



TC05476

Appeal number: TC/2011/03414

Value Added Tax – Exemption – Education – Non-Profitmaking Body – Company Limited by Guarantee – Teaching of English as a Foreign Language – Courses for Teachers of English as a Foreign Language who are not native English speakers– Scope of Exemption – Value Added Tax Act 1994 sch 9 Group 6 Item 1

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

OISE LIMITED

Appellant

- and -

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

TRIBUNAL: JUDGE NICHOLAS PAINES QC

**Sitting in public at 45 Bedford Square, London WC1 on 22, 23 and 24 October
and 14 November 2014**

**Paul Key QC and Rebecca Stripe, Counsel, instructed by MJ Payne of
Grosvenor VAT Consultants, for the Appellant**

**Christiaan Zwart, Counsel, instructed by the General Counsel and Solicitor to
HM Revenue and Customs, for the Respondents**

DECISION

The appellant

5 1. The appellant (the letters in whose name stand for the Oxford Intensive School
of English, founded in 1973 as a tutorial establishment for the study of English as a
foreign language) is the representative member of a VAT group comprising seven
companies in the United Kingdom. I shall refer to the appellant as OISE; it is now a
wholly-owned subsidiary of OISE Holdings Ltd. The founder of the group and
10 majority shareholder in OISE Holdings Ltd (and formerly in OISE) is Mr Till Gins,
who has overall responsibility for the day to day running of the group. Mr Gins gave
evidence in this appeal.

2. OISE was originally founded as a tutorial establishment, but in 1975 it opened
its first school and has continued to expand since then. Whilst primarily specialising
15 in the teaching of English as a foreign language, OISE now also teaches French,
German and Spanish and the group has expanded to include two private secondary
schools.

3. The group companies include The Education and Training Company Ltd
(TETCL) which provides among other things residential courses for foreign teachers
20 of English. These, along with courses in English as a foreign language (“EFL”) for
foreign students who are not teachers, are marketed under the name “Pilgrims”.
Pilgrims was an English language school acquired by the OISE Group in 2003, whose
name the group has continued to use by reason of the value attached to its brand. One
of the issues in the appeal is whether certain of the courses provided to teachers
25 amount to the teaching of English as a foreign language (“TEFL”) for the purposes of
the VAT exemption attaching to that activity. Some have been accepted as TEFL by
HMRC. Others (“the disputed courses”) have not.

4. TETCL is a company limited by guarantee (and therefore without a share
capital) whose articles of association preclude the distribution of profits. Its sole
30 member is OISE Ltd. It was set up by Mr Gins in 2002. Its activities currently extend
to running two schools, Newbury Park in Berkshire – a school for international
students – and Basil Paterson Tutorial College in Edinburgh, as well as providing
teacher training to foreign language teachers. (Other activities of providing TEFL to
students who are not themselves teachers of English are conducted elsewhere in the
35 group.) Mr Gins testified that the *raison d’être* of TETCL was to give the OISE
group a charitable arm. The other issue in the appeal is whether TETCL is a non-
profitmaking body for the purposes of the VAT exemption; if so, all of the disputed
courses are exempt supplies.

5. For the reasons I give in this decision, I have concluded that TETCL is not a
40 non-profitmaking body within the meaning of Note 1 to Group 6 in schedule 9 to the
VAT Act 1994, read compatibly with Directive 2006/112. Of the disputed courses, I
have concluded that on the balance of probability the following amount
predominantly to the teaching of English as a foreign language: Methodology and

Language for Secondary Teachers; Creative Methodology for the Classroom; British Life, Language and Culture; Teaching English for Business People; Teaching English through Music and Visual Art; Improving English through Humour; Creative Drama for the Classroom; and Creative Writing; the others do not.

5 The legislation

6. Article 132 of the VAT Directive 2006/112 provides so far as material as follows:

1. Member states shall exempt the following transactions:

.....

10 (i) the provision of children's or young people's education, school or university education, vocational training or retraining, including the supply of services and of goods closely related thereto, by bodies governed by public law having such as their aim or by other organisations recognised by the Member State concerned as having similar objects;

15 7. Article 133 goes on to provide that

Member States may make the granting to bodies other than those governed by public law of each exemption provided for in points (b), (g), (h), (i), (l), (m) and (n) of Article 132(1) subject in each individual case to one or more of the following conditions:

20 (a) the bodies in question must not systematically aim to make a profit, and any surpluses nevertheless arising must not be distributed, but must be assigned to the continuance or improvement of the services supplied; ...

8. In the Value Added Tax Act 1994, exempt supplies are listed in schedule 9. Item 1 of Group 6 in that schedule is

25 1. The provision by an eligible body of

(a) education; or

.....

(c) vocational training.

9. The Notes to Group 6 specify *inter alia* as follows:

30 (1) For the purposes of this Group an "eligible body" is—

(a) a school

(b) a United Kingdom university

.....

(e) a body which–

(i) is precluded from distributing and does not distribute any profit it makes; and

5 (ii) applies any profits made from supplies of a description within this Group to the continuance or improvement of such supplies;

.....

(f) a body not falling within paragraphs (a) to (e) above which provides the teaching of English as a foreign language.

10 (2) A supply by a body, which is an eligible body only by virtue of falling within Note (1)(f), shall not fall within this Group insofar as it consists of the provision of anything other than the teaching of English as a foreign language.

15 10. It will be seen that Note 1 (at (f)) includes a supplier of TEFL among the “eligible bodies” for the exemption where the supplier is not an eligible body under one of the preceding subparagraphs. Note 2, however, limits the extent to which a supply by a Note 1(f) eligible body falls within the Group of supplies exempt under the heading of education. I shall return to the meaning and effect of Note 2 later in this decision.

The history of the litigation

20 11. In January 2003 OISE applied to the Commissioners to add the newly formed TETCL to its VAT group. At the same time OISE’s advisers wrote to the Commissioners enclosing a copy of TETCL’s memorandum and articles of association; they explained that some courses which were then being provided as taxable supplies by another group company would be taken over by TETCL and said
25 that these would then be exempt supplies as TETCL was a non-profitmaking body. In March 2005 the advisers made a formal disclosure (as OISE was obliged to do as a result of changes to the VAT legislation) that TETCL received certain supplies from connected companies. HMRC replied in July 2005 saying that they might in due course make further enquiries and that if OISE wished to have certainty about the
30 arrangements it could apply for a ruling. Three years later, in July 2008, HMRC wrote to OISE announcing that they had decided to make further enquiries and asking for a meeting, to be preceded by the supply of some documents and information.

35 12. OISE’s advisers replied in August 2008 saying (in effect) that it was no longer necessary to rely on TETCL being a non-profitmaking body in order for its supplies to be exempt, as (a) the schools were in the process of achieving registration with the Department for Education (which would make their supplies exempt in any event) and (b) the content of the teacher training courses had materially changed towards the teaching of English as a foreign language, making those courses exempt in any event. HMRC replied asking for further information, a request which was answered in

February 2009. OISE's letter in reply relied both on the courses for teachers amounting to teaching of English as a foreign language and on TETCL's non-profitmaking status.

5 13. In response HMRC asked in March 2009 for an opportunity to review the course material relating to the courses provided to teachers "to ensure that HMRC is in agreement that these courses do fall to be treated as exempt EFL" and proposing a visit to examine that material as well as the documents previously requested regarding TETCL's non-profitmaking status. A meeting took place in May 2009. After it, HMRC wrote, agreeing that two of the courses for which they had been shown course materials amounted to TEFL and that another two might do so, but saying that that in the meantime they had discovered further courses advertised on the Pilgrims website, 10 18 of which appeared to fall outside the TEFL exemption as they appeared to be largely or purely 'methodology' courses.

15 14. The term 'methodology', which will appear fairly frequently in this decision, refers to the methodology of teaching; HMRC's thesis was that students on these courses (who are teachers of English as a foreign language, though almost invariably not themselves native speakers of English) were receiving instruction in how to teach English as a foreign language rather than being taught the English language itself.

20 15. HMRC enclosed a list of 27 courses they had seen on the website together with the stated requirement as to pre-existing English language proficiency and HMRC's view of their nature. They had classified 18 of the courses as methodology courses, two as EFL courses and seven as mixed courses of methodology and language improvement. They asked for details of the amount of income received from each of the courses in the year to date and repeated their request for further information 25 relevant to TETCL's non-profitmaking status.

30 16. On 29 July 2009 OISE's advisers replied enclosing a schedule prepared by OISE. This listed the 27 courses that HMRC had listed together with five more, giving a percentage split for each as between methodology and TEFL and the turnover of each of them in the last three years. The percentages attributed to TEFL were variously 100%, 80%, 60%, 50% and 30%. The covering letter said that Mr Jim Wright of OISE had been "able to, with his expert knowledge, identify the percentage elements which he considers relate to EFL and Methodology" The letter went on to say that all save one (discontinued) course contained meaningful TEFL content and that they were correctly exempted as composite supplies of TEFL with incidental 35 elements of methodology.

40 17. Mr Wright told me in evidence that he had in fact refused to carry out the percentage split exercise, which he regarded as meaningless ("a futile exercise" was how he described it), and that he had asked Mr Simon Marshall, one of the teacher trainers, to do it; he said that Marshall had described the exercise as ridiculous but agreed to do it. Mr Wright had seen the percentages arrived at by Mr Marshall before passing them on to OISE's finance director, who had asked for them. But Mr Wright remained unhappy about the exercise.

18. Mr Marshall appears elsewhere in this decision: he is one of the writers of letters on the subject of the relationship between EFL and methodology in Pilgrims teacher training courses which Mr Wright attached to his witness statement. I discuss these at paragraphs 101 onwards. Mr Marshall had delivered courses at Pilgrims for some 20 years and had taught a wide variety of Pilgrims teacher training courses; he was Pilgrims' Director of Teacher Training between 2001 and 2006; in that capacity he designed teacher training courses, wrote course descriptions and promoted them in the United Kingdom and abroad. Mr Wright described him as the senior trainer for many years during the summer (when many of the courses take place), with a role as director of studies.

19. Mr Marshall's letter, which I review later in this decision, indeed says that it is impossible to separate the learning of methodology from the learning of the English language. The letter does not comment on or refer to Mr Marshall's role in the production of the ratings of methodology and language content in the letter of July 2009; he was not called as a witness. There was no discussion of why not; no suggestion was made that he was unavailable. I have concluded that it is not impossible to estimate the respective EFL and methodology content of a course, though the exercise is inevitably impressionistic. It is apparent that Mr Marshall was able to ascribe percentages to the respective EFL and methodology content of the courses that were in dispute, since he produced some. I shall refer to these, along with the other information available to me; they generally correspond to the impression I have formed from the other evidence. It would have assisted me to hear his explanation of the exercise he undertook, as well as anything he might have wanted to say about its limitations.

20. HMRC replied in September 2009, referring to some of the *Card Protection Plan* line of case-law (as to which, see below), suggesting that the courses amounted to single supplies for VAT purposes but that at most eight of the courses could be exempt as having substantial EFL content, and seeking OISE's comments with a view to reaching agreement on how the courses should be classified. In reply in October OISE's advisers agreed that the courses were single supplies but criticised HMRC's over-reliance on how the courses were marketed and reiterated that all of them should be regarded as exempt supplies of TEFL. Discussion continued in correspondence and in February 2010 OISE produced some further material requested by HMRC. These included some statutory and management accounts for TETCL and some brochures.

21. On 23 August 2010 HMRC issued the decision against which the present appeal is brought. This was that the majority of the supplies of teacher training made by TETCL were not eligible for exemption; this was because TETCL was not a non-profitmaking body within the meaning of Note 1(e) to Group 6 and the majority of the supplies in issue were supplies of vocational training and not the teaching of English as a foreign language.

22. In relation to the non-profitmaking body issue, the letter referred to Case C-174/00 *Kennemer Golf and Country Club v Staatssecretaris van Financiën* [2002] ECR I-3293, [2002] STC 502 and *Messenger Leisure Developments v HMRC* [2005

EWCA Civ 648, [2005] STC 1078, both of which I discuss below. In relation to the TEFL issue, the writer was prepared to accept that three of the courses were predominantly language skills training, though each contained some elements of teaching methodology; there were a further five that were more finely balanced but the writer was prepared to give OISE the benefit of the doubt. As regards the additional five courses listed at the bottom of OISE's list the writer was unable to make a judgment for lack of sufficient information, though the letter went to say that "for the discontinued courses and conference I am prepared to accept the percentage split you have applied to determine the liability".

23. The discontinued courses and the conference were among the five courses the writer had just referred to, making this part of the letter self-contradictory. Mr Paul Key QC, who appeared for OISE with Ms Rebecca Stripe, complained that HMRC went on to assess OISE to tax in respect of those courses, even though OISE had rated some of them as predominantly TEFL. This appeal is against the decision letter and not against the assessments, but Mr Key was content that I should give my decision on the proper classification of those courses as though they were formally part of the appeal. Mr Christiaan Zwart, who appeared for HMRC, did not dissent from this course.

24. I add for completeness that OISE sought a review of the decision; HMRC gave notice to OISE to provide further documents and information, which OISE provided; HMRC proceeded to issue the assessments I have referred to; there was debate in correspondence over a further issue, not pursued at the hearing, as to whether the disputed supplies were exempt by virtue of being financed through EU funding; the decisions were upheld on review; and in May 2011 OISE appealed to the First-tier Tribunal.

25. In the course of the preparations for the appeal, discussion continued between OISE and its advisers and HMRC. These included an invitation from OISE to HMRC, issued in August 2012, to visit Canterbury to observe the disputed courses. This invitation culminated in a visit by two HMRC officers, Mr Richard Hughes and Mr James Edgoose, on 15 November 2012. I discuss it below.

The issues

26. If TETCL falls within Note 1(e), as OISE maintains it does, there is no dispute that the supplies at issue are either of education or of vocational training; there is no need to decide which of those they are. There is no relevant limitation on the exemption of supplies of education or vocational training supplied by a non-profitmaking body (as I shall loosely describe the entities envisaged by Note 1(e) to Group 6), and OISE's appeal must succeed. The first issue is whether TETCL falls within Note 1(e).

27. If on the other hand TETCL is not within Note 1(e), the only provision pursuant to which it can be an eligible body for the purposes of the exemption is Note 1(f). There is no dispute that TETCL falls within Note 1(f) if it does not fall within Note 1(e). But if TETCL falls within Note 1(f), then Note 2 limits the available exemption

so that it does not apply “insofar as [a supply by TETCL] consists of the provision of anything other than the teaching of English as a foreign language”.

28. Mr Key and Mr Zwart were united in submitting to me that the correct approach to the application of Note 2 is to decide whether each of the courses in dispute amounts to a supply of TEFL in accordance with the principles established in what I refer to as the *Card Protection Plan* line of authority (Case C-349/96 *Card Protection Plan v CCE* [1999] ECR I-973, [1999] STC 270). During the hearing I queried whether Note 2, which expressly excludes a supply made by a provider of TEFL from exemption “insofar as it consists of the provision of anything other than the teaching of English as a foreign language”, might apply different rates of tax to different elements of a single supply in accordance with the line of CJEU case-law commencing with Case C-94/09 *Commission v France* [2010] ECR I-4261, [2012] STC 573 (I discussed that case-law in my decision in *AN Checker v HMRC* [2013] UKFTT 506 and do not repeat the discussion here). It was the firm submission of both of them that I should not take that approach but should instead apply *Card Protection Plan* principles.

29. There is some attraction in an “insofar as” approach in the present case, to the extent that the disputed supplies have a mixed TEFL/non-TEFL character. However, it is not clear as a matter of domestic statutory interpretation whether “insofar as” in Note 2 is intended to mean any more than “if”; the *Commission v France* line of authority did not exist when the Note was inserted into the VAT Act and it is uncertain whether the drafter intended to give mixed treatment to a single supply. Nor is it clear as a matter of EU law whether the *Commission v France* line of authority extends to exemptions (the decided cases concern reduced and zero rates). An “insofar as” approach would reopen difficult issues, currently settled by *Pilgrims Language Courses Ltd v CCE* [1999] STC 874 as regards ancillary elements such as board and lodging in the case of a residential TEFL course. I therefore approach the second issue in the way described at the beginning of paragraph 28 above: the second issue is whether each of the disputed courses amounts to a supply of TEFL in accordance with *Card Protection Plan* principles. I discuss the *Pilgrims* litigation further below.

30. OISE’s case on issue 2 is put in two ways. Mr Key’s primary submission is that I should conclude that all of the disputed courses amount to TEFL on the basis of the evidence of OISE’s witnesses that the methodology element in them is the vehicle by which English language instruction is given (I explain this more fully below); alternatively, I should conclude that in each of the courses instruction in EFL predominates over the instruction in methodology of teaching.

31. I have mentioned that HMRC’s decision was followed by the issuing of a number of assessments to tax, some of which OISE has appealed. There was some discussion of whether some of the assessments contradicted favourable indications in the decision letter, but over the course of the hearing the parties agreed upon the courses on which I should rule. The appeals against assessments are not before me; I am simply asked to give a ruling on the correct tax treatment of the courses.

The evidence

32. Mr Gins gave evidence for OISE, together with Mr Wright who is the Head of Teacher Training and Adult Programmes at TETCL and Marion Williams who is a retired Reader in Applied Linguistics at the University of Exeter and a past President of the International Association of Teachers of English as a Foreign Language. For
5 HMRC evidence was given by Richard Hughes, a Tax Avoidance and Complex Issues project manager at HMRC and James Edgoose, a Higher Officer working in the Cambridge office of HMRC. All the witnesses made witness statements and all apart from Mr Hughes were cross-examined. Initially there were objections to the adducing
10 of a second witness statement by Mr Wright and of the witness statements of the HMRC officers, which were produced out of time, but those objections were sensibly resolved between the parties. I would have allowed the additional witness statements in any event; the issue in this part of the case are difficult and the witness statements were valuable.

15 33. Mr Gins's witness statement provided some background information about the OISE group and its history as well as evidence bearing on the issues in the appeal. The group consists of seven companies: the ultimate holding company is OISE Holdings Ltd, of which Mr Gins is the main shareholder. Mr Gins has overall responsibility for the day to day running of OISE and authority to take the majority of
20 important decisions. OISE is in turn the parent company of the five other companies in the group. It is unnecessary to describe in detail the activities of all of those companies; they are all involved in teaching EFL or in other forms of education. One of them is TETCL.

34. Mr Gins founded the Oxford Intensive School of English in 1973, initially as a
25 tutorial establishment in 1975 as a school. OISE was incorporated in 1977. The group has expanded to become an international organisation specialising primarily in teaching EFL. Many of the group's activities continue to be carried out under trading names used prior to the group's acquisition of them, in view of the goodwill that attaches to them. Consequently the names of the companies do not necessarily
30 correspond to the trading names under which education is provided. The courses in dispute in this appeal, for example, are provided by TETCL under the name Pilgrims. That name is also used by one or more other group companies to teach EFL to students who are not themselves teachers of English.

35. Another company outside the OISE group, Lanleya Ltd, owns the premises used by group companies. The shares in Lanleya are held by members of the Gins family. Mr Gins is the majority shareholder.

36. Mr Gins also gave evidence bearing on the non-profitmaking status of TETCL. He, as well as Mr Wright and Ms Williams, gave evidence on the issue of whether the
40 disputed courses amount to TEFL. Mr Hughes and Mr Edgoose gave evidence about a visit they made to view one of the disputed courses. I shall review all of this when I discuss those issues.

Issue 1: is TETCL a non-profitmaking body within the meaning of Note 1(e) to Group 6?

37. Before considering the authorities relevant to whether TETCL falls with Note 1(e), I record further findings of fact about TETCL.

5 38. I have mentioned that TETCL was set up by Mr Gins in late 2002. He gave
evidence, which I accept, that at that time he was unaware of any prospect of
acquiring Pilgrims. Mr Gins's original ambition for TETCL was to provide
mainstream secondary school education. He did not expect the activity to be
profitable and did not believe in making money out of mainstream education. He
10 investigated the possibility of setting up a charity but was put off by the prospect of
losing control to trustees who might decide to apply the assets to a different charitable
purpose. He opted for a company limited by guarantee with a memorandum of
association that prohibited distributions of profit.

15 39. TETCL operates as part of the OISE group. Its sole member is OISE, which is
in turn a wholly-owned subsidiary of OISE Holdings, of which Mr Gins is the
majority shareholder.

20 40. TETCL pays rent for the Newbury Park and Basil Paterson premises. This is
paid to Lanleya, but the rent is based on a professional valuation. To provide the
courses in dispute in this appeal TETCL generally rents university premises at
Canterbury but occasionally uses group premises; if it does so it does not pay rent, but
it is a party to an intra-group agreement involving OISE Holdings, OISE and
TETCL's fellow subsidiaries. Under the agreement TETCL is permitted to share the
use of group premises in Edinburgh and Canterbury and, if it does so, pays a share of
the administration costs related to those sites which is related to TETCL's turnover.
25 Mr Gins said, however, that TETCL is not charged for the rare occasions on which it
delivers courses on group premises in Canterbury. Like the other trading companies
in the group, TETCL pays a turnover-related share of the group's central costs, which
includes staff costs. In both cases the share of costs is uplifted by 10%. According to
the terms of the agreement, this reflects the fact that the costs are incurred in advance
30 and paid in arrears. Mr Gins insisted that, like the rental payments these payments are
at arm's length rates and in his view represent good value for money for TETCL.

41. The memorandum of association of TETCL includes the following clauses:

35 4. The income and property of the Company, wheresoever derived, shall be
applied solely towards the promotion of the objects of the Company as set forth
in this Memorandum of Association, and no portion thereof shall be paid or
transferred directly or indirectly, by way of dividend, bonus or otherwise
howsoever by way of profit to the members of the Company, and no member of
its Board of Directors or governing body shall be appointed to any office of the
Company paid by salary or fees or receive remuneration or other benefit in
40 money or monies worth from the Company.

Provided that nothing herein shall prevent the payment by good faith, by the Company:

- 5 (a) of reasonable and proper remuneration of any member, officer or servant of the Company (not being a member of its Board of Directors or governing body) for any services rendered to the Company;
- (b) of interest on monies lent by any member of the Company or of its Board of Directors or governing body at a rate per annum not exceeding 2 per cent less than the base lending rate for the time being prescribed by the Company's bankers, or 3 per cent, whichever is the greater;
- 10 (c) of fees, remuneration or other benefit in money or monies' worth to a company of which a member of the Board of Directors or governing body may be a member holding not more than one hundredth part of the capital of that company;
- 15 (d) of reasonable and proper rent for premises demised or let by any member of the Company or of its Board of Directors or governing body;
- (e) to any member of its Board of Directors or governing body out-of-pocket expenses.

5. No addition, alteration, or amendment shall be made to or in the provisions of the Memorandum or Articles of Association for the time being in force, which would have the effect that the Company shall cease to be a company to which section 30 of the Companies Act 1985 applies.

.....

8. If, upon the winding up or dissolution of the Company, there remains, after the satisfaction of all its debts and liabilities, any property whatsoever, the same shall not be paid to distributed among the members of the Company, but shall be given or transferred to some other institution or institutions having objects the same as or similar to the objects of the Company, and which shall prohibit the distribution of its or their income and property among its or their members to an extent at least as great as is imposed on the Company under or by virtue of Clause 4 hereof, such institution or institutions to be determined by the members of the Company at or before the time of dissolution, and if and so far as effect cannot be given to this provision, then to some other object as near as may be to that of the Company.

42. It was after TETCL had been set up that Mr Gins was offered the opportunity to buy the business of Pilgrims. On performing due diligence enquiries, it was discovered that the courses that Pilgrims provided to foreign teachers of English were not profitable, and there were indications that the directors of Pilgrims had been minded to cease providing them. Mr Gins accordingly decided that that aspect of the business would be "hived off" into TETCL.

43. I was shown the accounts of TETCL for the periods ending 31 December 2003 to 31 December 2008. In the first year of trading (which was the calendar year 2003) TETCL had, in round numbers, a turnover of £800,000 and made a surplus of £45,000. In 2004 TETCL had a turnover of £1.3 million and made a loss of £10,000; members' funds stood at £34,000. In 2005, the turnover was £1.5 million, generating a surplus of £18,000 after tax and members' funds of £52,000. Turnover in 2006 was £1.9 million, generating a surplus after tax of £110,000 and members' funds of £162,000. In 2007 turnover was a little under £2.2 million, generating a surplus after tax of £206,000 and members' funds of £369,000, while in 2008 turnover of £2.3 million generated a surplus after tax of £330,000; members' funds stood at £604,000.

44. Debate about TETCL's non-profitmaking status focussed on *Kennemer Golf and Country Club* and *Messenger Leisure Developments v HMRC*. The *Kennemer* case concerned a golf club in the Netherlands which was a members' club (ie one owned by its customers) but also offered its facilities to non-members in return for day subscriptions ('green fees'). It budgeted for, and over several years made, a surplus which it kept in the form of a 'reserve fund for non-annual expenditure'. Article 13(A)(1)(m) of the Sixth VAT Directive required member states to exempt "the supply of certain services closely linked to sport or physical education by non-profit-making organisations to persons taking part in sport or physical education". The national legislation also made use of the facility provided by the predecessor to article 133(a) to require that suppliers should not aim to make a profit. The predecessor provision, worded in terms slightly different to article 133(a), which I have set out at paragraph 7 above, permitted member states to impose a condition that the bodies "shall not systematically aim to make a profit, but any profits nevertheless arising shall not be distributed, but shall be assigned to the continuance or improvement of the services supplied". The issue was whether the club qualified for exemption despite the surpluses.

45. Both Mr Advocate General Jacobs and the Court concluded that the term 'profit' in what is now article 133(1)(m) referred to profits for the members of an organisation. Provided that surpluses were not distributed as profits, budgeting for a surplus was not incompatible with being non-profitmaking. According to the Court (paragraph 33 of the judgment) the predecessor to article 133(a) "essentially replicates the criterion of non-profitmaking organisation as contained in [article 133(1)(m)]". The Court therefore seems to have accepted the Advocate General's view that it was the aim of the organisation in question, rather than whether surpluses were generated or not, that determined whether it was non-profitmaking. In that connection the Advocate General had added that "when assessing those aims, it is necessary but not sufficient to look at the organisation's express objects as set out in its statutes. It is also necessary however to examine whether the aim of making and distributing profit can be deduced from the way it operates in practice". He went on to discuss hypothetical methods of what he termed "covert distribution" of profit.

46. The *Kennemer* decision was applied to an English golf club by the Court of Appeal in *Messenger Leisure Developments Ltd v HMRC* [2005] STC 1078. In that case the company in question was a company limited by shares; it was a wholly owned subsidiary of another group company that was in turn a wholly owned

- subsidiary of the group holding company. The holding company was owned by Mr Eddy Shah and his wife and Mr Shah was the sole director both of the holding company and of the subsidiary. A clause in the memorandum of association of the subsidiary precluded any distribution of profits save to the shareholders on winding up and required the company “to utilise any surplus funds for the continuance or improvement of the facilities for sport or physical education made available or provided by the Company”. The articles of association contained no power to pay dividends or make a capital distribution. The intention underlying the wording of the memorandum and articles was to make the company eligible for VAT exemption.
- 10 The company operated proprietary golf clubs owned by the holding company pursuant to an oral rent-free licence granted by the holding company. When one of the clubs was sold, half of the amount of the proceeds of sale that was attributed to goodwill was paid to the company. The company’s accounts showed retained profit of some £500,000 in 1999 and some £1.4 million in 2000.
- 15 47. The High Court and Court of Appeal upheld the tribunal’s decision that the company was not a non-profitmaking body. In the Court of Appeal Jonathan Parker LJ reasoned as follows:
87. [In *Kennemer*] [t]he Court of Justice accordingly concluded (paragraph 35) that “an organisation *may* be categorised as ‘non-profit-making’ even if it systematically seeks to achieve surpluses which it then uses for the purposes of the provision of its services” (emphasis supplied). As the judge correctly observes in paragraph 25 of his judgment (quoted in paragraph 66 above), that is the proposition for which *Kennemer* is authority.
- 20
88. More importantly for present purposes, however, *Kennemer* is *not* authority for the very different proposition that an organisation which has no power to make, and which does not make, distributions to its members is *necessarily* a ‘non-profit-making organisation’ for the purposes of Article 13A(1)(m), notwithstanding that it may achieve surpluses which it retains and uses for its own purposes. There are two reasons why, in my judgment, this is so.
- 25
89. First, in agreement with Mr Paines I can see no basis for treating the expression “financial advantages for the organisation’s members” in paragraph 33 of the ECJ’s judgment in *Kennemer* as restricted to a particular category of advantage, viz. a distribution of surplus funds to members. Indeed, when read in the context of the judgment as a whole it seems to me that it is plainly not so limited. Second, whether or not an organisation is ‘non-profit-making’ for the purposes of Article 13A(1)(m) must, as the ECJ tells us, depend on the “aim which [it] pursues”. As to that, I also agree with Mr Paines that in determining what is the “aim” which the organisation is pursuing when it makes the supply in question it is necessary to look at the transactions in question in their full factual context. Thus, the fact that an organisation systematically achieves surpluses which it retains for its own purposes may, depending on the context, demonstrate an “aim” which is far removed from ‘non-profit-making’.
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90. Such, in my judgment, is the position in the instant case. In my judgment it is clear on the undisputed facts that Developments [the appellant company]

represents an integral part of the commercial operation of the Messenger group, and hence of Mr Shah, in acquiring and running golf and country clubs (i.e. proprietary clubs), and, from time to time, in selling them. This is evident not merely from the formal structure of the group, but also from the fact that (as the Tribunal records in paragraph 40 of the Decision (quoted in paragraph 28 above)) the substantial surpluses accumulated by Developments arose from its free use of the facilities made available to it by other members of the group (principally Leisure [another group company]). A further indication of the commercial interdependence of companies in the group is the fact that on the sale of the Essex Club part of the price attributable to goodwill was paid to Developments (see paragraph 29 above).

91. In context, therefore, the building up of reserves in Developments is a clear financial advantage to the group, and hence to Mr Shah. So much, indeed, is evident from Mr Shah's expressed hope that in due course Developments may acquire its own 'flagship club'. So even assuming that the initial failure of Developments to charge interest on moneys held by Leisure for its account did not amount to a distribution (and it is unnecessary to decide whether it did or not) the commercial nature of Developments' "aim" in making the supplies in question is, in my judgment, clear on the facts.

92. As to whether the test of "aim" is a subjective or an objective one, I have no difficulty in accepting Mr Thomas' submission that Mr Shah's subjective intentions in relation to Developments were relevant matters for the Tribunal to take into account as part of the general context; but, for reasons already given, they are far from conclusive as to Developments' "aim" in making the supplies in question. Indeed, when all the surrounding circumstances are taken into account, the inevitable conclusion (as it seems to me) is that Developments' aim in making the supplies in question was to further the commercial aims of the group as a whole, and hence of Mr Shah....

48. It was accordingly sufficient in Jonathan Parker LJ's eyes that the company was an integral part of a commercial operation. He did not refer other than obliquely to the possibility of its memorandum and articles being changed so as to permit straightforward distribution of the accumulated surplus. I read paragraph 92 as indicating that, even accepting that Mr Shah did not intend to extract funds from the company, he had nevertheless not succeeded in making it non-profitmaking.

49. Arden LJ agreed with Jonathan Parker LJ's conclusions and his analysis of *Kennemer*, but added

96. In determining the relevant aim of Developments, there is one other aspect of the factual situation not mentioned by Jonathan Parker LJ which I regard as relevant. It is this. Developments is a company registered under the Companies Acts and limited by shares. As such, it has power to alter the conditions in its memorandum of association by special resolution (Companies Act 1985, section 4). It can accordingly remove the restrictions currently set out in its memorandum on the distribution of profits by special resolution. Moreover, if it

5 did so, the profits of Developments could be distributed to its shareholders even
though, when they were earned, the restrictions were in place. Indeed, as
Developments is a wholly-owned subsidiary, the parent company could pass a
special resolution without any formality. Thus there is, and could be, no finding
by the Tribunal that those restrictions could not be removed at some time in the
future, for example in the event of a change by Mr Shah of his current policy or
in the event of a change of control. (Indeed Developments would probably have
to remove the restrictions if, which is not of course currently anticipated, there
was an adverse change in the financial position of the group of which it forms
10 part necessitating access to the accumulated profits of Developments). The
contingent entitlement to distributions of profits in these circumstances seems to
me to be capable of being a financial advantage to which the members are
entitled for the purposes of paragraph 47 of the opinion of the Advocate General
in the *Kennemer* case.

15 97. The parent company could, with the same ease, cause Developments to be
wound up voluntarily so that surpluses could be distributed in its winding up. I
have taken no account of this because this would be a distribution of assets
under domestic law rather than a distribution of profits. However in an
appropriate case the right to a distribution of assets on a winding up may have to
20 be treated as a financial advantage for the purposes of this corner of European
Union law.

25 98. I do not hold that (so far as companies incorporated in this jurisdiction are
concerned) no company limited by shares can qualify as a non-profit making
body for the purposes of the exemption in article 13A(1)(m), or that only a
company which is a charitable company or a community interest company for
the purposes of the Companies (Audit, Investigations and Community
Enterprise) Act 2004 could so qualify. There are companies which cannot
effectively remove a restriction on the distribution on profits at least so far
30 profits already made are concerned. (In the case of community interest
companies, the distribution to members of profits is not wholly prohibited by
law but is subject to significant restrictions). However, as my Lord has pointed
out, in this case Developments is part of a commercial group of companies.
The relative fragility of the restrictions is not therefore a purely academic
matter. It is a fact or matter that in my judgment it is relevant to take into
35 account in evaluating the totality of the facts for the purpose of determining
whether in reality the aim of Developments in this case was to make profits for
its members.

99. For these additional reasons I agree with the order which my Lord proposes.

40 50. Lord Phillips MR also agreed, “for the reasons given by [Jonathan Parker LJ]
and the additional reasons given by Arden LJ”.

51. It was common ground that, despite TETCL being a company whose members’
liability is limited by guarantee and not by shares, there was no legal impediment to
TETCL’s memorandum of association being amended to remove the inhibition on

distribution of profits, though it seems to me that this would have to involve the deletion of clause 5 (set out above) as well as clause 4; distribution of assets on winding up otherwise than in accordance with clause 8 would necessitate the removal of that clause. Mr Gins gave evidence, which I accept, that he has no intention of doing these things. It was also his evidence that he had been looking for appropriate charitable or philanthropic ways to spend the company's surplus. He has recently discovered an opportunity to assist disadvantaged children in Cambodia, both by contributing to an existing charitable school and providing scholarships for schoolchildren to attend language courses, not necessarily at Pilgrims, in the United Kingdom.

52. Funds have also been spent on improving the facilities at Newbury Park and Basil Paterson, for example doubling the size of the science laboratory at Newbury Park. Between 2003 and 2013 TETCL spent a little over £150,000 on fixtures and fittings and reinvested some £390,000 in its leasehold property. TETCL also offers funded courses and bursaries. In 2011/2012, nearly £60,000 was expended in this way.

53. Mr Key relied on the provisions of the memorandum and on the evidence (which I accept) that Mr Gins had no intention of altering them. He submitted that the real question in this part of the case was whether Mr Gins would remove the restrictions, the answer to which he said was no. He further submitted that TETCL does not distribute any profits but instead reinvests them in scholarships, other charitable causes and the continued provision of its supplies. Mr Zwart relied on Mr Gins's control of TETCL, what Arden LJ had described as the "relative fragility" of the restrictions in the memorandum and on the fact of payment by TETCL of management charges to OISE and rental payments to Lanleya. Mr Key countered this last point by submitting that, on the evidence, the payments were at arms' length value for things provided to TETCL.

54. I accept Mr Gins's evidence both as to his intentions regarding TETCL's surpluses and the arm's length nature of the payments to OISE and Lanleya. I am nevertheless forced to the conclusion that TETCL is not a non-profitmaking body within the meaning of article 133(1)(m) of the Directive or Note 1(e) to Group 6.

55. First it seems to me that TETCL is in a materially identical situation to that of Messenger Leisure Developments as described at paragraph 90 of the judgment of Jonathan Parker LJ in the *Messenger* case: it is an integral part of a commercial operation consisting, in this case, of other members of the OISE group and the property-owning company Lanleya Ltd.

56. I note some differences between the situation of TETCL and that of Messenger Leisure Developments. In the *Messenger* case, the company's rent-free licence to occupy and operate the clubs meant that its activities were potentially capable of increasing the value of premises belonging to other group companies – a fact presumably reflected in the sharing of the goodwill payment when one of the clubs was sold. TETCL has a leasehold of its two school premises, and the fact of its paying rent reduces the amount of any potential surplus. But there are similarities as

well. In the event that the schools were sold as a going concern – something that would require co-operation between Lanleya as building owner and OISE as employer of the staff, but not by TETCL assuming that the lease had come to an end or was otherwise terminable by Lanleya – the fact of TETCL’s successful operation of schools at the premises would be likely to enhance the marketable value of the premises. That seems to me to be a financial advantage for the shareholders in Lanleya, who include Mr Gins.

57. I have also referred to the amounts invested by TETCL in the leased school buildings. I can see that those amount to the “continuance or improvement of the services supplied” in compliance with one of the conditions of the exemption; but they too are capable of enhancing the value of the reversions, which also seems to me to amount to a financial advantage for Lanleya. I appreciate that Lanleya is not the “member” of TETCL; OISE Ltd is that. But the European Court’s and Advocate General’s references in *Kennemer* to “financial advantages for members” were made in the context of a members’ club. The question being answered in the present case is whether TETCL has the character of a non-profitmaking body. If, as I have found, TETCL indirectly creates financial advantages for Mr Gins, it would be artificial to ignore them on the mere ground that they were enjoyed indirectly.

58. Arden LJ also found it relevant to consider what she called “the contingent entitlement to distribution of profits” in the event that the company’s memorandum of association were changed. It is apparent that she regarded that “contingent entitlement” as relevant, without finding it necessary to form the view that Mr Shah intended to change the memorandum and articles ; it was sufficient for her that “there is, and could be, no finding by the tribunal that those restrictions could not be removed at some time in the future”. Her refusal to hold that no company limited by shares could qualify as a non-profit making body for the purposes of the exemption appears to me to be based on her later observation that there are companies which cannot effectively remove a restriction on the distribution on profits, at least so far as profits already made are concerned.

59. I interpret Lord Phillips MR’s agreement with both judgments as including agreement with Arden LJ to the effect that the additional factor was relevant. I therefore do not base my decision solely on the considerations mentioned by Jonathan Parker LJ. Arden LJ’s conclusion was that the fragility of the restrictions was “a fact or matter that ... it is relevant to take into account in evaluating the totality of the facts for the purpose of determining whether in reality the aim of Developments in this case was to make profits for its members”, but she did not explain in what way it was relevant to take it into account. She could not have considered that it is necessary, in order to confirm a conclusion that a body is not non-profitmaking, for a tribunal to find that the controller of a body has the intention of removing the restriction, for the tribunal in *Messenger* had not so found. I disagree with Mr Key that that is the real question. I make no finding that it is presently Mr Gins’s intention to remove the restrictions on access to TETCL’s surpluses; it can only be a matter of speculation whether a future change of circumstances might compel him, or lead others in control of TETCL in the future, to do so. All that I can say about the “fragility of the restrictions” is that it adds to the categories of financial advantage that

I have already identified a possibility – in future circumstances which are necessarily unforeseeable at present – of the surpluses being released as profits.

5 60. A further difficulty in this case seems to me to lie in the requirement to apply “any profits made from supplies of a description within this Group” (my emphasis) to the continuance or improvement of such supplies. This aspect of the exemption was not discussed in *Messenger*, it seems because the exemption for sport as implemented in the United Kingdom did not include that criterion during all the periods relevant to that case. It is apparent from Mr Gins’s evidence in this case that his very laudable objective is for TETCL to be the “charitable member of the OISE family” in a general sense, exemplified by the financial contributions it is making to the charity in Cambodia. But it seems to me that all surplus funds must be applied in the required manner in order for a supplier of education to be exempt as a non-profitmaking body.

15 61. In response on this point Mr Key told me that the assistance to the Cambodian students would be by way of financial assistance to study at Pilgrims – by implication falling within the rubric “continuation or improvement of the supplies” – and that in any event they had not been identified as potential recipients of assistance until recently, so that they were not an obstacle to TETCL benefitting from exemption in the periods covered by the decision.

20 62. I have looked carefully at Mr Gins’s evidence on this point, which was as follows:

25 One of the things probably I ought to explain is that, well, I did try and explain earlier on that when I started the Education and Training Company Limited it was what I called entry level attempt to creating a foundation, a charity. Since then, I've spent a lot of time and probably money to actually find out how I could create a more interesting foundation and something more durable obviously which would have more of a legacy in the future, and that is really the aim of -- has been my aim. Unfortunately, I started, as I say, about 12 years ago now to see how I could actually make this a strong and robust reality. The problem I found is that nothing is as simple as I thought. Even when I went to talk to top charity lawyers, they explained to me that even if I converted everything into a charity, there is - I would still be at the mercy of the trustees deciding that it's better to sell the trade to a venture capitalist or private equity firm and use the resources for another charitable status. So I've actually struggled a lot with how to create a lasting charity, but this is my aim and was my -- is normal....

40 ... the charity I found in Cambodia is one that’s already been set up by a company that’s set up a school for girls, only for girls, in Cambodia, and they’re working towards 1,000 pupils, and their aim is to get these girls off the – the likely possibility that – very likely possibility that they’ll be on the streets at some stage. The parents obviously in Cambodia who are too poor to pay for any education really want these children to go and work as early as possible, and they take them in and they manage the parents as well as the children. They pay sometimes the parents to compensate them for their loss of income they

would get from the girls, and they actually have had huge success in getting the girls educated to secondary level.

5 It's – none of them has yet been to university, but they will be – they're in – they'll finish secondary education fairly soon some of – the first ones, and so we've started – what I'm starting is giving them, obviously providing funds for this, but also scholarships for these girls who will be coming from Cambodia to language courses in the UK over the summer which will actually give them exposure to a world culture, but also I see another spin-off for these children on the courses, that the Europeans to actually be exposed to the poverty and to the needs of others in Cambodia so – and we'll be looking at training. I mean, obviously we'll be giving quite a number of scholarships for those who want to come to the – on courses at Pilgrims or teacher training because they also need a lot of teachers of English with the right level of English.

Q. So the scholarships would be for people to come and take Pilgrims courses?

15 A. Yes, Pilgrims courses and for young people – that's for teachers to come and take, and it's also to – for the young children in the school, the school pupils to come to the UK to attend a language course with the young Russians, French, Germans and so on.

Q. At Pilgrims?

20 A. Not necessarily at Pilgrims. That's not – we'll fund them, but I think there'll be a choice of courses that they need to go on. We can't actually restrict it to Pilgrims.

Q. It hasn't happened yet?

25 A. No, it's – as I say, it's very new. It's an agreement I've just come to recently and we'll be doing the first programs in the coming months."

63. I take this to mean that TETCL would be both contributing funds to the school and/or the girls' university education in Cambodia and providing scholarships for study in the United Kingdom which would not necessarily be on courses supplied by TETCL. (Indeed, even if the girls studied EFL "at Pilgrims" otherwise than on courses for foreign teachers provided by TETCL, the courses would be being provided by other OISE companies.)

64. Mr Key suggested that, as the funding had not yet begun, TETCL could be regarded as satisfying the relevant exemption criterion in earlier periods. But it seems to me that the issue is whether TETCL has had the character of an organisation that applies any surplus to the continuance or improvement of its supplies. The first part of Mr Gins's evidence that I have quoted indicates that it was always the intention that surpluses would be used at least in part for wider benevolent purposes. Although some funds have been "ploughed back" into the continuation and improvement of TETCL's supplies, other funds have been allowed to accumulate within TETCL pending the identification of a suitable philanthropic application of them.

65. I stress that I am not suggesting that Mr Gins has done anything remotely improper in structuring TETCL as he has done. On the contrary, his generosity demands tribute. I do not find that any of the payments TETCL makes are at an overvalue so as to amount to “covert distributions” of the sort referred to by the Advocate General in *Kennemer*. But I find first that not enough has been done to insulate TETCL from producing financial advantages to give it the objective character of a non-profitmaking body within the meaning of the exemption and, secondly, that the criterion in Note 1(e)(ii) to Group 6 has not been satisfied.

10 **Issue 2: do the courses for teachers amount for VAT purposes to the teaching of English as a foreign language?**

66. OISE’s position is that all of the disputed courses should be exempt as the teaching of English as a foreign language; HMRC’s position is that only those that were accepted as TEFL in the decision should be. As regards the approach by which I should reach the result contended for by each of them, they both submitted that I should characterise the courses as TEFL or not by application of the *Card Protection Plan (CPP)* line of authority. In addition to *CPP*, Mr Key particularly directed my attention to Case C-41/04 *Levob Verzekeringen v Staatssecretaris van Financiën* [2005] ECR I-9433, [2006] STC 766 and *Customs and Excise Commrs v FDR Ltd* [2000] STC 672.

67. OISE’s primary case is that all the disputed courses should be regarded as TEFL irrespective of the level of methodology content. This is on the grounds that modern teaching of languages is content-based rather than focussing on imparting dry knowledge of rules of grammar or idiom. I shall summarise the evidence that was given in favour of this view in, as far as practicable, the witnesses’ own words. OISE’s secondary position, in the event of my deciding that as a matter of law the courses must be seen as having a mixed character, was that I should decide course by course, on the basis of the material before me, whether TEFL predominated. Its submission is nevertheless that TEFL predominates in all of them.

68. I shall begin by summarising the evidence of OISE’s witnesses, together with some written statements from clients and teacher trainers provided by Mr Wright, all of which concern the general issue of the relationship between EFL and methodology in the disputed courses. Next I shall consider the course material on particular courses and the evidence of Mr Wright specifically about those courses. After that I shall review the evidence about the HMRC officers’ visit to Pilgrims, which contains an account of proceedings in two sessions of a particular course. I shall then turn to the case-law and the parties’ submissions on issue 2, before giving my decision.

Evidence of witnesses for OISE

Ms Williams

69. I can best do justice to OISE’s primary case by starting with the evidence of Ms Williams. I have mentioned that she is a retired Reader in Applied Linguistics at the University of Exeter and a past President of the International Association of Teachers

of English as a Foreign Language (having previously been vice-president). She has worked in the field of education for 44 years and in that of TEFL and training TEFL teachers for 41 of those years. She was head of postgraduate programmes in TESOL (teaching English to speakers of other languages, which I understand to be the same as TEFL) at Exeter for 20 years; the title of Reader with which she retired corresponds to an Associate Professor. She has also worked overseas for 15 years, dividing her time roughly equally between teaching English and teaching teachers of English. Ms Williams now works for approximately 2 days a month as a paid consultant to OISE and chairs OISE's academic board. She did not study any materials about the TETCL courses for the purpose of giving her evidence but gave her general opinion about the link between methodology and EFL.

70. Ms Williams's evidence was that overseas English language teachers commonly attend teacher training courses in an English-speaking country in order to upgrade their teaching and English language skills in an integrated way, and that the courses typically aim to update the participants' English language knowledge and ability to speak the language, providing models of language for use in the classroom and increasing participants' confidence in the use of English. This she said, was the aspect that attracted them.

71. She also explained that language teaching since the 1980s has moved from teaching the form of the language – how to conjugate French verbs is an example she gave – to what she called a communicative approach, by which students are taught to communicate in the language, with some area of “content” used as the vehicle for communicating in the language. General English language lessons would involve simulated activities, such as shopping or ordering food in a restaurant, or learning about history; it did not follow that the students were learning (for example) history “rather than English”. She said “they are being taught English and the subject matter is simply a vehicle for this”. The additional knowledge acquired is “only incidental”. The same was true of specialised courses such as in business English or in teaching methodology.

72. As she put it in oral evidence: “if you go into a language class now you no longer go into a lesson on the present perfect continuous.... You go into a lesson labelled something like ‘volcanoes’ or ‘the role of women in the world’ or ‘racial concerns’ or whatever. There will be a specific topic.” Another term that is used is that language lessons should have a ‘non-linguistic purpose’. Ms Williams explained that “you use the language to achieve this non-linguistic purpose, which might be to play a game, it might be to write a letter to a newspaper, it might be to produce a class newspaper, it might be to engage in a debate in your classroom, it might be to have a business discussion to come to a decision about something. But whichever you're doing, the trained language teacher is helping the learner to use and practise the language that they need to achieve that particular non-linguistic purpose, as opposed to just teaching them one tense [of a verb] in the sort of mind-numbing way that we used to do in the 1960s”. She went on to say that “when I started teacher training I realised that teacher training is an ideal vehicle for developing language. It's just as you've been hearing about CLIL today, Content-assisted [*sic*] Language Learning.... Content is an ideal vehicle for language learning”.

73. Ms Williams thus saw the methodology of teaching as being an example of a vehicle for teaching language; she said that “the methodology, if learners come to a language school to do methodology, is a vehicle for the development of language that they will need to learn in order to do their job better when they get back home. And hopefully in learning English in England their aim will be on the learning of English. But the spinoff – there’s always a spinoff in language learning, or there should be – the spinoff will be that when they get back home they will become more confident teachers of English, feeling much more able to try out some of these various methods that they’ve seen their own teachers using. But while they’re in the class they’re learning English.”

74. When asked whether there was any observable difference between a class teaching English as a foreign language and one training teachers to teach English as a foreign language, Ms Williams replied “I would see it as an integrated whole. If they are non-native speakers, which they are, coming to do a methodology course, as they see it, in England – and that’s the key thing – it is an integrated whole. You can’t say there is this bit of methodology and this bit of language. Just like CLIL, Content-integrated Language Learning, this is also integrated. So the non-linguistic outcome is that they will go back home and become a better teacher for various reasons.”

75. I asked Ms Williams what distinguished TEFL from the case of a foreign student who chose to read, say, chemistry at an English university in order to improve their English for a purpose such as improving their prospects of employment in an English-speaking country. Her reply was that the hypothetical student would not be receiving any help with their English from those running the degree course, whereas in an EFL course using chemistry as the vehicle “you would have a teacher who, when you looked at your chemistry piece of writing, would say ‘can we work out the meanings of these words?’ ‘these are bits of vocabulary we could develop together’, ‘can you think of other words?’”

76. Ms Williams also commented on the account prepared by Mr Hughes and Mr Edgoose of the class they observed at Pilgrims. I shall review her evidence on that after I review that of the two officers.

Mr Gins

77. The evidence of Mr Gins on this point was consonant with Ms Williams’s approach. He first pointed out that (as the materials bear out) all the disputed courses were provided under the Pilgrims logo and the title “Pilgrims English Language Courses”. (The logo consists of a representation of a strand of DNA, sometimes used in conjunction with the phrase “the DNA of teaching English”: see paragraph 97 below). He said that there was good reason for their focus on the teaching of EFL. Non-native teachers of English as a foreign language formed most of the client base for the courses; given that the English language was the primary tool of their trade, it was understandable that they would wish to attend the courses to improve, update and/or maintain their knowledge of and ability to speak the language. Teaching them the English language was the most effective way of making them better teachers of English. Mr Gins regarded HMRC’s view that the courses did not provide teaching of

English as a foreign language as out of touch with the reality of what was taught on the courses; the designers of the courses, teachers and students on them all agreed, he maintained, that the predominant purpose of the courses was to teach EFL.

5 78. Mr Gins regarded the suggestion that the form of the courses could be divorced from their content as a flawed one. He accepted that the courses focussed on specific topics, but the fact that English was being taught in the context of business, ICT or (in the case of the disputed courses) methodology did not detract from the fact that they were English language courses; the subject-matter only provided the theme and structure of the courses and did not transform English language courses into business, 10 ICT or methodology courses. If the students wanted to learn about business, ICT or methodology they would attend courses on them in their home countries and in their native language. The reason why they preferred to come to Pilgrims was because of the potential the courses offered to develop their language skills.

15 79. It was, he added, common to link a language development course to a particular purpose for which the language was being used, such as with business English, legal English or medical English, all of which were rightly regarded as language courses.

20 80. Mr Gins quoted the definition of CLIL given by the academic who coined the phrase in 1994: “CLIL refers to situations where subjects, or parts of subjects, are taught through a foreign language with dual-focused aims, namely the learning of content and the simultaneous learning of a foreign language”. Pilgrims’ methodology courses were, he said, examples of this, providing English language tuition in the context of teaching the methodology of teaching.

25 81. Mr Gins criticised HMRC’s over-reliance on TETCL’s marketing materials. Marketing material, he said, was designed to sell courses and was an inherently unreliable source of information about actual content. In oral evidence he said that he regretted (his words were “not proud of”) the use of the term “teacher training” on the Pilgrims website, saying that “English language for teachers” or “Language training for teachers” would be better. The emphasis placed by TETCL upon teaching EFL on its own and/or through methodology was, he said, evident from the website. He 30 instanced a web page headed “Our philosophy”, which stated TETCL’s aim for teachers to return home more confident in English. The page includes the following:

We believe in humanising English language teaching. This means making English a very human, interactive and interpersonally positive experience – engaging body, mind and spirit!

35 With our history in effective and innovative teacher training spanning more than 35 years, we have developed courses that are on the leading edge of teaching and learning methodology.

All our courses are designed to enable you to improve and update your own English skills.

40 Pilgrims places teachers and learners at the centre of everything we do making our courses personally transformative for participants.

It is always our intention for Teachers to return home armed with a wide range of practical activities to use immediately in their English classes. Additionally, we aim for teachers to return home more confident in English and inspired to make positive changes for their students and colleagues at school.

5 82. In cross-examination Mr Gins described the philosophy as being very much about getting participants to practise and work very hard to improve their English – to refine it was his preferred word – and that they would spend a lot of time working on that so as to return home with confidence in their English and less anxiety.

10 83. Another web page referred to by him, headed “Principles and values”, reads as follows:

Inspiring teachers to be the powerful, confident and effective teachers they want to be

Creating communities and networks of innovative, empowered and confident teachers throughout the world

15 Humanising teaching methodology to engage the whole person in teaching and learning – engaging the body, the mind and the spirit

Giving teachers the opportunity to refresh and improve their own English skills in a natural English-speaking environment.

84. A web page describing TETCL’s own methodology says that

20 Teachers come to Pilgrims for new ideas, to be refreshed and to experience the unique Pilgrims difference, which focusses on your continuous personal and professional development.

Our international environment ensures that you practise and refresh your own English at all times.

25 85. Mr Gins drew attention to a “frequently asked questions” web page. One of the questions is “will there be a language improvement element to my course?” The answer given is “Yes, all elements of your course are designed to improve and update your English. The English language is constantly changing and our international environment provides the best opportunities for you to keep practising your speaking,
30 listening and new language acquisition”.

86. Mr Gins also maintained that the courses could be classified as English language courses on the basis of the course descriptions on the website; he maintained that the web pages providing course overviews illustrated that the vast majority of the courses were aimed solely at non-native English speakers or were expressly designed
35 to improve the English language proficiency of the participants. I shall return to those materials later in this decision.

87. Mr Gins regarded the web materials as demonstrating that the teaching of methodology was inextricably linked to the teaching of EFL: “the one cannot be done without the other”. The students, he said, were taught English but, “by virtue of the fact that in so doing they watch our teachers teach them English language, they are also taught methodology”. Moreover, it was the substance rather than the form of the courses that was crucial. Although the courses might sometimes be advertised and marketed as also being teacher training or other courses, they were in fact substantially EFL courses.

88. Mr Gins went on to explain that foreign teachers of EFL were almost universally anxious that their own English language skills were not good enough for them to teach the language to others. These anxieties were heightened by the frequency with which such teachers had pupils in their class with, for one reason or another, a strong command of English, exposing teachers to the risk of finding themselves corrected by a pupil. The website information reassured the teachers that their level of English would not be scrutinised or judged, but that they would go home with an improved command of the language. Mr Gins produced a copy of an article published in *The Teacher Trainer* which noted that anxiety about one’s performance in a foreign language is well researched among students of foreign languages; the author found it plausible that similar anxiety existed among both student teachers and qualified teachers of a language of which they were a non-native speaker. I also find this plausible. Ms Williams too said in evidence that non-native English teachers were anxious about their proficiency in the language – concerned not to be shown up in front of their students, for example. I accept this.

89. The predominant motivation of the teachers who attended the courses was not, Mr Gins maintained, a desire to be taught how to teach. As qualified teachers they were already adequately trained in that regard. Their main aim and central focus were to improve their own English and the courses were structured so that the content and accuracy of what they were teaching was enhanced and their teaching technique should be more confident and fluent as a result. This improvement was, however, only incidental to the tuition they had received in EFL. The main aim was to help teachers to make progress in the English language and any improvement of their ability to teach EFL was only secondary.

Mr Wright

90. Mr Wright has been Head of Teacher Training and Adult Courses at Pilgrims for some 10 years (he worked for Pilgrims for many years before its acquisition by the OISE group). In this capacity he has overall responsibility for TETCL’s courses given in Canterbury, which comprise the courses for foreign teachers of English as well as other English language courses for adults. He has overall responsibility for the content and titles of the courses and for ensuring that they run according to plan. He reports directly to Mr Gins.

91. Here I refer to some general matters covered in evidence by Mr Wright. Where his evidence relates to a specific aspect of the case that I discuss separately, I deal with his that evidence as part of that discussion. Mr Wright gave evidence about

individual courses, to which I shall come later in this decision. He also produced some material from clients of TETCL and from course instructors. I shall deal with that after the evidence of Mr Wright himself. I deal with his evince in relation to the HMRC officers' visit to Canterbury when I discuss that topic.

5 92. Mr Wright testified that nearly all the students on the disputed courses were foreign teachers of English or another subject taught in English. He said that they attend the courses to improve their English language skills, either generally or in relation to what he called a subject-specific area. He tailored the courses accordingly. Some, he said, were more traditional English language courses and others involved
10 teaching of English in relation to or through a particular subject-matter, but all courses involved the teaching of EFL.

93. Mr Wright also explained that Pilgrims create a "total immersion" environment for the foreign teachers who attend the courses (I call them "participants" in order to avoid confusion between their role as students on the courses but teachers in their
15 home countries). He described it as a "breakfast to bedtime language learning experience", explaining that accommodation was arranged in such a way as to separate participants with shared native languages. Every aspect of their experience for two weeks was geared to acquisition, recycling and practising of English. He suggested that they would coach and help each other with their English over the
20 dinner table. I think that is speculation on his part and find it somewhat implausible, though I accept that the participants will typically converse together in English.

94. Mr Wright shared Mr Gins's view about the marketing materials, saying "If teachers thought we were criticising their language skills, they would not attend, so we often portray the courses in such a way that EFL tuition appears as only a
25 tangential benefit". The types of course offered were driven by market forces; Pilgrims needed to bear in mind the ultimate purchaser who be the teacher, their headmaster or education ministry. The course title also had to be attractive. Eligibility for EU funding was also important.

95. When pressed in cross-examination on the reliability of the website materials,
30 he accepted that the website was a gateway to information, "our shop window"; whether people came into the shop or not depended on how attractive it was made. Mr Wright agreed that the website was not misleading, saying "there's no intention to mislead anyone in any of our materials", and that its information was accurate. He went on to say that the materials played down the English language training aspect of
35 the courses; this was because participants typically had to ask their employers to send them on the course and "it's quite unlikely you will want to go and ask your headmaster for a course in teaching English. He's going to take rather a dim view of your capabilities. It's much better if you could say 'I want to go to the UK to do a course where I can learn English but I will also be learning about some very
40 inspirational ideas about materials development or drama"". He said that Pilgrims bear this in mind when creating the marketing materials to "focus on a lot of the outcomes in terms of the methodologies that they will pick up as a result of the English language training". In re-examination he described the materials as "accurate in the fact that they reflect content but not where we play down the English".

96. With a view to demonstrating the EFL skills practised and acquired on the courses, in his second witness statement he annotated the example timetables relating to the five most attended courses in issue with notes of the skills he considered were practised and acquired in each of the sessions on those courses. I refer to these when I discuss the written materials relating to the courses. In his oral evidence Mr Wright described his annotations as examples of the types of activities that occur on a course and the English language competencies being practised during them.

97. In support of the view that the disputed courses involved the provision of TEFL Mr Wright produced the front cover of a brochure used in 2008. At the top is the heading “Pilgrims™ English Language Courses”. Below that is printed “Continuous Professional Development for Teachers”. At the bottom is the logo consisting of a representation of a strand of DNA together with the words “The DNA of teaching English”.

98. Both Mr Gins and Mr Wright were asked about the philosophy of Pilgrims as described by its previous management in the *Pilgrims* tribunal case. This was that “students make better progress if they learn not only in the classroom but also by means of using the language or else engaging in activities which are enjoyable and stimulating; no matter what they are doing through the day they are at all times learning English”. Both agreed. Mr Wright said that that formed the basis of the argument that they were teaching English through stimulating activities such as drama.

99. In oral evidence Mr Wright described the courses as having one underlining common thread, the teaching of English to non-native speakers of English. The title of different courses described the different approaches taken to delivering teaching of English to a particular target audience. The basic format was the delivery of the English language training through the subject referred to in the title. For example, the course entitled Creative Drama delivered English language teaching but predominantly through drama methods. He also said that drama was used to raise confidence; people were trained to act in English because this taught them to have presence, which gave them confidence to take control of a classroom.

100. Mr Wright also testified that, whilst teachers could only obtain EU funding to attend a course once every three years, somewhere between 10 and 20% of participants were repeat attenders.

Other evidence supplied by OISE

101. In addition to the oral evidence, I was provided by Mr Wright with the written views of some clients of Pilgrims and course instructors.

102. Mr Wright was asked in about 2011 to request of some of Pilgrims’ key clients an explanation of why they chose to send teachers to Pilgrims. In 2011 a substantial client of Pilgrims was the innovation and teacher training department of the Junta (regional government) of Castilla y León in Spain. It sent between 100 and 130 teachers per year to Pilgrims courses between 2003 and 2013, when the department’s

training budget was cut. The teachers would be spread across Pilgrims' courses. Mr Wright would travel to Spain annually to meet Mr Javier Arribas, the director general of the department, to identify the department's needs and make recommendations to him as to which Pilgrims courses to offer to his teachers.

5 103. In a letter dated November 2011 Mr Arribas explained why he chose Pilgrims as follows: "Among the purposes we try to achieve are methodology improvement as much as language improvement since in fact it is almost impossible to separate the two and Pilgrims offers the participants complete immersion in English and language
10 said in evidence that Mr Arribas understood that the content of Pilgrims courses was the vehicle for delivering EFL.

15 104. In March 2013 Mr José Hernández Gañán wrote a further letter. He is the head of the department in which Mr Arribas works, though Mr Wright has not dealt with him. He said "The whole purpose of sending our teachers to Pilgrims is to achieve significant improvement in the standard of our teachers in English language skills, in order to enable them to enhance the teaching of English in our schools. The complete immersion in English language training is essential, in order to enable our teachers to pass on the accuracy and fluency skills to our school students. The aim is to continually improve the quality and standard of our English teaching, and to do this
20 our teachers must improve their English language knowledge and usage. The courses include how to teach English, but in order to do so, the teaching of English as a foreign language by Pilgrims to our teachers is paramount and essential, which is why we contract with Pilgrims to provide their courses to our teachers."

25 105. Another big client is Early Bird, a government body in the Netherlands set up to advise on introducing English into the Dutch education system at kindergarten level. In 2011 some 200 teachers were due to attend courses at Pilgrims. These would be specially tailored closed groups. Their content would be planned jointly by Mr Wright and Mr Karel Philipsen of Early Birds. In November 2011 Mr Philipsen wrote saying "In response to your e-mail we are more than happy to confirm that the
30 Dutch teachers coming to Pilgrims come for both Methodology and Language but the accent is more specifically on language. The whole point of our teachers coming to Pilgrims is total immersion in the English language.... Many teachers speak and write only very basic English and badly need a language update. Pilgrims is perfect for this – in fact we specifically use Pilgrims because of the high number of contact
35 hours between the student and the trainer". He went on to say that "language acquisition does not stop outside the classroom" and referred to interaction between students and with host families in English.

40 106. Dr Flavia Laviosa teaches Italian language, culture and cinema and trains foreign language teachers at Wellesley College in Massachusetts, USA. She has attended Pilgrims methodology courses almost every year since 1982. Mr Wright said she came as much on account of her relationships with staff at Pilgrims as for the innovation and inspiration. She has also taught some workshops at Pilgrims for foreign teachers of English. In March 2013 she described the courses as "the best professional development and English language learning opportunities that I could

find in the United Kingdom. The numerous and diverse 1 or 2-week Teacher Training courses, along with a rich program of afternoon workshops and evening events, have all contributed to improve both my foreign language teaching and my English language skills over the years. Teaching training and language instruction go hand in hand in the courses offered at Pilgrims, and it would be arbitrary to assess where one ends and the other starts as the two are obviously intertwined processes leading to inevitably interconnected learning outcomes.... A methodology workshop has always offered [participants] the chance to learn new teaching ideas as well as to practise and improve their English language listening, speaking, reading and writing abilities.” She ended by reiterating “I do not see how a distinction can be made for courses to be either language development only or courses exclusively on methodology. This division is uninformed and against any pedagogical principle of teaching and learning.” She deplored the application of “VAT fiscal-centered definitions and boundaries” to education settings.

107. Dr Jana Chynoradska runs an English language school in three cities in Slovakia, mainly providing English language tuition supplementary to that provided in the Slovak education system. Pilgrims have in the past provided teacher training courses for her in Slovakia and she acts as the co-ordinator of Slovak teachers who attend Pilgrims in Canterbury. At the time she wrote, about ten of her teachers had attended Pilgrims courses and she had attended two or three herself. She wrote in an undated letter “Pilgrims trainings always focus on the following significant areas of our teachers’ personal development: personal, language and methodological improvement of teachers of English. We believe that Pilgrims provide not only professional but personal and language development of our teachers who need to improve their ability and confidence in their use of English and develop or improve their teaching skills. This is only possible when hand in hand with language development.” She explained that a shortage of qualified English language teachers in Slovakia meant that unqualified teachers were converting to teaching English; these teachers felt the need for language improvement first, followed by a proper methodological training. The teachers reported gaining more confidence and overcoming barriers they had to using English in the classroom. She recommended Pilgrims to all teachers of English who were looking for an individual approach and understanding of their needs in terms of the language itself as well as the methodology.

108. Mr Simon Marshall is the freelance teacher trainer who, in 2009, estimated the percentages of EFL and methodology content of the courses listed in the schedule that I have referred to at paragraph 16 above. I have already referred to his background in EFL and teacher training and his connection with Pilgrims. He has also acted elsewhere as an assessor of CELTA and DELTA courses (these are qualifications in EFL teaching aimed at native English-speaking teachers). I set out what he said at some length, given his role in rating the EFL and methodology components of courses.

109. Mr Marshall wrote professing himself “dismayed that the Tax Authorities wish to impose VAT charges on Pilgrims Teacher Training courses on the what I believe to be spurious grounds that these programmes do not explicitly aim to improve teacher’s

language skills”. He wrote to explain why he believed the courses “offer invaluable opportunities for language improvement”.

110. He went on to say that “as all Pilgrims courses are taught in English and the classroom *lingua-franca* is English, it is, in practice, impossible to separate the learning of methodology from the learning of the language. The learning of ‘*the how*’ (methodology) of teaching is inseparable from ‘*the what*’ (the English language). Pilgrims courses follow the approach adopted by increasing numbers of schools and universities throughout the world, namely that of CLIL. [CLIL] is where a subject is taught in the target language rather than the first language of the learners. In CLIL classes, tasks are designed to allow students to focus on and learn to use the new language as they learn the new subject content....”

111. He continued “all Pilgrims TT courses are experiential – those attending participate in the activities on methodology courses which are designed to allow students to focus on and learn to use the new language as they learn the new subject content. In addition to the above, almost all participants state that they attend Pilgrims teacher training courses in order to improve their English. If they were only interested in methodology, many of them would choose to attend courses held in their own language, especially those who teachers who have a low level of English themselves (e.g. many of those attending Methodology and Language for Kindergarten/Primary Teachers). It is also the case that many teachers who learn English in their home countries have demonstrably more advanced reading and writing skills, due to the way they have been taught the language. At Pilgrims, as stated above, the classroom *lingua franca* is English where teachers are required to participate in a wide variety of speaking and listening tasks which are aimed at specifically improving their spoken communicative competence and aural comprehension”. He followed this with a description of CLIL, with references some academic literature.

112. Chaz Pugliese is a freelance teacher trainer who has worked for Pilgrims for ten years. He maintained that English teachers come to Pilgrims “for three main reasons: 1) refresh their knowledge of English language teaching methodology, 2) be exposed to the culture of an English speaking country and 3) update their knowledge of the English language”. He also said that “The training courses consist of coupling Pilgrims’ humanistic methodology with a strong language learning element embedded, in that the courses are obviously delivered in the English language, and the participants express their views, debate and discuss in English, which is seen as an added benefit.”

113. Hanna Kryszewska is a freelance teacher trainer mainly based at the University of Gdansk. She has taught Pilgrims teacher training courses for some 20 years. She also promotes Pilgrims through workshops and tasters. She wrote to say that she recommends Pilgrims because “the organisation offers very high quality teacher training and very intensive good-value-for-money training days. The trainers at Pilgrims are both experienced [teacher training] professionals and very knowledgeable language teachers. Therefore they are able to deliver courses which focus on teacher training as well as language improvement. They are able to deliver

courses which often follow the loop-input formula, ie methodology issues are addressed and illustrated through hands on activities pitched at the students language level”.

The courses that were considered by HMRC

5 114. Thirty one courses appeared on the schedule submitted by OISE to HMRC as described in paragraph 16 above (one course having been accidentally listed twice under different descriptions). Eight of them were accepted by HMRC to be exempt as TEFL, and HMRC do not resile from that acceptance. Twenty three of them are in issue. I have website material relating to them, as well as descriptions by Mr Wright
10 in his witness statement and in some cases in oral evidence.

115. Most courses last two weeks (I identify the one week courses below). The standard timetable involves a first morning session from 9.30 to 10.30 (Mr Wright said in oral evidence that teaching started at 9.00; I do not need to resolve this apparent discrepancy), a second session from 11.00 to 12.30 and an afternoon session
15 from 2.00 to 3.30; there can be out-of-classroom activities, as exemplified by the course of which the HMRC officers observed a part. Each web page gives an example of a daily programme (to which I shall refer as the “example timetable”), with a note that it is an example and that course content may often be usefully adapted to incorporate the needs of each specific group. In some but not all cases the website
20 offers alternative courses, with the main points of difference explained, for those who do not think the course in question suitable for them. All the trainers are themselves qualified teachers of EFL.

116. The first session of each course typically involves group bonding, sometimes with “ice breakers” and group formation activities (sometimes these extend over the
25 first two sessions), followed by needs analysis and goal setting. Mr Wright said that in this session the course content and level of language training would be tailored to the language needs of the group. He said that what tends to happen is that the teacher puts up the objectives of the course and tries to get a consensus as to the types of exercises to be used “to teach them their English”. The Friday afternoon session in
30 the first week is typically devoted to a review of the first week, sometimes accompanied by goal setting for the second week. The final Friday afternoon session typically involves feedback, evaluation of the course and farewells.

117. Some of the courses are described as suitable for native English speakers and/or for participants other than teachers. Mr Wright said, however, and I accept, that
35 native English speakers who attended would mainly be, for example, proprietors of language schools abroad (and thus potential sources of custom) who were invited to attend courses as part of an introduction to Pilgrims. Only one or two native speaking TEFL teachers attend courses per year.

118. Mr Zwart took Mr Gins and Mr Wright through some printouts of the website as
40 it stood in 2009 and 2013. The 2009 website had a screen entitled “welcome to Pilgrims”, which was accepted to be the way in to the site. It begins by saying “Pilgrims offers top quality English language and teacher training in the United

Kingdom”, going on to refer to Pilgrims’ international reputation and other matters. At the foot of the screen there were links which the visitor could click for “English for 8-22 year olds”, “English for business” and “teacher training” – the term that Mr Gins expressed regret at using. Clicking “teacher training” took the visitor to a page with several more links,, including to “2009 courses, dates and fees”. Clicking that took the visitor to a list of course names (together with dates and fees) which I infer were links on which the visitor could click to open the course syllabus documents which I review below. All the 2009 pages have “Pilgrims™ English Language Courses” and the DNA logo at the top left, with “Teacher training” on the top right.

119. Several of the pages have a list of further links. These include Course dates and Times, The Pilgrims Difference and Your Training Day. I cannot see evidence of 2009 web pages dealing with philosophy, principles and values or FAQs. The training day page indicates that in addition to the sessions there were, in the summer period, 20 or so free, optional seminars, workshops and activities relating to a variety of methodological or linguistic topics such as an idioms update, storytelling and NLP; a few appear to be recreational activities such as folk dancing. “The Pilgrims Difference” is the closest I have seen to a statement of philosophy; it refers to Pilgrims’ 30 years of training teachers all over the world at a rate of over 1,000 a year; it says that teachers come to experience the unique Pilgrims difference which focuses on continuous personal and professional development and sets out three principles of engaging the whole person, making the learner central and that creativity, involvement and enjoyment are the essential elements for lifelong learning. It does not refer to language development.

120. In 2013 a visitor to the website could again click a link to “teacher training”. This opens a page containing a list of further links. The first is “About”. Clicking on this opens a page stating “Our philosophy”; it contains the text referred to by Mr Gins and set out at paragraph 81 above. Below “About” is a link to “Principles and values”; clicking this opens the text set out at paragraph 83 above. The next link is “methodology” – that is, Pilgrims’ own methodology. It introduces the text at paragraph 84 above. Below that link is one to “Courses, dates and fees”, through which I understand the viewer would again navigate to a course calendar and to the individual course web pages. The course web pages I have seen are typically two pages per course, occasionally running onto part of a third page. They have fairly standard content including target audience, course summary, programme of activities and timetable, and sometimes alternative courses are indicated.

121. Further down the screen, under “Useful information”, are a clutch of links including “Download a brochure”, “FAQ” and Pilgrims’ terms and conditions. The FAQ include the text set out at paragraph 85 above; Mr Zwart maintains that this was an innovation in the 2013 website; as I have mentioned, I have not seen evidence of its existence in 2009. I do not consider, however, that the philosophy or principles changed in 2013.

122. Some of the courses are similar. For example, there are courses entitled English for Primary Teachers and English for Secondary Teachers, both of which HMRC have accepted as amounting to TEFL. Mr Marshall rated them as being 100% EFL

and 0% methodology. The web page describing English for Primary Teachers presents the course as targeted at non-native teachers of English or other subjects who want to develop their English. A further course described on the website as primarily a language improvement course but including a methodological element, Teaching Advanced Students, was also accepted by HMRC as EFL; Mr Marshall had rated it as 80% EFL.

123. Three courses are entitled “Methodology and Language”. Two of these, Methodology and Language for Primary Teachers and Methodology and Language for Kindergarten teachers, were described by HMRC as language improvement and methodology courses, but accepted to be exempt; Mr Marshall had rated their EFL content as 80%. On the other hand, Methodology and Language for Secondary Teachers, which he had rated as 50% methodology, was regarded by HMRC as a non-exempt methodology course. Methodology and Language for Primary Teachers and for Secondary Teachers, together with Creative Methodology for the Classroom, were the courses that had been combined into the course of which the HMRC officers observed a part. I shall consider Methodology and Language for Primary and for Secondary Teachers and Creative Methodology for the Classroom first.

Methodology and Language for Primary Teachers

124. I have mentioned that this course was accepted by HMRC as constituting EFL, and it is accordingly not in dispute. The web page for this course describes it as suitable for non-native primary teachers with a least a lower intermediate (not elementary or beginner) level of English. The course summary describes it as being for teachers who need to improve their ability and confidence in their use of English and develop their teaching skills for young learners; it is “both a language improvement and a methodology course”. The example timetable includes: Teaching young learners; What motivates young learners? Teaching skills: speaking; Teaching skills: listening; Teaching skills: reading; Teaching skills: writing; Teaching vocabulary; Teaching grammar; Teaching through movement; Drama; Classroom management; Storytelling; Music and jazz; an Introduction to multiple intelligences theory; Course books; Designing materials; Games; Holding students’ attention; and Working with visuals and on-line resources.

Methodology and Language for Secondary Teachers

125. This course is in dispute. The web page describes it (there entitled “Secondary Teaching”) as requiring at least an intermediate level of English and giving an opportunity to improve one’s own English but focussing far more on methodology in secondary school teaching. It says “you will consider preparing interesting lessons for a variety of teaching situations ... developing yourself both professionally and personally”. Examples of the training activities, such as “ways of presenting and practising grammar and vocabulary” and “using music, story, picture and drama in your teaching”, “ideas to encourage pair/group work at different levels” and “using texts for different purposes” accord with what Mr Hughes and Mr Edgoose observed. Alternative courses suggested include “Creative Methodology for the Classroom for a

more general methodology course” and “English for Secondary Teachers for a more language focussed course”.

126. The example course timetable includes sessions on Motivating teenagers, How teenagers learn; Teaching skills: speaking; Teaching vocabulary; Teaching Skills: listening; Teaching skills: reading; Teaching grammar; Designing materials; Dealing with difficult students; Effective classroom management skills; Using visuals, web resources and pictures; Storytelling; Drama; Games; and Teaching through music and the arts.

127. Mr Wright said of the course in his witness statement that the course was designed to increase significantly the teachers’ own levels of English, though he added that “by being taught EFL by our teachers, the participants are also taught a great deal about the methodology of teaching English language to students”. He also annotated the example timetable, itemising the English language skills that he regarded as being practised and acquired at each stage of the course. These include listening, speaking, confidence building, participants’ awareness of their own language levels, new vocabulary, language acquisition, presenting in English, fluency, accuracy, reading, comprehension, grammar, pronunciation, eloquence, pace, songs, writing, explaining clearly in English and speaking in public.

128. In oral evidence Mr Wright said that the Secondary Teachers’ course did not differ from the Primary Teachers’ course in any way other than being targeted at teachers of different student age groups. The content and the intent of the course, he said, were exactly the same and it was an English language training course.

Creative Methodology for the Classroom

129. This course also requires at least an intermediate level of English. It is aimed at experienced native and non-native teachers of all age groups. It is described on the website as a methodology course, also of interest to teachers of other languages than English and occasionally attracting native English-speaking teachers. The programme of activities is more focussed than the Secondary Teachers’ course on particular teaching methods, though there is some overlap. The activities include “putting life into course book exercises”, “Adapting activities and tasks for different purposes and levels”, “Storytelling, music, songs, visuals, drama and movement”, “student-generated teaching” and introductions to particular teaching approaches including Neuro-linguistic programming (discussed below). It is said to be the right course for experienced teachers who want to widen their range of teaching options and promote their teaching capabilities. Alternative courses are Teaching English through multiple intelligences, NLP for teachers or, for a more language-focussed course, English for Primary or English for Secondary Teachers.

130. The timetable includes: Teaching with no materials; Fun in the classroom; Teaching through the arts; Deep Learning; Working with texts; Jazzing up your course book; Introduction to task-based learning; Teaching vocabulary; Teaching with realia; Creative Strategies; Language play and language learning; Lessons from multiple intelligences and from NLP; Teaching through the arts; Creativity strategies;

Creative listening; Storytelling; Poetry and literature; Creative writing; How to cater for kinaesthetic learners; Spoken versus written grammar; Designing creative tasks; and Testing and assessment. Mr Marshall rated its EFL content at 50%.

5 131. Mr Wright describes the course as being specifically aimed at non-native
teachers who need to improve their English language skills; typically, teachers
attending the course teach subjects in English and need a sound grasp of the English
language, which the course helps them to achieve. He adds that “by observing how
our trainers teach them English language, the teachers are inevitably also taught a
10 great deal about the methodology behind the teaching of EFL. As such, while the
teaching of EFL is a vital step in this process, students ultimately leave the course
with improved English language skills and an enhanced understanding of the most
effective ways to teach it. Nonetheless, the presence of this methodology tuition does
not alter the fundamental fact that this course provides the teaching of EFL”. His
15 annotations of the example timetable give a list of English language skills acquired
that is similar to his annotations of the timetable for the Secondary Teachers’ course,
with the addition of understanding colloquial English and modern spoken English,
analytical skills, observation and rapport skills, and correcting errors.

Building positive group dynamics

20 132. The web page for this one-week course describes it as targeted at, among others,
native and non-native teachers of English and other subjects. The activities include
managing conflict and orchestrating difference, Developing trust and tolerance, and
Developing your own individual style of group leadership. The timetable includes
25 subjects such as: promoting acceptance; promoting trust; the life of a group; various
leadership models and classroom observation of other trainers. The expected result is
that participants will have a more holistic, coherent view of what group work consists
of and be equipped with a new philosophy and skills to manage groups. The web
page describes the course as requiring an upper intermediate to advanced level of
English. Mr Wright says that a high level of English is required for much of the
30 course; he points out that it examines complex psychological theories and methods for
dealing with group behaviour. In consequence, participants necessarily learn new
language and vocabulary, without which they could not understand or participate in it.
The methodology and EFL training, he says, go hand in hand.

English for teaching other subjects through English

35 133. This course was accepted by HMRC to constitute EFL. It is for teachers with
an intermediate (and not elementary or advanced) level of English. It is described on
the website as both a language and a methodology course, not subject-specific but
working on language needed across the curriculum. The programme includes
language of classroom management and instruction, improving participants’ English
and their ability to explain things in simple or complex English. Mr Marshall rated
40 its EFL content as 80%.

Making the most of a course book

134. This course is targeted at all teachers who regularly use a course book and requires at least an intermediate level of English. Participants are asked to bring a course book that they currently use. The programme includes adapting and adding to course book exercises, ideas for supplementing course book materials and criteria for rejecting and replacing exercises and content, together with exploiting dialogue and reading and listening texts and use of the book as a homework resource.

135. Mr Marshall rated the course's EFL content at 50%. The example timetable includes subjects related to course books – such as why use a course book? choosing a course book, the course book and the syllabus, and a review of course books. It then turns to working with dialogues, with texts, with listening tasks and with grammar, recycling vocabulary, adapting the material from the learner's perspective, supplementing the course book, principles of an effective task and assigning meaningful homework. Further topics are challenging the students, what's a balanced lesson? skills and outcomes, principles of an effective task, assigning meaningful homework, teaching the students versus teaching the book, catering for various needs, making the language in course books more authentic and what could go wrong? Suggested alternative courses are Creative Methodology for the Classroom for teachers who want a more general methodology course and Methodology and Language for Secondary Teachers for those who want a more general methodology course for that age group.

136. Mr Wright describes the aim of the course as being to help teachers make the most of course books by teaching them how to create and use exercises while keeping their students' interest. He says that a prerequisite to this is greater and more skilled use of English, since only exercises that effectively employ the language are likely to keep students' interest; in this way the course exemplifies methodology and EFL tuition being inseparable and intertwined.

Neuro-Linguistic Programming for Teachers

137. This course is targeted at teachers of all age groups; it requires an upper intermediate to advanced level of English. The web page summary describes neuro-linguistic programming (NLP) as an established set of principles for teaching learning and personal development; the course explores its core principles and how they can be applied to participants' professional and personal life, providing a variety of strategies for maximising teaching and learning potential. The summary recommends participants spending extra time working on their skills in groups.

138. Mr Wright explains that the course looks, for example at how the brain, the body and language skills are interwoven in order to facilitate clear communication in English. He says that the course is aimed at non-native primary and secondary teachers whose English language needs to improve significantly in order for them to be able to teach advanced communication and interpersonal skills in English. He adds that "in connection with this, the course also looks at, for example, how the brain, the body and language skills are interwoven in order to facilitate clear communication in

English”. He goes on to say that “As such, while certain aspects of the course do not constitute orthodox English language tuition, they are necessarily underpinned by the teaching of EFL. Indeed, since the participants are almost exclusively non-natives, it is essential that the course first provides subject-specific English language tuition in order to put what follows in context. This aspect of the course is but an example of the EFL teaching it provides”. He has annotated the timetable with the EFL skills practised and acquired. These are similar to those in the annotations to the timetables for Methodology and Language for Secondary Teachers and Creative Methodology, with the addition of making a point in English.

139. The course timetable includes an historical overview of NLP; the presuppositions of NLP explained and myths about it exposed; representational systems and visual, auditory and kinaesthetic learning styles; managing difficult learners; how NLP can help communication in the classroom; rapport building and maintaining healthy group dynamics; effective use of language in the classroom, giving effective instructions and anchoring techniques; an examination of limiting beliefs and negative internal dialogue; improving coaching skills, including a coaching skills workshop; effective use of language in the classroom; metaphor as a learning tool. The second week contains an overview of Bateson’s logical levels and how they impact upon teaching; strategies for achieving positive teaching an learning outcomes; different types of learners. One session is devoted to asking quality questions in the classroom and working towards high yield classroom dialogue. There is a review of published NLP materials relevant to English language teaching; the course ends with “Goal setting; how I will take what I’ve learned from this course into my teaching”. Mr Marshall rated the course’s EFL content at 50%.

25 *Teaching Advanced Students*

140. This course was accepted by HMRC as EFL. Mr Marshall rated its EFL content at 80%. It is described on the web page as primarily a language improvement course with a methodological element. It is aimed at those teaching upper secondary level and above; an advanced level of language proficiency is essential for participants. The timetable includes: grammar, syntax and phonology practice through deconstructing a text; words that are easily confused; how culture influences language, with examples; stress and intonation activities; spoken versus written grammar; regional accents and dialects.

British Life, Language and Culture

141. This course is described as being for teachers wishing to learn about and experience British culture and those who teach British culture to young adults and adults; it requires an upper intermediate to advanced level of English. Mr Marshall rated its EFL content at 50%. The summary describes it as a mixture of information on British culture, an update on current English usage and practical ideas for teaching British culture. It aims to increase participants’ awareness of present day British culture while offering an opportunity to practise English, resulting in a wider understanding of key issues in teaching culture in an English language teaching setting. Alternative courses are English for Primary or Secondary Teachers for those

wanting a more language-focussed course or Teaching Advanced Students for advanced speakers seeking a more specific language-focussed course. Mr Wright describes the entirety of the course as focussed upon improving awareness and usage of colloquial and contemporary English, achieved through the study of British life, language and culture and listening and talking to guest speakers.

142. According to the sample timetable on the website the timetable starts, after preliminary sessions, with a quiz about the United Kingdom. The second day begins with “Englishness defined and deconstructed”, followed by the interface between language and culture and ways of analysing cultures. On the first Wednesday a visiting teenager speaks, followed by an analysis of content and language use in the talk. The afternoon studies politeness codes. The Thursday involves a visit to a Roman Catholic priest (presumably a university chaplain) who speaks about religion and university life; this is preceded by a preparatory session on religion and secularism in the United Kingdom and followed by an analysis of the content of and language use in the priest’s talk. The Friday features listening, with a variety of English accents and focus upon their key features, as well as how accent and use of words relate to the class system.

143. On the second Monday a black person speaks, preceded by a study of aspects of multiculturalism in the United Kingdom and followed by an analysis of content and language use. The Tuesday examines the United Kingdom’s political system, the “shadow” side of culture (violence and crime) and emerging Englishness, including English as a lingua franca. The Wednesday looks at family life, marriage and relationships with a visiting speaker, a counsellor from the organisation Relate. The Thursday looks at the educational; system, with a visiting schoolteacher speaker; both days’ talks are preceded by study of the respective topics and followed by an analysis of the talk’s content and language use. The final day considers humour and the myths and realities of political correctness. Mr Wright’s annotation of the timetable lists similar EFL skills practised and acquired as with other timetables, with the addition of cultural awareness, understanding accents and note taking.

30 *Leadership*

144. This one week course is targeted at teachers of English, especially at secondary level and above, with an advanced level of English. Mr Marshall rated its EFL content at 80%. The website describes it as a practical course in the newly emerging “post heroic” styles of leading, leadership being defined as influencing people and events, and life-enhancing leadership as leadership styles that draw out the best from people, relying on relationships and connection rather than hierarchy and distance.

145. Mr Wright says that the course aims to teach participants how to be good leaders and, in particular, “provides the teachers with an advanced handle of the English language”; he goes on to say that the provision of English language tuition is an essential element of the course, since without updating the language skills of participants it would not be possible to teach them in English how to understand and work with complicated concepts and examples of leadership. He describes the

methodology element as incidental to the EFL teaching, because the former (the methodology) could not be provided without the latter (the EFL).

146. The sample timetable begins with an examination of traditional roles of leadership, followed by newly emerging post-heroic models, learning from experience and new leadership paradigms; one day is devoted to examining participants' personal values and incorporating them into their own leadership style. The final day includes maintaining and sustaining relationships and connections and making post-course action plans, as well as a course review and evaluation.

Pronunciation

147. This one week course, rated by Mr Marshall as 100% EFL, was accepted by HMRC as being EFL. It is aimed at teachers of all age groups and student levels, participation requiring at least an intermediate level of English, and is described as a methodology and language improvement course for teachers who wish to learn a wide variety of ways of teaching the pronunciation of English as well as working on and improving their own pronunciation. The example timetable includes sessions on topics such as stress on words, intonation ("what it does and how to teach it") and features of connected speech, as well as more methodological topics such as "activities for teaching pronunciation".

Certificate in teaching English for Business People

148. This course, rated by Mr Marshall as 50% EFL, is aimed at teachers involved in, or wanting to expand into, teaching business English. It requires at least an intermediate level of English and involves sitting the examination for the London Chamber of Commerce and Industry (LCCI) Foundation Certificate for Teachers of Business English. The course summary describes it as a training course for teachers in the methodology of and approach to teaching business English, emphasising that it is not a language course in business English. The objective of the course is to provide participants with state of the art practices in teaching business language. The course is described as the right course for those who want to be provided with an exciting range of methodological options for teaching business English.
149. According to the sample timetable the course begins, after preliminaries, with a session on the LCCI exam. The next day covers business English versus general English, lesson planning and teaching business lexis. The remainder of the week is devoted to the challenges of teaching one to one and to teaching the language of meetings, of e-mails, or reports, of presentations, of English for special purposes and of negotiation, followed by working with materials. The first three days of the second week are devoted to motivating and challenging the business learner, teaching the executives, exploiting authentic texts, fluency tasks, cross-cultural awareness, ways to supplement a book, managing the business language classroom and test taking skills. The final two days are devoted to a mock examination and the LCCI Examination itself.

150. Mr Wright describes the sole purpose of this course as preparing candidates to sit and pass the LCCI examination. Since the examination is in English, he said, Pilgrims had to ensure that the English skills of participants were adequate and, in particular, that they had a sound grasp of the business-specific vocabulary required.
5 He said that candidates tended to need to be taught the business-specific and general vocabulary necessary to pass the exam.

Humanising testing

151. This course is designed for teachers who have to design tests or whose school syllabus includes testing. It requires an intermediate or higher level of English. In
10 summary, the course offers an overview of the principles of testing and involves designing tests, adding that “these practical activities will help you develop tests which are effective and fair, and will help turn test-anxiety into a motivating learning experience for your students”. The topics include the principles of good tests, different test types for different purposes, designing tests for all language skills, dos
15 and don’ts of a speaking test and reducing test stress. The example timetable includes sessions on proficiency tests, on achievement tests, and on testing writing, listening and speaking, as well as on guidelines for test design, on test authenticity, evaluating a test, interpreting results and setting scores and on test bias and fairness. Suggested alternatives are Creative Methodology for the Classroom for a more general
20 methodology course and English for Primary or Secondary Teachers for a more language-focussed course. Mr Marshall rated its EFL content at 30%.

152. Mr Wright describes the primary aim of this course as being to enable teachers to make the testing of the students’ English more humanistic and ultimately, a less stressful process. He says that, by improving and updating the teachers’ English
25 language skills and giving them ideas for more effective ways of testing their students, the course gives teachers greater confidence, enabling them to equip their students with the English language skills required to pass English tests more easily.

Teaching English through Multiple Intelligences

153. The website summary describes this course as designed to help teachers
30 understand more about how students learn, familiarising them with different learning styles and enabling them to recognise them in themselves and in students and to adapt their teaching to accommodate them. It is designed for teachers teaching at all levels but requires an upper intermediate to advanced level of English.

154. The programme of training activities includes: applying the theory of multiple
35 intelligences to the classroom; identifying learning styles and adapting teaching to them; the place in a curriculum of suggestopaedia (a technique involving suggestion); contacting and using the brain’s potential more fully; the concept of “understanding” and teaching for understanding; raising student self-esteem; the artful use of the metaphor; and portfolio evaluation as a means of testing genuine understanding.

40 155. The example timetable includes sessions on the background to multiple intelligences teaching, the eight intelligences, the ABC of multiple intelligences

teaching, myths and misconceptions, needs analysis and goal setting and how to cater for kinaesthetic intelligence, sessions on what is understanding and on understanding in practice, on teaching implications, portfolio assessment and on the intelligences less catered for as well as exercises around musical intelligences and
5 bodily/kinaesthetic intelligence. There are two group projects, one occupying an afternoon session and one occupying the final morning session. Mr Wright has annotated the example timetable with EFL skills acquired; these are again similar to those I have referred to above, with the addition of acquisition of new terminology associated with multiple intelligences theory.

10 156. Mr Marshall rated the EFL content of the course at 50%. Mr Wright described it in his witness statement as being for teachers “whose command of English needs to improve significantly enough to identify in their students how their language learning is progressing and further, their different learner styles”. He added that the course
15 taught the teachers “how to do this and, further, how to identify what teaching will meet the needs of their students, in terms of both what is lacking in their students’ language skills and also what teaching method is appropriate to their learner styles”. In these respects, he said, the course provided a great deal of EFL tuition.

Teaching English through Music and Visual Art

157. The website summary describes this course as designed for teachers with at
20 least three years’ teaching experience who teach teenage and older students; it requires an intermediate or higher level of English. It is described as a methodology course, of interest to teachers of other languages as well as English and occasionally attracting native English-speaking teachers. It is said to be the right course for experienced teachers wanting a course that will widen their range of teaching options
25 and promote their own creative abilities. The programme description refers to using art as a stimulus for task-based learning and integrated skills teaching, putting life into course book exercises, using music as an aid to classroom management, using the arts to enable more effective learning by difficult or unmotivated students, using music to enhance areas of learning such as pronunciation, vocabulary and fluency practice,
30 using art and music as a basis for storytelling, drama and movement, as well as introductions to approaches to teaching such as multiple intelligences. Alternative courses are Teaching English through Multiple Intelligences (a course which investigates the theory of multiple intelligences and provides approaches to more effective teaching of different learner styles), Methodology and Language for either
35 Primary or Secondary Teaching (a course more specifically guided towards particular age groups) or Creative Methodology for the Classroom (a course which explores several approaches).

158. The example timetable includes sessions on exploring art, using art to supplement the course book, task-based learning, music and classroom dynamics,
40 music-based lessons “beyond the gap fill format”, storytelling, using pictures, helping students go beyond the language and art, music and movement, as well as on psycholinguistic dramaturgy and multiple intelligences theory.

159. Mr Marshall rated the EFL content at 50%. Mr Wright said in his witness statement that the course was aimed at non-native primary and secondary teachers “whose command of English needs to improve significantly for them to be able to incorporate an appreciation of music and the visual arts into their English language classes. As such, this course aims to improve the teachers’ English language skills in this context, so as to enable them to teach their students, for example, how to interpret, describe and critique specific words, lyrics, songs and other art forms”. In this regard, he concluded, the provision of EFL tuition is evident.

The Expert Teacher

160. The website presents this course as targeted at experienced native and non-native English-speaking teachers of children aged 12 or over and adults, as well as teachers of subjects other than English who are interested in the practical application of psychology; the course requires an upper intermediate to advanced level of English. The summary describes it as a highly intensive methodology course exploring how different types of psychology affect classroom practice and examining practical classroom techniques and activities and the psychological background to them and how that influences teaching style. The programme includes: an introduction to the four psychological models – behaviourism, cognitive psychology/constructivism, humanism and social constructivism; an introduction to the lexical approach and spoken grammar; language across the curriculum; motivating students; assessment and feedback; and an introduction to neuro-linguistic programming and the theory of multiple intelligences.

161. The sessions in the example timetable cover the four psychological models referred to, together with: psycholinguistics; theories of motivation; spoken grammar; ways of drilling; memory; individual differences in learner thinking, in learning strategies and multiple intelligences; task-based learning; repetition and recycling; languages across the curriculum; neuro-linguistic programming; assessment and feedback; self-esteem; creativity; the “Silent Way”; blended learning; teaching culture; and psychodrama. The final day is devoted to a group project and feedback on it.

162. The aim of the course is said to be to provide opportunities to revitalise participants’ knowledge of English and reinforce their confidence in using the language, with the result that they will be more knowledgeable, confident and fluent users of English. It is the right course for those wanting to broaden their range of classroom techniques and approaches, to approach psychology from an experiential perspective and/or to learn how psychology can enhance their own creative abilities. Suggested alternatives are the courses on Multiple Intelligences or Neuro-linguistic programming for those wishing to focus especially on those topics, or Creative Methodology for the Classroom for a more general methodology course.

163. Mr Marshall rated the EFL content at 30%, but Mr Wright described the predominant purpose of the course as be “to take the participants beyond their current level of English language, teaching skills and knowledge”. He added that “you simply cannot be an expert teacher without having advanced English language skills.

The incidental improvement in teachers' methodology skills will then follow, but that benefit is subsidiary to the improvements teachers see to their English language skills".

What's New in Language Teaching

5 164. The website presents this course also as being targeted at experienced native and non-native English-speaking teachers of students from age 12 to adults, requiring an intermediate or higher level of English. It is described as a highly intensive methodology course for teachers who want to update their knowledge and deepen their experience of state-of-the-art language teaching methodologies, offering a wide
10 range of practical activities based on modern approaches to teaching and learning languages. The expected result of attending the course is said to be developing the expertise to design and run their own teacher training or teacher development sessions.

15 165. The course content is for review at the beginning of the course but the key contents are a taste of NLP, a taste of multiple intelligences, the impact of corpus linguistics, the impact of the lexical approach, the principled use of the mother tongue in the classroom, the critical role of cultural awareness in language teaching, and CLIL (which is explained in paragraph 80 above). The example timetable includes those, plus sessions including: insights from neurobiology research; how to get
20 students' attention; co-operative learning; blended learning; teaching through the arts; teaching with no materials; task-based learning; an introduction to coaching; insights from educational research and problem students; motivation theories; and distance learning. The final day is devoted to a group project and feedback on it.

25 166. Mr Marshall rated the EFL content at 30%. Mr Wright described the aim of the course as being to give teachers an update in the current trends in language teaching. As such, he said, the course was "largely focussed upon looking at developments in the English language, updating the teachers' own English skills and learning new and current vocabulary. In addition we taught teachers how, and in what ways, the English language was changing and developing". He found it "plain that during a
30 course of this kind, the teaching of methodology and EFL are inseparably intertwined", adding that Pilgrims "often conduct part of our EFL teaching through the tuition of methodology", which did not "detract from the fact that this is a substantially EFL course".

Dealing with Difficult Learners

35 167. The website describes this course as being targeted at teachers of all pupil age groups, including pupils with special educational needs, education managers and psychologists, requiring an upper intermediate or higher level of English. The course summary notes that teachers find some pupils difficult to teach on account of matters such as social emotional or behavioural difficulties or special educational needs; the
40 course looks at why these learners cause difficulties for teachers and how to develop a better understanding of the underlying reasons for the behaviour. The list of course contents, replicated in the example timetable, include: what is a difficult learner and

why they are difficult; emotional literacy; early attachment patterns and their relevance to learning; some psychoanalytical theory; the effects on learning of trauma, loss, family crises, abuse, etc; overcoming learning blocks and limiting beliefs; developing rapport and effective communication; dealing with conflict; recognising and working with different learning styles; behaviour management and changing techniques; different ways of assessing pupils; and classroom activities. The example timetable additionally refers to sessions on noticing one's own behaviour patterns, a practical approach to dealing with the situations rather than wishing them away, team teaching and peer observation for problem classes, identifying themes for self-management, peer support and co-counselling. The final day is devoted to revisiting key areas, and identifying topics for additional focus, followed by a course evaluation and farewells.

168. Mr Marshall rated the EFL content of the course at 30%. Mr Wright describes the over-arching aim of the course as being to enable teachers who are not native speakers of English to deal better with difficult learners. He says that Pilgrims believes this requires real skill on the part of the teachers in the nuances of the English language so that they can accurately understand meaning and convey complex issues; only if they are able to do this will they will they be able to understand difficult learners, communicate effectively with them and ultimately build relationships with them. He then described difficult learners in terms similar to the web page and said that the course looked at how and why these learners cause difficulties for teachers. He added that "if teachers can develop a better understanding of the underlying reasons for the behaviours and can tailor their English language skills accordingly, they will be able to communicate more effectively with the learners in question. Such communication is a key aspect of dealing better with difficult learners and this is what we aim to give the teachers on this course".

Improving English through Humour

169. The website presents this one-week course as targeted at native and non-native English-speaking teachers at secondary and tertiary levels, with an upper intermediate to advanced level of English. It offers a wide range of creative and humorous techniques and activities to enliven teaching. It is described as a methodology course; it is the right course for those who want a high energy, life-affirming methodology course, to inject humour and vitality into their lessons or motivate students tired of an overly academic syllabus. Suggested alternatives are Creative methodology for Classroom for a more general methodology course, English for Primary or Secondary Teachers for a more language focussed course or Teaching Drama for a more drama-focussed course.

170. The training activities include: building and maintaining a fun-loving atmosphere; healthy fun and laughter (laughing with and not at people); using jokes for listening and speaking practice; puns, ambiguity and nonsense; the English sense of humour; laughter as a therapeutic channel; and drama activities. The example timetable includes sessions on different types of humour; urban myths (including retelling urban myths from homework; homonyms, homographs and homophones as a source of humour; exploiting jokes and witticisms in the classroom; using different

types of humour to build healthy group dynamics; political correctness; native speaker errors; and the dark side of humour.

171. Mr Marshall rated the EFL content of this course at 80%. Mr Wright described it in his witness statement as being aimed at non-native state primary and secondary English teachers who want to improve their English language sufficiently to be able to introduce humour into their classrooms; as such, he said, a significant part of the course was directed towards teaching colloquial language, interpretation and wordplay. He denied that the course even had a methodology element; it was a relatively technical form of language tuition in subtleties of manipulation of the language usually alien to non-native speakers.

Creative Drama for the Language Classroom

172. According to the website, this one-week course is targeted at language teachers of all age groups and levels with upper intermediate or higher proficiency in English but not necessarily any previous experience of drama. Participants engage in a series of practical drama-based activities for use in the language classroom. Suggested alternatives are English for Primary or Secondary Teachers for a more language focussed course or Methodology and Language for Secondary Teaching for a more general methodology course for that age group.

173. The programme comprises: group co-ordination and trust exercises; warmers for the classroom; using the body to learn vocabulary and language structures; storytelling techniques; improvisation using the voice and body; developing participants' communication skills; using intonation, stress, rhythm and pauses for dramatic effect; and exercises to assist drama group leaders. The example timetable contains sessions on what is drama? teaching pronunciation, dramatising the course book, movement, working with dialogues, drama as a tool for positive group dynamics, storytelling ideas, working on your voice, improvisation skills, warmers and fillers; the final day involves a group project and feedback on it.

174. Mr Marshall rated the EFL content at 50%. Mr Wright again describes the course as being “for non-native state primary and secondary school teachers, whose command of the English language needs to improve significantly for them to be able to introduce drama techniques into their English classes”. He adds that “teaching drama requires a high level of English, since it involves interpreting scripts, memorising dialogues and encouraging students to create their own plays in English. This course improves the teachers' English language so that they can include such activities in their classes”.

Coaching skills for teachers

175. Coaching is described elsewhere in the papers as “a term that refers to a way of working with people that empowers them to make changes in the way that they work. Coaches believe that we all hold the solutions to our challenges within us, or that we are able to work out how to resolve issues ourselves. In classroom practice coaching is a very useful way to encourage students to work towards resolving either own

challenges, and helps develop a sense of responsibility for their learning. Teachers' interest in the value of coaching in the classroom is gathering pace, as the benefits become clear".

176. This course is aimed at teachers of English especially at secondary and higher level, teacher trainers, academic managers and school owners and principals, though Mr Wright says that it is mainly directed at secondary and higher age group teachers. It requires an advanced level of English and a background in NLP. The course aims to focus on new skills and practices for educators wanting to improve their ability and confidence in teaching, making participants more empathetic teachers and more effective communicators. Suggested alternatives are Dealing with Difficult Learners for those seeking strategies for dealing with those learners and Leadership or NLP for Teachers for those wishing to develop leadership skills. The programme of activities comprises making desired changes, understanding emotional attitudes in oneself and others and their effect on accomplishing a task, seeing a situation from the point of view of others and reasoning how one's actions and words affect others and understanding one's own and other people's values.

177. The example timetable includes sessions on: revising key NLP concepts; defining coaching; coaching and NLP; identifying core coaching skills; mutual respect; collaboration and constructive feedback; establishing trust; simple coaching strategies; the power of questioning; giving/receiving feedback; a structured feedback process; engaging in collaborative conversation; being an agent of change; self-reflection; empathising; focussing on values; models of coaching; how a coach can help others; transition from teacher to teacher coach; case studies and feedback on them; "working with someone who needs to be mentored but does not want to be"; and coaching adults.

178. Mr Marshall rated the EFL content at 30%. Mr Wright's witness statement says that the course gives participants "ongoing language training, as new skills and concepts are introduced during the course. Indeed, as 'Coaching Skills for Teachers' introduces teachers to the concepts and practices of coaching, the teachers' use and understanding of the English language is practised and improved. Both the language and practical skills that the teachers gain during this process are essential to coaching". He adds that "in this context, it would be impossible to separate the teaching of the advanced language skills from the tuition of the skills required to be a coach; they are intertwined and one could not be taught without the other. Indeed, absent a sound grasp of the English language, any methodology teaching would not only be unlikely to be understood by the participants on the Course, but it would be highly unlikely that it would be at all beneficial".

From Teaching to Training

179. Now called How to be a Teacher Trainer, this course requires an upper intermediate to advanced level of English. It is aimed at experienced language teachers who want to become teacher trainers and those new to teacher training who want to develop their skills further. The website course summary describes the course as practically orientated, examining the major differences between language teaching

and teacher training, investigating different ways of planning and presenting sessions and enhancing participants' people skills. Suggested alternatives are Creative Methodology for the Classroom for a more general methodology course and NLP for Teachers for those interested in exploring NLP and learning styles in more depth.

5 180. The course content is negotiated on the first day, but topics include planning training sessions that value different learning styles, acknowledging and responding to feedback, listening respectfully and communicating sensitively and effectively, dealing with "difficult" people, relating to and managing teachers, developing teacher autonomy, maintaining and expanding participants' development as trainers, and
10 incorporating core elements from fields such as NLP into training.

181. Sessions in the example timetable include: identifying and discussing the qualities of a good teacher trainer; similarities and differences between language teaching and teacher training; identifying participants' current teaching strengths that will help in teacher training; strategies for healthy group dynamics; key ingredients in
15 effective training sessions; a workshop involving micro teaching in groups and feedback on it, including a session comparing participants' feedback on a videoed lesson; observation skills; the impact of teaching beliefs and values on training style; lecturer, facilitator and animator roles; an overview of learning styles and how to cater for them; applications of NLP in teacher training; active listening skills; mentoring
20 approaches and techniques; maintaining motivation; effective tutorials and goal setting; giving difficult feedback; reconstructing a "disastrous lesson" and dealing with "difficult" people.

182. Mr Marshall rated the EFL content at 30%. Mr Wright says in his witness statement that "as a non-native teacher, it would be virtually impossible to make this
25 transition without having first obtained and mastered advanced and updated language skills. As such, this course aims to improve the teachers' command of the English language and in so doing, it also teaches them some of the essential skills required to lead a team of teachers. In addition to language skills, this Course equips teachers with the necessary attitude and aptitude required to be an effective and
30 communicative trainer. Part of this tuition flows directly from the English language teaching provided, and part of it is taught in combination with that teaching. In this way, it is clear that any methodology training provided is inextricably linked to the EFL teaching provided: it could not stand alone".

Methodology for Teaching Spoken Grammar/language

35 183. This course was accepted by HMRC as being TEFL. The website presents the course as targeted at experienced native and non-native teacher at primary level and above; it requires an upper intermediate or higher level of English. The course summary notes that traditional grammar teaching has been based on the grammar of written English, whereas it has become apparent that there are different rules, patterns
40 and conventions in spoken language. It presents the course as focussing on the principal differences between written and spoken grammar and how to teach spoken grammar effectively. The course objective is said to be to provide opportunities to

revitalise participants' knowledge and use of English and reinforce their confidence in using the language.

184. Mr Wright explains that the course draws on Corpus Linguistics, which he says is a database, updated daily, of words, phrases and sayings in English. He describes the main aspect of the course as tuition in the English language. Mr Marshall rated the EFL content of the course at 80%.

185. The programme includes: the main differences between written and spoken grammar; how English is (rather than should be) spoken; the crucial roles of vague language, understatement and indirectness in spoken English; ways of making course book dialogues more authentic; improving students' narrative-building skills; "turn taking" conventions including interruption, echoing and silence; teenage English and myths (of a disparaging type) about spoken grammar. The example timetable includes sessions on "what is a corpus" and its teaching implications, followed by language as it is versus language as it should be, spoken grammar and written grammar, modal verbs, the use in spoken English of words such as "well", "just" and "like", reported speech, ellipsis, vague language, softeners, indirectness, making course book dialogues more authentic, what native speakers do when they use the language, fluency and how to teach students to be more fluent. The final day is devoted to a group project and feedback on it.

20 *Teaching English for Academic Purposes*

186. The meaning of "English for academic purposes" is apparent from the website description of the target audience, which is said to comprise experienced teachers of general English who wish to specialise in teaching students preparing to enter institutions of further or higher education where English is the medium of instruction. The web page that I have seen does not state a required level of English language proficiency, but the schedule produced by HMRC in correspondence (see paragraph 15 above) gives the language requirement as "advanced" and this was carried over into OISE's own schedule (paragraph 16 above). The course summary says that the course provides participants with background theoretical principles in English for academic purposes and the skills needed to implement them in the classroom. The expected result of attending the course is that participants will be equipped with the skills needed to design and run a course in English for academic purposes.

187. The programme comprises: differences between general English and English for academic purposes; needs analysis; skills development and assessment; academic discourse, genre and style; materials and course design; and teaching study skills. The example timetable devotes the first morning to group bonding, needs analysis and goal setting. This is followed by an afternoon session on English for academic purposes and general English. Subsequent sessions are: how young adults learn; running a needs analysis session effectively; teaching study skills (two sessions); teaching skills: listening, recognising lecture structure; note-taking; teaching skills: writing (two sessions), reading (three sessions), speaking (two sessions). The timetable gives more detail on the sessions on teaching writing skills, breaking the topic down into: using sources; making notes; paraphrasing, summarising, quoting

and referring to sources; expressing purpose, means and method. The second and third sessions on teaching reading skills cover understanding text organisation and understanding meaning.

188. There are two sessions on assessment, one on course design, two on designing effective materials, and further sessions on coaching students, text and genre analysis, ways of supplementing materials, adapting teaching to students' needs and promoting students' autonomy. The final day is devoted to a group project and feedback upon it.

189. Mr Wright's witness statement described the course as being "for non-native state secondary and university teachers, who need to improve their English language skills significantly, in order to meet the high demands of students studying English language at a more advanced level". He said that many of the teachers attending the course teach students who are studying English for academic, examination and/or research purposes. He related that these students often approach their teachers with sophisticated and complicated questions; as a result, the teachers attend the course so that more often than not they will know the answer.

190. Mr Wright described the EFL and methodology training elements of the course as "inextricably linked, since the language levels of the students demand that the teachers' language levels are up to date and up to the requisite standard". He added that "while this tuition forms the core element of this Course, it is naturally accompanied, in parts, by more methodology-focused tuition. But as I state elsewhere in this statement, this fact does not take away from the fact that this Course does provide the teaching of EFL". Mr Marshall rated the course's EFL content at 80%

Transactional analysis for Teachers

191. Mr Wright explains in his witness statement that transactional analysis "is ultimately an integrative approach to the theory of psychology, psychotherapy and cognitive behaviour". He describes the course (which Mr Marshall rated as 100% methodology) as having provided subject-specific English language training in the context of teaching about transactional analysis, adding that "in this way, 'Transactional Analysis for Teachers' looked at how this theory could be understood and then integrated into language acquisition in the classroom and as such, the Course always involved an English language update for the teachers".

192. Mr Wright goes on to say that, without this update, the teachers would not have been able to obtain a greater understanding of psychology and cognitive theory, as well as the other complex theories analysed during the course. He concludes that "as a result, and as with the other Courses, the language and more theoretical aspects of this Course were inextricably linked. The latter would have been without purpose in the absence of the former, rendering the EFL aspect of this Course not only self-evident but also necessary".

193. The papers include a printed syllabus which presents this course as a methodology course targeted at teachers at secondary level and above, teacher trainers, academic managers and principals. It requires a level of proficiency in

English between upper intermediate and native. The summary describes the course as presenting the core principles of transactional analysis, familiarising participants with tried and tested resources, techniques and strategies, including various transactional analysis concepts. The papers do not include an example timetable, but the key course contents are said to include: exploring how we learn and how beliefs affect learning; how we communicate; identifying different working styles; understanding groups; planning and teaching through meeting fundamental needs; transforming dysfunctional ways of communicating and resolving conflict; ways of giving and receiving constructive feedback; and “pulling the strands together and using your newly acquired skills”. Suggested alternatives are Skills of Teacher Training for those interested in teacher training and Neuro-linguistic Programming for Teachers for those wanting to learn more about “the study of excellence”.

Creative Writing

194. The printed syllabus for this course describes it as being for non-native speaking English teachers of English from intermediate to very advanced level and for native speaking teachers, teaching at primary, secondary or tertiary level. It is for those who want to experience or re-experience themselves as writers and take leaps and bounds forward in their use of written English, and particularly for those preparing classes for examinations in which writing is important. Mr Marshall rated it as 100% EFL. The key course contents are: the letter or e-mail as an instrument of communication within the classroom and between students in the classroom and others outside; writing poetry; dialogue with (I infer) an imaginary interlocutor; brain-storming techniques preparatory to writing a composition; drama activates leading into and out of writing; role-reversal and “doubling” as writing techniques; writing from physical experience and observation; editing, re-writing, group writing; NLP modelling of students’ experiences of writing; editing, re-writing and group writing; the teacher’s role in error correction; and the evaluation of writing.

195. Mr Wright describes the course as being “primarily for non-native state primary and secondary school teachers, who need to improve their own language skills significantly in order to teach their students how to write more creatively and with greater accuracy in English”. He observes that it is inherent in the nature of creative writing that it demands a firm grasp of the English language and, in particular, its broad and varied vocabulary, and these skills must be mastered before a teacher can teach creative writing to somebody else.

196. He goes on to say that “in providing the participants on this Course with English language tuition in the context of learning about creative writing, the Course provides those teachers with a certain set of skills that they need for a specific type of class that they teach. While this Course does also touch upon, for example, structure and other aspects of creative writing, the skills taught inevitably include English language skills. In this respect, the EFL tuition provided on this Course is essential; it constitutes a defining feature and fundamental aspect of the Course”.

Pilgrims 35th anniversary conference

197. This five day conference held in August 2009 was entitled “Humanistic Teaching in the 21st Century”. Celebrating Pilgrims’ 35 years as pioneers of humanistic education, it consisted of five one-hour plenary sessions, three 4½-hour
5 workshops and two open seminars for networking and debating, evening events and a dinner. The plenary sessions were entitled “A Retrospective on English Language Teaching”, “Spoken Fluency Revisited”, “Thinking Frameworks”, “Seeds of Confidence” and “Closing Remarks”.

198. A total of 15 workshops were provided, though participants could only attend
10 three owing to simultaneous running. Each consisted of either three or four sessions (the conference document seems self-contradictory on the point). The subjects were Teaching through the Fine Arts, Teaching through Drama, Coaching Skills for Teachers, Storytelling for Young Learners, Culture in our Classrooms, CLIL, Teaching the Unteachable, The Richness Psychodrama, Transactional Analysis and
15 NLP bring to Teaching, Creativity for Teachers, Dogme and Silent Way, Meeting Change, Teaching Pronunciation, From Activities to Lessons, Dealing with Young Learners and Focussing on Skills,

199. The conference document contains a brief description of each workshop, though
20 in much less detail than the web pages and printed syllabuses that I have referred to above. From it I make the following findings about the workshops.

200. *Teaching through the Fine Arts*: the conference document observes that using fine arts in the classroom not only shapes students’ aesthetic tastes and teaches freedom of expression, interpretation and understanding but also introduces elements of content and language integration (CLIL) through which students can learn about
25 art, etc. The activities involving art presented in the workshops were suitable for a variety of levels and adaptable for age groups. The session was “experiential and very much hands on with some theoretical input”.

201. *Teaching through Drama*: this was a “practical ‘how to’ session” looking at how teachers can borrow from the craft of acting. The document observes that skills
30 displayed by actors (making each performance fresh and energetic, maximising the use of space and movement on the stage to, using their bodies and voices creatively to convey meaning and maintain audience attention) are equally important for language teachers wanting to reduce anxiety and tension in the classroom and make lessons enjoyable and memorable. The workshop conveyed fresh ideas for making more
35 creative use of space, movement, body, voice and humour in participants’ own teaching.

202. *Coaching Skills for Teachers*: I have set out the relevant content of the conference document at paragraph 175 above. The workshop conveyed coaching skills.

40 203. *Storytelling for Young Learners*: the first session focussed on beginners, using story-maps and actions to help learn stories by heart; role-play is a major part. The

second session moved to story-making, starting with a simple story and building on it, in groups and by individuals. The third session discussed why storytelling is important, the problems of telling stories to bilingual children and the advantages and disadvantages of oral and written stories and of realistic and fantasy stories and so forth.

204. *Culture in our Classrooms*: the description notes the increasingly multicultural nature of school classes in recent years, attributable to migration, and that classes are now rarely monolingual, but with tension between ‘native’ and ‘foreign’ students; the opportunity is not much taken of learning and understanding more of the beliefs and values of the cultures represented in classrooms. Against that background the workshops looked at what culture is, at culture and language, and at the United Kingdom today; they provided participants with activities to do with their students. The sessions were, as described, thought-provoking but light-hearted, with fun and laughter guaranteed.

205. *CLIL (Content and Language Integrated Learning)*: the document says that CLIL can represent a huge demand on language skills for subject teachers but that for language teachers it can provide all sorts of positive rewards (I take the distinction to be between teachers who are trained in a subject and called upon to teach the subject in another language and teachers trained to teach a foreign language using content as a teaching vehicle). The workshop considered how language teachers can support subject teachers and how they themselves can use other subjects to teach a foreign language. The sessions included classroom activities using content from across the curriculum.

206. *Teaching the Unteachable*: the workshop looked at reasons why difficult students behave as they do, the reasons why they are difficult to teach (“what they ‘do’ to us as teachers”) and practical strategies for reaching and teaching these students.

207. *The Richness Psychodrama, Transactional Analysis and NLP bring to Teaching*: the workshop studied how ideas and techniques from psychodrama were brought into language teaching and helped language teachers to reach the more unconscious layers of their students’ minds that control language reception and production. It also looked at how NLP work could help teachers think more perceptively about students’ learning process in areas like, for example, error self-correction and creative writing.

208. *Creativity for Teachers*: the conference document observes that creativity matters for students in fuelling their interest and self-motivation and for teachers wanting to give more impetus to their work. The workshop was for teachers who wanted to develop their own creativity and exploit it in class. While some theoretical input was provided, the sessions were hands on, giving teachers practical ideas and ready-to-use frameworks.

209. *Dogme and Silent Way*: the material describes these as neglected methodological byways that can inform teachers’ methodology and planning,

providing practical activities and techniques for everyday classroom use and saving time. The sessions explored these techniques.

210. *Meeting Change*: based on the observation that change is inevitable and uncontrollable but could be worked with, the workshop offered three perspectives on intentional involvement in change processes: coaching – supporting the self-directed change of others; action inquiry – the workshop explained this technique and experimented with some tools applying it; and liberating the intelligence of the system – this related to liberating the flow of feedback intelligence locked up in social systems such as a classroom or office.

211. *Teaching Pronunciation*: these workshops looked at a number of ways to approach aspects of pronunciation and make it simpler to teach, including a number of practical techniques designed to raise learners’ awareness of pronunciation and enable them to address particular difficulties.

212. *From Activities to Lessons*: the sessions focussed on ways to embed activities into lessons. The first involved considering the function and purpose of an activity, pacing the lesson and energising the students, using examples to investigate the practical aspects of planning a lesson. The second considered activities and exercises in the context of teaching a text, aiming to show that tasks are as important as the reading of the text itself. The third focussed on creative writing, concentrating on activities that can be used to stimulate creative writing.

213. *Dealing with Yonq Learners*: this workshop explored the problems of teaching restless, inattentive learners and suggested practical techniques for dealing with this, building on existing models of motivation to create a framework for analysing and dealing with the difficulties.

214. *Focussing on Skills*: this series of workshops dealt with teaching skills in the areas of exploring reading: focussing on the content and story and exploring what learners really understand, rather than ability to answer a set of comprehension questions; how to teach listening and reading; and various aspects of teaching language speaking, examining issues such as how to deal with reluctance to speak so as to give participants a better idea of what teaching speaking entails.

Closed groups

215. A “closed group” is a group of participants for whom a course is provided that is not open to general booking. They may follow one of the standard formats or be bespoke. Examples of specially tailored closed group courses are the courses Pilgrims provided to the Early Bird organisation in the Netherlands (see paragraph 105 above). Closed groups do not systematically differ from other courses from the point of view of the extent to which they provide methodology or EFL, and some closed group courses are identical in their content to courses open for general booking. I was given, as an example of a closed group course, a course offered in 2010 entitled How to be a Teacher Trainer. The printed syllabus is virtually identical to the webpage From Teaching to Training which to which I have referred in in

paragraphs 179 to 182 above (the only differences are that the 2010 document includes an additional programme activity “heighten your observation skills and provide valuable feedback on teaching” and an immaterial difference in the way the alternative Creative Methodology course is described). The timetables are identical.

5 Mr Key explained in opening that OISE was not asking me to rule on the VAT treatment of closed groups as a class.

The HMRC officers’ visit to Pilgrims

216. Mr Hughes and Mr Edgoose made witness statements, and Mr Hughes also gave oral evidence, about their visit to Pilgrims on Thursday 15 November 2012. They produced a joint report on the visit and Mr Edgoose produced his handwritten notes taken on the day. The visit lasted from 10.55 a.m. until 3.35 p.m., with a lunch break between 1.00 and 1.45, during which the officers remained in the classroom. Mr Hughes had been involved with the case at the time of the preparation of the decision letter in 2010; his involvement was with the issue of whether TETCL was a non-profitmaking body.

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217. On arriving at Pilgrims the officers met Mr Gins and Mr Wright and had about 25 minutes’ conversation with them. It was explained to them that the course that they would observe was an amalgamation of three courses, Methodology and Language for Primary Teachers, Methodology and Language for Secondary Teachers, and Creative Methodology for the Classroom; they had been amalgamated because insufficient students had enrolled to justify running the courses separately. The plan for the amalgamated course approximated to that for the Secondary Teachers’ course (six of the students had originally enrolled on that course, two on Creative Methodology and one on the Primary Teachers’ course). There were nine students in total, all of them state school teachers from the Netherlands, Poland and Slovakia, who were staying with host families in Canterbury. They were funded by a European Union fund.

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218. The course was one week long. On the Monday a session had taken place at which the students had written down, from a list supplied, the things they would like to get from the course; four students had selected storytelling, music, song and dance, three had selected putting life into the course book exercises and three had selected student-generated teaching. There had also been three selections of adapting activities and tasks for different purposes and levels, two selections of introductions to particular approaches to teaching and learning; one teacher had selected learner autonomy and independent learning. These are all items in the programme of Creative Methodology for the Classroom, to which I referred in paragraph 129 above. On the day before the officers’ visit, the group had visited a local primary school to observe education in England in practice in classes across the school.

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219. The officers attended the second and third sessions of the day, one before and one after lunch. The morning session was entitled “Mindful Thinking”. First, the teacher introduced the topic of “product writing versus process writing”. She distributed copies of Van Gogh’s painting *The Starry Night* and asked the students to devise five questions about the picture under each of the headings “how”, “why” and

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“what if?” The students did this in groups of three and selected one question under each heading for sharing with the class as a whole. There was some discussion of language: the teacher corrected a grammatical mistake and discussed the use of modal verbs (the auxiliary verbs can, could, might, must, etc) and there was discussion of
5 adjectives to describe the tree in the painting. The teacher also explained the importance of having, and keeping to, classroom rules.

220. The teacher proceeded to play a recording of the song *Vincent* by Don McLean and gave out copies of the lyrics with words left out; the students were asked to fill them in, focussing on Van Gogh’s state of mind when painting the picture. The
10 exercise involved recognising the words from the recording, which was played a number of times.

221. Finally, the teacher dictated a number of words (find, then, wrong, questions, run, solutions, someone, hell, there) and asked students to write them down and to consider their opposites; these were discussed. She played a recording of the song
15 *Something happened on the way to Heaven* by Phil Collins, to which the words were relevant. The students were asked to imagine themselves as the woman whom the singer was addressing with the repeated lyric “I’m sorry”, to imagine what the singer was apologising for and to write out their response in an imaginary e-mail to him. The responses were written out, posted on the whiteboard and discussed among the
20 group.

222. In conclusion, the teacher returned to the subject of product writing and process writing, explaining that the *Starry Night* exercise had involved process writing, whereas the imaginary responses to the Phil Collins song had involved product writing. (The explanation is not recorded in detail, but Ms Williams explained in the
25 course of her evidence that process writing involves writing successive drafts of a piece of writing, revising and improving them, often in pairs or groups.)

223. The afternoon session was preparatory to a visit later in the afternoon to a museum in Canterbury to consider using works of art to stimulate students. The teacher produced two portraits, of an older and a younger man, and asked the group to
30 guess who the subjects were, their ages and what the subjects did. Various suggestions were made. The students were then asked, in pairs, to create a dialogue between the two men in the form of seven sentences of lengths reducing from seven words to one word. The teacher explained that the portraits were of an artist whose work was displayed at the museum, painted in youth and in old age. The students
35 were then asked: to complete and read out a sentence about another painting by the artist, of some cattle, and to guess the name of the painting; to draw in blanked out parts of other pictures by the artist; and to suggest words to describe the artist’s work.

224. The next exercise involved the students, again in pairs, writing a story about a picture of a young girl, each student composing sentences alternately. These were
40 read out and the teacher corrected two grammatical errors.

225. Finally the students were asked to discuss in groups what they had done and experienced in the day’s classes and how they would each use or adapt the activities

in their own teaching. A number of students asked for drama to be covered on the remaining day of the course.

226. The class then ended; the students left to visit the museum before attending Evensong at Canterbury Cathedral and eating supper with their host families.

5 227. Following the visit, HMRC wrote to OISE’s VAT consultant on 1 March 2013; the writer reported being told by Mr Hughes that both he and Mr Edgoose were satisfied that the instruction they had observed was in the methodology of teaching and not EFL. Mr Hughes repeated that view in his witness statement, though Mr Edgoose confined his witness statement to exhibiting his handwritten notes and the
10 joint report. In cross-examination Mr Hughes accepted that he was not part of HMRC’s education team, had not taught EFL, was not an expert on the teaching of EFL and had never attended any other course where teachers were being taught to teach EFL. To my mind the officers’ evidence is relevant insofar as it is a source of primary factual information about what they were told and observed, in which respect
15 it was not challenged. I am not influenced by their expression of opinion.

228. Mr Gins and Mr Wright in oral evidence accepted the accuracy of what the officers had recorded, but both they and Ms Williams disagreed with the characterisation of it as instruction in methodology. Mr Gins described it as
20 “typically what happens in every English language class you find up and down the country” and said that it was no different from what one would observe at a Pilgrims EFL class that was not directed at teachers of EFL. Mr Wright disagreed on the grounds, first, that “the target audience was non-native speakers of English, so it has to be an English language course”. He then referred to the participants being asked
25 “to listen to music, to create language as a result of lyrics, fill in missing words in English from a song”, describing these as “classic English language exercises” that would be found in any language school.

229. Ms Williams went further, saying she could not “see a single item in it that’s methodology”. She elaborated that the technique of five questions under the headings how? why? and which? were typical of language teaching; she pointed out that the
30 teacher had necessarily corrected the students’ English; she described the discussion of modal verbs as “classic EFL stuff”; she observed that gap filling exercises with songs were something that every teacher straight off the CELTA course knew how to do (CELTA is explained in paragraph 108 above). She took a similar view of the exercise of identifying opposite words. The exercise of imagining the feelings of the
35 woman in the Phil Collins song would lead to a language development work – “why do you think that? A lot of new vocabulary would come from that”. Writing a response by e-mail was in a similar category. She concluded “Is that enough? ... these are just typical EFL activities. The sorts of things we put on our CELTA courses”.

The case-law

The *Pilgrims* case

230. The only authority shown to me on the VAT exemption of the teaching of English as a foreign language is *Pilgrims Language Courses Ltd v CCE*. Though the Pilgrims business was subsequently acquired by OISE, Mr Key stressed to me, and I accept, that any findings of fact by the tribunal in that litigation are not a reliable guide to the factual situation prevailing in the period to which this appeal relates. I agree – indeed, the tribunal in *Pilgrims* sat in 1996 – and review the issues in that litigation only for the purpose of examining the extent to which it illuminates the issues of law that I have to decide.

231. Pilgrims gave both language courses for children and young adults and courses for non-native speakers of English who were teachers of English as a foreign language (there were also courses in business English, but they are not relevant for present purposes). An issue common to both types of course was the extent to which things outside the classroom – board and accommodation, activities and excursions – were part of an exempt supply; in the case of the courses for teachers the same issue about methodology arose as in the present case.

232. The background to the appeal was summarised as follows by Richards J in the High Court ([1998] STC 784):

Pilgrims Language Courses Ltd. (Pilgrims) specialises in the teaching of English as a foreign language, an expression which is commonly and conveniently abbreviated to TEFL. Pilgrims runs residential TEFL courses providing total immersion in the English language - in its own phrase, “breakfast-to-bedtime tuition”. Courses consist of “accuracy activities”, including classroom teaching, and a wide range of “fluency activities”, including sporting and recreational activities. All students have to communicate in English from the moment of their arrival at the airport to the time of their departure at the end of the course. For many courses a single fee covers tuition, activities, meals and accommodation.

In broad terms, TEFL enjoys an exemption from VAT, though it will be necessary to consider the precise nature of that exemption in a moment. The Commissioners of Customs and Excise ruled that only certain elements of Pilgrims’ residential course were strictly TEFL and that the other elements were subject to VAT at the standard rate. The value added tax tribunal to a large extent allowed Pilgrims’ appeal from the commissioners’ ruling. The tribunal held that many of the elements, including accommodation and catering in the courses for children and young adults, were integral to the principal, exempt supply and were therefore themselves exempt from VAT. The tribunal also held, however, that other elements, including, e.g. sporting activities and excursions, were not integral to the principal supply and were therefore subject to VAT at the standard rate.

5 The tribunal's decision is now the subject of an appeal to this court by the
commissioners and a cross-appeal by Pilgrims. In each case there is a challenge
to some but not all of the findings that were adverse to the party concerned. In
the case of the commissioners' appeal the main contention is that the tribunal
was wrong to hold that accommodation and catering in any of the courses
benefitted from the exemption from VAT. In the case of Pilgrims' cross-appeal
the main contention is that the tribunal should have gone that much further and
held that the courses for children and young adults are composite supplies
benefitting in their entirety from the exemption from VAT.

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15 Finally there are courses for teachers of English, which are different yet again.
Courses are fully residential and range from full English language courses to
'methodology' courses with an English language content (eg music and art).
The tribunal found that in the majority of these courses there was substantially
less language teaching than teaching of other topics which be useful to
teachers....

20 233. The Commissioners had decided, on the basis of Note 2 to the Group, that the
exemption for TEFL (a) was limited to classroom instruction and (b) did not extend to
instruction in the teaching of English. The main issue in the appeal to the tribunal
was as to the extent to which the VAT exemption covered elements of what was
supplied apart from classroom teaching. As to that, the tribunal (Mr Angus Nicol and
25 Mr JN Brown CBE FCA ATII) decided that

30 The expression "teaching English as a foreign language" is, in our judgment, apt to
mean all that is necessary for the purpose of imparting to the student the grammar,
vocabulary, spelling, and usage of the English language and of assisting the
student to take in, retain, understand, and think in that language so as to be able to
communicate in it, orally and in writing.

35 234. The tribunal went on to apply the concept, developed in case-law leading up to
Card Protection Plan v CCE (which had not by then been decided in the CJEU), of a
supply including elements that were 'integral' to a main element; applying that
approach, they decided that the integral elements included the provision of
classrooms, learning materials, teaching by the teaching staff (not limited to teaching
within a classroom) and in residential courses the provision of food and, where not
charged for separately, accommodation. On the other hand, elements such as sporting
and principally or wholly recreational activities and excursions were not integral to
the teaching and were not part of an exempt supply. As regards courses for teachers,
40 they found that accommodation and catering were integral to those of the courses that
consisted in the teaching of English.

45 235. In deciding that eight of the then 22 courses supplied to foreign teachers of
English amounted to exempt TEFL, the tribunal seem to have accepted the description
of them by a witness for Pilgrims, who had said that four of the courses were
straightforwardly courses in the English language and another four were methodology

5 courses in which the English language was taught through the medium of methodology; the remaining 14 courses were described by the witness as 'methodology with a language content'. The tribunal noted that there was no detailed evidence before them of the extent of the language content of the 14 courses, but that the evidence was that the 14 courses were courses in teaching methods with a language content; they concluded that "a course in teaching methods cannot be a course of TEFL" and that the 14 courses fell within note 2 to Group 6. It does not seem from their decision that the witness had suggested otherwise.

10 236. The Commissioners appealed to the High Court and Pilgrims cross-appealed. Richards J allowed the Commissioners' appeal against the finding that meals and accommodation were integral to the exempt supply. Pilgrims had cross-appealed on two grounds: they contended first that the exclusion of the sporting and recreation activities and excursions from exemption was wrong in law, and secondly that methodology courses provided to teachers ought to be exempt, but as vocational training rather than as TEFL. The argument in relation to the methodology courses
15 was that the VAT Act recognised Pilgrims as an eligible body but that Note 2 impermissibly restricted the scope of the exemption accorded to it by the domestic law, contrary to the Directive. That is not an argument relied on by OISE in the present case. Richards J rejected both arguments.

20 237. Pilgrims successfully appealed to the Court of Appeal ([1999] STC 874) both against Richards J's upholding of the tribunal's exclusion of the sporting and recreational activities from exemption and his overruling of their decision in respect of meals and accommodation. They did not appeal against his conclusion in respect of the methodology courses. By then the European Court had decided *CPP*. As
25 regards the sporting and recreational activities and meals and accommodation, Schiemann LJ (with whose judgment the other members of the Court agreed) described the Court's task as follows (at 887c):

30 The task of the Court is to look at each course separately and to adopt in each case the approach indicated in *Card Protection Plan Ltd v Customs and Excise Comrs* (Case C-349/96) [1999] STC 270 at 293, paras 29-31. Thus the Court must (i) identify the various supplies involved, (ii) establish whether one or more principal supplies are involved and (iii) if there are more than one principal supplies establish, in relation to ancillary supplies, to which principal supply each ancillary supply is ancillary.

35 238. His conclusions, so far as relevant, were

I would allow Pilgrims' appeal against the judge's decision that the provision of meals (in all fully residential courses) and the provision of accommodation in the children's, young adults' and teachers' courses are not exempt. Here the Judge overruled the decision of the tribunal and I would restore its decision. I
40 am content to arrive at this conclusion by holding either (a) that this supply was closely related to the supply of teaching of English as a foreign language, falls within item 4 and that such a supply is not excluded from exemption by Note (2) or (b) that, applying the test in *Card Protection Plan*, it is clear that neither

the provision of food and nor the provision of accommodation constituted for the customers in the present case an aim in itself but was in each case a means of better enjoying the principal service supplied and that therefore the composite supply falls within item 1 to which note (2) has no application. So Pilgrims should succeed by either of the routes proposed by them.

I would allow Pilgrims' appeal against the Judge's decision that the excursions, transport to and from the airport, course photograph, certificate etc. provided in the children and young adults' course are not exempt for the same two reasons.

239. Item 4 of Group 6 exempts the supply of goods and services that are closely related to a supply of education or vocational training. It was rightly not prayed in aid before me; it was relevant to the activities outside the classroom that were in issue in *Pilgrims*, but is not relevant to the issue I have to decide. To the extent that a supply by TETCL amounts to a course in methodology of teaching, it falls within item 1 of Group 6 as a supply of either education or of vocational training (and most probably the latter) and not in item 4.

Card Protection Plan

240. Case C-349/96 *Card Protection Plan v CCE* [1999] ECR I-973, [1999] STC 270 ('*CPP*') was decided by the European Court in February 1999, after Richards J's judgment in *Pilgrims*. *CPP* concerned services some of which (if viewed in isolation) amounted to exempt supplies of insurance and others did not. The ECJ's judgment expounded the principles by which the House of Lords ultimately decided that there was a single exempt supply in which insurance predominated. In *CPP* the Court held

27. It must be borne in mind that the question of the extent of a transaction is of particular importance, for VAT purposes, both for identifying the place where the services are provided and for applying the rate of tax or, as in the present case, the exemption provisions in the Sixth Directive. In addition, having regard to the diversity of commercial operations, it is not possible to give exhaustive guidance on how to approach the problem correctly in all cases.

28. However, as the Court held in Case C-231/94 *Faaborg-Gelting Linien v Finanzamt Flensburg* [1996] ECR I-2395, paragraphs 12 to 14, concerning the classification of restaurant transactions, where the transaction in question comprises a bundle of features and acts, regard must first be had to all the circumstances in which that transaction takes place.

29. In this respect, taking into account, first, that it follows from Article 2(1) of the Sixth Directive that every supply of a service must normally be regarded as distinct and independent and, second, that a supply which comprises a single service from an economic point of view should not be artificially split, so as not to distort the functioning of the VAT system, the essential features of the transaction must be ascertained in order to determine whether the taxable person is supplying the customer, being a typical consumer, with several distinct principal services or with a single service.

30. There is a single supply in particular in cases where one or more elements are to be regarded as constituting the principal service, whilst one or more elements are to be regarded, by contrast, as ancillary services which share the tax treatment of the principal service. A service must be regarded as ancillary to a principal service if it does not constitute for customers an aim in itself, but a means of better enjoying the principal service supplied (Joined Cases C-308/96 and C-94/97 *Commissioners of Customs and Excise v Madgett and Baldwin* [1998] ECR I-6229, paragraph 24).

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32. The answer to the first two questions must therefore be that it is for the national court to determine, in the light of the above criteria, whether transactions such as those performed by CPP are to be regarded for VAT purposes as comprising two independent supplies, namely an exempt insurance supply and a taxable card registration service, or whether one of those two supplies is the principal supply to which the other is ancillary, so that it receives the same tax treatment as the principal supply.

241. The test for determining whether one element of a supply is ancillary to another is thus whether it “constitutes for customers” an aim in itself or a means of better enjoying the principal service” (paragraph 30); the customer to be considered is “a typical consumer” of the supply in question (paragraph 29).

FDR

242. My attention was also drawn to *Customs and Excise Comrs v FDR Ltd* [2000] STC 672. In that case FDR performed a complicated series of inter-connected functions for banks in relation to credit cards which, again, would if viewed in isolation be variously taxable and exempt. The particular feature of Laws LJ’s judgment in that case (with which the other members of the Court concurred) was that it articulated the distinction between *CPP*-type cases in which there is a principal element of the supply to which other elements are ancillary and those in which there is “a congeries of supplies” which without being in a relationship of principal and ancillary “are integral to each other or ‘indissociable’”. To a considerable extent, the judgment anticipated the later CJEU decision in *Levob*: as can be seen from paragraphs 21 and 22 of the *Levob* judgment, the reasoning in *CPP* had focussed on a supply in which elements could be classified as principal and ancillary; *Levob* gave prominence to the concept of elements being “so closely linked that they form, objectively, a single, indivisible economic supply”. Such supplies give rise to a further problem: whereas a supply consisting of principal and ancillary elements will receive the tax treatment appropriate to the principal elements (and *CPP* gave no guidance on what to do if the principal elements did not all receive the same tax treatment if taken in isolation), where the elements in a single supply do not stand in the relationship of principal and ancillary some other means of determining the overall tax treatment must be found. Laws LJ expressed the matter as follows:

53 ... I am sure with very great respect that Lord Millett did not intend, in the first
four sentences of the passage I have just cited [in *C & E Comrs v Wellington
Private Hospital Ltd* [1997] STC 445 at 462], to indicate that in every case
5 where multiple supplies properly fall to be treated as a single supply for fiscal
purposes there is always a *single* or *unitary* dominant supply to which all the
other supplies in question are then regarded as ancillary. That, certainly, is one
case; but there may be others where the single supply that is arrived at for VAT
purposes consists, not in one supply to which others are ancillary, but in a
10 bundle of supplies none of which predominates over the others; the single
supply may, as it were, be an apex or a table-top. There is thus a difference
between what is "ancillary" and what is "integral": several supplies may be
"integral" to one another, with none predominating - the table-top - and this I
think is the situation contemplated by the phrase "physically and economically
15 dissociable", quoted by Lord Millett and appearing in some of the Court of
Justice jurisprudence, and by Lord Nolan's expression "the true and substantial
nature of the consideration given for the payment"....

54 While I hope these observations are helpful I think there is some danger of over-
elaboration and needless complexity in this field. We are not here concerned
with deep legal principle, but with the articulation of a fair and reasonable
20 approach to those cases where there is a question how should the consideration
given by a supplier for his reward be categorised for the purposes of VAT, when
there are multiple acts of supply involved The simpler it is the better, so long as
it is kept consistent with the doing of justice. With respect I apprehend (but I by
no means propose to lay down any rule) that where this sort of issue arises, the
25 first question to be asked may be couched as Lord Nolan put it: what is "the true
and substantial nature of the consideration given for the payment". That will
identify the apex or the table-top. The second question will be whether there are
other supplies which are ancillary to the core.

55 But there is, I think, one further complication. Where the core supply is on the
30 table-top model - a congeries of supplies which are integral to each other or
"indissociable" - it may not be self-evident from the description of the core
supply at which the court or tribunal arrives what its tax treatment should be. In
that case, it will be necessary to look again at the elements which comprise the
core, and arrive at a decision on the facts whether, numerically if nothing else,
35 the taxable or exempt elements predominate. Necessarily no such difficulty
arises where the core supply is on the apex model.

Levob

243. Case C-41/04 *Levob Verzekeringen v Staatssecretaris van Financiën* [2005]
40 ECR I-9433, [2006] STC 766 concerned the supply by a US company to a Dutch
company (Levob) of software – supplied on discs that were delivered to Levob in the
USA – together with the service of customising that software to Levob's
requirements. The discs and the customisation were charged for separately. The

issue was whether VAT was payable on the whole amount or only the fee for customisation. This in turn depended on whether there were one or two supplies and, if one supply, whether it was of goods or of services. That affected whether the supplies were to be treated as made in the EU, and thus taxable.

5 244. The Court both repeated its reasoning in *CPP* and extended it to cover cases other than those of principal and ancillary supplies. It reasoned as follows:

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

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

245. The Court went to find that it would be artificial to split Levob's transaction
into separate supplies of "software which, as it stood, was nevertheless of no use for
the purposes of its economic activity, and only subsequently the customisation, which
20 alone made that software useful to it" (paragraph 24). Turning to the question, on
which its tax treatment depended, of whether the supply was of goods or a service, the
Court reasoned as follows:

27 Secondly, with regard to the question whether such a single complex supply is
to be classified as a supply of services, it is vital to identify the predominant
25 elements of that supply (see, inter alia, *Faaborg-Gelting Linien*, paragraph 14).

28 Apart from the importance of the customisation of the basic software to make it
useful for the professional activities of the purchaser, the extent, duration and
cost of that customisation are also relevant elements in that regard.

29 On the basis of these different criteria, the *Gerechtshof te Amsterdam* correctly
30 concluded that there was a single supply of services within the meaning of
Article 6(1) of the Sixth Directive, since those criteria in fact lead to the
conclusion that, far from being minor or ancillary, such customisation
predominates because of its decisive importance in enabling the purchaser to
use the software customised to its specific requirements which it is purchasing.

35 30 Having regard to all these elements, the answer to Question 1(a) and (b) must be
that:

– Article 2(1) of the Sixth Directive must be interpreted as meaning that
where two or more elements or acts supplied by a taxable person to a
customer, being a typical consumer, are so closely linked that they form
40 objectively, from an economic point of view, a whole transaction, which it

would be artificial to split, all those elements or acts constitute a single supply for purposes of the application of VAT;

- 5 – this is true of a transaction by which a taxable person supplies to a consumer standard software previously developed, put on the market and recorded on a carrier and subsequently customises that software to that purchaser’s specific requirements, even where separate prices are paid;
- 10 – Article 6(1) of the Sixth Directive must be interpreted as meaning that such a single supply is to be classified as a ‘supply of services’ where it is apparent that the customisation in question is neither minor nor ancillary but, on the contrary, predominates; such is the case in particular where in the light of factors such as its extent, cost or duration the customisation is of decisive importance in enabling the purchaser to use the customised software.

15 **The parties’ submissions**

246. For OISE Mr Key submitted that the disputed supplies consist, either exclusively or at least predominantly, of TEFL. He pointed out that the participants typically teach EFL in their home countries and are not native speakers of the language. He submitted that it was OISE’s experience that the participants are primarily motivated by the opportunity to improve their English language skills. This was supported by the evidence of participants recorded on the video produced in evidence by OISE, compiled from a bank of footage shot by OISE for marketing purposes and comprising extracts of interviews with course participants. HMRC’s reliance on methodology content missed the point that EFL is typically taught through the medium of some other subject-matter, as was explained by Ms Williams. If the participants’ ambition were to learn about methodology, business or information technology, they would attend courses on them in their own countries. They came instead to Pilgrims, an internationally known language school, because they wanted to improve their English language skills.

30 247. HMRC’s reliance on the marketing materials also missed the point that whilst non-native teachers of English were anxious about the level of their English language skills, they did not want to admit to the employers that they wanted to attend an English language course. It was for this reason that the marketing materials rarely focussed on the courses’ English language content. It is the actual content of the courses, he submitted, that is relevant to determining whether they involve the supply of TEFL. Reliance was also placed on the fact of the courses being marketed on the Pilgrims website under the banner Pilgrims English language courses, and upon the statements on the website that I have referred to at paragraphs 81 to 85 above and upon Mr Wright’s annotations of the five example course timetables with the EFL skills being practised and acquired.

248. Mr Key adopted the tribunal’s definition of EFL in *Pilgrims* (set out at paragraph 233 above) and referred to HMRC’s acceptance in VAT Notice 701/30 that

EFL included all elements that are integral to the course, held out as such, and are the means by which it is intended to promote fluency in the use of the English language. As to the practicalities of modern TEFL, he referred to Ms Williams's evidence that I have set out in paragraphs 70 to 73 above.

- 5 249. In support of the submission that all the disputed courses were designed to provide EFL tuition, reliance was placed on the following:
- 10 (1) that the whole philosophy of Pilgrims courses, as described in evidence by Mr Gins and Mr Wright, was to make its students work hard on improving their English; reference was made to the evidence of Mr Gins and Mr Wright that I have referred to at paragraphs 82 and 98 above and Mr Wright's evidence about individual courses;
 - (2) the letters from teachers of the courses, participants in them and their employers (paragraphs 101 to 113 above);
 - 15 (3) the video of course participants in which, he submitted (and I accept), participants focussed on language improvement;
 - (4) Mr Wright's annotations of five course timetables;
 - (5) the funding of the majority of participants by EU grants, entitlement to which is dependent on the course having English language acquisition in the country of the target language;
 - 20 (6) that the trainers were qualified EFL teachers;
 - (7) the evidence of Mr Gins and Ms Williams that the sessions described by Messrs Edgoose and Hughes were typical of EFL provision;
 - (8) the arbitrary and misconceived distinctions drawn between courses in HMRC's decision letter, such as between Methodology and Language for Primary Teachers (accepted as TEFL) and Methodology and Language for Secondary Teachers (classified by HMRC as methodology); reliance was placed on the evidence of Mr Wright (see paragraph 128 above);
 - 25 (9) the evidence of Mr Gins and Ms Williams as to non-native teachers' anxiety about their language skills;
 - 30 (10) that participants had no doubt that they were attending an EFL course, as was evidenced by the presence of the tm logo on every document, the statements on the website that I have referred to at paragraphs 81 to 85 above and the fact (testified to by Mr Wright) that between 10 and 20% of participants are repeat attenders.
- 35 250. Mr Key submitted that HMRC's reliance on Mr Marshall's ratings of EFL content was without merit in the light of Mr Wright's evidence that he regarded the exercise as futile and Mr Marshall agreed that it was ridiculous.

251. Generally, Mr Key submitted that the evidence of the witnesses was more significant regarding the classification of the courses than the marketing material. He submitted that I could not properly reject evidence of OISE's witnesses as to their aims and their beliefs that had not been challenged by Mr Zwart in cross-examination.
5 He said that the evidence of MS Williams was particularly significant in view of her experience both in teaching EFL and in training teachers to teach EFL and her knowledge of what was involved in each.

252. It was submitted that the nature of the supplies was not affected by TETCL's marketing material; what mattered was what was in fact supplied. Reliance was placed on the opinion of the Advocate General in Case C-520/10 *Lebara Ltd v C & E Comrs* [2012] STC 1536 and dicta in *C & E Comrs v Loyalty Management UK Ltd* [[2013] STC 784 and *C & E Comrs v Reed Personnel Services* [1995] STC 588. The marketing material had evolved over the years but the content of the courses had stayed broadly the same.
10

253. For HMRC Mr Zwart submitted that the question whether it was methodology or TEFL that was "principal to the other" was a question of fact and degree on the evidence, to be perceived from the typical customer's perspective. Relying on the *Pilgrims* tribunal's definition of TEFL (paragraph 233 above), he submitted that TEFL was necessarily a positive activity of *imparting* the English language to the student and *assisting* him or her to take the language in. The student's acquisition of English language knowledge as a result of attending a course in the United Kingdom was not, of itself, the receipt of a supply of TEFL; otherwise, Note 2 would be otiose.
15
20

254. Mr Zwart relied heavily on the marketing materials on Pilgrims' website. He submitted that these are an objective indicator of a course's content, as were the terms in which the supplier described it in those materials; he pointed out that reference to TEFL was absent from the web pages describing the disputed courses, in contrast to those on EFL courses at Newbury Hall. The level of pre-existing knowledge of English required for participation on a course was also an indicator of whether it was primarily a methodology or a language improvement course.
25

255. Mr Zwart relied heavily on the schedule I have referred to (paragraph 16 above), describing it as "the evidence of OISE's own expert" and reminding me that Ms Williams (who did not know Simon Marshall, the trainer who had rated the EFL/methodology content) had described him as having a good reputation as a trainer as well as a sound reputation as a thinker. TETCL, he submitted, must be taken to have known its course content when the schedule was prepared in 2009 and the schedule could be taken as TETCL's judgment on the fact and degree question of the courses' respective content.
30
35

256. Mr Zwart invited me to apply a "primary purpose" test, which led to the conclusion that the EFL element of the disputed courses was for the better enjoyment of the methodology instruction.
40

My decision on EFL

257. I have mentioned that OISE’s primary case here is that all the disputed courses should be regarded as TEFL on the grounds that the methodology is the content being used in a content-based course of EFL. OISE’s alternative case is that I should decide course by course, on the basis of the material before me, whether TEFL predominated. I consider first whether I should accept OISE’s primary argument – which I have concluded I should not – and secondly the principles by which I should decide whether a course is to be classified as TEFL for VAT purposes.

OISE’s primary argument

258. I have set out the evidence at some length. Mr Key understandably emphasised Ms Williams’s expertise, which I have recorded above; he reminded me of Ms Williams’ expertise both in teaching EFL and in training language teachers and submitted that she understood the different concepts of TEFL and teacher training; she had read the materials, listened to the evidence and was firm in her conclusion that the methodology here was the content element in a supply of EFL.

259. It is only a minor point that Ms Williams had not read all the materials; she had been asked to give her view on the basis of her (extensive) general experience and had only read one or two Pilgrims brochures and had a “quick look at the website”. I do not believe that her view would have changed as a result of reading all the course materials; she was certainly fortified in it in the case of the sessions described by Messrs Hughes and Edgoose.

260. The more important point is that the VAT consequences of the relationship between instruction in EFL and instruction in teaching methodology on these courses are a matter of law, to be approached in accordance with the guidance in case-law.

261. Cases where a transaction “comprises a bundle of features and acts” are the subject of *CPP* and *Levob*; the judgments contain principles for determining both whether the transaction amounts to one ‘composite’ supply or to two or more separate supplies and what the tax treatment is to be. In the case of a *CPP*-type supply consisting of principal and ancillary elements, the ancillary elements share the tax treatment of the principal element; in the *Levob* situation of closely linked elements, a more complicated approach is required, but one that ultimately involves a test of “predominance”. I discuss that further below. In both cases the standpoint is that of the “typical consumer”.

262. The disputed courses are in my judgment transactions with mixed elements. Participants (to varying degrees, the detail of which I shall need to examine below) receive instruction both in the English language and in methodology; all of OISE’s witnesses testify that that is the effect of the courses. Ms Williams described the learning that students derive from the content element of a content-integrated language course as a “spin-off”, but she was clear in her view that there should be one. She also described the aim of the participants as being “to upgrade their *teaching and language skills*” (my emphasis) in an integrated way.

263. It therefore seems to me that it is the principles in *CPP* and *Levob* that must determine both the question of whether the single courses involve single or multiple supplies and that of their tax treatment. The fact that the former question is not controversial in this case does not alter the fact that it is by those principles that it is to be determined. To say that the disputed courses are, as a matter of VAT law, supplies of EFL on the grounds that an educationist so regards them – where the educationist’s view is not based on an application of *CPP* and *Levob* principles – would not be applying the law.

The applicable principles for determining the character of the supplies

264. *CPP* lays down a principle that is easy to grasp if sometimes difficult to apply: the supply takes its character from its principal element or elements; the principal and ancillary elements are distinguished by examining whether a particular element does “not constitute for customers an aim in itself but a means of better enjoying the principal service supplied”.

265. The paragraphs I have quoted from *Levob* indicate that finding a relationship of principal and ancillary between elements of a supply is not the only way of identifying a single supply; one also exists where the elements or acts are “so closely linked that they form, objectively, a single, indivisible economic supply, which it would be artificial to split” (paragraph 22). There is no doubt that one or other of these approaches leads to the conclusion that each of the disputed courses is a single supply.

266. When it comes to characterising the supply, the approach in *Levob* is not dramatically different from that in *CPP*: it is “vital to identify the predominant elements” (*Levob*, paragraph 27). In the case of the customisation of software in *Levob* the relevant matters were the importance of the customisation of the software, and the extent, duration and cost of the customisation (paragraph 28). At paragraph 29 the Court approved the conclusion of the national court, “on the basis of these different criteria”, that in the result the customisation predominated because of its decisive importance in making the software usable. The Court’s abstract ruling, however, at paragraph 30 was that customisation predominates where “in the light of factors such as its extent, cost or duration the customisation is of decisive importance in enabling the purchaser to use the customised software”.

267. The Court did not merely say that the customisation predominated because without it there would have been no usable software – the retort to which could have been that without the software there would have been nothing to customise. The cost, duration and extent of the customisation were relevant as well. Though the judgment does not discuss those matters, it is apparent from the Advocate General’s opinion (see paragraphs 15 to 17 of it) that the customisation cost more than the software and that it and the training of *Levob*’s staff to use it took some two years. The Court’s conclusion is neatly summarised in the headnote to the report in *Simon’s Tax Cases*: “Having regard to the extent, duration and cost of the customisation it was apparent that the customisation in the instant case was neither minor nor ancillary but, on the contrary, predominated. The customisation was of decisive importance in enabling

the purchaser to use the customised software. Accordingly, the single supply of customised software was to be classified as a supply of services.”

268. Mr Key made some submissions about “decisive importance”; he invited me to ask myself whether, in the event that one or other element was removed from the courses, participants would still attend. There was a tension between that approach and his submission that in *Levob*, in contrast to *CPP*, the criteria are objective. Moreover, this case is not one like *Levob*, where without both elements the customer would receive nothing usable at all. Furthermore, the question invites one to speculate and is unlikely to produce a confident or useful answer. Messrs Gins and Wright testified to the effect that the courses were presented as methodology courses because teachers were reluctant to ask to go on a pure language course; this suggests that hypothetical removal of the methodology would deter participants. Parts of the evidence testify to the importance attached to the methodology element of the instruction (see further below). I accept that the evidence likewise testifies to the importance attached by participants both to the opportunity to practice English intensively over two weeks and to the opportunity to receive instruction in it. But the question what would happen to attendance on Pilgrims courses if they were transformed into courses of pure language instruction with no “content”, or a content other than methodology, is not one that I can or find it useful to answer.

269. Nor is it practicable to separate the cost of the English language element of the disputed courses from the cost of the methodology element (unlike in *Levob* where there were separate prices for the software and the customisation), and nobody has tried to do so. I can, on the other hand, attempt to gauge the relative extent of the methodology and language instruction respectively. But the use of the words “in particular” in the ruling in *Levob* indicate to me that the list of factors prescribed in *Levob* is not exhaustive; what factors are relevant will depend on the facts of each case.

270. The test of the “typical participant” invites the tribunal judge to view the matter from such a participant’s perspective in the manner of a thought experiment – how such a participant would view the relationship of the elements in the supply that was made. It is not a matter of collating opinion survey evidence, though expressions of opinion as to importance are to be taken into account. As regards the website materials, Mr Zwart emphasised the degree of expectation of methodology instruction he said was engendered by the course pages; Mr Key in retort stressed the expectation of English language improvement engendered by the philosophy and similar pages. I do not find it helpful to speculate as to which material the typical participant might have seen in advance. The main value of the website material in this case is as evidence of the nature and content and intent of Pilgrims’ teacher training courses. It is to those I have to apply the tests in the case-law.

271. One matter on which counsel were of one view was that the exercise was a difficult one. Both of them used that word several times in the course of their closing submissions, Mr Key describing it as “very difficult and metaphysical exercise”. In that connection Mr Key reminded me of part of paragraph 54 of Laws LJ’s judgment in *FDR*, set out at paragraph 242 above, referring to avoiding over-elaboration and

needless complexity. Laws LJ went on to commend (without laying it down as a rule) Lord Nolan's test in another case of "what is the true and substantial nature" of the supply.

272. It seems to me that in the case of each disputed course I must ask myself first
5 whether for the typical participant receiving instruction in methodology is an aim in itself or is ancillary to ("for the better enjoyment of") a supply of TEFL and conversely whether receiving instruction in EFL is an aim in itself or is ancillary to a supply of methodology. If the answer to either question is affirmative, that determines the tax treatment. If not, then I must decide which element predominates
10 along the lines of the *Levob* judgment. Of the *Levob* criteria, those applicable to this case are the importance of each element (for I do not see why importance should only be relevant if it attains the level of "decisive") and its extent.

The scope of the exemption

273. Both counsel relied on the working definition used by the tribunal in the
15 *Pilgrims* case. I have set it out at paragraph 233. I accept Mr Zwart's submission that its focus is on the positive activity of "imparting" knowledge of English. I find it correct as a generalisation that a supply does not amount to teaching EFL insofar as it merely puts the participant in an English-speaking environment in which their English is improved as a result of their practising it, hearing others speak it or seeing examples
20 of written English in daily life.

274. The philosophy and principles referred to in the website material at paragraphs 81 to 85 above refer (in addition to *Pilgrims* being at the leading edge of methodology) to enabling the participant "to improve and update your own English skills"; other expressions used there are "refresh and improve" and "practise and refresh".
25 Providing an opportunity to do these things is not synonymous with "assisting the student" to take in, retain, understand, and think in English, as the tribunal put it in *Pilgrims*. I am not suggesting that the two concepts are mutually exclusive; practising speaking or listening will often be a part of course that is squarely TEFL; supervised practising in which mistakes are corrected is an aspect of TEFL (though
30 practising a methodology can equally be an aspect of learning the methodology).

275. The Court of Appeal's ruling on *inter alia* the accommodation, catering and excursions provided as part of *Pilgrims*' TEFL courses for general students and those teacher training courses that amounted to TEFL was that they were either ancillary or closely related to the supply of TEFL; this indicates that they are either not TEFL,
35 albeit closely related, or at best that they would not be regarded as TEFL if they stood alone.

276. Attempting to compile a catalogue of situations that amount to "imparting" English or "assisting" the student to take it in would be an example of the unduly complex, over-elaborate approach deprecated by Laws LJ in *FDR*. I think that the main
40 relevance of the (admittedly imprecise) distinction between TEFL and other aspects of the "total immersion in English" provided by *Pilgrims* is that, in gauging importance and extent, the importance that I must seek to gauge is that attached to receiving TEFL as

distinct from that attached to total immersion and the extent that I must gauge is that of TEFL.

Conclusions of fact that are of general relevance

5 277. Before descending into the details of each course, I make some findings as to facts that are of general relevance to the exercise.

10 278. First, I find that the typical participant in a Pilgrims teacher training course is a non-native speaker of English who teaches EFL abroad. Secondly, such a typical participant will see an improvement in their English language skills over the period of the course, though this will be more so in the case of participants in two week courses than one week courses. This will be the result of spending two weeks in an English-speaking environment, conversing in English, reading and writing in English and attending several hours of classes conducted in English, as well as of any instruction in the English language that is given during the classes. Thirdly, the degree of language improvement will in general be greater in the case of participants whose starting level of English is lower.

15 279. Fourthly, I find that the typical participant attaches value to this improvement; this is a conclusion of common sense, fortified by the evidence, including the evidence about language anxiety; as I have already indicated, I find it natural that teachers of English who are not native speakers will be concerned to demonstrate good proficiency in the language themselves, and in particular not to make mistakes in class. The scientific writings that I have referred to indicate that this is indeed the case.

20 280. Though I shall review this finding in relation to each of the courses I consider, I also find as a general matter that the typical participant attaches importance to the instruction in methodology that is provided in the methodology element of courses.

25 281. In this regard I have considered the contents of the letters produced by Mr Wright. They are helpful as indicators of the attitude of the typical participant in that their authors are in general (though Dr Laviosa is speaking from offering a personal perspective) speaking either about categories of participant (where the letters relate to participants from particular countries) or, in the case of letters from Pilgrims trainers, about participants in general. I bear in mind that the authors did not give evidence, but I have no reason to doubt the sincerity, and can form my own view of the plausibility, of what they say.

30 282. In the case of the Junta of Castilla y León, there is a difference of view between Mr Arribas and Mr Hernández Gañán; Mr Arribas states that he is seeking methodology improvement as much as language improvement; he is the person with whom Mr Wright met annually to identify his department's needs and, on Mr Wright's evidence, the person who chose the courses that he would offer to his teachers; he was writing in response to Mr Wright's request to explain why the department sent teachers to Pilgrims. I do not know why Mr Hernández Gañán wrote over a year later (in March 2013), in terms which tend to indicate suggesting that he

only sought language improvement. Mr Wright said he thought Mr Arribas had asked Mr Hernández Gañán to write, but Mr Wright did not claim to know and it seems odd that this should be done 16 months after Mr Arribas had himself written. Most of the letters are undated, but I note that Dr Laviosa also wrote in March 2013, which suggests that a further request for such letters had been made. Mr Hernández Gañán does not comment on Mr Arribas's letter.

283. I conclude that within the education department of Castilla y León value was attached to both elements, though not by all officials. I find that Mr Arribas was seeking methodology improvement in choosing courses following discussion with Mr Wright, notwithstanding his observation that it is impossible to separate the two elements, and find it reasonable to conclude that the teachers whom he sent shared that aim.

284. Mr Philipsen of Early Birds wrote that he sent teachers for both methodology and language, but the accent was more on the language and the whole point was total immersion in English – in other words, that importance was attached to both, but more importance to English language improvement. His statement that the teachers had only basic English must be seen in context: the Early Bird teachers received specially tailored closed group sessions, whereas higher levels of English language ability are stipulated in the many of the website materials that I have reviewed above.

285. Dr Laviosa's letter indicates to me that that she chose the Pilgrims courses for both the professional development and the English language learning opportunities that they provided, and that the result has been an improvement in both her teaching skills and her English language skills. I conclude that she attaches value to both. I read Dr Chynoradska's letter as attaching importance to both methodology and language improvement; for the unqualified teachers she referred to, language improvement was the higher priority. Mr Marshall says that almost all students give improvement in English as the reason for attending, but his reference to "if they were only interested in methodology" implies that they are interested in it too. I think a fair reading of his letter is that students attach more importance to language improvement. Mr Pugliese ascribes to participants the dual aims of improving their methodology and their language skills, without saying that either predominates. Ms Kryszewska recommends Pilgrims on account of the dual focus on teacher training and language improvement, without indicating an order of priorities.

286. Of the eight respondents, six or seven (all but Mr Hernández Gañán and possibly Mr Marshall) appear to me to attach importance to the methodology element; three of those (including Mr Marshall) ascribe more importance to EFL, albeit that in two cases that is because of the particular level of English proficiency of the teachers being sent.

287. In the course of his oral evidence Mr Gins related an anecdote which he regarded as supporting the EFL character of the courses, but I find somewhat double-edged. It related to a course entitled Teacher Training for Music Teachers (not one of the courses that are before me) that was being sponsored by the Spanish government. One of the participants told Mr Gins that he was really dissatisfied that no musical

instruments were being used on the course. Mr Gins had to point out to the participant that the Spanish government had specifically said that the course was not to be a music course but a language course for music teachers. That is evidence that Spanish government (it is not clear whether this meant the Junta of Castilla y León) were interested in language acquisition, but it is equally evidence, albeit anecdotal, that the participant in question was interested in improving his music teaching.

288. I also find that in the years from 2008 to 2012, between one half and three quarters of participants were funded by EU funds. It is a condition of this funding that the courses involve “foreign language acquisition” in a country that uses the language. It was faintly suggested that this meant that the courses had been recognised by the EU as language courses, but I do not interpret the term “language acquisition”, which was used consistently by Mr Wright as well as others such as Mr Philipsen of Early Birds, as a requirement that the course be recognised as a language course. I have no doubt that the courses involve language acquisition, but this does not prove that they are EFL courses.

289. I accept the evidence that all the trainers delivering the disputed courses are qualified EFL teachers.

290. Finally, I have come to view that it is possible to “rate” (as I have called it) the respective proportions of methodology and EFL content in courses. Mr Marshall, an expert in EFL and training of EFL teachers, did so (which is why I would have been assisted by an explanation of how he approached the task, as well as of its limitations); OISE’s own materials distinguish between EFL and methodology instruction, even in a case of courses with a mixed character: examples are Teaching Advanced Students (mentioned in paragraph 122 above) and Methodology and Language for Secondary Teachers – described as giving an opportunity to improve one’s own English but focussing far more on methodology (see paragraph 125 above). I think it is possible in principle to compare the extents to which a course teaches methodology and the English language respectively, despite the teaching being delivered in an “integrated way”. The exercise is more easily accomplished by an expert in these disciplines than by a tax tribunal judge, which is why I attach some importance to Mr Marshall’s ratings.

Conclusions on the courses

Methodology and Language for Secondary Teachers

291. Though Mr Wright said that the “content and intent” of this course were exactly the same as in Methodology and Language for Primary Teachers – a course recognised by HMRC as TEFL – the materials do disclose some differences. Whereas the Primary Teachers’ course requires only a lower intermediate level of English, the Secondary Teachers’ course requires an intermediate level. The Primary Teachers’ course is described as “both a language improvement and a methodology course”, whereas the Secondary Teachers’ course was described as giving an opportunity to improve one’s own English but focussing far more on methodology. Mr Marshall had rated the EFL content of the primary teachers’ course at 80%, with

20% methodology; he had rated the secondary teachers' course as 50% of each. Comparison of the example timetables, however, shows a very considerable degree of overlap in terms, at least, of the titles of sessions.

5 292. This was one of three courses that had been amalgamated in the week of Messrs Hughes and Edgoose's November 2012 visit to Pilgrims, the others being the Primary Teachers' course and Creative Methodology for the Classroom. The majority of the participants had enrolled on the secondary teachers' course and the officers were told that the course plan approximated to the secondary teachers' course; I find that that was so.

10 293. I have already summarised what the officers recorded. Mr Gins and Mr Wright accepted that it was an accurate record of what they observed and I find that that is so. I have mentioned the diametrically opposed view of the officers and of OISE's witnesses of what the sessions amounted to, almost amounting to incredulity on the part of the OISE witnesses at the officers' professed opinion. As I suggested in the
15 course of argument, that can be because one viewpoint sees the session as a deployment of EFL methods by way of the teaching EFL while the other sees it a demonstration of EFL methods by way of teaching methodology. I do not consider that those professing either point of view are doing so even remotely in bad faith.

20 294. What has struck me, however, is the extent to which the participants spent time practising the methods of EFL instruction that were being demonstrated – devising questions about the *Starry Night* picture, recognising words in a recording of sung English (the Don McLean song), considering the antonyms of a number of words, preparing a piece of writing in response to the Phil Collins song, discussing the portraits, composing a story inspired by another picture. There were also instances of
25 specific instruction in English, such as the correction of a grammatical error and the discussion of modal verbs. I accept Mr Gins's description of this as typical of an EFL class.

30 295. On the other hand, I am not at one with Ms Williams in her assertion that there was not a single item of methodology. First, there was the exercise on the Monday morning of the week, of choosing from a list supplied the things the participants would like to get from the course. The items the participants had selected from the list (see paragraph 218 above) were of a methodological nature. During the morning session attended by the officers there was a discussion of the importance of classroom rules. At the end of the session there was a discussion of how the participants would
35 use the activities they had practised in their own teaching.

296. I have little evidence of the views of the individual participants on that course of the importance to them of methodological instruction. There is nothing to displace in this instance my general conclusion that participants accord importance to it; support for this being true of these participants is provided by the things they had said they
40 wanted to get from the course in the Monday morning exercise.

297. I am unable to conclude that for the typical participant in Methodology and Language for Secondary Teachers methodological instruction is not an aim in itself

but merely ancillary to receiving language instruction. Nor do I conclude that for the typical participant receiving language instruction is not an aim in itself: the course web page refers to it as an opportunity to improve one's English; the HMRC officers' notes indicate that by November 2012 "Methodology and Language" was in the course title (though it was not at the time of the 2009 web page). One of my general conclusions is that non-native EFL teachers attach importance to improving their English, for the reasons I have given above. The dividing line between an ancillary element of a supply and a joint principal element is a fine one, but my conclusion on the balance of probabilities is that it is crossed in the case of the language element of this course.

298. I therefore turn to consider, as best I can on the materials available to me, the relative extent and importance of language and methodology elements of this course. As to importance, the fact that the target group's level of English may be only intermediate supports the importance of the language element. Ms Williams's evidence that the techniques practised were standard elements of a CELTA course – that is to say, a course equipping an EFL teacher in this country, is some indication that foreign EFL teachers may already be familiar with similar techniques. As to extent, there is the statement on the web page that the course focusses far more on methodology than on language improvement, while Mr Marshall's 50/50 rating is inconclusive. Mr Wright has said that, while "playing down" the language element of courses, the web materials are accurate; I infer this to mean that they undersell the English language element by understatement or omission rather than misstatement. What to my mind tips the balance of probability in favour of this being predominantly a language course is the amount of time that the class observed by the officers spent practising the EFL methods being presented rather than merely than being told what they were and how to use them.

Creative Methodology for the Classroom

299. This was another of the courses that had been amalgamated into the course of which the HMRC officers observed a part. The fact that the list of topics from which participants had chosen appears to come from the programme of this course is the only information I have bearing on how far the amalgamated course may have approximated to this course; the evidence is that it approximated to the Secondary Teachers' course that I have just discussed. The web page contains no suggestion of a language element, going so far as to describe the course as a methodology course and to suggest that it occasionally attracts native English speakers. I take this as an indication that in Pilgrims' eyes the course is valuable even to someone who will derive no language improvement from it; that value must lie in the methodology acquired.

300. On the other hand, it is targeted at experienced teachers whose language proficiency may only be intermediate; I take these as the typical participants. I would expect an experienced teacher to have some knowledge of methodology. The course is targeted at teachers with the same (intermediate) level of English as the Secondary Teachers' course, and I find it probable that the method of instruction in particular teaching methods likewise involved practising them. Mr Wright's description in the

evidence that I have summarised in paragraph 131 above of participants “observing how our teachers teach them English language” is undoubtedly influenced by Mr Wright’s view that everything done in all the disputed courses amounts to TEFL – indeed, in commenting on the session observed by the HMRC officers he said that because the target audience was non-native speakers of English, it had to be an English language course – but it also gives some support to the view I have formed.

301. I am struck by the absence of any reference to English language improvement in the website materials but, on the basis of the evidence before me, I find that the typical participant receives a supply of instruction in both methodology and EFL; the EFL instruction takes the form of supervised practising of the techniques deployed. In my judgment the instruction in English will be for such a participant, with only intermediate proficiency in English, an aim in itself. I find that acquisition of methodology is also an aim in itself but, given that the typical participant is an already experienced teacher with intermediate English or above, and the totality of the evidence of such participants’ desire to improve their English, I find that supervised practising of English is of importance at least equal to that of learning additional teaching methods. On the basis of the items in the example timetable, I find that the majority of the sessions will have involved practising the methods. My conclusion on the balance of probability is that this is predominantly an EFL course.

20 *Building positive group dynamics*

302. This one-week course is described as targeted at, among others, native and non-native teachers of English and other subjects and requiring an upper intermediate to advanced level of English (in Mr Wright’s words, a high level of English for parts of the course). The activities, session titles and expected results seem to me to be entirely to do with methodology. Mr Wright makes the point that, on account of the complex psychological theories and methods for dealing with group behaviour covered by the course, participants necessarily learn new language and vocabulary, without which they could not understand or participate in it. By that analysis, in my judgment, the new language content is for the better assimilation of the methodology content. I do not consider that the typical participant, highly proficient in English, would regard instruction in the methodology content as not an aim in itself, but merely ancillary to the acquisition of new English vocabulary. Mr Marshall’s 50/50 rating is inconclusive. My conclusion on the balance of probability is that this is not an EFL course, applying the *CPP* test. Even assuming that language and methodology are joint principal elements, I find that methodology instruction predominates on *Levob* principles; it is in my judgment no less important to the typical participant, and greater in extent.

Making the most of a course book

303. The course requires intermediate English. The web page describes activities mainly related to methodology; Mr Wright describes the course as being to help teachers make the most of course books by teaching them how to create and use exercises while keeping their students’ interest. Mr Wright’s observation that a prerequisite to this is greater and more skilled use of English, on the grounds that only

exercises that effectively employ the language are likely to keep students' interest, does not assist me in evaluating the extent to which the course delivers improved English, nor does it support a conclusion that the typical participant would regard the instruction in the use of course books as ancillary to instruction in the English language. The fact that the two suggested alternative courses are described as more general methodology courses suggests that Pilgrims view the typical participant in this course as someone looking for a methodology course. Mr Wright views the course as an example of methodology and EFL tuition being inseparable and intertwined, but that begs the question of how much EFL tuition is given. I have therefore attempted to gauge from the example timetable how much time is devoted to methodological topics such as choosing a course book and how much to topics, such as working with grammar, that might involve practising of exercises in the manner observed by the HMRC officers.

304. The topics covered on the first two days of the course seem to me to be methodological, as does the review of course books on the Wednesday. The remaining activities of the Wednesday, Thursday and Friday and "supplementing the course book" would appear to involve practising techniques, whilst the remainder of the sessions seem to me predominantly to involve instruction in methodology. I am not able to conclude that either element is ancillary to the other or that one is more important than the other to the typical participant. The course seems to me to involve methodological instruction to a greater extent than language improvement. I find that it is predominantly a methodology course.

Neuro-Linguistic Programming for Teachers

305. This course, targeted at teachers and others, requires an upper intermediate to advanced level of English. My impression from the timetable is that the majority of the sessions involve instruction in NLP; there are few sessions whose titles suggest that they involve the sort of activities that the HMRC officers witnessed, though the summary recommends participants spending extra time working on their skills in groups. Mr Wright accepts that "certain aspects of the course do not constitute orthodox English language tuition". His statement that the course is aimed at teachers whose English language needs to improve significantly in order for them to be able to teach advanced communication and interpersonal skills in English leads him to the conclusion that the methodology aspects of the course are necessarily underpinned by the teaching of EFL. I find it is that the typical participant is an EFL teacher, rather than a member of another profession. Given that the target group includes teachers of all age groups, I am unclear to what extent they need to be able to teach advanced communication and interpersonal skills in English.

306. The only indication Mr Wright gives of how this is done is by way of his annotations of the timetable with English language skills practised and acquired. I can accept that these are practised during the sessions but, given the upper intermediate to advanced level of English proficiency of the participants, the scope for acquisition of them during the sessions must necessarily be limited. The English language skills to which he refers in his statement are in part acquisition of the

vocabulary necessary to understand the methodological concepts involved, which I regard as ancillary to the methodology instruction.

307. Mr Marshall gave the course's content an inconclusive rating of 50/50. My impression of the content of the course is such that I would not regard the methodology content as being, for the typical participant, ancillary to English language instruction; I fully accept that the participants practised their English, but an opportunity to practise English is not the same as instruction in the language, particularly where it took place among groups of participants in extra time. I accept that the receipt of English language instruction would be for the typical participant an aim in itself. Even if it was equal in importance to the instruction in NLP despite the participants' already upper intermediate to advanced level of English, I cannot conclude on the material that it predominated in extent.

British Life, Language and Culture

308. The "non-linguistic content" element of this course is not methodology of teaching but rather British life and culture, but that is an immaterial difference. The course again demands a high level of proficiency in English – upper intermediate to advanced. Mr Marshall rated its EFL content at 50%. Mr Wright's description of the course – one focussed upon improving awareness and usage of colloquial and contemporary English, achieved through the study of British life, language and culture and listening and talking to guest speakers – seems to me to be consistent with the web page, whose description includes references to an update on current English usage and an opportunity to practise English, and which offers language-focussed courses as alternatives. The sample timetable additionally includes pointers to language content. The talks by five outside speakers are each followed by an analysis of content and language use in the talk. The first Friday devoted to listening, seems to me to be geared to improving participants' awareness of and ability to identify and understand a variety of English accents as well as their knowledge of how accent and use of words relate to the class system. These are sophisticated aspects of the English language, acquisition of which would, I consider, represent an improvement in English language knowledge even for an already advanced speaker.

309. This course seems to me to have the dual aims of educating participants in British life and culture and in some fairly advanced aspects of the language – in particular how different outside speakers from different backgrounds and (on the Friday) people of different social groups use language. Though the course is described as targeted at teachers generally and teachers of British culture, I would expect the typical participant to be an EFL teacher, since Pilgrims teacher training courses as a whole are typically attended by EFL teachers and I find it improbable that this course attracts a different constituency. I would expect the typical participant to have aims corresponding to what I have found are the aims of the course. I would not expect a typical participant who is a teacher of English (and not for example a sociologist) to regard any education in English language as ancillary to education in life and culture; I would instead expect them either to regard the education in life and culture as ancillary to education in advanced aspects of English language knowledge, or at least to regard both as principal features of the course. I reach the

same conclusion, whether by a *CPP* analysis or a *Levob* analysis. In *Levob* terms, the education in language is at least as great in extent as the teaching of life and culture, and greater in importance.

Leadership

5 310. This one week course is targeted at teachers with an already advanced level of English. Mr Marshall rated its EFL content at 80%, but the information available to me does not enable me to conclude that EFL predominates within it. The website describes it as a practical course in leadership; I cannot discern any particular EFL content from the website description.

10 311. Mr Wright says that in addition to teaching leadership the course “provides the teachers with an advanced handle of the English language”; his approach to the course seems to be the same as his approach the Positive Group Dynamics course which I have discussed above, since he says that without updating the language skills of participants it would not be possible to teach them in English how to understand and
15 work with complicated concepts and examples of leadership. He describes the methodology element as incidental to EFL teaching, but in my view language teaching that is aimed at making the content of the course comprehensible is in *CPP* terms ancillary to the delivery of the content. I infer that the sessions will have involved discussing aspects of leadership in English, but even if doing this is equally
20 important for participants with advanced proficiency in English as acquiring an understanding of leadership, I find on the balance of probabilities that the instruction improved their understanding of leadership to a greater extent than their already advanced English language skills. I therefore find that the predominant element of the supply is instruction in methodology.

25 *Certificate in teaching English for Business People*

312. In the case of this course there is a degree of tension between the description of the course in the website materials and in Mr Wright’s evidence and, to some extent, within the web page itself. The course summary describes it as a training course for
30 teachers in the methodology of and approach to teaching business English, emphasising that it is not a language course in business English but aims to provide participants with state of the art practices in teaching business language. On the other hand Mr Wright says Pilgrims have to ensure that the English skills of participants are adequate to pass the LCCI examination and that candidates tend to need to be taught the business-specific and general vocabulary necessary to pass the exam. Some
35 indications of language content are given in the example timetable, which refers to sessions on business English versus general English, on teaching business lexis and teaching the language of meetings, e-mails, etc. Mr Marshall gave the course a 50/50 rating.

313. I have no doubt that successfully sitting the LCCI exam will be an aim in itself
40 for participants. I accept that passing the exam is likely to require a degree of knowledge of the type of language that one is seeking a qualification to teach. The statement on the web page that the course is not a course in business English indicates

that it does not aim to cover the complete syllabus of business English; Mr Wright's statement that candidates tended to need to be taught the business-specific and general vocabulary necessary for the exam is not an assertion that all of them did so, nor an indication of the extent of the necessary vocabulary. I was not shown the LCCI exam syllabus. I am therefore in difficulty establishing the extent of the language needs of the typical participant. I note, however, that the course requires only an intermediate level of English and there is no stipulation of prior acquisition of business vocabulary. The target group includes those already teaching business English, who would be expected to have most of the vocabulary already, but also those wanting to expand into the field.

314. I do not consider that the typical participant would regard the instruction in state of the art practices in teaching business language as merely ancillary to instruction in business language; I find that, for such a participant, acquiring knowledge of business English teaching methodology – which the web page implies is a requirement of passing the LCCI exam – is an aim in itself. I also find that acquiring the necessary language, for those who lack it, is an aim in itself. Both are, in *Levob* terminology, of decisive importance” to passing the exam.

315. My lack of knowledge of the degree of participants' deficiency in the necessary business English disables me from evaluating the relative importance to the typical participant of business English instruction and methodology instruction. Mr Marshall, who might have some experience of that, gave the course an inconclusive 50/50 rating. I therefore proceed by gauging the extent of the two forms of instruction on the basis of the example timetable.

316. The first day of the course, dealing with the exam itself, is not clearly devoted to either. The second day has elements of both. The remaining three days of the week seem to me to involve predominantly language instruction; I do not see how teaching the language of different types of business communication involves different teaching methods, so I infer that the subject-matter of those days is largely the language itself. The first three days of the second week seem to me to involve a mixture of methodology (such as motivating and challenging the learner) and linguistic matters (such as exploiting authentic texts). The two final days do not lend themselves to an analysis of proportions of EFL and methodology content. By this analysis, language teaching predominates in extent. I find on the balance of probability that this is an EFL course.

35 *Humanising testing*

317. This course is designed for teachers with intermediate or higher English. The web page gives little indication of EFL content. Mr Marshall gave its EFL content a relatively low rating of 30%. Mr Wright describes the primary aim of this course as being to enable teachers to make the testing of the students' English more humanistic and ultimately, a less stressful process; this seems to me to lie in the realm of methodology. Though he refers to the course improving and updating the teachers' English language skills as well as giving them ideas for more effective testing, he is not specific as to how the improvement of language skills is brought about. In my

judgment the primary element of the course from the point of view of the typical teacher attending it will be the instruction in testing. This view is supported by perusal of the example timetable and by Mr Marshall's rating. If, contrary to my view, receiving instruction in English language is an aim in itself for the typical participant and of equal importance, I conclude on the basis of the timetable and Mr Marshall's rating that methodology instruction predominates in extent.

Teaching English through Multiple Intelligences

318. Again requiring an upper intermediate to advanced level of English, this course appears from the website materials that I have reviewed earlier to be concerned with methodology at a fairly sophisticated level: of the activities I have listed at paragraph 154, only the artful use of the metaphor seems to me to have any potential EFL content. The session titles in the example timetable do not suggest EFL content either. However, Mr Marshall rated the EFL content of the course at 50%; Mr Wright has annotated the example timetable with EFL skills acquired; these include acquisition of new terminology associated with multiple intelligences theory.

319. At paragraph 156 I have set out Mr Wright's written evidence as to how the course provided a great deal of EFL tuition. This was not expanded on in oral evidence. It is not clear to me how identifying students' progress and learner styles is a matter of improving the participants' already upper intermediate to advanced level of proficiency in English, nor how the course does so apart from involving acquisition of new terminology associated with multiple intelligences theory. That seems to be to be ancillary to the delivery of the content. The evidence does not enable me to conclude that for the typical participant the acquisition of knowledge about multiple intelligences theory is ancillary in *CPP* terms to instruction in the English language. I accept Mr Wright's categorisation of the language skills practised during the sessions, but my evaluation is that the degree to which they are acquired or improved in an already upper intermediate or advanced speaker is less than the degree to which methodological knowledge is acquired by the participant. I conclude that this is predominantly a methodology course.

Teaching English through Music and Visual Art

320. Here again there is a degree of tension between the website materials – which describe this course as a methodology course of interest to teachers of other languages as well as English, requiring an intermediate or higher level of English and occasionally attracting native English-speaking teachers – and Mr Wright's description of it as aimed at non-native primary and secondary teachers whose command of English needs to improve significantly for them to be able to incorporate an appreciation of music and the visual arts into their English language classes. Mr Marshall rated the EFL content at 50%.

321. The website materials do not suggest that the course is about teaching an appreciation of music or visual arts, but rather about using music and visual arts as teaching aids in EFL classes. The titles of the majority of the sessions lead me to conclude on the balance of probability that they involve the practising of teaching

techniques that employ music or visual art, and that this will involve supervised practising of the English language in the way I have found to be the case with the Secondary Teachers' course. I conclude that the receipt of both instruction in methodology and of instruction in English are aims in themselves for the typical participant, but that, given participants' possibly only intermediate level of English proficiency, instruction in English predominates in importance. My perusal of the example timetable leads me to conclude on the balance of probability that it predominates in extent. I therefore conclude that this has the predominant character of an EFL course.

10 *The Expert Teacher*

322. In this case the website materials seem to me to be somewhat self-contradictory. They present the course as targeted at experienced native and non-native English-speaking teachers of English and teachers of other subjects who are interested in the practical application of psychology; the course requires an upper intermediate to advanced level of English. The summary describes it as a highly intensive methodology course, and the programme and example timetable suggest a very methodological content, spoken grammar being the only exception. The description of the course as suitable for native speakers indicate that Pilgrims consider it valuable for its methodology content in the absence of any English language improvement. The aim of the course is nevertheless said to be to provide opportunities to revitalise participants' knowledge of English and reinforce their confidence in using the language and the expected result is that participants will be more knowledgeable, confident and fluent users of English. On the other hand, it is also presented as the right course for those who want to broaden their range of classroom techniques and learn about psychology.

323. Mr Marshall rated the EFL content at 30%. Mr Wright's comment that "you simply cannot be an expert teacher without having advanced English language skills" is no doubt accurate, but I note that the target group already have an upper intermediate to advanced level of English. Having studied the example timetable I am unable to conclude that the typical participant would regard the improvement in their methodology skills as incidental to instruction in English. I consider that such a participant would regard the receipt of English language instruction as also an aim in itself. Given that the target participant is both an experienced teacher and upper intermediate to advanced English speaker, I cannot conclude that either predominates in importance. But I find that instruction in methodology predominates in extent, on the basis of Mr Marshall's rating and my perusal of the example timetable. I conclude that this course is predominantly of a methodological character.

What's New in Language Teaching

324. The website presents this course as a highly intensive methodology course targeted at native and non-native English-speaking teachers and requiring an intermediate or higher level of English. Even allowing for playing down of English language elements, this presents the course in a highly methodological light. The course content, example timetable and expected result of attending the course have

largely to do with methodology. Some of the session titles (such as teaching through the arts) suggest that techniques would be practised in the manner observed by the HMRC officers. However, Mr Marshall rated the EFL content at only 30%. Mr Wright's description of the course – as having the central aim of updating teachers in current trends on language teaching and “as such” being largely focussed upon looking at developments in the English language, updating the teachers' own English skills and learning new and current vocabulary – seems to me to involve a nonsequitur. I do not consider that a typical participant would regard the instruction in new teaching methods as ancillary to instruction in the English language, nor on the other hand regard the language instruction as other than an aim in itself. I consider that they would regard both as important, but Mr Marshall's rating of 70% methodology supports my impression that methodology instruction predominates in extent. I conclude that this course is predominantly of a methodological character.

Dealing with Difficult Learners

325. The website materials present this course, targeted at teachers and others and requiring an upper intermediate or higher level of English, in terms relating very much to developing an understanding of the phenomenon of difficult learners and on methods of dealing with them, including “developing rapport and effective communication”. Mr Marshall rated the EFL content of the course at 30%. Mr Wright's evidence about the course focusses on teachers' English language skills in the difficult learner context. He did not give any oral evidence on this topic and I have some difficulty in understanding his written evidence insofar as it goes beyond repeating material from the web page; this may be because he deals fairly briefly with what is no doubt a complex matter. What he says presumably relates to the item in the web materials that relates to developing rapport and effective communication, but there is nothing in the web material that indicates the giving of instruction in English language skills for dealing with difficult learners. I do not understand him to dispute that the other items described in the web materials are features of the course as well.

326. I accept Mr Wright's characterisation of the typical course participant as teacher, but I do not consider that for such a participant the education about the difficult learner phenomenon is ancillary to instruction in English language skills for dealing with difficult learners. I have some doubt that instruction in English language skills is for the typical participant a principal element of the supply, but even assuming that is, I do not consider that it would be regarded by a participant with at least upper intermediate English as more important than instruction in the phenomenon of difficult learners on which the course programme concentrates. My perusal of the web page and Mr Marshall's rating lead me to the conclusion that methodology instruction predominates in extent and I conclude that the course is predominantly one of methodology.

Improving English through Humour

327. This one-week course targeted at native and non-native English-speaking teachers with an upper intermediate to advanced level of English is described on the website as a methodology course, but Mr Marshall rated its EFL content at 80%. Mr

Wright denied that the course even had a methodology element, describing it as a relatively technical form of language tuition in subtleties of manipulation of the language usually alien to non-native speakers. Having perused the web page, I largely agree with that description, though I do not agree that the course has no methodology content at all: topics such as analysis of different types of humour and maintaining a fun-loving atmosphere seem to me to relate to methodology. The example timetable includes sessions in which I infer that participants will practise humorous English, such as using urban myths in the classroom and retelling urban myths from homework; homonyms, homographs and homophones as a source of humour; and exploiting jokes and witticisms in the classroom. I conclude that instruction in both methodology and English will be aims in themselves for the typical participant, but I find it more probable that its predominant character is EFL on the basis of Mr Marshall's rating and my perusal of the timetable.

Creative Drama for the Language Classroom

328. This one-week course requires upper intermediate or higher proficiency in English; participants engage in a series of practical drama-based activities for use in the language classroom. This course seems to me very much a borderline case. Mr Marshall gave its EFL/methodology content an inconclusive 50/50 rating. The suggested alternatives are a "more language focussed" course and a methodology course. Mr Wright says that participants' command of the English language needs to improve significantly for them to be able to introduce drama techniques into their English classes; this is on the ground that teaching drama requires a high level of English, since it involves interpreting scripts, memorising dialogues and encouraging students to create their own plays in English. However, the web page presents the course as suitable for teachers of pupils of all ages and levels, thereby including ones with levels of English significantly inferior to their teachers'; classroom drama at those levels is likely to be of a relatively unsophisticated type.

329. The issues I have to decide concern the extent and importance of drama instruction and language instruction received by participants. The evidence does not enable me to conclude that the typical participant in this course with at least upper intermediate proficiency in English would regard either of those as merely ancillary to the other or regard one as more important than the other. As to their respective extent, I note that the course sessions involved practising drama techniques. Some of the sessions in the example timetable, such as teaching pronunciation and working on the voice, suggest activities that improve fluency and accuracy; the session on improvisation skills appears by its nature to be one that will work the participants' English by requiring them to improvise speech or dialogue in English; the group project, which I take to involve acting a short drama, is also likely to work the participants' English. As a matter very much of impression, I have concluded that supervised practising of English predominates in this course and that it accordingly has a predominantly EFL character.

Coaching skills for teachers

330. This course is aimed at teachers of English and others; it requires an advanced level of English and a background in NLP. It is said to focus on new skills and practices for educators. The suggested alternatives are Dealing with Difficult
5 Learners, Leadership or NLP for Teachers. The programme of activities and the example timetable suggest a strongly methodological content. Mr Marshall rated the EFL content at 30%. Mr Wright refers (see paragraph 178 above) to ongoing language training, in that new skills and concepts are introduced during the course, and testifies that the teachers' use and understanding of the English language is
10 practised and improved, referring also to the impossibility of separating the teaching of advanced language skills from that of coaching skills and the need for a sound grasp of the English language.

331. The requirement of an advanced level of English indicates to me that that participants will already have a sound grasp of English; in my judgment the typical
15 participant will not regard the instruction in coaching skills as ancillary to instruction in the English language. To the extent that participants acquire new vocabulary connected with coaching skills, that amounts to an improvement in their English language skills but seems to me to be largely ancillary to acquiring the skill of coaching.

332. I am prepared to assume that the typical participant will regard acquisition of English language knowledge and skills as an aim in itself, so I consider which element – instruction in coaching or instruction in English language – predominates. Even assuming the two are of equal importance to the participant despite their already advanced level of English, I find on the basis of Mr Marshall's rating and the example
20 timetable that the instruction is predominantly in coaching.
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From Teaching to Training

333. This course, requiring an upper intermediate to advanced level of English, is aimed at experienced language teachers who want to become teacher trainers and those new to teacher training who want to develop their skills further. The typical
30 participant will therefore attend the course for one or other of those specific purposes. Again the website materials suggest a strongly methodological content. Mr Marshall rated its methodology content at 70% and the EFL content at 30%.

334. Mr Wright stresses the need in teacher training for advanced and updated language skills and says that the course aims to improve the teachers' command of the
35 English language; in doing that it also teaches them some of the essential skills required to lead a team of teachers. I take this to mean that the imparting of teacher training skills is the means by which participants' language skills are enhanced. I do not consider that a typical participant would regard matters in this way. In my judgment the typical participant will have joined the course because they either want
40 to move into teacher training or are new to it and wish to improve their skill in it. I do not believe that such a participant will regard the learning of teacher training skills as other than an aim in itself. I find that, even if the instruction in training and in English

language are of equal importance to the participant, the instruction is in teacher training to a greater extent than in EFL, on the basis of Mr Marshall's rating and my perusal of the example timetable. My conclusion on the balance of probability is that methodology predominates.

5 *Teaching English for Academic Purposes*

335. This course is for experienced teachers of general English with (I find) advanced proficiency who wish to specialise in teaching English to students who are preparing to enter institutions of further or higher education where English is the medium of instruction, and in particular gain the skills needed to design and run a course in English for academic purposes. The course summary says that the course provides participants with background theoretical principles in English for academic purposes and the skills needed to implement them in the classroom. Mr Zwart relied on this as indicating that the course was in methodology.

336. The participants' students will, I find, require a high standard of English in order to study successfully and I find it unsurprising that their teachers (the participants) will themselves have a high level of proficiency in English. Mr Wright makes the point that such students will make high demands of their teachers and says that the teachers need to improve their own language skills significantly in order to meet them. The issue for me is to what extent the course teaches language skills and to what extent it teaches the methodology of teaching such students.

337. Looking at the example timetable, it seems to me that the sessions are on skills needed by a student studying at further or higher education level: using sources and note-taking, for example. Whilst I appreciate that the participants will be teaching those skills to people who will apply them to studying in English as a non-native speaker, it is not apparent to me how the course improves the already advanced English language proficiency of the participants – how, for example such participants need greater English language proficiency in order to teach their students how to recognise lecture structure and how the course gives it to them. I have had no explanation from Mr Marshall of his 80% EFL rating of course. Since I am unable to understand how the course instructs participants in English beyond being part of a fortnight's total immersion, I am unable to conclude that it predominantly involves EFL.

Transactional analysis for Teachers

338. The course syllabus presents this course as a methodology course presenting the core principles of transactional analysis (Mr Wright's explanation of which I have recorded at paragraph 191), requiring an English language proficiency between upper intermediate and native; the key course contents have an entirely methodological flavour and Mr Marshall rated it as 100% methodology. In my judgment Mr Wright's description of the relationship between the Language presents the language element (acquisition of language necessary to understand their theories analysed during the course) as ancillary to the acquisition of the methodology. The typical participant, for whom acquisition of knowledge of transactional analysis would be the principal

5 element of the course, would in my judgment regard the acquisition of the related language and vocabulary as ancillary to that. If, contrary to my view, the participant would see that language acquisition as an aim in itself, I find that the methodology element nevertheless overwhelmingly predominates, on the basis of the course syllabus and Mr Marshall's rating.

Creative Writing

10 339. The printed syllabus for this course describes it as being for teachers of English of varied levels of proficiency (from intermediate to native), particularly those preparing classes for examinations in which writing is important. Mr Wright said it was primarily for non-native primary and secondary school teachers who need to improve their own language skills significantly in order to teach their students how to write more creatively and with greater accuracy in English. He added that, while the course touched upon structure and other aspects of creative writing, the skills taught inevitably included English language skills. Mr Marshall rated it as 100% EFL.
15 Perusal of the key course contents indicates to me that the course involved practising various forms of creative writing, though it had some methodology elements such as NLP modelling and the teacher's role in error correction.

20 340. The course was thus apt to improve both participants' English skills and their teaching skills. I conclude that the typical participant would regard both forms of improvement as ends in themselves and of comparable importance. But I conclude from the syllabus and from Mr Marshall's 100% rating of the EFL component that EFL instruction predominated.

Pilgrims 35th anniversary conference

25 341. It was, rightly, common ground between counsel that I should treat the conference also as a single supply. As I have noted above, it lasted five days and included evening events as well as plenary sessions and workshops. It was residential. The workshop topics have considerable similarities with some of the topics in the disputed courses. They have a highly methodological flavour.

30 342. The question I have to answer is whether the conference amounts to a supply of teaching English to those attending. I infer that, in common with the courses, the typical participant was a non native speaking teacher of English as a foreign language. I infer that the plenary sessions were lectures, on topics other than how to speak English. I do not consider that the opportunity to listen to a lecture delivered in English in itself amounts to provision of TEFL; nor does the provision of an
35 opportunity to network and debate in seminars. My information on the workshops is comparatively brief; some of them appear to approximate in subject-matter to some of the courses I have reviewed; the majority of them appear to be to be methodological on the basis of the text of the conference programme and (in some cases) of the apparent similarity of their content to courses that I have considered above.
40 Moreover, it would be a matter of speculation which three out of the fifteen of them any participants attended. The only conclusion can reach on the information available to me is that admission to the conference did not amount to a supply of TEFL.

Decision

343. For the reasons I have given, I allow the appeal to the extent stated in paragraph 5 above.

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

**NICHOLAS PAINES QC
TRIBUNAL JUDGE**

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