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Disqualification Newsletter

Newsletter Editor
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Dear Subscriber,

This Newsletter contains an important news item concerning Government proposals to strengthen the disqualification regime. It also contains summary reports of four recent decisions on directors' disqualification and summaries of two recent disqualification cases published by the Insolvency Service on its website where disqualification orders have been made by the courts.

Dr John Tribe

Newsletter Editor

FEEDBACK

We would be pleased to hear from subscribers who have any comments or suggestions regarding the content of this Newsletter, or any comments or queries on disqualification law, practice and procedure in general. Letters which raise issues of interest may be published in the Newsletter. Please address letters to the editor of this newsletter: Dr John Tribe, Kingston Law School, Kingston University, Kingston Hill, Kingston upon Thames, Surrey, England, KT2 7LB, Email: j.tribe@kingston.ac.uk.

GOVERNMENT PROPOSALS TO STRENGTHEN DISQUALIFICATION REGIME

Following the completion of the consultation concerning the strengthening of the regime for disqualifying directors (see Issue 53 of the Newsletter published in August 2013), the Government has announced measures to amend and expand the existing regime for disqualifying directors. The Business Secretary, Dr Vince Cable, announced the reform initiative on 19 April 2014: see: www.gov.uk/government/news/cable-takes-aim-at-dodgy-directors and www.bbc.co.uk/news/uk-27079682. The measures include the following:

- allowing an award of compensation to be made against a director who is disqualified;

- requiring the court to take into account a wider range of matters when considering whether to disqualify a director for unfitness, such as his previous business failures, the nature of any losses, overseas conduct and breaches of specific laws.
- imposing a prohibition on an overseas director convicted of an offence relating to a commercial matter overseas from being a director in the UK.

The proposals which the Government intends to introduce are set out in detail in its response to the consultation document it issued in July 2013 entitled 'TRANSPARENCY AND TRUST: ENHANCING THE TRANSPARENCY OF UK COMPANY OWNERSHIP AND INCREASING TRUST IN UK BUSINESS' and is available on the Government website at www.gov.uk/government/uploads/system/uploads/attachment_data/file/304297/bis-14–672-transparency-and-trust-consultation-response.pdf.

CASE LAW UPDATE

Re SFM Legal Services Ltd, Secretary of State for Business, Innovation and Skills v Malcolm Stewart Graham

Newcastle upon Tyne County Court, District Judge Kramer, 15 January 2014.

Directors' disqualification – unfitness – failure to exercise proper governance over the affairs of a company – failure to ensure that company could pay customers if a scheme for avoiding tax was ineffective – providing misleading information.

This was an application by the Secretary of State for a disqualification order against the director under s 6 of the Company Directors Disqualification Act 1986 ('CDDA 1986'). The director, then a solicitor, was the only registered director of SFM Legal Services Ltd (SFM) and also its sole shareholder. SFM undertook conveyancing and offered its clients a scheme to avoid stamp duty land tax and mitigate other taxes payable by them. SFM was incorporated on 22 February 2006. The solicitors' practice run by SFM was intervened on 28 August 2008 following an investigation by the Solicitors Regulation Authority ('SRA') into its non-compliance with professional requirements stipulated by the Law Society and the Council of Mortgage Lenders in relation to conveyancing transactions. SFM went into liquidation on 21 August 2009. The deficiency to creditors at the date of the liquidation was thought to be £46,000 but this had risen to just under £800,000 by the time of the hearing, excluding contingent liabilities to mortgagees.

The director did not attend the trial of the proceedings but provided written submissions to the court.

There were three matters of unfitness alleged:

1 The director failed to exercise adequate governance over SFM as a result of which, when acting for mortgage borrowers and mortgagees, it

misrepresented to the mortgage lenders the details of mortgage transactions. In essence, contrary to the requirements of the Council of Mortgage Lenders and the Law Society to combat mortgage fraud and the requirements of specific mortgagees, it certified purchase prices to lenders which it knew to be incorrect, so that the lender financed 100% of the price instead of 85%. In addition, it failed to alert lenders to back to back transactions, to the fact that vendors had not owned the properties which they had sold for a period of six months prior to sale, and to the fact that purchasers had made no contribution to the purchase price. There was evidence of 72 improper transactions. The lenders calculated that the deficiency in the loan to value for the transactions was just under £11,000,000 and said that they would not have lent had they not been misled. The final extent of their loss depended upon their recovery under the mortgage covenants. There was a further substantial transaction in which lenders advanced £16,000,000 for the purchase of what SFM represented to be the leases of 78 flats to a single purchaser. In the event, the money was used to purchase two hotels for £11,150,000, which was the true nature of the transaction, and the balance of the money was sent to the client's bank account in Switzerland. SFM received fees of £644,417 for this transaction.

2 SFM marketed a Stamp Duty Land Tax ('SDLT') avoidance scheme which promised the return of fees paid if the scheme was found to be ineffective but the director failed to ensure that SFM had any ability to repay customers in such circumstances. The scheme was ineffective and the loss to clients was £571,495 in fees which SFM had no means of repaying. The actual loss to clients was greater, closer to £800,000 as they had to pay interest to HM Revenue and Customs ('HMRC'). SFM's insurers treated these losses as trade debts for which they were not responsible.

3 The director used a forged letter purporting to be written on behalf of HMRC giving approval for a capital gains tax mitigation scheme marketed by SFM in an attempt to persuade the Solicitors Regulatory Authority that the scheme had such approval.

The director, in his written submission, asserted that:

(a) the proceedings were an abuse of process as the allegations against him were matters of professional misconduct for which he had been disciplined by the SRA and were not relevant to the issue of unfitness;

(b) he was unaware of the misleading of mortgage lenders as a fellow director, who had not been registered as such, ran the conveyancing side of the business;

(c) he believed the SDLT scheme to be effective and there was no promise to return fees;

(d) he believed the letter sent to the SRA concerning CGT was genuine;

(e) he had been punished enough in that he had been made bankrupt, struck off as a solicitor and had been disqualified from acting as a

director for five years by the Crown Court two months previously, and been given a suspended prison sentence, for fraudulently using leading counsel's opinion to market a tax avoidance scheme without revealing that the opinion had been altered without that counsel's knowledge.

HELD:

(1) The proceedings were properly brought. Conduct which was unethical from a professional point of view could also amount to evidence that the director was unfit to act in the management of a company. Now that legal and other professional services were commonly provided with the protection of limited liability, it was of importance that the directors of such companies acted with utmost probity as those purchasing such services could place particular reliance on the fact that they are dealing with an organisation regulated by a professional body and give less consideration to the risk of dealing with a company with limited liability.

(2) On the evidence, the director was aware of the impropriety of the mortgage transactions conducted by SFM. It would have been a culpable failure of governance on his part had such transactions taken place without his knowledge, particularly as an SRA investigation into another company, of which he had been a director, had brought to his attention that it had not complied with like disclosure requirements. His failure of governance was more serious due to his knowledge of wrongdoing.

(3) The allegation was not that it was improper to market the scheme but that there should have been provision made for the return of fees, which amounted to half of the SDLT purportedly saved. The money back promise was given. There was no contingency for covering repayment in the event that the scheme was ineffective, in part because the director had taken £1.5 million out of SFM between 2007 and 2008. He was aware since 2006 that there was a high risk of the scheme being ineffective. To market the scheme in those circumstances, knowing that the promise of repayment was likely to prove hollow, was a lack of commercial morality of an extremely high degree.

(4) The letter provided to the SRA was a forgery and the director was aware that it was a forgery. His use of the letter was also evidence of a serious lack of probity, not only as a solicitor, but also as a company director. The SRA had the task of investigating the marketing of the scheme for the protection of the public. Those who sought to evade the regulatory process by the use of forged documents presented a considerable risk to the public and ought not to have the protection of limited liability.

(5) The director had caused considerable detriment to the public in respect of all three allegations with clients suffering large financial losses as a result of his behaviour.

(6) The director had advanced no mitigation other than he had suffered enough. The fact that he had been disqualified for other behaviour since the cessation of the misconduct was not relevant. In this case, it was not necessary for the court to decide whether it should ensure that the period of disqualification for the behaviour which gave rise to the prosecution and these proceedings did not exceed 15 years in total from the earlier disqualification, to prevent the 15-year cap being circumvented by virtue of the fact that some of the misconduct involved the commission of criminal offences which were dealt with in a different forum. However, there was substance in that point.

(7) It did not assist the director to say that he should be treated more leniently than someone who had not suffered the punishment of losing his professional standing. Those who fell off the pedestal by their own act could not expect to be treated any more favourably that those who were never on the pedestal at all.

(8) This was a serious case involving both the need to protect the public and deterrence. While more serious cases could be envisaged, the director's improper conduct was responsible for causing the public and the lenders vast losses in the space of about 18 months and, despite his earlier brush with the SRA, he had actively sought to deceive the SRA when it was investigating the marketing of the tax avoidance scheme. The case fell into the top bracket in *Re Sevenoaks Stationers* (*Retail*) *Ltd* [1991] Ch 164, albeit at the lower end of that bracket. A disqualification order for a period of 11 years would be made against the director.

Mr Philip Capon (instructed by Bond Dickinson LLP) for the Secretary of State.

The director did not appear and was not represented.

Re Wood Hall Ltd, Secretary of State for Business, Innovation and Skills v Earley EWHC 4084 (Comp)

High Court of Justice, Chancery Division, Newey J, [2012] EWHC (Ch).

Directors' disqualification – unfitness – members' voluntary liquidation followed by creditors' voluntary liquidation – permission to bring proceedings out of time under CDDA 1986, s 7(2).

The Secretary of State applied for permission to bring disqualification proceedings against the Defendant out of time pursuant to CDDA 1986, s 7(2). The application was brought in respect of three companies of which he was a director. All three companies went into members' voluntary liquidation on 26 November 2007 and, subsequently, into creditors' voluntary liquidation on 17 December 2008.

The court had to decide the following questions:

(a) whether the failure to make the application in the correct form affected the validity of the application;

(b) whether there was any significance in the fact that the Secretary of State had applied for permission well before the two-year period had expired when, on the view he had taken about when the period commenced to run, he could have brought proceedings much earlier;

(c) whether the two-year period under CDDA 1986, s 7(2) commenced to run from the date when the companies passed into members' voluntary liquidation or whether it ran from the date when they passed into creditors' voluntary liquidation; and

(d) whether permission should be given to the Secretary of State to bring disqualification proceedings against the Defendant out of time.

HELD:

(1) Although the application for permission had not been brought in the correct form, it was 'a procedural error of no significance'. The application would be treated as having been made in the correct form and as being effective;

(2) No point of substance arose in relation to the fact that the application for permission had been brought well before the two-year period had expired when, on the view the Secretary of State had taken about when the period commenced to run, he could have brought proceedings much earlier;

(3) The two-year period under CDDA 1986, s 7(2) commenced to run from the date when the companies passed into into creditors' voluntary liquidation and not when they passed into members' voluntary liquidation; and

(4) It was appropriate for permission to be granted for disqualification proceedings to be brought out of time under s 7(2). Applying the factors set out in *Probe Data Systems* (*No 3*) [1992] BCLC 405 and the further guidance given in *Secretary of State for Trade and Industry v Davies* [1996] 4 All ER 289 and *Re Polly Peck International plc* (*No 2*) [1994] 1 BCLC 574:

    (a) The relevant delay was just over two months, and the Defendant was fully on notice of the Secretary of State's intention to bring disqualification proceedings well before the expiry of the two-year period. In fact, some five months or so before the expiry of that period he had been sent a draft claim form and the evidence on which the Secretary of State relied in support of the proposed disqualification proceedings.

    (b) The confusion between whether the date of the members' voluntary liquidation or that of the creditors' voluntary liquidation was the relevant one was entirely understandable. If there was scope for criticism of the Secretary for this delay, it was limited.

    (c) There was no evidence of any significance to indicate that the Defendant had been caused prejudice by the very limited delay

that has occurred in circumstances where he was aware well before the deadline that proceedings were in prospect.

(d) Although the case against the Defendant was not as serious as had been suggested in the notice given to him under CDDA 1986, s 16, and it was not a foregone conclusion that the Secretary of State would ultimately obtain a disqualification order against the Defendant, the court was neither concerned to try the claim nor in a position to do so. Its task was to assess, having regard to what was alleged against the Defendant, whether there was a sufficiently arguable case for disqualification as to justify granting permission in circumstances where the two-year period has expired. The allegation against the Defendant included causing the three companies to part with their valuable assets which would, if the allegations were proven, justify the making of a disqualification order against the Defendant. There was, therefore, a sufficiently arguable case for a disqualification order to be made.

(e) Overall, therefore, although the case against the Defendant was not as serious as that suggested in the notice under s 16, it was a case of sufficient substance to justify, putting all the matters into the balance, granting the Secretary of State permission to bring disqualification proceedings out of time.

Mr Mark Cunningham QC (Instructed by Howes Percival LLP) appeared on behalf of the Secretary of State.

The Defendant appeared in person.

[**NOTE**: a disqualification order was subsequently made against the Defendant for a period of five years by Mrs Registrar Derrett on 2 July 2013. The substantive case is analysed in an earlier issue of the Newsletter – see Issue 53, August 2013.]

Her Majesty's Secretary of State for Business, Innovation and Skills v Thomas Brady, 16 August 2013

Sheriffdom of Glasgow and Strathkelvin at Glasgow, 16 August 2013, Sheriff Alayne E Swanson.

Directors' disqualification – unfitness – whether allegation of failure to pay VAT could be made out if the Defendant could establish there was no VAT due – whether the court could determine the quantum of VAT in the disqualification proceedings.

The Secretary of State sought a disqualification order against the director under s 6 of the CDDA 1986 on the ground that he had failed to ensure that the Company complied with its statutory obligations to file returns to HMRC in respect of VAT and, as a consequence, caused the Company to trade to the detriment of HMRC.

The court had to consider whether it was possible for the director to demonstrate in the disqualification proceedings that there was no VAT due from the Company to HMRC and whether that could be prayed in aid by the director in his defence to the proceedings.

HELD:

(1) It was not possible for the disqualification court to adjudicate upon whether the amount of VAT claimed by HMRC, which was relied upon by the Secretary of State, in support of the application for the disqualification order, was correct. Parliament had prescribed a procedure for disputes between a taxpayer and HMRC to be determined. In those circumstances, it was not competent for the disqualification court to determine those disputes: *Re Calvert* [1899] 2 QB 145, *Customs and Excise Commissioners v Holvey* [1978] 1 All ER 1249, and *Chamberlin v HMRC* [2011] EWCA Civ 271 applied.

(2) The averments challenging the VAT assessment and offering to prove that no VAT was due did not support a relevant defence in these proceedings.

Mr David Thomson (Instructed by Sheppard and Wedderburn) appeared on behalf of the Secretary of State.

The Defendant appeared in person.

Official Receiver v Roger Charles Gawn

High Court of Justice, Chancery Division, Companies Court, 22 January 2014, Mr Registrar Jones.

Directors Disqualification – unfitness – trading to the detriment of HMRC – failure to pay PAYE/NIC.

The Secretary of State applied for a disqualification order under s 6 of the CDDA 1986 against the Defendant, Roger Charles Gawn.

The allegations made by the Secretary of State were that the Defendant had caused Ioco (Norfolk) Ltd ('IOCO') to trade between 19 April 2008 and 13 November 2009 to the detriment of HMRC in that: (a) the Defendant had caused IOCO to default on the monthly remittances of PAYE/NIC and tax deducted from sub-contractors, which resulted in a liability of at least £214,386 to HMRC (exclusive of interest and penalties) for the period from 6 April 2008–13 November 2009; (b) during the period from 6 April 2008, IOCO made payments of at least £720,958 but had made no payments in respect of the taxes accruing; and (c) at the date of liquidation on 3 March 2010, the total amount outstanding to HMRC was at least £229,636 (exclusive of interest and penalties) and the amount due to the other creditors only amounted to £35,217.

IOCO began trading in August 2006. Its purpose was to supply labour, mainly in the building trade. However, in effect, the labour was only supplied to companies under the control of the Defendant, specifically a company called Tamarix Investments Ltd ('Tamarix').

Tamarix undertook a large housing development project in 2007 with the assistance of a loan provided by I Ltd. IOCO supplied and paid the workforce and invoiced Tamarix for it. The homes on the site would be sold as they were completed and those sales would fund repayment of the loan and development costs. However, the 'credit crunch' meant that this could not happen. Tamarix was not able to sell the houses as anticipated and the funding from I Ltd was substantially reduced after the initial facility expired. Negotiations for renewal followed, but there were delays in granting a new facility.

Tamarix was unable to pay IOCO its labour costs. The Defendant decided that IOCO would pay the workforce but would leave the tax it owed to HMRC largely unpaid. In the period March 2008–November 2009, the amount owed to HMRC had increased from £39,305 to a sum of nearly £230,000. In the same period, debts due to all other creditors had only increased from 34,808 to £35,217.

The Defendant asserted that his conduct could not said to be unfit because his decision to pay the workforce instead of HMRC had been necessary and essential in order to keep the project going. He anticipated that the development would achieve a profit at the end of the day of an anticipated £10 million. That amount would be sufficient to pay IOCO and, therefore, HMRC. The fact that work was continuing under the project meant that payment to IOCO would not need to await the end of the project. It could be achieved earlier in accordance with the sales of the various properties being built as and when they were purchased. In support of his belief that the project would be completed profitably and that HMRC would be paid, he relied in particular upon the continued support and increased facilities provided by I Ltd. The Defendant made the point that Tamarix had never breached its covenants under that facility. In addition, he referred to the values of the houses that might be sold. He gave an example that if ten houses were sold, he would anticipate funds being received in the region of £1.5 million. In the context of the size of the project, he considered that this sustained the belief that, as soon as the sales started up in any substance, then the liabilities of Tamarix could soon be paid off.

HELD:

(1) The court came to the following findings of fact: (a) from at least 5 April 2008, IOCO was insolvent, being unable to pay its debts as and when they fell due; (b) from at least that date, IOCO was dependent upon Tamarix for the payments of its contractual debts in order to be able to pay its two main creditors, the workforce and HMRC; (c) from at least 5 April 2008, IOCO was not able to pay both the workforce and HMRC. The Defendant always chose to pay the workforce. It followed that he chose not to pay the creditors equally or in any other way to apportion IOCO's available funds between the workforce and HMRC; (d) this was discriminatory; (e) it resulted in HMRC being owed over £200,000. It meant that HMRC funded the credit given by IOCO to Tamarix; (f) this occurred without discussion, negotiation or agreement

with HMRC; (g) advantage was therefore taken of the fact that HMRC did not press for payment; and (h) this practice lasted for some 19 months.

(2) Failure to pay a particular creditor, including HMRC, was not unfit conduct in itself. The starting point was to establish a discriminatory practice of paying other creditors with the result that the company concerned was trading at the expense of the creditor who was discriminated against. If established, this could constitute unfit conduct. Such practice was normally found in cases where the company was insolvent, could not pay all its creditors when their debts fall due, and decided to pay those creditors who pressed and not those who exercised forbearance. Forbearance could be intentional or because of administrative problems in pressing for prompt payment by companies in financial difficulty.

(3) The evidence required to establish a policy of discrimination could be direct, but it could also be inferred from conduct, for example, the fact of withholding payment for a significant period in contrast to the payment of others. If such a deliberate policy of non-payment was established, the court still had to ask whether the defendant had fallen below the standards of probity and competence appropriate for persons fit to be involved in the management of a company, taking into account any extenuating circumstances. However, the guidance of the courts was that a deliberate policy of non-payment over a lengthy period was likely to be misconduct justifying such a finding: see, in particular, *Re Structural Concrete Ltd, Official Receiver v Barnes [2001] BCC 578; Re Grayan Building Services Ltd* (*In liquidation*) [1995] Ch 241*; Re Sevenoaks Stationers* (*Retail*) *Ltd* [1991] Ch 164 *and Cathie v Secretary of State for Business, Innovation and Skills* (*No 2*) [2012] EWCA Civ 739.

(4) The insolvency of IOCO meant that the Defendant, as a director, had to place the interests of the creditors first. He needed to do so in circumstances of considering how best to pay an existing debt and whether IOCO might be able to pay its debts as they fell due. He also had to do so in the context of considering whether to significantly increase HMRC's existing debt and whether to use that increasing debt to finance IOCO's continued trading. It was apparent that such matters must be taken into account when reaching his decision in the interests of all the creditors.

(5) The Defendant reached his decision in the belief that the building project would in due course provide the funds to cover the continually increasing debt. That belief, however, had no timescale, whether as to the date of the sale of the properties needed to be sold or as to the repayment of the debt itself. He also reached his decision in the course of the credit crisis and seeing Tamarix under substantial financial pressure, both due to diminishing financing and the significant reduction in interest in the purchase of the properties being constructed. He did so without considering any security that might be provided by

Tamarix when credit was being obtained unilaterally from HMRC. He did so without first approaching the creditor whose debt he wished to leave unpaid and to use as enforced credit. He failed to seek assistance from the Business Payment Support Service of HMRC. Even if he was unaware of that service, he failed to seek assistance of HMRC directly, yet HMRC was the creditor whose debt the company continued to take advantage of. All this occurred over a period of 19 months. He took no professional advice and sought no insolvency remedy or protection on behalf of IOCO. He was wholly wrong to take such an approach in the circumstances of the insolvency. To decide unilaterally in all those circumstances to increase the debt of a creditor who came within the description of one who exercised forbearance from seeking payment was conduct that fell below the standards of probity and competence required to be involved in the management of a company. In order to meet those standards, he should, at the very least, have been in contact directly and specifically with HMRC. He should only have pursued the course of using their debt as credit for Tamarix with their agreement.

(6) The decisions he took were not only discriminatory but unfair. They were unfair on HMRC because they left HMRC owed an increasing liability by IOCO without HMRC being informed that this was the decision being taken or indeed of the circumstances in which the decision was being reached. The result was obviously unfair because HMRC had been left with a very substantial liability. That unfairness was achieved by taking advantage of the fact that HMRC was not pressing for payment.

(7) A disqualification order for a period of three years would be made against the Defendant.

Mr P Capon (instructed by Howes Percival) appeared on behalf of the Secretary of State.

Mr R Hantusch (instructed by Kleyman & Co) appeared on behalf of the Defendant.

INSOLVENCY SERVICE CASE SUMMARIES

The Insolvency Service continues to be active in its reporting of directors' disqualification cases and its successes in obtaining orders against unfit directors. The following two cases are recent cases in which disqualification orders were made by the court.

(1)*Re Kymo Holdings Ltd, Bolton County Court, 3 April 2014*

A disqualification order for a period of seven years was made against the Defendant under CDDA 1986, s 6 for failing to keep and/or maintain and/or deliver up to the liquidators of the companies accounting records as a result of which it was impossible to verify the companies' financial dealings, in particular, the extent of their assets and liabilities, the purpose of cash transactions and the nature of inter-company transactions.

(2)*Re T M Global Ltd and TM GB Ltd, Official Receiver v Somchul Rashid, High Court of Justice, Chancery Division, Companies Court, Mr Registrar Barber, 26 March 2014*

A disqualification order for the maximum period of 15 years was made against the Defendant for involving the above companies in a scheme linked to VAT fraud and making wrongful VAT reclaims against HMRC.

The Defendant's brother, Foxlul Haqe Rashid, had earlier entered into a disqualification undertaking with the Secretary of State for Business, Innovation and Skills or a period of 14 years.

The investigation by the Insolvency Service uncovered that between February and June 2006, these companies, buying mobile phones in the UK, made onward sales of £218.8 million to wholesalers in other EC countries, and then filed monthly returns with HMRC 'reclaiming' UK VAT monies that 'missing traders' (ie traders that had not paid over VAT due to HMRC) earlier in supply chains had failed to pay.

The court heard that the companies entered into trading arrangements which were 'too good to be true', and against which they had been expressly and repeatedly warned by HMRC.

Such missing trader fraud indicators included the rapid succession of same day trades without deliveries within the UK of goods sitting at a shared freight forwarder, the common use of the same offshore bank, and entering into payment arrangements involving third parties who were neither suppliers nor customers.

All traders banked with the First Curacao International Bank which was shut down by the Netherlands Antilles authorities in September 2006 in order to prevent money laundering.

The court also heard that as the managing director with responsibility for sales, the Defendant was involved in pricing decisions which ran against any commercial logic and could only be explained in terms of this fraudulent scheme.

The companies sourced goods either from supply chains involving missing traders with default losses of £12.1 million, or from 'contratraders', which were companies that offset £21.5 million of VAT from their trades across different trading chains, thereby obscuring trading and transaction connections to fraudulent losses, and improving chances of obtaining VAT reclaims from HMRC. While performing this role, the contratraders received a premium price from the companies.

The Defendant also extended TM Global Ltd's trading chain by bringing in another company as an intermediary with its existing customer, sacrificing profit in the process. The extension of supply chains is a feature of missing trader fraud distancing traders seeking fraudulent reclaims and so facilitating their denial of knowledge of missing trader tax evasion.

The court heard that VAT registration checks on trading partners were undertaken as a cynical exercise to 'put HMRC off the scent'. The companies

had already started trades without making checks, and when HMRC advised of failed verifications, the companies continued trading regardless.