trader; and a 15 November 2012 visit to its principal place of business, at which it could not be tracked. Like Capital, and with the same qualifications, there were post-deregistration invoices and payments.

78. I am satisfied that the first three stages of the Kittel enquiry are met in its regard.

79. BRM was next with its invoices from 30 April 2013 to 31 January 2014 which totalled £431,362 and included £71,757 of VAT, of which Miss Wilson-Barnes could find only £295,300 paid. It was incorporated under number 07675748 on 21 June 2011 as Apple Consultant Limited, changing its name on 12 August 2011. Mr Soni became its director on 4 August 2011 after Muhammad Rehan. Its PAYE returns disclosed three employees in the period 2010-2011; it filed none subsequently.

80. Its only filed accounts at Companies House, to 30 June 2012, showed assets of £2,800, and net current assets and a positive balance sheet in the sums of £60.

81. Its contract with the Company was made and effective from 4 March 2013. It had on 24 October 2012 registered for VAT, and submitted a VAT return to 01/13 seeking repayment of £2,354; 04/13 and 07/13 returns were nil. Out of time, and shortly after Mr Khan's 27 February 2014 meeting with HMRC, BRM filed its 10/13 and 01/14 returns showing tax due of £349 and £923 respectively, although those were the balances after declared outputs of £50,282 and £45,940 respectively. Mr Khan could not recall if he told Mr Soni about the meeting, but particularly after such a long delay in the filing of the 10/13 return the dates would appear more than coincidental; and the Company and BRM were still doing business at this time, so it may be assumed that Mr Khan was speaking to Mr Soni.

82. BRM was registered at Companies House with its nature of business as "other business support service activities". Its VAT registration was the one which contained the trade classification "wholesale of fruits and vegetables"; neither aligned with the other; nor with a business of supplying guards. Further, in support of its VAT registration Mr Soni provided a National Insurance number which was not his own, but that of a Spanish lady, Mireya Fernandez whose connection, if any, is unknown.

83. Its problems with HMRC arose immediately after registration. The notification letter was sent to 183 Charlemont Road E6, the trading address contained in its application form and since 18 August 2011 its registered office, which it remained at dissolution on 23 December 2014. It was returned to HMRC marked "refused". So BRM too was categorised as a missing trader. Despite the later returns, no other address was ever provided for it; and it used the address on each of its invoices to the Company. So on 2 April 2013 when HMRC wrote to BRM about its claimed repayment under the 01/13 return, inviting contact "to facilitate clearance for the claim to be paid", it was to that address, as was the 23 April reminder.

84. On 6 June 2014 two HMRC officers made an unannounced visit to 183 Charlemont Road. There is nothing to suggest that an announced visit would have had any more success: it was a residential address where BRM was unknown. The officers checked post, including some in Asian names, but

none was referable to Mr Soni; and the letter left, despite this being its registered office, brought no contact. Mr Young's inventive suggestion that perhaps there was no post for BRM because it had been picked up would, if right, only call into greater doubt why BRM should not have responded to this letter from HMRC.

85. The first three Kittel questions are therefore answered affirmatively in respect of BRM; the more emphatically as it was by now the third in the chain.

86. Overlaying the chain is Aliance and its suppliers, Azora and Greitai.

87. Aliance was incorporated under number 06991526 on 14 August 2009 and dissolved on 26 July 2016 having filed accounts to 31 August 2014. Its sole director and shareholder was Muhammad Aamir Bhatti.

88. The accounts disclose small-scale trading: net current assets and a balance sheet of £15 for 2010; then £182 for 2011, £1,387 for 2012, £91 for 2013, then £1 for 2014. Its invoices to the Company were 30 June 2011-31 October 2013. They totalled £711,600 including VAT of £118,600. Miss Wilson-Barnes could find Company payments totalling £506,200 only.

89. Mr Khan agreed that the Company was Aliance's only customer. The contract was signed on and with effect from 22 August 2009, eight days after its incorporation. Mr Khan knew Mr Bhatti, who had previously worked for the Company and by the Affinity Letter of 13 October 2015 was again, "and has done for some time". The long gap between contract and supply will be considered below.

90. Aliance submitted no PAYE returns, and there is no evidence it had employees. It was registered for VAT under the flat rate scheme from incorporation with the main activity "private security services". Its invoices charged VAT at 20%.

91. Aliance is not itself alleged to be a missing trader. When two other officers from HMRC visited its registered office on 6 June 2014 they met Mrs Bhatti; and they met Mr Bhatti at a pre-arranged meeting on 14 August 2014 at

Affinity, to whom he had been recommended by Mr Khan; there it was confirmed that Mr Bhatti had been employed by the Company before, during and after its use of Aliance.

92. Those who are missing are its own sub-contractors, Azora and Greitai.

93. Azora was incorporated as Azore International Limited under number 05700303 on 7 February 2006, changing its name on 27 April 2006. Its first and only filed accounts were to 28 February 2009, which were dormant. From 4 January 2010 its sole director was Khalid Mehaboob. It was dissolved on 13 August 2013.

94. Azora had registered for VAT from 1 April 2009. Its main activity, as described on its VAT1 application form, was "management consultants and event organisers". Mr Young got Mr Campbell to agree that the latter might need security, but that would hardly constitute a main business any more than catering or marquee erection; and anyway, it was accepted that the Company never supplied events. Azora never filed any VAT returns, or PAYE records. On 13 September 2012 it was compulsorily de-registered as HMRC was unable to establish contact with it.

95. There are invoices from it to Aliance of 31 July 2010, 31 August 2010 and 30 September 2010, then from 30 June 2011 to 30 November 2011. These are for £256,173 gross, including VAT of £41,263. At a 6 May 2016 meeting with HMRC at Affinity, Mr Bhatti said he paid Azora in cash.

96. On 23 December 2010 Azora sent HMRC a letter on headed paper about a change of address. Very oddly the subject-line was "Re: Capital Zone UK Ltd, Change of details". There is no overt link between the two companies. But beyond noting that this would seem to show that there were covert links, itself a not unexpected possibility given the chain of supply, this cannot be taken further.

97. Greitai was incorporated on 25 July 2007 under number 06323112 as Greitai Mortgages Ltd, changing its name on 27 July 2009. From 2 December 2009 its sole director was Mitesh Raghwani. No accounts were filed under his

watch. Those for the period to 31 March 2008 and the year to 31 March 2009 showed respectively net current liabilities of £2,684 and then £3,116, and balance sheets of a positive £140 and a negative £857. It was dissolved on 15 October 2013.

98. Greitai was registered for VAT from 1 October 2008. Its declared main business activity was "renting properties & arranging mortgages", although that at Companies House was "labour recruitment". It was compulsorily de-registered on 1 May 2010, never having filed any returns. Neither did it file any PAYE records.

99. Between 15 January 2010 and 31 August 2013 Greitai invoiced Aliance for security services in the sum of £1,355,053 gross, including VAT of £258,383; it also sold some security equipment on Mr Bhatti's behalf.

100. At the meeting on 6 May 2016 Mr Bhatti told HMRC that his only due diligence on Greitai had been at Companies House; he did not know Mr Raghwani's background, but an unnamed person had informed him "that Greitai would supply security guards". He paid its invoices in cash.

101. Again, the only sensible conclusion in respect of both Azora and Greitai is that the first three stages of the Kittel test are met.

102. I turn to Mr Khan's actual or imputed knowledge of the Kittel frauds; and of the supply or otherwise of staff by any of the four sub-contractors.

103. He was sole director of the Company, and there is no indication that anyone was assisting him in its management.

104. He was also its sole owner and in charge of its record-keeping: "I was careful about the preparation of my books and records. As I am not an accountant or a bookkeeper by training (I am a salesman) and, conscious of the limits of my skills, I instructed… Affinity… to finalise and provide oversight and prepare Anderson's accounts and VAT returns. They held and maintained our books and records". Mr Khan prepared the VAT summary account and returns before handing them to Affinity for submission; and kept his records

manually: we have copies of handwritten cashbook excerpts for NUHA, BRM and Aliance.

105. He was intending to turn the Company around and make it into a national brand. The subcontractors were required to fulfil, in the Company's name, its contracts with its customers.

106. Mr Khan chose to deal with Capital, NUHA and BRM without any prior knowledge of them or those behind them. They came to him off the streets. Each of them "approached us for work. I did not know them or their owners before".

107. He did so following exiguous due diligence on each; and that despite the failure of the prior supplier.

108. Asked at the 27 February 2014 meeting what due diligence he had done on Aliance and Capital Mr Khan said none. He was referred to the due diligence guide on HMRC's website.

109. In his evidence Mr Khan states that his due diligence was to "look up the company to see if their company registration number and VAT number was genuine. I also checked whether they had the company registration documents". The last act would seem to mirror the first. He does not say where he looked up the genuineness of the VAT number.

110. He also regarded as due diligence his post-contractual activity: "I used to also check that their banking company accounts were genuine and operational by carefully monitoring my initial payments to them".

111. Mr Khan's summary of his efforts was that "Aside from the above there was no need to do a great deal of front ended due diligence because our subcontractors were paid in arrears with the promise of bigger contracts if they could prove they performed".

112. And then this, which was a theme of his oral evidence as well: "If the subcontractors were not performing our clients would… have been on the phone immediately and we either would not pay the subcontractors or would

not use them further. I monitored subcontractors' performance closely over their first 2-3 contracts".

113. Mr Khan's sifting into due diligence his oversight of the contract in performance does not disguise the paucity of his pre-contractual investigations. He agreed in cross-examination that due diligence was not his priority. But in the context that makes no commercial sense. He was seeking large numbers of workers, who were competent to do different grades of security work, SIA-licensed where applicable, and reliable; workers who on site presented themselves as the Company's, and whose qualities therefore had to match Mr Khan's aspirations for the Company. So, Capital's first invoice of 31 January 2011 was for £25,044 plus VAT, in respect of 3,554 hours provided to eight sites between London and Devon. Before it started work he had to know how it had the staff to service those contracts, based somewhere near the locations, and able to conduct themselves properly; yet neither for Capital nor NUHA nor BRM nor Aliance does he say he asked those basic questions, let alone ask for some evidence; and that despite the Company assumedly having been let down by a previous contractor insofar as these were repeat jobs; and let down by Capital when NUHA presented itself; and Capital and NUHA when BRM walked through the door with its bare promises. Mr Khan avoids the obvious point that if a site manager called through with a complaint on a contractor's first job it would be too late; and Mr Khan had not the slightest assurance that his selected contractor would be able to put things right.

114. Further, assuming that Mr Khan did such due diligence as identified, his reaction to it was again in context uncommercial. His basic Companies House check on NUHA, assumedly just before the 21 December 2011 contract, would have shown that its Mr Masood Khan had been a director only for a matter of days, and that NUHA had yet to file any accounts. There was nothing wrong in either, but each would cause any ordinary director to make further enquiries as to its physical and financial ability to supply; especially as its proclaimed business was the trading of electricity.

115. For BRM it is quite possible that by late February or early March 2013 Mr Khan would have forgotten that when he made his investigations of NUHA he had seen the name of the same Mr Soni who was now presenting himself on behalf of BRM as the recent director of NUHA; although again, that history was to be discovered by basic Companies House checks. Mr Khan's checking of Mr Soni's passport was of limited assistance. Looking at Companies House would also have revealed that no accounts had yet been filed, which had caused action to be taken to strike off, albeit discontinued. More, his oral elucidation that when he saw the VAT trade classification "wholesale of fruits and vegetables" he asked Mr Soni to change it was not only in my view a convenient invention, but it failed to address the real point: how can someone who registered his company for VAT on fruit and vegetables now be telling me that it can supply thousands of hours of guards a month? And, of course, by now that question must have been ringing in Mr Khan's mind: he had believed Capital and it had let him down; and then NUHA, and he had or was about to terminate its contract.

116. Aliance was in a different position in that its Mr Bhatti "was a former employee of Anderson. When he told me he intended to set up in business I recommended him my accountants Affinity". As a former employee, Mr Khan "must have" seen Mr Bhatti's licence. But what is unclear is why Mr Khan thought that Aliance could supply anyone. It contracted to do so with effect from 22 August 2009, when it was 8 days old. Its first invoice was not until 30 June 2011. Mr Khan told the court that that was because Mr Bhatti wanted time to build a competent workforce, so he had just said to let him know when he was ready to proceed: Mr Khan did not mind the timing, so long as he could supply.

117. Again this fails to address why in May 2011 Mr Khan thought that Mr Bhatti now had a competent workforce, or on what basis. In fact he did not have one: Aliance's supplies were made through Azora and Greitai. In cross-examination Mr Khan said he knew this, but also that he had checked neither; nor had Mr Bhatti, beyond Companies House. Mr Bhatti also told HMRC at their 6 May 2016 meeting that through Aliance he wanted a "kick back" on the

guards it supplied to the Company. That is another matter which cannot be taken further, but which nods to the murkiness surrounding these dealings.

118. It might be said that Mr Khan gained some assurance from the contractual terms agreed with each. Despite their late provision, years after first requested by the initial letter of 4 December 2013; their non-production being a ground of the Refusal Letter; and their production being exhorted by the Review Letter, their authenticity is not challenged.

119. We have already seen some terms from the first of these, Capital's, which obliged it to ensure among other things that all its staff were SIA-licensed, and that it carried valid insurance. Mr Khan did not check those matters separately. Capital was to hold for 12 months from creation the "documentation and records which relates to the managed services (such as daily occurrence book, patrol records, incident reports, visit records…)". Clause 4 was headed "Charges and Payment": "Your invoice shall be sent to us calendar monthly with effect from the commencement date and shall be payable in full or in part within 45 days of the date of our invoice received from our client". By clause 7, absent material breach or suchlike, written one month's notice could be given by either side, but with a penalty of "a sum equal 1 months' charges".

120. Each contract was materially the same. Mr Khan said the template had been downloaded from the internet and amended by himself and whoever else was in the office who might understand it better than he. He explained the non-sensical clause 4 as meaning that the Company would pay the sub-contractor within 45 days of its being paid; although a moment later he said it meant within 45 days of its invoice to its customer, as they were payable within 30 days. Mr Khan viewed the 45 day period as a warning not to push him too hard for earlier payment.

121. That salutary effect was in practice nugatory, and the written contracts, with no obligation for minimum provision of guards or fixed fees, do not appear to have influenced the parties' relationship at all.

122. There is nothing to show that the sub-contractors were paid 45 days after invoice. Instead, Mr Khan's evidence on the timing of payments gave a plethora of alternatives. As above, what was in the CVL history was that Mr Khan was not concerned about using sub-contractors because they were "paid 30, 60, 90 days after they have completed the job": a range of figures none of which aligns with the contract. That formal account can be contrasted with the formal account given at the first HMRC meeting on 28 January 2014, where Mr Khan stated that "All subcontracts are paid in cash/ cheque every Friday. ZA goes to the bank every Friday to draw the cash and pay the subcontractors". Officer Orman advised that "this should be either recorded manually in the cash payment book and signed by the receiver or paid by cheque. Cash payments should be made only occasionally in case of emergency". There is therefore no doubt that was the account Mr Khan gave. Also, Mr Amin was in attendance at that meeting, and would presumably have intervened if he knew different. That said, it may well be that Mr Amin's knowledge of these payments was limited. Mr Khan says in his evidence that Affinity "managed Anderson's payroll. Every week they prepared summary sheets to show what wages I needed to pay and what NIC and PAYE I needed to pay", but that "we paid the subcontractor company directly for whatever fees they were charging us".

123. Mr Khan said that after this meeting he told sub-contractors that the cash had to stop, but as that would collapse the business the edict could not be implemented straightaway. At the 27 February 2014 meeting he described Mr Bhatti and Mr Alam as calling by "for the cash", but bank transfers being made as well.

124. Mr Khan's witness statement has another variant. "Subcontractor companies were indeed often paid in cash. Our terms were to pay 30 days after the work was done. This consequently placed the cashflow risk on the subcontractors". It also placed a risk on the Company, if payment were not linked to its own payment by the customer.

125. In his oral evidence Mr Khan stated at one point that he would not pay a subcontractor without an invoice. That is wrong. Capital's first invoice was

31 January 2011, before which it had been paid £38,000: £9,500 on each of 13, 20 and 25 October 2010, and 5 January 2011. There is a payment receipt for each, signed by Mr Alam and Mr Khan. The printed options of "BACS/ Cheque/ Cash" are not struck through, but each was cash. None of the receipts is numbered.

126. NUHA's first invoice was 31 January 2012. It received cash payments on 18 and 23 January 2012 of £6,500 and £9,500. The receipts are signed by Mr Zaheer Khan, and unnumbered.

127. Aliance's first invoice was 30 June 2011, but it received a bank transfer of £7,000 on 22 June 2011. It is possible that this was Mr Khan's test payment. No 2011 payment to Aliance appearing in the handwritten cashbook, Mr Khan agreed with Miss Wilson-Barnes that a page from it must be missing.

128. Nor is there any correlation between any of the dozens of invoices raised by any of the four sub-contractors and any of the payments made to them. Instead, we have round-figure payments, often of £9,500 as that was the amount which Mr Khan said he could obtain from the bank without filling in too much paperwork.

129. Nor was any running account kept between the Company and any of the four sub-contractors: Mr Khan's own cashbook, which might be the closest to any record, just contains date and amount of payment to the particular company, and whether cash or bank transfer. As Miss Wilson-Barnes observed, it is therefore not possible to say of any invoice whether it has been fully paid. More, it was not possible for Mr Khan to know how much he ought to be paying any of these companies at any time. His explanation that he knew what sums would be due because he knew what work they were doing and whether there had been complaints or not does not deal with the point. Nor does his statement in cross-examination that at times he would mark what had been paid on invoices; which became that 6-monthly he would work out what had been paid; and in the further alternative that he would check within a 45-50 day period.

130. The sub-contractors' invoices are not marked with what was paid, but some do have figures written by Mr Khan, preceded by the word "Pending", against a place of supply: so, from a 31 October Aliance invoice: "JP-Old Bury. Pending £5,133.60 [*over*] £1,026.72 [*totalling*] £6,160.32", which represents 744 hours at £6.90 an hour, the £1,026.72 being the VAT on top; this is then added to another similar entry; and their total of £8,132.73 is written under the invoice total of £58,453.17 also next to the word "Pending". Mr Khan's eventual explanation was that "Pending" meant unpaid by the Company. That does not by itself confirm that the rest of the invoice had been paid, nor when or by what means. Taken to another Aliance invoice Mr Khan said that he paid the invoices in small "sections"; but that is not apparent from any marking either.

131. I do not think "pending" can just mean unpaid. NUHA's first invoice was dated 31 January 2012 (and said to be payable on its receipt). There were eight work locations. For "ISG Imperial College Outs" it was seeking £5,035 plus £1,007 VAT for 662.5 hours at £7.60. Next to this Mr Khan wrote "Disputed Hours". Below, he wrote "662.50 Hours – 326.00 Hours", followed by "326 Hours agreed". Next he multiplied the 336 non-agreed hours by the £7.60 and added VAT to come to a figure of £3,064.32 described as "Disputed Payment". Underneath the invoice total of £36,098.64 he wrote "Pending £3,064.32" followed by the £33,034.32 balance after its deduction. "Pending" would therefore appear to equate to "disputed" or "currently disputed" rather than "unpaid".

132. The BRM invoices were markedly different in that having described the location and hourly rate and totalled that with VAT, they would total those entries, £44,280.55 for that of 30 September 2013, followed by "Payments", which matched that number, leaving a bottom line "Total £0.00". As already observed, there is nothing to show any such payments or zeroing of any invoice balance. Odder still, Mr Khan has ringed the last figures on this invoice with the words "Incorrect. Please correct"; and earlier he has altered the hours on 6 of the 13 workplaces, increasing "B & K Wandsworth" from

393.75 hours to 1,059, and decreasing the other 5 significantly: "Leadbitter 322 Broadway Hse" from 996 to 642 hours.

133. There is no corrective invoice available. Although not a ground in the Claim, it came out in Mr Khan's evidence that although he made deductions to certain invoices, he claimed as input tax the value shown on the uncorrected, and therefore larger, invoices.

134. On what basis was Mr Khan making these alterations? We do not know. Asked why NUHA was still being paid up to 23 October 2013 when its last invoice was 31 March that year, Mr Khan said it would be either because the invoice was disputed or the Company had not itself been paid. There is no evidence to link either of those two possibilities to any payment; nor would this explain why all payments to it and others were in round sums. Likewise, there is nothing to link any alteration on an invoice to, to take the most obvious possibility, a refusal of the Company's customer to pay that balance. Yet on Mr Khan's evidence the alterations were substantial. He explained the difference between the £506,200 paid to Aliance and the £711,600 billed by it as being, probably, the deductions he had made.

135. The contract with the customer was the Company's. It was Mr Khan's evidence that the customer would be billed the contracted hours. There is a large problem with that simple statement: the hours would change, perhaps because a guard did not appear, or because ad hoc more hours were requested over a month. Those alterations must surely have been on the Company's invoices. More, as we have seen the sub-contractors were also billing for large numbers of hours which were subsequently written down. As Mr Khan described, it was "common practice" to have to make deductions from their over-demanded hours: they would bill for 5,000 hours and just add another 3-400.

136. The obvious answer to both wings of this issue is timesheets. So obvious that, as the Affinity Letter says, "You mentioned that there are no timesheets in relation to the supplies. This is truly baffling, how do you expect our client to make a payment without knowing the hours done? The security guards are

meticulous in the hours they have done and we can provide this for any period that you wish…". Not one has been produced since the 4 December 2013 initial letter. Yet Mr Khan's statement of case in the FTT, dated 23 November 2016 and signed off by Affinity, avers that the Company "provided detailed timesheets for the subcontractors who carried out the work and can still do so should the tribunal require"; and, turning to the other wing, "Subcontractors were paid weekly and this was paid in cash… calculated on their timesheet"; that, it may be noted, is a variant averred trigger for their payment.

137. At trial Mr Khan has taken a different line. He acknowledged that what he had called timesheets in his statement, being the documents behind the Company's invoice to the customer, were not. They were just a list of the booked hours. It was "silly of me" said Mr Khan to attach them, as the customer already knew the contracted hours; and he had done so only to make the Company's invoices, which were for large sums, look more professional. That was nonsense. What would have been professional was to bill for the actual hours; unprofessional was to have to change the invoice: we only examined one or two at trial, but that of 31 December 2013 to Bowmer & Kirkland, for the Sainsbury's site in Garratt Lane, Wandsworth, was for 1,143.5 hours at £7.50 an hour. Mr Khan has struck through the hours and replace them with 1,140, and written below: "mistake". Such a change would originally have come from the site manager he said, or whoever else was responsible, by phone or email. His final version was that he would send out his invoices and the customers correct them and send them back; but that does not address how he would deal with customer disputes.

138. That is of even greater piquancy when considering the Company and its sub-contractors, regularly overcharging. At the 23 June 2014 meeting Mr Khan said that the guards sometimes filled out timesheets. Asked at trial if he ever saw anything from the sub-contractors signed by the site manager, Mr Khan prevaricated; then said that he had had some signed sheets, but did not keep a copy; then that this was after the first visit, and what he was given were sheets such as those he sent the customers; as these were "irrelevant and an extra burden", he asked the subcontractors to stop providing them; then he said that

he had received timesheets from some, but could not recall which; then that he had no documents signed by a site manager, but the site manager would confirm the hours.

139. This was hopeless evidence on a critical point. Timesheets, whether those particular sheets signed by the site manager or equivalent, or monthly agglomerations of such sheets, were the base documents proving the supplies of staff. Their absence is indeed "truly baffling". Mr Khan could not begin to negotiate the hours claimed by a subcontractor without them; nor could the subcontractor with him. They were documents which would be produced in the natural course of any legitimate engagement, and insisted on in any dispute, as in them would be resolution. The unappetising alternative is that given by Mr Bhatti in his HMRC interview on 6 May 2016: "When Mr Bhatti questioned the validity of the invoices from Greitai (i.e. the hours worked) he would only receive verbal assurances and he did not ask for any proof (e.g. no time sheets were provided)"; these were the invoices given "to Mr Bhatti who would then forward them to AST. AST would give Mr Bhatti the cash which he would pay to Greitai".

140. No sensible person would conduct business that way. That was the more so here as Mr Khan was always aware that sub-contractors would press for payment before time and without entitlement. Asked how the chain of contracts had come about, he told the court that once work started sub-contractors would demand payment before their invoices, at higher than agreed rates, with inflated hours, backed by threats to withdraw workers otherwise; and he would tire of this. But the answer to this, especially as he had been stung before, was timesheets.

Conclusion

141. Mr Khan was therefore causing the Company to deal with Capital, NUHA, BRM and Aliance, each now shown to be involved in fraudulent evasion of tax, the first three being unknown to him before, as were the last's sub-contractors; failing to make any usual commercial enquiries beforehand, including as to their ability to supply labour, or its quality; ignoring the

warning signs from such documents as he did look at, including incompatible trade descriptions; ignoring the terms of the contracts which were intended to protect the Company; making large and regular payments unrelated to any invoice; many in cash; without sight of a timesheet even when disputes arose.

142. So I consider that on the Kittel questions, Mr Khan ought to have known that he was connecting the Company with the fraudulent evasion of tax; and indeed must have known.

143. I also conclude that none of Capita, NUHA, BRM and Aliance made taxable supplies to the Company. The dealings with each of them were uncommercial and largely unrecorded. This judgment began with the 4 December 2013 notification letter, seeking documents including timesheets. No direct evidence of supply has ever been produced, whether by timesheet or otherwise, even though at intervals documents have been said to exist. In the end the best allusive evidence of supply is that Mr Khan was marking adjustments on sub-contractor invoices; but, like much else, he was unable or unwilling to explain those fully and properly; and, despite this being a claim in fraud, they do not serve to fill the evidential chasm.

144. It follows that his conduct is unfit within section 6 of the Act, and that he must be disqualified.

145. Although a matter for the court, 12 years was the period suggested in the section 16 letter. That was when the PAYE/ NIC allegations were live, and their no longer being so indicates that the period ought to be shorter. It can also be said that at £412,825 the denied amount is relatively modest for a missing trader case, and that the conduct is long ago. I have no information on what Mr Khan has been doing since the Company liquidated, but this is a case of deliberate and substantial fraud which he has defended to the hilt, without foundation, while giving deeply unsatisfactory evidence. In the circumstances I consider the 12 years which I will order appropriate.