



TC02759

Appeal number: TC/2011/1266 & TC/2012/0935

VAT – exemption for medical care – whether applies to services provided by dispensing opticians in circumstances where spectacles are bought online – yes – whether single supply of spectacles subject to standard rate – no – or separate supplies of goods on the one hand and services amounting to medical care on the other - yes – Article 132(1)(c) Principal VAT Directive – Schedule 9 Group 7 item 1(b) Value Added Tax 1994 – appeals allowed

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

PRESCRIPTION EYEWEAR LIMITED

Appellant

- and -

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

Respondents

**TRIBUNAL: JUDGE TIMOTHY HERRINGTON
NIGEL COLLARD**

**Sitting in public at the Royal Courts of Justice, Strand, London WC2A 2LL on
26, 27 and 28 November 2012.**

Ms Nicola Shaw QC, instructed by Bristows, Solicitors for the Appellant

**Mr Brendon McGurk, Counsel, instructed by the General Counsel and Solicitor
to HM Revenue and Customs, for the Respondents**

DECISION

I Introduction

- 5 1. The Appellant, Prescription Eyewear Limited, trading as Glasses Direct (“Glasses Direct”) appeals against two decisions of the Respondents (“HMRC”) made on 4 November 2010 and 28 November 2011 respectively to reject the Appellant’s request to agree an apportionment between what Glasses Direct contends are exempt supplies and its standard rated supplies.
- 10 2. Glasses Direct had proposed an effective tax rate of 13.4% but that proposal was rejected on the basis that HMRC did not agree that Glasses Direct made exempt supplies of medical services. Glasses Direct also made a claim for repayment of overpaid VAT in the amount of £418,199.76 in respect of what it contends are exempt supplies. This claim has been rejected by HMRC on the same basis.
- 15 3. The amount of VAT at issue is not in itself a matter for us to decide. HMRC’s decisions were made solely on the basis of its contention that none of the supplies made by Glasses Direct were exempt and therefore the question of apportionment does not arise. HMRC’s statement of case did not question the basis of the apportionment sought to be made by Glasses Direct; that is an effective tax rate of
20 13.4% on the totality of its supplies. In those circumstances we indicated that the Tribunal would not be favourably disposed to an application to amend the statement of case at this stage and Mr McGurk rightly did not press the point.
4. Glasses Direct is a UK based online retailer of prescription glasses, including
25 prescription sunglasses, and owns and operates the website www.glassesdirect.co.uk. Customers can place an order for prescription glasses through the Glasses Direct website or by telephone. The supply of every pair of prescription glasses is supervised by a qualified dispensing optician registered under the Opticians Act 1989, as required by that legislation.
- 30 5. Glasses Direct contends that in relation to every order of prescription glasses it makes two supplies: an exempt supply of medical services (specifically, dispensing services) and a taxable supply of goods, namely the prescription glasses. HMRC’s position is that whereas High Street Dispensing Opticians provide medical care in the form of personally measuring and fitting the customer face to face, Glass Direct does not insofar as it neither measures, nor fits, nor does anything else resembling the
35 provision of medical care. If they are wrong on that, HMRC contend that any medical care provided on the facts of this case is ancillary to the supply of prescription glasses with the same result namely that there is a single standard rated supply.
- 40 6. We consider below the relevant legislation, guidance and authorities in relation to the exemption for medical care in the context of the supplies made by Glasses Direct. We then make findings of fact based on the evidence before us as to the manner in which Glasses Direct’s business operates. We then set out our decision on

how Glasses Direct's business is to be characterised for VAT purposes in the light of our findings of fact, the relevant legal principles and the submissions of the parties.

II Relevant legislation, guidance and authorities

7. Article 132 of Council Directive 2006/112/EC ("the Principal VAT Directive")
5 sets out various exemptions from VAT for "certain activities in the public interest" which Member States are required to implement. Article 132(1)(c) provides that Member States shall exempt:

"the provision of medical care in the exercise of the medical and paramedical professions as defined by the Member State concerned."

10 8. This exemption is given effect to in item 1(b) of Group 7 of Schedule 9 to the Value Added Tax Act 1994 ("VATA") which provides for the exemption of:

"The supply of services consisting in the provision of medical care by a person registered or enrolled in ...

...

15 (b) either of the registers of ophthalmic opticians or the register of dispensing opticians kept under the Opticians Act 1989 or either of the lists kept under section 9 of that Act of bodies corporate carrying on business as ophthalmic opticians or as dispensing opticians."

20 9. Note 2 to this item provides:

"(2) Paragraphs (a) to (d) of item 1 and paragraphs (a) and (b) of item 2 include supplies of services made by a person who is not registered or enrolled in any of the registers or rolls specified in those paragraphs where the services are wholly performed or directly supervised by a person who is so registered or enrolled."

Note 2 therefore makes provision for supplies of medical care made by persons under the supervision of registered or enrolled opticians to be exempt as well as such supplies made directly by persons so registered or enrolled.

30 10. Section 7 of the Opticians Act 1989 ("the Act") sets out the registers that need to be maintained according to that Act as follows:

"The Council shall continue to maintain-

35 (a) two registers of ophthalmic opticians, one for the registration of persons engaged or proposing to engage both in the testing of sight and in the fitting and supply of optical appliances and the other for the registration of persons engaged or proposing to engage in the testing of sight, but not in the fitting and supply of optical appliances; and

(b) a register of dispensing opticians."

11. Sections 36(1) of the Act defines "dispensing optician" as:

“A person engaged or proposing to engage in the fitting and supply of optical appliances.”

12. Section 24 of the Act imposes restrictions on the testing of sight. It provides:

5 “(1) Subject to the following provisions of this section, a person who is not a registered medical practitioner or registered ophthalmic optician shall not test the sight of another person.”

Subsection (4) of that section provides that it is a criminal offence to contravene subsection (1).

13. Section 26 of the Act provides:

10 “(1) The Secretary of State may by regulations provide that, subject to any exceptions specified in the regulations, when a registered medical practitioner or registered ophthalmic optician tests the sight of another person, it shall be his duty

15 (a) to perform such examinations of the eye for the purpose of detecting injury, disease or abnormality in the eye or elsewhere as the regulations may require, and

(b) immediately following the test to give the person whose sight he has tested a written statement

20 (i) that he has carried out the examinations that the regulations require, and

(ii) that he is or (as the case may be) is not referring him to a registered medical practitioner.

25 (2) Except in circumstances specified in regulations under subsection (3) (b) below, it shall also be his duty to give the person whose sight he has tested, immediately following the test, either a signed, written prescription for an optical appliance or a signed, written statement that he does not need to wear or use an optical appliance.”

30 Thus it can be seen from this provision that an ophthalmic optician must provide the patient with a copy of any prescription that has been required necessitated by reason of the eye test.

14. Section 27(1) of the Act provides:

35 “(1) Subject to the following provisions of this section, a person shall not sell any optical appliance unless the sale is effected by or under the supervision of a registered medical practitioner or registered optician.”

40 Subsection(10) provides that it is a criminal offence to contravene subsection (1). “Registered optician” is defined in section 36 of the Act as “a person who is registered in any of the registers”, so that includes ophthalmic opticians and dispensing opticians.

15. It is to be noted that the restriction on sale of optical appliances except by or under the supervision of the relevant practitioner only applies to retail sales. Section 27(5)(a) and (b) of the Act provides:

“(5) Subsection (1) above shall not apply to the sale of an optical appliance –

(a) to a registered medical practitioner, registered optician or enrolled body corporate for the purposes of his practice or of his or its business;

(b) to a manufacturer of or dealer in optical appliances for the purposes of his business.

....”

16. It is helpful to analyse in chronological order the various decisions of the European Court of Justice (“ECJ”) and the UK courts to see how the jurisprudence as to what constitutes “medical care” has developed. In order for Glasses Direct to succeed on its appeal it needs to satisfy us that the services provided by its dispensing opticians constitute “medical care”.

17. We start with Case 353/85, *EC Commission v United Kingdom* [1988] STC 251. Rather ironically, bearing in mind HMRC’s position in relation to these appeals, this case concerned infraction proceedings brought before the ECJ by the European Commission against the United Kingdom in relation to predecessor legislation to that now contained in VATA relating to the exemption for medical care. The relevant legislation at the time contained in the Value Added Tax 1983 (Item 1 Group 7 of Schedule 6 to that Act), provided an exemption for –

“The supply of services and in connection with it, the supply of goods, by a person enrolled in any of the following ...”.

18. This exemption extended to those entered into either of the registers of ophthalmic opticians or dispensing opticians maintained under the predecessor legislation to the Act. Consequently, as the ECJ found, the supply of corrective spectacles by registered opticians was exempt when they were supplied in connection with the provision of services.

19. The UK Government argued that the exemption for “medical care” covered goods supplied in connection with the services provided by certain recognised medical and paramedical professions and therefore that the supply of corrective spectacles, either by an ophthalmic optician or by a dispensing optician, is closely connected with the service provided. The Court rejected this argument, its conclusion being set out in paragraph 32 of its judgment as follows:

“32. Indent (b) provides that the member states are to exempt from value added tax: ‘Hospital and medical care and closely related activities undertaken by bodies governed by public law ... The services involved therefore encompass a whole range of medical care normally provided on a non-profit-making basis in establishments pursuing social purposes such as the protection of human health.

33. On the other hand, indent (c) provides that the member states are to exempt from value added tax: ‘The provision of medical care in the exercise of the medical and paramedical professions.’

5 It is clear from the position of that indent, directly following the indent concerning hospital care, and from its context, that the services involved are provided outside hospitals and similar establishments and within the framework of a confidential relationship between the patient and the person providing the care, a relationship which is normally established in the consulting room of that person. In those circumstances, apart from minor provision of goods which are strictly necessary at the time when the care is provided, the supply of medicines and other goods, such as corrective spectacles prescribed by a doctor or by other authorised persons, is physically and economically dissociable from the provision of the service.

10 34. It follows that the exemption from tax of goods supplied in connection with the medical care referred to in indent (c) cannot be justified by indent (b), as the United Kingdom maintains.”

15 20. The ECJ held in this case that the supply of glasses by a dispensing optician was a separate supply to the supply of dispensing services, thus delineating the scope of the exemption by reference to the provision of the dispensing services, not the goods supplied.

20 21. As a result of this case, the UK legislation was changed and this change is now reflected in Item 1(b) of Group 7 of Schedule 9 to VATA where the exemption is restricted to “the supply of services consisting in the provision of medical care ...” by ophthalmic or dispensing opticians.

25 22. This legislation and the scope of the exemption for dispensing services was considered by McCullough J in *Customs & Excise Commissioners v Leightons Ltd* [1995] STC 458. The headnote summarises the facts and issues in that case as follows:

30 “Leightons carried on business as opticians. It employed ophthalmic opticians to carry out eye tests and issue prescriptions, and dispensing opticians to take measurements of patients’ eyes, give advice, prepare and check specifications for lenses and frames, fit the spectacles with patients and make any modifications required. The Commissioners accepted that the services of the ophthalmic opticians were exempt supplies separate from the supply of spectacles. However, in September 1992 they issued a decision that the supply of spectacles by L was a single standard-rated supply of goods to which the dispensing opticians’ services were merely ancillary. Leightons appealed contending that the services of dispensing opticians were separate exempt supplies and that the consideration received for the spectacles should be apportioned accordingly.”

40 23. The facts as to how *Leightons* provided its dispensing services were agreed to be as set out at page 461 c to f as follows:

“It is agreed that the stages in the sale of a pair of corrective spectacles can be summarised as follows:

- (i) The patient is first seen by a dispensing optician who examines the patient's existing spectacles (if any), prepares a record card and decides on the appropriate next step.
- 5 (ii) Usually the patient has his eyes tested by an ophthalmologist (who is a registered medical practitioner) or an ophthalmic optician who writes out a prescription.
- (iii) The patient takes the prescription to the dispensing optician who then or later may discuss matters with the prescriber.
- 10 (iv) The dispensing optician takes detailed measurements of the patient's eyes and other features and prepares detailed notes.
- (v) The dispensing optician advises the patient on the options available in respect of lenses and frames.
- (vi) The dispensing optician draws up a specification for the lenses and frames from the measurements which he has taken.
- 15 (vii) The specification is sent to a laboratory which produces the lenses and frames to specification.
- (viii) When the spectacles are returned the dispensing optician will check whether they conform to the specifications sent.
- 20 (ix) And finally the dispensing optician will fit the spectacles with the patient and make any minor modifications required."

24. McCullough J identified the issue to be determined at page 461 g as follows:

25 "It is clear that the corrective spectacles which a dispensing optician supplies are 'goods' and that the dispensing services he performs are 'services'. The sole issue in the case is whether the supply of the spectacles constitutes a single supply of goods to which the dispensing optician's services are merely ancillary or whether it involves two separate supplies: one of goods and the other of services."

25. He determined the issue at pages 465 f to 466 j as follows:

30 "Para (b) of item 1 in Group 7 of Schedule 6 to the 1983 Act exempts the supply of services by a person registered or enrolled in the register of dispensing opticians kept under the Opticians Act 1989. If the services of dispensing opticians are to be regarded as ancillary to the supply of corrective spectacles – which I understand to be the majority of the work of dispensing opticians – what remains of the exemption?

35 Merely the services of dispensing opticians to patients who want to be measured for frames and lenses which the patients then have made up by someone else and the patients who want a similar service prior to their being supplied by someone else with safety spectacles and gas masks. How realistic is it to grant exemption to the services of the dispensing optician in the exceptional situations but to deny it in the

40 typical one? ...

How then should one resolve the issue in the typical provision of corrective spectacles by a dispensing optician?

5 In consideration of the single payment he receives the dispensing optician provides both his professional services and spectacles. I have to ask whether in substance and reality the one supply is ancillary to the other – or the other ancillary to the one – or whether there are separate supplies.

I have regard to the practical and fiscal consequences of each possible answer.

...

10 If I find there is one supply of goods to which the services are ancillary the supply will be standard-rated. For reasons already expressed this would deprive para (b) of item 1 in Group 7 of Sch 6 of much of the effect that the legislative history suggests Parliament intended it to have. It would lead to what I see as the illogicality of exempting a dispensing optician's services relating to the supply of safety spectacles and gas masks but not of spectacles supplied in the ordinary way ...

15 If I find that there are two supplies no practical difficulty results. The Commissioners accept that apportionment of the consideration as between services and goods can readily be made.

20 Spectacles may, of course, be supplied without dispensing services and vice versa, but in the typical supply under consideration the two elements are closely linked, each dependent on the other. Frames holding lenses made up to the ophthalmologist's (or ophthalmic optician's) prescription will not meet the needs of the patient if they are not the height, horizontal distances and distance from the eyes that he requires ... This consideration may be thought to point to there being a single supply ... in terms of cost, I am not surprised to be told that the majority is attributable to the element of service. Where the two elements are roughly evenly balanced the more arbitrary become the consequences of a decision to classify the supply as a single supply of either kind. This may well be a pointer to the fact that there are indeed two separate supplies. And this is the conclusion to which I have come.

35 For these various reasons – the legislative history, the desirability of reaching the conclusion that Parliament would regard as fulfilling its intention, the position relative to safety spectacles and gas masks and other instances where the patient, having been measured and given his specification, goes elsewhere, the practicalities, the fiscal consequences and the roughly even balance of the two elements – I hold that in substance and reality there are here two separate supplies: one of corrective spectacles, the other of the services of the dispensing optician. My only doubt would be whether this includes the relatively small element of service provided when the patient comes to collect his spectacles. Even here I would say that this was ancillary to the service of measuring and specifying, so that it too is exempt.”

45 26. Thus the clear conclusion of McCullough J is that dispensing services are a separate supply to the supply of glasses; HMRC's argument that there was a single supply of goods with the dispensing optician's services being ancillary was rejected.

27. We observe that McCullough J's analysis was based on the factual scenario where the dispensing services took place face to face with the patient on the optician's premises. Mr McGurk in this case places emphasis on the personal service of the dispensing optician in examining the patient and measuring and fitting corrective spectacles. He submits that the provision of spectacles through a customer driven process online gives rise to new questions about the nature and extent of dispensing services provided and the application of the principles relating to the exemption of dispensing services in this new sphere. He observes that in *Leightons* at no stage did McCullough J analyse whether each of the nine stages of the dispensing services set out in paragraph 23 above could be said to consist of the provision of medical care. As we shall see, there are subsequent cases decided in the ECJ on the meaning of "medical care". We accept Mr McGurk's submission that it is necessary to consider whether each stage of the dispensing services as provided by Glasses Direct through its online business model has as its purpose the provision of medical care, as interpreted in the ECJ authorities in order to establish the precise scope of the exemption.

28. Ms Shaw's overarching submission is that the principles laid down in *Leightons* still hold good and can be applied to Glasses Direct's business model; in particular all the stages described in paragraph 23 above with the exception of (ii) are satisfied in this case albeit that they are satisfied in a slightly different way to a High Street optician.

29. The issue as to whether the provision of spectacles constitute two separate supplies or a single supply with the dispensing optician's services being ancillary was revisited in the VAT and Duties Tribunal in *Southport Visionplus v Commissioners for Customs and Excise* (VTD 17502). The Commissioners decided to test the issue again in the light of the guidance given by the ECJ in the well known case Case C-349/96 *Card Protection Plan Ltd v Customs and Excise Commissioners* [1999] STC 270 as to how to determine whether a transaction which comprised several elements was to be regarded as a single supply or as two or more distinct supplies assessable separately.

30. The criteria laid down in *Card Protection Plan* for ascertaining whether a transaction amounts to a single supply or multiple supplies, as set out in paragraphs 29 and 31 of the ECJ's judgment can be summarised as follows:

- (1) Every supply of a service must normally be regarded as distinct and independent;
- (2) A supply which comprises from an economic point of view a single supply should not be artificially split;
- (3) There is a single supply where one or more elements constitute the principal service to which the other elements are ancillary (in the sense of not constituting for customers an aim in themselves but a better means of enjoying the principal service); and
- (4) The fact that a single price is charged is not decisive.

31. The Tribunal in *Southport Visionplus* applied these principles to the facts of that case, which were broadly identical to those on which the decision in *Leightons* were based and concluded at paragraphs 61 and 62 of its decision:

5 “61. In the present appeal the price for dispensing services is more than one half of the price for the total supply. On that ground alone, the supply of the dispensing services should not be treated as ancillary to the supply of goods. However, even if the proportion of the price were not a relevant consideration, we would still have concluded that the supply of dispensing services was not ancillary to the supply of the goods as the services are an aim in themselves. Customers could purchase ready-made reading spectacles if they wished to do so but, if they want dispensed spectacles, they know that they have to pay for the services of the dispensing optician. Neither do we see the dispensing service as a means of “better enjoying” the optical appliance; a dispensed optical appliance could not be enjoyed at all without the dispensing service.

10
15 62. We conclude that in this appeal there are two equivalent supplies, and not one principal supply and one ancillary supply.”

20 32. As submitted by Miss Shaw, it appears to us that the key question is whether from the point of view of the typical consumer the supply concerned (in this case prescription glasses) constitutes a single indivisible economic supply which it would be artificial to split or whether it constitutes two distinct and independent supplies.

25 33. In *HMRC v. Weight Watchers (UK) Ltd* [2008] STC 2313, in Paragraphs 17 of its judgment the Court of Appeal gave guidance as to how that question should be answered.

30 “[17] In summary, therefore, the court must have regard to all the circumstances. It must apply the relevant test on an objective basis. There are various formulations of what the relevant test is in *Card Protection Plan* (para 29) and *Levob* (para 22 and ruling 1). Common to all of them are the requirements that the court must look at the transactions from the view point of the typical consumer rather than the supplier. The extent of the linkage between the relevant transactions must be considered from an economic point of view, rather than, say, a physical, temporal or other standpoint. So regarded the question then is whether it would be artificial to split them into separate supplies. The fact that the supplier has charged a single price for the aggregate of the transactions is a relevant circumstance but is not conclusive because that price may be apportioned.”

35
40 34. In both *Leightons* and *Southport Visionplus* this question was clearly answered in the case of prescription glasses provided by dispensing opticians on the High Street by concluding that there are two separate supplies and this is consistent with the ECJ’s findings in *EC Commission v UK* where it concluded in paragraph 33 of its judgment:

5 “[33] ... In those circumstances, apart from minor provisions of goods which are strictly necessary at the time when the care is provided, the supply of medicines and other goods, such as corrective spectacles prescribed by a doctor or by other authorised persons, is physically and economically dissociable from the provision of the service.”

10 35. Our conclusion from these authorities is that we need to establish whether the services provided by the dispensing opticians in this case are of a different character to those considered in *Leightons* and *Southport Visionplus*. We need to consider the question as to whether, as submitted by Mr McGurk, those services provided by the dispensing opticians in this case which constitute “medical care” are so minimal that they should be regarded as ancillary to the provision of the goods, namely the prescription glasses. In that regard we need also to consider what services provided by the dispensing optician can properly be regarded as “medical care” and we shall turn to the relevant authorities on this issue.

15 36. Before turning to the authorities on the meaning of medical care, we observe that HMRC have since the *Leightons* case accepted that the sale of prescription glasses under the supervision of a dispensing optician involves two separate supplies. Its guidance, set out in VAT Information Sheet 08/99 provides:

20 “Since the ruling of the High Court in the case of *Leightons/Eye Tech* in 1995, it has been accepted by Customs and Excise that the supply of spectacles by an optician is a mixture of VAT – exempt dispensing services and standard-rated frames and lenses”.

25 37. We note that there is no attempt in this guidance to distinguish those dispensing services which constitute “medical care” and those that do not. The guidance proceeds on the basis that all the services provided by a dispensing optician in relation to a supply of prescription glasses will constitute “medical care” and accordingly will amount to an exempt supply. In this case HMRC are seeking to characterise the services provided by Glasses Direct’s dispensing opticians differently. Mr McGurk submits that they are professional services but do not amount to medical care because of the lack of face to face contact and the more limited role that Glasses Direct’s dispensing opticians perform than is the case with a sale of prescription glasses on the High Street.

38. We therefore turn to the question as to what constitutes “medical care”.

35 39. Mr McGurk referred us to Case C-348/98 *D v W* ECR I-695. In that case a doctor in Austria who was appointed by a court as a medical expert and instructed to establish on the basis of a genetic test whether the claimant in the proceedings could be the child of the Defendant, included a sum for VAT in her invoice. The ECJ held that the exemption within Article 13(1)(c) did not include medical services which do not consist of providing medical care by diagnosing and treating a disease or any other health disorder. At paragraphs 18-19 it held:

40 “... the concept of ‘provision of medical care’ does not lend itself to an interpretation which includes medical interventions carried out for a

purpose other than that of diagnosing, treating and, in so far as possible, curing diseases or health disorders.

5 So services not having a therapeutic aim must, having regard to the principle that any provision establishing an exemption from VAT is to be interpreted strictly, be excluded from the scope of Article 13A(1)(c) of the Sixth Directive and therefore subject to VAT.”

Mr McGurk submits, and we accept, that it is therefore crucial not just to look at the activity, but the purpose for which the activity was undertaken. If it was undertaken for a purpose other than that of diagnosing, treating and, in so far as possible, curing
10 diseases or health disorders, then it will not constitute the provision of medical care.

40. Nevertheless, the exemption must be construed consistently with the objectives pursued by the exemption for medical care which is to reduce the cost of medical care and make it more accessible to individuals. This appears from Case C-45/01 *Christoph-Dornier-Stiftung Für Klinische Psychologie v Finanzamt Giessen* [2005]
15 STC 228 where the Court considered whether psychotherapeutic treatment provided by an entity governed by private law fell within the exemption.

41. In finding that the treatment provided by qualified psychologists in a hospital environment fulfils the condition of having a therapeutic purpose the Court held in paragraphs 42 to 44 and 47 of its judgment as follows:

20 “42. According to the Court of Justice’s case-law, the exemptions envisaged in art 13 of the Sixth Directive are to be interpreted strictly since they constitute exceptions to the general principle that VAT is to be levied on all services supplied for consideration by a taxable person
25 ... However, the interpretation of the terms used in that provision must be consistent with the objectives pursued by those exemptions and comply with the requirements of the principle of fiscal neutrality inherent in the common system of VAT.

30 43. It is apparent from the case-law that the objective of reducing the cost of medical care and making that care more accessible to individuals is common to both the exemption provided for in art 13A(1)(b) of the Sixth Directive and that in letter (c) of the same provision.

35 44. It must also be borne in mind that the principle of fiscal neutrality precludes, inter alia, economic operators carrying on the same activities from being treated differently as far as the levying of VAT is concerned.

...

40 47. Next, as correctly pointed out by the Advocate General in points 44 to 46 of her opinion, the criterion for drawing a clear distinction between the two tax exemptions provided for in art 13A(1)(b) and (c) is less the nature of the service than the place where it is provided. The Court of Justice has held that, under art ~~13A(13A~~ 13A(1)(b), it is appropriate to exempt services encompassing a whole range of medical care in establishments pursuing social purposes such as the protection
45 of human health, whereas letter (c) of the same provision exempts

5 services provided outside hospitals and within the framework of a
confidential relationship between the patient and the person providing
the care. Whilst it is true that the Court of Justice in that case found
that the exemption of supplies of goods effected in connection with the
provision of medical care envisages in art 13A(1)(c) could not be
justified under letter (b) of the same provision, that interpretation
follows inter alia from the fact that the latter provision covers duly
recognised establishments pursuing social purposes and provides
expressly for exemption of activities which are closely linked to
10 medical care; the same cannot be said of art 13A(1)(c).

48. It should also be borne in mind that, given the objective of
reducing health care costs, the term medical care in art ~~13A(1)(c)~~
13A(1)(b) does not call for an especially narrow interpretation. However, the
services covered by that term, like those covered by provision of
15 medical care in letter (c) of the same provision, must have as its
purpose the diagnosis, treatment and, in so far as possible, cure of
diseases or health disorders. It is not disputed that the treatment
provided by qualified psychologists in a hospital environment fulfils
the condition of having a therapeutic purpose.

49. Lastly, it must be pointed out that that interpretation of the term
20 medical care in art ~~13(1)(c)~~ 13(1)(b) is in keeping with the principle of fiscal
neutrality because paramedical services, such as treatment given by
qualified psychologists, are exempt from VAT regardless of where
they are provided.”

42. We note from this judgment that whilst the exemption is to be construed strictly
25 it is not to be given an especially narrow interpretation. Ms Shaw relies on this case to
demonstrate that there is no basis for distinguishing between services provided by a
dispensing optician in a High Street opticians and the services of a dispensing optician
employed by Glasses Direct, just as there was no basis for distinguishing between
30 supply of psychotherapeutic treatment provided in a hospital facility and in an
outpatient facility in the *Christoph-Dormie-Stiftung* case.

43. Notwithstanding the principle that for activities to amount to “medical care”
they must have as their purpose the diagnosis, treatment and as far as possible cure of
diseases or health disorders it has been held that the term will include medical
35 services effected for prophylactic purposes. In Case C-307/01 *d’Ambrumenil v. CCE*
[2005] STC 560 a dispute arose as to the tax treatment of certain activities including:

- (a) Medical examinations of individuals for employers or insurance
companies;
- (b) The taking of blood or other bodily samples to test for the presence or
40 viruses, infections or other diseases on behalf of employers or insurers;
- (c) Certification of medical fitness, for example, fitness to travel;
- (d) Medical examinations conducted with a view to the preparation of expert
medical reports.

44. At paragraph 52 of its judgment the ECJ recalled previous case law to the effect
45 that the exemptions envisaged for medical care “are to be interpreted strictly since

they constitute exceptions to the general principle that VAT is to be levied on all services supplied for consideration by a taxable person”.

5 45. The ECJ then stated that the exemptions did not cover all the services which may be effected by the exercise of the medical and paramedical professions. At paragraphs 58-60, the Court held:

10 “While it follows from [the] case law that the ‘provision of medical care’ must have a therapeutic aim [although] it does not necessarily follow therefrom that the therapeutic purpose of a service must be confined within an especially narrow compass ... medical services effected from prophylactic purposes may benefit from the exemption under Article 13A(1)(c). Even in cases where it is clear that the persons who are the subject of examinations or other medical interventions of a prophylactic nature and not suffering from any disease or health disorder, the inclusion of those services within the meaning of ‘provision of medical care’ is consistent with the objective of reducing the cost of health care ...

15 On the other hand, medical services effected for a purpose other than that of protecting, including maintaining or restoring, human health may not, according to the Court’s case law, benefit from the exemption under Article 13A(1)(c) of the Sixth Directive. Having regard to their propose, to make those services subject to VAT is not contrary to the objective of reducing the cost of health care and of making it more accessible to individuals.

20 ... it is the purpose of a medical service which determines whether its should be exempt from VAT. Therefore, if the context in which a medical service is effected enables it to be established that its principal purpose is not the protection, including the maintenance or restoration, of health ... the exemption under Article ~~13A~~13A(1)(c) does not apply to the service.”

25 46. The Court found that since none of the purposes for which the examinations were undertaken could be said to relate to the provision of medical care so defined, they did not benefit from the exemption.

30 47. It is also clear that services can amount to medical care where they are provided remotely or without any physical or face-to-face contact between the supplier and the patient. This appears from Case C-106/05 *LuP GmbH v. Finanzamt Bodium-Mitte* [2008] STC 1742 where the question to be determined was whether testing services provided by laboratories affiliated with general practitioners, who prescribed the tests concerned in the course of the care they provided to patients who required testing, qualified for the exemption. The ECJ concluded that these services were capable of
35
40 qualifying for the exemption. Its reasoning was set in paragraph 28 to 32 of its judgment as follows:

45 “28. In the present case, the national court expresses doubts as to whether medical tests such as those at issue in the main proceedings do constitute such care, although it acknowledges that those tests assist in the diagnosis of diseases. The Commission maintains that, on a

5 functional and teleological interpretation of the relevant provisions of the Sixth Directive, a laboratory carrying out such tests cannot be equated with a centre for diagnosis because those tests serve merely to establish the diagnosis and, on a systematic interpretation of those same provisions, those tests could be viewed as being medical care because they serve to establish the diagnosis and are an integral part thereof.

10 29. It should be borne in mind that, whilst ‘medical care’ and ‘the provision of medical care’ must have a therapeutic aim, it does not necessarily follow that the therapeutic purpose of a service must be confined within a particular narrow compass. The Court’s case law is to the effect that medical services effected for prophylactic purposes may benefit from the exemption under art 13A(1)(c) of the Sixth Directive. Even in cases where it is clear that the persons who are the subject of examinations or other medical interventions of a prophylactic nature are not suffering from any disease or health disorder, the inclusion of those services within the meaning of ‘medical care’ and ‘the provision of medical care’ is consistent with the objective of reducing the cost of health care, which is common to both the exemption under art ~~13A(13A(1))~~(b) and that under (c) of that paragraph. Accordingly, medical services effected for the purpose of protecting, including maintaining or restoring, human health may benefit from the exemption under art 13A(1)(b) and (c) of that directive ...

25 30. Moreover, medical tests which, as in the present case, are prescribed by general practitioners as part of the care they provide may contribute towards maintaining human health because, like any medical service effected for prophylactic purposes, they allow for the observation and examination of patients before it becomes necessary to diagnose, care for or heal a potential illness.

30 31. In those circumstances, as maintained by LuP at the hearing, and as acknowledged as being possible by the national court and the Commission, the court finds that, in the light of the objective of reducing health care costs pursued by the abovementioned exemptions, medical tests such as those at issue in the main proceedings, which have as their purpose the observation and examination of patients for prophylactic purposes, may constitute ‘medical care’ within the meaning of art 13A(1)(b) of the Sixth Directive or ‘the provision of medical care’ within the meaning of letter (c) of the same paragraph ...

35 32. This interpretation is, moreover, consistent with the principle of fiscal neutrality, which precludes treating similar supplies of services, which are thus in competition with each other, differently for VAT purposes. It would be contrary to that principle to make medical tests prescribed by general practitioners subject to a different VAT scheme depending on where they are carried out when they are equivalent from a qualitative point of view in the light of the professional qualifications of the service providers in question.

40 48. It is also clear that services which only form part of the therapeutic process can qualify as medical care. This appears from Case C-156/09 *Finanzamt Leverkusen v.*

Verigen Transportation Service International AG [2011] STC 255. This case concerned a service provided by a biotech company which received human tissue extracted from a patient and subjected it to a process to produce cartilage cells which were sent to the medical practitioner for re-implantation into the patient. The ECJ held that the services constituted medical care. Its reasoning was set out in paragraphs 25 to 28 of its judgment as follows:

“25.—~~Here. Here~~, it is not disputed that the process consisting in the removal of cartilage material to extract cells which will then be multiplied for re-implantation in a patient has, overall, a therapeutic purpose.

26. The specific services provided by VTSI form, admittedly, only part of that overall process. However, as the Advocate General observed at point 23 of her opinion, they are an essential, inherent and inseparable part of the process, none of the stages of which can usefully be performed in isolation from the others.

27. It follows from the foregoing that the extraction of joint cartilage cells from cartilage material taken from a human and the subsequent multiplication of the cells for re-implantation for a therapeutic purpose falls within the concept of ‘provision of medical care’ referred to in art 13A(1)(c) of the Sixth Directive. Such an interpretation is also consistent with the objective of reducing the cost of health care referred to in that provision ...

28.—~~The. The~~ fact that the services are carried out by laboratory staff who are not qualified medical practitioners is irrelevant, inasmuch as it is not necessary for every aspect of therapeutic care to be provided by medical staff.”

49. However, it is also clear that the services concerned must not be too remote from the therapeutic purpose. This appears from Case C-86/09 *Future Health Technologies Limited v. HMRC* [2010] STC 255 which concerned the tax status of activities consisting in the despatch of a kit for collecting blood from the umbilical cord of newborn children, the testing and processing of that blood and, where appropriate, in the storage of stem cells contained in it for possible future therapeutic use. The stem cells were collected with a view to their possible future use in medical treatment of that child itself or of other persons, e.g. a future sibling. The cells were not permitted to be used for any other purpose.

50. HMRC took the view that the principal supply was storage of stem cells, an activity that did not constitute medical treatment and that the analysis and processing of the cells ancillary to that activity. It further considered that even if the activities were to be examined separately, testing and processing of stem cells was not to be regarded as medical care. The ECJ agree that this did not constitute the ‘provision of medical care’. Its reasoning was set out in paragraphs 43 and 44 of its judgment as follows:

“43. However, the activities in question in the main proceedings, as carried out by FHT, namely the despatch of a kit for collecting umbilical cord blood and the testing and processing of that blood and,

5 where appropriate, the storage of stem cells contained in it, whether taken together or separately, do not appear to have as their direct purpose any actual diagnosis, treatment or cure of diseases or health disorders, or any actual protection, maintenance or restoration of health.

10 44. In that regard, while the detection of illness may admittedly be one of the possible purposes of collecting stem cells from umbilical cord blood, it seems to be clear from the documents in the court file, and particularly from the contract, that the services provided by FHT are intended only to ensure that a particular resource will be available for medical treatment in the uncertain event that treatment becomes necessary but not, as such, to avert, avoid or prevent the occurrence of a health disorder, or to detect such a disorder in a latent or incipient state. ...”

15 51. Finally, it is apparent from the foregoing analysis of the authorities that the principle of fiscal neutrality must be borne in mind when considering whether a particular service constitutes medical care. Most recently, in joined cases C-259/10 and C-260/10 *Rank Group Plc v. HMRC* [2012] STC 23 the ECJ established the relevant principles as set out in paragraphs 32 to 35 and 42 to 44 of its judgment as follows:

20 “... According to settled case law, the principle of fiscal neutrality precludes treating similar goods and supplies of services, which are thus in competition with each other, differently for VAT purposes ...

25 ... According to that description of the principle the similar nature of two supplies of services entails the consequence that they are in competition with each other.

30 ... Accordingly, the actual existence of competition between two supplies does not constitute an independent and additional condition for infringement of the principle of fiscal neutrality if the supplies in question are identical or similar from the point of view of the consumer and meet the same needs of the consumer ...

35 ... That consideration is also valid as regards the existence of distortion of competition. The fact that two identical or similar supplies which meet the same needs are treated differently for the purposes of VAT gives rise, as a general rule, to a distortion of competition.

... [The] principle precludes treating similar goods and supplies of services differently for VAT purposes.

40 ... In order to determine whether two supplies of services are similar within the meaning of the case law cited in that paragraph, account must be taken of the point of view of a typical consumer.

45 ... Two supplies of services are therefore similar where they have similar characteristics and meet the same needs from the point of view of consumers, the test being whether their use is comparable, and where the differences between them do not have a significant influence on the decision of the average consumer to use one such service or the other ... “

52. These principles are relevant in the present case when considering HMRC's position that there is a very real and significant difference between a High Street and an online offering of prescription glasses which justifies a different treatment for VAT purposes.

5 53. In our view the following principles emerge from the legislation and the authorities:

- 10 (1) Pursuant to the authority given in Article 132(1)(c) of the Principle VAT Directive the United Kingdom has, through Item 1(b) of Group 7 of Schedule 9 VATA, provided an exemption from VAT for medical care provided by registered opticians or persons directly supervised by them;
- 15 (2) By virtue of section 27 of the Act all retail sales of corrective spectacles must be effected by or under the supervision of a registered medical practitioner or optician. Any breach of this provision is a criminal offence. Parliament has therefore considered that it is essential that such a practitioner has a significant role in the sale of any such item;
- (3) The supply of corrective spectacles is physically and economically dissociable from the services of the dispensing optician;
- 20 (4) The relevant domestic authorities clearly establish in relation to retail sales on the High Street that, notwithstanding the close link between the supply of corrective spectacles and dispensing services which are each dependent on the other, there are two separate supplies, an exempt supply of dispensing services and a standard supply of spectacles. Although not specifically argued, it was assumed in those cases that the dispensing services provided in each of the stages involved in the sale of corrective spectacles constituted medical care;
- 25 (5) In the light of the subsequent jurisprudence concerning single and multiple supplies it is necessary in any particular case to consider whether, from the point of view of the typical consumer, there is a single indivisible economic supply which would be artificial to split or whether there are two distinct and independent supplies;
- 30 (6) The concept of medical care does not embrace services that are not provided for a purpose other than the diagnosis, treatment and, in so far as possible, cure of diseases or health disorders.
- 35 (7) Nevertheless, the exemption for medical care, although to be construed strictly, is not to be confined to an especially narrow compass. It must be construed consistently with the objectives pursued by the exemption, namely to reduce the cost of medical care and make such care more accessible. The exemption will include medical services provided for prophylactic purposes or provided remotely or without physical or face to face contact;
- 40 (8) Services which only form part of the therapeutic process can qualify as medical care but they will not qualify if they are too remote from the therapeutic purpose; and

(9) In construing the exemption the principle of fiscal neutrality must be borne in mind, that is services which from the point of view of the consumer are comparable must not be treated differently for VAT purposes.

5 54. Before leaving our analysis of the law we should make it clear that in our view
the process by which a patient is provided with spectacles to correct a defect in his
eyesight is a therapeutic process. It is a process which starts with the diagnosis of the
defect in question, following an eye test, the selection, measuring and fitting of
corrective spectacles to correct the defect and the supply of those spectacles. We do
10 not understand HMRC to dispute that point. The various stages in that process were
described clearly by McCullough J in *Leightons* (see paragraph 23 above) and he
effectively decided that the involvement of the dispensing optician in each of the
stages in which he participated amounted to medical care. We need to decide whether
on the facts of this case the services provided by Glasses Direct's dispensing opticians
15 do amount to medical care such that they benefit from the exemption but in so doing
our starting point is that the process as a whole is a therapeutic one of the nature we
have described.

III Findings of Fact

General

20 55. We had before us various documents relating to Glasses Direct's business
including extracts from its website showing the various steps in the online purchasing
process for the corrective spectacles that it sells, various explanatory material
provided through the website to assist customers in the purchasing process, certain
internal documents regarding Glasses Direct's processes for supervising its sales,
25 selected transcripts of telephone calls from customers and a DVD containing selected
videos from Glasses Direct's website designed to assist customers.

56. We had witness statements from Howard Bryant, the Chief Financial Officer of
Glasses Direct and Mr David Hutchfield, a qualified dispensing optician who is Sales
and Service Manager at Glasses Direct. Both witnesses gave oral evidence and were
30 cross-examined in depth. We found both Mr Bryant and Mr Hutchfield to be honest
and reliable witnesses and had no hesitation in accepting their evidence. In particular,
Mr Hutchfield was an extremely knowledgeable witness, clearly committed to
ensuring that high standards of customer service are provided by Glasses Direct's
dispensing opticians and with in depth experience of his own in performing a
35 supervisory role within Glasses Direct and hands on experience with High Street
opticians. This experience led us to accept his evidence on the comparison to be made
between how the two businesses models operated in practice. From the documents
submitted and the evidence we heard we make the following findings of fact.

57. Before embarking on a review of the evidence it is helpful to set the scene by
40 explaining the options available to those who need to purchase corrective spectacles.

58. The first stage in the process is that the patient will undertake an eye test. This
will be conducted by an optometrist (or an ophthalmic optician). As we have seen

from section 24 of the Act there are restrictions on who may lawfully carry out eye tests. The eye tests will enable a diagnosis to be made of the state of the patient's eyes and consequently whether corrective spectacles are required. Following the eye test, the optometrist will record information about the patient in a prescription which must
5 be given to the patient. This prescription will indicate the strength of the prescription glasses that will be required, and any additions that are necessary to make the glasses suitable for reading or computer work. It is common ground that the services of the optometrist constitute medical care and the fees for his services will be exempt from VAT.

10 59. The patient then has a choice as to whether he will ask the same optician's practice to provide his glasses or whether to take his prescription elsewhere for that purpose. Mr Hutchfield's evidence, which we accept, is that approximately 30-40%
| ~~of the~~ of the purchasers of prescription glasses exercise this choice to go elsewhere. Glasses Direct does not conduct eye tests so its market is comprised entirely of those
15 30 to 40% of patients who exercise that choice. The starting position for Glasses Direct is therefore no different to a High Street Optician who receives a patient bringing a prescription from another optician; they both start with the same information in the form of the prescription.

20 60. Until 2004 the patient would have to have visited an optician face to face to order his glasses. Glasses Direct was founded in that year as the first online prescription glasses retailer in the UK. Mr Bryant's evidence, which we accept, is that the aim of the company is to provide those who require prescription glasses with a better value product at a more accessible cost without compromising on the quality of customer care and service.

25 61. We were told that Glasses Direct has by far the largest market share for online sales of prescription glasses in the UK; it was estimated by Mr Bryant as being as large as the rest of its competitors put together. Nevertheless, it is a small market, representing only one to two percent of the total number of prescription glasses sold
30 in the UK. The business is still loss making; there has been a high upfront investment in the systems and people necessary to deliver an online business. It has also been a slow process to build up a critical mass of customers which is essential to recoup the high upfront costs of a online business; Mr Bryant acknowledged the wariness of customers to accept that it was appropriate to buy prescription glasses online, thus
35 leaving out the traditional process of meeting and interacting with the dispensing optician face to face. Consequently, Glasses Direct aims to be very competitive on price with those in the value segment of the market, such as Specsavers. It is helpful in that context that, being an online business, Glasses Direct does not have the heavy overheads associated with maintaining and operating retail premises.

40 62. That factor is highly relevant in understanding why the percentage of exempt supplies claimed by Glasses Direct is much lower than those claimed by the High Street operators. Mr McGurk suggested that the low proportion of its supplies that Glasses Direct claimed as exempt, representing the services of its dispensing opticians (13.4% as opposed to percentages in excess of 60% for some of the High Street opticians) could be explained by the more limited services provided by its dispensing

opticians as opposed to those operating in High Street outlets. We find, however, that it is equally explainable on the basis that Glasses Direct carries out the apportionment by reference to the employment costs of its dispensing opticians whereas the High Street operators are likely to operate an apportionment based on the cost of floor space, which would undoubtedly lead to a higher figure. We therefore find that the apportionment figure gives us no reliable basis on which we could infer that the services provided by Glasses Direct's opticians were on a different scale relative to its customer base than those of the High Street opticians.

63. In terms of the current scale of the business, it currently serves approximately 66,000 customers a year. Net sales last year were around £5.5million.

64. Against that background, we can turn to a detailed examination of how Glasses Direct's business operates in practice and the role played by its dispensing opticians.

65. Mr Hutchfield helpfully explained the role of a dispensing optician and how it differs from that of an optometrist. The dispensing optician will only become involved when the patient's prescription has been issued; it will then be his task to supervise the translation of that prescription into an optical device to correct the patient's defective eyesight.

66. In the High Street practice the patient will see the dispensing optician or his assistant and he will be taken through the process of selecting suitable corrective spectacles. In Glasses Direct's online model it is common ground that because of the absence of face to face contact the process is very much customer driven. However, it is clear that the Glasses Direct website contains a considerable amount of information which is easily accessible to guide the patient through the process and at any stage the patient can contact Glasses Direct for help and advice. The contact number is prominently displayed on each webpage and on the page on which the patient enters data to personalise his glasses the following statement appears:

"If you're not sure you can always call me or one of our team of opticians, and ask us for clarification on 08456 88 2020 or [click here for an immediate call back](#) Monday – Friday 8 a.m. – 6 p.m."

67. Mr Hutchfield explained how the process of "translating" a prescription into an optical device could at one level be considered a purely mechanical process of translating numbers into a product. However, he explained that it is a more complex process than this as the dispensing optician needs to consider the particular eye care needs of each patient, which can affect a number of factors. For example, if a patient wished to purchase a specific frame, the dispensing optician might consider that the selected frame is unsuitable for use with the lenses needed to correct the patient's defective eyesight. This is particularly relevant for strong prescriptions in large frames.

68. The dispensing optician is not only responsible for ensuring the physical creation of the prescription glasses, but also providing the patient with advice and guidance on which glasses are most appropriate to correct defective eyesight for their individual needs and how to get the most effective use out of them. This therefore

involves professional advice at a pre-sale stage e.g. information on available lens options such as anti-reflective coating; explaining to new users how varifocal lenses work and post-sale, e.g. adjusting glasses for fit; information on how to adjust glasses; advice and guidance on how to correctly use the glasses and how long it might take to get used to the new prescription, etc.

69. These tasks are readily performed when the patient is face to face with the optician in the High Street outlet. We examine later the extent to which the dispensing optician's role is different in the Glasses Direct business model.

70. Glasses Direct clearly give close attention to the need to comply with their regulatory obligations and in particular the requirement that (except in respect of a supply of single vision glasses of less than 4 dioptres to a person over 16) prescription glasses must not be sold unless the sale is effected under the supervision of a registered optician or medical practitioner.

71. Mr Hutchfield's role as sales and service manager includes responsibility for the clinical standard of care provided to customers by Glasses Direct's dispensing opticians and optical assistants under their supervision.

72. To assist Mr Hutchfield in carrying out the responsibilities referred to above, Glasses Direct has established a Supervision Committee, which includes amongst its members two clinical advisers and ophthalmic surgeons. It is Mr Bryant's belief that no other opticians practice has a supervision committee. The role of this committee is to set the clinical standards for the dispensing services provided by Glasses Direct's dispensing opticians and optical assistants and they do this by authorising and maintaining a detailed Supervision Requirements Statement some 27 pages in length that governs Glasses Direct's operating procedures for dispensing categories of prescription. The procedures and standards in this document provide amongst other things that:

(1) The sale of each pair of prescription spectacles must be supervised by one of Glasses Direct's dispensing opticians;

(2) Each of its dispensing opticians has absolute discretion to exercise his professional skill and judgment as clinicians in respect of each sale for which he is responsible; and

(3) There is a minimum level of authorisation and customer consultation required in each case to ensure that dispensing and supervising standards are met. Dispensing opticians have the discretion to go further than the standards prescribed under the Statement but may not do less.

73. We refer in some respects to the supervision requirements, but we have accepted that as it is a highly commercially sensitive document, as we were told that Glasses Direct believes that no other optician has anything comparable, we avoid direct quotes from the document and refer to its requirements in generic terms.

74. Mr Hutchfield's evidence, which we accept as he has experience of working with High Street opticians, was that he has not seen anything comparable to the

supervision requirements statement in a High Street practice nor would it be expected. His evidence was that most opticians do not provide any guidance at all as to their operational ~~standards, standards~~; rather standards and procedures are left to the professional skill and judgment of each dispensing optician.

5 75. Glasses Direct makes available to customers through its website a Quality Statement which summarises Glasses Direct's requirements for the supervision of its sales of spectacles. This is prepared by the Supervision Committee and its objective is stated to be to ensure high standards of care and best practice in the industry. It is in effect a summary of Glasses Direct's requirements for the supervision of its sales of spectacles. Mr Hutchfield told us that he has not seen anything comparable in a High Street practice. We will examine these procedures in some detail later but they can be summarised as follows:

15 (1) General supervision: Every order is checked and approved by a supervising optician before spectacles are sent out. That optician is responsible for identifying any anomalies or potential problems and has absolute discretion to exercise his professional skill and judgment as a clinician over the sale. This includes contacting the customer to discuss the order where necessary and provide advice.

20 (2) Prescription verification: Prescription details are inputted by the customer. The supervising optician may at his discretion contact the customer to confirm or verify the prescription.

25 (3) Ordering: Where necessary, Glasses Direct seeks details of the customer's pupillary distance requirement, ~~that, that~~ is the distance between the pupils of the eyes. As we shall see, in most cases Glasses Direct uses an average pupillary distance based on a survey carried out on 4,000 people.

(4) Manufacturing: All lenses manufactured are checked by a dispensing optician and tested with a focimeter to confirm that it matches the prescription.

30 (5) After sales care: A customer care booklet prepared by Glasses Direct's supervising opticians is sent out with all spectacles sold which among other things offers advice on the proper fitting and use of spectacles. Customers are advised to contact Glasses Direct if they experience any problems with their spectacles, such as eyestrain. Free consultations may be arranged to deal with any such problems.

35 (6) Additional supervision: In all cases of sales of more high powered spectacles and of bifocals and varifocals a supervising optician contacts the customer to discuss the order. In the course of such contact the optician will advise on lens thickness, lens weight and frame suitability and any potential intolerance. Pupillary distance measurements are more likely to be requested in these cases.

40 76. As is apparent from the Quality Statement, additional supervision is required in relation to sales of higher powered spectacles. Glasses Direct divides sales into 10

categories. Categories 1 and 2 are the most straightforward sales and covers about 80% of all Glasses Direct's sales. Categories 3 to 10 are subject to the additional supervision requirements referred to above. Glasses Direct does not supply glasses that fall outside these categories; it believes that such sales do require face to face contact and more personal attention by a dispensing optician.

77. As a customer navigates through the website going through the various stages necessary to make a purchase, there are links to more detailed explanatory material relevant to the particular stage in question. For example, customers are given guidance about how to find the right pair of glasses, how to become accustomed to bifocal and varifocal lenses, the benefits of having thinner lenses, scratch resistant coating, anti-reflection coating and UV protection, how to understand the prescription, information on pupillary distance and how to make minor adjustments to the glasses. This advice and guidance has all been written by or with the approval of Glasses Direct's dispensing opticians.

78. Customers may order prescription glasses through Glasses Direct's website or by telephone. Around 80% of orders come through online orders and the rest by telephone.

Frame Selection

79. We assume that the customer starts the purchasing process by visiting Glasses Direct's home page. As we have observed, a contact phone number is shown (at the top of the page) and there is a bar containing various icons including one named "Find frames that suit and fit". This will enable the customer to view a large selection of styles and frames. There is further material to assist the customer in this, including a "Style Finder" which helps to narrow the choice and how to choose the right frames for the customer's particular face shape. There is also a "Best Fit Machine" which shows how to measure existing frames a customer has. This would enable a customer to find frames that closest fit a pair of glasses he already owns. The home page also contains the following statement:

"Our friendly customer service teams and opticians here at Glasses Direct are available to help you order your glasses online with us and along with our fantastic online tools, will ensure you find the right spectacles for you."

80. Mr Hutchfield expanded upon how contact was typically made with customers. At any stage of the process, customers could contact Glasses Direct's dispensing opticians by telephone, email or Live Chat. The call centre is open 9 a.m. to 5 p.m. Monday to Friday and is manned by four dispensing opticians and eight optical assistants during those times. Mr Hutchfield's view was that by comparison with a large High Street outlet, there would be around 6 optical assistants who would place 75-80% of all orders and perhaps one or two supervising dispensing opticians who would walk the floor and troubleshoot enquiries.

81. In addition to customers obtaining assistance from the advice on the website as to how to find the right pair of glasses a significant number of customers are assisted

over the telephone or by Live Chat. For example, we were shown transcripts of telephone calls where customers were informed about the suitability of rimless glasses for stronger and thicker lenses or the frame choice for varifocal lenses. Obviously, when these conversations take place the customer will not be in the presence of the
5 | optician, ~~although~~, although the latter will be able to look at the frames in question on the website.

82. Customers are also able to physically try on a selection of frames using Glasses Direct's Home Trial Service which enables customers to try on up to four frames at home before committing to a purchase. About 35% of orders arise from customers
10 using this service.

83. Sometimes the choice of frame is limited by the customer's prescription. For example, a prescription of +8 will be incompatible with a rimless frame or some frames are not suitable for bifocals or varifocals (which account for around 12% and 10% respectively of Glasses Direct's orders), because the vertical height of the frame
15 may be insufficient for the lens. The 'Style Finder' is able to identify frames suitable for a varifocal or bifocal prescription by assessing the depth of the frame of the glasses. Therefore, if a customer indicates that they want varifocal or bifocal lenses in the frame, the Style Finder services excludes frames which have insufficient frame height that would be unsuitable for these lenses. Even if the customer has not used the
20 Style Finder, part of the dispensing optician's review for every order placed with Glasses Direct includes a check that the selected frame is compatible with the customer's prescription. If it is not then the supervising optician will inform the customer and advise them as to an alternative choice of frame.

84. In the High Street outlet, there is a wide range of frames to look at on the premises and try on and the optical assistant (or less frequently the dispensing
25 optician) may offer assistance in choosing the frame and can give advice concerning matters such as suitability for face shapes and lens types which is available to customers of Glasses Direct through the materials available online or through direct contact.

85. In terms of frame measurements, Mr Hutchfield's evidence, which we accept, based on his working experience, is that the optical assistant or dispensing optician will not take any measurements from the customer, the height and width of the bridge of the nose, the angle to which the sides of the glasses should be bent around behind the ears or the width of the patient's face to enable the optical assistant or dispensing
35 optician to select appropriate frames for the customer. Although this was found to be the case in *Leightons*, stage (iv) (see paragraph 23 above), nowadays opticians offer such a wide range of frames that suit most people and usually customers are easily able to find a pair of glasses that fits.

86. On the Glasses Direct model it is left to the customer to input the measurements, usually from his existing glasses or by using the Home Trial Service, assisted by
40 contact with Glasses Direct in some cases. Mr Hutchfield's evidence was that the process through Glasses Direct was therefore comparable to that on the High Street, in that in both cases the customer is an active participant in the choice of frame and that

customers often have a clear idea of the type of frames they are looking for and, often, the price they are willing to pay. We accept that assessment.

Intended Use

5 87. After the customer has chosen his frames, he will be led to another stage of the process headed “personalise your glasses” where he provides additional information about how he intends to use the glasses. This is done by selecting whether the glasses are to be used, for example, driving, for distance, solely for reading, solely for computer work (or for reading sheet music), or less frequently, for use with bifocal or varifocal lenses. Glasses Direct provides information and guidance on its website to
10 assist customers to make a decision about which lens types are most suitable for their intended use, including bifocal and varifocal glasses.

15 88. The intended use of the glasses is an important piece of information (and as such is part of the information reviewed by the dispensing optician before an order is authorised) because it affects how the lenses are made. As an example Mr Hutchfield referred to a situation where a customer wished to use the glasses solely for computer work, but the optometrist did not provide an intermediate addition (or ADD) value for such use. In those circumstances the supervising dispensing optician would need to lower the customer’s prescription strength to enable the customer to have clear vision for computer use at a slightly longer distance. The degree of adjustment depends on
20 how far away the customer sits from the computer screen. The same principle applies if the customer wishes to read sheet music or use a shop till at a slightly longer distance than normal.

25 89. Mr Hutchfield explained that the underlying mathematical calculation to adjust the prescription is based upon knowledge acquired by dispensing opticians during their training, including knowledge of anatomy and the optical properties of lenses. If such adjustments are necessary, the dispensing optician would discuss them with the customer over the telephone before making them.

30 90. We were shown transcripts of telephone calls with customers during which, having obtained further information from the customers as to the distance they worked from their computer screen, or, in the case of a customer working at a garden centre, the distance from which he looked at the details of plants, the optician agreed to weaken the prescription to a slight degree.

35 91. Mr McGurk challenged the lawfulness of this process, bearing in mind the restrictions in the Act which appeared to confine jurisdiction over the prescription to an ophthalmic optician. Enquiries of the Association of British Dispensing Opticians indicate that making adjustments of the kind described above by a dispensing optician is permissible and although we were not shown any direct legal authority for this, we find that it is an accepted and usual practice.

40 92. Where a customer indicates that he needs glasses for both distance and close up work he may select either bifocal or varifocal lenses to avoid the need for different spectacles for the two purposes. As an operational requirement under the Supervision

Requirements Statement, a dispensing optician is required to contact a customer choosing either of those types of lenses to discuss and check the order and give the customer further information before approving the order. In particular, for first time wearers of such spectacles it may be necessary to take the customer through how the lenses work and explain what to expect from them, and we were shown a transcript of a call with a customer explaining how bifocals operate and the fact that they may not be entirely suitable for computer work. We were also shown examples of a call where, as a result of the dispensing optician's advice, the customer decided to select a different lens type to the one initially ordered.

93. Mr Hutchfield's evidence, again based on his working experience, which we accept, was that when purchasing on the High Street a customer would be asked similar questions about use which, as with the case of the calls we reviewed, may result in the dispensing optician giving advice as to use and the appropriate type of lens. We accept, however, that this process is more customer driven in the Glasses Direct scenario, where Glasses Direct acts primarily on the information as to use provided by the customer who may have been guided by the information available on the website. A discussion as to suitability only takes place where the customer chooses to contact Glasses Direct or where its Supervision Requirements Statement requires a dispensing optician to contact the customer.

Lens selection/specification

94. The next stage in the process under "personalise your glasses" is the selection of a lens package. There are various categories of lens, a bronze, silver, gold and platinum package. The components of each package will vary, from bronze, which is standard thickness and scratch-resistant, ~~through~~, through to platinum, which is ultra thin and light, scratch-resistant with anti reflective coating and UV protection. The customer has the choice to add reactive and tinted lenses and information is contained on the website as to how these options can assist clarity of vision. A "See Clearly Guide" on the website provides further guidance as to when it is appropriate to use tints.

95. When the supervising dispensing optician reviews the order, he will check the suitability of the frame and lens combination selected by the customer and conveyed electronically to Glasses Direct through the online order process or verbally for telephone orders. The supervising dispensing optician, when reviewing the order, may raise any concerns with the customer about the suitability of the frame and lens combination and advising on appropriate alternative specifications. This therefore covers some of the ground covered by *Leightons* stages (v) and (vi) (see paragraph 23 above).

96. For example, where the customer has a strong prescription and has selected a rimless frame, the dispensing optician may advise the customer on what thickness of lens might be most suitable for the customer's needs and may suggest an alternative lens or frame combination. Alternatively, where a customer with a strong prescription requiring a thick lens has chosen a thin metal frame, the dispensing optician would advise on the implications of this, including upon the frame's resilience.

97. We were shown transcripts of calls with customers containing advice given by dispensing opticians in such situations.

98. Mr Hutchfield's evidence, based again on his working experience and which we accept, is that similar advice would be given where necessary face to face on the High Street and details of lens packages would be provided in written form on a portable board. Again we accept that not in all cases of a sale by Glasses Direct would there be a discussion between a customer and a dispensing optician on the choice of lenses and the suitability of the frame/lens combination. In category 1 and 2 cases this would only occur at the customer's initiative so that the customer would drive the choice, guided if he felt appropriate by the explanatory materials and advice available on the website.

Provision of prescription details and other information

99. The customer is then led to the next page of the site which is headed "Entering your prescription". The customer is prompted to enter his prescription details, which include the Sphere, Cylinder, Axis and Near Addition values for the right and left eye, the pupillary distance measurement and the prescription date. The Sphere, Cylinder, Axis and Near Addition values are fundamental parameters for the dispensing of prescription glasses and are exact measurements for the individual customer. Customers can also input information into the "Additional notes for our opticians" box to add any other information regarding their prescription.

100. Guidance is available on the website in order to help customers to understand their prescription, including a stand-alone publication entitled "Understanding your prescription" which can be accessed by clicking a link on the page. This publication enables the customer to understand what is meant by Axis, Sph and Cyl as those terms appear on a prescription and how to translate the prescription and enter it online. Again this publication is written and approved by Glasses Direct's dispensing opticians who are available by telephone, email or Live Chat to answer any queries that may arise.

101. The dispensing optician may, at his discretion, contact a customer to confirm the prescription, ask the customer to provide the original or to verify the prescription with the optometrist who provided it. In all cases the details provided will be checked by a dispensing optician for possible errors and omissions, such as missing values or decimal points in the wrong place. In Mr Hutchfield's experience, it is rare for transcribing errors not to be picked up by the dispensing optician.

102. The supervising dispensing optician will also review a customer's previous prescriptions and orders (if any) to check for inconsistencies and unexplained changes, such as a significant change in the prescription in one of the eyes or where a prism has been prescribed. If so, the supervising dispensing optician may feel it necessary to discuss this with the customer, who may experience difficulties adjusting to a significant change in prescription.

103. Alternatively, the supervising dispensing optician may have concerns about the accuracy of the prescription provided. This may result in the dispensing optician advising the customer to get a second opinion on the prescription if it was considered that the reading addition was too high for the customer's age. We were shown a transcript of a call with a customer where such a situation was discussed and the customer was advised to take the prescription back to the optician who provided it for verification.

104. For orders falling within categories 3-10 of Glasses Direct's Supervision Requirements Statement (around 20% of orders), the supervising dispensing optician will, as a matter of course, speak to the customer by telephone to go through and confirm the prescription details. The supervising dispensing optician would use this opportunity to also ensure that he has all necessary information from the customer and to confirm information that has already been given. Any other issues considered relevant by the dispensing optician would also be raised, such as the intended use of the glasses, the suitability of the lens/frame combination chosen by the customer, changes to the prescription and issues relating to particular lens types.

105. As part of the process for reviewing each order, the supervising dispensing optician may sometimes need to contact the optometrist responsible for giving the customer's prescription. This may arise where there is something missing from or illegible on the prescription. In addition, the supervising dispensing optician has discretion to contact the optometrist if he or she feels it is necessary. If so, he dispensing optician would usually ask the customer for permission to contact the optometrist.

106. We note that on the "Entering your Prescription" page the customer is asked to enter details of his "pupillary distance". As a general rule, the pupillary distance measurement is rarely provided on the prescription but it is measured during the eye test and maintained by the optometrist.

107. As Mr Hutchfield explained, the pupillary distance measurement does not form part of the prescription because it is not a measurement of defective eyesight. Rather, it is the distance between a person's pupils and, as such, is a measurement adopted as part of the dispensing process to ensure that the lenses are centred on the customer's eyes. The pupillary distance can either be measured manually, using a ruler, or more commonly using a special machine called a pupillometer. It can also be measured from a customer's existing glasses.

108. In about 30% of orders, customers are able to provide Glasses Direct with their pupillary distance measurement. In the remaining 70% of orders, where the pupillary distance measurement is not provided, the absence of the exact measurement is, in Mr Hutchfield's view, in about 80% of cases, completely immaterial to the process of dispensing a pair of prescription glasses, in that it is not a necessary prerequisite or requirement for the process of selecting the frame and lens specification. For orders failing within Categories 1 and 2 of Glasses Direct's Supervision Requirements Statement (namely prescriptions up to ± 5 in strength), which account for about 80% of its orders) they use an average pupillary distance measurement of 63mm. In almost

every instance (over 99% of cases) where this average is used, in Mr Hutchfield's experience, there is no impairment to the quality of optical vision afforded by the prescription glasses.

5 109. Glasses Direct's Supervision Committee came to this conclusion based on a sample of some 4,000 people.

10 110. In relation to the less than 1% of Glasses Direct's customers who experience pupillary distance problems, it will either create a replacement pair of glasses free of charge using the accurate pupillary distance measurement by asking the customer to obtain an accurate pupillary distance measurement from their optometrist, or if this is not possible, to send in their existing glasses (provided that these glasses were originally created using an accurate pupillary distance measurement) from which the customer's pupillary distance measurement can be taken. Alternatively, the customer can have a full refund.

15 111. Any customer in categories 3 to 10 must provide an actual pupillary distance measurement, either by obtaining it from the optometrist who carried out his eye test or sending in an old pair of glasses from which Glasses Direct can take a measurement using an ophthalmic instrument known as a focimeter. Self-measured distances are not accepted.

20 112. Mr Hutchfield explained that the reason why an accurate pupillary distance measurement is required in these cases is because there is a higher risk that a customer using an average pupillary distance measurement might experience discomfort or eye strain, although it would not cause long-term medical effects. There is more of a risk, therefore, that the customer would notice a material difference in optical quality where the pupillary distance measurement is incorrect. Where anything other than an average measurement was entered by the customer, the dispensing optician would contact the customer in order to verify it.

30 113. We observe from the prescription entering process that it is possible in theory that up to 80% of all Glasses Direct's customers could obtain a pair of prescription glasses without any contact with a dispensing optician. This could be the case where the customer obtains all the information he believes he needs from the website, inputs his prescription details correctly, inputs his pupillary distance, if known, or leaves it to Glasses Direct to use an average distance, needs only standard lenses or moderate strength and on review of the order the dispensing optician identifies no issues that he feels necessitates contact being made with the customer. Indeed Mr Hutchfield accepted in cross-examination that the vast majority of orders in categories 1 and 2 would proceed without any contact with the customer.

40 114. As, unlike the High Street, Glasses Direct is dependent to a large extent on the information provided by the customer, it is possible that a category 1 or 2 customer will receive glasses which are not fit for purpose because he inputs incorrect information regarding his prescription or the use of the average pupillary distance figure is inappropriate. Under the Act, a prescription must be no more than two years old when used as a basis for a supply of glasses so Glasses Direct takes the customer's

information in that regard on trust. Nevertheless, if as a result of any of these factors the glasses do not correct the customer's vision adequately, there is a generous returns policy and after supply care services in place which enable the customer to contact a dispensing optician, explain the problem and either be given advice as how to solve the problem or be able to provide further information (such as correct prescription details or pupillary distance) to enable the glasses to be replaced or a refund to be given. It was fully accepted that there was an inherent risk in Glasses Direct's model that customers will be provided with spectacles that do not at first correct their vision.

115. On the High Street, where the customer is a purchase-only customer the prescription information would be manually entered on to the optician's database. The only difference with the Glasses Direct model is therefore that the dispensing optician will be able to verify the prescription there and then and raise any queries directly with the customer or the optometrist concerned.

Review and Pay

116. Once the customer has inputted all the details required in the online order process, which may have involved a telephone or 'Live Chat' consultation with Glasses Direct, the customer is able to review the order in his 'basket' before placing and paying for the order.

Review Process by Supervising Dispensing Optician

117. As explained above, all information provided by the customer is reviewed by the supervising dispensing optician before the order is approved for processing. For those customers who fall into categories 3 to 10 and those customers in other categories where the dispensing optician at his discretion believes it appropriate to do so, contact will be made with the customer to discuss his order before it is approved. Where required under the terms of the Supervision Requirements Statement (such as where varifocals are ordered or there is a significant difference in prescription between the eyes), or if considered necessary by the supervising dispensing optician upon reviewing the customer order, the supervising dispensing optician will contact the customer and ask that he sends in his existing glasses in pre-paid packaging. This is to enable the supervising dispensing optician to take the pupillary distance measurement and the lens depth measurement. These form part of the customer's specification that is sent to Glasses Direct's laboratory which 'makes up' the glasses once the supervising dispensing optician has completed the review process and approved the order for processing. Around 6-7% of all customer orders require customers to send in their existing glasses.

118. There is not an equivalent stage to this process of review in a High Street optician. According to Mr Hutchfield, based on his experience, the person who dispenses the glasses would enter the details on to the system and in a High Street chain he would expect that person to be an optical assistant in around 75-80% of orders. A dispensing optician would not, generally, review and approve an order placed by an optical assistant unless the prescription was a complex one, for example for a partially sighted customer or a very powerful prescription.

119. In a High Street optician, the customer may or may not have his existing glasses with him when seeking to purchase a new pair. However, according to Mr Hutchfield it would not normally be necessary for the customer to provide an existing pair of the glasses to the optician, who would instead, take the pupillary distance measurement and lens depth measurement from the customer face-to-face if needed.

120. Although Glasses Direct does not take these measurements in person from the customer, they can do so from the customer's existing glasses where required. In Mr Hutchfield's view it is immaterial whether the measurements have been obtained face-to-face or by using an existing pair of the customer's glasses.

10 **Processing of Approved Orders and Quality Control Checks**

121. Once the supervising dispensing optician has reviewed the customer's order and approved it, the order is then sent to the laboratory which 'makes up' the prescription glasses (*Leightons* stage (vii): see paragraph 23 above).

122. Glasses Direct's dispensing opticians are also available to give further guidance or advice to the laboratory in translating the prescription into the prescription glasses to ensure that the finished product is suitable for the customer's needs. It might be that the lens and frame combination that has been requested by the customer is not available, which may result in the supervising dispensing optician contacting the customer to recommend an alternative produce.

123. Glasses Direct produce the simpler lenses in house whereas the more complicated lenses are manufactured by external laboratories.

124. Mr Hutchfield told us that the process on the High Street would be very similar. The optician would send the frames, prescription and any accompanying notes to the laboratory, which would then make the glasses according to the specification. The optician will usually send the frames that the customer has physically tried on in-store to the laboratory.

Quality Control

125. After the laboratory has 'made up' the prescription glasses, Glasses Direct's dispensing opticians oversee the next stage of the order process. This is where all parts of the finished prescription glasses are examined by a quality control technician under the supervising dispensing optician's supervision in accordance with internal guidelines. The purpose of this is to ensure that the prescription glasses are correctly 'set up' prior to dispatch to the customer, which will in most cases result in a good fit for the customer. The quality control process involves a number of steps including ensuring that:

- (a) the prescription is correct;
- (b) the side angle is correct;
- (c) the glasses are level on a flat surface;

- (d) the nose pads are the correct distance apart and symmetrical on each side of the nose;
- (e) the sides are the correct length specified, are parallel to each other and should have a smooth finish behind the ears;
- 5 (f) the head width is correct;
- (g) the lenses comply with relevant standards for Sphere, Cylinder, Axis, Prism, Addition, and Optical Centres and are secure within the frame;
- (h) the correct lens type and material has been used;
- (i) the lenses are not excessively thick for the frame;
- 10 (j) the coatings have been correctly applied; and
- (k) where tints are present, that these are the correct density and colour.

126. These processes are, according to Mr Hutchfield based on his own experience, similar to the processes carried out on the High Street, They correspond to *Leightons* Stage (viii): see paragraph 23 above.

15 **Pre-fit**

127. If the customer has sent in his existing glasses, measurements such as the length of the arms of the glasses, the distance between the nose pads, the frontal angle, the length to bend, and the bow of the frame are taken (*Leightons* stage (iv): see paragraph 23 above).

20 128. These measurements enable Glasses Direct to ‘pre-fit’ the glasses to the customer based on the exact measurements taken from the customer’s existing glasses to ensure that the glasses properly fit the customer.

25 | 129. Mr Hutchfield told us, based on his own experience, which we accept, ~~that, that~~ although Glasses Direct does not fit glasses to the customer face-to-face, the provision of a pre-fit service based on the customer’s exact measurements produces the same result, i.e. a proper fitting pair of prescription glasses.

30 | 130. Mr Hutchfield told us, again based on his own experience, that pre-fit adjustment would not be carried out on the High Street and he would not expect the measurements referred to in ~~paragraph 127~~ paragraph 127 above to be taken by a High Street optician as a matter of course. Instead, any necessary adjustments to fit would be made face-to-face when the customer first selects and tries on the frame or when the customer comes to collect the dispensed glasses and puts them on to check the fit.

Dispatch to Customer

35 131. Once the review and adjustment process has been completed, the prescription glasses are dispatched to the customer by post.

After-sales care

132. Between 85-90% of customers do not require any aftercare or adjustments to ensure the proper fit of their glasses. Clearly, the quality control processes described above, the use of the Home Trial Service by some customers and pre-fitting where
5 customers have sent in an existing pair of glasses will help to minimise the need for aftercare.

133. Most aftercare issues concern adjustments to the physical fit of the glasses, for example to the nose pads or arms to the glasses, but generally not the lenses. If adjustments for fit are needed, a dispensing optician or optical assistant will talk
10 directly to the customer by telephone to try and resolve the issues by taking the customer through the necessary steps. This corresponds with *Leightons* stage (ix) (see paragraph 23 above) but obviously does not take place face to face. For example, we were shown a transcript of a call where a customer was given advice as to how to correct a problem of the glasses sliding off the face by increasing the curvature of the
15 front of the bridge and making the frames grip tighter on the side of the head.

134. In addition there are videos on the Glasses Direct website providing step-by-step instructions to customers as to how to make adjustments which were contained on the DVD we were provided with.

135. However, if the customer is not confident about making any necessary
20 adjustments to fit themselves as advised over the phone by the dispensing optician or is unsuccessful in making the modifications himself, he can return the glasses and Glasses Direct can make the required adjustments for him. In some instances, if he has not previously sent them in, the customer may also be asked to provide his existing glasses which can be used as a template for making any required adjustment.

136. Aftercare may also be required where the customer is experiencing difficulties
25 adjusting to a new prescription, for example, varifocal lenses. These are complex lenses that can sometimes cause dizziness, nausea and/or headaches for first time users and it might take several weeks before a customer gets comfortable with them. In those cases a dispensing optician will provide advice and guidance by telephone or
30 Live Chat.

137. We were shown transcripts of calls where customers were given advice on how to adapt to varifocals. Sometimes a problem is diagnosed with the alignment of the lenses causing distorted vision which will entail the glasses being returned and replaced free of charge. In one case a customer who could not adapt to varifocals was
35 offered a replacement of bifocals free of charge.

138. In some cases a discussion about problems may lead to a change in the frame/lens combination, or where there has been a large increase in a prescription asking the customer to be re-examined by an optometrist if he appears intolerant to the prescription.

139. On the High Street any aftercare issues, such as necessary adjustments or
40 problems with varifocals are addressed in the shop. It appears to us similar advice

and information would be given, the only difference being that it will be provided face to face which obviously will make it easier, for example, to demonstrate how to make adjustments or best position the head or body to adapt correctly to varifocals.

Summary of findings

5 140. We can now summarise our findings on how Glasses Direct's business operates in practice. We do so by reference to the *Leightons* stages as appropriate so as to give a comparison between Glasses Direct's business model and that operated on the High Street as follows:

- 10 (1) Glasses Direct does not conduct eye tests. It deals only with customers who have already had their eye test carried out by an ophthalmologist or ophthalmic optician who has provided a prescription. *Leightons* stage (ii) therefore does not apply.
- 15 (2) A Glasses Direct customer drives the purchasing process himself through the website, referring as he thinks fit to the various explanatory documents and guidance material prepared by or under the supervision of Glasses Direct's dispensing opticians by telephone, email or Live Chat. On the High Street a similar process takes place, but it is done face to face with questions being answered directly by the optician and information provided orally (*Leightons* stage (i))
- 20 (3) The Glasses Direct customer inputs his prescription details which are taken on trust by Glasses Direct. There is considerable guidance available to customers on how to read a prescription, again prepared by or under the supervision of dispensing opticians. The material inputted is reviewed by a dispensing optician and he contacts the customer if he notices any anomalies or obvious errors or for any reason wishes to discuss or verify
25 the prescription or advise that it be referred back to the optometrist responsible for it. On the High Street the prescription is verified face to face. Customers falling within categories 3 to 10 are as a matter of course contacted by a dispensing optician to discuss their prescription (*Leightons*
30 stage (iii)).
- 35 (4) The Glasses Direct customer is responsible for measuring the frames he requires and inputting the required data when placing his order. He may do this by reference to his existing glasses which he can send to Glasses Direct who will take the necessary measurements themselves. Detailed advice is available, again prepared by or under the supervision of dispensing opticians as to how to measure frames. Customers may also receive up to four types of frame to try on at home. The customer will be asked to enter his pupillary distance, if he has it, if not an average will be used in most cases. On the High Street, measurements for frames (as
40 suggested in *Leightons* stage (iv)) are not generally taken as there is a wide range of frames that means most customers can easily find a frame that fits. The customer generally looks at what is available on the display

in the shop and picks it out for consideration in conjunction with the optician.

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- (5) The Glasses Direct customer chooses his own frames by reference to the many examples shown on the website, again guided by the explanatory material and guidance on the website, supplemented by a discussion with the Glasses Direct optician if necessary. He will also drive the process if selecting the correct lenses and getting the right style of frame for the shape of the customer's face and the type of strength of lenses is important. The customer's choice in this regard will be reviewed by the dispensing optician when he reviews the customer's order and the dispensing optician will raise any concerns about the combination selected with him. The principal difference with the High Street ~~is~~,is that unless the customer takes the initiative to contact one of Glasses Direct's dispensing opticians, the optician will only be involved if he decides to contact the customer himself as a result of his review. In all category 3 to 10 cases the customer will be contacted. The Glasses Direct optician will not have the advantage of seeing the combination on the customer's face and will have to visualise it himself. (*Leightons* stages (v) and (vi)).
 - (6) Disclosing the intended use of the spectacles is important; again guidance on this is available on the website but there need not be any contact with a dispensing optician in category 1 and 2 cases; the information would be inputted and it may prompt the dispensing optician reviewing the order to discuss the matter with the customer. Discussing intended use would feature as part of the face to face process with the dispensing optician on the High Street (*Leightons* stages (v) and (vi)).
 - (7) After the customer's order has been reviewed and any necessary issues resolved the order is sent to a laboratory for production of the glasses according to the specifications given. This is the same for Glasses Direct and the High Street (*Leightons* stage (vii)).
 - (8) On return from the laboratory the manufactured glasses are checked through by a quality control process under the supervision of a dispensing optician. A similar process happens in relation to glasses supplied on the High Street (*Leightons* stage (viii)).
 - (9) Glasses Direct provides after sales care to deal with any fitting issues or the suitability of the glasses more generally for the customer. This service is provided through customer contact by telephone, Live Chat or email and may result in glasses being returned for adjustment or replacement. This process takes place with the customer face to face on the High Street when he visits the optician to collect his glasses (*Leightons* stage (ix)).
141. Ms Shaw summarised the participation of the Glasses Direct dispensing optician in the process from the placing of an order (including any preparatory steps) to its despatch and including any aftercare as follows:
- (1) Creating and reviewing website information to help customers choose the right frame for their needs and offering other eye care related information

by website, phone and live chat; checking that the selected frame is appropriate to the customer's prescription;

- 5 (2) Providing information and assistance to help customers choose the right lenses for their requirements, including by reference to the intended use of the glasses by website, phone and live chat; checking and confirming the compatibility of the customer's choice with their prescription and intended use;
- 10 (3) Providing information and assistance to customers to understand their prescription by website, phone and live chat; verifying prescription information and reviewing prescription history;
- (4) Reviewing and approving every order;
- (5) Ensuring the finished product is fit for purpose, including quality control checks and a pre-fit assessment (and additional measuring for specific prescription types as required); and
- 15 (6) Offering a comprehensive aftercare service by website and phone to allow any adjustments to be made and generally to ensure that the prescription glasses are fit for purpose.

20 We accept this as an accurate summary and it is consistent with our findings of fact. We observe that the tasks performed mirror those provided by the High Street optician, the principal difference being that the services are provided remotely and in many cases do not involve customer contact at all where the information provided by the customer is sufficient to enable the optician to approve the order without the need for any discussion.

25 **IV Issues to be determined**

142. Our task is to determine whether all or any of the services provided by Glasses Direct's dispensing opticians as summarised in paragraph 141 above constitute the provision of medical care within the terms of Article 132(1)(~~e~~)(e-c) of the Principal VAT Directive, as implemented by Item 1(b) of Group 7 of Schedule 9 VATA. If we determine that not all the services concerned constitute medical care we need to

30 ~~determine whether~~determine whether those elements that do can be regarded as being ancillary to the standard supply of the manufactured spectacles with the result that there is a single standard supply. We must also bear in mind the principle of fiscal neutrality when coming to a conclusion of those issues.

35 **V Discussion**

General

142. We start our discussion with an observation which we referred to in paragraph 54 above, that a person needs corrective spectacles because he has defective eyesight. The diagnosis of that defect, as carried out by the ophthalmic optician and the

40 production of a prescription, is clearly medical care. It is common ground that the supply of the glasses that are manufactured according to the specification set out in

the prescription is a standard supply of goods. The dispute concerns the services of the dispensing optician which translate the prescription into an optical device (the prescription glasses) which corrects the diagnosed eyesight and how they are to be characterised, and in ensuring that the device manufactured is fit for purpose and meets the customer's needs. It is accepted by HMRC that where the services are provided on the High Street, involving the dispensing optician engaging in the nine stages set out in *Leightons* then services are characterised as medical care. The work involved cannot legally be carried out unless it is effected by or under the supervision of a registered optician. Inevitably, the nine stages of work identified in *Leightons* cannot be carried out in the same fashion when a customer deals with Glasses Direct as would be the case if he visited a High Street dispensing optician with his prescription in order to obtain a pair of corrective spectacles. HMRC contend that the differences involved are so fundamental that the character of the services are changed from being the provision of medical care to the provision of "professional services" which are to be standard rated for VAT purposes. Their case rests on two primary submissions as follows:

- (1) Glasses Direct provides none of the services in *Leightons* stages (i), (iii), (iv) or (v) to any material extent; and
- (2) The services provided by Glass Direct's dispensing opticians in relation to *Leightons* stages (vi), (vii), (viii) and (ix) cannot amount to medical care as the services are not provided face to face or do not in any event have the character of being the provision of medical care.

143. By contrast Ms Shaw's primary submission is that the services provided by Glasses Direct's dispensing opticians and their purpose is exactly the same as the services supplied by dispensing opticians on the High Street. In each instance the aim is to translate the prescription into a pair of corrective spectacles, appropriate to the patient's needs. She further submits:

- (1) In dispensing prescription glasses, Glasses Direct makes two separate supplies, one of dispensing services and one of goods;
- (2) Those dispensing services are properly to be regarded as exempt supplies of medical care;
- (3) There is no qualitative difference between what Glasses Direct does and what a High Street optician does in dispensing prescription glasses and therefore no basis for treating Glasses Direct's supplies differently from the supplies made by a High Street optician.

144. We approach these submissions in two stages. First we examine the extent to which, contrary to Mr McGurk's submissions, Glasses Direct provide the services identified in the *Leighton's* nine stages. Secondly, we examine the extent to which the services so provided constitute medical care.

The services provided

Stage (i) – Seeing the dispensing optician

145. Mr McGurk submits that Glasses Direct does not provide any of the services mentioned in stage (i) because none of its customers see a dispensing optician before placing an order. That is true as far as it goes but we do not believe it is of any significance. This is merely an introductory stage and is equivalent to the customer visiting the Glasses Direct website and starting to input his particulars.

Stage (ii) – The Eye Test

146. It is common ground that stage (ii) is of no relevance in this case as Glasses Direct does not undertake eye tests.

Stage (iii) – ~~Taking~~ Taking the prescription to the optician who may discuss it with the prescriber

147. Mr McGurk submits that there is a fundamental difference between the process on the High Street and that through Glasses Direct at this stage. In particular:

- 15 (1) The inputting of the prescription details (including its date) through the Glasses Direct website gives rise to a risk of input error and, even, albeit exceptionally, abuse. It is a system based on trust and self-certification.
- (2) Verification is sought in only a very small proportion of cases.
- 20 (3) This is in complete contrast with the situation on the High Street where the dispensing optician will see the original prescription every time and therefore be in a position to verify it.
- 25 (4) There is no requirement at all for a dispensing optician to contact a customer who falls into category 1 or 2 (about 80% of all customers) to discuss their prescription and it is the case that there is no contact in the vast majority of such cases.

In our view these differences do not prevent a conclusion that the process is broadly comparable between the two outlets. In all cases the prescription is reviewed by a dispensing optician and, as we have found, a Glasses Direct optician has the discretion to contact the customer and discuss the prescription. For example, if he identifies anomalies or errors or thinks it desirable to refer back to the prescriber. Contact will be made in any event in those 20% of cases that fall into categories 3 to 10. The scope for errors or abuse is in our view of no significance; the likelihood of a customer deliberately inputting false information in order to obtain glasses which in these circumstances are unlikely to meet his needs is so improbable that it should be discounted. If the lack of face to face contact means errors slip through the net these are likely to be picked up when the glasses are made and first used by the customer, who would then be able to make use of the aftercare service. We therefore conclude that *Leightons* stage (iii) is present in the Glasses Direct model, albeit in a different form.

Stage (iv) – detailed measurements of the eyes and other features

148. Mr McGurk submits that this is the key aspect of the dispensing optician's work that HMRC believes constitutes the provision of medical care and therefore benefits from the exemption. He submits this service is provided in all cases on the High Street. Mr McGurk notes that that Glasses Direct takes no actual measurements of the customer's pupillary distance in contrast to the position on the High Street. He submits that the alternative approach of Glasses Direct, that is to rely on an average measurement for categories 1 and 2 customers and either asking a customer in categories 3 to 10 to provide his actual measurement where he can obtain it from the optician who tested his eyes, or sending in existing glasses so it can be measured from lenses, is not comparable. He contends that in effect Glasses Direct rely on and take the benefit of measurements that have been taken on the High Street. Mr McGurk also submits that where the dispensing optician is face to face with the customer on the High Street he will be able to note whether there are any issues with the customer's eyes that might call for further testing.

149. In our view Mr McGurk is confusing the role of the dispensing and ophthalmic optician. Mr Hutchfield's evidence, which we accept, was that the pupillary distance measurement was taken during the eye test. It would therefore have been available at the time the prescription was handed to the dispensing optician, on the High Street, or on Glasses Direct model when the customer inputs his details on the website. Glasses Direct's explanatory document "Understanding your Prescription" available on its website states that "many prescriptions given by High Street opticians do not include a PD measurement as standard". This indicates that the prescription does include it in some cases so corroborates Mr Hutchfield's statement that it is taken as part of the eye test.

150. A customer of a High Street optician requiring his actual measurement would therefore be in the same position as a Glasses Direct customer; he would have to go back to the optician who conducted his eye test. We therefore find that the dispensing optician on the High Street is in the same position as the Glasses Direct optician in relation to this issue; it is a measurement that is required so that the prescription can be translated into glasses that are fit for purpose. On the High Street it can undoubtedly be obtained more easily by going to the record of the eye test; on the Glasses Direct model, recognising that it might be more difficult to obtain in many cases, Glasses Direct rely on an average adjustment or one taken from an existing pair of glasses. This process results in the same outcome, a customer's glasses are prepared by reference to a pupillary distance measurement and as in the case with the other details inputted in respect of the prescription, if there are errors they are corrected as a result of the aftercare service.

151. Nor do we believe that there is anything in Mr McGurk's point about the dispensing optician being able to examine the patient's eyes for other issues. In most cases any issues will have arisen during the eye test, which in the typical sale on the High Street will have taken place only very shortly before the dispensing optician is engaged to dispense the spectacles. Mr McGurk was unable to show that it was a duty of the dispensing optician to examine the customer's eyes for evidence of injury or disease.

*Stage (v) – advice as to options available in respect of lenses and frames;
examination of existing spectacles*

152. Mr McGurk submits that this process in a Glasses Direct supply is entirely led by the customer, using the style finder and best fit tool, and the vast majority of 80%
5 of supplies made in categories 1 and 2 the choice can be made with no input from a dispensing optician whatsoever. In our view Mr McGurk exaggerates the difference between Glasses Direct’s and the High Street processes. As we have found, based on Mr Hutchfield’s evidence the choice on the High Street is largely customer led, with the customer looking at a large variety of frames which are on display and a portable
10 board giving details of lenses. This is comparable to the process on the website where the use of the style finder and best fit tool will narrow down to the correct combination bearing in mind the fact that certain types of lenses will not be suitable in particular types of frame. The customer also has the other explanatory material on the website, initiating advice on how to measure glasses for measurement, the ability to
15 contact a dispensing optician for advice and the ability to have some frames on a home trial. In our view the existence of all of these features means that the process of selection of frames and lenses through Glasses Direct is comparable to the process that happens on the High Street.

Stage (vi) – drawing up specification for frames and lenses

20 153. Mr McGurk submits there is no role for dispensing opticians at this stage on Glasses Direct’s model. He contends that any measurements applied are the measurements of other, prior dispensing opticians and as mentioned above, the choice of lenses and frames is entirely customer driven, with category 1 and 2 orders being processed usually without consultation except in a small number of cases where there
25 are anomalies. Mr McGurk also questions the credibility of the call samples for which transcripts were provided, twenty one in total. He submits that Glasses Direct have “cherry picked” a limited number of calls to illustrate conversations that seek to support the points it makes.

154. We reject these submissions. We have found that in many cases detailed frame
30 measurements are not taken on the High Street as there is a wide variety of frames to choose from which are likely to fit. As in the case with Glasses Direct, the customer’s previous glasses will be available as a guide to measurements and these may be sent to Glasses Direct so they can be used as a means of ensuring the new frames are of the right size. The website also allows the customer to input his own measurements and
35 guidance is given as to how to measure the bridge and the arms of the frame. We therefore find that the processes of the two outlets are comparable.

155. With regard to the call transcripts, there is no reason to believe that a larger
40 sample, say all the calls received on a particular day, would be any more representative. The transcripts we were shown deal with a variety of issues including frame and lens selections, intended use, how to cope with bifocals and varifocals, and various aftercare issues including making adjustments. As Ms Shaw points out, the transcripts were available well in advance of the hearing and if HMRC had an issue as to them being unrepresentative they could have sought a wider sample of recordings.

The calls reveal the kind of discussion that could equally take place face to face at an optician's premises on the High Street.

Stage (vii) – Sending the specification to the laboratory

156. It is clear and accepted that this process is comparable to both outlets.

5 *Stage (viii) – Checking the spectacles conform to the specification after manufacture*

157. Again it is clear that the process is the same for both outlets.

Stage (ix) – Fitting the spectacles and making any minor modifications required

158. Mr McGurk submits that Glasses Direct does not fit the glasses, unlike in the High Street. They send them out and delegate fitting to the customer. If the fit is
10 wrong, there are instructions as to how the customer can do it himself (including heat treatment with a hairdryer). We accept that making adjustments is easier where the customer is face to face, but in our view the same result is achieved through the provision of clear guidance on the website or advice given remotely by telephone, with the option of the customer being able to send his glasses back for Glasses Direct
15 to be able to make the adjustments for the customer. We therefore find that the two processes are comparable.

159. We have therefore concluded that Glasses Direct's dispensing opticians do provide all of the services envisaged in the nine stages set out in *Leightons*, albeit they are delivered by alternative means to face to face contact. The fact that there are
20 many cases where the services are not provided directly in the sense that glasses can be supplied without any customer contact at all does not alter the position; the various tools and information available on the website and the steps that the customer has to take to order his glasses means that the advice and supervision which is a feature of the High Street practice is delivered by other means. This is reinforced by the fact
25 that all orders are reviewed by a dispensing optician before they are accepted and the glasses despatched.

160. We now turn to the question as to whether the services provided by dispensing opticians at the nine stages of the process, as identified above, amount to medical care. Mr McGurk's primary submission is that the reason the High Street dispensing
30 opticians do provide medical care is that they personally measure and fit the customer and in the absence of this feature the services provided by Glasses Direct's dispensing opticians cannot amount to medical care. In particular, Mr McGurk contends that the following services do not constitute medical care:

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- (1) Verifying a customer's prescription is quality control rather than medical care (stage (iii));
 - (2) Dealing with customer enquiries as to the nature of the lens required, whether add-ons were needed given the intended use to which the glasses would be put and the lens and frame combination, in particular:

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- (a) the nature of the lenses does not alter the prescription that those lenses contain (and that is true for bifocals and varifocals);
- (b) advice as to the type of lens is purely for going through the most suitable means by which the customer's prescription is delivered, relative to their working or leisure needs or preferences'
- (c) advising on lens/frame combinations is a matter of suitability of use, what is physically capable of being made and convenience, although he accepts that there is provision of medical care where a dispensing optician says a lens is too thick to be applied within rimless frames;
- 10 (d) advice or intended use is not medical care; that a customer may work outdoors and want scratch resistance coating and UV protection are add-ons that will enhance the durability of glasses and protect the eyes from the sun; although he accepts that reducing a prescription, for example, in relation to computer use (assuming it is permitted) does amount to medical care.
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- (3) The steps that Glasses Direct takes to establish pupillary distance because they rely on information provided by the customer and average measurements where no other information is provided (Stage (iv));
- 20 (4) Information on the website is no substitute for face to face contact; at best it might allow a customer to undertake self-diagnosis. No warranty is given as to the accuracy of the information on the website; it is merely providing information and not healthcare (stage (v));
- (5) Style, colour and aesthetic factors of glasses do not contribute to the provision of healthcare;
- 25 (6) None of the customer calls contain advice that amounts to the provision of medical care as opposed to advice on suitability (stage (vi));
- (7) Stage (vii) is concerned solely with product manufacture;
- (8) The purpose of stage (viii) is purely quality control of a newly manufactured produced so as to ensure the product is to specification and fit for purpose; and
- 30 (9) Fitting (stage ix) cannot amount to medical care unless carried out personally by a dispensing optician.

161. We remind ourselves that as established in *EC Commission v. United Kingdom* (see paragraph 19 above) the supply of corrective spectacles is economically dissociable from the provision of the service. We do not take Mr McGurk to dispute that; although HMRC's position has changed from its original contentions in its statement of case that the dispensing services in this case were purely administrative, Mr McGurk now accepts that they are professional services albeit not amounting to medical care. As we have found that the delivery of the services is effected in a manner which is comparable to that provided on the High Street we have no hesitation in concluding that there are two separate supplies, the supply of the dispensing services (however characterised) and the supply of the corrective spectacles. In *Southport Vision Plus* which revisited the separate supply issue following *Card*

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Protection Plan the clear finding was that customers knew that they have to pay for the services of the dispensing optician and it was not a service provided so as to “better enjoy” the optical appliance; it could not be enjoyed at all without the dispensing service.

5 162. In our view that analysis holds good in this case; the services of the dispensing
opticians may be delivered in a different way but the customer will be fully aware of
their significant input into the process. Mr Bryant accepted that selling glasses online
was a ‘tough nut to crack’ because customers are generally aware of the role of the
10 dispensing optician and regard it as a matter of some comfort. They may therefore be
more wary of a process where the role of the dispensing optician is more in the
background than is the case on the High Street. However, we have no doubt that
those customers who do use the website will have realised that there is significant
input by dispensing opticians; this clearly appears from the various prompts to make
15 contact to take advice and the explanatory material that is prepared by or under their
supervision. This is against the backdrop of the regulatory background which
requires all retail sales to be supervised by a dispensing optician. Therefore from the
viewpoint of the typical customer he will see the supply as two distinct and
independent supplies.

20 163. As to whether the services concerned constitute medical care, we bear in mind
the principles that we established from our analysis of the authorities set out above
and in particular:

- 25 (1) the fact that there must be a therapeutic purpose: as we have established
the translation of the prescription into the optical advice under the
supervision of the dispensing optician is part of the therapeutic process of
correcting defective eyesight and as established by *Verigen* (see paragraph
48 above) a service which is part of the process can qualify;
- 30 (2) the fact that the services are provided remotely does not prevent the
exemption applying: see *LuP* (see paragraph 47 above). Accordingly
we reject Mr McGurk’s submission that the fact that the services are not
provided face to face means they cannot constitute medical care.
- 35 (3) There is nothing in the authorities which suggests that the fact that the
dispensing optician does not personally carry out the measuring means
that none of the services amount to medical care. It is clear from both
Leightons and *Southport Vision Plus* that each part of the service must be
examined separately and a view taken as to whether it constitutes medical
40 care. In our view the way in which Glasses Direct’s dispensing opticians
participate in the measuring process by preparing or supervising the
explanatory material to assist the customer and the steps taken to establish
pupillary distance, albeit that more aftercare services may result as a result
of the lack of face to face contact, puts these services in no different
category from the same services provided on the High Street.
- (4) We should not confine the exemption to an especially narrow compass.
Bearing in mind the regulatory scheme and the importance of the
objective of the exemption in reducing the cost of healthcare we should

5 give considerable weight to the fact that Glasses Direct’s business model
helps to reduce the cost of the provision of corrective spectacles as
compared with their cost on the High Street. In addition, we should regard
services which are not too remote from the therapeutic process to benefit
10 from the exemption. We therefore conclude that all of the matters
referred to in Mr McGurk’s submissions, as detailed in paragraph 160
above, which he contends do not constitute medical care are so closely
connected with the therapeutic process that it would be artificial to
separate them; and in particular there is no basis on which we should seek
15 to draw a distinction between a quality control process and medical care
when carried out by a dispensing optician.

164. We therefore conclude that Glasses Direct has satisfied us that all of the services
provided by their dispensing opticians as set out in paragraph 141 above amount to
medical care within the terms of the exemption. Although it is not necessary for the
15 purposes of our decision we are reinforced in our findings by applying the principle of
fiscal neutrality as set out in *Rank*. From the point of view of the consumer who
enters the Glasses Direct website and informs himself as to how the process operates
and the significant level of supervision provided by the dispensing opticians, the
differences between the two processes do not have a significant influence on the
20 decision of the average consumer to use one service or the other. He will, as we have
found, find that their use is comparable.

165. We allow the appeals.

166. 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
25 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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**TIMOTHY HERRINGTON
TRIBUNAL JUDGE**

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RELEASE DATE: 20 June 2013