



TC04172

Appeal number: TC/2013/01451

VAT – property used for weddings – overnight accommodation not provided – assessment of the evidence – Secret Hotels 2 considered – contract between the parties not contained in a single document – terms of the contract – whether single supply – whether exempt supply – whether customer had right to occupy as owner – whether a relatively passive activity – held, single standard rated supply of services.

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

WILLANT TRUST LTD

Appellant

- and -

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

**TRIBUNAL: JUDGE ANNE REDSTON
 MR CHRISTOPHER JENKINS**

**Sitting in public at the Tribunal Centre, Bedford Square, London on 1 and 2
October 2014**

**Mr David Southern QC, of Counsel, instructed by Saffery Champness, for the
Appellant**

**Mr Sarabjit Singh, of Counsel, instructed by the General Counsel and Solicitor
to HM Revenue and Customs, for the Respondents**

DECISION

5 1. Willant Trust Limited (“WTL”) owns Ramster Hall (“the Hall”), a stately home in Surrey. The Hall is licensed for civil weddings; receptions are also held there following weddings in local churches and elsewhere. Unless otherwise specified, a reference to “wedding” in this decision is to both civil weddings and wedding receptions. Other events, such as parties and meetings, are also held at the Hall.

10 2. HM Revenue and Customs (“HMRC”) decided on 24 December 2012 that the WTL was making a single standard-rated supply of wedding-related services. WTL asked for a statutory review, and on 28 January 2013 HMRC upheld the decision. WTL notified its appeal to the Tribunal on 26 February 2013.

15 3. The parties clarified in the course of proceedings that the decision under appeal related only to the provision of supplies relating to weddings and not to other events. They also confirmed that the appeal related to liability only and did not extend to issues of quantum.

20 4. The grounds of appeal were that WTL’s supplies were exempt under Value Added Tax Act 1994 (“VATA”), Sch 9, Group 1, Item 1, as being “the grant of an interest in or right over land or of any licence to occupy land.” That exemption implements Article 135(1)(l) of the Principal VAT Directive (2006/112/EC) (“the PVD”) which exempts the leasing or letting of immoveable property.

5. We found that there was a single supply which did not consist of “the grant of an interest in or right over land or of any licence to occupy land” and that it was therefore standard rated.

25 **Issues in the case**

6. The issues in the case were:

- 30 (1) whether WTL was making a single/composite supply, or a multiple supply;
- (2) if WTL was making a single/composite supply, whether that supply was exempt under Sch 9, Group 1, Item 1, or standard-rated;
- (3) if WTL was making a multiple supply, whether any of the supplies were exempt under Sch 9, Group 1 Item 1.

The evidence

7. The Tribunal was provided with a bundle of documents, which included the following:

- 35 (1) the correspondence between the parties and between the parties and the Tribunal;
- (2) extracts from the website www.ramsterweddings.co.uk (“the website”) and from www.ramsterevents.com (“the events website”), together, “the websites”;

(3) pages entitled “civil ceremony, wedding reception and private party rates” for 2013 and 2014 (“the Price List”). The wording of the two pages is the same for both years, other than that the prices increased in 2014;

5 (4) a page entitled “Application for the Hire of the Long Hall and adjoining rooms and premises for 2013” (“the Application”) and the corresponding page for 2014. The pages are the same other than that it is now possible to pay the deposit by direct bank transfer;

(5) a document entitled “conditions for the hire of the wedding hall at Ramster Hall” (“the T&C”);

10 (6) a copy of a brochure entitled “Ramster Hall” (“the Brochure”) and another entitled “Ramster Hall Weddings” (“the Wedding Brochure”), together “the Brochures”;

(7) an invoice for a specific wedding function dated 2 August 2012; and

15 (8) a document headed “Jacaranda client itinerary and seating plan” (“the Jacaranda itinerary”) for a specific wedding function in July 2013. Jacaranda Limited (“Jacaranda”) is the company which provides catering for weddings held at the Hall.

8. Mr Malcolm Glaister, a director of WTL, provided two witness statements. The second attached WTL’s statutory accounts for the year ended 30 April 2013. He gave oral evidence and was cross-examined by Mr Singh and answered questions from the Tribunal. We discuss his evidence at §61 below.

9. Mr David Smith, the HMRC Officer who made the disputed decision, provided a witness statement and was cross-examined by Mr Southern. We found him to be an honest and credible witness.

25 10. As is not uncommon with Tribunal Bundles, there were several copies of a number of documents. Many of those listed at §7 were included as attachments to both Mr Glaister’s and Officer Smith’s witness statements, with further copies included in the Appellant’s documents and the Respondent’s documents. For the most part, the Tribunal was taken to the version attached to Mr Glaister’s witness statement. One of the documents of which we had multiple copies was the T&C. It was not until after the hearing that we identified that the version attached to Mr Glaister’s witness statement was different in two respects (see §41) from that which had been provided to HMRC and which Officer Smith considered before he made the decision which is under appeal. We have based our decision on that earlier version of the T&C, but confirm that we would have decided the case in the same way had we
35 relied on the new version.

Application to admit new evidence

11. On the morning of the second day of the two day hearing, Mr Southern opened by asking the Tribunal to accept as evidence certain pages from the Jacaranda website. He passed copies to Mr Singh, who objected because:

(1) the documents appeared to him to be a miscellaneous selection of webpages;

(2) no context had been provided and he was unable to check whether they were complete;

(3) there was no opportunity to give the documents proper consideration; and

(4) Mr Glaister had finished giving evidence on the previous day and was not in attendance at the Tribunal.

12. Mr Southern then offered to phone Mr Glaister so that he could attend the Tribunal and be recalled to the witness box. Neither party suggested that the appeal should be adjourned to another date.

13. We considered whether we should admit this evidence. The overriding objective, at Rule 2 of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2008 (“the Tribunal Rules”), is to deal with cases fairly and justly. Rule 15(2)(b)(iii) allows the Tribunal to exclude evidence which would otherwise be admissible “if it would otherwise be unfair to admit the evidence.”

14. In *First Class Communications v HMRC* [2014] UKUT 0244(TC) (“*First Class Communications*”) the Upper Tribunal (Judges Sinfield and Clark) affirmed the decision of the First-tier Tribunal at [2013] UKFTT 342(TC), saying at [34] that Judge Mosedale had “correctly identified the relevant factors to be considered” when deciding whether or not to admit evidence. Those principles were:

“the relevance of the evidence, length of delay, the reason (or lack of it) for the delay and the possible prejudice to each party in the context of the facts of FCC's appeals.”

15. In her decision, Judge Mosedale discussed a number of cases, including *Atlantic Electronics Ltd* [2012] UKUT 423 (TCC), which dealt with late evidence, and *Mills & Reeve* [2011] EWCA Civ 14, which concerned a late amendment to pleadings, before saying:

“[43] In *Atlantic Electronics*, it was the delay combined with procedural prejudice which led to the exclusion of the evidence. It seems to me that this was also behind the comment of Lloyd LJ in *Mills & Reeve*: a very late amendment needs a great deal of justification as it is almost bound to lead to procedural prejudice to the other party, such as the loss of a hearing date or an inability to prepare for the new evidence properly.

[44] It is, like so many things are, a question of degree. The longer the delay, the more likely there will be procedural prejudice. The greater the procedural prejudice, the less likely it will be admitted. It is also clear that the importance of the evidence to the person seeking to rely on it must be weighed in the balance. Evidence critical to one party's case is more likely to be admitted than evidence of only peripheral relevance.”

16. We applied the principles set out in *First Class Communications* to the matter before us. The application to admit the Jacaranda website evidence was made extremely late. No reason was given as to why these pages had not been produced

earlier. Mr Southern did not submit that they were core to WTL's case. On the other hand, Mr Singh had had no opportunity to evaluate the evidence or consider its context, so if we admitted the evidence and continued with the hearing, the prejudice to HMRC would have been considerable.

5 17. Because Mr Singh had said he was likely to want to cross-examine Mr Glaister on the evidence if it was admitted, and because he could not prepare his cross-examination without having time for consideration and evaluation, we could not direct the parties to make paper submissions after the conclusion of the second day's hearing. Our only options were (a) to adjourn or (b) to refuse to admit the evidence.

10 18. We decided that it would be unfair to admit the evidence without giving Mr Singh the time he reasonably needed, and we further decided that it was not in the interests of justice to adjourn the case at this late stage given the nature of the evidence. We also took into account the fact that neither party was seeking an adjournment.

15 **The facts not in dispute**

19. On the basis of the evidence at §§7-10 above, we first set out those facts which were not in dispute.

20. WTL owns the Ramster Estate near Chiddingfold in Surrey. The Estate comprises the Hall, being a Jacobean country house dating from 1604, estate cottages,
20 25 acres of gardens and 250 acres of farmland. Mr and Mrs Glaister live at the Hall with their children and Mrs Glaister's parents.

21. WTL's shares are owned by Mrs Glaister, known as Rosie (10%), Mrs
Glaister's parents (25%) and various family trusts (65%). Mr and Mrs Glaister,
together with others, are directors of WTL; the statutory accounts for the year ended
25 31 March 2013 were approved by Mr and Mrs Glaister.

22. The following rooms ("the Rooms") in the Hall are available for weddings:

(1) the Long Hall, which is principally used for dining and dancing. It has a dance floor, fairy lights, spotlights, and a music system operated via a CD player;

30 (2) the Great Drawing Room, with a minstrels' gallery, which is licensed for civil wedding ceremonies;

(3) the Brick Hall, which is an alternative entrance hall; and

(4) the Courtyard Room, a small room next to the main entrance lobby.

23. The Long Hall, Great Drawing Room, and the Brick Hall are on three sides of a square, with the entrance lobby and Courtyard Room forming the fourth side. In the
35 middle of the square is the Courtyard Garden, which is also available to clients who hold a wedding at the Hall. WTL does not provide any overnight accommodation.

24. WTL advertises the Hall and its availability for weddings on the website www.ramster-weddings.co.uk. Anyone with further questions is asked to contact

“rosie” by email. Potential clients visit the Hall, often at the weekend, and are taken round, usually by Mrs Glaister or her Personal Assistant (“PA”).

25. It is Mrs Glaister or her PA who deals with almost all subsequent contact with clients in relation to the use of the Hall, including taking bookings, invoicing and payment. Mr Glaister was asked, during cross-examination, how much time Mrs Glaister and her PA spent on wedding-related matters. He said that they each spent around a day a week, so around 16 hours a week in total. This wasn’t challenged and we accept it.

26. Mr Glaister described his role in WTL as being to manage the farm and its employees, and to ensure that the properties and the garden were maintained. He said that “if pushed” he would show potential wedding clients around the building “occasionally,” which was around once a month.

27. We find as a fact that it is Mrs Glaister who is in charge of the part of WTL’s business which relates to the hire of the Hall for weddings and any related services. The nature and extent of any related services is in dispute and we make findings of fact on that issue later in our decision.

The Price List, the Application and the T&C

28. Potential clients receive the Wedding Brochure and the Price List. We return to the Wedding Brochure later. The Price List sets out the “civil ceremony, wedding reception and private party rates.” The price options are in two columns, one headed “exclusive hire for a reception only” and the other “hire for ceremony and reception.” For 2013, prices range from £4,000 in the High Season to £3,000 in January to March and on weekdays other than Fridays. If the booking does not include a civil ceremony, the price is reduced by £200. All prices include “exclusive use” of the Long Hall and Great Drawing Room, dance floor, minstrels gallery, tables and chairs for up to 160 guests and the Courtyard Garden. The Brick Hall is available for a further £300.

29. Once a client has decided to book, he completes the Application, which begins “I [name and address] hereby apply for the hire of the premises as detailed below on [date].” It is followed by the same price structure in tabular format as is on the Price List: the client is required to tick a box showing which option has been selected.

30. The Application requires the contact details of the Bride and Groom, the time of the civil ceremony or time/location of the church wedding; the client is instructed to identify any bank transfer with his name and the wedding date. From these details and the two columns headed “exclusive hire for a reception only” and the other “hire for ceremony and reception” we find as a fact that the Application is designed to be used for booking weddings.

31. The Application also sets out the requirement that a non-refundable deposit of £1,000 is paid to “WTL t/a Ramster.” The following bullet points are set out above the space for the client’s signature:

- I agree to pay the sum indicated above for such hire purposes, plus additional charges as may be applicable.
- I have read and agree to comply with all the terms and conditions annexed hereto [being the T&C].
- 5 • I am aware that Ramster is a no-smoking venue and that the cut-off time for guests to leave is midnight.
- I understand that Ramster only allows Jacaranda Catering to do the catering at this venue.

10 32. The T&C begin by defining key words, including “the Owner,” who is stated to be “Mrs Rosalind Glaister.” Mr Southern said that since the owner of the Hall is WTL, “in substance and reality” the term “Owner” in the T&C should be understood as being WTL. Mr Singh said that HMRC accepted that the T&C had been agreed between the client and WTL. For the purposes of this decision, we have treated Mrs Glaister as acting as agent for WTL when agreeing these T&C with clients.

15 33. The T&C define “the Premises” as “the Long Hall at Ramster and such other parts of the adjoining rooms, buildings and grounds known as Ramster to which the Hirer may be given access by the Owner.”

20 34. The T&C define the “Hire Period” as that specified on the Application. Clause 6 provides that “if the Hirer remains in occupation of the Premises after the expiry of the Hire Period, the Owner may charge the Hirer a surcharge of £50 per hour or part thereof, in respect of any time after midnight during which the Hirer has not vacated the Premises.” Clause 7 provides that “the Hirer may not use or enter the Premises at any time other than during the Hire Period unless prior arrangements have been made with the Owner.” Mr Glaister told us that if there were no back-to-back bookings, clients could come the day before, if they so requested, in order to set up the wedding, arrange room decorations etc. Clause 32 requires the Hirer to move any parked vehicles by 11am on the day following the hiring.

25 35. Clause 9 states that the Hirer is responsible for “the effective supervision of the Premises” including “the orderly and safe admission and departure of persons to and from the Premises” and the “orderly and safe evacuation of the Premises in case of emergency”; ensuring that no obstacles are placed by any corridors or exits; the safety of the Premises and “the preservation of good order and decency in the Premises.”

30 36. By Clause 10 the Owner disclaims liability for the death or injury of any person attending the Premises for the function the subject of the hiring unless due to the negligence of the Owner. By Clause 12, the Hirer indemnifies the Owner against any claims from third parties in relation to liabilities listed in Clause 10. Clause 14 says that “the Owner gives no warranty that the Premises are legally or physically fit for any specific purpose.”

35 37. Clause 35 says that the Hirer must take out appropriate insurance to cover any cancellation of the Hiring. Clause 13 reads:

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“the Owner will not be liable for any loss due to any breakdown of machinery, failure of supply of electricity, leakage of water, fire, government restriction or act of God, which may cause the Premises to be temporarily closed or the hiring to be interrupted or cancelled.”

- 5 38. The T&C state that the Hirer is not allowed to:
- (1) use the Premises for any purpose other than that described in the Hiring agreement (Clause 16);
 - (2) sublet the Premises (Clause 16);
 - 10 (3) move or alter any electrical, light or power appliance or fitting which is in the Premises (Clause 27);
 - (4) throw confetti or drop cigarette ends (Clause 28);
 - (5) use any DJ other than “Mark the DJ” (Clause 29)
 - (6) play any music after 11.50pm on the day of the hiring; if the hiring is on a Sunday, the time limit is 10.00pm (Clause 29);
 - 15 (7) use any amplification in the courtyard (Clause 29);
 - (8) assign the agreement (Clause 36).
39. The T&C further state that the Hirer is prevented from doing any of the following without the consent of the Owner:
- (1) bringing any animal into the Premises (Clause 18);
 - 20 (2) affixing any notice or poster to any part of the Premises, internally or externally (Clause 20);
 - (3) driving any pins, bolts, screws etc into any part of the Premises (Clause 20);
 - (4) bringing any additional lighting, heating, power, or other electrical fittings or appliances onto the Premises (Clause 27).
- 25 40. Under the T&C the Owner retains the following rights:
- (1) to “enter the premises (whether by herself or by any agent of hers or any other person authorised by her) at any time during the Hire Period” (Clause 15);
 - (2) to “put a stop to any meeting or entertainment not properly conducted” (Clause 17);
 - 30 (3) to “put a stop to any meeting or entertainment...which involves a danger” whether to the Premises or to those using it, or to the public (Clause 17);
 - (4) to require the Hirer to “remove any flag, emblem, notice or other decoration” from the Premises which if in the Owner’s opinion is “unseemly, is likely to expose the Premises to undue risk of fire or is likely to lead to any
 - 35 disturbance or breach of the peace” (Clause 21);
 - (5) to make a charge for the clearing of any confetti or similar substances (Clause 28);

(6) to set parking restrictions, which must be observed by the Hirer (Clause 32);
(7) to “request the removal from the Premises of any child who, in her opinion, is not being properly supervised and/or is in danger of damaging themselves or the Owner’s property” (Clause 33).

5 41. We mentioned at the beginning of this decision that we were provided with two different versions of the T&C and that we have used the earlier version as it was supplied to HMRC for the purposes of the disputed decision. The later version attached to Mr Glaister’s witness statement did not include:

10 (1) part of Clause 30, which read “catering staff have the right to refuse to serve alcohol to anyone who appears to be either under 18 years of age (or is able to satisfactorily prove otherwise) or appears to be detrimentally under the influence of alcohol. In all instances the decision of the Owner or the catering staff is final”; and

15 (2) part of Clause 33, which deals with controlling children. The omitted words are in italics: “The Owner *or front of house manager* may, if she thinks fit, request the removal from the Premises of any child, who, in her Opinion, is not being properly supervised...”

Catering, alcohol and music

20 42. Only Jacaranda is allowed to provide catering. There is no legal connection between the owners/directors of Jacaranda and the owners/directors of WTL. Clients contract separately with Jacaranda.

25 43. At the time of the decision, the Hall did not have a licence to serve alcohol and no pay bar was permitted. Clients either contracted with Jacaranda to provide alcohol or arranged for its separate provision; no corkage was charged but WTL invoiced separately for the disposal of the bottles.

30 44. As stated at Clause 29 of the T&C, Mr Mark Parker is the only DJ permitted to provide a wedding disco. Clients contract separately with Mr Parker. He brings his own lighting and sound system. A client who wishes to have a band or other live music rather than a DJ can do so without restriction, but must comply with the conditions set out in the T&C in relation to noise, amplification etc.

From the booking to the wedding

45. The period between the booking and the wedding can be as long as two years. Mrs Glaister and her PA deal with queries in this period, but the nature and extent of the queries is disputed and we make further findings of fact later in this decision.

35 46. The following services were supplied by WTL on or around the day of the wedding:

- (1) opening the Rooms on the day of the wedding for setting up;
 - (2) opening the Rooms on the day before the wedding for setting up, if requested and if there was no other wedding on that day, and closing the Rooms on that day;
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- (3) cleaning the Rooms before the wedding;
 - (4) deep cleaning between two consecutive events;
 - (5) provision of space for the parking of guests' vehicles and any other vehicles connected with the wedding;
 - 5 (6) heating and lighting of the Rooms;
 - (7) provision of sufficient tables and chairs for the guests;
 - (8) delivery of those tables and chairs to the Great Drawing Room;
 - (9) if a civil wedding, provision of a "responsible person" who is in attendance at the wedding ceremony;
 - 10 (10) allowing the bride, groom and guests access to the Hall's garden for the purpose of taking pictures;
 - (11) arranging for the collection of glass bottles for recycling;
 - (12) providing a phone number for use in an emergency and responding to any such phone calls.
- 15 47. The following services were supplied by Jacaranda:
- (1) catering;
 - (2) provision of linen and glasses; and
 - (3) locking up the Rooms at the end of the event.
48. The following services were supplied by other third parties:
- 20 (1) alcohol;
- (2) photography;
 - (3) music;
 - (4) wedding cake;
 - (5) flowers;
- 25 (6) decorations;
- (7) overnight accommodation; and
 - (8) transport between the accommodation and the Hall.
49. The Wedding Brochure states that the client will have "exclusive use of the halls and courtyard which are yours for the wedding day" and Mr Glaister confirmed
- 30 that no other event was permitted to run at the same time as a wedding.

Assessing the evidence

50. In *Drumtochty Castle v HMRC* [2012] UKFTT (429), the Tribunal (Judge Reid and Mr Condie) considered how the use of a castle for the purposes of weddings should be treated for VAT purposes. At [16] they say:

“the facts of each case need to be determined and assessed with particular care in order to identify the nature of the supply or supplies and to determine how the arrangements in any given case fall to be classified for the purposes of VAT.”

5 51. We agree. Before we move on to making findings of fact on the matters in dispute, we first assess the evidential sources provided to us. But one of the surprising features of this case was the evidence which was *not* provided, and we discuss this first.

The evidence which was not provided

10 52. It is Mrs Glaister, not her husband, who runs this part of WTL’s business. It is she who is contacted by clients. It is her email address on the website. She, or her PA, normally takes potential clients on a tour of the Rooms. She and her PA deal with the paperwork. It is they who have contact with the clients from initial contact through a period of up to two years, until the wedding takes place.

15 53. One of the key issues we have to decide is the quality and quantity of contact between the clients and WTL before the wedding takes place and at the wedding: namely what is promised and what is delivered. But we have to carry out this task without the benefit of either Mrs Glaister’s evidence or that of her PA.

20 54. The Appellant’s only witness was Mr Glaister: he provided witness statements, and attended the Tribunal to give evidence in chief, be cross-examined, and answer our questions. As we have already recorded, he has very limited involvement in this business: he occasionally helps out when Mrs Glaister is over-stretched. He does not have first-hand knowledge of how the business works, and so the weight we place on his evidence is less than we would have attached to evidence provided by Mrs
25 Glaister and/or her PA, assuming that they would have been credible witnesses.

55. Another key issue is the relationship between WTL and Jacaranda. However, we have no witness evidence from Jacaranda’s directors or employees. We were not provided with a copy of the agreement between WTL and Jacaranda. The only evidence in the Bundle which relates to Jacaranda is the single sample Jacaranda
30 itinerary. As recorded earlier in this decision, Mr Southern belatedly asked to introduce some pages from Jacaranda’s website on the second day of the two day hearing, but for the reasons already set out we did not admit that evidence.

56. Mr Parker has sole rights to provide the wedding discos. The nature of the relationship between him and WTL is potentially in issue, but he gave no witness
35 evidence. We have no copy of any agreement between him and WTL. The only evidence we had came from Mr Glaister, who is hardly involved in that part of WTL’s business at all.

57. Part of WTL’s case is that the other third party providers are acting entirely at arm’s length, so that WTL have no reward from, or involvement in, the contracts
40 between clients and these third party providers. We are told (again by Mr Glaister) that WTL’s sole involvement is to provide clients with a booklet containing the

contact details of these third party providers. But we have no witness statements from any of these providers. We do not even have a copy of the booklet which is said to set out their details.

58. The recipients of the disputed services are the clients. Again, we have no
5 witness evidence from any client as to what services were provided by WTL, from
their first contact, through the period leading up to the wedding, at the wedding itself,
or afterwards. This is in contrast, for example, to *Best Images Ltd v HMRC* [2010]
UKFTT 175 (TC) (“*Best Images*”), a case about the VAT status of supplies made for
the purposes of weddings from that company’s premises, known as “Vickram’s
10 Occasional Palace.” In *Best Images*, not only did the proprietor give evidence, but so
too did Lawrence Bankesfay, a customer of the appellant who had held a party at
Vickram’s, and Balbir Jhawar, another customer who had arranged his niece’s
wedding celebration at Vickram’s, see [9] of that decision.

59. Not only do we have no witness evidence, but we have no letters or email
15 communications between any clients and Mrs Glaister. The only evidence we have
from clients are the testimonials on the website: these were provided by HMRC and
criticised by Mr Southern, and are discussed at §64 below.

60. We do not go so far as to say that we draw an adverse inference from the
absence of Mrs Glaister and her PA, from the lack of third party evidence, from the
20 absence of any client witnesses, or from the failure to provide contracts setting out the
relationship between WTL of the one part and Jacaranda and Mr Parker of the other,
but we take the absence of this evidence into account, along with other factors, when
deciding the weight to give to the material which has been provided.

Mr Glaister’s evidence

25 61. Mr Glaister did not run this part of the business: he had other responsibilities –
for the farm, for the employees, for property maintenance, and for the gardens. As we
have already stated, we place less weight on his evidence because he is telling us what
he understands happens in a different part of WTL’s business, with which he was not
normally involved.

30 62. He also gave very guarded oral evidence. This was manifested in vague replies
to straightforward questions, such as the basis of payments made by Jacaranda to
WTL. He appeared to us to bolster some of his responses so as to make them more
favourable to the company’s case: for example, he was asked three times over the
course of his evidence how often he and Mrs Glaister were away when a wedding was
35 taking place at the Hall: with each successive reply the frequency of their absences
increased. We found that he exaggerated the role played by Jacaranda.

63. Mr Singh described him as giving “self-serving” evidence, and if by that he
means Mr Glaister tried not to give any evidence which would be adverse to his case,
that too was our overall impression. There were very occasional flashes of frank
40 honesty, such as when he spoke of “ghastly” weekends with three successive
weddings. Overall, however, we found his evidence to be not entirely reliable.

The testimonials

64. Extracts from correspondence from satisfied clients are included on the website as “testimonials,” on which HMRC placed considerable weight. Mr Southern said they had “very little evidential value” and were simply “expressions of appreciation as to how the wedding event was enjoyed.”

65. The testimonials were placed on the website by WTL and there was no suggestion they were not genuine. It is WTL who now asks us to ignore them. It would have been a relatively easy matter for WTL to provide either client correspondence or client witness evidence in order to rebut the picture painted by these testimonials, but none has been provided.

66. In deciding whether, and if so how much, weight can be placed on the testimonials, we take into account the fact that they are extracts from correspondence and not complete documents, and also that they have been selected by WTL to attract new clients. We cannot place the same weight on the testimonials as we would on a formal witness statement tested in cross-examination. With these caveats, we nevertheless find that they constitute genuine third party evidence on which reliance can be placed.

The website and the Brochures

67. Mr Singh also invites the Tribunal to place weight on the material on the websites and in the Brochures. Mr Southern submits that these, too, are of “limited evidential value” because “their purpose is to attract custom.”

68. We accept that the purpose of the websites and the Brochures is to advertise, and we must therefore be alert for, and discount, elements of “puff” or “hype.” But both nevertheless provide documentary evidence of what WTL are telling the marketplace about its supplies. If other evidence contradicts the websites or the Brochures, we must decide which we prefer, just as we would in any other case where there is a conflict of evidence.

Further findings of fact: Jacaranda

69. We now move on to make further findings of fact about the issues in dispute, beginning with Jacaranda.

Jacaranda’s business

70. Mr Glaister told us that Jacaranda provides wedding catering at other venues. This was unchallenged and we find as a fact that Jacaranda provides catering services at other venues and not only at the Hall.

71. The Wedding Brochure describes the kitchen at the Hall as “well-equipped” and Mr Glaister told us that it was “re-equipped” in 2007-08 “to allow a higher standard of catering.” These statements weren’t easy to reconcile with his other evidence, that Jacaranda brought with them all their kitchen equipment – not merely bowls and other relatively easily portable items, but including even refrigerators. However, Mr Glaister agreed with Mr Singh that WTL had equipped the kitchen with sinks, plumbing, heating, a hot water boiler, and ovens. We find that Jacaranda bring with

them most of the equipment they need to provide the wedding catering, but that the basic kitchen infrastructure is provided by WTL.

Does Jacaranda have contact with other suppliers before the wedding?

5 72. We next consider whether Jacaranda contacts other third party suppliers before the wedding.

73. The Jacaranda itinerary begins by saying:

10 “At Jacaranda our aim is to make your special day a happy and enjoyable experience. Please therefore fill in the form below and return to us before the date specified (please add any further information you feel is important.)”

15 74. Underneath are boxes for name, date, final number of guests, top table format, and “confirmation of drinks.” In the centre are boxes asking for “Number of crew meals – bands, photographers, etc”; the name and number of florist; the name and number of photographer and of the wedding cake supplier. Because Jacaranda asks the client to complete these details, we find that it does not know them beforehand, so has no role in finding these suppliers.

20 75. In answer to a question from the Tribunal, Mr Glaister said that before the wedding Jacaranda might have contact with the provider of alcohol and the cake maker, but not with other suppliers. We find as a fact that although Jacaranda does not help the client find any other suppliers, it may have contact with the provider of alcohol and the cake maker, after they have been selected by the client.

Does Jacaranda have a wider role other than providing the catering?

76. A single testimonial refers to Jacaranda:

25 “Just a note to say thank you Rosie (Ramster Hall) and Sara (Jacaranda Wedding Catering) so much for all your help in making Liz and Oscar’s wedding such a wonderful day. All the guests were so impressed with the venue, the food and the beautiful gardens. And with your guiding hands it went without a hitch.” [Parents of the bride]

30 77. Although the English possessive adjective can be either singular or plural, the natural reading of this testimonial is that “*your* guiding hands” refers to both Rosie (Mrs Glaister) and Sara. But the extract does not say whether Sara was only “guiding” the catering, whether she made a wider contribution, or whether the “help” she provided was only on the wedding day. We find that this testimonial does not provide us with reliable evidence about the role played by Jacaranda.

35 78. When Mr Glaister was being pressed by Mr Singh as to how often Mrs Glaister was present at the weddings, he described Jacaranda as “an event organiser on site.” This was not a phrase used anywhere else in the evidence and it contrasted with that given in his witness statement, where he had said:

40 “The Caterer [Jacaranda] is responsible for meeting and greeting, assistance with coats, serving food and drinks, arranging furniture,

assisting with departure of Hirer's guests and returning the hall to the condition of the commencement of the hire."

79. There is a big difference between being the "event organiser on site" and the carrying out of routine and minor tasks such as collecting coats and delivering them back to their owners at the end of the day.

80. Other evidence about the role of Jacaranda is provided by the Jacaranda itinerary. This includes a timetable for the event, headed "Wedding itinerary – please feel free to change the order below as it suits." There follows a plan, with one column giving times, the second giving the event (reception drinks, speeches, cake cutting etc) and the third setting out the drinks and any comments. In the example provide to us, the only client comment which suggests any wider role for Jacaranda is the comment relating to the arrival of evening guests at 8pm:

"glass of pink sparkling Cremant on arrival. Please hold guests in Great Hall if speeches still ongoing."

81. We accept, in reliance on this comment in the Jacaranda itinerary, that Jacaranda had *some* role in co-ordinating the day itself – such as to prevent evening guests flowing from one room to another, and we find this to be consistent with Mr Glaister's witness statement. We find that his oral evidence, that Jacaranda was the "event organiser on site," was an exaggeration and that Jacaranda did not have any overall organising role on the day of the wedding.

Why WTL used Jacaranda as the sole supplier

82. Mr Glaister said that using Jacaranda as the sole caterer saved time which would otherwise be spent explaining how the dining area and kitchen worked; it reduced the risk of damage which might otherwise occur when moving equipment in and out of the kitchen, and that from experience WTL knew Jacaranda would leave the premises as they found them. He added that they also knew how to lock up the building when they left and that:

"any shortcomings in the caterer will be blamed on us by the hirers. We have confidence in the high standard of service which Jacaranda supplies. We do not want a successful hiring to be ruined by bad catering."

83. We accept this evidence.

Payments between Jacaranda and WTL

84. How Jacaranda is paid is a different factual issue from how the business was run on a day to day basis: that was Mrs Glaister's domain. Rather, it is a matter of the income received and the profitability or otherwise of WTL. Mr Glaister is a director of that company, and signed the accounts.

85. Mr Glaister told us that Jacaranda pays WTL for the hire of the kitchen at the Hall. The statutory accounts showed a figure for "Long Hall Hire Income" of £215,040 and a figure for "rent receivable" of £22,147. Mr Glaister said that the latter "probably" related to rent received from the other cottages on the estate and that the

amount paid by Jacaranda was “probably” included in the figure for Long Hall Hire Income.

5 86. We asked Mr Glaister how the payment was calculated, for example, was it a fixed or variable charge, and if the latter, did it vary according to the number of people attending the wedding, the price paid for the catering, or to some other factor. Mr Glaister initially said “it may vary” then that he was “not sure” and finally that it “might be roughly the same.”

10 87. Given that Mr Glaister is a director of WTL, we find it unlikely that he does not know the basis on which Jacaranda paid for the hire of the kitchen. We find that his initial response, that the amount paid by Jacaranda “may vary”, was the most reliable, and that he then sought to row back from that answer as he considered its possible implications.

15 88. We find as a fact that the amount paid to WTL by Jacaranda was included in the “Long Hall Hire Income” i.e., as part of the income received for weddings and other events. We also find that amount paid varied in some way, possibly in relation to Jacaranda’s income, or the number of guests, or the price charged by Jacaranda, or that company’s profits.

Further findings of fact: the price

20 89. WTL charges up to £4,300 per wedding. Mr Singh invited the Tribunal to find that this figure was so high that it must include, not only the room hire costs, but also the provision of a wedding planning and co-ordination service provided by Mrs Glaister and her PA.

25 90. However, no evidence of comparators was provided to the Tribunal. There is no basis on which we can infer, from the price itself, any finding of fact about the nature of supplies being provided.

Further findings of fact: Mrs Glaister’s role

91. The most contentious factual issue in dispute was Mrs Glaister’s role and that of her PA. This section of our decision sets out the evidence and the parties’ submissions, followed by our findings of fact.

30 The documentary evidence

92. The Wedding Brochure includes the following statements:

“every wedding is different and dealt with on a very personal and intimate level.”

35 “every civil wedding ceremony is different and is planned uniquely for the Bride and Groom, their family and friends.”

93. The website says:

“Ramster Hall is our lovely family home, our uniqueness is dependent on that.”

“hope you have a wonderful day here and please do email me if you have any further questions [email address for ‘rosie’].”

94. Under the heading “wedding planning, suppliers and services” is this paragraph:

5 “we have a great in-house disco and a varied list of reliable, professional suppliers and services to help you with your wedding planning. No matter what you want, we are here to help you achieve the perfect wedding day that will be beyond all your expectations.”

95. The Brochures both include this statement:

10 “we always aim to exceed your expectations and can help with your planning by putting you in touch with excellent local suppliers to help the day run smoothly.”

96. The statutory accounts, under the heading of “principal activity” says: “the principal activity of the company continued to be that of providing a wedding service.”

15 97. Another source of evidence is the testimonials, which are from named individuals, most of whom appear to be the newly married couple, although some are the bride’s parents. The first has already been set out earlier in our decision but is repeated here for ease of reference:

20 (1) “Just a note to say thank you Rosie (Ramster Hall) and Sara (Jacaranda Wedding Catering) so much for all your help in making Liz and Oscar’s wedding such a wonderful day. All the guests were so impressed with the venue, the food and the beautiful gardens. And with your guiding hands it went without a hitch.” [Parents of the bride]

25 (2) “...On the day we felt totally relaxed in Ramster’s special atmosphere and the professional way in which the whole day was managed.” [Parents of the bride]

30 (3) “Thank you for all your help with our wedding, we had so many compliments on the venue, it really is quite special. We shall remember it fondly. Thank you for your friendly and efficient organisation, which ensured the day went off without a hitch. Much appreciated.”

(4) “Just wanted to say a big THANK YOU to you for all your help at and before our wedding, the venue is really fantastic and everyone loved it.”

(5) “Thank you so much for all your help with our big day in June. You made all the planning so easy for us...”

35 (6) We are writing to thank you for the amazing care and attention you gave to our wedding, we had the most wonderful day at Ramster and felt so well looked after by everyone, all the elements pulled together to a wonderful day thanks to you and your great list of suppliers.”

40 (7) “...The scheme you have for recommending specialists – caterers, florists, photographers and music was enormously helpful both in planning and on the

day. You all worked so well together with the result that the day goes wonderfully smoothly. Thank you too for your personal help. It was lovely to be greeted at the door by you and the registrars and ushers...”

5 (8) “You made us all feel so welcome for the start. The unique family history of Ramster created a relaxed yet special atmosphere...”

(9) “May I say how much we all enjoyed the day at Ramster Hall, the arrangements worked beautifully...”

(10) “Thank you so much for all your help in organising the wedding in the weeks leading up to it.”

10 *Mr Glaister’s evidence*

98. Mr Glaister said in his oral evidence that Mrs Glaister and her PA showed potential clients round, and sent out invoices and other paperwork. She also provided the clients with a list of potential suppliers for the services WTL did not provide, such as flowers, photography, accommodation and transport. He denied that she would
15 recommend any particular supplier, and insisted that she simply provided the list, and that was all. However, he accepted that clients met third party suppliers at the Hall, because it was “more convenient to be there” and that Mrs Glaister (or her PA) would need to be involved in setting up these meetings, as she had to give access to the Hall.

99. Mr Glaister said that the weddings were planned and co-ordinated entirely by
20 the bride, groom and/or their families, using the list of suppliers and with help from Jacaranda. When the testimonials were put to Mr Glaister in cross-examination, he said that that the clients may have confused WTL staff with Jacaranda staff.

100. He said that “the only part [of the wedding day] Mrs Glaister is there for is the civil ceremony” and this is only because it was a requirement of the wedding licence
25 that a “responsible person” attend the ceremony. The ceremony lasted for only around 20-30 minutes. But even this responsibility, he said, could be delegated to another employee of WTL.

101. In the course of his evidence, his assertions as to the insignificance of Mrs Glaister’s attendance at the weddings strengthened. At first he said “it is not
30 uncommon for us not to be there at all,” later that “quite often we will be away” and finally “we are not routinely present on the day.” However, when there are three weddings in succession, usually over a weekend, he said that he and his wife always remain at the Hall. As already noted, he described these weekends as “ghastly.”

102. He was asked what happened when clients were unhappy about some aspect of
35 the wedding, such as if the coach company turned up late to collect guests. He said that the disappointed clients “will tell us.” He accepted that “a bad wedding” would “damage Ramster’s reputation.” As we have already recorded, he said that “any shortcomings in the caterer will be blamed on us by the hirers.”

103. Mr Glaister was also asked about the accounts description of the company’s
40 principal activity as being “providing a wedding service” and said “I wouldn’t use [that phrase] now.”

Submissions

104. Mr Southern invited the Tribunal to find, on the basis of Mr Grainger's evidence, that Mrs Grainger and her PA provided an "administrative facility" and that there was "no interaction" between WTL and the client "other than the provision of administration services" and occasionally playing a purely passive role in the civil ceremony. As we have already noted, he submitted that the testimonials, the Brochures and the website had little evidential value. This picture was, he said, consistent with the T&C, which made no reference to services other than the hire of the premises.

105. Mr Singh said that, through the website and the Brochures, WTL has represented that it will help clients "achieve the perfect wedding" and that the testimonials show that this is what was provided. The website and the Brochures are not just advertising puff. Mrs Glaister provides "a guiding hand," and the extent of her involvement is clear from the repeated comments in the testimonials. The accounts correctly describe what is being provided as a "wedding service."

Was there confusion between WTL and Jacaranda?

106. We first considered Mr Glaister's suggestion that clients had confused Jacaranda staff with WTL staff when writing the testimonials. For the following reasons, we do not accept it.

107. First, as we have already found, Jacaranda is not an event organiser and its role before the wedding is limited to catering and occasional contact with the cake-maker and the supplier of alcohol. So the references to "all your help in organising the wedding in the weeks leading up to it" and "all your help at and before our wedding" can only refer to WTL, not to Jacaranda.

108. Second, in the phrase "all the elements pulled together to a wonderful day thanks to you and your great list of suppliers" the reference to *your great list of suppliers* can only refer to WTL, because it is WTL not Jacaranda that has that list. It follows that it can only be Mrs Glaister and her PA who "pulled together" the various elements to make the day go smoothly.

109. Third, only one testimonial mentions "Sara from Jacaranda" and that client has clearly not confused Jacaranda with WTL, because "Rosie (Ramster Hall)" is mentioned separately.

110. Fourth, all the testimonials are on the www.ramsterweddings.co.uk site, so these are letters or emails sent to WTL not to Jacaranda (which, as we know from Mr Southern, has its own site). Clients contract directly with Jacaranda, and agree the catering arrangements directly with that company, and so must have direct email contact.

Findings of fact about Mrs Glaister's role before the wedding

111. We first considered the promises: the Wedding Brochure says that each wedding will be dealt with "on a personal and intimate level" and be "planned uniquely for the Bride and Groom." The contact for "any further questions" is Mrs

Glaister. Those questions are not limited to the list of suppliers: the website says “no matter what you want, we are here to help you.”

112. That Mrs Glaister delivered on these promises can be seen from the testimonials: *with your guiding hands it went without a hitch; thank you for all your help with our wedding; thank you for your friendly and efficient organisation, which ensured the day went off without a hitch; all your help at and before our wedding; all your help with our big day; you made all the planning so easy for us; the amazing care and attention you gave to our wedding; thank you so much for all your help in organising the wedding in the weeks leading up to it; all the elements pulled together to a wonderful day thanks to you and your great list of suppliers.*

113. This is consistent evidence from a range of clients, and we find it more reliable than that provided by Mr Glaister. We accept Mr Singh’s submission that the testimonials demonstrate that the promises made in the Brochures are delivered by WTL, and that putting these testimonials on the website is itself evidence of the service offered by WTL.

114. We find as a fact, in reliance on the Brochures, the website and the testimonials, that Mrs Glaister and her PA were actively involved in the planning and co-ordination of the event from the initial query from the client to the date of the wedding.

Findings of fact about Mrs Glaister’s role during the wedding

115. We also prefer the testimonials over Mr Glaister’s evidence when we come to Mrs Glaister’s role during the wedding itself. As we have already observed, his evidence on this issue was amended several times – from the triple negative of “it is not uncommon for us not to be there at all,” through “quite often we will be away” to “we are not routinely present on the day.” If weddings could routinely take place without anyone present from WTL, we found it difficult to understand why Mr and Mrs Glaister always remained at the Hall when there were three weddings in succession, given that Mr Glaister described these weekends as “ghastly.”

116. The testimonials paint a different picture. They say “*Thank you for your personal help. It was lovely to be greeted at the door by you and the registrars and usher; you made us all feel so welcome at the start; thank you for all your help at and before our wedding; on the day we felt totally relaxed in Ramster’s special atmosphere and the professional way in which the whole day was managed*” and “*you all worked so well together with the result that the day goes wonderfully smoothly.*”

117. These testimonials show Mrs Glaister greeting guests at the door and making them welcome; managing “the day” professionally, and helping “at” the wedding. They paint a picture of Mrs Glaister being present at least at the beginning of the wedding, providing a welcome, and being available to ensure the event goes smoothly. If these testimonials represent one-off, occasional examples, why were they included on the website to show what couples can expect if they get married at the Hall?

118. In reliance on the testimonials we find that Mrs Glaister and/or her PA are present or available during the wedding itself. This is consistent with our earlier finding, that Mrs Glaister is involved in the co-ordination and planning of the weddings; she does not simply provide a list of suppliers and step back.

5 119. We therefore do not accept Mr Glaister’s evidence (which was robustly challenged by Mr Singh during cross-examination) that his wife and/or her PA are not “routinely” present at the weddings, but that the opposite is the case: we find that she and/or her PA are *routinely* present, although we accept they are not *invariably* there.

10 120. Our finding is also consistent with Clauses 30 and 33 of the T&C. The former deals with refusing to serve alcohol to those who appear to be under its influence: it says “the decision of the Owner or the catering staff is final,” so that either Mrs Glaister or Jacaranda (“the catering staff”) could refuse service of alcohol to a guest.

15 121. Clause 33 allows either “the Owner” or “the front of house manager” to “request the removal from the Premises of any child, who, in her Opinion, is not being properly supervised.” Given the explicit references in the T&C to “the catering staff” and our earlier findings on Jacaranda’s role, we find that the phrase “front of house manager” is more likely than not to be a reference to another employee of WTL, such as Mrs Glaister’s PA.

20 122. In summary, we find that Mrs Glaister and/or her PA were actively involved in the planning and co-ordination of the event and continued to have that a role during the wedding itself.

Further findings of fact: the other suppliers

25 123. Mr Glaister was asked if there was any personal relationship between a member of his family and Mr Preston, the DJ. He was also asked if Mr Preston made any payment to WTL in exchange for the exclusive right to provide wedding discos. He answered no to both questions.

124. Although the absence of any financial payment from Mr Preston to WTL is surprising, given the arm’s length commercial context which Mr Glaister said existed, his evidence was unchallenged by Mr Singh and we accept it.

30 125. Mr Glaister said that WTL used Mr Preston because he was familiar with the Hall and was aware of the time limitations placed on the use of the venue; Mr Preston was also mindful that Mrs Glaister’s parents lived in a flat nearby and that noise could be an issue for them. We accept this statements as facts.

35 126. Mr Glaister said that none of the other suppliers on their approved list made any payment to WTL by way of commission or otherwise, for example, when they obtained work as a result of being on the approved list. This evidence too was unchallenged and we accept it.

Further findings of fact: summary

127. We summarise our further findings of fact as follows:

- 5 (1) WTL used Jacaranda because (a) having a single caterer saves time before and after a wedding, which would otherwise be spent in explaining the kitchen/dining area and locking up; (b) it reduces the risk of damage to the kitchen from moving equipment; and (c) Jacaranda had been found to be reliable, so using that company minimised the risk to WTL’s reputation.
- (2) Before the wedding day, Jacaranda had contact with the wedding cake supplier and the provider of alcohol but did not assist in choosing them and had no contact with other third party suppliers.
- 10 (3) Jacaranda had *some* co-ordinating role on the wedding day itself – such as to prevent evening guests flowing from one room to another.
- (4) Jacaranda’s payments to WTL are not fixed but vary in relation to headcount, turnover or some other factor.
- (5) Mrs Glaister and her PA actively co-ordinate and plan the weddings with clients, and do not simply hand out a list of approved suppliers.
- 15 (6) Mrs Glaister and/or her PA are normally present at the weddings to greet the guests and make sure it all goes according to plan.
- (7) No payment (such as commission) is made by Mr Preston or other suppliers to WTL when they supply services to WTL’s clients.

The contract between the parties

20 128. In *Secret Hotels 2 v HMRC* [2014] UKSC 16 (“*Secret Hotels2*”) at [34], Lord Neuberger said that the first step when analysing supplies for VAT purposes is to characterise the nature of the relationship between the parties in the light of the contractual documentation. The second step is to “consider whether that characterisation can be said to represent the economic reality of the relationship in the light of any relevant facts.”

25

129. In *Secret Hotels2* the parties “entered into a written agreement which appears on its face to be intended to govern the relationship between them.” The hoteliers had signed an Accommodation Agreement and the customers had signed the website terms. As is apparent from the analysis below, the position in this case is not so straightforward.

30

The parties’ submissions

130. The first explicit mention of *Secret Hotels2* came in Mr Southern’s closing submissions. However, he had opened WTL’s case by submitting that the question before the Tribunal was “what is the essential subject matter of the contract”; he ended by saying that in *Secret Hotels2* the Supreme Court “was not saying anything new” – the Tribunal’s task was “to find the legal substance of the transaction” and the “starting point” was the contract.

35

131. Given that *Secret Hotels2* was first referred to in closing, we asked Mr Singh if HMRC wished to respond. He said he agreed with Mr Southern that the Tribunal’s task was to find “the essential subject matter of the contract,” and had no further submissions.

40

The T&C, the Application and the Price List/website

132. Both parties accepted that the contract includes the T&C. It is, however, self-evident that the T&C do not contain the entire contract, because they do not include the price to be paid; the date on which the wedding takes place; the requirement that
5 only Jacaranda be used for catering, or even the name of the client. These terms are all contained in the Application. Furthermore, both parties accepted that it was a condition of the contract that the client has “exclusive” use of the Rooms, but this term is in neither the T&C nor the Application; instead it is set out in the Price List and the website.

10 133. The terms of the contract between WTL and a client are therefore not all the contained in a single document, but are found in the T&C, the Application Form and the Price List/website.

134. We note that if WTL is supplying a service and not simply hiring out premises, some of the T&C may be void under consumer protection law. For example, Clause
15 14 says that “the Owner gives no warranty that the Premises are legally or physically fit for any purpose” and Clause 35 disclaims liability where a wedding is cancelled or interrupted because of “any loss due to any breakdown of machinery, failure of supply of electricity, leakage of water...” etc. But if those terms are unenforceable, that is a consequence of what is being supplied; it does not determine the nature of the supply.
20 And of course our jurisdiction does not extend to consumer protection law. For the purposes of this decision, we have therefore simply accepted that the parties agreed to the terms set out in the T&C, whether or not all those terms can be enforced.

Planning and organising: a representation and/or a term?

135. The Wedding Brochure, as we have already seen, says that “every wedding is
25 different and dealt with on a very personal and intimate level” and “every civil wedding ceremony is different and is planned uniquely for the Bride and Groom, their family and friends.” The website says “No matter what you want, we are here to help you achieve the perfect wedding day that will be beyond all your expectations”; it also contains the testimonials.

30 136. Mr Southern submitted that the purpose of the Brochures and the websites were “to attract custom,” and we concur. He also said that the testimonials were “simply expressions of appreciation” and here we disagree. While the *clients’* purpose in writing the letters displayed as “testimonials” was to express appreciation, *WTL’s* purpose in putting these extracts on its website is to show potential clients that WTL
35 will deliver on the promises in the Wedding Brochure and elsewhere on the website.

137. We find that the statements set out at §135, taken together with the testimonials, were representations that WTL would provide organisation and planning to help with the wedding, and that this assistance went beyond the mere provision of a list of suppliers.

40 138. Were these representations terms of the contract? In *Inntrepreneur Pub Co v East Crown* [2000] 2 Lloyds Rep 611, Lightman J said at [10]:

“The relevant legal principles regarding the recognition of pre-contractual promises or assurances as collateral warranties may be stated as follows:

- 5 (1) a pre-contractual statement will only be treated as having contractual effect if the evidence shows that parties intended this to be the case. Intention is a question of fact to be decided by looking at the totality of the evidence;
- 10 (2) the test is the ordinary objective test for the formation of a contract: what is relevant is not the subjective thought of one party but what a reasonable outside observer would infer from all the circumstances;
- 15 (3) in deciding the question of intention, one important consideration will be whether the statement is followed by further negotiations and a written contract not containing any term corresponding to the statement. In such a case, it will be harder to infer that the statement was intended to have contractual effect because the prima facie assumption will be that the written contract includes all the terms the parties wanted to be binding between them;
- 20 (4) a further important factor will be the lapse of time between the statement and the making of the formal contract. The longer the interval, the greater the presumption must be that the parties did not intend the statement to have contractual effect in relation to a subsequent deal;
- (5) a representation of fact is much more likely intended to have contractual effect than a statement of future fact or a future forecast.”

25 139. These principles were later adopted by the Court of Appeal in *Business Environment Bow Lane Ltd v Deanwater Estates Ltd* [2007] EWCA Civ 622 (“*Business Environment*”) at [46] *per* Morritt LJ and at [60] *per* Lloyd LJ.

140. The agreement between WTL and its clients was not reduced to a written contract intended to contain all the terms, so (3) of Lightman J’s list does not apply.
30 The representations are on the website at the time the parties contract, so there is no lapse of time (point (4) of the list). Given that almost all contracts deal with future facts and events, we found point (5) of Lightman J’s list more difficult, but note that in *Business Environment* at [47] Morritt LJ held that it applied to the facts of that case because “the representation relied on related to future events in unforeseeable
35 circumstances.” Here, in contrast, the representation is to help with the planning and organisation of the specific wedding booked by the client.

141. We thus consider points (1) and (2) of Lightman J’s list, namely whether a reasonable outside observer would infer from all the circumstances, taking into account the totality of the evidence, that the parties intended the representations about
40 planning and organisation to be terms of the contract. In carrying out that exercise, we take into account the following:

- (1) WTL does not simply promise to “deal with every wedding on a very personal and intimate level” and to plan every civil wedding “uniquely for the bride and groom.” It also provides the testimonials showing that it delivers on

its promises. We find that it is reasonable to infer that (a) WTL considers that it has this obligation and (b) clients expect this level of support and assistance.

5 (2) If there is a problem with the weddings, such as in relation to transport, or to Jacaranda, the client complains to WTL, and Mr Glaister knew and expected this would happen: for example, he said “any shortcomings in the caterer will be blamed on us by the hirers.” From this it is reasonable to infer that both parties saw WTL as responsible for the event planning and organisation, such that this was a term of the contract.

10 (3) Although only one of the testimonials refers to “the professional way in which the whole day was managed,” the sheer number and repetition of the references to the help provided by WTL, makes it unlikely that a client reading these testimonials would think that provision of this “help” was not part of its contract with WTL.

15 142. We thus find that the reasonable informed observer would find, on the evidence, that the contract included a term that WTL will help with the planning and organisation of the wedding.

Conclusion

20 143. Based on the above analysis, the contract includes written terms from the T&C, the Application and the Price List/website as well as a term that WTL will help with the planning and organisation of the weddings.

144. This is entirely consistent with the facts as found, and the contract therefore represents the economic reality of the relationship between the parties.

Single supply?

25 145. In *Card Protection Plan v C & E Comrs* (Case C-349/96) [1999] STC 270, the CJEU held that:

30 “[29] ...every supply of a service must normally be regarded as distinct and independent and second, that a supply which comprises a single service from an economic point of view should not be artificially split, so as not to distort the functioning of the VAT system, the essential features of the transaction must be ascertained in order to determine whether the taxable person is supplying the customer, being a typical customer, with several distinct principal services or with a single service.

35 [30] There is a single supply in particular in cases where one or more elements are to be regarded as constituting the principal service, whilst one or more elements are to be regarded, by contrast, as ancillary services which share the tax treatment of the principal service. A service must be regarded as ancillary to a principal service if it does not constitute for customers an aim in itself, but a means of better enjoying the principal service supplied.”

40

146. In *Levob Verzekeringen BV v Staatssecretaris van Financien* [2006] STC 766, the CJEU said:

“[19] ...where a transaction comprises a bundle of features and acts, regard must be had to all the circumstances in which the transaction takes place in order to determine, firstly, if there were two or more distinct supplies or one single supply...

5 [20] Taking into account, firstly, that it follows from Article 2(1) of
the Sixth Directive that every transaction must normally be regarded as
distinct and independent and, secondly, that a transaction which
comprises a single supply from an economic point of view should not
be artificially split, so as not to distort the functioning of the VAT
10 system, the essential features of the transaction must in the first place
be ascertained in order to determine whether the taxable person is
making to the customer, being a typical consumer, several distinct
principal supplies or a single supply (see, by analogy, *CPP* , paragraph
29).

15 [21] In that regard, the Court has held that there is a single supply in
particular in cases where one or more elements are to be regarded as
constituting the principal supply, whilst one or more elements are to be
regarded, by contrast, as ancillary supplies which share the tax
treatment of the principal supply (*CPP* , cited above, paragraph 30,
20 and Case C-34/99 *Primback* [2001] ECR I-3833, paragraph 45).

[22] The same is true where two or more elements or acts supplied by
the taxable person to the customer, being a typical consumer, are so
closely linked that they form, objectively, a single, indivisible
economic supply, which it would be artificial to split.”

25 147. On the facts as found, the clients are provided with the use of the Rooms for the
wedding reception, space for parking, use of the Courtyard Garden, assistance with
planning, tables and chairs, cleaning of the premises before and after the event,
heating and lighting, access to the gardens for photographs, links to other tried and
tested suppliers, and (at the client’s option) the use of the Brick Hall and/or the
30 attendance of an approved person if there is a civil ceremony.

148. Both Counsel submitted that WTL was making a single supply which it would
be artificial to split. We agree. From the point of view of the client, all the elements
listed in the previous paragraph objectively form a single indivisible economic supply,
for the same reasons as set out by the Tribunal in *Best Images* at [30], although the
35 facts in that case were of course not identical to those in this case:

40 “They were closely linked because they were acquired together in a
single bargain, because the benefit provided by the additional services
was part of what the customer sought from the use of the premises (a
smooth ceremony), because the additional support was linked to the
use of the premises for the ceremony both temporarily and physically,
and because, for the typical customer, the additional support was no
use without the premises and the premises would not be so desirable
without the support and care of [the owners].”

149. The parties then disagreed: Mr Southern said that the supply was an exempt
45 licence to occupy land, and Mr Singh that it was a standard rated supply of services.

We next consider whether or not the supply made by WTL consists of, or includes, the leasing or letting of immovable property.

The law on the VAT exemption

150. It is settled law that the exemptions in the PVD are to be interpreted strictly: they are derogations from the general principle that VAT is to be levied on all supplies of goods or services made for consideration by a taxable person, see for example *Sweden v Stockholm Lindöpark AB* (Case C-150/99) [2001] STC 103 at [25] and many other cases. But exemptions must not be construed so narrowly as to deprive them of their intended effect, see *Belgium v Temco Europe SA* (Case C-284/03) [2005] STC 1451 (“*Temco*”) at [17].

151. Article 135(1)(l) of the PVD reads:

(1) Member States shall exempt the following transactions:

(a)-(k)...

(l) the leasing or letting of immovable property.

152. The following shall be excluded from the exemption provided for in point (l) of paragraph 1:

(a) the provision of accommodation, as defined in the laws of the Member States, in the hotel sector or in sectors with a similar function...

(b) the letting of premises and sites for the parking of vehicles

153. In the United Kingdom, these provisions are implemented by VATA, Sch 9, Group 1, Item 1, which reads:

The grant of any interest in or right over land or of any licence to occupy land...other than

(a)-(c)...

(d) the provision in an hotel, inn or similar establishment of sleeping accommodation or of accommodation in rooms which are provided in conjunction with sleeping accommodation or for the purpose of a supply of catering;...

(e)-(g)...

(h) the grant of facilities for parking a vehicle.

154. The term “similar establishment” in Item 1(d) is defined in Note 9:

(9) “Similar establishment” includes premises in which there is provided furnished sleeping accommodation, whether with or without the provision of board of facilities for the preparation of food, which are used or held out as being suitable for use by visitors or travellers.

155. The parties agreed that the scope of VATA Sch 9 Group 1 item 1 was no wider than the scope of Reg 135(1)(l) of the PVD, despite the different wording and structure of the two provisions.

155. In *Temco*, the CJEU summarised the jurisprudence of the Court on the meaning and scope of the exemption:

5 “[19] In numerous cases, the Court has defined the concept of the letting of immovable property within the meaning of Article 13B(b) of the Sixth Directive as essentially the conferring by a landlord on a tenant, for an agreed period and in return for payment, of the right to occupy property as if that person were the owner and to exclude any other person from enjoyment of such a right (see, to that effect, *Goed Wonen*, paragraph 55; Case C-409/98 *Mirror Group* [2001] ECR I-7175, paragraph 31; Case C-108/99 *Cantor Fitzgerald International* [2001] ECR I-7257, paragraph 21; Case C-269/00 *Seeling* [2003] ECR I-4101, paragraph 49; and *Sinclair Collis*, paragraph 25).

15 [20] While the Court has stressed the importance of the period of the letting in those judgments, it has done so in order to distinguish a transaction comprising the letting of immovable property, which is usually a relatively passive activity linked simply to the passage of time and not generating any significant added value (see, to that effect, *Goed Wonen*, paragraph 52), from other activities which are either industrial and commercial in nature, such as the exemptions referred to in Article 13B(b)(1) to (4) of the Sixth Directive, or have as their subject-matter something which is best understood as the provision of a service rather than simply the making available of property, such as the right to use a golf course (*Stockholm Lindöpark*, paragraphs 24 to 27), the right to use a bridge in consideration of payment of a toll (*Commission v Ireland*) or the right to install cigarette machines in commercial premises (*Sinclair Collis*, paragraphs 27 to 30).

25 [21] The actual period of the letting is thus not, of itself, the decisive factor in determining whether a contract is one for the letting of immovable property under Community law, even if the fact that accommodation is provided for a brief period only may constitute an appropriate basis for distinguishing the provision of hotel accommodation from the letting of dwelling accommodation (Case C-346/95 *Blasi* [1998] ECR I-481, paragraphs 23 and 24).”

35 156. Many earlier Tribunal cases have considered whether the exemption applies where property is used for a wedding, but in the majority the appellant was providing overnight accommodation and so engaged the relevant statutory provisions (Article 135(2)(a) of the PVD and Sch 9, Group 1, Item 1 (d) and Note 9 to the exemption, set out above). As WTL does not provide overnight accommodation, those provisions are not in point.

40 **Right to occupy as if owner and exclude any other person?**

157. It is common ground that, to come within the exemption, the client must have the right to occupy the property as if he were the owner and exclude any other person from its enjoyment, per *Temco* at [19].

45

Restriction on type of event

158. Mr Singh argued that the requirement at Clause 16 of the T&C that the client use that space only for the pre-agreed function of a wedding means that the client does not have the right over the space which an owner would have, to do what he wants with the space.

159. However, leases frequently restrict the type of activity which can be carried out in the let premises – for instance, a lease might permit only residential occupation, or only commercial occupation. In our judgment, that sort of restriction does not prevent the supply from coming within the exemption.

160. It is true that the T&C are narrower than the examples listed in the preceding paragraph: the client can only use the Rooms for the purpose described in the Application, so he must specify whether the Rooms are required for a wedding ceremony plus reception, or for a reception only. He cannot change his mind and hold a children’s party in the Rooms instead of a wedding. Of course, it is possible, perhaps even likely, that WTL would agree that the client could change the use in that way, but the T&C do not give him the right to do so.

161. Does this prevent the client from being able to occupy the property as if he were the owner? In our judgment, specifying the particular type of event, or even the exact event – such as a particular wedding – for which a space is being hired, does not of itself prevent the exemption applying. A landlord is entitled to decide that he will only let his land for certain purposes, and require that these be specified and agreed as a condition of that letting. So we find that WTL’s requirement that the Halls be used only for a specific wedding does not take it outside the exemption.

Use of Jacaranda

162. Catering is almost invariably an important part of a wedding reception. It is a condition of the contract between WTL and its client that Jacaranda provides the catering. Mr Southern said that this reflected WTL’s concerns as landlord: WTL knew Jacaranda was familiar with the building and would treat it properly, and the restriction was therefore “consistent with the care which a responsible property owner would wish to take of his property.”

163. Mr Singh disagreed, saying that preventing clients from engaging their own caterer means they do not have the right to occupy the Rooms as if they were the owner.

164. We have already found as facts that Jacaranda was used because:

- (1) having a single caterer saves time before and after a wedding, which would otherwise be spent in explaining the kitchen/dining area and locking up; and reduces the risk of damage to the kitchen from moving equipment: and
- (2) Jacaranda had been found to be reliable, so using that company minimised the risk to WTL’s reputation.

165. In reliance on those findings of fact, we disagree with Mr Southern, because:

(1) the convenience of Mr and Mrs Glaister is unconnected with the protection of the property;

(2) the risk of reputational damage if WTL uses a bad caterer is nothing to do with protecting the Rooms; and

5 (3) access to the kitchen is not part of the contract under which WTL supplies the disputed services to clients: instead, access is supplied to Jacaranda under a separate arrangement. WTL's concerns about moving equipment in and out of the kitchen cannot affect the categorisation of the services supplied by WTL to its clients.

10 166. We therefore agree with Mr Singh and find that a person who is in occupation of a property "as owner" for the purposes of holding a wedding reception would have at least some choice as to the caterer providing the wedding breakfast. The requirement that clients use only Jacaranda cannot be reconciled with the statutory exemption.

15 *Other restrictions*

167. WTL also has other rights. Mr Singh submitted that these "circumscribed" the client's rights to use the Rooms. Mr Southern again said they reflected the "care which the responsible property owner would wish to take of his property."

20 168. We agree with Mr Southern that some of the restrictions are property-related. These include WTL's right to require the removal of decorations which are likely to expose the Rooms to undue risk of fire (Clause 21); to stop the event if it involves a danger to the Rooms (Clause 17) and only to allow animals by consent (Clause 18). Similar clauses are in many lease agreements, and are unlikely to prevent the exemption applying.

25 169. Others, however, have little or nothing to do with protecting the property:

(1) Clause 20 prohibits the client from putting up notices or posters without the Owner's consent. This not only prohibits the use of (for example) pins, nails or adhesives which might risk causing damage to the fabric of a building; it is much broader, requiring permission for all posters and notices. Clause 21 is even more restrictive: it allows WTL to "require" the client to remove any notice which is, in the Owner's opinion "unseemly."

(2) WTL can also "put a stop to any meeting or entertainment not properly conducted" (Clause 17), and has discretion to decide what is meant by "properly conducted."

35 (3) Clause 30 says that WTL's decision as to whether a person should not be served alcohol is final, and this right is not limited to situations where WTL reasonably believes there to be a threat of property damage.

40 (4) Amplification in the courtyard is banned, and although the client is in occupation of the Rooms until midnight, he cannot play any music after 11.50pm, or after 10.00pm on Sunday. These restrictions have nothing to do

with caring for the property itself; their purpose is to minimise disturbance to the family who live in the Hall.

5 (5) Finally, if clients wants a disco, they must use “Mark the DJ.” We have already found as a fact, based on Mr Glaister’s evidence, that this is because Mr Preston is familiar with the Hall and aware of the time limitations placed on the use of the venue; he was also mindful that Mrs Glaister’s parents lived in a flat nearby and that noise could be an issue for them. Again, this is nothing to do with caring for the property but relates to the comfort and convenience of family members.

10 170. We find that these restrictions constitute interference with the rights of the client to use the property “as if he was the owner.”

Excluding others: CJEU law

171. In *Stichting ‘Goed Wonen’ v Staatssecretaris van Financiën* (Case-326/99) [2003] STC 1137, the CJEU said at [55] (emphasis added):

15 “The fundamental characteristic of such a transaction, which it has in common with leasing, lies in conferring on the person concerned, for an agreed period and for payment, the right to occupy property as if that person were the owner and to exclude any other person from enjoyment of such a right.”

20 172. These words were repeated in *C&E Comrs v Mirror Group* (Case C-409/98) [2001] ECR I-7175 at [31] and in *Seeling v Finanzamt Starnberg* (Case C-269/00) [2003] STC 805 and in *Sinclair Collis Ltd v C&E Comrs* (Case C-275/01) [2003] STC 898 at [25], where the principle was described as “settled.”

173. However, in *Temco* the CJEU said that:

25 “[24] ...as regards the tenant's right of exclusive occupation of the property, it must be pointed out that this can be restricted in the contract concluded with the landlord and only relates to the property as it is defined in that contract. Thus, the landlord may reserve the right regularly to visit the property let. Furthermore, a contract of letting
30 may relate to certain parts of a property which must be used in common with other occupiers.

[25] The presence in the contract of such restrictions on the right to occupy the premises let does not prevent that occupation being exclusive as regards all other persons not permitted by law or by the contract to exercise a right over the property which is the subject of the
35 contract of letting.”

174. The Court in *Temco* did not appear to consider that this analysis was in conflict with the settled case law that the tenant must be able to exclude “any other person.”

40 175. In reliance on this passage from *Temco*, Mr Southern said that although Clause 15 of the T&C allows a representative or agent of WTL “to enter the premises...at any time during the Hire Period,” this does not prevent the client from having an “exclusive” right. More generally, he drew our attention to the “exclusive” nature of

the agreement between WTL and the client, so that no other event could take place in the Rooms once a booking has been made.

176. We accept that the client has a right to occupy the Rooms to the exclusion of other clients. However, Clause 15 gives WTL's representative the right to enter the premises without permission and without any restriction as to time. This is clearly in conflict with the "any other person" of the earlier authorities, and is also a significant extension to "the right regularly to visit the property" referred to in *Temco*. In our judgment it conflicts with the client's right to use the Rooms "as owner."

Excluding others: the hotel argument

177. Mr Southern had a further argument. He said that a hotel room would have been within the exemption were it not specifically taken out by Article 135(2)(a) of the PVD, and by paragraph (d) to Sch 9, Group 1, para (d), and that the same approach should be taken to WTL's disputed supplies.

178. We noted that in *C&E Comms v Sinclair Collis Ltd* [2001] UKHL 30 Lord Scott at [68]-[71] said that it was not the case that "every transaction falling within an exclusion would, had it not been for the exclusion, have fallen within the exemption" and that whether a hotel room would, absent the exclusion, fall within the exemption would depend on the facts.

179. Further, even if Mr Southern were correct, hotel staff do not have an unrestricted right of entry at all times and without permission or due cause (such as an emergency). The position can be contrasted with that in *Dazmonda (t/a Sugar & Spice) v HMRC* [2014] FTT(TC) 337. The tribunal in that case (Judge Hellier and Mrs Gable) had to decide whether an adult entertainment club was making an exempt supply of land to dancers giving private performances in booths within the club. They decided at [64] that "if what was supplied was strictly limited to the element representing the booth, the supply would be a supply of land" having already found as facts at [60(3)] that the dancers had:

"the right to admit, or exclude, other persons of their choice to the booth subject to the right of the club to enter (and to terminate a use of the booth) if (a) there was an emergency or (b) the inhabitants were doing anything illegal or contrary to the club's licence."

180. WTL's right of entry is, by contrast, unrestricted.

Conclusion on right to occupy as owner

181. In summary, the client does not have the right to occupy the Rooms as if he was the owner because:

- (1) weddings almost invariably involve catering, and the client must use a specified catering supplier, Jacaranda;
- (2) if the client wants to hold a disco as part of the wedding, he must use Mr Preston's services;

(3) the client’s use of the Rooms is significantly restricted in other ways, such as in relation to the use of musical amplification and the putting up of posters; and

(4) WTL has an unrestricted right of entry.

5 **A relatively passive activity?**

182. The CJEU in *Temco* said that the leasing and letting of immovable property was a “relatively passive activity linked simply to the passage of time and not generating any significant added value,” in contrast to “something which is best understood as the provision of a service.”

10 183. Mr Singh argued that the payment was not even linked to the passage of time, because if there was no booking on the previous day, WTL allowed clients access to the Rooms on that earlier day. However, we find that this was at the discretion of WTL and not a term of the contract: early access depended entirely on whether there was another booking.

15 184. Mr Singh’s primary argument was much stronger: that the nature and extent of the services supplied by WTL meant that it was not “a relatively passive activity.” We agree.

185. We have found as facts that Mrs Glaister and her PA actively co-ordinate and plan the weddings with clients, and do not simply hand out a list of approved
20 suppliers; that this can continue for up to two years; that Mrs Glaister and/or her PA are routinely present at the weddings to greet the guests and make sure it all goes according to plan; and they are not simply there for 20-30 minutes to satisfy the legal requirement for an approved person to attend the civil ceremonies. WTL also allow access to the gardens for photographs, provide a list of third party suppliers and
25 arrange for the meetings with those suppliers to take place at the Hall.

186. As a result, we conclude that WTL is not engaged in “a relatively passive activity” but that there is “significant added value,” with the result that what is being supplied is the provision of a service.

187. In this context we also considered the contractual requirement that clients sign a
30 separate contract with Jacaranda, from whom WTL receives some variable payment. We thought that this arrangement was inconsistent with a “relatively passive” supply of immovable property, but as we had no submissions on this point and because we did not need to resolve it in order to decide the appeal, we have not taken it into account in coming to our decision.

35 **Decision**

188. On the basis of the foregoing, we find that here was a single supply which did not consist of “the grant of an interest in or right over land or of any licence to occupy land.” As a result, the supply is standard rated and WTL’s appeal is dismissed.

Appeal rights

189. This document contains full findings of fact and reasons for the decision. Any party dissatisfied with this decision has a right to apply for permission to appeal against it pursuant to Rule 39 of the Tribunal Rules. The application must be
5 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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**ANNE REDSTON
TRIBUNAL JUDGE**

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RELEASE DATE: 5 December 2014