[2016] UKFTT 0525 (TC)

TC05274

Appeal number: TC/2015/6501

PROCEDURE – degree of particularity required in statement of case where connection to fraud alleged

FIRST-TIER TRIBUNAL
TAX CHAMBER

RONALD HULL JUNIOR LIMITED **Appellant**

- and -

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

TRIBUNAL: JUDGE Barbara Mosedale

Sitting in public at the Royal Courts of Justice, London on 2 June 2016

D Scorey QC, instructed by Mazars LLP for the Appellant

Mr J Puzey, Counsel, and Mr N Chapman, Counsel, instructed by the General Counsel and Solicitor to HM Revenue and Customs, for the Respondents

DECISION

1. The appellant appeals against a decision of HMRC dated 17 July 2015 assessing it to tax of £597,172 on the basis that it was not entitled to reclaim input tax in that sum which it had offset in its VAT returns for periods 7/13, 10/13 and 1/14. In making the assessment, HMRC relied on the doctrine in the joined CJEU cases of *Kittel* and *Recolta Recycling* C-439/04 and C-440/04 denying that the appellant was entitled to the input tax credit on the basis (HMRC alleged) it knew or ought to have known its transactions were connected to fraud.

2. On 22 January 2016, HMRC served its statement of case in the appeal ('the SOC'). The statement ran to 20 pages and 98 paragraphs. Annexed to it was the decision letter which contained as (appendices 1-3) the list of the appellant's deals in which input tax was refused. HMRC also mentioned two further appendices in its statement of case but these were not served at the same time; HMRC applied for and was granted an extension of time to serve them late and they were served on 3 February 2016. I will refer to the 3 appendices in the decision letter as the original appendices and the two served late as the new appendices.

3. On 4 February (and before it seems the new appendices were considered) the appellant made an application for 'Further Information' with respect to the statement of case. This included 31 specific requests. HMRC objected to the application and did not provide the further information requested.

4. On 10 February, HMRC applied for a direction from the Tribunal that both parties be excused compliance with Rule 27 (provision of lists of documents): in effect HMRC's application was that any documents relied on would be exhibited to, and served with, the witness statements. They also applied to the Tribunal for a 'Fairford' direction and other more standard directions to prepare this case for hearing.

5. On the same day, the appellant formally objected to this application and made a further application, this being for disclosure of all relevant documents.

6. I will deal with the various applications in turn.

Appellant's application for further and better particulars – general principles

7. What is the appellant entitled to ask for? It is clear that the appellant is entitled to a proper statement of HMRC's case and to the extent that HMRC have not provided this, HMRC ought to be directed to remedy the position. Even if the statement of case was beyond reproach, nevertheless a party ought to be able to ask reasonable questions to enable it to understand the other side's case or prepare their own.

8. But timing is important too. A statement of case is but a step in preparing the case for hearing: it outlines HMRC's case but does not recite the evidence. The full details of the evidence on which HMRC relies is served after the statement of case, when the parties exchange documents and witness statements. Ordering HMRC at the

statement of case stage to provide details of the evidence which ought to be provided at the exchange of evidence stage only builds in delay in preparing a case for hearing.

9. So my approach in this case is to consider whether HMRC's statement of case is sufficient for the appellant to understand the case. Once it has a proper statement of case, the next stage is for evidence to be exchanged. At that point, if the appellant still has unanswered questions about HMRC's case, further questions can be asked. But I think it wrong in principle to order HMRC before exchange of evidence to provide more information than is required to be in the statement of case as it creates a precedent for quibbling over the statement of case rather than getting on with exchanging evidence.

10. Moreover, it is in the respondents' interests to fully plead a case: if they fail to properly plead their case then this may result in the hearing judge refusing to permit them in the hearing to lead evidence to prove something not properly pleaded.

General principles on what a statement of case should contain

11. The parties were agreed that I was bound by the recent Upper Tribunal decision in *Ebuyer/Citibank* [2016] UKUT 123 (TCC) but they were not agreed on the correctness or otherwise of the one aspect of my decision in *Citibank* [2014] UKFTT 1063 (TC) which had not been appealed and which dealt with how much detail a statement of case in this Tribunal should contain where allegations of fraud were made. The parties were not agreed on the principles I should apply in order to determine whether or not to order HMRC to provide the information in the 31 individual requests made by the appellant.

12. Unlike in *Ebuyer/Citibank*, in this appeal both parties were agreed that dishonesty was clearly alleged against the appellant (& vehemently denied). The Tribunal's rules on statements of case require only that it 'set out the respondent's position in relation to the case' (Rule 25(2)(b)), but both parties were agreed that the pleadings must actually meet two tests: they must be

(1) clear and unequivocal;

(2) have sufficient detail or particularity.

And that because this was a case where fraud was alleged the higher standard of particularity required in fraud cases applied.

13. These two requirements were set out by Lord Millett in *Three Rivers District Council v Bank of England* [2001] UKHL 16:

> [185] It is important to appreciate that there are two principles in play. The first is a matter of pleading. The function of pleadings is to give the party opposite sufficient notice of the case which is being made against him. If the pleader means "dishonestly" or "fraudulently", it may not be enough to say "wilfully" or "recklessly". Such language is equivocal. ...

> [186] The second principle, which is quite distinct, is that an allegation of fraud or dishonesty must be sufficiently particularised, and that particulars of facts which are consistent with honesty are not sufficient. This is only partly a matter of pleading. It is also a matter of substance. As I have said, the defendant is entitled to know the case he has to meet. But since dishonesty is usually a matter of inference from primary facts, this involves knowing not only that he is alleged to have acted dishonestly, but also the primary facts which will be relied upon at trial to justify the inference. At trial the court will not normally allow proof of primary facts which have not been pleaded, and will not do so in a case of fraud. It is not open to the court to infer dishonesty from facts which have not been pleaded, or from facts which have been pleaded but are consistent with honesty. There must be *some* fact which tilts the balance and justifies an inference of dishonesty, and this fact must be both pleaded and proved.

14. As I have said, in this case the appellant accepts that dishonesty is clearly pleaded against it. The dispute turns on whether the allegations of fraud against it and other persons in the statement of case have been adequately particularised. What is clear from this is that the statement of case must plead 'the primary facts which will be relied upon at trial to justify the inference' of dishonesty. The parties were not agreed what this meant.

Degree of particularity?

15. Lord Hope at [49] and Lord Hutton at [128] in the same case (*Three Rivers)* approved what Saville LJ had said in *British Airways Pension Trustees Ltd v Sir Robert McAlpine & Sons Ltd* (1994) 72 BLR 26. At [33-34] Saville LJ said:

> "The basic purpose of pleadings is to enable the opposing party to know what case is being made in sufficient detail to enable that party properly to prepare to answer it. To my mind it seems that in recent years there has been a tendency to forget this basic purpose and to seek particularisation even when it is not really required. This is not only costly in itself, but is calculated to lead to delay and to interlocutory battles in which the parties and the court pore over endless pages of pleadings to see whether or not some particular point has or has not been raised or answered, when in truth each party knows perfectly well what case is made by the other and is able properly to prepare to deal with it."

16. Lord Hope commented that these observations, although made under the old CPR rules still held good and cited with approval Lord Woolf MR in *McPhilemy v Times Newspapers Ltd* [1999] 3 All ER 775, 792J-793A (Lord Hutton also cited the last part of this with approval at [128] in same case):

> "The need for extensive pleadings including particulars should be reduced by the requirement that witness statements are now exchanged. In the majority of proceedings identification of the documents upon which a party relies, together with copies of that party's witness statement, will make the detail of the nature of the case the other side has to meet obvious. This reduces the need for

> particulars in order to avoid being taken by surprise. This does not mean that pleadings are now superfluous. Pleadings are still required to mark out the parameters of the case that is being advanced by each party. In particular they are still critical to identify the issues and the extent of the dispute between the parties. What is important is that the pleadings should make clear the general nature of the case of the pleader. This is true both under the old rules and the new rules."

17. Lord Hope at [51] however made the point:

> On the other hand it is clear that as a general rule, the more serious the allegation of misconduct, the greater is the need for particulars to be given which explain the basis for the allegation. This is especially so where the allegation that is being made is of bad faith or dishonesty. The point is well established by authority in the case of fraud.

18. So, in summary, pleadings clearly are not intended to contain every detail which will be contained in the witness statements but they should identify the 'parameters' of the alleged case. Moreover, fraud allegations require a greater degree of particularity than ordinarily required.

Are full particulars required?

19. While fraud allegations must be pleaded with some degree of particularity, my view has been that it is not necessary to rehearse in the statement of case *all* the evidence relied on to prove the fraud. My view of the authorities above is that they require primary facts to be pleaded, but not every fact is a primary fact.

20. The disputed passage in *Citibank* , referred to at §11 above, is where I said:

> 92. ... At a number of places it asks for 'full particulars of all facts and matters relied on' by HMRC to prove a specified point (see eg §1(f), 2(b)(iv), 12(c), and 13 (d)) and 'provide an exhaustive list of all facts and matters relied upon (see §2(a)(ii)). Elsewhere it made many requests for 'full particulars' (eg §19(a) and 22).
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> 93. The appellant's Request is for more information than a statement of case is meant to contain. But so far as I understood its position, the appellant's point is that it requires this information. It wants it now and does not wish to wait for the witness evidence to be served, which may or may not contain the information it seeks. Without it, it says, it can not investigate the position.
>
> 94. If I were to grant an application for 'full' or 'exhaustive' particulars I could create a hostage to fortune; it could lead to an application by the appellant at the hearing that anything put to the appellant's witness that strays beyond the 'exhaustive' particulars is beyond what the respondent is entitled to put to that witness. It might give rise to a suggestion that a respondent could not apply to amend a statement of case if and when further evidence comes to light.
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> 95. If I were to grant an application for 'full' or 'exhaustive' particulars, I would create an unfortunate expectation that appellants

> are entitled to that level of detail in every statement of case. In the same way that a notice of appeal does not require the appellant to state absolutely every fact on which it relies, no more is a statement of case required to contain this level of detail. The statement of a case is a step in the process of building the case that will come on for hearing. It must contain a reasonably detailed outline of the respondent's case but it is not required to contain all the evidence that will later be contained in the witness statements.
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> 96. Moreover, allowing requests for 'full' or 'exhaustive' particulars would delay proceedings as it would be impossible for HMRC to serve its SOC any earlier than it could serve its witness statements. On the contrary, the rules expect the SOC to be served within 60 days of the receipt of the notice of appeal.
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> 97. Allowing the request for 'full' or 'exhaustive' particulars of allegations would also render the SOC otiose as it would become no more than a duplication of the witness statements. On the contrary, the statement of case is merely a step in building the case to be heard at the hearing; it is not a substitute for witness statements.
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> 98. A Tribunal should not grant, at this stage in proceedings, a request for pleadings to be more detailed than required because such a request only slows down the progress of the proceedings; instead of agreeing Directions shortly after receipt of the SOC for service of witness evidence, the parties here have been involved in a dispute over the Request. Delay in proceedings is in the inevitable consequence, so the Tribunal should not uphold at this stage of proceedings requests for further details unless the statement of case is actually defective.
>
> 99. ....
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> 101. So I will not grant the appellant's request for HMRC to provide 'full' or 'exhaustive' particulars. The respondents are merely required to plead the primary facts on which they rely, and that is without prejudice to any possible application to amend the pleadings which might be made once witness statements are exchanged.

21. The appellant considers that this was wrong. It relies on *Pegasus Birds* [2004] EWCA Civ 1015 and in particular what Carnwath LJ said at [38]:

> (iii) In particular the Tribunal should insist at the outset that any allegation of dishonesty or other wrongdoing against those acting for the Commissioners should be stated unequivocally; that the allegation and the basis for it should be fully particularised; and that it is responded to in writing by the Commissioners. The Tribunal should not in any circumstances allow cross-examination of the Customs officers concerned, until that is done.

22. HMRC's point is that *Pegasus Birds* was not a case about pleadings and Carnwath LJ was doing no more than briefly setting out a well-known general principle: primary facts must be pleaded. He did not address what was a primary fact nor the level of detail in which it must be pleaded.

23. I agree with HMRC that Carnwath LJ here was not intending to do more than rehearse well known general principles of pleading and what he said was intended to be consistent with *Three Rivers*, a case which both preceded his case and bound him. Primary facts must be pleaded: that it what he meant by 'fully particularised'.

24. In the later case of *Gamatronic* [2013] EWHC 3287 (QB) at [26-27] Mr Justice Andrew Smith said:

> I therefore come to the criticisms of the claimants' statement of case, and the argument that claims are not sufficiently pleaded. Ms Oakeshott emphasised the guidance of Lord Wolff in *McPhilemy v Times Newspapers Ltd*, and cited in the White Book at 16.0.2 that statements of case should be concise and avoid excessive details and particulars. That is so, but they must still be sufficient accurately to identify the issues for the court as well as the parties. For this reason I reject any suggestion that a pleading is sufficient if the other parties can discern what lies behind it: parties should not have to dig behind what is pleaded to detect what is alleged (particularly where dishonesty or comparable impropriety is alleged); and, perhaps more important, its meaning should be plain to the court as well as other parties.
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> In this sort of case where the claims are based upon allegations of covert wrongdoing, claimants are often unable to provide full details and solid evidence of their complaints. In *Dar Al Arkan Real Estate Development Co v Al-Sayed*, [2013] EWHC 1630 (Comm) at para 3, I cited the judgment of Morritt C in *Toshiba Carrier UK Ltd v KME Yorkshire Ltd*, [2011] EWHC 2665 (Ch), and, observing that the thrust of the complaint was that the defendants worked together secretly to damage the claimants' reputation and business, I said that, "On a summary judgment application the court is not blind to claimants' difficulties in such cases, of producing solid evidence of the role of each defendant in covert activities, particularly before disclosure". The same is true of the difficulties in pleading with particularity, but lack of particularity is different from lack of clarity.

25. Again I do not consider that the Judge said anything here inconsistent with binding authority. Pleadings of fraud must be clear and properly particularized. They must plainly identify the issues, and not rely on the other party having to draw inferences of what the claimant's case is. But nevertheless statements of case should not be excessively detailed.

26. The appellant points out that the Upper Tribunal at [46] in *Ebuyer/Citibank* [46] said that the Tribunal could not allow proof of primary facts which were not pleaded [91] [102] [104-5]. My view of this is that it is quite right and consistent with *Three Rivers* and the other authorities binding on the Upper Tribunal: but it does not require every fact which goes to make up HMRC's case to be pleaded. It requires every *primary* fact to be pleaded.

27. I was also referred to *Sunico* [2012] EWHC 4156 [7-8] Warren J repeated the well understood requirement at [7] to plead fraud expressly if that is what the claimant intends to prove; and at [8] he considered the degree of particularity required and said:

> [8] But simply to allege fraud or knowledge is not enough. The second requirement in a fraud case is that a defendant is entitled to know from the pleadings the fraud which he is alleged to have perpetrated and the allegations as to facts which are made against him in order to establish the fraud alleged. Since knowledge is the essence of fraud, he is entitled to particulars of knowledge. It is however a rare case where direct evidence of knowledge of fraud can be adduced. It would be a stroke of the most extreme luck for a claimant to find, for instance, a letter passing between conspirators setting out the detail of their plot. Usually the knowledge of a defendant is to be inferred from all of the facts. Accordingly, a plea of fraud is certainly not to be struck out on a pleading point if, first of all, fraud or dishonesty and, secondly, the primary factor relied on at the time of the inference and, thirdly, the extent of the knowledge of the fraud could be said to be inferred or alleged. I will return to this in the context of the facts in due course.

28. I think this can all be summarised down to this. Fraud must be clearly pleaded; and a claimant must plead the primary facts relied on; where fraud is pleaded, those primary facts must be pleaded in sufficient detail to understand what inferences the court will be asked to draw (see §14). There is no authority that the appellant is entitled to exhaustive or full particulars of the facts relied on. Primary facts must be pleaded; not <u>all</u> the facts. The appellant is also wrong to say that primary facts must be pleaded *in full.*

What are primary facts?

29. That is all very well but what are primary facts? The citations from *Three Rivers, Gamatronic* and *Sunico* at §§13, 24 and 27 above recognised that in cases of alleged fraud the court or tribunal is normally asked by the claimant to infer dishonesty from facts which are not themselves direct evidence of fraud. The facts relied on for these inferences are the primary facts and they must be pleaded.

30. The appellant considered that *all* the facts from which the tribunal will be asked to draw inferences must be pleaded but that has the problem identified of effectively requiring entire witness statements to be pleaded. That would tend to obfuscate rather than clarify the main issues. It seems to me that the judges in the authorities cited above were using 'primary' in the sense of 'main' or 'principle'. They were not requiring every detail to be pleaded. Any other conclusion would lead to all the problems outlined in my comments in Citibank cited above at §20. So the *primary* facts which the party relies on to prove the alleged dishonesty must be pleaded, but not all the details surrounding those primary facts.

31. The appellant at various points asked for pleadings to be exhaustive or for matters to be "fully" pleaded and said this went no further than they were entitled to as demonstrated by Carnwath LJ in *Pegasus Birds.* But as I have said, *Pegasus Birds* was not a case about the level of detail in pleadings and Carnwath LJ cannot be taken to have said anything inconsistent with the Supreme Court in *Three Rivers.* The appellant is not entitled to full or exhaustive particulars: they are entitled to having the primary facts pleaded.

Pleadings of fraud against third parties

32. At various points in the SOC, HMRC allege that persons who are not parties to the appeal committed fraud. The appellant says that [186] of *Three Rivers* (cited at §13 above) requires the primary facts of these fraud allegations to be pleaded in the same way as fraud allegations against the other party must be pleaded. But does *Three Rivers* require the pleading of fraud against non-parties to be in exactly the same level of detail as if that non-party were a party to the appeal? HMRC's case is that where the allegation of fraud is remote from the appellant, the facts on which the allegation relies become mere details which can be left to the witness statements.

33. For instance, HMRC allege that some 380 transactions of the appellant's were connected to fraud, and each and every one of those transactions is identified by date, amount, supplier, and invoice number in an appendix to the SOC. HMRC also allege a great number of other transactions between other persons were fraudulent, being transactions with no alleged connection to the appellant. They have not attached appendices identifying the transactions. Should they have done?

34. Bearing in mind pleadings should clarify and not obfuscate the case against the appellant, it seems to me that where a third party's alleged fraud is a primary fact alleged against a party to an appeal, it must be pleaded with sufficient details to justify it but it does not itself have to be pleaded in the same degree of detail as it would need to be pleaded if the non-party were a party to the case. The SOC does not have to contain a full SOC for every non-party alleged to have committed fraud. The details can wait for exchange of evidence.

35. I return to this point at §§78, 88, 105-6 and 108-9.

Negative pleading

36. None of the authorities drawn to my attention deal with negative pleading by which I mean whether the claimant can be required to state that they are <u>not</u> making a particular allegation. I did discuss this in my earlier decision in *Citibank* at [12-117]. My view remains that the claimant/respondent cannot be required to plead negatively for the reasons given there. Moreover, unnecessary disputes over SOCs should be discouraged; if a party has adequately pleaded its case, the parties should move on to exchange of evidence so the other party should not have the right to stop that process by requiring negative pleading.

37. While of course the appellant is entitled to clarity in pleaadings, negative pleading should not be necessary to clarify a case: if the party providing the statement of case fails to make a clear allegation in the SOC, then they are not entitled to prove it.

Must individuals be identified?

38. I also think what I said in *Citibank* about identification of individuals was right. It is possible for HMRC to prove its case that a corporate appellant had actual knowledge without identifying a particular individual officer or employee or agent of the appellant who had actual knowledge. It can do this if HMRC can show that the

company acted in such a way that it (acting by its officers and employees) must have known. If this were not the case, a company could defeat any investigation into it simply by failing to identify which person took which decisions.

39. However, in so far as it is or becomes HMRC's case that a particular officer/employee/agent of the company had actual knowledge and that that (alleged) knowledge should be attributed to the company, then the allegation that that individual had actual knowledge must be pleaded together with the primary facts relied on to support that allegation.

40. It is therefore not necessary for HMRC to plead that any particular individual had actual knowledge, unless it is its case that a particular individual had actual knowledge. Nor, as I have said, is HMRC required to plead negatively. They do not have to state that they do not plead that named persons did have knowledge.

Specific requests

41. With these principles in mind, I go on to consider whether HMRC ought to provide the further information and particulars required.

Request 1

42. Seven persons are named in paragraph 12 of the SOC, and their relationship to the appellant stated. The appellant wants HMRC to state whether or not it is alleged any of these individual knew or ought to have known of the alleged fraud.

43. In my view this is a request for negative pleading. My view is as set out at §§36-37 above. It is possible for HMRC to prove fraud against a corporate appellant without proving fraud against any particular individual who acted on behalf of that company: §§38-40. HMRC cannot be required to state whether or not they do allege fraud against any particular individual but, if they do not allege fraud against a named individual, then they must not seek to prove fraud against an individual at the hearing.

44. If at any point, such as after exchange of evidence, it becomes HMRC's case that a named individual was knowingly involved in the fraud, then they will need to apply to amend the statement of case.

45. In conclusion, I do not find Request 1 justified.

Requests 2 & 3

46. A clear allegation of fraud was made against the appellant's supplier 'BMC'. This request asked HMRC to clarify whether the allegation of fraud was only in respect of the 383 sales by BMC to the appellant or whether other sales were alleged to be fraudulent, and if so, to plead particulars. The appellant also wanted HMRC to plead exhaustively facts relied on to support the allegation of fraud; and whether it is alleged the appellant knew or ought to have known of each of these facts.

47. HMRC's view was that in so far as it was HMRC's case that other sales by BMC were fraudulent, this was very much a secondary fact and not one which required pleading.

48. I find that HMRC actually pleaded (§14 of SOC) that BMC defaulted on all its sales in 3 specified VAT periods; the allegation of fraud appears only to be supported by the allegation that BMC failed to file a VAT return or pay its VAT liability in any of those three specified VAT periods. What they have not pleaded is the details of each of these sales eg dates, amounts and to whom.

49. I consider that HMRC's allegation that all BMC's sales in certain periods were fraudulent is a primary fact and it would have to be pleaded (as it has been) but the details of those sales are secondary facts which do not have to pleaded and can be left to witness statements. HMRC's reasons for alleging that all BMC's sales in particular periods were fraudulent are also primary facts and must be pleaded. But it seems that this has been done at §§31-51 when HMRC set out the background to BMC.

50. If there is more to HMRC's case in the sense that there are other primary facts about BMC not pleaded which HMRC then seek to rely on to prove fraud at the hearing, then the appellant's solution will be to ask the hearing judge to prevent HMRC leading evidence to prove them. But there is a difference between primary facts and mere details which can be left to exchange of evidence.

51. In so far as the appellant asks for HMRC to state whether or not it is their case that the appellant knew or ought to have known of BMC's fraud, then again the answer is at §38-39 where I deal with negative pleading. If it is HMRC's case that the appellant knew BMC was fraudulent, then it must be pleaded; but HMRC do not have to state a negative. They do not have to state it is not a part of their case. In fact I find it is pleaded that the appellant knew of BMC's history of fraud: §91 SOC and it is also pleaded the appellant knew its own transactions with BMC were connected to fraud.

52. I do not find requests 2 & 3 justified and I refuse them.

Request 4

53. This request required HMRC to plead the transaction chain for the 6 remaining transactions from a different supplier (Carwood) where the allegation was that the fraudulent default was by Carwood's supplier rather than Carwood.

54. HMRC say that this was pleaded: §15 SOC states Carwood's supplier was GPSE Ltd. HMRC plead GPSE Ltd was a fraudulent defaulter. HMRC accept that the dates and amounts of the supplies GPSE to Carwood are not pleaded in the SOC but consider these are secondary details which will be contained in the witness statements.

55. I agree with HMRC that the dates and amounts of the transactions GPSE to Carwood are very much details or secondary facts and not primary facts. The primary

facts include that GPSE was the supplier to Carwood and the reasons HMRC have for alleging GPSE's sales were fraudulent (set out at §§60-70 SOC).

56. I will not direct that HMRC provide the information at Request 4 now: it would be tantamount to requiring a SOC to contain the text of witness statements.

Requests 5, 6 & 7

57. A clear allegation of fraud was made against GPSE, Carwood's supplier: this request was effectively the same as at Requests 2&3, save that it was in respect of GPSE's 6 sales to Carwood.

58. Request 6 was for exhaustive particulars of the alleged fraud, a statement whether it was alleged the appellant knew of the particular alleged and if so who at the appellant knew it; or if it was alleged the appellant ought to have known of it, what steps the appellant ought to have taken.

59. I have the same view as I did of Requests 2 & 3. I dismiss these requests for the same reasons.

Request 8

60. The SOC alleged that the appellant had previously traded with companies linked to BMC each of which had fraudulently defaulted on its VAT obligations. This request asked for details including the company's name, nature of link, the deals, the VAT default, and if it was alleged that the appellant's deals with those companies were connected with fraud and if so the appellant wanted full particulars and to know whether it was alleged the appellant knew or ought to have known of the default.

61. It seems to me that in order to decide on whether this request should be answered in the SOC, I must decide what is a primary fact which must be pleaded and what is merely supporting detail which can be left to a witness statement.

62. My understanding of HMRC's case from the SOC is that they do not allege that the appellant's earlier trades with pre-BMC companies were connected to fraud, merely that, from various circumstances set out in §95, that the appellant knew or ought to have known that those companies were vehicles for fraud and that therefore BMC was too.

63. Whereas I consider that if the allegation was that the appellant's earlier trades were connected with fraud, then those trades with particular companies ought to be identified, I do not consider that the allegation actually pleaded is so serious so far as the appellant is concerned. Therefore I consider it does not require the same level of detailed pleading. Appendix 2 identifies the companies, the period in which the appellant traded with them and those companies' alleged defaults. I consider that sufficient detail for the SOC in these circumstances: the rest can be left to the witness statements.

Request 9 & 10

64. The SOC alleged that the appellant made purchases from a company ('WMD') stated to be a 'phoenix' of BMC. The appellant asked what HMRC meant by a 'phoenix' and what was the relevance of the allegation as it was not alleged those purchases were connected with fraudulent evasion of VAT.

65. HMRC say the meaning of 'phoenix' is well known. My understanding of it is that it is where one company takes over the business of another company in the same control and in circumstances where fraud of some sort or another is implied. And I think that is generally well understood. And as it is quite clear from the SOC that HMRC do allege that WMD is in the same control as BMC, WMD took over BMC's business, and HMRC alleges fraud against both, I do not really think that there is anything wrong or misleading in the use of the word 'phoenix' and HMRC do not have to explain what they mean, which is obvious.

66. I find that the statement of case is written such that allegations against various companies are made in one section, and there is then a later section which makes the allegation of the appellant's knowledge or means of knowledge of fraud in its own transactions by reference to a list of factors, which requires the reader to refer back to express pleadings against particular companies. I do not see that there is anything wrong with organising a statement of case like this as it is a way of avoiding repetition and therefore of achieving clarity.

67. So while §29SOC contains allegations about WMD and does not make any express allegation about the appellant, it is not the case that the appellant is left to infer the allegation: it is made expressly at §95SOC (combined with §84SOC). The allegation is knowledge of fraud by the appellant because of an alleged pattern of trading by the appellant with a series of allegedly fraudulent phoenix companies. Indeed, part of the allegation at §95SOC relates to trading post BMC's deregistration so specifically relates to WMD as well as the other alleged phoenix companies.

68. In my view HMRC have explained their case on this and do not need to be directed to amplify it.

Request 11 & 12

69. The SOC alleged that every purchase from Carwood, apart from the six with which the appeal was concerned, which had been traced, had been traced to fraudulent tax loss. The appellant requested full particulars of the extended verification of all transactions which have been fully traced and those which have not.

70. Again this request requires me to consider what is a primary fact and what is detail which can be left to a witness statement. HMRC say the primary fact is what is pleaded, which is that some (unidentified) earlier trades with Carwood by the appellant were connected to fraud. The identification of those trades, says HMRC, is detail which can be left to witness statements.

71. I don't agree. While some of the details surrounding those trades might not need pleading, I think the actual trades undertaken by the appellant which are alleged to have been connected to fraud should be identified in the pleadings, even where those trades are not the subject of the appeal. But they are, to my mind, one of the primary facts pleaded to support the case against the appellant.

72. I direct that HMRC provide a reply to Request 11.

73. So far as Request 12 is concerned, this is similar to a request for negative pleading. HMRC do not rely on the trades which have not been traced to a fraudulent default as a primary fact supporting the allegation of knowledge of the alleged fraudulent trades at issue in this appeal. They do not have to identify in the statement of case the trades which they do not rely on to support their allegations. I do not direct HMRC to provide a reply to Request 12.

74. These details may or may not be contained in the witness statements: if they are not, because HMRC do not rely on them, then it seems to me that this is the sort of detail which, if the appellant wishes to know it in order to prepare its case, it could ask for later. But at this point in time I will not direct HMRC to provide more information than ought to be contained in the SOC for reasons explained at §9.

Request 13

75. The SOC alleged that BMC made sales to CF Booth. The appellant asked the relevance of the allegation, requested full particulars of the transactions referred to, and, if alleged the transactions were alleged to be fraudulent, asked for the same details as per Request 6.

76. In my view, §39-41 of the SOC clearly state that these sales to CF Booth are alleged by HMRC to be fraudulent on the part of BMC.

77. In so far as Request 13 asks for full particulars of these transactions, as I have said, the appellant is not entitled to full particulars in any event. It is merely entitled to the primary or headline facts which are alleged. But here HMRC have not even identified the number of transactions, the amounts of the transactions or the dates of the transactions between BMC and CF Booth. Are these matters 'primary facts' which must be pleaded or merely secondary facts or details which can be left to the witness statements?

78. So far as Request 11 was concerned, I took the view that the identity of particular deals by the appellant alleged by HMRC to be connected to fraud, albeit not ones at issue in this appeal, were primary facts and did require to be pleaded. But I consider that that level of detail is not required in the SOC where the deals concerned do not involve the appellant in that the appellant is not the buyer, seller nor even alleged to be in the chain of purchase or sale of those goods. The primary fact for the SOC is, in this case, it seems to me, that BMC's other sales in the same period were allegedly fraudulent. That is what was pleaded. I do not consider HMRC should be required to

provide further details in the SOC. My answer to this is the same as to Requests 4 & 8.

79. I also do not consider that HMRC is required to provide the level of detail requested as at Request 6 and for the same reasons.

Request 14 & 15

80. The SOC referred to sales by BMC to the appellant in February 2014 (after the period of the sales to which the appeal related). The appellant asked the relevance of the allegation, full particulars of the transactions referred to and if it was alleged the transactions were fraudulent, asked for the same details as per Request 6.

81. I find that it is pleaded that these later sales were fraudulent: this follows if §40 of the SOC is read with §41. These paragraphs in isolation leave unclear whether it is HMRC's case that these trades are merely further evidence of BMC's alleged fraudulent activities, or whether HMRC go further and says it is more evidence of the appellant's alleged knowledge of BMC's alleged fraudulent activities. However, when read in conjunction with §95 I find it is clear that the allegation is the latter. The continued trading with BMC and other companies is alleged to be evidence of alleged knowledge of connection to fraud.

82. So I do not consider HMRC have to further explain the relevance of the allegation.

83. I do consider that transactions should be identified for the reasons given in respect of Request 11: these allegedly fraudulent transactions directly involve the appellant and the details of them are a primary fact even if these deals are not the subject of the appeal. However the original appendices 1-3 to the SOC identifies all the sales to the appellant from BMC in the period June 2013 to end January 2014. The only ones missing are for February 2014. HMRC is directed to provide the same information for the February 2014 deals as for those deals in the earlier two periods.

84. However, in so far as the appellant asks for the same details as it asked in Request 6 but in respect of the December 13 to February 14 deals, this is refused for the same reasons as given in respect of Request 6.

Request 16

85. The SOC alleged that many of BMC's suppliers fraudulently defaulted on their VAT obligations or purchased from those who did; the appellant asked HMRC to confirm that the details of the transactions relied on were exhaustively set out in new appendix 1 and if not, asked for those details. The appellant also asked whether the SOC included an allegation that the appellant knew of the defaults, and if so, for HMRC to identify who at the appellant knew of the default, and whether it included an allegation that the appellant ought to have known of the defaults and if so, why.

86. New appendix 1 to the SOC sets out HMRC's allegations on the suppliers to BMC.

87. While I do not accept, for the reasons already given at §§19-28, that the appellant is entitled to exhaustive particulars, it is entitled to the primary facts. Is the alleged default of the supplier's supplier a primary fact or is it merely a secondary detail which can await witness statements?

88. HMRC do not claim to identify which supplier to BMC supplied the goods ultimately supplied to the appellant; nor do HMRC have to prove (in order to win the appeal) that any of BMC's suppliers were fraudulent. It is enough to prove if they can that BMC was fraudulent. This is not an alleged MTIC fraud where the allegation is that a chain of transactions connects the appellant to a defaulter. The defaulter is alleged to be the appellant's immediate supplier. While the allegation that the defaulter's suppliers were fraudulent is a primary fact which (if alleged) must be pleaded (as it has been), I do not think in these circumstances that the details of the alleged transactions between its suppliers and BMC amount to primary facts. The details can be left to witness statements. The appellant is certainly not entitled to exhaustive particulars in the SOC.

89. The second half of Request 16 asked for negative pleading; requiring HMRC to say whether or not it made out a certain case. There is no pleading that the appellant knew or ought to have known of its supplier's supplier alleged defaults or fraud: while that remains the case HMRC cannot seek to prove it in the hearing, but at the same time they cannot be required to state that it is not a part of their case. Nor are HMRC required to identify a particular individual with knowledge, for reasons already stated at §§38-40.

Request 17 & 18

90. The SOC alleged that BMC traded in breach of a requirement to lodge security for VAT and had untruthfully told HMRC it would stop trading in scrap metal. The appellant asked for details about when BMC was asked for security, by when it should have been provided, and the details about its statement that it would cease to trade.

91. I agree with HMRC that the details about the security and the statement are not primary facts and can be left to witness statements.

Request 19-23

92. The SOC alleged that the owners of BMC had a long history of causing their phoenixed companies to fraudulently default on their VAT liabilities, creating a total debt to HMRC of about £26million. Details of these companies were contained in the new Appendix 2 to the SOC. It was also alleged the director was subject to a director disqualification order and that another officer was convicted of money laundering. The appellant requested:

(a) Identification of the companies

(b) Exhaustive particulars of the defaults

(c) The same particulars as per Request 6

(d) The dates each company defaulted and ceased trading

(e) What HMRC meant by phoenixed;

(f) Exhaustive details about the disqualification and its relevance to HMRC's case

(g) Exhaustive details about the conviction and its relevance to HMRC's case including whether it was alleged that the appellant knew or ought to have known of it.

93. So far as (a) is concerned, these details are in the new appendix 2 to the SOC. This Request was unnecessary.

94. So far as (b) is concerned, I consider that individual, allegedly fraudulent, transactions by the appellant's supplier but which do not directly involve the appellant do not, for reasons already given at §78, have to be pleaded, let alone exhaustively. The details can await the witness statements.

95. So far as (c) is concerned, I have already dealt with this with respect to different requests and refuse the application for the same reasons.

96. The default and liquidations are pleaded: the exact dates, it seems to me, are details which can be left to witness statements.

97. So far as (e) is concerned, I have dealt with this at §§64-65.

98. So far as (f) is concerned the appellant is not entitled to exhaustive details. I consider the details pleaded (name, date, reason, period of disqualification) are sufficient pleading of primary facts. So far as relevance is concerned, I find this is pleaded at §95SOC and it is that the appellant chose to continue to trade with BMC and connected companies even after the disqualification, and that is pleaded in support of the allegation of actual knowledge or means of knowledge.

99. So far as (g) is concerned, the answer is the same as with (f). As §84SOC read with §95SOC makes clear, it is HMRC's case that the appellant knew or ought to have known of the connection to fraud because of a number of factors including that the appellant continued to trade with BMC-connected companies after (amongst other things) the conviction of an officer of some of those companies. It seems obvious it is HMRC's case is that the appellant knew or ought to have known of the conviction. While, as said in *Gamatronic* at [26] as discussed above at §24, the appellant should not have to infer the other party's case, this really does seem obvious. Nevertheless, the appellant is entitled to clarity so I direct that HMRC state if they are pleading that the appellant knew or ought to have known of the conviction.

Request 24

100.The SOC alleged that in a stated number of VAT periods, Carwood entered into some transactions connected with fraud and in two periods the majority of its transactions were connected with fraud. The appellant requested full particulars of every transaction traced to fraud and whether it was alleged the appellant knew or ought to have known this, and if so, the same particulars as per Request 6.

101.As I have already stated, and for the reasons already stated, I do not consider that the details of the transactions not directly involving the appellant can be said to be primary facts which must be pleaded. The details are not primary facts and can wait until the witness statements. Indeed, in my view exhaustively pleading every transaction carried out by the various companies listed in the SOC would lead to obfuscation rather than clarification.

102.And as I have already stated, if HMRC do not plead that the appellant knew of the defaults, then they cannot seek to prove it, but at the same time they are not required to state that they do not consider that the appellant did not know of it. And I refuse the particulars as for request 6 and for the same reasons given as before.

Request 25

103.The SOC alleged that the directors of Carwood owned another company, which they sold, the sale being arranged by the officer of the BMC companies who was convicted of money laundering. The appellant asked the relevance of this allegation.

104.HMRC say that the relevance of this pleading is obvious: the allegation is that a person connected with the appellant was also connected with Carwood and that person is now in prison for a fraud-type offence. However, I don't agree that it is obvious. The section of the SOC in which this appears is not the section dealing with the appellant's alleged knowledge or means of knowledge so it is not obvious that this primary fact is intended to support the allegation of knowledge/means of knowledge. The relevance should be expressly pleaded and so I direct that HMRC provide an answer to Request 25.

Request 26

105.The SOC alleged that Carwood was supplied by GPSE, which was in turn, in 04/13 VAT period, supplied by UAA and (on one occasion) Millennium. UAA was alleged to be a fraudulent defaulter; UAA was also said to be Millennium's supplier and Millennium was alleged to trade in carbon credits, a market notorious for fraud. The appellant requested full particulars of the alleged fraudulent defaults, and if it was alleged that the appellant knew or ought to have known of the defaults, the same particulars as requested in Request 6.

106.This request is refused for the same reasons as in respect of the suppliers to BMC and as explained above at §§85-89.

107.If it is alleged the appellant knew or ought to have known of UAA's defaults, then this would be a primary fact which ought to be pleaded. It has not been and for this reason, as well as those given above in respect of Request 6, the request for the same particulars as per Request 6 is refused.

Request 27 & 28

108.A company IBY was alleged to have supplied GPSE in the next two VAT periods. IBY was alleged to be a fraudulent defaulting trader and its shareholder to be a serial VAT fraudster. The appellant requested exhaustive particulars of the details of IBY's and its shareholder's frauds.

109.This request is refused for the same reasons as in respect of the suppliers to BMC and as explained above at §§85-89.

Request 29

110.The SOC alleged that the transactions from IBY and UAA to GPSE to Carwood were part of a contrived scheme and that all participants in that scheme including the appellant knew its place in the fraud. The appellant requested full particulars of its alleged role in the scheme to defraud.

111.While the appellant is not entitled to full particulars, it is entitled to know what it is alleged against it. HMRC do not explain how the alleged contrived scheme was supposed to work; the appellant (and Tribunal) is left to infer it. As said in *Gamatronic* at [26], that is not enough. I direct that HMRC explain its allegation in §90 of the SOC.

Request 30

112.The SOC alleged that had the appellant undertaken reasonable due diligence, it would have known BMC was a vehicle for VAT fraud. The appellant asked what due diligence it should have undertaken and what it would have revealed.

113.The SOC at §89 and 92 alleged the appellant failed to carry out credit and other (unspecified) publically available checks. A failure to carry out due diligence checks is, it seems to me, a primary fact and while full particulars don't have to be pleaded I think that HMRC must be more specific in what they allege the appellant failed to do. This is not requiring negative pleading: it is simply requiring HMRC to identify the primary fact pleaded, in this case, what it is they allege the appellant failed to do. I direct that they specify what due diligence they allege the appellant could have carried out but did not.

114.In so far as an alleged failure to carry out due diligence is used to support an allegation of actual knowledge, what the due diligence would have revealed if carried out is irrelevant (in that the failure to carry it out is because it is unnecessary – the appellant knows about the fraud and intends to carry on regardless). However, in such far as an alleged failure to carry out due diligence is used to support an allegation

of means of knowledge, what the due diligence would have revealed is relevant. But HMRC's allegation on what the due diligence would have revealed is vague. They say the appellant would have realised BMC was a vehicle for fraud (§92). While exhaustive particulars don't have to be pleaded, the primary facts do. HMRC ought to specify what they allege the due diligence would have revealed and I direct that they do so.

Request 31

115. The SOC alleged that BMC's records were seized by police. The appellant asked whether it was alleged it knew or ought to have known of this and if so, to provide the same information as per request 6.

116. This is one of the allegations in §95 and as I have said that has to be read with §84. It is HMRC's case the appellant's alleged knowledge or means of knowledge of the connection of their purchases to fraud is evidenced by its decision to carry on trading with BMC despite (amongst other matters) BMC's records being seized by police. It seems obvious to me that that is an allegation that BMC knew or ought to have known of the seizure but it is not expressly stated. Nevertheless, the appellant is entitled to clarity so I direct that HMRC state if they are pleading that the appellant knew or ought to have known of the seizure.

117. So far as the appellant requires the same information in respect of this as required in Request 6, it is refused for the same reasons given before.

Conclusion

118. To a limited extent I have found that the statement of case is deficient and HMRC must provide the further information as directed above. To make the directions easy to identify them, I have underlined them. Otherwise, the application for further particulars is dismissed and the appellant must wait for the witness statements.

Appellant's application for standard disclosure

119. The appellant applies for standard disclosure as per the CPR:

120. HMRC accept that they have duty of candour and to that extent the difference between the parties on standard of disclosure may be more illusory than real. While HMRC accept that it is appropriate in some cases to order CPR style diclsoure of all relevant documents, as was done by the Upper Tribunal in *Ebuyer,* they do not accept that there is any general principle that in the more complex-type tax tribunal case standard CPR disclosure should be the norm.

121. HMRC's point is that checking for relevance every document they hold on every trader even peripherally connected to this appeal is a time consuming exercise which would put back the preparation of their witness statements and one that they think to an extent may be unnecessary. They consider it a better use of their time to prepare

and serve their witness statements with exhibits and then for the appellant to make a more targeted application for disclosure.

122.HMRC's point is that a CPR31-type disclosure exercise by them would be unfocussed as, being a tribunal case, they do not get a defence to the statement of case, so don't really know the appellant's case and don't therefore know what is relevant to it.

123. I don't agree with this. While I accept HMRC's point that ordering discovery of all relevant material will necessarily cause HMRC a great deal of work, and which may well involve them looking at a great deal of irrelevant material, and which would be avoided if the appellant made a more targeted application for disclosure, knowledge of connection to fraud is alleged against the appellant and a very substantial sum of money is at stake. HMRC have the burden of proof and access to the information about the various companies allegedly involved in the alleged frauds. In my view the appellant is entitled to disclosure of all relevant material held by HMRC and is not required to specify classes of material it wants disclosed. Without access to the material, it can't know which classes of material will be relevant.

124.Relevant documents are those which support the appellant's case or undermine HMRC's. HMRC knows its own case and therefore can conduct an exercise to identify any documents it holds which undermine its own case. In so far as it may hold documents supporting the appellant's case, but it says it does not know what the appellant's case is, it is only required to conduct the exercise to the extent it knows what the appellant's case is from the notice of appeal *and* to the extent the appellant takes the opportunity to refine its request for relevant documents.

125.So I consider that I should direct HMRC to disclose documents on CPR31 basis but the timing of this I will deal with after the question of the disclosure of documents relied upon and witness statements.

HMRC's application to dispense with Rule 27

126.The Tribunal's rules provide for the parties to exchange lists of documents on which they intend to rely in the hearing. It makes no provision for witness statements: nevertheless, it is normal practice in this Tribunal in cases involving significant amounts of evidence to direct an exchange of witness statements after the parties have exchanged documents.

127.HMRC ask for the requirement to exchange lists of documents to be dispensed with on the grounds it serves no purpose and leads to duplication of costs: the documents they rely on will be served as exhibits to their witness statements in any event.

128.In my view, the rules are generic, not only intended to cover all tax tribunal cases, but are derived from rules which were intended to apply to all tribunal cases. The fact the rules do not direct an exchange of witness statements does not indicate it was intended witness statements would be exchanged after documentary evidence: far

from it, it means that it was not envisaged that ordinary tribunal cases would have an exchange of witness statements at all. The rules were not drafted with the more complicated tax tribunal cases, such as this one, in mind, and there is no reason in principle why documents should be exchanged before witness statements.

129. Indeed, I agree with HMRC that doing so can be wasteful of both time and costs and serves no purpose. Therefore I direct that Rule 27 is to be dispensed with. The parties must serve the documents on which they rely in the hearing at the same time as they serve witness statements from the witnesses on whose evidence they rely, as exhibits to those witness statements.

130. The appellant asks for standard disclosure before service of witness statements: I accept HMRC's point that they can't do both at the same time. The appellant says it needs to prepare its defence, but I think that HMRC's witness statements are far more likely to produce more relevant material than standard disclosure would reveal: so the appellant is best served if it has the witness statements first and standard disclosure later.

131. I therefore agree with HMRC that the disclosure exercise can be conducted after the service of evidence, which will give the appellant the opportunity to make more specific applications for documents if they wish to do so after reading the witness evidence.

HMRC's application for Fairford Directions

132. HMRC applied for directions of the type approved by the Upper Tribunal in *Fairford* [2014] UKUT 329 (TCC). It is obvious that the actual directions set out at §47 of *Fairford* are not appropriate dealing as they do with MTIC fraud: here there are no deal sheets, deal chains nor contra traders. However, the principle behind *Fairford*, which is to prevent the hearing being taken up with evidence which is not in dispute, or at least which is not seriously challenged, should perhaps be applied here as it is an appeal involving a very large number of transactions and a large number of alleged defaulters.

133. The appellant saw the application as relating only to the 6 Carwood deals where there is an allegation of orchestration (see §§110-111 above). I don't see the principle behind *Fairford* – type directions being limited to such allegations: the purpose is to narrow down the hearing of voluminous evidence which is not really in dispute. It may shorten the hearing and focus the parties minds if in advance the appellant is required to state whether it accepts the accuracy of, say, HMRC's original appendices 1-3, and, if it denies that the various companies alleged by HMRC to be fraudulent were fraudulent, and if so, why. But I make no decision to that effect.

134. My decision is that taking into account that HMRC has not yet served its evidence and that any *Fairford*-type directions would need to be written with that evidence in mind and not just cribbed from an MITC appeal, and that HMRC are to clarify their orchestration allegation (see §§110-111), I do not consider it appropriate to issue such directions now. HMRC can renew the application, stating precisely

what directions they seek (it is not enough to say '*Fairford* type directions') once they have served their evidence. It will be for the appellant to consider the application then, and, if it cannot be agreed upon, for the then Tribunal to resolve the matter.

HMRC's application for further case management directions

135. HMRC's application was for directions to take the appeal all the way to hearing; these directions made no allowance for a sampling exercise, taking into account that there were some 389 impugned transactions, as proposed by the appellant.

136. I agree with the appellant that it was inappropriate for the Tribunal at this stage to issue directions to take the appeal all the way to hearing as it is not appropriate to determine whether or not there should be a sampling exercise until the evidence is served, and if there was to be a sampling exercise HMRC's draft directions were inapt. I agree with the appellant that it would in this case, taking into account the likely volume of the evidence and the nature and seriousness of the allegations, be appropriate for there to be another case management hearing after the evidence is served to set down appropriate directions to take the appeal to hearing, including a decision on whether or not it was appropriate to order a sampling exercise.

137. I DIRECT as follows:

Directions

(1) The appellant's application for further and better particulars of the statement of case is hereby dismissed save to the extent HMRC have been directed to provide further information as indicated in the above decision (underlined sections in paragraphs §§72, 83, 99, 104, 111, 113, and 116); those further particulars shall be provided no later than 19 August 2016;

(2) The obligation on the parties to comply with Rule 29 is hereby abrogated in this appeal;

(3) Not later than 16 September 2016 the respondents shall send or deliver to the appellant statements from all witnesses on whose evidence they intend to rely at the hearing setting out what that evidence will be and including as exhibits all documents relied on by HMRC in this appeal; and at the same time they shall notify the Tribunal that they have complied with this direction.

(4) Not later than 11 November 2016 the respondents shall provide disclosure to the appellant as set out at CPR 31 (save to the extent the documents were disclosed under direction (3) above) and at the same time shall notify the Tribunal that they have complied with this Direction;

(5) Not later than 20 January 2017 the appellant shall send or deliver to the respondents statements from all witnesses on whose evidence it intends to rely at the hearing setting out what that evidence will be and including as exhibits all documents relied on by the appellant in this appeal and shall at the same time notify the Tribunal that it has done so.

(6) Not later than 17 February 2017 the appellant shall provide disclosure to the respondents as set out at CPR 31 (save to the extent the documents were disclosed under direction (5) above) and at the same time shall notify the Tribunal that it has complied with this Direction;

(7) Not later than 17 February 2017 both parties shall provide a time estimate and dates to avoid for a case management hearing to take place in March or April 2017. The Tribunal will set down this hearing shortly after 17 February irrespective of whether either party provides its dates to avoid and an application for a postponement on the grounds that the dates are inconvenient is unlikely to succeed if the direction was not complied with. Either party seeking any particular case management direction should notify the other party and Tribunal of this no later than 2 weeks before the hearing; skeletons should be exchanged 7 days before the hearing.

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

BARBARA MOSEDALE
TRIBUNAL JUDGE

RELEASE DATE: 29 JULY 2016