



**TC02393**

**Appeal number: TC/2009/13846**

***TYPE OF TAX – BINGO DUTY – Were the admission charges levied by the Appellant for the afternoon early session at Stalybridge and for the afternoon and evening main sessions at Eccles and Stalybridge payments in respect of an entitlement or opportunity to participate in a bingo game? – No – Appeal allowed***

**FIRST-TIER TRIBUNAL  
TAX CHAMBER**

**COSMO LEISURE LIMITED**

**Appellant**

**- and -**

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

**TRIBUNAL: JUDGE MICHAEL TILDESLEY OBE  
PETER WHITEHEAD**

**Sitting in public at public at 3<sup>rd</sup> Floor Alexandra House, 14-22 The Parsonage, Manchester M3 2JA on 22, 23 and 24 February 2012. The Tribunal reconvened on 24 February 2012 to consider the evidence. The proceedings adjourned until 22 March 2012 for receipt of additional written submissions**

**John Tallon Q.C. counsel instructed by The VAT People for the Appellant**

**Owain Thomas counsel instructed by the General Counsel and Solicitor to HM Revenue and Customs, for HMRC**

## DECISION

### The Appeal

1. The Appellant appealed against an assessment dated 13 May 2009 in the sum of £247,363 in respect of unpaid excise duty known as bingo duty for the period 1 May 2006 to 29 March 2009.

2. The Appellant owned and operated two bingo clubs in the Greater Manchester area, one at Stalybridge and the other at Eccles. The working day at both clubs was divided into afternoon and evening with four separate sessions for playing bingo. The sessions were referred to as early and main afternoon, and early and main evening. The Appellant charged admission fees for each of the four sessions.

3. The assessment was made to best judgment. There has been no agreement between the parties on the quantum of the assessment. The issue in this Appeal to be decided by the Tribunal is one of principle: whether the admission fees for each session were subject to bingo duty.

4. Under section 17 of the Betting and Gaming Duties Act 1981 bingo duty is charged on a person's bingo promotion profits at a rate now of 20 per cent of those profits. The amount of a person's bingo promotion profits is the amount of the person's bingo receipts minus the amount of his expenditure on bingo winnings. The term bingo receipts are critical to the calculation of a person's bingo promotion profits. Section 19(1) of the 1981 Act deals with the definition of bingo receipts, stating that

“A person has bingo receipts for an accounting period if payments fall due in the period in respect of entitlement to participate in bingo promoted by him”.

5. At the hearing considerable time was spent by the parties on the scope of the statutory definition of bingo receipts. The question posed by section 19(1) of the 1981 Act was whether the admission fees charged by the Appellant were in fact for either an entitlement or an opportunity to participate in bingo. The facts not in dispute were that the Appellant charged an admission fee for the early sessions which was not included in the charge for the bingo games. The admission fee for the main sessions was according to the Appellant incorporated in the charge for the bingo games.

6. The Appellant contended at the hearing that admission fees were just that permitting the person to enter the bingo premises. The admission fees did not give the person an entitlement or an opportunity to play bingo. If a person wanted to play bingo he would have to pay the charge for bingo games. HMRC, on the other hand, argued that resolution of the dispute depended upon close attention to the statutory language. In HMRC's view the breadth of the statutory concept of bingo receipts was not limited and wide enough to embrace admission charges. HMRC contended that the principle function of the Appellant's business was to play bingo, the admission charge gave the person an opportunity to play bingo and therefore fell within the definition of bingo receipts.

7. The Appellant considered HMRC's contention that any payment to gain entry to bingo premises must be in respect of an entitlement/opportunity to play bingo was false logic and at odds with the contents of successive HMRC's Public Notices where reference had been made to admission fees not being attributable to the playing of the bingo.

8. HMRC's alternative position was that on the facts the admission charges for the main afternoon and evening sessions, and the early afternoon session at Stalybridge had been mislabelled and they were instead charges in respect of an entitlement to participate in bingo. This was the basis for the disputed assessment dated 13 May 2009.

9. At the end of the hearing on 23 February 2012 the dispute consisted of two issues in the alternative:

(1) Whether the admission fees charged by the Appellant were in fact for either an entitlement or an opportunity to participate in bingo? (the statutory issue).

(2) Whether the admission charges for the main afternoon and evening sessions and the early afternoon session at Stalybridge had been mislabelled and were in reality charges in respect of an entitlement to participate in bingo? (the mislabelling issue).

10. The impact of the statutory issue was wider than that of the mislabelling issue in that if correct would mean that the charges for admission to the premises for each of the four sessions fulfilled the definition of bingo receipts and would be included in the amount upon which bingo duty was calculated. The mislabelling issue was essentially restricted to the true nature of the admission charges for the two main sessions.

11. Following final submissions the Tribunal read out passages from a paper entitled *Bingo Taxation* produced for Members of Parliament and dated 15 December 2009<sup>1</sup>, and invited the parties' representations on whether the Tribunal was entitled to have regard to the contents of the paper and if so on the contents of the consultation on the *Abolition of Bingo Duty* in 2003.

12. The Appellant contended that the Tribunal should have regard to the contents of the Government's Consultation Paper on the *Abolition of Bingo Duty*<sup>2</sup> and *Summary of Responses*<sup>3</sup> to assist with the proper construction in law of the relevant provisions of the 1981 Act. The Appellant referred to the House of Lords decision in *Pepper v Hart* [1992] STC 898 which sets out the circumstances when the Courts are entitled to refer to parliamentary materials. Lord Browne-Wilkinson said

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<sup>1</sup> House of Commons Library: Bingo Taxation, Standard Note SN/BT/2151

<sup>2</sup> HMCE "The Modernisation of Gambling Taxes: Consultation on the Abolition of Bingo Duty" August 2002

<sup>3</sup> HMCE "The Modernisation of Gambling Taxes: Consultation on the Abolition of Bingo Duty – Summary of Responses" April 2003

“I therefore reach the conclusion, subject to any question of parliamentary privilege, that the exclusionary rule should be relaxed so as to permit reference to parliamentary materials where:

- a) legislation is ambiguous or obscure, or leads to an absurdity;
- b) the material relied on consists of one or more statements by a minister or other promoter of the Bill together if necessary with such other parliamentary material as is necessary to understand such statements and their effect;
- c) the statements relied on are clear”.

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10 13. The Appellant considered the Consultation Paper and the Summary of Responses constituted parliamentary materials. They contained the Government’s original proposals on the reform of bingo duty and the subsequent legislative intentions enacted in the Finance Bill 2003. The Appellant believed that the legislation was obscure or ambiguous, particularly in relation to the extended meaning  
15 of section 19(1) given by section 20C(5), which results in a possible construction that a whole variety of charges including admission fees could be regarded as bingo receipts. The Appellant asserted that the other two requirements of *Pepper v Hart* had also been met. The views expressed in the Consultation Paper were those of Government, the promoter of the Finance Act 2003. The Government’s statements as  
20 to what was to be included in *gross profits* were crystal clear.

14. HMRC in its response of 21 March 2012 did not accept that the Consultation Paper had any relevance to the Tribunal’s task of interpreting the legislation. HMRC submitted that the legislation was not in itself ambiguous and that a summary of the Government’s response to a consultation exercise should not be properly used as  
25 material to the construction of legislation.

15. HMRC, however, modified its position from that taken at the hearing stating that

30 “The Commissioners, however, have decided to put their case as to the scope of the tax as follows. The Commissioners accept that the correct interpretation of the statute should exclude from bingo receipts, payments which are, on a proper analysis of the circumstances of any given case, purely for admission to premises and which can be dissociated from the granting of any entitlement to participate in games of bingo.

35 For this purpose the Commissioners would accept that the admission charges made at the point of entry to the premises in this case for the early sessions (both afternoon and evening) at the Appellant’s bingo halls – with the exception of those early session payments at Stalybridge which also entitle members to free games of bingo are  
40 properly admission charges and are not bingo receipts. This analysis is the one upon which the disputed assessments were in fact made and therefore the outcome of the appeal is unaffected by this concession. It follows that the broader interpretation to the effect that all admission charges were prima facie within the scope of the tax is not one which  
45 the Commissioners pursue”.



chargeable shall be disregarded (irrespective of whether or not that amount is paid by way of value added tax),

(c) it is immaterial whether an amount falls due to be paid to the promoter or to another person,

5 (d) it is immaterial whether an amount is described as a fee for participation, as a stake, or partly as one and partly as the other, and

10 (e) where a sum is paid partly in respect of entitlement to participate in a game of bingo and partly in respect of another matter—

(i) such part of the sum as is applied to, or properly attributable to, entitlement to participate in the game shall be treated as an amount falling due in respect of entitlement to participate in the game, and

15 (ii) the remainder shall be disregarded.”

19. Section 20C of the 1981 Act deals with supplemental matters. Section 20C(5) is relevant in this case and provides

20 “(5) In those provisions a reference to entitlement to participate in a game of bingo includes a reference to an opportunity to participate in a game of bingo in respect of which a charge is made (whether by way of a fee for participation, a stake, or both)”.

20. HMRC also referred to section 344 of the Gambling Act 2005 which does not govern the position for bingo duty but defines participation fees for other forms of gambling as

25 “as an amount paid in respect of entitlement to participate in gambling and for that purpose the legislation provides that:

(a) it is immaterial -

- 30 i. How a fee is described,  
ii. Whether a fee is payable in money or money’s worth,  
iii. When and how a fee is payable  
iv. To whom a fee is payable.

(b) a charge for admission to premises where gambling takes place shall be treated as a participation fee.

### 35 **The Arguments**

21. The dispute centred on the construction of *an amount in respect of entitlement or opportunity to participate in a game of bingo* (section 19(3)(a) as modified by section 20C(5) of the 1981 Act.

40 22. The Appellant’s primary submission was that a decision on whether a payment was *in respect of* entitlement or opportunity to participate in a game of bingo involved

an enquiry into what in reality any particular payment was *for*. The Appellant supported his primary submission by reference to

(1) The decision in *Vaughan-Neil v IRC* 54 TC 223 where the words *in respect of* were construed as meaning *for*; and

5 (2) Section 17(1)(a) of the 1991 Act which focused the charge to duty *on the playing* of bingo which suggested that the charge was directed to receipts from the actual playing of bingo.

23. The Appellant also noted the contrast between the wording of section 19(3)(d) of the 1981 Act with section 344 of the Gambling Act 2005. Section 19(3)(d) referred  
10 to specific types of payment and did not adopt the blanket description in section 344. This suggested that bingo receipts were restricted to participation fees and or stakes. Unlike section 344 of the 2005 Act, there was no reference to admission fees in section 19(3) of the 1981 Act.

24. HMRC argued that *an amount in respect of entitlement or opportunity to  
15 participate in a game of bingo* was not restricted to payments for playing bingo but included any payment which was in respect of an entitlement or opportunity to play bingo. On this basis admission charges were included in bingo receipts. They are paid in respect of entitlement to play bingo because in order to play bingo these charges must be paid, without them there would be no entitlement and no opportunity to play.

25. HMRC disagreed with the Appellant's analysis of the decision in *Vaughan-Neil*,  
20 pointing out that the facts concerned covenants in restraint of trade which had no bearing upon the interpretation of Betting and Gaming legislation. Moreover HMRC considered incorrect the Appellant's construction of the phrase *in respect of* as conferring a causal connection between the act of payment and the playing of bingo.  
25 In HMRC's view the words *in respect of* embraced a wider connection and not confined to cause and effect. Thus admission fees were linked to the playing of bingo. HMRC believed that the wider construction of bingo receipts was consistent with a tax on gross profits. If admission fees were taken out of the equation there would be a significant loss to the Revenue.

30 26. On balance, the Tribunal prefers the Appellant's construction that the tax charge is imposed on payments that are for playing bingo and not for something-else. The Tribunal in reaching this conclusion places weight on the actual charging provision in section 17(1) *the tax shall be charged on the playing of bingo* which is reinforced by the wording of section 19(3)(d) and 19(3)(e). The latter emphasise that the scope of  
35 the tax is restricted to those payments that are just for playing bingo. Section 19(3)(d) limits the categories of payments to participation fees and stakes. It does not adopt the wording of section 344 of the Gambling Act which has a wider range of payments including those just for gambling and others that have a connection with gambling. Section 19(3)(e) focuses on those payments that is applied or *properly* attributable to  
40 entitlement to participate in bingo. Section 19(3)(e) also acknowledges that payments may be for something-else.

27. The Tribunal considers the ruling in *Vaughan-Neil* assists in the analysis on the proper construction of sections 17 and 19 of the 1981 Act, in particular the interpretation of the phrase *in respect of* as meaning no more than *for*. The ratio in *Vaughan-Neil* is also helpful, namely that in determining what the payment is for, the critical question to ask is *what is the reality?*

28. The Tribunal, however, recognises that HMRC’s wider construction of section 19(3)(a) has merits, particularly as a result of the insertion of the word *opportunity* by section 20C(5) of the 1981. In the Tribunal’s view there is a qualitative difference between an *opportunity* and an *entitlement* to participate in a game of bingo. An opportunity is about possibilities, whereas an entitlement is about rights. In this respect an admission charge may give the person a possibility of participating in a game of bingo but not the right.

29. Despite its preference for the Appellant’s construction of the statutory language, the Tribunal considers that there is an argument for saying that the legislation is ambiguous about the scope of bingo receipts. In those circumstances the Tribunal decides that this is an appropriate case for considering parliamentary materials as an aid to the construction of statute. The Tribunal agrees with the Appellant’s submissions on this point. Although HMRC have modified its position since the hearing, it would appear that this has been a result of having sight of the consultation papers on the proposed legislation.

### **History of the Reform of Bingo Duty**

30. Prior to 4 August 2003, bingo duty was charged on winnings. In the 2002 Budget the Government stated that it would “*be considering the scope to abolish the tax on bingo stakes and replace it with a gross profits tax on bingo companies.*”<sup>4</sup>

31. In August 2002 the Government issued a Consultation paper on *the Abolition of Bingo Duty*<sup>5</sup> with a foreword by John Healey MP, Economic Secretary to the Treasury introducing a gross profits tax:

“We now want to deliver the same successful reform for bingo, abolishing the tax currently played by bingo players and replacing it with a tax on bingo company profits. That should allow bingo companies to invest more in the growth of their clubs and increase their prize payouts; which should in turn help to boost attendances and make a bingo a more attractive and rewarding night out”.

32. The Consultation Paper explained that moving to a gross profits regime meant replacing a tax on turnover (the total amount of stakes placed by punters) with a tax on profits (the total amount of stakes received less the winnings paid out) The paper invited responses by 31 October 2002. At paragraph 3.18 the Government sought views on what should the definition of “gross profits” include:

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<sup>4</sup> *Budget 2002* HC 592 April 2002 para 5.86

<sup>5</sup> See footnote 2

5 “In common with the reforms to betting and pools taxation, the Government wants to introduce a definition of “gross profits” that accurately reflects the cost of playing bingo and the amount actually won, and is keen to hear what bingo clubs think of the suggested definition below:

The stakes the customer pays to play bingo would include:

- the cost of buying cards for main stage bingo;
- the gross total spent playing mechanised and gross bingo;
- the cost of admission; and
- 10 - any other charges levied (eg membership fees).

The customer’s winnings would include:

- the value of cash prizes won and paid to the player, and
- the cost of any non-cash prizes won and taken by the player”.

15 33. In April 2003 the Government published a *Summary of the Responses* to the Consultation<sup>6</sup>. At paragraphs 2.19 to 2.21 the Summary reported on the responses to the proposed definition of gross profits and the Government’s decision:

20 “There was a range of views on this subject. The favourite option was to define ‘stakes’ as the money spent on cards for main stage bingo and the total amount spent playing mechanised cash and prize bingo, and winnings as the value of cash and non-cash prizes won by players. Advocates believed this would truly reflect what players paid to participate in games of bingo and what they won. Additionally some believed this would be the simplest option in compliance terms,

25 especially if the Government decided to abolish VAT on par fees.

A couple of respondents were content with the definition the Government proposed. The rest wanted to be able to offset stakes against other costs, for example the cost of bingo cards and staff. There was no consensus on what the extra costs should be. Advocates of this position believed it would tax the operating profit earned by companies providing bingo.

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Having considered the industry’s views, the Government has decided to use the industry’s favoured definition. Based upon the evidence provided, the Government believes this definition best reflects the financial costs and benefits of players participating in bingo. It also has the advantage of being the same definition as is used for betting, the football pools and casinos”.

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34. Thus it is clear from the *Summary of Responses* that the Government adopted the industry’s favoured option of restricting stakes to the money spent on cards for bingo, and the total amount spent playing mechanised cash and prize bingo. In so doing the Government ruled out the inclusion of admission fees and other charges, such as membership fees from the definition of bingo receipts.

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<sup>6</sup> See footnote 3.

35. The Finance Bill 2003 was published on 14 April 2003. Clause 9(1) of the Bill substituted new sections 17 to 20C of the 1981 Act. The proposed new sections 17 and 20C(5) were enacted without amendment. Section 19(3)(b) was added to the proposed new section 19 during the passage of the Bill in Parliament, and was the only change to that section. Section 19(3)(b) was not material to the issue in this Appeal.

36. The Tribunal considers that the analysis of the passage of the legislation in Parliament acknowledged that there was wide range of payments that were made in connection with the playing of bingo. The analysis demonstrated that Parliament chose to restrict the scope of tax to payments made on cards for main stage bingo and for playing mechanised cash and prize bingo. Parliament excluded charges relating to admission and membership from the definition of bingo receipts. The Tribunal believes this analysis supported its construction of section 17 and 19 of the 1981 Act that the tax is on those payments just for the playing of bingo.

37. This was the position adopted by HMRC in its Public Notices following the enactment of the amended provisions to the 1981 Act. The July 2004 version of HMRC Public Notice 457 said at section 4:

“Any payments that do not relate to the playing of bingo, such as admission fees, membership fees or catering charges should not be included within the bingo receipts calculation”.

38. HMRC, however, in its Information Note – February 2011 *Bingo Receipts*, however, qualified its position on admission charges:

“Whilst we accept that bingo clubs are entitled to levy an admission charge we are concerned that some charges are being described as admission charges, when they might in fact be a charge to participate in the playing of bingo.

Bingo clubs may offer ancillary services such as food and drink but in those cases the club remains essentially bingo club. On this basis HMRC is likely to consider that all payments due from customers are in respect of entitlement to participate in bingo and are not attributable to other matters. The actual liability in any given case depends on the individual facts of the case”.

### **The Mislabeling Dispute**

39. The views expressed in Information Note – February 2011 set the scene for the mislabeling dispute in that HMRC would regard payments from customers as bingo receipts unless the payments or part of them can be attributable to something-else. The authority for HMRC’s position stemmed from the wording of section 19(3)(e) which states that

“where a sum is paid partly in respect of entitlement to participate in a game of bingo and partly in respect of another matter—

(i) such part of the sum as is applied to, or properly attributable to, entitlement to participate in the game shall be treated as an amount falling due in respect of entitlement to participate in the game, and

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(ii) the remainder shall be disregarded.”

40. HMRC pursued its interpretation at the hearing:

10 “The next question is whether any of those sums are properly attributable to something else other than an entitlement to play bingo. The injunction that sums must be properly attributable to another matter is to be construed such that a realistic assessment of the facts surrounding the transactions in question should be adopted. Where sums are attributed to admission it must be realistic to attribute those sums to facilities other than bingo; why else is a charge properly made? Here, where the facilities of the bingo hall are ancillary there is no justification for disregarding any of the sums for the purposes of the tax on the basis that any part of admission is attributable to those elements when the nature of the entire charge as a charge in respect of entitlement to participate in bingo is so clear”.

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41. The Tribunal considers that HMRC’s application of section 19(3)(e) has distorted its statutory effect by placing the emphasis on proving that the payment is not attributable to an entitlement to play bingo. In the Tribunal’s view, the starting point in section 19(3) is whether the payment can be properly attributable to the playing of bingo, and if not the payment is disregarded for the purposes of the tax charge.

25 **Tribunal’s Conclusions on the Statutory Wording of the 1981 Act**

42. The Tribunal’s conclusions are as follows:

- (1) The tax charge under section 17 of the 1981 Act is on the playing of bingo as represented by the tax-payer’s bingo promotion profits for an accounting period.
- 30 (2) Bingo promotion profits are the amount of bingo receipts for the said period minus the amount of expenditure on bingo winnings for that period.
- (3) Bingo receipts are payments in respect of entitlement or opportunity to participate in bingo
- (4) Payments in respect of entitlement or opportunity to participate in bingo are construed as payments just for the playing of bingo.
- 35 (5) Section 19(3)(d) of the 1981 Act restricts bingo receipts to participation fees and stakes. Unlike section 344 of the Gambling Act 2005, section 19(3)(d) does not include admission charges within the definition of participation fees.
- (6) The references to Parliamentary materials confirm the existence of a wider range of payments that have some connection with the playing of bingo. Parliament, however, chose to limit the scope of the tax to the money spent on cards for bingo, and the total amount spent playing mechanised cash and prize
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bingo. Admission fees and other charges, such as membership fees are excluded from the charge to tax.

5 (7) The correct approach in determining whether a payment falls within the definition of bingo receipts is to decide whether a payment is applied or properly attributable to an entitlement to play bingo. If not, the payment shall be disregarded for the purposes of the tax charge.

### **The Legislative Background to the Bingo Industry**

10 43. Before turning to the facts, the Tribunal considers it necessary to provide an overview of the legislative landscape for the bingo industry. HMRC argued that such an overview was not relevant and provided no assistance to the construction of the 1981 Act which was a taxing statute. The Appellant, however, in its evidence cited the previous legislative regime under the Gaming Act 1968 in support of its justification for the commercial decisions taken in respect of its business operations. In this respect the legislative landscape was part of the factual matrix for this Appeal.

15 44. The Gaming Act 1968 was repealed by the Gambling Act 2005 with effect from September 2007. The 1968 Act was in force at the time of the 2003 amendments to the 1981 Act and at the initial period of the disputed assessment. The Gaming Board and the provisions of the 1968 Act regulated every aspect of the operations of the bingo industry. The holder of a bingo licence had to be approved as a fit and proper  
20 person by the Gaming Board. The premises for playing bingo required a separate licence granted by the local magistrates. The bingo club had to be run as a members' club and was not open to the general public.

25 45. Section 14 of the 1968 Act enabled regulations to be made prescribing the type, level, and notification of charges levied by bingo operators for taking part in gaming. Section 14(3) allowed the regulations to specify different charges in respect of different facilities or in respect of gaming facilities provided on any premises during different sessions of play. Section 14(4) stated that no charge should be made unless particulars of the charges and of the circumstances in which they are chargeable were displayed on the premises and prior to May 2002 notified to the local magistrates' clerk.  
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35 46. Regulation 5 of the Gaming Clubs (Hours and Charges) Regulations 1984 (SI 1984/248) set out the detailed requirements for charges made by bingo operators. Originally regulation 5 prescribed the amount bingo operators could charge by way of admission and participation fees for games during any period of play of up to two hours, which was £10 VAT exclusive. Further bingo operators were required to publicise details of the charges for each charging period and notify the local magistrates' clerk of them. A charging period had to be of at least two hours duration.

40 47. Regulation 3 of SI 2000/899 substituted a new regulation 5 which abolished charging periods but preserved the maximum charges for admission and the playing of bingo and the publication of those charges. The wording of new regulation 5 was:

“Any charge which apart from this regulation, would be prohibited by section 3 of the Act, as applied by section 14(1) of the Act, may be made in respect of gaming on bingo club premises, subject to the following conditions, namely:

5 (a) the charge shall be in respect of an individual person and shall be for his admission to premises in respect of which gaming in the form of playing bingo takes place or otherwise in respect of his participation in a game of bingo on those premises;

10 (b) in the case of his admission, the charge shall not exceed £10 per day; and

(c) in the case of his participation in a game of bingo, the charge shall not exceed £5 for each chance in playing the game.

(2) In the case of a charge for admission, a notice of that charge shall be displayed on the premises at or near the principal entrance.

15 (3) In the case of any other charge in respect of gaming, a notice in the name of the bingo club concerned containing the particulars of the charges specified in paragraph (4) below shall be displayed at the point (or, if more than one, the main point) where payment for the charge is to be made.

20 (4) The particulars to be contained in the notice are:

(a) the date from which the notice applies;

(b) the name of each ticket or game (or set of tickets or games) to be played during the currency of the notice;

25 (c) the cost (in money) of each ticket or game (or set of tickets or games);

(d) the charge in respect of each ticket or game (or set of tickets or games); and

(e) a statement to the effect that all or part of the charge may be waived at the discretion of the person making it”.

30 48. SI 2002/1902 increased the maximum charges for admission and gaming as specified in regulation 5 to £20 per day, and £10 respectively. The Gaming Clubs (Hours and Charges) Regulations 1984 lapsed in September 2007.

35 49. The Gambling Act 2005 represented a major shift in policy from that which underpinned the 1968 Act. The 2005 Act replaced the Gaming Board with The Gambling Commission which was required to exercise its functions with a view to pursuing the licensing objectives<sup>7</sup> and to permit gambling, in so far reasonably

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<sup>7</sup> The objectives are:

Protecting children or other vulnerable people from being harmed or exploited by gambling.

Preventing gambling from being source of crime or disorder being associated with crime or disorder or being used to support crime.

Ensuring that gambling is conducted in a fair and open way.

consistent with those objectives. The 2005 Act removed the requirements for bingo clubs in respect of membership and charging, and generally allowed the bingo operators to run their operations with a degree of freedom provided the licensing objectives were met. The Gambling Commission, however, retained control over the authorisation of operating and personal licences for commercial gambling operators and personnel working in the industry, whilst local authorities took over the responsibility for licensing bingo premises.

### **The Evidence**

50. The Tribunal heard evidence from Mr Downs and Mr Lee for the Appellant. Mr Downs was the Appellant's director and majority shareholder. Mr Lee was employed by the Appellant as the Operations Director at Stalybridge and Eccles, and the General Manager of the Stalybridge Club. The Tribunal received agreed bundles of documents in evidence.

### **The Facts**

51. The Appellant was a family business<sup>8</sup> with a long involvement in the bingo industry. Mr Downs was the Appellant's majority shareholder and had been in the bingo industry for over 40 years. His first venture in the business was with the Empire Cinema in Mossley which was converted to a bingo hall in the late 1960's. The property was closed in 1980 with the business transferred to the current premises at Stalybridge. The Appellant purchased the Eccles site in 1988 and has operated as a bingo hall since 1990.

52. The Stalybridge site has a 1,300 capacity over two floors which included two licensed bars, a café (operated via a concession), and a lobby containing approximately 60 amusement machines. The site has a separate outdoor smoking area with several fruit machines and mini-cash bingo machines located there. The Eccles site has a 1,000 capacity with one licensed bar, a café and around 60 amusement machines.

53. Both clubs effectively had the same physical ground floor lay out. A reception desk was situated at the front of the entrance area. Behind the reception desk there was a counter which sold the ticket books and the hand held machines (known as Planets) for playing bingo. The entrance hall opened into a lobby in which amusement machines were located. Off the lobby was the main hall in which the ticket bingo games were played (main stage bingo). Tables were laid out in the hall with each table having bingo shutter boards for playing mini bingo. The hall operated as the hub for the business with more amusement machines located there plus the café. The bar ran off the main hall. The Stalybridge premises also had a first floor on which two bingo halls and a bar were situated.

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<sup>8</sup> The Appellant operated the site at Stalybridge. A separate company known as Cosmo Eccles Limited ran the Eccles site. The Appellant, however, owned the shares in Cosmo Eccles Limited.

54. The Appellant offered a range of bingo games at the club. The main event was ticket bingo which was held at various times during the day. A member could either play bingo on paper using a book with strips of six tickets or with the aid of an electronic hand held device known as the Planet. A member playing bingo with a book would normally only be able to mark one book at a time. The Planet, on the other hand, enabled members to play a game with multiple books since the numbers were marked electronically.
55. The Appellant operated a dual pricing policy which depended upon whether a member had chosen to purchase a ticket book or a Planet with the latter being the more expensive option. The Appellant offered a range of promotional incentives to encourage members to purchase Planets, for example, a member who had bought a Planet with 24 plays (4 books) received an additional 12 plays (2 books) at no extra charge.
56. The Appellant also imposed additional charges for playing specific bingo games which included link games at 90 pence, National Game at £1.50 and Sweet Sixteen at £1.
57. The Appellant expected to receive at least £9 for a first set of books to play ticket bingo, of which £2 represented the fixed charge for admission to the main session. The typical costs for a set of books on a bargain evening main session would be £11 rising to £16.50 for busier evening sessions. .
58. The ticket bingo generally involved a line game followed by a full house. The prize money for the games varied between the sessions and the days of the week. The Appellant also held linked bingo games with other clubs and took part in the National bingo game which significantly increased the prize money. Mr Lee explained that the bingo business was driven by the size of the prize money. The Appellant had attempted to keep the prize money high but its profits had been squeezed by the competition and on-line bingo. The house big prize monies varied from £100 to £1,000, linked games ranged from £300 to £3,000, with the National game offering prizes from £20,000 to £100,000.
59. The Appellant supplied its members with a range of facilities which the members could use when the ticket bingo games were not played. The Appellant ran mini bingo games where the members used the shutter boards located on the table. The shutter boards were slot machines requiring a payment of 20 pence and offering prizes of between £5 to £20.
60. The Appellant gave its members the option of playing amusement machines with around 60 machines in a separate room. The machines included four jackpot machines offering prizes of £500 for a £1/£2 play. The chances of winning on the amusement machines were fixed at a high percentage from 70 to 86 per cent. The Appellant secured about 46 per cent of its income from the amusement machines.
61. The cafeteria at each site was open from 11.30am to 2.30pm, and 5.30pm to 8.30pm, and provided the complete meal range from a snack to a three course meal.

The cafeterias were run under a concession but the Appellant would arrange with the concessionaire promotions, such as a 99 pence meal deal on Wednesday and Friday afternoons and a Sunday roast carvery for £5.

5 62. The bars opened at each site from 11.30am to 3pm and from 5.30pm to 10pm. The bars supplied soft drinks as well as alcohol, and sold a range of items associated with playing bingo, such as marker pens. The promotions with the bar included *happy hours* and bottles of wine at £6.50. The bar revenue constituted about ten per cent of the Appellant's income.

10 63. The Appellant was the oldest independent bingo operation in the North West of England, and encouraged the creation of a social environment for the playing of bingo. A good proportion of its members were retired with the overwhelming majority of them living locally to the club. The Appellant organised a community event once a month and held birthday and Christmas parties at the clubs. Mr Lee supplied evidence of an independent survey identifying the principal reasons why  
15 members attended the clubs which were:

- Everyone knows each other.
- They love that the caller will call out birthday messages.
- They think the food is great – both selection and pricing.
- They all love the friendly helpful staff.
- 20 ➤ Stops them being lonely, and stops them getting old before you need to.
- They love it that the elderly are respected and looked after.
- They like the fancy dress events and the effort staff make for these events.

25 64. The Appellant in its answer to a questionnaire from HMRC dated 14 February 2008 confirmed club facilities were only available to members playing main session bingo.

30 65. The Appellant operated a membership scheme at both sites, although membership has always been free. The Gambling Act 2005 abolished the legal requirement for bingo halls to be private members clubs. The Appellant, however, continued with the membership scheme because it gave the Appellant control over the persons admitted to the premises, and provided a database of its customers for marketing purposes.

35 66. A person wishing to join as a member was required to fill out a membership application form on which the applicant declared that if elected to membership he would agree to abide by the Rules of the Club as displayed in the premises. A successful applicant was issued with a membership card, which he was required to produce on entry to the premises.

67. The Appellant in its Rules stated that it abided by the codes of conduct issued by the Bingo Association and agreed with the Gambling Commission. The pertinent rules relevant to the Appeal were as follows:

5 (1) The management reserved the right to refuse membership and or admission of any member without the need to state a reason.

(2) Admission fees may be charged in accordance with the notices displayed at the point of point of entry. Admission fees may be included with the cost of books.

10 (3) Fees and charges that may be taken would be displayed in the transparency charging notice for that day displayed at the main book sales counter. Members should read all the notes on this notice.

68. The transparency charging notice was displayed on the reception desk and on the walls behind the reception area and the counter for book sales in each of the premises. The transparency notice for the Stalybridge premises gave details of the admission charge for each of the four sessions. The notice supplied details of an up to charge and the normal charge for admission. The notice also specified that the admission charge for the main sessions was included with the books.

69. Mr Lee accepted that the present format of the transparency notice specifying a normal admission charge came into force on the 1 April 2008. Mr Lee denied that this change had anything to do with HMRC's investigation which did not commence until May 2008. Prior to 1 April 2008 the Appellant applied a variable admission charge which was displayed on the then transparency notice.

70. The Appellant asserted the fixed (normal) charge did not replace the variable charge. The fixed charge was within the auspices of the maximum charge that could be levied. The Appellant introduced the fixed charge because it was simpler to administer, which was of particular assistance to the book counter staff.

71. The Appellant pointed out that its admission charges did not exceed the monetary limit for admission charges as set out in the fifth edition of the Manager's Handbook published in July 2004 by the Bingo Association. Also the Bingo Code of Conduct which was contained in the Handbook permitted the imposition of variable charges.

72. The Appellant displayed a separate notice known as *Charges to Play* from the transparency notice in the premises. The *Charges to Play* also set out the admission charges together with the charges for playing the various bingo games. The *Charges to Play* Notice for Stalybridge effective from 26 March 2008 specified admission charges of 60/80 pence<sup>9</sup> for the early afternoon session, up to £2.70 for the main afternoon session, 80 pence for the early evening session, and up to £5 for the main evening session.

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<sup>9</sup> 60 pence for those aged 60 or over, 80 pence for the remainder.

73. The Appellant supplied details of the variable admission charges for a sample week from 27 October 2007 to 4 November 2007 for both sites. The charges for the main afternoon sessions at Stalybridge varied from £1.80 to £3, whilst those for the main evening sessions were from £4.50 to £5. The charges for the same sessions at Eccles were constant at £3. Also on various days of the week the Appellant did not charge an admission fee because of a promotional offer of giving members free admission to certain sessions.

74. Mr Lee stated that the charging regime had to respond to changing economic circumstances. According to Mr Lee, the Appellant operated in a highly competitive environment which was price sensitive. The Appellant was required to keep its prices under constant review so that it could respond to the competition. The managers were responsible for the decisions on charges which were normally taken at meetings of the General Manager and the managers for the two bingo halls.

75. The offer of free admission in the sample week arose as a response to some of the Appellant's competitors offering free admission on a permanent basis. The range of charges for the main evening sessions at Stalybridge in the sample week reflected the volume of demand for specific days of the week with the highest charge of £5 being reserved for the most popular evening of the week, which was a Sunday.

76. Mr Lee stated that throughout his 28 years of employment the Appellant had always organised its working day into separate sessions for playing bingo for which the Appellant charged a separate admission fee. Mr Lee pointed out that the Appellant was required under the previous regulatory regime imposed by the Gaming Act 1968 to run its business in a specific way which included displaying its charges on the premises and notifying the licensing authority (the local Clerk to the Magistrates) of its charges.

77. Mr Lee produced a copy of the Appellant's notice of changes to hours and charges to the Clerk to the Eccles Magistrates dated 9 February 2000. This Notice showed that the Appellant held six charging periods for playing bingo in each day, (Monday to Saturday) with a separate admission charge for each charging period.

78. Mr Lee also supplied a copy of the 2004 Code of Conduct between the Bingo Association and the Gaming Board which set out how a bingo operator should organise its business within the law including what charges can be levied. Paragraph 7 referred to charges for taking part in gaming which required the bingo operator to display in its premises its maximum charges for admission to the premises, and participation in the gaming. The Code specified that the maximum charge for admission should be £20 and that for participation in gaming at £10 per ticket. An earlier version of the Code published in 1994 identified the term charging period which stated that the period must be not less than two hours in duration (but may be more)<sup>10</sup>.

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<sup>10</sup> The cited extracts from the Code in effect reproduced the provisions of the Gaming Clubs (Hours and Charges) Regulations 1984 (SI 1984/248).

79. Mr Lee pointed out that the previous regime imposed by the Gaming Board was strict and required absolute compliance by the bingo operator. Although the new arrangements under the Gambling Commission were more relaxed, the Appellant still ran the risk of its gaming certificate being revoked. Mr Lee stated that the Appellant  
5 had continued with its operating methods that existed under the Gaming Act 1968 despite the change in the regulatory regime to ensure that all regulations were met and that the good relationships with the regulator were maintained.

80. Mr Lee referred to a recent inspection of the Appellant by the Gambling Commission which demonstrated the Appellant's high compliance with its  
10 responsibilities under the Gambling Act 2005. Mr Lee asserted that the Appellant's charging system was a continuation of that which existed under the Gaming Act 1968.

81. Both clubs operated the same basic system for playing bingo with four sessions during the day: early and main afternoon; and early and main evening. The early afternoon session started at 11.00 am and finished at 1.30pm<sup>11</sup>. On arrival at the club  
15 all members swiped their membership card at the reception desk. The swipe machine confirmed the member's details. Members paid an admission fee which was either 60 or 80 pence at Stalybridge or 50 pence at Eccles for which they received a receipt. The members attending the early sessions paid separately for the bingo books and or Planets from the book counter.

82. Since 19 March 2008 members arriving at Stalybridge before 11.40am who have paid their admission fees received a book of three bingo games including a cash pot ticket at no additional cost. The free book was given to the members at the reception desk because the book counter did not open until 11.30am. The Appellant decided to offer a free book to encourage members to attend the Stalybridge club  
20 early and play the gaming machines. The free book permitted those members to play the first three bingo games which started at 11.40am. Members entering the premises after 11.40am were not entitled to a free book. They would have to pay for the early session book in addition to their separate admission charges for the remaining four games of the early session. The early members also had to pay for the remaining four  
25 games. The free book facility was not available at Eccles. Ticket bingo was played between 11.40am to 12.05pm, and 12.55pm to 1.10pm in the early afternoon session.  
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83. The main afternoon session started at 1.30pm and finished at 3.30pm. The admission fee for this session was paid when a member on the premises purchased the main session book. The admission fee was included in the price of the books which  
35 were available for sale from 12 midday onwards.

84. The Appellant introduced an all inclusive fee for the main sessions in or around September 2006 because it had become the industry norm to have an inclusive fee of which part was an admission fee. Prior to September 2006 an 80 pence charge was made at the door with a separate charge for the ticket book.

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<sup>11</sup> At Eccles the early afternoon session finished at 1pm which was also the start time for the main afternoon session.

85. The admission fee for the main sessions has been fixed from April 2008 at £2 for Stalybridge and £1 at Eccles. This arrangement meant that members present in the hall did not have to go through the admission procedure again. Anyone in the premises not playing bingo in the second session was required to pay the admission charge. According to Mr Lee this was a rare occasion, normally a friend accompanying a playing member. Since HMRC's inspection the Appellant has kept separate records of those persons who have just paid the admission fee.

86. Ticket bingo was played in the main afternoon session between 1.35pm to 2.05pm, and 2.25pm and 2.55pm. The door to the premises was locked after 1.30pm to prevent persons from participating in games which have started.

87. The early evening session started at 3.30pm with members swiping in their membership cards and paying a separate admission fee of 80 pence at both clubs. The bingo books or planets were purchased at the book counter. No free books were provided. Ticket bingo did not start until 6pm with a cash pot game which lasted five minutes. The main game in this session took place at 6.55pm and finished at 7.10pm. The session ended at 7.30pm. Members generally arrived after 4pm and stayed on for the main evening session.

88. The main evening session commenced at 7.30 pm and finished at 9.30pm. The admission fee for this session which has been fixed since April 2008 at £2 for Stalybridge, and £1 for Eccles was included in the price for the bingo book or the Planet. As with the main afternoon session, members were not required to go through again the admission procedure. The bingo books for the main evening session went on sale from 5.30pm. The doors were locked for the main session from 7.40pm. Ticket bingo was played at 7.35pm to 8.05pm, 8.35pm to 9.05pm and 9.15pm to 9.30pm.

89. The reality was that members attending the early sessions for either the afternoon or the evening stayed on for the respective main sessions. Effectively there were two separate groups of customers. The first group attended the early and main afternoon sessions, whilst the second group attended the early and main evening sessions. The Appellant reconciled admissions for the main sessions to the total admission for the early sessions by noting and deducting those members who had left the building before the commencement of and during the main sessions. Mr Lee accepted that members who attended early and main sessions paid a second admission fee despite having already been admitted into the building.

90. The Appellant had no formal system of identifying those members who have paid admission for an afternoon session and stay on the premises for the evening session but did not play bingo. Mr Lee stated that this rarely happened, and such persons would stand out because the overwhelming majority of customers for the afternoon session would have left. Mr Lee asserted that any member remaining on the premises who had not paid an admission fee would be expelled.

91. The prices for the Planets increased on a linear basis in direct proportion to the number of games, for example, the price for the afternoon session on a Sunday was £9.60 for the Bronze buying 12 (two books) and playing 18 and £19.20 for the Gold

5 buying 24 (four books) and playing 36. The price of one bingo book (six games) was £4.80 regardless of the number of books purchased despite the fact that the first book included an amount for the admission charge. Mr Lee explained that the Appellant was entitled to make an admission charge. Further the Appellant had decided not to price subsequent books at a lower price than that for the first book because the pricing regime for the Planets was already heavily discounted as a result of the number of additional plays at no cost included within the offer.

10 92. The spreadsheet for the value of betting income received and the value of winnings for the week ending 4 November 2007 for each of the premises revealed that the value of the admission charges constituted 88 per cent of the bingo profits for the Stalybridge club and 68 per cent of the bingo profits for the Eccles club. In contrast, when a different denominator was used the admission charges only amounted to 14 per cent of the value of bingo receipts for the week in question. In the quarter October to December 2011, the value of the admission charges equated to 5 per cent of the Appellant's total income receipts.<sup>12</sup>

### Findings of Fact

93. The Tribunal makes the following findings of fact:

20 (1) The Appellant was an independent bingo business effectively run by the same family for 50 years. The present majority shareholder, Mr Downs, had over 40 years experience in the bingo trade. Mr Lee, operations manager, had been employed with the Appellant for 28 years.

(2) The Appellant was an established local business with strong customer loyalty from the local vicinity. The overwhelming majority of its customers lived within a two mile radius of the clubs.

25 (3) The predominant theme of continuity prevailed throughout the Appellant's business practices. Despite the change in the regulatory regime introduced by the Gambling Act 2005, the Appellant carried on with aspects of its previous practices under the Gaming Act 1968 in order to maintain its good relationship with the regulator so as to minimise the risk of losing its licence. Examples of previous practices included a membership scheme, display of a range of notices, and the break up of the day into playing sessions.

35 (4) The Appellant's business purpose was to promote the playing of bingo in a social environment. The Appellant provided a range of facilities and arranged a series of events to enhance the social ambience of the experience. Their provision, however, was designed to encourage and support the playing of bingo. The facilities were not independent of the bingo activities. There was no evidence that members attended for the facilities alone. The Appellant accepted that the facilities were only available to those persons playing main stage bingo.

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<sup>12</sup> The first set of figures was taken from the spreadsheets exhibited at 137A & B: Bingo Payments £57,884.49 & £41,363; Admission charges £8,945 & £5,835. The second set of figures from the spreadsheet with folio reference of 27: total admission charges £31,988; total receipts £648,286.

(5) The Appellant's examples of the various promotions connected with the bar and the cafeteria were indicative of a business strategy of enticing members to enter the premises to play bingo.

5 (6) The fact that the income from the bar takings and the amusement machines formed a significant proportion of the Appellant's income receipts did not persuade the Tribunal that the Appellant was offering a range of self contained services from the same building. The Appellant adduced no evidence of the overheads for the bar takings and amusement machines in respect of the figures contained in the spreadsheet of income for October to December 2011 quarter.  
10 The indications of the capital and leasing costs of the amusement machines together with the high winnings ratio suggested that the overheads for the machines would be high. Also the whole tenor of the Appellant's evidence was that it was running bingo halls and that the provision of the additional facilities was ancillary to that purpose.

15 (7) The playing of ticket bingo did not take up a significant amount of the session time, particularly in the early sessions (40 minutes: early afternoon; 20 minutes: early evening). The Tribunal is, however, satisfied that the ticket bingo was the main event of the particular session. The facilities added value to the bingo experience, particularly during the intervals between the ticket games but  
20 did not supplant the playing of bingo.

(8) The members attended the premises to play bingo but in a social environment with a range of facilities. The Tribunal considered simplistic HMRC's assertion that they were essentially bingo halls and there were no other facilities that justified a separate admission fee. The Tribunal finds that the  
25 members received added value from the social opportunities and the facilities provided at the clubs for which the Appellant was entitled to charge but only insofar as the added charge was proportionate to the charges for playing bingo so as to reflect the ancillary nature of the facilities and social environment.

(9) The Appellant organised its business day into four separate sessions,  
30 namely early and main afternoon, and early and main evening. The length of these sessions were either two hours or two and half hours except the early afternoon session which was four and a half hours at Stalybridge, although the first ticket bingo game did not commence until 6 pm.

(10) This pattern of sessions was a continuation of the prescribed previous  
35 practice under the Gaming Act 1968 of splitting the business day into separate charging periods, which was evidenced by the Appellant's letter to the Clerk to the Eccles Justices in February 2000. The organisation of the day into specified sessions to play bingo followed established practice in the bingo industry.

(11) The Appellant's clubs were only open to members. Persons of 18 and over  
40 were admitted as members if they completed an application form which did not require a payment of fee. Members agreed to abide with the rules of the club.

(12) The rules of the club advised members that admission fees may be charged in accordance with the notices displayed at the point of entry. The rules also specified that admission fees may be included with the cost of books.

5 (13) The Appellant exhibited transparency notices in prominent positions at both clubs informing members of the admission fees for each session. The notices declared admission fees for each session. The notice on display since April 2008 declared a maximum (described as *up to*) and a normal admission fee for each session. In addition the admission charges for each session were publicised in the *Charges to Play* document also on display in the public area.

10 (14) The Appellant charged a separate admission fee ranging from 50 pence to 80 pence for members wishing to attend the early sessions. The members would pay their admission fee on production of their membership card at the reception desk where they were given a receipt for the fee.

(15) The members attending the early session purchased the bingo tickets or Planet from the book counter separately located from the reception desk.

15 (16) Since 19 March 2008 members arriving at Stalybridge before 11.40am who have paid their admission fees received a book of three bingo games including a cash pot ticket at no additional cost. The Appellant decided to offer a free book to encourage members to attend the club early and play the gaming machines. The free book permitted those members to play the first three bingo games which started at 11.40am. Members entering the premises after 11.40am were not entitled to a free book. They would have to pay for the early session book in addition to their separate admission charges for the remaining four games of the early session. The early members also had to pay for the remaining four games.

20 (17) The Appellant charged an admission fee for members attending the main sessions. The admission fee was included in the purchase price of the bingo ticket or Planet. Unlike the early session there were no separate arrangements for paying the admission fee.

25 (18) The unit price for the second and subsequent set of games on the Planet was the same as the price for the first set of games even though the price for the first set included the admission fee.

30 (19) The bingo tickets and the Planet for the main session went on sale on the mid-point of the early session.

35 (20) Prior to April 2008 the Appellant charged a variable admission fee for the main session. The Tribunal is satisfied that the Appellant's application of the variable fee was based on commercial considerations as evidenced by the fees for the week 27 October to 4 November 2007, which showed that the higher fees at Stalybridge were charged on the busier days.

40 (21) During the same week (27 October to 4 November 2007), the Appellant opted to waive the admission fees on specific days. The Tribunal accepted Mr Lee's evidence that this decision was taken in response to competitors offering permanent free admission.

(22) Since April 2008 the Appellant has charged a fixed admission fee to the main sessions. The Tribunal is satisfied with the Appellant's explanation that

this was implemented for commercial considerations, and not in response to HMRC's investigations.

5 (23) The Appellant's decision on the amount of the admission charge was influenced by the prices charged by its competition and the guidance on maximum charges issued under the previous regulatory regime of the Gaming Act 1968

10 (24) Members attending the early session as a rule stayed on for the main session. They were not required to swipe their membership cards for the later session. In effect they paid two admission fees despite the fact that they did not leave the premises at the end of the early session.

(25) The attendance profile at the Appellant's clubs was such that there were two distinct groups of attendees. The first group attended the early and the main afternoon sessions. The second group attended the early and the main evening sessions.

15 (26) The Appellant had no formal arrangements for identifying persons who stayed on for the evening session after attending the afternoon session. The Tribunal was satisfied that there was no need for such arrangements because members on the whole left after the end of the afternoon session. A member staying on would stand out and be noticed by the Appellant's members of staff.

20 (27) The admission charges did not constitute a significant proportion of the Appellant's total income from its bingo operations. The value of the admission charge in proportion to the actual charges for playing bingo was not excessive, about 1:7 (14%)<sup>13</sup>. The exclusion of admission charges, however, from the bingo receipts, made considerable inroads into the Appellant's bingo profits which significantly reduced the tax charge for bingo duty.

### Reasons

30 94. The dispute concerned whether specific admission charges were in fact and in law payments in respect of entitlement or opportunity to participate in bingo, and therefore, liable to bingo duty. There were two specific categories of admission fees in issue. The discrete category of the admission fee paid by members attending the early afternoon session at Stalybridge before 11.40am which entitled them to a book of three games of bingo at no additional cost. The second category concerned the admission charges for the afternoon and evening main sessions which were included in the price for the ticket bingo games.

35 95. The parties' disagreement on the facts was marginal. Instead the parties placed weight on specific aspects of the factual matrix to support the application of their respective interpretations of the law.

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<sup>13</sup> The figure of 1:7 is taken from the sample week see para.92, and is an overall figure. The facts recorded in paragraph 57 give indications of the proportion of the inclusive charge dedicated to the admission charge for particular days of the week

96. The Appellant argued that it did charge admission fees which the members were fully aware of from the club rules and the various public notices. The Appellant offered a range of facilities which justified the charging of admission fees. The Appellant in imposing admission charges was following long established business practice in the bingo industry originating from the Gaming Act 1968 and justified commercially by the provision of facilities and social opportunities at the bingo clubs. The Appellant asserted that it was not mislabelling charges as admission fees to gain a fiscal advantage. The size of the charges was proportionate to the charges for playing bingo and influenced by the prices charged by competitors. The Appellant's charges were well within the maximum limit for admission charges imposed under the previous regulatory regime of the Gaming Act 1968.

97. The fact that the exclusion of the admission charges from the bingo profits significantly reduced the Appellant's charge to tax was a consequence of the legislation and had no relevance to the dispute. There was nothing to prevent the Appellant from charging an all inclusive fee. The Appellant did not understand HMRC's objection to the charge for the early attendees at Stalybridge, particularly in view of HMRC's concession on admission charges at point of entry for the other early sessions held at the clubs. The Appellant concluded that it was entitled to charge admission fees, and its decision to do so was a matter of commercial judgment with which the Tribunal should not interfere.

98. HMRC maintained that the question was still whether the amount paid was an amount in respect of entitlement or opportunity to participate in a game of bingo. The inquiry was not concerned with whether something was merely labelled as an admission fee. HMRC submitted that the inclusive fees for the afternoon and evening main sessions were clearly payments in respect of an entitlement to bingo. The Appellant in return for the inclusive fee provided members with a book of tickets to play bingo. The members had no choice but to pay the full ticket price. The overwhelming majority of members attending the main session had already paid an admission fee for the early session with the result that they were paying the admission fee twice even though they had not left the premises between the two respective sessions.

99. The Appellant's charging policy for the Planet revealed that there was no distinction in the respective unit prices for the first and subsequent ticket books despite the first book purportedly including an admission fee. This revelation highlighted the contrived nature of the admission fee. Equally the payments made ostensibly for early admission to Stalybridge but which in fact entitled the member to bingo books at no extra cost were within the scope for the tax. The Appellant's reliance on the legislation governing the industry was completely irrelevant. The reality was that the Appellant by levying admission fees had attempted to create a membrane around part of its bingo profits which reduced its tax charge.

100. The Tribunal's analysis of the legislation and its passage through Parliament demonstrated that there was a range of payments made in connection with the playing of bingo but only those payments made just for the playing of bingo were subject to the tax. HMRC with its concession on the admission charges for the early sessions

acknowledged that not all payments made in connection with bingo fell within the definition of bingo receipts and subject to bingo duty.

101. The Tribunal agrees with HMRC's starting point which was that the inquiry should commence with the question of whether the disputed admission charges were amounts paid in respect of an entitlement or opportunity to play bingo. The Tribunal has construed payments in respect of entitlement or opportunity to participate in bingo as payments just for the playing of bingo.

102. The Tribunal, however, differs from HMRC on how it should approach this question. HMRC's approach was encapsulated in the quotation cited at paragraph 40 above which was summed up by the opening words: *the next question is whether any of those sums are properly attributable to something else other than an entitlement to play bingo.* The Tribunal considers HMRC have misunderstood section 19, particularly the words of section 19(3)(e) which was relevant to the question of all inclusive charges. The effect of HMRC's approach was that if there was a link between the payment and the playing of bingo, the focus of the inquiry should be on whether the payment or part of it was *properly* attributable to something-else. That is not what section 19(3)(e) says. The examination should concentrate on whether a payment is applied or *properly* attributable to an entitlement to play bingo.

103. The Tribunal considers its difference with HMRC on the construction of section 19 of the 1981 Act significant. The Tribunal's preferred construction means that the payment must have all the characteristics of an entitlement to play bingo. The payment should be just for playing bingo. HMRC's approach, on the other hand, deflected attention from that essential question and focused on whether the payment had sufficient characteristics of something else to undermine its link with the playing of bingo. In the Tribunal's view HMRC's approach leads the consideration in the wrong direction by concentrating on what was an admission charge and whether the disputed charge met that definition. The 1981 Act provides no definitions of charges which do not constitute an entitlement or opportunity to play bingo. The 1981 Act simply refers to those charges which are not an entitlement or opportunity to play bingo as another matter.

104. The Tribunal intends to deal first with the substantive dispute which concerned the admission charges for the afternoon and evening main sessions. In this instance the admission fee was included in the price for the book of tickets to play main stage bingo. The fact that it was an inclusive price was not decisive that the whole amount constituted a payment just for playing bingo. The wording of section 19(3)(e) clearly envisages the possibility of inclusive payments and the need to apportion the amount between the separate elements of the charge.

105. The Tribunal found that the Appellant's business purpose was to promote the playing of bingo in a social environment. The Appellant provided a range of facilities and arranged a series of events to enhance the social ambience of the bingo experience. Although the Tribunal considered that the provision of facilities was ancillary to the playing of bingo, the Tribunal decided that the members received added value from the social opportunities and the facilities provided at the clubs for

which the Appellant was entitled to charge. The charge, however, for those facilities should be proportionate to the charges for playing bingo so as to reflect their ancillary nature.

5 106. The Appellant informed the members purchasing the book of tickets for the main session that part of the inclusive price was for admission. This was done cumulatively through the club rules and the various notices on public display. The Tribunal places weight on the presence of the transparency notice at the point of purchase.

10 107. HMRC takes issue with the significance of the various notices signifying an admission charge. First, HMRC says that a member did not know the actual admission charge for a specific session because the Notices specified a maximum charge, and only recently a normal charge. In the Tribunal's view HMRC's criticism did not undermine the established fact that the Appellant was including within the inclusive price a charge for something other than playing bingo, and that this amount  
15 would not exceed the maximum as stated on the notice.

108. Second, HMRC states that in any event this amount dedicated to an admission charge could not be described as such because the overwhelming majority of members had already paid an admission fee when they entered the premises at the earlier session. As explained earlier the structure of section 19 is such that the  
20 Tribunal is not concerned with what was an admission charge but whether the whole of the charge could properly be attributable to the playing of bingo, and if not, that part not so attributable should be disregarded. The Tribunal's findings showed that the Appellant organised its business day into four bingo sessions. The Appellant regarded each session as a discrete charging period entitling it to make a charge for  
25 admission into the session. The Tribunal decided that the Appellant was following established practice for the bingo industry which had its origins in the former regulatory regime imposed by the Gaming Act 1968. In short the Tribunal was satisfied with the Appellant's commercial rationale for levying an admission fee for each bingo session.

30 109. The Tribunal was satisfied that the amount of the inclusive price allocated to the admission charge was not disproportionate and reflected the ancillary nature of the facilities and social opportunities on offer. The findings demonstrated that there was no evidence that the Appellant was deliberately manipulating the level of the admission charge to avoid tax. The fixed charges imposed since April 2008 appeared  
35 to the Tribunal to be a fair and reasonable assessment of the added value provided by the facilities. The Tribunal was supplied with limited evidence on the application of the variable charge prior to April 2008, mainly because the Tribunal was being asked to make a decision in principle rather than on quantum. The Tribunal's finding on the application of the variable charge was that it was governed by commercial  
40 considerations. A higher charge was imposed for the busy sessions, which in the Tribunal's view maintained the proportionate nature of the amount allocated to the admission charge.

110. HMRC contended that the evidence of no distinction in the respective unit prices of the first and subsequent books on the Planet despite the first book purportedly including an admission fee undermined the validity of allocating a separate amount for admission. The Tribunal was not convinced that this evidence  
5 outweighed the evidence pointing in the other direction. The Tribunal formed the view from Mr Lee's evidence that the pricing of second and subsequent books on the Planet had been significantly discounted by the offer of additional plays and that it was not commercially viable to add a further deduction in respect of the admission fee. The Tribunal was satisfied with Mr Lee's explanation.

111. The Tribunal considered Mr Lee's evidence plausible in respect of the Appellant's reasons for changing to an inclusive fee in September 2006. Mr Lee explained that this was done in response to the charging of inclusive fees by competitors and adverts by them about the additional charges imposed by the Appellant. HMRC pointed out that there was no documentary evidence to corroborate  
15 Mr Lee's testimony. The Tribunal, however, found Mr Lee a credible witness and had no reason to doubt his veracity.

112. The reality was that the Appellant was a local established business with a long history in the bingo industry. The Appellant's business practices reflected the highly regulated nature of the industry and the importance of staying on the right side of the  
20 regulator. Some of its practices were a continuation of those that existed under the previous regulatory regime and had become an embedded part of the industry. The Appellant was not just offering bingo but bingo in a social environment where members could take advantage of facilities and social opportunities. The Appellant was entitled to charge for the added value that it brought to the bingo experience for its members. The Appellant did in fact impose a charge for that added value of which  
25 the Appellant informed its members at the point of purchase of the book of tickets. The charges levied by the Appellant for admission were proportionate and not excessive in relation to the ancillary nature of the additional facilities. The Appellant's decision to have separate charging periods for each session of playing  
30 bingo was consistent with established practice in the industry. In short, the Appellant had a sound commercial rationale for allocating part of the inclusive ticket price for the main sessions to admission. This was not a company that made up its rationale as it went along.

113. In view of its findings the Tribunal holds that the all inclusive fee for the afternoon and evening main sessions was not just for the playing of bingo. The Appellant was entitled to allocate part of the fee for the admission of the member to  
35 the particular session for playing bingo.

114. Turning now to the issue of the admission charge for the early session at Stalybridge. The facts found were that members arriving at Stalybridge before  
40 11.40am swiped their membership cards and paid admission fees for which they received receipts. The transparency notice informed the members that they were paying an admission charge. On paying the admission fee they were given ticket books which permitted them to play the first three games of bingo in the early session at no cost. Members arriving after 11.40am went through the same procedures and

paid the same admission fees but were not entitled to the book of tickets at no cost. This offer of a free book of tickets was promoted by the Appellant to encourage members to attend the club early and play the gaming machines and had been in force since 19 March 2008.

5 115. HMRC appeared to accept that the admission charge entitled the member to  
gain access to the premises but the fact that they were given a free book also entitled  
them to something more than just admission, namely to play bingo<sup>14</sup>, in which case  
the charge fell within the scope of bingo duty. HMRC in its letter dated 21 March  
10 2012 put forward its revised interpretation of the 1981 Act which was that charges  
purely for admission to premises and which can be dissociated from the granting of  
any entitlement to participate in games of bingo were outside the scope of the tax.  
Thus HMRC's objection to the early admission charges at Stalybridge was that they  
were not solely for admission because of their connection with the promotional offer.

15 116. As explained previously the Tribunal considers HMRC's approach flawed, the  
question is not whether the charges are purely for admission but whether they are just  
for the playing of bingo. Clearly on the facts found the charge was not just for playing  
bingo. The presence of the transparency notice, the swiping of the membership card,  
the issue of a receipt, and the fact that persons arriving after 11.40 am went through  
20 exactly the same procedures without receiving the free book of tickets all pointed to  
the conclusion that this charge was for something other than just the playing of bingo.

117. The next question is whether any part of this charge should properly be  
attributable to an entitlement to play bingo. In the Tribunal's view it was not the  
admission charge which gave rise to the member's entitlement to play bingo. It was  
the issue of the book of tickets at no charge which permitted a member to play bingo.  
25 The Appellant under its *Charges to Play* was entitled to waive the charges on playing  
bingo. In this respect a no charge was still a charge for playing bingo. There was no  
evidence that the Appellant's implementation of the no charge facility amounted to an  
abusive practice. The scope of the promotional offer was limited and modest in  
respect of the income foregone. The Tribunal concludes that none of the charge for  
30 early admission to Stalybridge can properly be attributable to the playing of bingo.

118. The Tribunal, therefore, finds that the charge for early admission at Stalybridge  
was not an amount in respect of an entitlement or opportunity to participate in bingo.

## **Decision**

119. The Tribunal finds that

35 (1) The all inclusive fee for the afternoon and evening main sessions was not  
just for the playing of bingo. The Appellant was entitled to allocate part of the  
fee for the admission of the member to the particular session for playing bingo.

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<sup>14</sup> See review letter dated 28 July 2009

(2) The charge for early admission at Stalybridge was not an amount in respect of an entitlement or opportunity to participate in bingo.

120. The Tribunal, therefore, allows the Appeal.

121. The Appellant has indicated that it wished to apply for a wasted costs order. The Tribunal expresses no view on this matter. Leave is given to the Appellant to submit an application if it wishes to pursue it within 28 days from receipt of this decision.

122. This document contains full findings of fact and reasons for the decision. Any party dissatisfied with this decision has a right to apply for permission to appeal against it pursuant to Rule 39 of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009. The application must be received by this Tribunal not later than 56 days after this decision is sent to that party. The parties are referred to “Guidance to accompany a Decision from the First-tier Tribunal (Tax Chamber)” which accompanies and forms part of this decision notice.

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**MICHAEL TILDESLEY OBE  
TRIBUNAL JUDGE**

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**RELEASE DATE: 29 October 2012**