

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS IN WALES
INSOLVENCY AND COMPANIES LIST (ChD)

IN THE MATTER OF FOCUS 15 TRADING LIMITED (IN LIQUIDATION)
AND IN THE MATTER OF THE COMPANY DIRECTORS DISQUALIFICATION
ACT 1986

Cardiff Civil Justice Centre
2 Park Street, Cardiff, CF10 1ET

Date: 13 November 2020

Before:

HIS HONOUR JUDGE KEYSER QC
SITTING AS A JUDGE OF THE HIGH COURT

Between:

THE OFFICIAL RECEIVER
- and -
HOWARD DUCKETT

Claimant

Defendant

Simon Passfield (instructed by **Gowling WLG (UK) LLP**) for the **Claimant**
Howard Watkinson (instructed by **Bellavia and Associates LLP**) for the **Defendant**

Hearing dates: 27 and 28 October 2020

Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

COVID-19 Protocol: This judgment was handed down remotely by circulation to the parties' representatives by email and release to BAILII. The date and time for hand-down is deemed to be 10am on Friday 9 November 2020.

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HIS HONOUR JUDGE KEYSER QC

JUDGE KEYSER QC:

Introduction

1. This is a claim by the Official Receiver (“OR”) for a disqualification order, pursuant to section 6 of the Company Directors Disqualification Act 1986 (“CDDA”), against Mr Howard Duckett in respect of what is said to be his conduct as a *de facto* director of Focus 15 Trading Limited (“the Company”, often referred to in the documents as “Focus 15” or “F15”), which is a company in insolvent liquidation.
2. The OR’s complaint is that Mr Duckett either failed to ensure that the Company maintained and preserved adequate accounting records or, if such records were maintained and preserved, failed to ensure that the Company delivered them.
3. Mr Duckett’s response to the complaint is, in brief, first, that he was not a *de facto* director of the Company—it is common ground that he was not a *de jure* director—and, second, that the OR has not proved that the Company’s accounting records were inadequate.
4. The background provides a sub-text to the proceedings. The Company was wound up on the petition of Her Majesty’s Revenue and Customs (“HMRC”) for non-payment of VAT. HMRC’s investigations had led it to form the view that the Company was a vehicle for a so-called Missing Trader Intra-Community (“MTIC”) fraud. The OR shares that view. It is important, therefore, to observe at the outset that the OR has not brought these proceedings on the basis of an allegation that Mr Duckett carried on an MTIC fraud or any other form of fraud via the Company. Accordingly, the question of fraud is not an issue in the case and cannot form the basis of any order. What the OR does say and is entitled to say, however, is that the significance of the obligation to maintain and preserve adequate records, and therefore of a failure to comply with that obligation, lies in part in the importance of proper documentation both to lessen the risk of fraud and to enable it to be detected and thoroughly investigated when it has occurred.
5. The trial was heard over two days by Cloud Video Platform. I am grateful to Mr Passfield and Mr Watkinson, counsel respectively for the OR and for Mr Duckett, for their helpful and well-focused written and oral submissions.
6. The rest of this judgment will be structured as follows. First, I shall set out the statutory framework in CDDA. Second, I shall give a short overview of the Company and of the principal individuals with whom the case is concerned. Third, I shall refer briefly to the commencement of proceedings and to the issues that arise. Fourth, I shall provide a lengthy chronological narrative, with extensive reference to the documents. Fifth, in the light of that narrative, I shall address the issues in turn.

The Statutory Framework

7. CDDA contains the following provisions that are relevant to this case:

“Section 1

(1) In the circumstances specified below in this Act a court may, and under sections 6 and 9A shall, make against a person a disqualification order, that is to say an order that for a period specified in the order—

- (a) he shall not be a director of a company, act as receiver of a company’s property or in any way, whether directly or indirectly, be concerned or take part in the promotion, formation or management of a company unless (in each case) he has the leave of the court, and
- (b) he shall not act as an insolvency practitioner.”

“Section 6

(1) The court shall make a disqualification order against a person in any case where, on an application under this section, it is satisfied—

- (a) that he is or has been a director of a company which has at any time become insolvent (whether while he was a director or subsequently), and
- (b) that his conduct as a director of that company (either taken alone or taken together with his conduct as a director of one or more other companies or overseas companies) makes him unfit to be concerned in the management of a company.

(1A) In this section references to a person’s conduct as a director of any company or overseas company include, where that company or overseas company has become insolvent, references to that person’s conduct in relation to any matter connected with or arising out of the insolvency.

(2) For the purposes of this section, a company becomes insolvent if—

- (a) the company goes into liquidation at a time when its assets are insufficient for the payment of its debts and other liabilities and the expenses of the winding up, ...

...

(4) Under this section the minimum period of disqualification is 2 years, and the maximum period is 15 years.”

“*Section 22*

...

(4) ‘Director’ includes any person occupying the position of director, by whatever name called.”

“*Section 12C*

(1) This section applies where a court must determine—

(a) whether a person's conduct as a director of one or more companies or overseas companies makes the person unfit to be concerned in the management of a company;

...

(c) where the court has decided to make a disqualification order under any of those sections or is required to make an order under section 6, what the period of disqualification should be.

...

(4) In making any such determination in relation to a person, the court or the Secretary of State must—

(a) in every case, have regard in particular to the matters set out in paragraphs 1 to 4 of Schedule 1;

(b) in a case where the person concerned is or has been a director of a company or overseas company, also have regard in particular to the matters set out in paragraphs 5 to 7 of that Schedule.”

“*Schedule 1*

Matters to be taken into account in all cases

- 1 The extent to which the person was responsible for the causes of any material contravention by a company or overseas company of any applicable legislative or other requirement.
- 2 Where applicable, the extent to which the person was responsible for the causes of a company or overseas company becoming insolvent.
- 3 The frequency of conduct of the person which falls within paragraph 1 or 2.

- 4 The nature and extent of any loss or harm caused, or any potential loss or harm which could have been caused, by the person's conduct in relation to a company or overseas company.

Additional matters to be taken into account where person is or has been a director

- 5 Any misfeasance or breach of any fiduciary duty by the director in relation to a company or overseas company.
- 6 Any material breach of any legislative or other obligation of the director which applies as a result of being a director of a company or overseas company.
- 7 The frequency of conduct of the director which falls within paragraph 5 or 6."

The Company and the individuals: an overview

8. The Company was incorporated on 16 September 2015. Its stated business activity was "Other retail sale in non-specialised stores." The sole shareholder and *de jure* director from the date of incorporation and at all times thereafter was Richard Cooke, who had a shareholding of one ordinary share at £1. No company secretary was appointed. The registered address of the Company from the date of incorporation and at all times thereafter was 20-22 Wenlock Road, London, N1 7GU, which was the address of the company formation agent that dealt with the incorporation. The Company did not have trading premises and did not employ any staff. The Company was registered for VAT with effect from 1 November 2015, pursuant to an application submitted electronically on 18 November 2015, which described its business activities as "Wholesale of clothing". The application stated the Company's principal place of business as 75 Morden Road, Newport; those were residential premises and were, at least some of the time, Mr Cooke's home address. The Company held four accounts with Santander bank; three accounts were opened on 10 November 2015 and the fourth on 19 January 2016. Mr Cooke was the sole signatory on the accounts. The Company began trading in June 2016.
9. On 22 March 2017 HMRC presented a petition for the winding up of the Company for a debt of £179,470 in respect of VAT for the period ended 31 August 2016. A winding-up order was made against the Company on 22 May 2017 on HMRC's petition. The position of the Company on winding up was as follows. There were no assets. The liabilities were £432,928. The issued and paid-up capital was £1. Accordingly, there was an overall deficiency as regards creditors and shareholders of £432,929.
10. No financial statements have been filed at Companies House in respect of the Company.

11. Three individuals are central to this case: Mr Cooke; Mr Duckett; and one John Deere (or Deer: both spellings have been given, and the only rational basis for choosing between them appears to be aesthetic).
12. Mr Cooke was born on 27 May 1991. He was therefore 24 years old when the Company was incorporated. The information that he gave to the OR's examiner in 2017, in the presence of Mr Duckett, was that he had no professional or technical qualifications, and that his previous work experience had included working in the building industry, working at a call centre, and working on a self-employed basis for a conservatory company as an installer's mate. The Company was his first corporate venture. Mr Duckett's evidence, unchallenged on the point, was that Mr Cooke had dyslexia and possibly dyspraxia and would not have been able to run a business or company. Mr Cooke did not give evidence.
13. Mr Duckett was born in December 1961. He has a degree in business studies and has worked for a number of companies as an employee. He was a director of Monmouthshire Financial Management Limited from its incorporation in 2004 until its dissolution in May 2016. He was the director of Markdown Limited, which is recorded as being a manufacturing company though I do not know whether it traded, from February 2013 until it was struck off in March 2015. In August 2015 he was appointed as a director of Beauforce Corporation Limited, and he has since been the sole director and member. Beauforce Corporation Limited is authorised by the Financial Conduct Authority to carry on the business of providing consumer advice on debt and related matters. It carries on business from Mr Duckett's premises at The Coach House, 7B Castle Parade, Usk, ("The Coach House"), though Mr Duckett says that as a result of the stress occasioned by these proceedings he has ceased carrying out advisory work.
14. Mr Deere's name is first mentioned in the documentary evidence on 7 July 2017, when it is recorded that Mr Duckett informed an officer of the OR that Mr Deere was the person who ran the Company. When Mr Cooke attended for interview at the OR's offices in London on 1 August 2017, accompanied by Mr Duckett, he said that, although he was the sole director and signatory on the bank accounts and the "face" of the business, the day-to-day operations of the Company were carried out by "John Deere". Mr Cooke said that it had been Mr Deere who suggested that he form a company to carry on the importation and sale of goods, and he stated: "Mr Deere kept me out of the business and he stated that I wouldn't understand what he was doing anyway. I suffer from bad dyslexia and he took advantage of that. I trusted him and left him to run the company. ... He effectively operated the company by himself. I did not receive any remuneration at all. I carried on working at the Conservatory company." Mr Cooke explained that he had not required any start-up capital for the Company, because: "Mr Deere said that he would get stock on credit and the customer would pay in advance. Once the customer paid, the supplier would then be paid." He stated that, when HMRC was pressing him to provide documents to support the Company's VAT return, he went to see Mr Deere, who assured him that he would deal with matters. When HMRC continued to press, he went to see Mr Duckett, who instructed tax specialists to deal with the matter. When asked about Mr Deere, Mr Cooke had this to say:

"About 5' 6"; late 30s; messy (?) brown hair; blue eyes;
Bristolian / West Country accent; white; clean shaven; well

spoken; Tag Heuer watch. He was a local guy in Gwent but I did not know his address. As he had a Bristol accent, he may have lived there or around Somerset. I was in contact with him via his mobile but that number is no longer operational.”

15. There is no evidence that the Company made any payments to Mr Cooke or to Mr Deere. It made payments in the sum of £12,800 to Mr Duckett: £6,000 on 8 August 2016; £2,600 on 13 September 2016; £2,200 on 8 December 2016; and £2,000 on 6 February 2017. Mr Duckett says that these were payments for consultancy and administrative services he had provided to the Company, and he relies on an itemised invoice in respect of each payment. The OR says that the invoices were produced *ex post facto* and do not provide truthful explanations of the payments.
16. Mr Deere has not been located. Mr Cooke and Mr Duckett have not provided any contact details for him; they say they have none. The OR says that Mr Deere is a fiction. Whether that is so lies at, or near, the heart of the case.

The proceedings and the issues

17. On 20 June 2018 the OR gave to Mr Duckett notice of intention to apply for a disqualification order against him. The notice, given pursuant to section 16 of CDDA, stated that it was also intended to apply for a disqualification order against Mr Cooke.
18. On 18 July 2018 the Secretary of State accepted a pre-issue undertaking from Mr Cooke for a period of nine years from 8 August 2018.
19. Proceedings were commenced by the issue of a claim form on 31 May 2019. The details of claim were stated in substantially the same terms as those in the statutory notice (I shall mention one difference later), as follows:

“Between at least 16 September 2015 and 22 May 2017, Howard Duckett (‘Mr Duckett’) failed to ensure that Focus 15 Trading Limited (‘F15’) maintained and/or preserved adequate accounting records or in the alternative failed to deliver up adequate accounting records such as were maintained. As a result of this it has not been possible to establish:

- a) Who had control of the affairs of F15 from incorporation to liquidation;
- b) The full nature of F15’s trading activities;
- c) The income and expenditure of F15 and in particular the disposal of at least £1,443,293 paid from the company bank account between 16 December 2015 and 22 May 2017 and whether this related to genuine company expenses;

- d) F15's actual VAT liability in respect of VAT periods ended 31 August 2016 and 1 February 2017 in respect of which HMRC has issued assessments totalling £217,477 and £116,452 respectively;
 - e) The assets and liabilities of F15 at liquidation.”
20. On 31 July 2019 Mr Duckett acknowledged service of the claim form, stating that he intended to contest the claim on the grounds that he was not a director or shadow director of the Company and that he disputed the allegation that his conduct made him unfit to be involved in the management of a company.
21. There are three issues:
- 1) Was Mr Duckett a *de facto* director of the Company?
 - 2) If he was, does his conduct in relation to the Company make him unfit to be concerned in the management of a company?
 - 3) If it does, what order ought to be made against him?

Factual Narrative

22. The Company was incorporated on 16 September 2015.
23. Mr Duckett dealt with the incorporation through a formation company. His evidence was that he did this at Mr Cooke's request and with the information that Mr Cooke provided to him. Mr Duckett stated that he was introduced to Mr Cooke by a woman who worked for him, Lisa Rowles, who was a long-standing friend of Mr Cooke. Mr Cooke explained to him that he was working as a labourer on a building site; one of the men working there, John Deere, ran a trading business from his laptop and had suggested that Mr Cooke do likewise. Mr Cooke was unable to deal with business matters personally, because he was not really computer literate and was dyslexic; apparently this did not put him off, but he would need assistance. Mr Deere had offered to source suppliers and customers but was unable to be a director "because of his past". Why this should prevent Mr Deere from helping Mr Cooke with the mechanics of forming a company is unclear; when I asked Mr Duckett, he said he had been given no reason why Mr Deere could not assist in that respect. Nevertheless, despite expressing misgivings about what he had heard of Mr Deere, Mr Duckett agreed to help Mr Cooke set up the Company. That was his evidence.
24. This account was supported by Ms Rowles, who made a witness statement dated 14 May 2020 and attended for cross-examination. Ms Rowles' statement described how Mr Cooke, a "long-standing friend", asked her if she or someone she knew could advise him on how to set up a limited company "for a business idea that he and his friend wanted to start." The friend, was "a work colleague, John Deer", who "was already operating the business and earning good money but could do much larger transactions through a limited company." The statement explained how Ms Rowles arranged an introduction for Mr Cooke to Mr Duckett and overheard the conversation

in which Mr Cooke explained his intentions and Mr Duckett, having voiced a number of concerns, agreed to assist in setting up the Company and made suggestions as to appropriate bankers for the Company to use. The statement says that Mr Duckett had asked why Mr Deer was not to be a co-director with Mr Cooke, and that Mr Cooke had answered “that John Deer had told him he could not be a director of a limited company because he had a company earlier which had to close.”

25. Ms Rowles gave her evidence at trial in a pleasant manner and stood by the contents of her statement. She said that she had worked for Mr Duckett on a part-time and self-employed basis since roughly 2008/2010 and had known Mr Cooke for roughly eight years, more as an acquaintance than as a close friend. She said that the initial meeting between Mr Duckett and Mr Cooke was an informal one, more in the nature of a chat, and was held in the reception area of the office at The Coach House where she was working at the desk. Subsequent conversations between Mr Cooke and Mr Duckett took place in Mr Duckett’s private office, where he conducted his advisory business, and could not be overheard by her. Ms Rowles insisted that she had heard the name “John Deere”, but she could not be certain that it had been mentioned at the first meeting.
26. Ms Rowles’ witness statement was prepared by solicitors. One obvious source for its contents was a letter signed by Ms Rowles and dated 3 December 2017, which was one of a number of documents sent by Mr Duckett’s current solicitor to the Insolvency Service in August 2018 in response to the formal section 16 notification letter. Ms Rowles said that the witness statement was prepared by the solicitors after a telephone conversation with her and that she signed it after satisfying herself that the information in it was correct.
27. There is a striking difference between the letter and the statement: only in the statement, not in the letter, is the new company to be anything in the nature of a joint venture between Mr Cooke and John Deer, and the latter is not named in the letter. This difference can be seen by comparing the two documents.
 - In the letter Mr Cooke is said to have wanted advice on how to set up a company “for a business idea that a friend of his had introduced him to.” In the statement the company was to be “for a business idea that he and his friend wanted to start.”
 - Paragraph 3 of the statement introduces wholly new material: that “John Deer was already operating the business” “but could do much larger transactions through a limited company.” This is not in the letter.
 - The letter contains no mention of any queries concerning the friend’s involvement or his inability or unwillingness to become a director. Taken by itself, it does not suggest that the friend was anything more than the person who had put an idea in Mr Cooke’s head; it neither says nor even hints that he was to be involved in the new business.
28. Ms Rowles insisted that the statement did no more than provide details of a conversation that had only been summarised in the letter. I consider that to be very implausible: first, the recollection of these details more than two years after the letter was written and more than four years after the conversation is unlikely, particularly

when Ms Rowles claimed not to have known what the purpose of the legal enquiries was and so would have been unlikely to be turning events over in her mind, and when she was not herself a participant in the conversation and was apparently getting on with her own work; second, the details do not merely amplify the contents of the letter, they significantly alter its tenor, as I have observed. I am bound to say that I also find it implausible that anything more than initial introductions and pleasantries would have been discussed in the reception area when Mr Duckett had a private office: Ms Rowles' statement and letter both say that the conversation took about one and a half hours, and in oral evidence she said that the premises did not have a waiting room as such.

29. I cannot accept Ms Rowles as a reliable witness. I consider that the details concerning Mr Deere in her witness statement were provided to her subsequently: whether by the inclusion in her witness statement of extraneous details from a different source so as to create a coherent case (such things are not unknown and I cannot discount this possibility) or by the imparting of further information by someone else. This also places a question against the reliability of the original letter, which must have been provided at Mr Duckett's request. My conclusion as to Ms Rowles is that she is suggestible and not a good historian.
30. As to what led to the incorporation of the Company, assurance is neither possible nor necessary. It is improbable that Mr Cooke had the idea of incorporating a limited company. Therefore it is probable that someone suggested to him that a company be formed and that he be a director. In the light of other conclusions that I reach, as explained below, I think the most likely scenario is as follows. Mr Cooke got it into his head that he might be able to supplement his earnings by running a business as a sideline. This may, perhaps, have been suggested by a work acquaintance; I do not, however, accept the story about John Deere. Mr Cooke wanted to talk over this possibility with someone knowledgeable about business matters, and he used his acquaintanceship with Ms Rowles to find an opportunity to speak about it to Mr Duckett.
31. What is clear, at all events, is that Mr Duckett dealt with the incorporation of the Company. Mr Deere did not do so.
32. The next recorded events were in November 2015, when the Company made arrangements to enable it to carry on business.
33. First, the Company opened three accounts at Santander bank. (A fourth account was opened there in January 2016.) Mr Duckett's evidence was that Mr Cooke asked him to recommend a bank and help him with opening an account, and that he introduced Mr Cooke to a Santander bank manager whom he knew. If, as Ms Rowles stated she was told by Mr Cooke, Mr Deere was "already operating the business and earning good money"—and Mr Duckett's evidence was that Mr Cooke claimed to have seen Mr Deere's bank statements—nevertheless Mr Deere was not instrumental in the choice of the bank for the Company. This aspect of Mr Duckett's case lacks plausibility.
34. Second, the Company became registered for VAT. On 18 November 2015 Mr Duckett sent an email to Emma Sadler, the director of Ace Accounts & Bookkeeping Services Limited ("Ace"), a company with which he had an established relationship.

The email was sent from howard@beauforcecorporation.co.uk (“the Beauforce Email Address”). The Subject line referred to the Company. The email read:

“Hi Emma

The other business I spoke to you about is at last moving forward.

To these ends I attach the company’s vat application form. Again as mentioned to you, I would like you to do the vat returns for the business. Can you please register with HMRC as the person doing the VAT and I can then receive another 15 letters from them telling me that you are our VAT rep.

Thanks Emma

Regards

Howard”.

35. Mr Duckett’s evidence was that he did not send this email on his own initiative. In November 2015 he received a telephone call from Mr Cooke, who asked him to recommend an accountant for the Company. Mr Duckett recommended Ace, who acted as his accountants. He told Mr Cooke that the best way to proceed would be for Mr Deere to email the documents to Ace. However, a few weeks later Mr Cooke turned up at his offices with some invoices for Ace, saying that Mr Deere had been unable to scan and send them by email. Mr Duckett agreed to help, and thereafter he would scan and email documents to Ace whenever required. When Mr Cooke wanted the Company to be registered for VAT, “at his request I filled in the form then sent the form to Ace.” In cross-examination, Mr Duckett accepted that someone reading this email might gain the impression that he was running the Company, but he said that any such impression would be mistaken. In my view the email clearly suggests that Mr Duckett is doing more than providing assistance to others in respect of a company with which he has no personal connection: he writes “I would like”, refers to “our” VAT representative, and jokes about the prospect that he (not some third party) will receive unnecessary communications from HMRC; and there is no suggestion that third parties have contacted him again and asked for assistance. Further, Mr Duckett’s assertion, in these proceedings and in a statement he provided to HMRC in December 2017, that after assisting in the incorporation of the Company in September 2015 he had no further involvement until receiving an unsolicited request to recommend an accountant in November 2015, sits very uneasily, if at all, with the sentence, “The other business I spoke to you about is at last moving forward.” I do not accept Mr Duckett’s evidence that he contacted Ace as a favour to Mr Cooke.
36. Ace submitted the application for VAT registration electronically on 18 November 2015 and the registration took effect as from 1 November 2015.
37. On 14 December 2015 Miss Sadler sent an email to Mr Duckett at the Beauforce Email Address, asking for the VAT registration number and registration date of the Company and its postcode as shown on the VAT certificate, so that she could add the

Company to her “agents file” rather than having to log on as a delegate. Mr Duckett replied from the Beauforce Email Address. He gave the VAT number and the registration date. He also gave the postcode for 75 Morden Road but added, “This will change shortly as will the trading address”. Mr Duckett said in cross-examination that he wrote that because he understood that Mr Cooke had moved out, or was going to move out, of 75 Morden Road on account of his on-off relationship with his partner.

38. On 15 December 2015, at 8.34 a.m., Miss Sadler sent an email to Mr Duckett at the Beauforce Email Address: “Can you please confirm the full company name please. (The new company)”. The Subject line of the email was “Re: Meeting”. The reply to that request was sent at 9.21 a.m. from admin.focus15@focus15trading.co.uk (“the Company Email Account”). The From line of the email was: “John <admin.focus15@focus15trading.co.uk>”. The Subject line was: “RE: Meeting”. The text was:

“Hi Emma

Focus 15 Trading Ltd

Regards

Admin team”.

39. Mr Duckett’s evidence was that he did not send this response: he made a telephone call to Mr Deere and asked him to liaise with Miss Sadler. He said that all emails sent from the Company Email Account were sent by Mr Deere (the “John” mentioned in the From line), who alone had access to the account from his laptop. However, this evidence is unconvincing. First, it is to be expected that Mr Duckett would himself reply to an email sent to him by a person with whom he was well acquainted. Second, as Mr Duckett had dealt with the incorporation of the Company, had completed the VAT registration application, and had been quite capable of providing the VAT registration number and registration date on the previous day, it would be surprising if he could not provide the name of the Company. Third, if for some reason Mr Duckett required to be reminded of the name of the Company, he might as easily have enquired of Mr Deere as asked Mr Deere to send the response to Miss Sadler. I find that Mr Duckett sent the email.
40. Two features of the emails from the Company Email Account may be noted: first, the From line identified the sender as “John”; second, the automated signature is “Regards[,] Admin team”. These are clearly the way the account is set up. Someone has named the account user as “John”. Mr Duckett says that this is John Deere. No email states “John’s” surname, however, and there are some emails that identify the sender as “John” in the From line but are in my judgment clearly from Mr Duckett.
41. On 7 January 2016 an email was sent from “John <admin.focus15@focus15trading.co.uk>” to Miss Sadler, attaching a communication from HMRC regarding the Company’s tax dates. The email read:

“Hi Emma

Please find attached a letter [from HMRC] regarding Focus 15 tax dates.

Regards

Howard”.

Mr Duckett denied sending this message. He said it must have come from Mr Deere. He did not know why it had been signed “Howard”; Mr Deere was, he supposed, impersonating him. In the light of all the evidence, I reject that explanation and find that the email was sent by Mr Duckett, as it purports to have been.

42. On 4 March 2016 Mr Duckett sent an email to Miss Sadler from the Beauforce Email Address:

“Hi Emma

Just received notification for the company’s agent verification code which is: [number and expiry date set out].”

Mr Duckett’s evidence was that he received the information in this email from Mr Cooke.

43. On 7 March 2016 Miss Sadler sent an email to Mr Duckett at the Beauforce Email Address at 8.29 a.m.:

“Hi Howard

I have checked the Vat quarter for Focus 15 and it is Nov 15 – 29/02/2016 (4 month period). Has there been any trading in this period?”

Mr Duckett replied from the Beauforce Email Address at 9.12 a.m.:

“Hi Emma

No, not at the moment, problems with officials abroad, another reason to leave the EU!!!!

Howard”.

Mr Duckett’s evidence was that he could not give the information in this reply from his own knowledge but had first to check by telephone with Mr Cooke. That is not inherently implausible, but it sits uneasily with Mr Duckett’s evidence that Mr Cooke did not know details of the Company’s trading position, and in the light of all the other evidence I reject it. I consider that Mr Duckett had full knowledge of the Company’s trading position.

44. On 25 May 2016 Mr Duckett sent to Miss Sadler an email from his personal email account, asking her: “Can you please do a nil vat return for Focus 15 for period 01-03-2016 to 31-05.2016.” Mr Duckett’s evidence is that he was asked by Mr Deere to make this request. If (as Mr Duckett says) Mr Deere had already sent emails to Miss

Sadler on 15 December 2015 and 7 January 2016, it is far from obvious why he could not also have sent this simple request directly to her without asking Mr Duckett to do so. I reject Mr Duckett's evidence on this point.

45. On 14 June 2016 Miss Sadler replied to Mr Duckett, confirming that she had filed a Nil return for the last quarter and saying that she would contact him after her return from holiday. Mr Duckett replied, again from his personal email address, and in a tone that reflected what he described as his jocular relationship with Miss Sadler:

“Hi Emma

Ta ever so, see you when you get back. Don't forget my stick of rock! Happy hols! X”

46. According to information provided by Mr Cooke to the OR, the Company commenced trading in June 2016 and its business involved the importation of goods including salt from China, televisions from the Czech Republic, Microsoft software, computer hard-drives, and Sony Play Stations. HMRC's records show reason to believe that the Company may have been trading during the quarter to 31 May 2016, but it is unnecessary for me to explore that issue here.
47. From at the latest 3 August 2016 the statements of the Company's Santander bank accounts were addressed c/o Beauforce Corporation at The Coach House. Mr Duckett denied that this was because he was running the Company. He said that it was a purely temporary measure and that he had repeatedly told Mr Cooke to get a service office to which all official documents could be sent. In fact, however, the bank statements continued thereafter to be sent to The Coach House; the arrangement was not changed. When Mr Duckett was asked in cross-examination why the bank statements had not gone to Mr Deere, who after all was (on Mr Duckett's case) running the Company, he replied that Mr Deere had no right to receive them and did not want to receive them. I understood that evidence to mean that, as Mr Deere was not a director, he could only receive the statements with Mr Cooke's permission and if he agreed to receive them, and that he did not agree to receive them. This would mean that, having had initial misgivings about Mr Deere's involvement, Mr Duckett was nevertheless willing to be used as a postbox for the Company, even though he had never received any explanation of Mr Deere's inability to be a director, knew nothing meaningful about Mr Deere (including his address) and had no knowledge of the Company's trading activities. That is inherently implausible. (It is convenient to note here that from 28 November 2016 correspondence to the Company from HMRC, discussed below, was addressed to The Coach House.)
48. On 8 August 2016 the Company made the first recorded payment to Mr Duckett, in the sum of £6,000. There is an invoice in respect of this payment, dated 20 August 2016. I shall comment on these and other payments below.
49. On 28 September 2016 Miss Sadler of Ace sent an email to Mr Duckett at his personal address:

“Am just trying to file an annual statement on companies house for Focus 15. We need a personal address for Richard Cooke. We can use the London address as a correspondence address

and a head office address but not as personal for him. If you could let me know what address to use and I shall get it updated and filed.”

Mr Duckett replied that day, from his personal address, giving Mr Cooke’s address as 75 Morden Road.

50. On (Thursday) 29 September 2016 Miss Sadler sent an email to Mr Duckett at the Beauforce Email Address at 11.03 a.m.: “Do you have sales/expenses to be declared on the vat return for Focus 15. The deadline is looming for filing.” Mr Duckett replied from the same address at 11.15 a.m.:

“Hi Emma,

I haven’t got a clue what your on about! However, I am about to start sending you the purchase orders and invoices which, hopefully, I will do by tomorrow and then you can go through them and let me know—in plain English what the situation is.

Thanks Hun

Howard”.

In answer to questions from me, Mr Duckett confirmed the obvious meaning of the first sentence of that email: it was not an assertion that he had no idea of the Company’s trading position but rather a jocular pretence not to understand the very simple request that Miss Sadler had made. Miss Sadler, either playing along or taking no chances, replied explaining that she required the sales and purchase invoices. Mr Duckett replied: “Yep, I know that bit! It’s the rest I haven’t a clue about so those are the ones I am going to send you. Then we’ll go from there.” Mr Duckett’s evidence was that Mr Cooke had given him the documents to scan and send to Ace and that he did so. The evidence has to be viewed in the context of all the other evidence, and I reject it.

51. On (Monday) 3 October 2016 an email was sent to Miss Sadler from John <admin.focus15@focus15trading.co.uk> at 12.52 p.m. with the Subject line “June docs”:

“Hi Emma,

Here are June’s purchases and invoices

Regards

Admin team”.

At 12.59 p.m. a further email was sent from the same address, with the Subject line “July docs”. At 1.01 p.m. a further email was sent from the same address with the Subject line “Aug docs” and the text: “August part 1, Regards, Admin team”. At 1.19 p.m. a further email was sent from the same address, with the Subject line “Aug part 2”: “Emma, The remainder will be sent tomorrow. Regards Admin team”.

52. Mr Duckett's evidence was that the emails on 3 October 2016 were sent by Mr Deere and were a rare example of him sending documents. The documents sent by these emails were (he said) additional to those that Mr Cooke had provided to him. However, I note the following points. First, the emails of 3 October do not claim to be sending documents additional to any that had already been sent. Second, the copies of the emails that are in evidence are from chains that were forwarded by Miss Sadler to an Examiner within the Insolvency Service in March 2018. The forwarding emails for the emails of 3 October 2016 list pdf attachments, and the documents in those attachments are in evidence. The forwarding email for the emails of 29 September 2016 does not show any attachments and no attached documents are in evidence. Accordingly, the probability is that the only documents sent to Miss Sadler between 29 September and 3 October 2016 inclusive were those sent from the Company Email Address on Monday 3 October 2016 as mentioned above.
53. On Friday 7 October 2016 there were further email exchanges with Miss Sadler.
- (1) At 8.59 a.m. Miss Sadler wrote to Mr Duckett at his personal email address:
- “Hi Mr Duckett [with a winking emoji]
- Just a little reminder that I need the Vat paperwork for Focus 15 by lunchtime today.
- You will get a fine if it is not filed today.”
- (2) At 9.14 a.m. Mr Duckett replied from his personal email address:
- “Here we go, nag nag nag!!!
- I was a little tied up yesterday—figuratively speaking! Thank you for your reminder—much appreciated, I will get them to you by lunchtime which, for me, is about 4pm!!!!
- Howard”.
- (3) At 9.30 a.m. Miss Sadler replied in jocular manner to Mr Duckett's personal email address.
- (4) At 9.33 a.m. an email was sent to Miss Sadler from “John <admin.focus15@focus15trading.co.uk>”, which said, “Hi Emma, There were two transactions in June. Regards, Admin team”. There were four attachments to that email, two for each transaction.
- (5) At 9.36 a.m. a further email was sent to Miss Sadler from “John <admin.focus15@focus15trading.co.uk>”, which said, “Hi Emma, There were five transactions in July. Regards, Admin team”. There were ten attachments to that email, again two for each transaction.
- (6) At 9.46 a.m. Mr Duckett replied to Miss Sadler again from his personal email account:

“Please disregard anything sent earlier in the week, I am going through the whole lot and have already sent you June and July. I am presently working on August for you. I will split August into two emails, as there were eleven transactions and I don’t know if I put all twenty-two pages as attachments if they would all go through.”

- (7) At 9.50 a.m. a further email was sent to Miss Sadler from “John <admin.focus15@focus15trading.co.uk>”. The Subject line was “August part 1”, and the email said, “August 2016[,] 6 of 11[,] Regards, Admin team”. There were twelve attachments to that email, two for each of the six transactions.
- (8) At 9.53 a.m. a further email was sent to Miss Sadler from “John <admin.focus15@focus15trading.co.uk>”. The Subject line was “August 2016 part 2”, and the email said, “Here’s the final lot—can you please confirm receipt of these ere emails please? Regards, Admin team”. There were ten attachments to that email, two for each of the five transactions.
- (9) At 1.50 p.m. Miss Sadler sent an email to Mr Duckett at his personal email address:

“Hi Howard

I have received all of the docs. I am just processing now.

John originally sent me two sales invoices, that is sales you have made to your customers. Are they correct. You didn’t include them in your emails.

Thanks

Em”.

- (10) At 2.02 p.m. Mr Duckett replied from his personal email address:

“As you can see from his original messy paperwork, I altered the way he did things to make life clearer. However, if I am correct in my thinking, and often I am not—you want the Purchase order we sent to our supplier and their invoice to us? Therefore, what else do you require?”

- (11) At 3.00 p.m. “John <admin.focus15@focus15trading.co.uk>” sent an email to Miss Sadler, clearly in response to hers of 1.50 p.m. to Mr Duckett. The Subject line was “June sales” and the text read: “Sorry[,] Regards[,] Admin team.” The attachments were two Company invoices: they were two of the four such invoices that had been attached to the email at 12.52 p.m. on 3 October, but they had not been attached to the email at 9.33 a.m. on 7 October 2016, which had failed to include those two transactions.
- (12) At 3.01 p.m. “John <admin.focus15@focus15trading.co.uk>” sent Miss Sadler an email in respect of “July”, which said “Sorry – again” and attached three further documents.

- (13) At 3.14 p.m. “John <admin.focus15@focus15trading.co.uk>” sent Miss Sadler an email in respect of “July sales”. It attached two very large sales invoices from the Company (the total value of the sales was £873,360) and said, “I have emailed Shades to amend their paperwork which hopefully will be with me soon.”
- (14) At 3.17 p.m. “John <admin.focus15@focus15trading.co.uk>” sent Miss Sadler an email in respect of “August sales”, again attaching a number of documents. The email said: “Sorry – still waiting for shades.”
- (15) At 3.23 p.m. “John <admin.focus15@focus15trading.co.uk>” sent a further email to Miss Sadler, again in respect of “August sales”. It attached a number of documents, including several concerning Shades Limited. The text of the email read:

“I think that’s the lot – any queries things not matching, give me a call hun x”.

54. Mr Duckett’s evidence was that all of these emails sent from “John <admin.focus15@focus15trading.co.uk>” were sent by Mr Deere. A conclusion on this question must involve consideration of the totality of the evidence, not just this sequence of emails. But I can say now that Mr Duckett’s evidence, which I reject, is implausible in the light of the emails themselves.

- 1) Taken by themselves, the emails on 3 October 2016 could indeed have been sent by someone other than Mr Duckett, including “John”.
- 2) However, Mr Duckett’s email of Thursday 29 September 2016 clearly means that he (rather than someone else) was dealing with the documents and that he hoped to send them through on the following day. In those circumstances, it is implausible that the documents he was dealing with would be sent to Miss Sadler by someone else, especially when: (a) the documents were sent electronically; (b) Mr Duckett was not in personal contact with Mr Deere, whom he claims to have met only once, so could not have handed over physical documents that he had put into order; and (c) there are no emails at all passing between Mr Duckett and Mr Deere, whether by way of forwarding documents or otherwise. Mr Duckett’s evidence was that he deleted most of his emails and did not keep any of those passing between him and Mr Deere, but I do not believe that convenient but patently false explanation.
- 3) Further, Mr Duckett says that he sent some documents for the quarter to August 2016 to Miss Sadler and that Mr Deere sent other documents; but there is in evidence no email by which Mr Duckett sent any such documents to Miss Sadler, if he did not send the emails in the week 3 to 7 October 2016. When this was pointed out to Mr Duckett in cross-examination, he said that he could see the point and had no answer to it, albeit that he continued to maintain the truth of his account.
- 4) A probable inference, accordingly, is that Mr Duckett had intended to send the documents on which he was working on Friday 30 September but did not get around to it until Monday 3 October 2016.

- 5) The timings of the emails from the Company Email Address on Friday 7 October 2016 make it overwhelmingly probable that Mr Duckett sent them. That he did so is confirmed expressly by the email sent from his personal email account at 9.46 a.m., as well as by the terms of the email at 3.23 p.m. on 7 October 2016. In cross-examination Mr Duckett said of the former email that when he said, “I am presently working on August for you” he meant that he was getting Mr Deere to work on August, and that he knew the page-count (twenty-two pages) because this is what Mr Deere had told him. Of the latter email, Mr Duckett said that the words “give me a call hun x” did not come from him, because he would not sign an email “Regards[,] Admin team”. These responses were desperate and serve only to confirm the untruthfulness of Mr Duckett’s evidence.
 - 6) On any view of it, the documents leave a lacuna in the week of 3 October 2016. Documents for June, July and August had been sent on Monday 3 October, but what purports to be a complete set of documents for those months was also sent on Friday 7 October. Miss Sadler’s email at 8.59 a.m. on 7 October makes sense only if she had been in further contact with Mr Duckett during the week and had not received what she regarded as satisfactory documentation. (Given the mess that was still being made of the documentation on 7 October, this is hardly surprising.) Mr Duckett’s email at 9.46 a.m. that day reflects that: I take him to be saying that he will start again rather than try to supplement what had been done before. It also appears likely that Miss Sadler made a telephone call to Mr Duckett after receiving his email at 2.02 p.m. on 7 October 2016 in order to explain to him the remaining deficiencies she had found in the paperwork that had been sent to her.
 - 7) The use of two different email accounts from the Company’s side seems to me to be easily explicable. The so-to-speak “off the record” interaction between Mr Duckett and Miss Sadler was done on the personal email account. The formal submission of documents to the Company’s accountant was done via the Company email account. This does not require the supposition that two different people sent the emails.
55. In the following days there were a number of further emails passing between Miss Sadler and representatives of the Company. Again, these emails require some examination.
- (1) On 10 October 2016 at 2.38 p.m. “John <admin.focus15@focus15trading.co.uk>” sent an email regarding “VAT calculation”, which appears to be the only email from the Company Email Address giving the name “John” not only in the address line but also as the signature of a person distinct from Mr Duckett:

“Emma,

Howard has had a word with me and I think I have made an error with the docs I put ready for him. Looking at your sheet, you have 3 transactions done with Asma in July these 3 transactions failed and so I shouldn’t have sent them to you. Can you please take those 3 out and recalculate it. It should then calculate correctly then. You can reply to my email but I

don't think I am here much longer but Howard will be looking at my emails for your reply.

Regards

John

Admin team”.

- (2) On 11 October 2016 at 1.38 p.m. Miss Sadler sent an email to Mr Duckett's personal email account: “John has asked me to delete the 3 ASMA sales invoices but there are 4. Please confirm what sales were cancelled so I can recalculate.”
- (3) On 11 October 2016 at 6.52 p.m. Mr Duckett replied from his personal email account: “Old remove all 4 Asla deals none conducted for same reason. Lack of ability to provide funds.” (The email was sent from a mobile telephone, which might explain its typographical quirks.)
- (4) On 12 October 2016 at 1.14 p.m. Miss Sadler sent a revised VAT return to Mr Duckett at his personal email account and asked: “Please check the details and confirm if you are happy for me to file online.”
- (5) On 12 October 2016 at 2.12 p.m. “John <admin.focus15@focus15trading.co.uk>” sent an email to Miss Sadler regarding “VAT return”: “Hi Emma[,] Please file that return – thanks[,] Regards[,] Admin team”.

56. Mr Duckett's evidence was that the emails from “John <admin.focus15@focus15trading.co.uk>” were from Mr Deere. At first blush, that might seem plausible. However, I think it is plainly false.

- 1) On Mr Duckett's case, the sender could only be John Deere: there was no one else in the Company, except Mr Cooke, who had no ability to deal with emails or computers and who knew nothing about the Company's trading activities.
- 2) In the course of his oral evidence, Mr Duckett repeatedly insisted that he could not have sent emails from the Company Email Address because he had no access to it: only Mr Deere had access to it, from his personal laptop. If that were correct, “John” could not have supposed that Mr Duckett would “be looking at [his] emails for [Miss Sadler's] reply.” I note that in cross-examination Mr Duckett said that Miss Sadler was aware that emails sent to the Company email address would not come to his attention, because Mr Deere had told her that he (Mr Duckett) had no access to that account.
- 3) If Mr Deere sent the email at 2.38 p.m. on 10 October 2016, his remark, “I don't think I am here much longer”, makes little sense. It can hardly mean that Mr Deere is leaving the Company, whether for pastures new or fearing being given his marching orders, unless Mr Deere was pretending to be an administrative assistant. If, on the other hand, they mean that he is shortly to finish work for the day, they make equally little sense, because the Company had no offices and Mr Deere is said to have worked from his laptop wherever he was.

- 4) So, if Mr Deere sent the email, it constitutes a pretence. It could be said that Mr Deere was concealing his true identity as the person in control of the Company. However, as much of Mr Duckett's evidence is plainly false, including his claim to have had no access at all to this email account, it is at least equally plausible that Mr Duckett was creating the pretence that there was an administrative assistant called John. I am satisfied that the latter is the correct conclusion.
 - 5) The timing of the emails on 12 October 2016, coupled with the absence of any documentary evidence that the VAT calculation was forwarded to Mr Deere, makes it strongly probable that it was Mr Duckett who gave the confirmation that the return could be submitted. Mr Duckett's attempt to deal with these emails in cross-examination was remarkable: he said that, when he received Miss Sadler's email at 1.14 p.m. he forwarded the email to Mr Deere (there is no documentary evidence of this) and attempted unsuccessfully to contact Mr Deere by telephone, and then he contacted Mr Cooke by telephone and asked him to get Mr Deere to tell Miss Sadler whether the return could be submitted. Mr Duckett said that he did not know that Mr Deere had replied to Miss Sadler. This is obviously incredible for all manner of reasons, not least that Mr Duckett would have given some response to Miss Sadler if he did not know that anyone else had responded.
57. The Company's VAT return for the period to August 2016 claimed a repayment of £38,007.
58. Communications between HMRC and the Company began in October 2016. HMRC became aware that the Company was supplying a company called AST Communications Limited, which had recently been set up by a person believed to be concerned with MTIC frauds through previous companies. When HMRC learned this is not clear, but it is likely to have been in or shortly before early October 2016, and the information will have been acquired by the MTIC Officer with responsibility for AST Communications Limited. The Central Co-ordination Team requested that the Fraud Investigation Team visit the Company, apparently to provide education and instruction in MTIC fraud.
59. An HMRC Fraud Investigation Officer, Damian Paschal, made several attempts to contact Mr Cooke and arrange to visit the Company at its place of business. Mr Paschal gave evidence at the trial, based on written records, to the following effect. Having previously failed to contact Mr Cooke, on 17 October 2016 he managed to speak to him on the Company's business mobile number recorded on the VAT registration application. He explained that he wanted to make a visit and discuss the Company's business with Mr Cooke. Mr Cooke said that he would have to speak to "Howard" and would call Mr Paschal back. Having heard nothing further, Mr Paschal made a further telephone call to Mr Cooke that day. Mr Cooke told him that he had been unable to contact "Howard" but would keep trying and would make arrangements for a suitable time for a visit.
60. On 25 October 2016, having heard nothing further from Mr Cooke, Mr Paschal contacted Mr Cooke again by telephone. His record of the conversations was as follows:

“RC [Mr Cooke] said that a visit had already been arranged for the 31/10/2016. DP [Mr Paschal] explained that he knew nothing about this and that the visit had not been made with hi[m], again RC said that he would contact Howard to find out. RC called back to say that it was passed over to another department. DP told RC that he still needed to come out and visit the business himself and again RC stated that he would need to contact Howard. DP asked RC if he was the director of the company to which he responded that he was, DP then went on to ask why he needed to speak to Howard regarding the visit when in fact ads (sic) the director he was responsible for the company. At this point RC terminated the call.”

In cross-examination Mr Paschal said that, as part of his standard procedure, he asked Mr Cooke general questions about the Company, but that Mr Cooke was unable to answer and kept saying that he would have to refer to “Howard”.

61. In cross-examination Mr Duckett was asked why Mr Cooke should have needed to speak to him about a meeting with HMRC, when he (Mr Duckett) had no material involvement in the Company and only provided occasional assistance of a practical nature. Mr Duckett said that Mr Cooke wanted to know whether he could use The Coach House for the meeting; he needed permission, because Mr Duckett had told him at the outset that his offices could not be used for any meetings relating to the Company. While that explanation might be credible on its own terms, it does not explain why Mr Cooke should not have mentioned Mr Deere or why he should have given Mr Paschal the impression, as he clearly did, that he could not answer questions about the Company without reference to Mr Duckett.
62. Mr Paschal then spoke with Robert Newton, an Officer in HMRC’s “Pre-Cred[ibility] Team”, which is responsible for investigating claims for repayment of VAT. Mr Newton had arranged to visit Mr Duckett in connection with the VAT repayment claim in the return for August 2016; I think that this was the pre-arranged visit for 31 October 2016 mentioned in the HMRC records, although it pre-dates the notification by HMRC’s Fraud Investigation Service that the return had been selected for verification. Mr Newton agreed that Mr Paschal could accompany him on that visit. Mr Paschal’s notes record:

“RN [Mr Newton] then contacted HD [Mr Duckett] to explain that DP would be in attendance at the visit but HD told RN that he would need to cancel the visit as he wasn’t aware that the documents were needed and they were at the accountants.”

Mr Duckett did not deny that he had spoken with Mr Newton or made initial arrangements for a meeting on 31 October 2016. His evidence was to the effect that he was unable to provide Company documents because he never retained them: Mr Cooke would bring him documents, which he would scan and email to Miss Sadler and then return to Mr Cooke, who said that Mr Deere required their prompt return. The explanation given to Mr Newton, according to Mr Paschal’s notes, was that the papers were with the accountant. That explanation could not be correct, because papers were provided to Ace electronically after being scanned; the accountant never held the documents themselves. I bear in mind that the recorded explanation is

hearsay evidence of what Mr Newton said Mr Cooke had told him. Its reliability has to be assessed in the context of the totality of the evidence. I see no reason to doubt the accuracy of Mr Newton's record.

63. By letter dated 4 November 2016 HMRC's Fraud Investigation Service informed the Company that it had selected the claim in the VAT return for August 2016 for verification as part of its strategy to tackle MTIC fraud.
64. On 7 November 2016 Mr Paschal and another HMRC Officer, Robert Pickles, carried out an unannounced visit at 75 Morden Road. The door was answered by someone answering to the name Mr Ramone, who said that he had been renting the property since August 2016 and that Mr Cooke had not resided there for several months; he did not have a forwarding address for Mr Cooke.
65. As the Company had no presence at 75 Morden Road and had not updated its principal place of business, it was de-registered for VAT by HMRC.
66. On 17 November 2016 Mr Pickles wrote to Ace as being the Company's agent:

“Despite numerous attempts by my colleague Mr Paschal to arrange a meeting with the director of the business, he did not receive a satisfactory response. As a consequence, we visited the registered place of business on the 7 November 2016 and established that the business and the director were no longer at this address and had vacated the premises some time ago. In light of this failure to keep HMRC updated with a correct trading address we were unable to confirm that the business was still active and so the business was removed from the VAT register.

At present I do not have in my possession any evidence that the business has carried out the transactions that are included on the 08/16 VAT return. If I do not receive the full books and records including purchase and sales invoices, bank statements and transport details relating to the 08/16 VAT return by the 28 November 2016 I will have no option but to reject the repayment claim and disallow the input tax claimed.

I will also require all purchase and sales invoices along with bank statements for transactions dated from 1 September 2016 up to the date of deregistration which is the 7 November 2016.”

67. On 18 November 2016 Mr Pickles, who did not give evidence at the trial, spoke by telephone to a person he believed to be Mr Cooke. His record of the conversation reads as follows (with some modifications to spelling and punctuation):

“I introduced myself and Mr Cooke wanted to know why the VAT number had been deregistered. I explained the checks on VAT repayment claim now being dealt with by Fraud Investigation Service part of HMRC. We made numerous attempts to arrange a visit with him but without success. Mr

Cooke said he didn't know who Mr Paschal was. I advised that a visit was made to the business address held on record, 75 Morden Road, and as the business and he were not there the business was deregistered immediately. I explained that this was done as a protective measure. Mr Cooke said it assumed guilt. I explained this was not the case; we can only take action on information held at the time and in situations like this deregistration is essential. Mr Cooke said he had told us of a change in address. I asked Mr Cooke how and when. Mr Cooke said he couldn't remember, and there was no evidence on the system to there having been an official request being submitted to change the address. Mr Cooke said arrangements had been made to meet at The Coach House, 7B Castle Parade, Abergavenny, which will now be the new address. I explained that there is no record of HMRC being advised of a change in address for the main PPOB [principal place of business] and HMRC had no authority to speak and deal with Mr Duckett or contact him at the aforementioned address. I explained there is no official provision of a new PPOB and it would not be updated. The only evidence held is that a meeting was initially agreed at the address provided, not that it is the new trading address. I advised Mr Cooke it is the responsibility of the business and director to advise HMRC of new trading address and update this in the correct manner.

I advised Mr Cooke that when we visited the address on record that the person currently living there had been there since August. Mr Cooke said he now has a customer who can't get his stock. I asked what the stock was. Mr Cooke said he didn't know. I asked who was running the business. Mr Cooke said Mr Howard Duckett and he confirmed that Mr Duckett completed all of the buying and selling actions. I asked why he wasn't running the business. Mr Cooke said he needed help as he had dyslexia. ...

Mr Cooke confirmed a meeting for 28 November at the address provided. Mr Cooke wanted to know what to do about the new stock. I explained I would, as a new address had been provided, instigate VAT reg[istration] reinstatement, I would contact him Monday [i.e. 21 November] and provide an update, in addition I would provide details of when EORI number would be reinstated; in the meantime he will need to officially update the address. I advised Mr Cooke that when we meet on 28 November 2016 they must have all books and records available for me to take away. Mr Cooke confirmed this would be the case. Mr Cooke said the business now managed two suppliers and a few new customers and didn't want this to affect their relationships."

68. Mr Duckett said in cross-examination that the person purporting to be Mr Cooke was probably Mr Deere, and that the number on which Mr Pickles had contacted “Mr Cooke” was the number on which he (Mr Duckett) used to contact Mr Deere, though it had now been de-activated. The person’s inability to provide information about the Company’s trade is consistent with the person being Mr Cooke. In my view, it is inherently improbable that the person was Mr Deere, because Mr Cooke was the link with Mr Duckett and had already spoken to HMRC and would doubtless do so again, so the impersonation of Mr Cooke and the false implication of Mr Duckett would quickly be discovered. I find that the person with whom Mr Pickles spoke was Mr Cooke.
69. On 21 November 2016 at 10.24 a.m. Mr Pickles sent an email to Mr Cooke at the Company Email Account, asking for confirmation that communications could take place by email. The response from “John <admin.focus15@focus15trading.co.uk>” at 10.43 a.m. read:

“Good morning Mr Pickles,

Richard has informed me of your conversation last week and I confirm via this email that we are happy to continue by email.

Do you have an update as to the restoration of both our Vat number and the EORI [Economic Operators Registration and Identification – required for trade between the UK and non-EU locations] number?

Kind regards

Howard”.

Mr Duckett’s evidence was that this email must have been sent by Mr Deere.

70. Mr Pickles replied at 2.18 p.m.:

“Good afternoon Mr Duckett

Further to our telephone conversation, the following link will take you to the relevant information on how to change the business address.

<https://www.gov.uk/vat-registration/changes-to-your-details>

HMRC will need authorisation on the record that will allow HMRC to discuss business matters relating to Focus 15 Trading Ltd with you. This authorisation can come in the form of a signed letter provided by the director or an additional 64-8 [the HMRC “Authorising your agent” form].

Below is a link to the 64-8 form.

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/489900/64-8.pdf

I have checked the record and the visit was booked for 28 November at 10:15. Please let me know If this is still ok”.

71. A reply to that email was sent at 3.26 p.m. from the Company Email Address (the name “John” was not shown):

“Good afternoon Mr. Pickles,

Thank you for your email. Please be advised the address has now been updated on your system. As for the meeting at 10:15 am on Monday, that is still ok and both of us will be here.

Also, the 64-8 has been completed.

Kind regards

H Duckett”

Eleven minutes later, at 3.37 p.m., a further email was sent from the Company Email Address to Mr Pickles:

“Good afternoon Mr Pickles,

Please find attached the 64-8.

Kind regards

H Duckett”.

72. Mr Duckett’s evidence was that he neither received nor sent any of these emails. Specifically, he did not send the emails at 3.26 p.m. and 3.37 p.m. on 21 November 2016: they were sent by Mr Deere, who was impersonating him. I regard this as certainly false. The email at 3.37 p.m. attached as a pdf attachment a form 64-8 signed by Mr Duckett (as he accepts) and dated 21 November 2016. Mr Duckett says that he signed the form and scanned it and sent it to Mr Deere, who in turn sent it on to Mr Pickles. This strains credulity too far, especially as there is no documentary evidence of any emails ever passing between Mr Deere and Mr Duckett.
73. A further oddity is that the form 64-8 was a nonsense: its operative text read, “I, H DUCKETT of FOCUS 15 TRADING LTD authorise HMRC to disclose information to H Duckett.” This effort at self-authorisation would be of little relevance to this case, were it not that Mr Duckett gave evidence that he completed, signed and sent the form 64-8 on the advice and at the request of Murtaza “Monty” Jivraj, the Head of Tax at Neumans LLP, a London law firm. That evidence was certainly false: first, I am satisfied that Neumans LLP were not instructed until after 21 November 2016 (see further below); second, no professional tax specialist would have advised Mr Duckett to execute a form in those terms, and there is other evidence (mentioned below) that shows how Neumans LLP prepared forms 64-8; third, Mr Jivraj, who gave evidence at trial and was in my judgment perfectly straightforward and reliable as a witness, denied that he advised Mr Duckett as alleged. I shall say more about the instruction of Neumans LLP presently.

74. On 21 November 2016 at 3.38 p.m., one minute after the last previous email, Mr Pickles replied to the Company Email Address, acknowledging receipt of the form 64-8 and asking for the Company's EORI number. The response to that email was sent on 22 November 2016 at 1.08 p.m., again from the Company Email Address (no reference to "John"):

"Good morning Mr Pickles,

Firstly, thank you for your help and assistance in arranging for our vat number to be reinstated. I have checked on the HMRC website this morning and it is now showing as valid.

In reply to your request for the EORI number it is as follows;
GB227323133000.

We would be grateful for your continued assistance in helping us get this reinstated also.

Kind regards

H Duckett".

Mr Duckett, who denies sending any emails from this account, denies sending this one. He points to the mis-spelling of his surname. By itself, that might lend support to the hypothesis that a careless imposter wrote the email. In the context of the evidence as a whole, it does nothing to force such a conclusion.

75. On 23 November 2016 HMRC wrote to the Company at 7B Castle Parade, Usk (that is, The Coach House) to confirm that the VAT number had been reinstated.
76. It is convenient at this point to discuss the instruction of lawyers by the Company and the commencement of the involvement of Neumans LLP.
77. In Mr Duckett's first affidavit in these proceedings, sworn on 27 September 2019, the matter is introduced in paragraphs 24 to 26:

"24. Around this time [that is, October 2016] Richard [Cooke] telephoned and asked to see me because he was concerned at the content of some of the letters he was getting from HMRC. The letters from HMRC stated that the Company had been removed from the VAT register, and that it was being investigated for fraud, I advised Richard that he should stop all work with the Company and sit down with John to ascertain exactly what was going on.

25. Richard said he could not stop doing transactions as John [Deere] had the bank card reader. John had apparently told Richard that John should have the bank card because transactions were done at all times of day and night, Richard did not live in Bristol and Richard was not computer savvy anyway.

26. I advised Richard to seek the advice of a solicitor, and after searching online I suggested that he contact Mr Jivraj of Neumans LLP in London. Mr Jivraj wanted to conduct everything by email, and as Richard did not have an email account or smartphone I agreed to receive and send documents on his behalf. Mr Jivraj was, from the start, in the full knowledge that I was purely the Company's start-up consultant and not an officer of the Company.”

78. This raises a question concerning the first payment made by the Company to Mr Duckett: £6,000 on 8 August 2016. (I shall pass over a related question concerning the second payment, of £2,600 in September 2016.) The payment is supported by an invoice dated 20 August 2016. The first extrinsic evidence of the existence of this invoice post-dates the winding-up order, and the question is whether it is a genuine document or was created ex post facto. I note the following points:

- The invoice is for the period January to September 2016. One of its entries is £420 for “Procurring (sic) specialist VAT solicitor”. The only such solicitor mentioned in the evidence, whether the documents or the witness statements and affidavits, is Neumans LLP. Neumans LLP was not instructed until three months after the date shown on the invoice.
- In one of the more memorable passages of the evidence at trial, Mr Passfield cross-examined Mr Duckett on this invoice. At first, Mr Duckett said simply that the “specialist VAT solicitor” was Mr Jivraj. When it was pointed out to him that Neumans LLP were not instructed until well after the date of the invoice, he purported to remember that he had first searched for solicitors closer to home and had found one in Cardiff. When I asked who that solicitor was, he said he thought his name was Phillips. When I asked which firm he was with, he said that he could not remember but thought that he was a sole practitioner. When I asked where his offices were, he said that he thought they were in the vicinity of Park Place, Cardiff, “where the barristers’ chambers are”. Mr Duckett said that he did not actually meet Mr Phillips: most of the communications were by email, and he spoke to Mr Phillips to explain the situation as Mr Cooke had explained it to him. He told Mr Phillips that the Company was under a VAT investigation and emailed the Company’s documents to Mr Phillips. Mr Phillips suggested that he contact someone with more experience than he had, so the matter went no further.
- It was perfectly obvious, in my view, that this passage of evidence was an improvised concoction. None of it had been mentioned before and none of it was supported by any other evidence, and it contradicted Mr Duckett’s initial confirmation that the “specialist VAT solicitor” was the only one mentioned in the documents, namely Mr Jivraj. Mr Phillips is as mysterious a character as Mr Deere. Even leaving these points aside, the evidence makes little sense. Mr Duckett (whose protestations that he could not have written the emails from the Company Email Account included pointing to the poor spelling in those emails) could not have charged for “procurring specialist VAT solicitor” in August 2016, because he did not procure such a solicitor then. Even if one

stretches a point, he could not have charged £420 for fruitless communications with a solicitor who advised that someone more suitable be instructed.

- Further, the timings do not work. First, there is no evidence that HMRC had contacted the Company about an investigation before 20 August 2016. Even if it is possible, as Mr Watkinson suggests, that HMRC had picked up on the Company's dealings with AST Communications Limited before that date, there is no record that it made or attempted to make contact with the Company before that date. Second, there is no letter from HMRC to the Company concerning VAT investigation or MTIC fraud before that date. Third, the evidence shows that the first oral communication between HMRC and the Company (Mr Cooke) about any of these matters was on 17 October 2016. Thus there was no investigation of which to inform Mr Phillips in August 2016 and there was no relevant document to scan and send to him. Fourth, if it was considered necessary to instruct a specialist VAT solicitor in August 2016, there is no obvious explanation for why no such solicitor was instructed until a full three months later.

79. I find that the invoice dated 20 August 2016 is an ex post facto creation, fabricated in an attempt to justify to the Insolvency Service Mr Duckett's receipt of moneys from a company in which he was not involved. The second invoice, dated 2 September 2016, contains a charge of £350 for "On going handling of papers to Solicitor"; this only strengthens (if it were possible) the conclusion I have reached as to the first invoice and shows that the second invoice is also fabricated. The same applies to the third invoice, dated 18 November 2016. I regard all six invoices as fabrications.
80. To return to the chronology: the evidence of Mr Jivraj was that his first contact with the Company was on 24 November 2016, when he received a telephone call from a man calling himself Richard Cooke, who said that the VAT registration had been revoked on 21 November and that goods that were arriving at Heathrow would be "interned" if there were no VAT number. This evidence certainly presents a difficulty, because by 24 November the Company was aware that its VAT registration had been reinstated: see the email at 1.08 p.m. on 22 November. I have considered the possibility that Mr Jivraj is mistaken about the date of his first contact and that it was in fact on or about 21 November. However, I reject such a conclusion and accept that his evidence that the first communication was on 24 November is correct. First, the starting point for Neumans LLP's involvement would have been an authority to act. Second, the form 64-8 sent from the Company Email Address on 21 November is unlikely to have come from Mr Jivraj, because (a) it did not purport to give Neumans LLP authority to act, (b) a form provided by Neumans LLP would probably have been filled out with Neumans LLP's details, as were the forms it subsequently submitted, and (c) the evidence from both Mr Jivraj and Mr Duckett was that Mr Jivraj preferred to deal with matters by email, and the probability is that he would have submitted the form 64-8 himself, and it makes little sense for Mr Duckett, having completed a form at Mr Jivraj's request, to send it to a third party (Mr Deere) to submit rather than returning it to Mr Jivraj to submit. Third, the form submitted on 21 November was clearly a response to the emails from HMRC and the link sent by Mr Pickles on that date. Fourth, Mr Jivraj's evidence as to the date was unchallenged in evidence. I should record that Mr Jivraj was called to give evidence by Mr Duckett, not by the OR. Fifth, if as is probable the telephone call on 24 November was made by Mr

Cooke, it is by no means unlikely that Mr Cooke either misunderstood or failed to communicate the up-to-date position regarding the VAT registration.

81. On 25 November 2016 Mr Jivraj sent an email to Philip Crouter of HMRC:

“Dear Mr Crouter

In accordance with The Value Added Tax Regulations 1995, paragraph 10, we are instructed to act as the HMRC agents of Focus 15 Trading Limited.

Please find by way of service, the HMRC authorising your agent from 64-8 and the email authority. Please kindly note our interest in the matter and direct all correspondence to this firm marked for my attention.

Please kindly indicate if the meeting on Monday 28 November 2016, is going to take place or cancelled?”

Attached to the email was a form 64-8 authorising HMRC to disclose information to Neumans LLP as nominated agent. The form had been pre-prepared by Neumans LLP with its own details, which were printed on the form, and must have been sent electronically to the Company for completion. As sent by Mr Jivraj to Mr Crouter, it was signed by Mr Duckett as “manager” and dated 25 November 2016. Mr Jivraj said in evidence that he had not advised that Mr Duckett should sign as manager. Indeed, the evidence does not establish that by this stage Mr Jivraj had spoken at all to Mr Duckett, with whom he says he spoke only once.

82. On 25 November 2016, at 4.03 p.m., Mr Crouter replied to Mr Jivraj, acknowledging receipt of the form 64-8, which he said had been added to the Company’s VAT record, and stating: “As I relayed on the phone the proposed VAT visit to the Coachhouse, 7B Castle Parade ... for 28 November has been cancelled.” Mr Jivraj replied: “Thank you Mr Crouter. I will inform my client.”
83. Mr Duckett confirms that Mr Jivraj spoke to him by telephone and told him that the meeting scheduled for 28 November had been cancelled. He says that he (Mr Duckett) then told Mr Cooke that the meeting had been cancelled and asked him to tell Mr Deere. “Richard said he was not able to contact John because he changed his mobile number regularly, and [he] did not have the new number. Also, he said John had transferred to a different building site” (first affidavit, paragraph 35). Mr Duckett said that Mr Jivraj advised him that, if HMRC officers did attend at The Coach House, he should not give them any Company documentation; instead he should send it to Neumans LLP. As to this evidence:

- I accept that Mr Jivraj told the Company that the meeting had been cancelled. However, I reject Mr Duckett’s evidence that he did so by a telephone call: the email at 10.33 a.m. on 28 November 2016 (below) indicates that the information was probably communicated by email, which was Mr Jivraj’s preferred way of communicating. Mr Jivraj’s evidence was that he had spoken twice by telephone to Mr Cooke but only once by telephone to Mr Duckett. I think that is probably correct, though nothing much turns on it.

- The email on 25 November is not in evidence. I doubt whether it specifically mentioned that Mr Cooke should be told not to attend on Monday; that hardly needed saying.
- I reject Mr Duckett's evidence that Mr Jivraj asked him to tell Mr Deere that the meeting had been cancelled. First, there was probably no telephone call such as Mr Duckett describes. Second, even if there had been such a call, I can see no reason why Mr Jivraj should have felt it necessary to spell out that Mr Deere should be told. Third, Mr Jivraj's clear evidence at trial was that the first he ever heard of Mr Deere was when he received the bundle of documents in these proceedings. He never heard of him in the course of his dealings with the Company. I accept that evidence. Correspondingly, I reject Mr Duckett's evidence in cross-examination that Mr Jivraj knew that Mr Deere was running the Company because he (Mr Duckett) had told him this in the course of a conversation.
- It is unclear why Mr Jivraj, having obtained confirmation that the meeting had been cancelled, should be concerned with what to do if HMRC Officers attended. I accept, however, that Mr Jivraj did advise Mr Duckett at some point, and quite possibly before 28 November, that any documents should be provided to HMRC through Neumans LLP as the authorised agent, rather than being handed over directly.

84. On 28 November 2016, however, HMRC Officers, Mr Paschal and Mr Pickles, did attend at The Coach House at about 10.15 a.m. This appears to have been a matter of poor communication within, or by, HMRC: the meeting had been arranged (and cancelled) by Mr Newton of the Pre-Cred Team, but Officers of the MTIC Fraud Team were also going to attend; apparently the former team did not tell the latter team that the meeting had been cancelled; or HMRC failed to make it clear to the Company that only one part of the visit was cancelled.

85. Mr Paschal's report of the visit was as follows (references to "HW" are a mistake for "HD"):

"Officers Damian Paschal (DP) and Robert Pickles (RP) arrived at the PPOB which was an office on the 1st floor of building just off the main road in Abergavenny [in fact, Usk].

The office was a medium space with a number of desks and computers dotted around, from the far end of the office a IC1 male came from behind a corner where another office was based.

DP introduced himself and RP to the IC1 male who introduced himself as Mr Howard Duckett. No ids were exchanged. DP explained to the man purporting to be HD that there were here carry out a visit and collect the business records as discussed during the telephone conversation with the director Mr Richard Cooke (RC).

HW told the officers that this visit has been cancelled, HW explained that his solicitor had cancelled the day before. DP told HW that the solicitor had not contacted him to cancel the meeting. HW was adamant that the meeting had been cancelled.

DP and RP accepted that the meeting was not going to place as agreed, DP then asked the man purporting to be HW if he could go ahead and take the business records that had been requested and the RC had agreed during his previous conversation with RP. HW told the officers that they would not be taking the records today and this was under the instructions of his solicitor.

DP accepted and explained he would be in touch.”

Mr Paschal’s evidence was that he wrote that the man they met *purported* to be Mr Duckett because identification was not formally requested or produced. However, he said that Mr Pickles told him he had previously met Mr Duckett and they had no doubt that it was indeed he. Mr Duckett accepts that he was the person the Officers met: Mr Cooke did not attend; nor did Mr Deere, though Mr Duckett’s evidence would leave open the question how he knew that the meeting had been cancelled. Mr Duckett’s evidence was that the Officers had “faces like thunder” when he told them that the meeting had been cancelled, and I suppose that is correct. Mr Paschal accepted in cross-examination that the recorded reference to “his [Mr Duckett’s] solicitor” might not be accurate: Mr Duckett could have said “the” or “our”; so no significance attaches to the possessive pronoun.

86. Mr Paschal’s report records that the meeting on 28 November lasted from 10.15 a.m. to 10.30 a.m., and Mr Duckett confirmed that it lasted no more than fifteen minutes. Immediately after this visit, at 10.33 a.m., an email was sent from “John [mailto:admin.focus.15@focus15trading.co.uk]” to Mr Jivraj:

“Good morning Monty,

Contrary to your email on Friday, the chaps from vat (MTIC) have just turned up. I told them the meeting had been canceled by Mr. Crouter. They were not happy, to say the least, especially so when they asked to take copies of the documents which, based on your advice, I would not give them, as you stated they had to go through you.

My guess is that they will now suspend our vat and the eori numbers again immediately.

Clearly, since the beginning of their planned inspection, their left hand does not know what their right hand is doing and this essentially means we will not be able to trade and therefore cost us money. Especially so, as we have goods arriving at Heathrow early this week and, will be interned there as we will not have valid numbers.

Kind regards

Howard.”

87. Mr Duckett denied sending that email. He said that it was sent by Mr Deere: immediately after the Officers left he spoke to Mr Deere by telephone and told him what had happened, because he was the person running the business; and Mr Deere immediately got in touch with Mr Jivraj. I am certain that this is untrue. First, Mr Deere did not exist. Second, anyway, the timings could barely be credible. Third, it is unclear how Mr Duckett would have contacted Mr Deere: on Friday evening (according to his own case) neither he nor Mr Cooke had a contact number for Mr Deere. Fourth, the email purports to be from Mr Duckett. Fifth, Mr Duckett had (on his own account) spoken to Mr Jivraj to receive confirmation of the cancellation of the meeting, and there is no evidence that Mr Deere had ever spoken to Mr Jivraj, so it makes no sense that Mr Duckett should contact Mr Jivraj via Mr Deere. Sixth, I note that, as the notification of cancellation of the meeting was given by Mr Jivraj to the Company by email, and as there is no evidence that Mr Jivraj ever communicated by email with the Company other than at the Company Email Address, Mr Duckett’s knowledge of the cancellation must have come either from his own reading of the email or from a communication from someone else who had read the email—which is directly contrary to his own evidence.
88. At 10.37 a.m. on 28 November Mr Jivraj forwarded the email he had received from the Company to Mr Crouter, asking: “can you please investigate as to which officers turned up at our client’s principal place of business, despite your email stating the meeting is cancelled.” At 11.52 a.m. Mr Crouter replied that he had not been aware of any planned visit, save for one by a VAT Officer called Mr Newton, who had cancelled his visit on his calendar. He wrote: “Sorry if there has been a misunderstanding.”
89. Meanwhile on that day, Mr Jivraj was seeking instructions from the Company and confirmation that it accepted Neumans LLP’s terms of business. He sent a new form 64-8 for completion by Mr Cooke (the one that Mr Duckett had signed as “manager” had been rejected by HMRC) and received back a form duly signed by Mr Cooke and a letter dated 28 November 2016 on Company paper and addressed to Mr Jivraj:

“Dear Mr Jivraj

Further to discussions and emails over recent days. Please accept this letter as my authority for you to deal with the HMRC on behalf of my company. Please deal with the General manager Mr Duckett with whom you have already been liaising with (sic).

I am aware your fees are £1000 plus VAT per month upon invoice.

Kind regards

R Cooke

Director.”

90. At 5.08 p.m. on 28 November 2016, Mr Jivraj sent an email to Mr Paschal, Mr Crouter and Mr Pickles, attaching the completed form 64-8 and going on to say:

“Mr Pickles — We understand you visited our client's principal place of business today with your colleague. We understand the visit was cancelled and this was notified to us in an email from Mr Crouter on Friday, 25 November 2016. We can only apologise (sic) for this unforeseen misunderstanding and hope the Commissioners' have not been prejudiced. To save time and costs to parties, we ask you to direct all correspondence to this firm, with a copy sent to our client's principal place of business. We would like the Commissioners to assist us in assisting our client in the hope of working together.

Please do let me know if you require any specific documents to assist you in checking our client's tax position in respect of VAT. Please make direct contact with this firm should the Commissioners' require any assistance in respect of our client.”

91. By then, however, and in the light of what he perceived to be the Company's failure to produce the records, Mr Paschal had sent to Mr Cooke a letter dated 28 November 2016:

“We arrived at the premises today at 10:15am for our scheduled meeting. Upon arrival a person purporting to be Mr Duckett informed me that the visit had been cancelled by his solicitor and under their instructions the business records would not be made available to me.

As I have no evidence of trade your VAT number will be blocked with immediate effect.

Please provide me with the business records as were originally requested by Monday 5 December 2016. Failure to provide me with the business records will result in the VAT registration number for Focus 15 Trading to be cancelled and the repayment claim will be denied.”

92. On receipt of that letter, Mr Jivraj wrote a robust response dated 30 November 2016, in which he laid the blame for what had happened on 28 November squarely at HMRC's door but stated:

“For the record, our client is working with HMRC and not against HMRC. For the sake of good order and to work constructively with HMRC we are instructed to inform HMRC of the following below.

(a) Please indicate the class and type of documents sought to assist HMRC in checking our client's tax position in respect of VAT;

(b) Please indicate the prescribed VAT accounting period (s) on which information is sought;

(c) Please provide the notes taken during the visit to our client's principal place of business on 28 November 2016 together with the ranks of the HMRC Officers.

Please note that HMRC will be provided with the information voluntarily. There is no need in this instance to use excessive powers to block our client's VAT number. We respectfully request HMRC to unblock our client's VAT number immediately and confirm in writing that it has been unblocked. Should HMRC ignore our client's request and not unblock the VAT registration number by Friday 2 December 2016, our client will have little choice to apply and seek an injunction.”

93. On 2 December 2016 Mr Paschal replied to Neumans LLP at length, setting out “the numerous reasonable attempts taken by HMRC to meet with your client and obtain the books and records that Focus 15 Trading are required to keep to substantiate the VAT return rendered.” It is unnecessary to recite the narrative in the letter. The letter ended:

“I acknowledge your comment that records will be provided voluntarily however despite HMRC best efforts to obtain this information so far the records have not been forthcoming.

Decisions made by HMRC are done so on the basis of fact. At present although a VAT return has been submitted there is no proof of active trade in relation to the VAT registered entity without this proof of trade which has been requested and a seeming reluctance to meet with HMRC there will be no option but to carry out the actions outlined in my letter dated 28 November 2016.

I am more than happy to collect the records from the business premises[;] once these are received I will remove the block from the VAT registration.

For clarity the records I require that will be relevant to the VAT return period 08/16 include all documents that have been used to render the VAT return to include purchase and sales invoices, all related bank accounts, all transport documents, all storage documents that from 1 June 2016 to 31 August 2016.”

94. Also on 2 December 2016 the Company provided to Mr Jivraj a number of certified documents that he had requested. These were sent as attachments to an email from the Company Email Address, purporting to come from Mr Cooke. The documents, or

at least some of them, can have come from no other source than Mr Cooke. On the basis of Mr Duckett's evidence as to Mr Cooke's capabilities, Mr Cooke cannot have sent the email. Mr Duckett's evidence would require that the email was sent by Mr Deere. I find, however, that it was sent by Mr Duckett.

95. On 7 December 2016 Mr Jivraj sent, by email, a letter to Mr Paschal with enclosures. The letter suggested that the events of 28 November 2016 arose from a breakdown of communication between the parties, addressed HMRC's powers to obtain records and information, and continued:

“For the purpose of checking our client's tax position being VAT, we enclose in total of sixty-one pages (61) documents/information together with our client's VAT return rendered for accounting period ending June to August 2016 for HMRC's consideration.”

The letter requested that the Company's VAT registration be reinstated immediately.

96. The enclosures to the letter of 7 December 2016 were produced by Mr Paschal in evidence.
97. By a letter of 15 December 2016, Mr Paschal informed the Company that his check of the VAT return for the period to August 2016 had found errors and that, based on the invoices provided by the Company, the tax due was £179,470.87. The schedule accompanying the letter explained Mr Paschal's conclusions:

“During my review of the records that you provided the following errors have been discovered:

1. You have not accounted for the Acquisition Tax on the supplies purchased from Valdek SRO.
2. You have not declared EC sales in respect to sales made to Valdek SRO.
3. You have not declared EC purchases in regards to the purchases you made from Valdek SRO.
4. The outputs and inputs declared on the 08/16 VAT return are inaccurate.
5. An EC sales list has not been supplied.

Please find below my findings from the records that you provided

VAT Return based on the account provided by you:

Output Tax = £277,893.87

Input Tax = £315,900.00

Net Tax = £38,006.13 Cr

My assessment based on the records that you have provided:

Output Tax = £322,270.87

Input Tax = £142,800.00

Net Tax = £179,470.87

Total Assessment = £179,470.87”

The letter said:

“Before we make an assessment of tax due, I would like to give you the opportunity to comment on my findings and calculations.

If you would like to comment or give me any more information, please contact me by 4 January 2017. You can contact me by phone or letter.

If I do not hear from you by then, I will take this to mean that you agree with my calculations. I will then make an assessment of the amount due and send you notice of that assessment.”

98. On 22 December 2016 Mr Paschal sent to the Company a warning letter in respect of MTIC fraud. The letter said that Mr Paschal would contact the Company to arrange a visit to the Company’s business premises to discuss its business activities and inspect its VAT records.

99. On 10 January 2017 Mr Paschal sent to the Company a formal letter giving notice that the assessment of the VAT due for the period to August 2016 was £179,470.87 and requiring immediate payment.

100. On 17 January 2017 Mr Paschal sent to the Company a further letter noting that the Company had not filed a VAT return for the period ending November 2016 and continuing:

“Please file the return by the 26 January 2017. If the return is not filed by this date I will have no option other than to remove your VAT registration number.

I would also like to remind you that I require the business records for the VAT period ending 11/16 by no later than the 31 January 2017.”

101. On 1 February 2017, having received no response from the Company, Mr Paschal sent a letter informing the Company that its VAT number had been cancelled with effect from that date.

102. On 22 March 2017 HMRC presented its winding up petition against the Company in respect of the unpaid VAT.
103. On 22 May 2017 a winding-up order was made against the Company
104. In May 2017 Mr Paschal received a request from another HMRC Officer, Emma Bullivant, to visit the Company's premises. The request was made because Ms Bullivant had identified evidence that the Company had been supplying a particular business during the period to May 2016, in respect of which it had made Nil VAT returns. Mr Paschal recorded the information that he gave to Ms Bullivant in response to her request:

“As I explained to Emma Bullivant after the assessments were raised [that is, in December 2016] I have been unable to make contact with the trader and the solicitor ceased to act for them. I did receive a phone call from a company explaining that they were asked by focus 15 trading to complete that the last return. During the conversation it turned out that focus 15 trading had failed to provide the records for the VAT period and they were unable to complete the return.

I contacted the agent again a few days later to see if the records were forthcoming and if so could they send me copies. They explained that they still had not received the records and as such were not able to send me anything.”

105. On 6 June 2017 a Case Officer in the OR's office wrote to Mr Cooke to notify him that his attendance was required at an interview on 13 June 2017. Mr Cooke did not attend for that interview, and on 14 June 2017 he was sent notification of a further appointment for interview on 27 June 2017. Again he did not attend. By a letter dated 28 June 2017 the OR's office informed Mr Cooke of a third appointment, on 14 July 2017, and warned him that in the event of his non-attendance he would be required to attend at a public examination.
106. On 7 July 2017 the OR's office received the first communication from the Company, in the form of a telephone call from Mr Duckett. The Case Officer recorded the tenor of what was said in an email to Mr Duckett later that day:

“1. Your mobile number is [number set out].

2. Mr Cooke is no longer at the address/es we have for him. He is currently of no fixed abode.

3. You are a friend of a friend, a local experienced businessman, and you were approached by Mr Cooke to assist him in sorting out the paperwork and maybe taking over the company, of which you have previous experience with other start ups.

4. Upon looking at the company's records you found that they were in a mess and did not wish to proceed any further in taking over the company.
5. The company imported things like salt from China and many other goods from around the world and sold them to UK and EC customers.
6. Mr Cooke had a business associate, a Mr Deer, who cannot be located.
7. Mr Deer told Mr Cooke that he had a lot of contacts with whom the company could do business, but it turned out these were just potential trading partners found on the internet from sites such as AliBaba.com.
8. You confirmed that you have the company's physical records."

(This appears to be the first recorded mention of "Mr Deer".) The email offered alternative dates for an interview with Mr Cooke—subsequently 1 August 2017 was agreed as a mutually convenient date—and attached a pdf copy of the Insolvency Service's Preliminary Information Questionnaire (PIQC") for Mr Cooke to complete. The email also said:

"With regards to the company's records, whether physical or electronic, they will need to be handed over to me either at the interview or I can instruct our agents to collect them prior to the interview if they are bulky. Please advise."

107. On 29 July 2017 the PIQC was completed in Mr Cooke's name on behalf of the Company. Page 46, which is signed by Mr Cooke, states that the form was completed by Mr Duckett in the presence of Mr Cooke. In cross-examination, Mr Duckett said that some of the answers had been written by Mr Cooke; that is plausible and I accept it. Others were written by Mr Duckett. These latter entries included those at page 37 ("Accounting Information"), which gave the name "John Deere" as that of the "officer of the company directly responsible for ensuring that proper accounting records were maintained". Mr Duckett said that he had written only what Mr Cooke told him to write. I do not accept that evidence. As it is quite clear to me that Mr Deere did not exist and, accordingly, that Mr Duckett's evidence about him is made up, there is no reason to believe that he made this entry at Mr Cooke's instigation.
108. On 1 August 2017 Mr Cooke attended for interview at the Official Receiver's offices and signed a statement written out by the Case Officer on the basis of the answers he gave. Mr Cooke was accompanied by Mr Duckett, whom he described as "my friend" and "a local businessman and advisor". I have already set out what Mr Cooke had to say about Mr Deere: see paragraph 14 above. Regarding the Company's accounting records he said:

“I managed to salvage some of the records that were kept on a USB stick by Mr Deere, and Mr Duckett has printed them out and put them in a file for [the Insolvency Service’s Examiner].”

The documents provided by Mr Cooke will be discussed later in this judgment.

109. In August 2017 Mr Paschal was informed by the HMRC Officer dealing with another business that he had identified sales by the Company to that business in December 2016 and January 2017; the total amount of the sales was £569,686.20. A further supply in November 2016 to the value of £107,525 was subsequently identified.
110. On 14 November 2017 HMRC issued a Notice of penalty assessment in respect of the Company. The total penalty charged, payable by 14 December 2017, was £137,006.10.
111. On the same day, HMRC issued to Mr Duckett a Personal Liability Notice, informing him that he was personally liable to pay the penalty because the Company was likely to become insolvent and:

“You are liable to pay 100% because the information that we have points to you as the controlling person behind the business and the transactions undertaken during the period 08/16 VAT period were carried out under your direction.”

The Notice gave information to Mr Duckett as to how to seek a review of the decision or how to appeal to the tribunal. The Notice is currently under appeal.

112. On 15 November 2017, Mr Paschal sent to the Company a VAT Pre-assessment Letter in respect of its VAT liability for the final VAT period, namely to February 2017. This was based on the information received in August 2017 as to the Company’s undeclared trading activity in December 2016 and January 2017; see above. The schedule to the letter calculated a liability of £116,452.70 in respect of “sales of scrap metal, which have not been declared on a VAT return”. The letter said that, if the Company did not respond by 15 December 2017, it would be taken that it agreed with the calculations and a notice of assessment would be sent. The Company did not challenge or query Mr Paschal’s calculations, and accordingly on 18 December 2017 HMRC raised a VAT assessment in the sum of £116,452.70 for the final VAT return and sent it to the Company at The Coach House and to the Official Receiver.
113. On 12 December 2017 Miss Sadler wrote to HMRC on behalf of Mr Duckett:

“We wish to appeal your decision that Mr Duckett was the controlling person in the business and enclose proof of our appeal.

Mr Richard Cooke was. the director of Focus 15 Trading Ltd. John Deer was the controlling person in the company (proof provided) and Mr Duckett purely helped/advised Mr Cooke [to] comply with his HMRC responsivities (sic) ensuring his vat returns were filed on time etc.

I enclose the following appeal documents to support our appeal.

- 1) Signed statement from L Rowles. Ms Rowles works for Mr Duckett and introduced her long-standing friend Mr Cooke to Mr Duckett with a view to Mr Duckett helping with the set up of the company and registration for Vat. Mr Cooke explained that he had been contacted by Mr Deer with a business proposal that he wished to pursue.
- 2) Statement from Mr Duckett detailing the events of the meetings and requests for help and advice from Mr Cooke.
- 3) Signed statement from Mr Cooke confirming that Mr John Deer dealt with all of the day to day running of the business and had access to the business bank account. Mr Deer dealt with all banking transactions and dealt with all of the purchase and sales invoices.
- 4) HMRC put Focus 15 trading Ltd into liquidation which is currently being dealt with by Mr H Zaidi. As part of the insolvency Mr Cooke had to give a sworn statement as part of the High Court of Justice procedure for insolvency. In the statement Mr Cooke clearly states that: ‘Due to the experience and contacts, John Deer ran the day to day operations’ (as highlighted on page SPIQ Page 2 of 8).’ This statement was provided prior to Mr Duckett receiving the personal liability notice and therefore Mr Cooke clearly stated the facts of the case under oath.

We are unsure, as to why you consider Mr Duckett to be the controlling person of the company when all evidence from all parties clearly states that Mr John Deer was the controlling person.”

I have already referred at length to Ms Rowles’ statement. Mr Duckett’s statement set out the account that he gives in these proceedings. Mr Cooke’s statement was to the same effect as Mr Duckett’s. As Mr Cooke’s statement is typed and literate, it must (on the basis of Mr Duckett’s evidence as to his capacities) have been typed and composed for him; of course, this does not in itself mean either that Mr Cooke was not the source of the information or that the contents of the statement are untrue. However, as I have made clear, I do regard them as untrue.

114. On 5 February 2018 the Insolvency Service wrote to Mr Cooke to inform him that it was investigating whether it ought to seek a disqualification order against him.
115. On 27 March 2018 the Insolvency Service sent written questions to Miss Sadler, who replied on the same day. Miss Sadler replied that she had received instructions in respect of the Company from Mr Duckett and that she “believed he was acting as a general manager.” She said that she did not retain any books, records or documents and that all paperwork had been returned to Mr Duckett.

116. On 10 April 2018 the Insolvency Service wrote to Mr Duckett with a request for information concerning his role and responsibilities in the Company.
117. On 1 May 2018 the Insolvency Service wrote to Mr Cooke and to Mr Duckett, notifying each of them that it considered it appropriate to recommend the commencement of disqualification proceedings against him and inviting a response by 15 May 2018.
118. On 23 May 2018 Miss Sadler sent an email to the Insolvency Service, saying that Mr Duckett had sought her assistance in responding to the letter of 1 May and asking whether it was too late to respond. The Insolvency Service replied that the matter had been referred for consideration by the Secretary of State but that this did not preclude Mr Duckett from providing a response.
119. On 20 June 2018 the Insolvency Service wrote to Mr Cooke and to Mr Duckett, notifying each of them that the OR intended to apply for a disqualification order against him. The letters informed them that, if they wished to offer a disqualification undertaking or to make further representations, they should do so by 11 July 2018.
120. On 10 July 2018 Mr Cooke signed a disqualification undertaking for a period of 9 years.
121. Mr Duckett made no response to the letter of 20 June 2018 or to two subsequent letters from the Insolvency Service until 25 July 2018, when his solicitors wrote to confirm that he would defend any disqualification proceedings brought against him. Further correspondence ensued. On 31 August 2018 Mr Duckett's solicitors sent copies of the statements of Mr Cooke and Ms Rowles, already mentioned, and invoices in respect of payments received by Mr Duckett from the Company. On 19 September 2018 the solicitors sent redacted copies of bank statements. On 12 December 2018 the Insolvency Service provided drafts of its evidence.
122. On 31 May 2019 these proceedings were commenced. It is unnecessary to recite the procedural history of the case. I turn to the issues.

Was Mr Duckett a director of the Company?

123. The OR's case is that, although he was never formally appointed as a director of the Company, Mr Duckett was a *de facto* director of the Company: that is, that he occupied the position of a director (section 22(4)).
124. The question whether a particular individual was a *de facto* director turns on the facts of the particular case. In *Secretary of State for Trade and Industry v Tjolle and others* [1998] BCC 282, Jacob J said at 290:

“For myself I think it may be difficult to postulate any one decisive test. I think what is involved is very much a question of degree. The court takes into account all the relevant factors. Those factors include at least whether or not there was a holding out by the company of the individual as a director,

whether the individual used the title, whether the individual has proper information (e.g. management accounts) on which to base decisions, and whether the individual has to make major decisions and so on. Taking all these factors into account, one asks ‘was this individual part of the corporate governing structure?’, answering it as a kind of jury question. In deciding this, one bears very much in mind why one is asking the question. That is why I think the passage I quoted from Millett J [in *Re Hydrodan (Corby) Ltd* [1994] BCC 161 at 162-3] is important. There would be no justification for the law making a person liable to misfeasance or disqualification proceedings unless they were truly in a position to exercise the powers and discharge the functions of a director. Otherwise they would be made liable for events over which they had no real control, either in fact or law.”

125. Part of the passage quoted by Jacob J from Millett J’s judgment in *Re Hydrodan (Corby) Ltd*, and relied on by Mr Watkinson for Mr Duckett, was as follows:

“To establish that a person was a de facto director of a company it is necessary to plead and prove that he undertook functions in relation to the company which could properly be discharged only by a director. It is not sufficient to show that he was concerned in the management of the company’s affairs or undertook tasks in relation to its business which can properly be performed by a manager below board level.”

126. Jacob J’s approach to the question seems to me to be essentially the same as that proposed by Lord Collins in *Holland v The Commissioners for Her Majesty’s Revenue and Customs* [2010] UKSC 51, [2010] 1 WLR 2793, at [94], namely to ask whether the person was part of the corporate governance structure of the company and whether he assumed a role in the company that imposed on him the fiduciary duties of a director.
127. Helpful guidance on the identification of a *de facto* director was given in *Smithton Limited v Naggar* [2014] EWCA Civ 939, [2015] 1 WLR 189, where Arden LJ, with whom Elias and Tomlinson LJ agreed, said:

“33. Lord Collins [in *Holland v HMRC*] sensibly held that there was no one definitive test for a de facto director. The question is whether he was part of the corporate governance system of the company and whether he assumed the status and function of a director so as to make himself responsible as if he were a director. However, a number of points arise out of *Holland* and the previous cases which are of general practical importance in determining who is a *de facto* director. I note these points in the following paragraphs.

34. The concepts of shadow director and *de facto* are different but there is some overlap.

35. A person may be *de facto* director even if there was no invalid appointment. The question is whether he has assumed responsibility to act as a director.

36. To answer that question, the court may have to determine in what capacity the director was acting (as in *Holland*).

37. The court will in general also have to determine the corporate governance structure of the company so as to decide in relation to the company's business whether the defendant's acts were directorial in nature.

38. The court is required to look at what the director actually did and not any job title actually given to him.

39. A defendant does not avoid liability if he shows that he in good faith thought he was not acting as a director. The question whether or not he acted as a director is to be determined objectively and irrespective of the defendant's motivation or belief.

40. The court must look at the cumulative effect of the activities relied on. The court should look at all the circumstances 'in the round' (per Jonathan Parker J in *Secretary of State v Jones*).

41. It is also important to look at the acts in their context. A single act might lead to liability in an exceptional case.

42. Relevant factors include:

i) whether the company considered him to be a director and held him out as such;

ii) whether third parties considered that he was a director;

43. The fact that a person is consulted about directorial decisions or his approval does not in general make him a director because he is not making the decision.

44. Acts outside the period when he is said to have been a *de facto* director may throw light on whether he was a *de facto* director in the relevant period.

45. In my judgment, the question whether a director is a *de facto* or shadow director is a question of fact and degree. ..."

128. Mr Watkinson submitted that the evidence did not establish that Mr Duckett was a *de facto* director of the Company. That submission was advanced with detailed reference to the oral, written and documentary evidence and I mention only some of the main points raised. First, Mr Duckett was an experienced businessman in middle age and of good character. It was unlikely that he would now embark on a fraudulent

enterprise. Second, Mr Cooke’s account to the Insolvency Service, given on pain of prosecution for perjury if it were false, was entirely consistent with Mr Duckett’s case, as was the letter he had previously signed to similar effect. Third, Ms Rowles’ evidence also supported Mr Duckett’s case. Fourth, the disappearance of Mr Deere was unsurprising: HMRC’s evidence suggests that Mr Deere “was engaged in a VAT fraud scheme”; he “appears to have used Mr Cooke as a stooge who would take the fall when the fraud was unravelled”; he took steps to ensure that he could not be traced, which is just what would be expected. Fifth, by contrast, Mr Duckett failed to distance himself from the Company: his name was all over the documents, his involvement in key moments was entirely apparent, and as HMRC became involved he, far from receding into the shadows, was thrust into the limelight. Mr Duckett was “set up to take the fall”. Sixth, there was evidence that “John” was active on the Company Email Account, and no person other than Mr Deere had been identified as a likely candidate. Seventh, the evidence adduced by the OR and the lack of serious investigation by the Insolvency Service and HMRC meant that it was impossible to be satisfied that Mr Deere could not have been found with proper effort: the OR had not called evidence from Mr Pickles, or from Mr Paschal’s superior, or from Mr Cooke or Miss Sadler; there was no evidence as to what if any investigations the Insolvency Service had carried out, and Mr Paschal’s evidence showed that HMRC had not explored obvious lines of enquiry. Eighth, Mr Duckett was never held out as, and never held himself out to be, a director of the Company. Ninth, the various activities in which Mr Duckett had been engaged—assisting in the incorporation of the Company and the opening of the bank accounts, giving instructions and documentation to accountants and solicitors, and communicating with HMRC—were not activities solely within the remit of directors but could be carried out by anyone engaging in managerial activities or providing administrative and consultative support.

129. Although Mr Watkinson advanced his submission with great skill and force, I do not accept it. I find that Mr Duckett was a *de facto* director of the Company. The reasons for this finding largely appear from the foregoing narrative, but here I make some general points.

- 1) Mr Duckett’s own case is that Mr Cooke did not run the Company or have knowledge of its trading activities but was merely a front-man or “face”. I largely accept that. I doubt whether Mr Cooke realised that he was being used; he probably thought that he was a partner in a business and that the details, both of trading and of legal matters, were being attended to by a partner better qualified in that regard.
- 2) Mr Duckett’s case is that the person who was in truth running the Company and conducting its business was Mr Deere, who “acted in the capacity of a director, took all the day-to-day decisions in relation to the management of F15, and effectively operated the company alone” (Mr Watkinson’s skeleton argument, paragraph 4) and used Mr Cooke as “a stooge” (*ibid.* para 5). If Mr Deere is fictitious, the result is that this picture is substantially correct save for the identity of the *éminence grise*: he can only be Mr Duckett. That this is so, I find as a fact.
- 3) The grounds of the finding of fact regarding Mr Deere appear from the narrative set out above.

- 4) Accordingly, there is no force in the contention that Mr Duckett did nothing that could only be done by a director. If his involvement in the Company had been as he alleges, the point made on his behalf would be a fair one. As his involvement was not so limited, and as he was fulfilling the role that he attributes to Mr Deere, it was necessarily he himself who was “act[ing] in the capacity of a director”. There are very many individual pieces of evidence that go to show that Mr Duckett was where the governance of the Company lay: he dealt with the incorporation; he identified the Company’s bankers; he engaged and instructed the accountants and the solicitors; he received the bank statements and the correspondence with HMRC; he used the Company Email Address—not by itself a major point, but important in view of his insistence that only Mr Deere had access to it; in communications with third parties he implied his own close connection with the Company (“our”), in terms that belie his claim to have been providing merely ad hoc assistance; he alone received payments from the Company—payments, moreover, for which he gives no persuasive explanation; he was the person whom Mr Cooke had to consult before providing information, he was the person who first responded on behalf of the Company to the Insolvency Service, and he both completed much of the PIQC and accompanied Mr Cooke to interview. However, the central point is the one made above: if Mr Cooke was not running the Company, and if Mr Duckett’s evidence about Mr Deere is false, only Mr Duckett can have been running the Company.

130. It is unnecessary to deal expressly with each and every point raised by Mr Watkinson, though I take them into account. However, I do remark that complaints about the poverty of the OR’s investigations and evidence seem to me to be unjustified. The OR’s evidence was that enquiries undertaken by the Insolvency Service had been unable to locate Mr Deere and that the failure of Mr Cooke and Mr Duckett to provide any detailed information about Mr Deere had precluded meaningful search enquiries (first report, paragraphs 16 and 35). Mr Duckett by his representatives declined the opportunity to cross-examine the OR in respect of that or any other part of his evidence. The complaint that the OR failed to call evidence from Mr Cooke or Miss Sadler lies oddly, given that it is Mr Duckett who seeks to rely on their previous statements and who might therefore have been expected to call them as witnesses on his behalf.

Unfitness

131. Section 386 of the Companies Act 2006 provides, so far as relevant, as follows:

- “(1) Every company must keep adequate accounting records.
- (2) Adequate accounting records means records that are sufficient—
- (a) to show and explain the company's transactions,
- (b) to disclose with reasonable accuracy, at any time, the financial position of the company at that time, and

(c) to enable the directors to ensure that any accounts required to be prepared comply with the requirements of this Act (and, where applicable, of Article 4 of the IAS Regulation).

(3) Accounting records must, in particular, contain—

(a) entries from day to day of all sums of money received and expended by the company and the matters in respect of which the receipt and expenditure takes place, and

(b) a record of the assets and liabilities of the company.

(4) If the company's business involves dealing in goods, the accounting records must contain—

(a) statements of stock held by the company at the end of each financial year of the company,

(b) all statements of stocktakings from which any statement of stock as is mentioned in paragraph (a) has been or is to be prepared, and

(c) except in the case of goods sold by way of ordinary retail trade, statements of all goods sold and purchased, showing the goods and the buyers and sellers in sufficient detail to enable all these to be identified.”

Section 388 provides, so far as relevant:

“(1) A company’s accounting records—

(a) must be kept at its registered office or such other place as the directors think fit, and

(b) must at all times be open to inspection by the company’s officers.

...

(4) Accounting records that a company is required by section 386 to keep must be preserved by it—

(a) in the case of a private company, for three years from the date on which they are made ...”

Failure by a company to comply with the obligations in these sections gives rise to criminal liability on the part of the company’s officers, subject to a defence if the officer proves that he acted honestly and ought reasonably to be excused: sections 387 and 389.

132. With reference to section 221 of the Companies Act 1985 (corresponding to sections 386 and 387 of the 2006 Act), Chadwick J explained the rationale of the obligations in *Secretary of State for Trade and Industry v Arif* [1986] BCC 586 at 593-4:

“Section 221 has, at the least, two purposes. First, to ensure that those who are concerned in the direction and management of companies which trade with the privilege of limited liability, do maintain sufficient accounting records to enable them to know what the position of the company is from time to time. Without that information, they cannot act responsibly in making decisions whether to continue trading. But equally important is a second purpose. If the company fails, a licensed insolvency practitioner will become office holder; as liquidator or as administrator or as administrative receiver. The office holder requires information as to the company’s trading and transactions which is sufficient to enable him to identify and recover or exploit the company’s assets. His task is made extremely difficult, if not impossible, if the company has failed to comply with its obligations under s. 221 of the 1985 Act.”

133. It is common ground that a *de facto* director owes to the company the same duties as those owed by a *de jure* director.
134. The evidence provided by the OR shows that as a director of other companies Mr Duckett has approved three financial statements: for Cresthall Trading Limited, on 1 July 2013; for Monmouthshire Financial Management, on 27 July 2015; and for Beauforce Corporation Limited, on 28 July 2017. Each of those financial statements included the following declaration: “The directors acknowledge their responsibilities for complying with the requirements of the Act with respect to accounting records and the preparation of accounts.”
135. The evidence of Mr Kenneth Beasley, the OR, in his first report, is that the records delivered up by Mr Cooke, in the presence of Mr Duckett, on 1 August 2017 comprised those listed in a seven-page schedule exhibited to the report. The records comprised sales invoices, purchase orders, bank statements, transport and insurance documents, VAT summaries, VAT reports, due diligence documents for counterparties, and documents concerning the Company’s formation.
136. In paragraphs 128 to 145 of his first report Mr Beasley sets out the deficiencies in those records. The following extracts give the tenor of the complaints; I omit the detail and most of the figures.

“128. The books and records delivered up by Mr Cooke include examples of due diligence documentation and some trading paperwork including sales and purchase orders, sales and purchase invoices, shipping documents and some bank statements.

129. They do not include any books of prime entry, including sales and purchase day books or equivalent listing of sales and purchases, no cash book or equivalent summary of monies

received and spent, and no ledgers. There is no clear audit trail and the information provided is insufficient as to: (a) Establish the full extent of F15's trading; (b) Explain the purpose of the withdrawals from the bank accounts.

...

131. F15 submitted its VAT return in respect of 08/16 to HMRC ... [and] claimed a net VAT repayment of £38,007.

...

133. HMRC notified F15 of adjustments to its 08/16 VAT return ... and consequently issued an assessment for VAT now payable in the amount of £179,470 ...

134. F15 submitted Nil VAT returns in respect of all other periods (02/16, 05/16 and FINAL). Therefore the sum of the trading declared by F15 and that assessed by HMRC in respect of VAT period 08/16 represents all of F15's declared trade.

135. The books and records delivered up by Mr Cooke included sales and purchase invoices summarised as follows, the sum total of which does not match the figures per the VAT return submitted ...

136. The books and records available therefore are insufficient as to (sic) accurately establish F15's actual VAT liability.

...

138. The books and records delivered up by Mr Cooke included sales invoices which amount to a gross total of £4,278,641 whilst bank receipts into F15's two known bank accounts total £3,492,852. The books and records available do not explain the difference of at least £785,789 between sales made and income received.

...

140. [From a comparison of identified payments from the bank statements and purchase invoices delivered up] it would appear that the gross value of purchase invoices delivered up by F15 exceed total bank payments made by £490,306. This discrepancy cannot be explained by the books and records delivered up. Moreover, the allocation of the bank payments made cannot be explained as there is little apparent correlation between the suppliers identified per the invoices delivered up and the recipients of monies paid from F15's bank accounts as noted on the bank statements.

...

142. If, in the absence of alternative explanation, it is accepted that £2,049,559 paid from F15's bank account is sufficiently supported by the invoices produced, there remains a further £1,443,293 that cannot identifiably be supported.

...

144. The books and records delivered up are inadequate for purpose in that:

- a) There is no clear audit trail;
- b) Prima facie invoices differ in value and designation from bank statement entries with at least £1,443,293 expended from the bank accounts that cannot be reconciled to the paperwork provided;
- c) It is not possible to accurately establish F15's VAT liability;
- d) It is not possible to determine F15's assets and liabilities at liquidation."

137. Mr Duckett's response to this case was advanced by way of Mr Watkinson's submissions and amounted to two points. First, Mr Beasley made clear that he was "not purporting to give, nor holding [himself] out as being qualified to give, 'expert evidence'" in respect of accountancy. Second, Mr Beasley listed the documents received from Mr Cooke but did not exhibit them; therefore neither Mr Duckett nor the court could be satisfied as to their inadequacy.
138. There is nothing in those points. First, the matters in the OR's evidence do not involve any identified issue on which the court would require expert evidence. The deficiencies identified by Mr Beasley concern failings of substantiation and correlation. That does not require expert evidence; it is a matter of analysis, such as is commonly undertaken by lawyers and courts without expert assistance. The role of an accountancy expert, if such had been sought, could only have been to relieve lawyers of an onerous task of close reading of financial records. Second, if Mr Duckett wanted the documents, he could have asked for them and if necessary sought an order for their production. He could also have sought to cross-examine Mr Beasley but chose not to do so.
139. On the basis of the OR's evidence, I am satisfied, in accordance with the primary case advanced, that Mr Duckett failed to ensure that the Company maintained and preserved adequate accounting records. The alternative case, that if adequate records were kept he failed to produce them, need not be considered, as it is not suggested that other documents exist but have been withheld.
140. I have no doubt but that Mr Duckett's conduct in failing to ensure the proper maintenance of adequate accounting records is conduct that makes him unfit to be concerned in the management of a company.

Disposition

141. By reason of my findings, section 6 of CDDA requires that I make a disqualification order against Mr Duckett for a period of not less than 2 years and not more than 15 years.
142. In *Re Sevenoaks Stationers (Retail) Limited* [1991] Ch 164, the Court of Appeal approved the division of the potential 15-year disqualification period under CDDA into three brackets:
- “(i) the top bracket of disqualification for periods over 10 years should be reserved for particularly serious cases. These may include cases where a director who has already had one period of disqualification imposed on him falls to be disqualified yet again. (ii) The minimum bracket of two to five years’ disqualification should be applied where, though disqualification is mandatory, the case is, relatively, not very serious. (iii) The middle bracket of disqualification for from six to 10 years should apply for serious cases which do not merit the top bracket.”
143. For the OR it was submitted that the present case fell within the middle bracket. Mr Watkinson did not make a contrary submission. I agree that the middle bracket is the appropriate one. The question is where within that bracket the case lies. Mr Passfield submitted that it was at the top end of the bracket and that the appropriate period of disqualification was 10 years.
144. Mr Watkinson advanced several matters in mitigation on Mr Duckett’s behalf: (1) his age; (2) his prior good character; (3) his decision to cease advisory work in Beauforce Corporation Limited; (4) the relatively small financial benefit that he obtained from the Company; (5) the fact that he did deliver up significant books and records of the Company. I take these matters into account. I also accept Mr Watkinson’s submission that the period of the undertaking given by Mr Cooke is not evidence of the appropriate period of disqualification for Mr Duckett. There is no doubt, on the basis of my findings, that Mr Duckett’s culpability is greater than that of Mr Cooke. However, the question for me is what period of disqualification is merited for Mr Duckett, not what period was agreed to by Mr Cooke. Again, and importantly, I bear in mind the point made earlier in this judgment: that the period of disqualification is to be fixed only by matters properly alleged and proved. There is, to put it mildly, a strong suspicion that the Company’s activities were in furtherance of a VAT fraud; indeed, Mr Duckett’s own case was advanced precisely on that basis, albeit that he said that the fraudster was not he but Mr Deere. However, the allegation pursued against Mr Duckett is not one of fraud but of failure to maintain proper records. As already explained, of course, the importance of adequate record-keeping lies in part in the prevention or at least detection of fraud.
145. However, in my judgment, the conduct alleged and proved against Mr Duckett is to be regarded as a serious breach of his obligations as a director. He is not able to advance even the excuse that he relied on others or that he failed by reason of oversight,

inexperience or inattention. He is an experienced businessman, with significant experience as a company director, and is to be taken to have understood his duties and been capable of discharging them. He had, as I find, control of the Company and its activities. The way he chose to defend these proceedings, by attempting to distance himself from the Company and denying that he was a director, leaves him with no credible case as to why his conduct regarding the Company's records was less serious than might first appear. The failure to keep proper records has the effect of hindering not only the conduct of the liquidation but investigation of substantive matters of possible fraud and misfeasance.

146. I also take into account the nature of Mr Duckett's defence in these proceedings, which I have already mentioned. As a full and frank admission of failures might be a mitigating factor, so I regard it as an aggravating factor that Mr Duckett lied on oath so egregiously in these proceedings. While the period of disqualification must be fixed by reference to the range appropriate for the specific matters pleaded and proved, and therefore Mr Duckett's false evidence does not seem to me to justify moving the case into the top bracket, it is properly to be taken into account when deciding where in the appropriate range the case falls.
147. Having taken these various matters into account, I consider that the proper period of disqualification is one of 10 years and I shall make an order accordingly.
148. The judgment will be handed down remotely in accordance with the current protocols. I shall direct the parties to file written representations on the matter of costs and shall determine that matter without a further hearing.

ORDER

UPON the Claimant's application for a disqualification order pursuant to section 6 of the Company Directors Disqualification Act 1986

AND UPON HEARING Mr Passfield of Counsel for the Claimant and Mr Watkinson of Counsel for the Defendant on 27 and 28 October 2020

AND UPON RECEIVING evidence

AND UPON judgment being handed down this day

IT IS ORDERED that:

1. Pursuant to section 6 of the Company Directors Disqualification Act 1986, for a period of 10 years the Defendant Howard Duckett:

- a) shall not be a director of a company, act as a receiver of a company's property or in any way, whether directly or indirectly, be concerned or take part in the promotion, formation or management of a company unless (in each case) he has leave of the court, and
 - b) shall not act as an insolvency practitioner.
2. Pursuant to section 1(2) of the Company Directors Disqualification Act 1986 the period of disqualification shall begin at the end of 21 days beginning with the date of this order.
3. The parties shall file and serve any representations they may have regarding costs by 4 p.m. on 18 November 2020, and the Court will then determine what further order ought to be made in respect of costs without a further hearing.