



TC04183

Appeal number: TC/2013/04219

MONEY LAUNDERING –whether appellant fit and proper to be beneficial owner of business subject to registration under the Money Laundering Regulations 2007 - No – Appeal dismissed

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

MICHAEL HUNT

Appellant

- and -

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

**TRIBUNAL: JUDGE TIMOTHY HERRINGTON
 MISS SANDI O’NEILL**

Sitting in public at 1 Edward Street, Brighton on 24 March and 10 October 2014

The Appellant in person

**Ms Yasmin Yasseri, Counsel, instructed by the General Counsel and Solicitor to
HM Revenue and Customs, for the Respondents**

DECISION

Introduction and Background

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1. The Appellant (“Mr Hunt”) appeals against a decision of the Respondents (“HMRC”) dated 5 April 2013 (confirmed after review on 22 May 2013 and 7 May 2014) to refuse an application for registration under the Money Laundering Regulations 2007 (the “Regulations”).

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2. On 25 February 2013 Serviced Office Company Limited (“the Company”) applied for registration as a trust or company service provider pursuant to the Regulations. Mr Hunt, as required by the Regulations, applied for a fit and proper test on the basis that he was a beneficial owner of the Company, as he owned the whole of its issued share capital.

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3. On 5 April 2013 HMRC informed the Company that its application could not currently be accepted because Mr Hunt had failed the fit and proper test. Mr Hunt was informed by HMRC on 16 April 2013 that he had failed the fit and proper test because in 1993 he was found guilty and imprisoned for 8 years for conspiracy to defraud and was disqualified from being a company director for 10 years. HMRC stated that these

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circumstances led them to believe that there would be a higher risk of money laundering so based on this past performance Mr Hunt had failed the fit and proper test.

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4. At some time thereafter, Mr Hunt disposed of his shares in the Company to his wife who passed the fit and proper test. As a consequence the Company was duly registered under the Regulations.

5. Mr Hunt nevertheless wishes to pursue his own application which if successful would enable the shares held by his wife to be transferred back to him.

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6. Accordingly on 24 April 2013 Mr Hunt requested a review of the decision on the basis that the conviction was over 20 years ago, and he had long since ceased to be subject to a disqualification order. His request concluded as follows:

“The mission of the HM Prison Service is to rehabilitate prisoners and release them as law abiding citizens. I consider that I have satisfied the authorities in their philosophy and feel that it is very unfair to put such an obstacle in the way of my company, which is completely law abiding.”

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7. On 22 May 2013 HMRC informed Mr Hunt that the review decision was to uphold the original decision.

8. On 11 June 2013 Mr Hunt appealed against this decision to the Tribunal pursuant to Regulation 43 of the Regulations. In his grounds of appeal Mr Hunt stated:

“I do recognise that my conviction is a specified reason for failing the test under the relevant act, but am disappointed that rehabilitation and repentance seems not to have been considered.”

- 5 9. In its statement of case HMRC contended, as the sole ground for contesting the appeal, that as a result of Mr Hunt’s conviction for fraud which led to a sentence of 8 years imprisonment and disqualification as a company director for 10 years in 1993 it cannot register the Company. HMRC stated that they did not consider Mr Hunt, who would be effectively directing the business, to be a fit and proper person

The Law and relevant Guidance

- 10 10. The Money Laundering Regulations 2007 implement the United Kingdom’s obligations under Directive 2005/10/EC which relates to the prevention of use of the financial system for the purpose of money laundering and terrorist financing. The Regulations provide for various steps to be taken by the financial services sector and other persons to detect and prevent money laundering and terrorist financing.
15 Obligations are imposed on “relevant persons” defined in Regulation 3. These are credit and financial institutions, auditors, accountants, tax advisors and insolvency practitioners, independent legal professionals, trust or company service providers, estate agents, high value dealers and casinos.

- 20 11. The definition of “trust or company service providers” in Regulation 3(10) includes in sub paragraph (c):

“Providing a registered office, business address, correspondence or administrative address or other related services for a company, partnership or any other legal person or arrangement.”

- 25 12. By virtue of Regulation 23 HMRC are the supervisory authority for trust or company service providers which are not supervised by any other specified body.

13. Regulation 25 requires HMRC, inter alia, to maintain a register of trust or company service providers for which they are the supervisory authority.

- 30 14. Regulation 26 provides, inter alia, that a person in respect of whom HMRC are required to maintain a register under Regulation 25 must not act as a trust or company service provider unless he is included in the register and Regulation 27 provides for such persons to make an application for registration to HMRC.

15. Regulation 27 requires an applicant for registration to provide such information as HMRC may specify, which by virtue of Regulation 27(2) (d) includes:

- 35 “(i) the name of any person who effectively directs or will direct the business and any beneficial owner of the business; and

(ii) Information needed by the Commissioners to decide whether they must refuse the application pursuant to regulation 28.”

16. Regulation 28(1) provides as follows:

“The Commissioners must refuse to register an applicant as money service business or trust or company service provider if they are satisfied that-

- (a) the applicant;
- 5 (b) a person who effectively directs, or will effectively direct, the business or service provider;
- (c) a beneficial owner of the business or service provider; or
- (d) the nominated officer of the business or service provider,

is not a fit and proper person with regard to the risk of money laundering or terrorist financing.”

10 17. “Beneficial owner” is defined in Regulation 6. In relation to a body corporate “beneficial owner” means any individual who-

“ (a) as respects any body other than a company whose securities are listed on a regulated market, ultimately owns or controls (whether through direct or indirect ownership or control, including through bearer share holdings) more than 25% of the shares or voting rights in the body; or

15 (b) as respects any body corporate, otherwise exercises control over the management of the body.”

18. Regulation 7 requires a relevant person to apply “customer due diligence measures” when, inter alia, he establishes a business relationship or suspects money laundering or terrorist financing. Regulation 7(2) also requires a relevant person to apply customer due diligence measures at other appropriate times to existing customers on a “risk-sensitive basis.”

19. Regulation 8 requires a relevant person to conduct “ongoing monitoring” of a business relationship, which includes “scrutiny of transactions throughout the course of the relationship to ensure that transactions are consistent with the relevant person’s knowledge of the customer, his business and risk profile.”

20. Regulation 14 requires a relevant person to apply on a risk sensitive basis enhanced customer due diligence measures and enhanced ongoing monitoring in a situation which by its nature can present a higher risk of money laundering or terrorist financing.

21. Regulation 5 defines “customer due diligence measures.” The term includes identifying the customer and verifying the customer’s identity on the basis of documents, data or other information obtained from a reliable and independent source.

35 22. Regulation 43 makes provision for appeals against decisions of HMRC. It provides, inter alia, that a person who is the subject of a decision under Regulation 28 that he is not a fit and proper person may appeal to the Tribunal.

23. Regulation 43(4) provides inter alia that the Tribunal hearing an appeal against a decision under Regulation 28 has the power to-

“(a) quash or vary any decision of the supervisory authority, including the power to reduce any penalty to such amount (including nil) as it thinks proper, and

(b) substitute its own decision for any decision quashed on appeal.”

5 24. It is common ground that the effect of Regulation 43(4) is that the Tribunal has in relation to an appeal under Regulation 28 full power to decide for itself afresh as to whether in the light of all the evidence and circumstances before it the appellant is not a fit and proper person for the purposes of the Regulations. Consequently, if it allows the appeal the effect will be that HMRC would be bound to register the person concerned under Regulation 27.

10 25. We note from the wording of Regulation 28 that HMRC are bound to refuse registration if they are satisfied that the person concerned is not fit and proper. That suggests the burden is on HMRC to establish whether the person is not fit and proper, having assessed the information before them, including any further information they
15 obtain pursuant to Regulation 27(2) (d) (ii), rather than for the relevant person to satisfy HMRC of his fitness and properness. On the basis that the Tribunal has full jurisdiction to substitute its own decision for that of HMRC, it appears to us that the Tribunal should take the same approach as HMRC is bound to under Regulation 28, that is it should allow the appeal unless it is satisfied that the appellant (in this case Mr Hunt) is not a fit and proper person.

20 26. HMRC have published guidance on the fit and proper test. It is not entirely satisfactory in its current form. It consists of two documents. First, there is leaflet MLR25200 which, although designed as internal guidance to HMRC officers making decisions on registration, can be accessed by the public through HMRC’s website. This document states:

25 “If a person has been convicted of any of the offences listed under (a) below, he/she is not a fit and proper person under the MLR 2007 and the application must be refused.”

The offences listed include fraud and money laundering related offences. It therefore indicates that regardless of any other circumstances such a conviction is an automatic bar to registration.

30 27. On the public facing guidance on HMRC’s website, there is more comprehensive guidance which states as follows:

35 “You will fail the test if you cannot satisfy HMRC that you are a fit and proper person with regard to the risk of money laundering or terrorist financing. HMRC will want to see evidence of your honesty and integrity and whether you are able to understand and fulfil your obligations under the regulations. In order to reach a decision HMRC will consider a wide range of information including, for example, whether you:

- are being investigated or have been convicted of money laundering or other offences involving dishonesty, fraud or financial crime.
- have been disqualified from acting as a company director
- 40 • have been subject to confiscation order under the Proceeds of Crime Act 2002.

- have a track record of consistent non-compliance with the Money Laundering Regulations, or with the EU Payments Regulation which applies to money transmission service providers
- have been disciplined or expelled by another supervisor or professional body for regulatory or professional failings.”

28. The guidance referred to in Paragraph 27 above makes it clear that HMRC will consider all relevant circumstances where a conviction is disclosed, whereas that set out in Paragraph 26 suggests a conviction of a particular type will be an automatic bar, regardless of other circumstances, and in particular the question of rehabilitation.

29. We were assured by HMRC that the guidance referred to in Paragraph 26 above will be amended, so as to make it clear that convictions are not an automatic bar and that HMRC will take all relevant circumstances into account. As a decision making body exercising public functions and entrusted with a discretion, HMRC must not, by the adoption of a fixed rule of policy, disable themselves from exercising the discretion in individual cases. Accordingly, in our view when an appellant for registration has a relevant conviction it is the duty of HMRC to consider it in the light of its relevance to the duties that the applicant is to perform, the nature of the business concerned, the record of the appellant since his conviction including employment history and personal conduct, and the length of time since the conviction, thus enabling HMRC to consider the impact of rehabilitation on the issue.

Procedural history and HMRC’S further review

30. The appeal was initially listed for hearing on 24 March 2014. Neither HMRC’s statement of case nor any of their correspondence with Mr Hunt indicated that they had considered any material other than the fact of Mr Hunt’s conviction and HMRC’s representative at the initial hearing confirmed that to be the case.

31. In the Tribunal’s view such an approach is, for the reasons given in Paragraph 29 above, flawed. Regulation 27 requires the applicant to provide such information as HMRC may specify so as to enable them to decide whether they must refuse the application pursuant to Regulation 28. In our view it is implicit in Regulation 27 that when HMRC becomes aware of a conviction on the part of an applicant they are duty bound to make further enquiries as to the circumstances of that conviction and the events since, seeking further information from the applicant as necessary in order to comply with the obligations we have identified in Paragraph 29 above, and to comply with their own guidance to consider all the relevant circumstances.

32. The correspondence revealed that HMRC had failed to comply with those obligations and their initial decision was therefore flawed.

33. Although, as we have identified, the Tribunal has power to substitute its own decision for that of HMRC, the Tribunal was of the view that it was not in a position to do so without the matter having been fully investigated. It therefore adjourned the hearing and made directions specifying additional material to be provided by Mr Hunt concerning, inter alia, the Company’s current business and financial performance, Mr Hunt’s current and intended role with the Company, evidence as to the current

position regarding Mr Hunt's tax position and whether there were any outstanding investigations against him, full details of the circumstances that led to Mr Hunt's conviction and his activities both in prison and after his release.

5 34. HMRC was directed to consider the material provided and carry out a further review of its decision. On 7 May 2014 HMRC issued their review decision. It acknowledged the following matters arising from the additional material provided:

(1) That Mr Hunt appeared to be compliant with his tax obligations;

(2) That Mr Hunt "tried to make good" both while in prison and after his release; and

10 (3) That the crime he was convicted for was committed in 1993.

However it contended:

(1) It appeared that Mr Hunt was dismissive of the offence and punishment which lowered HMRC's confidence in Mr Hunt's ability to comply with the reporting and record keeping obligations under the Regulations;

15 (2) The Court of Appeal in Mr Hunt's appeal against sentence noted that although the Crown could not prove that Mr Hunt had benefited from the fraud "it is absurd to suggest that he had not done so at all."

(3) Mr Hunt's crime was very serious and involved money laundering, there being £55 million lost corporation tax and £30 million in interest; and

20 (4) The Company provides virtual office services which offer anonymity. This is attractive to criminals; those who run such a business must be alert to potential criminal activities and have obligations to report suspicious activity.

25 35. HMRC therefore concluded that Mr Hunt's subsequent good conduct does not mitigate the risk of money laundering or terrorist financing particularly given the nature of the business "he is proposing to run."

36. Accordingly HMRC confirmed their original decision and the hearing was reconvened to consider Mr Hunt's appeal in the light of the further information provided and HMRC's review decision.

Evidence

30 37. We had evidence relating to Mr Hunt's conviction, including a copy of the judgement of the Court of Appeal in relation to his appeal against sentence. We also had some written evidence regarding the existing business of the Company, as well as its annual accounts since incorporation. Mr Hunt also provided his recent personal tax returns and computations and a statement covering the matters which are the
35 subject of the Tribunal's directions referred to in Paragraph 33 above. We were also provided with the statement of proposals by the administrator of Altala Group Limited

(“Altala”), a company in which Mr Hunt held an equity interest and in respect of which he guaranteed certain borrowing.

38. Mr Hunt was cross examined by Ms Yasseri and answered questions from the Tribunal. Although we had no reason to doubt the oral evidence Mr Hunt gave, in our
5 view he was not as open as he might have been about issues concerning the fraud for which he was convicted and his personal wealth.

Findings of Fact

39. From the documents we saw and the evidence we heard we make the following findings of fact:

10 40. The Company was incorporated on 27 September 2007 and commenced trading on 1 March 2008. Mr C.J Hunt, Mr Hunt’s son, has at all times since the Company’s incorporation been the Company’s sole director. The whole of the issued share capital of the Company was previously owned by Mr Hunt but on 26 April 2013, in order to facilitate the registration of the Company under the Regulations, Mr Hunt transferred
15 the whole of his shareholding to his wife, Mrs Shirley Hunt, who we understand is now sadly terminally ill.

41. Mr Hunt has provided an interest free loan to the Company which as at the date of its last accounts stood at £920,289. We understand that this loan is repayable as and when the Company has the resources to do so and that recently a sum of £50,000 was
20 repaid.

42. The Company occupies two buildings, one in London’s Docklands and the other in Salford Quays. Mr Hunt is the freeholder of the office in the London Docklands and the Salford Quays property is owned by a trust the beneficiaries of which are Mr Hunt’s wife and children. These properties were originally available to the Company
25 rent free but rent is now being paid.

43. The Company’s business is the provision of serviced office accommodation including I.T, telephone, reception, meeting rooms and communal refreshment facilities for tenants and visitors at the two properties it occupies. In addition to these activities it provides “virtual office” services to clients who do not require a physical
30 presence at the location, which can involve providing telephone call forwarding and mail redirection. It is these additional services that require registration under the Regulations, the activities concerned amounting to the provision of a correspondence or administrative address within Regulation 3 (10) (c). The Company does not allow the use of its address as the registered office of any of its tenants or virtual tenants.

35 44. Mr Hunt does not carry on or, he says, intend to carry on any managing role in relation to the Company, although he says that he would interact with the management of the Company (that is his son) only on major issues relating to the buildings. HMRC have at times looked at Mr Hunt’s application on the basis that he was proposing to run the business; this is apparent from the conclusions in their
40 review decision of 7 May 2014. We accept Mr Hunt’s evidence on this point. It is

consistent with the role he performed in relation to Altala which we consider in more detail below, where he provided financial support to the company and held a substantial shareholding but did not get involved in the company's management.

5 45. Nevertheless, it is clear to us that Mr Hunt would be in a position to exercise significant influence over the Company's affairs if his application were approved and he took back the shares he transferred to his wife. This influence would be exercised through his shareholding and his central role in providing the Company with its necessary support and, the buildings which it occupies. In our view it is unlikely that 10 any major business decision would be taken by the Company without Mr Hunt being consulted and it would be expected that the sole shareholder and main financial backer of such a Company would need to be concerned as to the steps that the Company was taking to ensure that it had appropriate procedures in place to ensure compliance with its regulatory responsibilities pursuant to the Regulations. It is therefore necessary to assess his application in the light of these facts.

15 46. Mr Hunt provided two schedules which gave brief particulars of the Company's virtual office clients at the two locations. He was unable to provide any details of the policies and procedures that the Company operated in order to meet its obligations in respect of customer due diligence and ongoing monitoring pursuant to Regulations 7, 8 and 14 of the Regulations.

20 47. We now turn to the circumstances relating to Mr Hunt's conviction. Mr Hunt was convicted on the 26 June 1993 of conspiracy to cheat Her Majesty the Queen and the Commissioners of Inland Revenue and was sentenced to eight years imprisonment, ordered to pay £513,512 towards the costs of the prosecution and disqualified from being concerned in the management of a company for 10 years.

25 48. The conviction followed an investigation by HMRC into the affairs of Nissan UK Limited ("NUK"), which was at the time the sole distributor of Nissan vehicles in the United Kingdom. Mr Hunt was along with Mr Octav Oswald Botnar and Mr Frank Sharman a director of NUK. Mr Botnar was the chairman of NUK and owned 76.26% of its share capital, Mr Hunt and his family trusts owned 13.65% of the share capital 30 and Mr Sharman 7.24%. Mr Hunt was the General Manager of NUK and the most senior executive at NUK after Mr Botnar.

49. The substance of the conspiracy was that NUK facilitated a tax fraud by remitting inflated freight payments through bogus agency agreements made with a shipping agent. These agreements were a sham in that the agent was purporting to carry out 35 numerous functions which in fact were carried out by Nissan Motor Company of Japan and its affiliates ("Nissan"). False invoices between NUK and the shipping agent and correspondence were manufactured which showed the inflated freight charge. These false monies and inflated freight payments were included in NUK's accounting books and records and were reflected in annual accounts which were 40 submitted to HMRC for the purpose of determining the amount of corporation tax to be paid by NUK.

50. According to the Court of Appeal's judgement on the appeal Mr Hunt bought against his sentence there was clear undisputed oral evidence which established that for the majority of the time the freight charges paid by NUK were approximately 40 per cent higher than the freight payments recovered by Nissan although in reality the shipping agents were performing no real functions. The prosecution was able to trace the trail of moneys to bank accounts in Switzerland but was unable to prove that the shareholders of NUK benefited from the proceeds of the fraud. Between 1975 and 1991 a total of £219,911,823 was extracted from NUK causing a loss to HMRC of £97,119,462. The prosecution alleged Mr Botnar was the moving spirit in the conspiracy with Mr Hunt the second in command.

51. In dismissing Mr Hunt's appeal Stuart-Smith LJ said:

"The applicant is now 60 he is married with children and grandchildren. He is of good character. The loss to the Revenue over the period of count three was £55 million in lost corporation tax and over £30 million in interest. It was fraud on a massive scale over nine years. While it is true to say that the Crown could not prove by how much the applicant had benefited from the fraud, it is absurd to suggest that he had not done so at all. Those who indulge in fraud on anything like this scale are playing for very high stakes. The potential profit is enormous; the punishment if they are caught must be condign. This type of fraud with its complex web of international transactions, overseas banks and trail of false documents is difficult to detect and immensely expensive to prosecute. It is inevitable that those who are brought to justice face deterrent sentences. In our judgement, the sentence was not a day too long."

52. Mr Hunt said very little in his statements to the Tribunal about his culpability in relation to the conspiracy. In his written statement he refers to the fact that his barrister (who Mr Hunt says was under pressure to start another trial in Hong Kong) advised that he should not present any evidence on the basis that the Revenue had not provided any acceptable evidence against him and it had not been shown who had benefitted from the alleged fraud. Mr Hunt says he made "a fatal error" of accepting that advice. He also referred to the fact that it appeared the jury were "fed up" and wanted to go home and were under pressure from the judge to reach a verdict.

53. Following questioning from the Tribunal, Mr Hunt distanced himself from the fraud referring to the fact that it was a "corporate matter" and not his responsibility alone. He did however, concede that he suspected that a fraud was taking place in the latter period that it was going on and that he should have "blown the whistle" on it. In his reply he said that would have been difficult, but he did not say why. He said he had "learnt his lesson" without elaborating and that he would never knowingly commit a crime.

54. After he was sentenced, Mr Hunt's assets were frozen. Mr Hunt said that "although it was a corporate matter" he had been served with personal demands relating to the tax owed by NUK, which he settled following which his assets were unfrozen. Mr Hunt gave no details of how much he paid under this settlement, and how much of the sums demanded it represented.

55. In prison, Mr Hunt appears to have been a model prisoner and assisted in helping inmates suffering from depression. In 1997 on his release on parole having served half of his sentence, he established a charitable trust which, inter alia, assists the immediate relatives of serving prisoners facing financial hardship, so they can fund travel costs involved in maintaining prison visits. When serving his sentence he was allowed out on a daily basis to work for a children's charity which he identified. He ran the charity's office, reporting to the trustees.

56. Since leaving prison Mr Hunt spends his time on:

(1) Managing his property and share portfolio

(2) Overseeing the management of three private companies; and

(3) Providing investment working capital, either by loan or shareholding, for fledging firms prior to AIM listing or bank refinancing.

57. HMRC have accepted that Mr Hunt appears to be compliant with his tax obligations. There are two open tax enquiries the outcome of which is not known.

58. Mr Hunt's tax returns and computations demonstrate that he has considerable personal wealth. On the basis of his tax calculation for the year ended 5 April 2013 he had total income in excess of £8 million, including foreign income of £3.9 million and dividends from overseas companies of £1.32 million. His annual income in the previous three years averaged approximately £7.5 million, including foreign income of £4.8 million. We understand much of his foreign assets are held with a Swiss bank.

59. Mr Hunt was invited by the Tribunal to provide further details as to the source of his income and assets. He did not do so other than to say that some of it was derived from the sale of his interest in NUK's associated Swiss company. On the basis of Mr Hunt's income it is likely that his assets exceed £100 million in value.

60. There have been no investigations by any police government or regulatory authority into Mr Hunt since his conviction.

61. Evidence was provided by HMRC as regards Mr Hunt's investment in Altala and Mr Hunt answered questions on it from Mrs Yasserli and the Tribunal. Altala was established to form an alternative to the National Lottery, with the NHS being the intended beneficiary. Altala was funded by an unsecured loan facility from Barclays Bank which was in essence guaranteed by Mr Hunt. Mr Hunt took no part in the management of Altala, but received a shareholding, representing 22% of the issued share capital. The company spent the proceeds of the bank loan on setting up the necessary infrastructure for the lottery, but there were difficulties in obtaining the necessary licence from the Gambling Commission.

62. It would appear that Mr Hunt's association with Altala may have caused difficulties, because his shares, apparently on advice of Altala's solicitors were transferred to trustees of a settlement of which he was a beneficiary. It was not clear to what extent Mr Hunt was advised as to whether that arrangement would be

sufficient for the purposes of obtaining the licence, but the impression we have formed is that Mr Hunt distanced himself from the arrangements and played no part in the discussions with the Gambling Commission. In addition, although he saw some analysis of where the funds he was guaranteeing had been spent he did not involve himself in monitoring the development of the business and the licence issue.

63. Altala ultimately withdrew its application to the Gambling Commission and the company subsequently failed, being put into administration in December 2009. Mr Hunt accepted in answers to questions from the Tribunal that with the benefit of hindsight he was too trusting of the assurances he received as to the way Altala's business was being run and did not keep as close an eye on the business as he should have done.

Discussion

64. We now turn to make an assessment as to whether we are satisfied that Mr Hunt is not a fit and proper person with regard to the risk of money laundering or terrorist financing. We approach this issue by considering all the circumstances including the findings of fact that we have made. As we have indicated in Paragraph 25 above if we are satisfied that he is not a fit and proper person then we must dismiss the appeal. If we are not so satisfied on the basis of the material before us we should allow the appeal.

65. Mr Hunt's main contention is that HMRC have refused his application solely on the basis of his conviction and that he has been judged as the person he was then rather than the person he is now. In essence, Mr Hunt submits that he has been rehabilitated. His offence was over twenty years ago. He observes that the mission of the prison service is to rehabilitate prisoners and release them as law abiding citizens. He concludes that he has satisfied the authorities in their philosophy. His approach is that he has served his time, paid money to HMRC and has had no difficulties with the police since. On that basis he should be regarded as fit and proper. He also refers to the fact that despite the United States Government strict policy on visas being granted to convicted criminals, he has declared his conviction to U.S authorities and has been given a visa.

66. Our starting position is that Mr Hunt's conviction, although a long time ago, was for conspiracy to commit a very serious fraud. There was a very substantial loss to the Revenue over a very long period of time. Mr Hunt was the second most senior person in the NUK and was found to have been a leading figure in the conspiracy. On his own admission before the Tribunal, he was at the very least aware that the fraud was going on and did nothing to stop it or report it. That is precisely the type of behaviour that is unacceptable on the part of persons associated with businesses which are at risk of being involved in money laundering. Consequently, regardless of the length of time since the conviction, the mere fact of it and its circumstances must weigh heavily in the balance against Mr Hunt. In our view in these circumstances, there must be very cogent and compelling evidence of rehabilitation to justify now regarding the conviction as not being sufficient in itself to result in Mr Hunt failing the fit and proper test.

67. Secondly, we must have due regard to the nature of the Company's business and the policies and procedures in place to address the risk of money laundering as required by the Regulations. We accept HMRC's assessment that the virtual office services provided by the Company offer anonymity which is attractive to criminals and accordingly those who have a position which gives them significant influence over the affairs of such a Company must be alert to potential criminal activities and the need to report suspicious activity. Mr Hunt provided no evidence as to the policies and procedures of the Company, in place in this regard, although he did accept in his correspondence with HMRC that identity checks were carried out.

68. Thirdly, we must have regard to the role that Mr Hunt is to play with regard to the Company. As we have indicated above, we not accept HMRC's assessment, repeated by Ms Yasseri in her submissions, that Mr Hunt "runs" the Company or that there are any specific obligations imposed upon him in the way that they are on the directors of the Company to ensure that the appropriate policies and procedures are in place to comply with the Regulations.

69. A controlling shareholder, which we accept is all Mr Hunt wishes to be on the assumption he takes back the shares currently held by his wife, is in a different position. He is one step removed from the management of the business. Nevertheless, it appears to us, as is the case in relation to businesses subject to regulation in other sectors, that the policy behind assessing the fitness and properness of controlling shareholders is that they are in a position to exercise significant influence over the direction of the company. Indeed a controlling shareholder would be expected to be consulted over major decisions and, in order to protect his investment, would be expected to be interested in the steps that are being taken to ensure the business is being run compliantly so as to minimise reputational risk. Therefore in relation to a regulated business, there is a legitimate concern on the part of the regulator that the influence capable of being exerted by virtue of the substantial shareholding is benign and positive.

70. In this case the interest in Mr Hunt exercising influence is heightened due to the fact that through his substantial loan to the Company it is financially dependent on him. In addition, it occupies two properties of which he or his family trusts are the freehold owners.

71. Unfortunately, the recent experience of Mr Hunt's approach to a company in which he had a significant shareholding and substantial financial interest is not positive. In relation to Altala, another company which required a regulatory permission to operate, Mr Hunt appears to have played little part in monitoring how the company was being managed, bearing in mind the significant financial support he gave. He appears to have been detached from the process of obtaining the necessary license from the Gambling Commission, even though it appears that the difficulties may have arose due to his own association with the company. On his own admission, he was too trusting of the management and did not keep as close an eye on the business as he should have done. Therefore, although there is no evidence that his influence on Altala was negative, or that it has been negative in relation to the Company to date, there is no evidence to support the notion that Mr Hunt would be a

positive and proactive influence in relation to the Company and there is a serious concern that he would not take sufficient steps to inform himself as to how the Company was being run. In summary, Mr Hunt's recent approach to his position as a substantial shareholder does not weigh in his favour.

5 72. Finally, with regard to the question of rehabilitation, in our view the concept goes wider than how Mr Hunt presented it in his submissions. It is not merely a question of a sentence being served and there being a lapse of time without any further new issues of concern arising.

10 73. Mr Hunt is to be given credit for the way he behaved in prison and his charitable work. His tax affairs are in order and he has not been subject to any further investigation by the police or any regulatory authority. As HMRC put into he has "tried to make good" while in prison and after his release.

15 74. However in our view, in the light of a conviction so serious and so relevant to the business of the company in respect of which Mr Hunt wishes to be registered, that is insufficient. In that situation rehabilitation cannot be said to have started until the subject has clearly accepted his wrongdoing and has repented from it. Indeed Mr Hunt seems to have accepted the key need for repentance in the extract from his notice of appeal that we quoted in Paragraph 8 above. Without clear evidence of repentance there must be a serious concern that given circumstances similar to those that he faced
20 in relation to the fraud at NUK he would not act any differently than he did then.

75. However, regrettably Mr Hunt's approach since then does not show any significant evidence of repentance.

25 76. We make no criticism of Mr Hunt's decision to plead not guilty to the conspiracy charge. It was his right to require the Crown to prove its case and in that context he decided not to give evidence on the advice of his barrister. However, Mr Hunt's complaint is not that he was wrongly convicted but that the strategy of not giving evidence failed and he lays the blame for that at the door of his barrister. It was only when pressed through questions from the Tribunal that he accepted any degree of culpability in relation to the fraud when he accepted that he had suspicions of what
30 was going on and failed to blow the whistle. He also downplayed the significance of his personal role stating that it was a corporate matter, "not MJ Hunt alone" which fails to recognize that corporate frauds cannot occur without the actions of natural persons.

35 77. He said that blowing the whistle would have been difficult, but was unable to tell us why.

78. As appears from the Court of Appeal's judgment on Mr Hunt's appeal against sentence, the court was of the view that it was likely that Mr Hunt benefited from the fraud. Mr Hunt indicated that he had made a settlement with HMRC but did not provide any detail of the amounts involved. This is against a background where it is
40 obvious that he has considerable personal wealth. A clear indication of repentance in relation to serious fraud would be an act of substantial recompense to the victim, but

we have no evidence as to whether the sums involved were substantial in relation to the monies lost to the revenue. In that regard he also stated that he was pursued despite the matter being in his view a corporate fraud, but as we have indicated behind every corporate fraud there are culpable individuals.

5 79. In our view it is essential when judging the question of rehabilitation that the person claiming to be rehabilitated puts all his cards on the table. In our view Mr Hunt was less than forthcoming than he should have been in this regard. He gave us no details of his settlement with HMRC. He was invited to give us more detail as to his personal wealth but did not do so.

10 **Conclusion**

80. In conclusion, we are not satisfied that Mr Hunt has been rehabilitated to the extent that is necessary to allow his application. In our view his reluctance until a very late stage to accept any degree of culpability, his attitude to the fraud as being essentially a corporate matter and his lack of openness in a number of respects when
15 taken together with the seriousness of the conviction, the risks posed by the Company's business and his role as a controlling shareholder lead us to conclude that he is not a fit and proper person for the purposes of Regulation 28.

Disposition

81. We dismiss the appeal.

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

TIMOTHY HERRINGTON

30 **TRIBUNAL JUDGE**

RELEASE DATE: 12 December 2014