FIRST-TIER TRIBUNAL
TAX CHAMBER

By remote video hearing, by MS Teams

Appeal references: TC/2023/08321, 08410, 15909, 15908

Keywords: notice of requirement of security; PAYE and National Insurance; insolvency of underlying business; whether Tribunal's jurisdiction is supervisory or appellate; D-Media considered; reasonableness of the notices; difference between future liabilities and pre-existing debt; impact of subsequent changes of circumstances

Heard on: 8 January 2026
Judgment date: 12 February 2026

Before

TRIBUNAL JUDGE KEITH GORDON
MRS CHARLOTTE BARBOUR

Between

(1) MICHAEL STEFAN DUMA
(2) HARRIOT K ROCKEY

Appellants

and

THE COMMISSIONERS FOR HIS MAJESTY'S REVENUE AND CUSTOMS

Respondents

Representation:

For the Appellants: Mr Andrew Young of Counsel

For the Respondents: Ms Olivia Donovan, litigator of HM Revenue and Customs' Solicitor's Office

DECISION

INTRODUCTION

1. The form of the hearing was V (video) by MS Teams. The documents to which we were referred are:

(1) a hearing bundle containing documents, a witness statement by Mr Duma and some authorities (457 pages).

(2) a witness statement by HMRC Officer O'Donnell (dated 22 October 2024).

(3) a skeleton argument submitted on behalf of HMRC.

(4) a skeleton argument submitted on behalf of the Appellants.

(5) a witness statement by Ms Rockey (together with 37 pages of exhibits).

(6) 12 pages of further exhibits relating to Mr Duma.

2. We also received and took into account the following documents submitted after the hearing:

(1) a 30-page submission on behalf of the Appellants; and

(2) a 5-page submission on behalf of HMRC.

3. In addition, there were different versions of a supplementary authorities bundle circulating. It was agreed, however, that the only further case law we needed to focus on at the hearing itself was the Tribunal's decision in *D-Media Communications v HMRC* [2016] UKFTT 430 (TC) ("*D-Media*"), which was common to all versions of the supplementary authorities bundle.

4. Prior notice of the hearing had been published on the gov.uk website, with information about how representatives of the media or members of the public could apply to join the hearing remotely in order to observe the proceedings. As such, the hearing was held in public.

OUTLINE OF THE APPEALS

5. Although the Tribunal originally allocated six references to the appeals, there are only four decisions that were under appeal (all purportedly made, subject to the point made at ¶27 below, on 24 April 2023):

(1) A Notice of Requirement given to Influence Network Ltd made under the Value Added Tax Act 1994, Schedule 11, paragraph 4(2)(a) requiring the provision of security of £40,932.25 for 24 months ("the VAT notice");

(2) A Notice of Requirement given to Influence Network Ltd made under the Income Tax (Pay As You Earn) Regulations 2003 (SI 2003/2682), regulation 97N and the Social Security (Contributions) Regulations 2001 (SI 2001/1004), Schedule 4, paragraph 29N requiring the provision of security of £96,439.34 (PAYE) and £79,307.61 (NIC) (a total of £175,746.95) for 24 months ("the PAYE/NIC notice (IN)");

(3) A Notice in materially identical terms to the PAYE/NIC notice (IN) given to Ms Rockey ("the PAYE/NIC notice (HR)"); and

(4) A Notice in materially identical terms to the PAYE/NIC notice (IN) given to Mr Duma ("the PAYE/NIC notice (MD)".

6. The Notices identified at ¶5(2), (3) and (4) above imposed joint and several liability on the three recipients.

7. Influence Network Ltd ("the company") has since gone into receivership and, by notice dated 28 October 2025, the Official Receiver notified the Tribunal that it wished to withdraw

the appeals made by Influence Networks Ltd (i.e. the notices referred to at ¶5(1) and (2) above). As a result, we did not consider those decisions at all, except to the extent that they were relevant to the remaining matters before us.

8. Furthermore, Mr Duma and Ms Rockey both purported to appeal against copies of the VAT notice (i.e. copies of the notice issued to the company that HMRC sent by way of information to the company's directors). As HMRC have no powers to serve such notices on persons other than taxable persons, we concluded that Mr Duma and Ms Rockey were not the recipients of such notices and, therefore, there was nothing for them to appeal against. To the extent that there remain live appeals by Mr Duma and Ms Rockey in relation to VAT, we strike out those appeals as a consequence of Rule 8(2) (mandatory strike-outs in cases where the Tribunal lacks jurisdiction, there being no other court or tribunal with jurisdiction). The parties agreed with that course of action.

9. As a result, we were required only to consider the Notices referred to at 5(3) and (4) above.

10. For the reasons explained below, we decided that:

(1) the decisions to issue the Notices are upheld (but for a different amount);

(2) in light of further information made available to HMRC after the decisions to issue the Notices, the Notices are now set aside.

A BRIEF ADJOURNMENT

11. Mr Young was instructed only two days before the hearing and this led to Ms Rockey preparing a witness statement very late, as well as the late provision of the additional documents relating to Mr Duma. We considered it appropriate for the hearing to be paused for just under an hour to permit Ms Donovan to become more fully acquainted with the new material and to take instructions, as required. When the hearing resumed, Ms Donovan confirmed that she had had sufficient time to assimilate the new material and we decided, in the light of the Tribunal's Rule 2, to proceed with the hearing.

THE TRIBUNAL'S JURISDICTION

12. Early in the resumed hearing, however, it became clear that there was a divergence of views as to the Tribunal's jurisdiction on an appeal such as this: broadly, whether our role is merely supervisory or whether we have a full appellate jurisdiction. It was Mr Young's submission that the latter applied, whereas Ms Donovan was arguing that the former applied. Indeed, HMRC's written submissions to the Tribunal prior to the hearing stated blankly that our role was supervisory only, without even suggesting that there was any room for debate.

13. For example, HMRC's statement of case contained the following passage:

> JURISDICTION
>
> 25. In considering this appeal it is respectfully submitted that the Tribunal is limited to considering the reasonableness of the Commissioners' decision to issue the Notice of Requirement. The amount of the security may not be varied on appeal.

14. And, in a similar vein, Ms Donovan's skeleton argument summarised the issue before us thus:

> ISSUES
>
> 20. Whether HMRC's decision to issue the VAT and PAYE/NIC Notice of Requirements is reasonable and proportionate.

15. The question of jurisdiction was something that we wished to hear submissions on, particularly as it was clear that it formed a central plank of Mr Young's case. However, we were concerned that Ms Donovan had not prepared for the hearing on the basis that the Tribunal might have an appellate jurisdiction. We do not wish to criticise Ms Donovan for the approach that she took in this regard; we recognise that this could be a consequence of HMRC's internal training. Furthermore, it would have been difficult to discern from the Appellants' grounds of appeal (or, indeed, the grounds submitted on behalf of the company) or the Appellants' skeleton argument that the Appellants were necessarily relying on the Tribunal having a broader appellate jurisdiction.

16. Not only was this an important subject on which it would have been unfair to expect Ms Donovan to make submissions on the hoof, but we also recognised that Ms Donovan might need to revise her proposed lines of cross-examination of the Appellants to reflect the additional issues that might be relevant to our decision if it transpired that we considered our jurisdiction to be broader.

17. We therefore decided that HMRC be permitted to send the Tribunal written submissions in relation to the jurisdiction issue subsequent to the hearing. However, we had to decide whether to adjourn the hearing at that initial stage or to proceed as far as we could at the hearing itself and to deal with any remaining matters by way of written submissions.

18. Ms Donovan sought an adjournment but Mr Young made clear his preference for the latter course.

19. We decided to proceed with the hearing, subject to some procedural modifications to assist Ms Donovan. Our principal reasons for doing so were:

(1) the cost impact on the Appellants who could ill afford to instruct Counsel for a further hearing; and

(2) our view that the main point about jurisdiction on which Mr Young was going to rely derived from *D-Media*. Not only was this a case involving HMRC (and of which they would clearly be aware) but it was also a case on which HMRC were actually relying (although it was not included in their bundle of documents).[1] HMRC (as a Department) should have been prepared to deal with the point and it would be unfair on the Appellants (and Tribunal users generally) if the hearing had to be adjourned for this reason.

20. The procedural modifications that we proposed were:

(1) That Ms Donovan's cross-examination of the Appellants be deferred until after the lunch break, so as to give Ms Donovan the opportunity to undertake further preparatory work. Accordingly, we would hear from the witnesses out of order (HMRC's witness being heard before lunch).

(2) That HMRC be permitted to make written submissions after the hearing to address us on the question of jurisdiction.

21. Prior to cross-examining the Appellant's witnesses, Ms Donovan confirmed that the reordering of the witness evidence had given her sufficient additional time to prepare.

22. In the end, we directed that both parties be permitted to send in written submissions after the hearing: first from the Appellants and, two weeks later, from HMRC. In their post-hearing submissions, the parties' positions remained unchanged.

[1] After the Appellants appealed against the notices issued to them, HMRC conducted an internal review and, in the section concerning quantum of the security sought, the reviewer noted: "The method of calculation set out in this guidance has been found to be acceptable to Tribunals (*D-Media Communications Ltd*)."

23. In those post-hearing submissions, Mr Young cited from *D-Media* extensively, but noted that the First-tier Tribunal in that case (Judge Berner sitting alone) did not have the benefit of submissions from the taxpayer. He continued:

> Paragraphs 20-21 of *D Media* are clear that the FTT should re-make the decision(s) on the basis of the information available to the FTT at the date of the hearing. This view was approved by Judge Mosedale in *Quadragina*, see paragraph 101. …
>
> It follows that the FTT has something akin to full appellate jurisdiction over the NOR [Notice of Requirement].

24. In contrast, Ms Donovan's post-hearing submissions stated as follows:

> The Tribunal's jurisdiction in PAYE/NIC security appeals is supervisory, not fully appellate. HMRC maintains that *D Media Communications Ltd v HMRC* does not create a general right for the Tribunal to re-determine the amount or terms of security. The Tribunal must assess whether HMRC acted lawfully and reasonably on the information available at the time of the decision.
>
> This approach aligns with the VAT security cases *John Dee* and *Peachtree*, and with later PAYE/NIC authority such as *Blocksure Ltd (in liquidation) & Ranvir Saggu v HMRC* [2024] UKFTT 397 (TC).
>
> HMRC's internal legal guidance also reflects the supervisory model. It explains that:
>
> (a) the key statutory test is revenue protection, and
>
> (b) the Tribunal will not normally remake an NOR unless HMRC made a public law error.
>
> …
>
> While *D Media* discusses the power to vary an NOR, it does not displace the established supervisory standard. Later decisions, including *Blocksure*, confirm that the Tribunal's role is to test legality and reasonableness—not to re-set security unless the original decision was unlawful.

25. We return to our determination of the question of our jurisdiction below.

CERTIFICATES OF SERVICE

26. Our bundle [**HB/381—383**] contained three certificates of service signed (by typed name) confirming that "on the 21st April 2023, I [i.e. the signer of the certificates] served [the Appellants] with a Notice of Requirement to give Security of which this is a true copy". It was not immediately clear to us which Notices those certificates related to, a difficulty aggravated by the fact that our hearing bundle placed those three certificates immediately after copies of the four decision letters (and two additional copies of the company's VAT Notice as sent to the Appellants in their capacity as officers of the company). However, Mr Young confirmed that the Appellants were not taking any point about service of the Notices and, therefore, we were not required to resolve this matter. We would nevertheless recommend that, in future, bundles that contain certificates of service make it far clearer which documents are being certified as having been served.

27. In addition, we were unsure why the certificates were dated 21 April 2023 advising of service of Notices of Requirement dated three days later. Furthermore, Mrs O'Donnell's witness statement says that she actually signed the Notices on 20 April 2023 and allocated them to another officer (the officer referred to in the preceding paragraph) for serving. Again, this was not something that we needed to resolve as Mr Young was not taking any point about the procedural validity of the Notices. Nevertheless, we would point out that we felt uncomfortable

that an HMRC officer was knowingly signing a legal document on 20 April 2023 when the document was dated some four days later, particularly in circumstances when the documents were actually despatched in the interim. As with many documents issued by HMRC, the date of service can often be of critical importance, and this is often determined by a Tribunal using the date shown on the document as the best clue as to when the document was despatched into the postal system. In our view, if a document displays a particular date, that should actually reflect the date on which the document was authorised by the relevant officer and on which steps were taken to effect service to the intended recipient.[2]

FINDINGS OF FACT

28. We heard live evidence from both Appellants and from Mrs O'Donnell, the HMRC officer who gave all four of the Notices originally under appeal.

29. We found all witnesses to be honest and credible. Any difficulties that they had answering questions related not to any apparent desire to avoid the point being made but simply to a lack of appreciation regarding a point or the passage of time.

30. We make the following findings of fact based on a combination of the documentary and oral evidence.

31. In respect of the company, we make the following findings of fact:

(1) The company was founded in 2017 by Mr Duma and Ms Rockey who became directors.

(2) Its business was to match businesses who wish to advertise through the use of social media influencers with the influencers themselves.

(3) Its turnover derived from the client businesses who paid a fee for the advertising services, out of which the company then paid the influencers.

(4) In the company's accounts, the influencers' fees were recorded as cost of sales.

(5) The company's 2021 and 2022 balance sheets show "Shareholders' funds" as £742,592 and £747,186 respectively. These figures were overwhelmingly made up of share capital (£1,375) and the company's share premium account (£723,254) with only the balance representing accumulated profits (£17,963 and £22,557 respectively). So far as the company's assets were concerned, there was very little cash at the bank on the balance sheet dates (£1,020 and £441 respectively), the current liabilities of the company were considerable (£80,752 and £156,505 respectively) and vastly outweighed the company's debtors (£36,424 and £9,000 respectively).

(6) Those balance sheets show significant sums as "stocks" (£148,050 and £123,750 respectively) but we were unsure what these related to as the company did not buy or sell goods in any traditional sense. In any event, the bulk of the company's assets as shown on the balance sheets are described as intangible assets and, in 2021 and 2022, were recorded as standing at £687,850 and £820,500 respectively. Mr Duma explained that this related to software acquisitions made by the company for the running of its business.

(7) We make no finding as to whether the accounting treatment adopted by the company conforms with GAAP but we conclude that the balance sheet, when viewed as

[2] We recognise that post is sometimes collected from HMRC offices before the end of officers' working days. For the avoidance of doubt, we do not suggest that an officer should redate documents which have missed that day's postal collection. It is our view that a document should reflect the date on which the officer completed work on the document and put the document in his/her/their "out tray" (or whatever equivalent receptacle is used in the officer's location), with the expectation that that document will then leave the office either later that day or on the next working day.

a whole, shows a company whose finances were precarious and, pending a significant influx of additional revenue, whose survival depended on external funding.

(8) The company's directors did not initially draw any salaries from the company. However, salaries started to be drawn from October 2020 when the company registered its payroll with HMRC. There were at most seven people on the payroll but this was reduced as the company's financial difficulties continued.

(9) On 21 September 2022, HMRC Debt Management wrote to the company warning of impending winding up action for debts of £110,384.35.

(10) Although Mr Duma was repeatedly confident of securing lucrative contracts for the company, these failed to materialise. Consequently, the company became unable to pay some of its creditors, in particular HMRC in relation to VAT and PAYE/NIC.

(11) The company's difficulties were compounded by the effects of the Covid-19 pandemic, personal illness of both directors, and also family difficulties (bereavement and serious illness) suffered by the company's accountant.

(12) Accordingly, the company failed to pay the PAYE/NIC due on the salaries it was paying. In relation to VAT, the company not only failed to account for this to HMRC but it also failed to submit timely VAT returns. When Mr Duma sought to obtain a time to pay arrangement with HMRC, he was refused because of the outstanding returns. Mr Duma (with the assistance of his accountant who was dealing with family difficulties) managed to file the outstanding VAT returns. However, by the time that he was then able to speak again with HMRC to arrange a time to pay arrangement, another VAT return had become late and this led to HMRC again refusing to grant a time to pay arrangement.

(13) The company filed its PAYE returns in a timely fashion.

(14) HMRC issued the company with a warning letter stating that a VAT Notice of Requirement would be sent if full payment of the VAT then outstanding (£22,161.13) was not made by 30 October 2022. That warning letter was dated 22 October 2022. That VAT related to the VAT due for the VAT quarters ending 30 September 2020, 31 March 2021, 31 December 2021 and 30 June 2022. The letter stated that the security sought would (in the company's case) be £27,611.13, representing the company's average six-monthly VAT liability.

(15) HMRC also issued the company with a warning letter stating that a PAYE/NIC Notice of Requirement would be sent if full payment of the PAYE and NICs then outstanding (£104,266.10) was not made by 30 October 2022. That warning letter was similarly dated 22 October 2022. The letter stated that the security sought would be £132,272.10, representing the company's average four-monthly PAYE/NIC liability (£28,006.00) and the pre-existing arrears.

(16) The sums (referred to at (14) and (15) above) outstanding were not paid by 30 October 2022, nor were they paid at all.

(17) The company was then issued with Notices of Requirement of security as outlined at ¶5(1) and (2) above.

(18) The £40,932.25 sought by the VAT notice related to an estimated six-monthly liability of £5,450.00 together with the then pre-existing VAT debt of £35,482.25.

(19) The £175,746.95 sought by the PAYE/NIC Notice related to estimated four-monthly liabilities of £18,853.00 (PAYE) and £16,834.00 (NIC) together with the then pre-existing debts of £77,586.34 (PAYE) and £62,473.61 (NIC).

(20) Eventually, HMRC issued a winding-up petition as the sole creditor of the company. The company was placed in the hands of the Official Receiver.

32. In respect of Mr Duma, we make the following additional findings of fact:

(1) Mr Duma has considerable financial difficulties – as at February 2023, his mortgage was in arrears of over £27,000 and, in 2025, he was the subject of an order for repossession.

(2) On 8 February 2022, HMRC sent Mr Duma a PAYE/NIC Notice of Requirement seeking over £240,000 in relation to another company of which Mr Duma was at the time an officer. That was the only other company with which Mr Duma was actively involved at the time.

(3) Mr Duma was not and is not in a position to satisfy that notice. The company to which that notice relates is now in liquidation.

(4) Mr Duma was not and is not in a position to satisfy the Notice issued to him that is before us.

(5) Mr Duma is not someone who would try to avoid speaking with HMRC's Debt Management team. He spoke with them on several occasions in an attempt to sort out time to pay arrangements.

(6) Mr Duma was the person who took responsibility for the company's payroll.

(7) Currently, Mr Duma is a director of two other active companies. One is in the "crypto blockchain space" and is currently in development. It has no employees and does not operate a payroll in relation to its directors. It is VAT registered and up to date with its VAT affairs. Mr Duma is the sole director of this company.

(8) The second company is one where Mr Duma is a 45% shareholder seeking to develop a media platform. Mr Duma is one of three directors. This company is also fully up to date with its tax obligations.

(9) Both companies are in the early stages of development

(10) In relation to the blockchain company, Mr Duma will occasionally charge the company for his services on a consultancy basis (i.e. assuming that the payments are not categorised as employment income, the company is not liable to be registered for PAYE and NIC as it does not have an active payroll).

33. In respect of Ms Rockey, we make the following additional findings of fact:

(1) Ms Rockey held between 7 and 8% of the share capital of the company.

(2) Although appointed a director when the company was first established, Ms Rockey did not take an active role in relation to the company's financial position.

(3) We find that Ms Rockey's role in the company was very much subsidiary to that of Mr Duma and that, for example, it was his choice (with her consent) that she be appointed a director of the company. As Ms Rockey said, "Mike [i.e. Mr Duma] said he had run businesses in the past and said he understood how businesses run and he could do the things the business needed to do": Ms Rockey's role was focusing on client relationships which she was comfortable with.

(4) Ms Rockey had previously obtained a law degree and studied company law in her final year. Whilst recognising that being a director brought some responsibilities, Ms Rockey did not fully appreciate the full consequences of what being a director meant. To the extent that Ms Rockey took into account what she had learned from her law studies, it was the naïve belief that the separate legal personality of a company actually protected her.

(5) Approximately one year after first drawing a salary from the company in 2020, Ms Rockey became unwell.

(6) Hoping for a recovery, Ms Rockey continued to receive her full salary until 2022 at which point it was announced to the company's board (which we infer to be made up of external advisers and investors) that Ms Rockey was stepping down from an active role in the company. Her salary was then reduced and, again in 2023, before being stopped altogether in March 2024.

(7) Prior to October 2023, Ms Rockey described her role in the company as Chief Operations Officer on LinkedIn. However, we accept that Ms Rockey did not log into LinkedIn regularly and, therefore, that the entry did not accurately reflect Ms Rockey's role in the company after she became unwell, so that the LinkedIn profile had become out of date.

(8) In a similar vein, Ms Rockey did not initially update Companies House concerning the change of her role within the company. She was unaware of the need to do so. It was only in May 2023 (in consequence of having received the Notice of Requirement as an officer) that she did so. Nevertheless, Ms Rockey was not identified as one of the company's directors in its June 2021 and June 2022 accounts (finalised in October 2022 and September 2023): Mr Duma was shown as the sole director serving in the years under review.[3]

(9) Ms Rockey did not have the funds with which to meet the requirement for security at the time that the Notice was given. She still does not have such funds.

(10) Ms Rockey is still undergoing medical treatment.

(11) Ms Rockey is not a director of either of the two other companies with which Mr Duma is currently a director.

(12) Prior to the Notices of Requirement being given, HMRC made one attempt to call Ms Rockey. After being told that the call was from HMRC, Ms Rockey said that she was not prepared to take the call. We accept what Ms Rockey said was her reason for this course of action. Ms Rockey told us that she assumed that the call was a phishing exercise by someone fraudulently purporting to be in a position of authority and, accordingly, took the precaution of terminating the call.

(13) Ms Rockey did not expect to receive the Notice of Requirement and immediately upon receipt went straight to Mr Duma. She was overwhelmed. Mr Duma said that he would seek legal advice straight away, he was sorry and that he would deal with the matter.

34. In respect of Mrs O'Donnell's decision to issue the Notices of Requirement to give security, we make the following findings of fact:

[3] It appears to us that the statement that Mr Duma was the sole serving director in the year ended 30 June 2021 was by all accounts inaccurate.

(1) Mrs O'Donnell took into account the fact that the company had not made any payments of PAYE and NIC despite the company's first PAYE returns being made in 2021 (and the payroll scheme being set up in October 2020).

(2) Mrs O'Donnell had previously spoken with Mr Duma who stated that the company had recently won a large contract and that he would speak to HMRC's debt management team to set up a time to pay arrangement. This led Mrs O'Donnell to give the company further time. However, no payments were being made and still no time to pay agreement was reached. Mrs O'Donnell concluded that there was a risk to the revenue.

(3) It was Mr Duma whom Mrs O'Donnell would initially try to speak to. As a result, when he was unavailable, it was only on one occasion (prior to giving the notices) that Mrs O'Donnell tried to call Ms Rockey who (as noted above) thinking it a phishing exercise terminated the call.

(4) When deciding which officers should be treated as running a company and issued with notices imposing joint and several liability, Mrs O'Donnell confirmed that she will look only at Companies House records.

(5) In April 2023, Mrs O'Donnell saw that the company's only officers were the two Appellants.

(6) Mrs O'Donnell did not know of Ms Rockey's illness prior to the issue of the notices.

(7) Mrs O'Donnell was not aware at the time of tax arrears being experienced by, and the Notices of Requirement issued in relation to, Mr Duma's other company. Mrs O'Donnell focused her research on Influence Network Ltd alone.

(8) Mrs O'Donnell did not believe the company was insolvent because, despite its tax debts, she had been advised by Mr Duma of a big contract coming in and he had reassured her that HMRC would be paid in full.

(9) Mrs O'Donnell did not speak to her colleagues in Debt Management; nor did she consult the electronic records of communications between Debt Management and Mr Duma.

(10) Although the Notices included an amount reflecting prior debt owed by the company to HMRC, Mrs O'Donnell did accept that any security would not have the effect of clearing that prior debt: that is a matter for the Debt Management team to recover.

THE LEGISLATIVE SCHEME

35. The Income Tax (PAYE) Regulations 2003 (SI 2003/2682) were amended in 2012 by the insertion of a new Part 4A (constituting regulations 97M to 97X). Under those regulations (so far as is relevant to this case):

(1) regulation 97N permits an officer of HMRC to require a person to give security for the payment of amounts in respect of which an employer is or may be required to account to HMRC in relation to PAYE (and, in particular, under regulations 67G, 68 or 80);

(2) such a notice may be given if the officer "considers it necessary for the protection of the revenue" (regulation 97N(1));

(3) under regulation 97P(1), persons who may be required to give such security include the employer and any officer of the employer;

(4) where more than one person is required to give security, those persons are jointly and severally liable to give that security (regulation 97P(2));

(5) under regulation 97V(1), such recipients of a Notice of Requirement may appeal against the Notice or any requirement in it;

(6) under regulation 97V(5), on any appeal to the Tribunal against the Notice, the Tribunal may confirm the requirements in the Notice, vary the requirements or set aside the Notice;

(7) the general provisions in the Taxes Management Act 1970 governing the conduct of appeals applies to any such appeal (with minor modifications).

36. Section 684(4A) of the Income Tax (Earnings and Pensions) Act 2003 provides that failure to comply with a Notice of Requirement amounts to a criminal offence.

37. It was common ground that the National Insurance legislation is to similar effect. Accordingly, we refer only to the PAYE legislation, but our conclusions will apply to both codes.

38. Although we are not directly concerned with the equivalent rules for VAT, which are drafted differently, we consider it helpful to summarise their operation as this will inform our consideration of the question of our jurisdiction to which we will shortly turn. The VAT rules had been in place for many years before Notices of Requirement were introduced to the PAYE code.

39. The VAT rules are primarily found in the Value Added Tax Act 1994, Schedule 11, paragraph 4(2).

(1) These permit HMRC to give a taxable person (i.e. not including officers) a notice requiring security "for the payment of any VAT that is or may become due".

(2) Such a requirement may be imposed if HMRC "think it necessary for the protection of the revenue".

40. So far as appeals against a VAT Notice of Requirement are concerned:

(1) Section 83(1)(l) provides that an appeal lies to the Tribunal in respect of "the requirement of any security under … paragraph 4…(2) of Schedule 11".

(2) Section 84, which contains further provisions relating to appeals, makes no additional provision concerning the nature of any appeal under section 83(1)(l).

CASE LAW ON THE TRIBUNAL'S JURISDICTION IN CASES CONCERNING NOTICES OF REQUIREMENT TO GIVE SECURITY

41. In *D-Media*, Judge Berner said the following concerning the Tribunal's jurisdiction:

> **The Tribunal's jurisdiction**
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> 16. This is, I was told, the first appeal to come to the Tribunal in respect of a Notice of Requirement to provide security in respect of PAYE or NICs. The nature of the Tribunal's jurisdiction accordingly falls to be considered. As D-Media did not appear and was not represented, I heard no proper argument on this subject, and what follows therefore is the view I have adopted with the benefit only of limited submissions.
>
> 17. Some assistance may be drawn from the position on the exercise by HMRC of its powers to require security for VAT, in respect of which some parallels were drawn in Ms Brown's submissions [Ms Brown was HMRC's presenting officer in the *D-Media* case]. Those provisions are found in paragraph 4 of Schedule 11 to the Value Added Tax Act 1994. Paragraph 4(2)

provides that if they think it necessary for the protection of the revenue, HMRC may require a taxable person, as a condition of his supplying or being supplied with goods or services under a taxable supply, to give security, or further security, for the payment of any VAT that is or may become due from (a) the taxable person, or (b) any person by or to whom relevant goods or services are supplied.

18. It is clear that, in relation to security for VAT, the jurisdiction of the Tribunal is supervisory only (*John Dee Ltd v Customs and Excise Commissioners* [1995] STC 941). Thus, on such an appeal, the task of the Tribunal is to consider whether HMRC had acted in a way in which no reasonable panel of commissioners could have acted or whether they had taken into account some irrelevant matter or had disregarded something to which they should have given weight. In doing so, the Tribunal is confined to considering facts and matters which existed at the time HMRC made their decision (*Customs and Excise Commissioners v Peachtree Enterprises Ltd* [1994] STC 747). The Tribunal might also have to consider whether the Commissioners had erred on a point of law. The Tribunal cannot, however, exercise a fresh discretion; the protection of the revenue is not the responsibility of the Tribunal or the court. If the decision is found to have been flawed, the appeal will be allowed, and HMRC may make a further determination if they so choose.

19. As Ms Brown fairly acknowledged, whilst the need for protection of the revenue is common to VAT security cases and those with which this appeal is concerned, there is a significant difference in the way the legislation has been drafted in each case. There is nothing in the VAT security provisions corresponding to the powers expressly given to the Tribunal, in Reg 97V(5) of the PAYE Regulations, to vary the requirements in the notice.

20. Accordingly, although I accept that the Tribunal's jurisdiction in relation to security for PAYE and NICs is to some extent supervisory in nature, it is an appellate jurisdiction. The supervisory approach, that is having regard to the reasonableness of HMRC's decision is, in my view, limited to the matters referred to in Reg 97N, namely whether the giving of security is necessary for the protection of the revenue. It is not for the Tribunal itself to second guess that exercise of judgment, so long as it has been exercised reasonably within the terms expressed in *John Dee*.

21. All other aspects, on the other hand, are matters on which the Tribunal is entitled to form its own view, and on doing so to confirm, set aside or vary the Notice of Requirement. That includes whether the appellant is a person from whom security may be required, the value of the security to be given, the manner in which it is to be given, the date on which it is to be provided and the period of time for which the security is required. The value of the security and the manner in which it is to be provided are included amongst these matters; in contrast to the VAT security provisions which provide, at para 4(4), that the security is to be of such amount and given in such manner as HMRC shall determine, the PAYE Regulations merely require those matters to be specified in the Notice, and the power of the Tribunal to vary the requirements in the Notice, in my view, renders these matters susceptible to substitution of the Tribunal's own view.

42. Without yet commenting on whether we agree with what Judge Berner said, we can immediately address Ms Donovan's submission "that *D Media Communications Ltd v HMRC* does not create a general right for the Tribunal to re-determine the amount or terms of security". Those words, read literally, are undoubtedly correct inasmuch as no decision of this Tribunal

can "create" a jurisdiction on the Tribunal that has not been given by Parliament. The question, however, is whether the decision in *D-Media* suggests that the jurisdiction on these appeals is appellate rather than merely supervisory. If Ms Donovan's submission is that that is not what *D-Media* says, then we respectfully disagree. We cannot see any room for the suggestion that paragraphs [20] and [21] and, in particular the words "although I accept that the Tribunal's jurisdiction in relation to security for PAYE and NICs is to some extent supervisory in nature, it is an appellate jurisdiction … All other aspects, on the other hand, are matters on which the Tribunal is entitled to form its own view" say otherwise.

43. Ms Donovan took further comfort from what the Tribunal said in *Blocksure Ltd (in liquidation) & Ranvir Saggu v HMRC* [2024] UKFTT 397 (TC). That was a case where (as in the present case) a company and director were both issued with Notices of Requirement to give security in relation to PAYE and NICs. One point of distinction between that case and the present was the fact that that was an application by Mr Saggu (the director) for the admission of an appeal out of time. However, that distinction does not appear to be relevant for present purposes because the Tribunal in *Blocksure* proceeded to consider the full merits of Mr Saggu's case (where Mr Saggu's representative (Mr Ahmed) contended that Mr Saggu had a strong case).

44. In doing so, the Tribunal made the following observations:

> 111. On the question of the validity of the NoRs, we have considered the similarly-worded provisions relating to the requirement to provide security for VAT. These provisions are in paragraph 4 of Schedule 11 to the Value Added Tax Act 1994. Paragraph 4(2) provides that if they think it necessary for the protection of the revenue, HMRC may require a taxable person, as a condition of supplying or being supplied with goods or services under a taxable supply, to give security, or further security, for the payment of any VAT that is or may become due from the taxable person, or any person by or to whom relevant goods or services are supplied
>
> 112. It is clear that, in relation to an appeal against a requirement to provide security for VAT, the jurisdiction of this Tribunal is supervisory only. The relevant principles were summarised in the decision of this Tribunal in *The Southend United Football Club Ltd v HMRC* [2013] UKFTT 715 (TC) at [10]:
>
> > "It is undisputed that our jurisdiction is supervisory only. That is, if we are to allow the appeal we must be satisfied that the decision is one at which the Commissioners could not reasonably have arrived. That understanding of the law derives from the judgements of Farquharson J in *Mr Wishmore Ltd v Customs & Excise Commissioners* [1988] STC 723, of Dyson J in *Peachtree Enterprises Ltd* [1994] STC 747 and of the Court of Appeal in *John Dee Ltd v Customs & Excise Commissioners* [1995] STC 941. The cases show that we must limit ourselves to a consideration of the facts and matters which were known when the disputed decision was made, so cannot take account of developments since that time, and that we may not exercise a fresh discretion. In other words, if the decision was flawed we must allow the appeal and leave HMRC to make a further determination if they so choose. If we are persuaded the decision was flawed but that, had HMRC approached the matter correctly, they would inevitably have arrived at the same conclusion we should dismiss the appeal."
>
> 113. In deciding whether HMRC's decision is one at which they could not reasonably have arrived, the Tribunal must consider whether HMRC took into account some irrelevant matter or ignored a relevant factor. The decision may also be unreasonable if HMRC made an error of law.

> 114. In our view, these are the principles we should apply in considering whether the NoRs in this case were validly issued.
>
> 115. Mr Ahmed did not seek to persuade us that, if we were to grant permission for a late appeal, we should take into account facts or circumstances in existence after Officer Laurie took the decision to issue the NoRs. Mr Ahmed also did not seek to persuade us that we should vary the notice by substituting a different figure for the amount of security to be given.
>
> 116. We note that this Tribunal has previously held (in *D-Media Communications Ltd v HMRC* [2016] UKFTT 430 (TC) ("*D-Media*"), and *Quadragina*) that it has jurisdiction to re-make HMRC's decision to issue a NoR to give security for PAYE and NICs, even if that decision was reasonable, on the basis of information that is available to the Tribunal at the hearing but which was not available to the decision-maker at the time. Mr Carey submitted that this interpretation of the PAYE and NIC Regulations was incorrect, and that *D-Media* was wrongly decided.
>
> 117. We note that in *Boship Lions Farm Hotel Ltd and others v HMRC* [2018] UKFTT 411 (TC), the Tribunal held that it could only consider facts as they were at the time the decision to require security was taken, although in that case the Tribunal was not referred to *D-Media*. We further note that although *Quadragina* was appealed, the Upper Tribunal declined to express a view on the (First-tier) Tribunal's jurisdiction, having made its decision on other grounds.
>
> 118. Given that Mr Ahmed did not seek to persuade us to the contrary, we have proceeded, for the purposes of the *Martland* exercise, on the basis that if we were to grant permission for a late appeal, the strength of Blocksure and Mr Saggu's case would depend on whether HMRC's decision to issue the NoRs was reasonable on the basis of information which existed at the time the decision was made. We therefore make no findings on the correctness of the approach taken in *D-Media*.

45. We first note that Mr Saggu's representative did not seem to argue that the Tribunal had a fuller appellate jurisdiction. Secondly, it is clear that the Tribunal in *Blocksure* was aware of the earlier decision in *D-Media* but it also noted that there was conflicting authority at the FTT level (the *Boship* case). In *Boship*, we note that the taxpayer was not represented and that no reference was apparently made to the Tribunal of the *D-Media* case. As did the Tribunal in *Blocksure*, the Tribunal in *Boship* started (and finished) its analysis by citing from the *Southend* case, a case concerned with the VAT provisions.

46. In light of the above, we consider that fairness requires us to conduct our own analysis of the statutory provisions as it is only they that can determine the extent of our jurisdiction.

47. The first thing we note is that regulation 97V(1) states that the recipient of a notice may appeal against the notice or any requirement in it. Whilst not addressing the nature of the Tribunal's jurisdiction, this makes it clear that our jurisdiction is not limited to the fact of a notice itself but we can also look at particular requirements therein.

48. When looking at what the Tribunal may do on any such appeal, regulation 97V(5) gives the Tribunal three options:

(1) to confirm the requirements in the notice;

(2) to vary the requirements in the notice; or

(3) to set aside the notice.

49. It is clear from this that the Tribunal's jurisdiction is broader than exercising a binary choice of upholding or quashing a notice, in that the Tribunal has the power to vary particular requirements within the notice. Of course, that does not fully answer the matter. Should we vary the requirements only in cases where the original requirements were unreasonably imposed (i.e. adopt a supervisory jurisdiction over particular aspects of a notice) or are we permitted to vary the notice by taking into account matters known to us but not known to the original decision maker (i.e. adopt a full appellate jurisdiction)?

50. For the following reasons (both individually and cumulatively), we conclude that we have a full appellate jurisdiction.

(1) First, the statutory instrument expressly provides that the nature of the matter before us is an appeal. In this regard, we note what the Lord Chancellor (Lord Irvine of Lairg) said in *Boddington v British Transport Police* [1999] 2 AC 143 at 161C—D:

> However, in approaching the issue of statutory construction the courts proceed from a strong appreciation that ours is a country subject to the rule of law. This means that it is well recognised to be important for the maintenance of the rule of law and the preservation of liberty that individuals affected by legal measures promulgated by executive public bodies should have a fair opportunity to challenge these measures and to vindicate their rights in court proceedings. There is a strong presumption that Parliament will not legislate to prevent individuals from doing so: "It is a principle not by any means to be whittled down that the subject's recourse to Her Majesty's courts for the determination of his rights in not to be excluded except by clear words …"

(2) Secondly, regulation 97V(4) requires appellants to state the grounds of appeal. Unlike similar provisions elsewhere in the PAYE Regulations, there is no attempt in the regulations to curtail the grounds of appeal (*cf* regulations 72A(4), (5), 72B, 72C, 72G, 81A, 97LF, 97U, 99 and 210C[4]). We note that regulation 97U is in fact part of the code at which we are looking.

(3) Thirdly, the purpose underlying these rules is to impose an additional burden on taxpayers in those cases where an HMRC officer "considers it necessary for the protection of the revenue", with such a burden being backed up by the criminal law. In our view, it would be excessive (and thus beyond the purpose of that legislation) for the risk of committing a criminal offence to arise in circumstances where an HMRC officer has diligently and properly issued a Notice of Requirement but who did so in ignorance of a material fact that would have led to a different outcome. In our view, the appeal process (which effectively defers the activation of the criminal offence) would be a wholly appropriate opportunity for additional facts to be considered. That approach seems to us to be further reinforced by the provisions of regulation 97S which permit applications for a reduction in the value of security held because of a change of circumstances, but only in cases where security has actually been given.

(4) Fourthly, we do not consider that a purely supervisory jurisdiction would be entirely helpful to HMRC (and could thus undermine the purpose of the legislation). We have in mind the situation where it is clearly appropriate for a Notice of Requirement to be given but where the officer has made a clear error in determining the amount of the security to be given. If our role were solely supervisory, we might be forced to set aside the Notice in its entirety rather than uphold the Notice albeit for a reduced amount.

(5) Looking beyond the PAYE Regulations, the powers of the Tribunal under regulation 97V are very similar to those in cases of appeals against information notices

[4] This list omits those provisions added subsequent to the introduction of regulation 97V.

issued under the provisions of Schedule 36 to the Finance Act 2008. (See Schedule 36, paragraph 32(3).) This Tribunal and one its predecessor bodies (the Special Commissioners) have taken the view that, when applying the "reasonably required" test which underpins any information request, the Tribunal is entitled to take into account matters that have arisen since the issue of the notice. See *Afsar v HMRC* (2006) SpC 554 at [62] (in relation to a similarly-worded provision that preceded Schedule 36) and *Parker Hannifin (GB) Ltd v HMRC* [2023] UKFTT 971 (TC) at [183], [184].

(6) Furthermore, where the Tribunal's jurisdiction is more limited, the statute says so. For example, in the provisions imposing penalties for inaccuracies in tax returns (and other documents), taxpayers can appeal against (*inter alia*) adverse conclusions in relation to suspension and special reduction, but the Tribunal's role is expressly limited to exercising a supervisory jurisdiction (see Finance Act 2007, Schedule 24, paragraph 17(3)(b), (4)(a), (5)(b), (6)).

51. We recognise that, for the equivalent VAT provisions, the conventional approach has been that, on any appeal, the Tribunal's role is only supervisory. In section 83(1)(l) of the 1994 Act, there is a right of appeal with respect to "the requirement of any security". As noted, section 84 does not contain any provision commenting on the scope of an appeal under section 83(1)(l). In contrast, section 84(4ZA), (4A), (4C), (7), (7ZA) and (7B) (which address other types of appeal) all expressly provide for situations where the role of the Tribunal on an appeal is supervisory only. Applying the logic of the preceding paragraph, we can see considerable merit in saying that the absence of any express restrictions concerning section 83(1)(l) appeals means that the Tribunal has a full appellate jurisdiction on appeals against Notices of Requirement to provide security in the VAT context.

52. Although we do not propose to make any definitive statement about the Tribunal's jurisdiction in VAT cases, as such a matter is not before us and we have heard no arguments on the Value Added Tax Act 1994, we feel that it is helpful to understand why the Tribunal has repeatedly restricted itself to a supervisory jurisdiction in such cases as that will help to inform us on whether our conclusion stated at ¶50 above should be reconsidered.

53. The case repeatedly referred to in the VAT context is the decision of this Tribunal in *The Southend United Football Club Ltd v HMRC* [2013] UKFTT 715 (TC), paragraph [10] of which is cited within the *Blocksure* extract at ¶44 above.

54. Indeed, it is the trilogy of cases cited in *Southend* at [10] that have led to the longstanding understanding about the supervisory nature of the Tribunal's jurisdiction in the equivalent VAT context. As those cases are all from the higher courts, we hesitate to deviate from their conclusions (even if we are not strictly bound by them, given the different statutory context).

55. When the matter came before Dyson J (as he then was) in *Peachtree*, his Lordship noted at 748j:

> There is apparently no authority on the point. In *Mr Wishmore Ltd v C & E Comrs* [1988] STC 723 at 727, Farquharson J doubted obiter whether the tribunal had power to take into account events occurring after the date of the decision under appeal.

56. A "doubt" expressed *obiter* is something we feel capable of departing from. We also observe that there is a distinction between taking into account events occurring after the date of the decision under appeal and taking into account events obtaining at the time of the decision but not known to the decision maker. However, it is illustrative to see what else Farquharson J said about the jurisdiction of what is now this Tribunal in such cases (at 725d):

> The first matter in this appeal is to establish the nature of the appeal to the value added tax tribunal. Is it a rehearing whereby the tribunal can review the discretion of the commissioners and alter it or come to a different conclusion if it so desires, or does the tribunal on the other hand exercise only a supervisory jurisdiction, limiting its decision to one based on Wednesbury principles? (see *Associated Provincial Picture Houses v Wednesbury Corp* [1948] 1 KB 223).
>
> There is very little difficulty about this aspect of the case because it is agreed on all sides that the latter alternative represents the correct approach.

57. And later, in the passage referred to by Dyson J, the Judge continued:

> Nothing that I have been referred to in this Act would suggest that the tribunal, when reviewing the commissioners' decision, can pose questions of that nature. However, it is right to say I have been informed that as a matter of convenience tribunals do consider those questions, that is to say, what the current position is at the time of the appeal, and the matter has specifically not been argued before me. In any case, having regard to the decision I have already given any comments I make would be obiter, so I take the matter no further.

58. Accordingly, the question of the Tribunal's jurisdiction was expressly put to one side.

59. Similarly, in *Peachtree* itself, Dyson J did not make any findings as to the scope of the Tribunal's jurisdiction. At 751b, he noted:

> I turn, therefore, to the principal issue that arises in this appeal. It is important to start by stating that it is common ground that the jurisdiction of the tribunal is only supervisory. The appeal before the tribunal is not by way of a rehearing …

60. The third case is that of *John Dee*. That was a decision of the Court of Appeal in which the leading judgment was given by Neill LJ, with whom Roch and Hutchinson LLJ agreed. In the course of the litigation of that case, the position of HM Customs & Excise changed. By the time that the case reached the Court of Appeal, they accepted that the Tribunal's jurisdiction is appellate and not supervisory. In his conclusion, Neill LJ said at 952a:

> Counsel for the company was clearly right to emphasise that the function of the tribunal is an appellate function. Section 40(1) of the 1983 Act [now, section 83(1) of the 1994 Act] makes provision for an *appeal* [emphasis in original]. Furthermore, I agree that references in this context to *Wednesbury* principles are capable of being a source of confusion.

61. However, this does not mean that the Tribunal has full appellate jurisdiction in such VAT cases. As his Lordship continued, the Tribunal's role is to assess whether the statutory condition for a notice of requirement is met. In the VAT context, that requires HMRC to "think it necessary for the protection of the revenue" for a notice of requirement to be given. That therefore focuses attention on the decision-making process itself. In other words, in the VAT context, there is undoubtedly an "appeal", but (akin to a supervisory function) the focus is on the process rather than the merits of the decision itself.

62. Moreover, the wording of regulation 97N is not, in our view, sufficiently distinct from that applying in VAT cases ("In circumstances where an officer of Revenue and Customs considers it necessary for the protection of the revenue") to allow us simply to disregard the VAT authorities. However, nor is it that different from many other parts of the tax code which require an HMRC officer to take a view based on the information before her, him or them, but where it is undisputed that there is a right to a full appeal (see, for example, sections 28A(2)

and 29(1) of the Taxes Management Act 1970). In those cases, without any statutory wording concerning the scope of any appeal, it is undoubtedly the case that the Tribunal can both:

(1) supervise the process under which the decision was made; but also

(2) adopt an appellate jurisdiction and take into account material which was not available to the officer at the time of the officer's decision.[5]

63. With that in mind, we return to the analysis undertaken by Judge Berner in *D-Media*. Subject to the reference to "supervisory", which might not be strictly correct given what was actually said in *John Dee* (but which is nevertheless a helpful shorthand), we consider that it accurately reflects the role of the Tribunal in PAYE/NICs cases. We proceed on that basis.

64. We note that Ms Donovan's submissions refer to the fact that HMRC's internal manuals proceed on the basis that our jurisdiction is only supervisory. However, it is long established that those manuals are not legally binding on us and we accordingly see no reason to supplement our analysis of the legislation and the case law with a discussion of the contents of the manuals.

WHAT DECISIONS ARE UNDER APPEAL

65. Mr Young submitted that the appeals before us relate to the conclusions of the internal reviews (October 2023), which were undertaken following the appeals made by the Appellants to HMRC against the April 2023 decisions. (Initially, the Appellants had sought to notify the appeals against the April 2023 decisions direct to the Tribunal and had those appeals rejected.) The suggestion that the matter before a Tribunal is the conclusion of the internal review was made by this Tribunal in *Half Penny Accountants Ltd v HMRC* [2016] UKFTT 45 (TC), a case concerning VAT Notices of Requirement.

66. However, in another VAT case (albeit not concerning notices of requirement), *Motorplus Ltd v HMRC* [2025] UKFTT 931 (TC), this Tribunal inclined to the view that "it is the terms of the denial letters and not the terms of the review conclusion letter which are relevant in determining what it was that the Respondents decided".

67. The distinction was of little significance in the *Motorplus* case because the substance of the review conclusion letter was not meaningfully different from the substance of the denial letters. However, it was a significant point in *Half Penny* because of the acceptance in that case that the Tribunal's role is supervisory only and, therefore, a failure to take into account a relevant consideration at only one of the stages can be determinative as to the outcome of any appeal.

68. It is our view that the decisions under appeal before us are the April 2023 decisions to issue the Notices of Requirement, rather than the subsequent conclusions of the review process. We base that conclusion on the wording of section 49G of the Taxes Management Act 1970 which refers to the notification of "the appeal" to the Tribunal. The appeal is the original challenge made to HMRC against the decision that was then the subject of the internal review. Furthermore, subsection (4) provides that the Tribunal will then "determine the matter in question". That is defined in section 49I(1)(a) as "the matter to which an appeal relates" (which is the same as the subject of the review itself (section 49E(1)). This wording contrasts with the position in social security law, for example, where the Tribunal is seised of appeals against

[5] It is also worth noting that the case law in the VAT cases was heavily rooted in the landmark case of *HMCE v J H Corbitt (Numismatists) Ltd* [1980] STC 23 which concerned a decision whether to allow input tax claims in the absence of a valid tax invoice. The nature of an officer's decision in that case (a discrete question to be applied at a single point in time) is in our view different from an administrative act that imposes an ongoing obligation on taxpayers. That distinction represents a further reason for us to be concerned about rigidly following the VAT case law in relation to Notices of Requirement.

decisions "whether as originally made or as revised under section 9 above)" (Social Security Administration Act 1998, section 12; section 9 provides for internal reviews).

OUR CONCLUSIONS

The issue of the Notices to the Appellants

69. Our decision on the subject matter of appeals means that, when looking at the reasonableness of HMRC's actions, we cannot take into account the fact that, for example, Ms Rockey ceased to be a director in May 2023.

70. To the extent that Mr Young was arguing that Ms Rockey's more limited role in the company excused her from being served with a Notice of Requirement, we disagree. It may well be the case that Ms Rockey's role within the company meant that the circumstances that led to the Notices of Requirement being issued were not down to her. However, there was no reason in this case for Mrs O'Donnell to have known that.

71. Ms Rockey was (and was shown on Companies House records as being) a director of the company at the time that the decision to issue the Notices was taken. We do not see that it is incumbent on HMRC officers to carry out a detailed review of what individuals do or don't do for a company prior to issuing Notices of Requirement.

72. In our view, an individual's election to assume the office of a director (and any failure to remove oneself from that role at Companies House) exposes that individual to any legal action that might be taken against directors (at least in the absence of information suggesting otherwise).[6] To the extent that this might give rise to unfair outcomes, we consider that this is more than adequately remedied by the fact that the Tribunal can exercise an appellate jurisdiction and therefore review matters with the benefit of hindsight on any appeal.

73. Furthermore, given the nature of the company's history of very poor tax compliance (in particular in relation to PAYE/NIC), the fact that warnings had gone unheeded and that salaries were continuing to be paid (with the deducted tax and National Insurance being used as working capital rather than being paid over to HMRC), it was entirely reasonable that Mrs O'Donnell decided to issue Notices of Requirement against the company and (for the reasons in the preceding paragraphs) to both of its directors. We discuss the quantum below.

74. For completeness, we add that we are making no comment on whether an entry on LinkedIn should be treated in the same way as a record at Companies House. LinkedIn was not something that Mrs O'Donnell considered when she made her decisions – it seemed to arise only at the review stage. We would prefer that question to be considered on a future occasion when it might prove material to the determination of the appeal.

The quantum of the Notices at April 2023

75. We also consider that it was entirely reasonable for the Notices to stipulate that the requirement should be for the amount of the company's estimated PAYE/NICs liability for a four-month period. This struck us as a sensible estimate of the company's likely exposure to future PAYE/NIC liabilities pending any reorganisation to reflect the company's dire financial position having effect.

76. However, we see no justification for the Notices also to require the company and its directors to give security in relation to pre-existing PAYE/NIC debt owed by the company. It

[6] We also observe that Ms Rockey's salary was initially quite high considering her claimed limited involvement in the company. However, in the circumstances, we did not need to address that point any further. Even if Ms Rockey had taken no salary from the company, we would consider her status as director to be sufficient to attract a Notice of Requirement. We also consider the absence of her name as a director in the annual accounts to be insufficient to override the record of directorships at Companies House.

must be remembered that the exercise is to protect the revenue, and we interpret that as providing a safeguard that future amounts that might become owed to HMRC are not lost. As for amounts that have previously fallen due and are as yet unpaid, it is too late for those to be protected: it is akin to locking a stable door after the horse has bolted. In any event, HMRC have creditors' rights to recover such sums (if available). Furthermore, to use a Notice of Requirement against a director in relation to pre-existing debt strikes us as an inappropriate way of jumping the queue of creditors and forcing the hand of a company's directors in circumstances where insolvency law is unlikely to give other creditors such a remedy.

77. Furthermore, we note and agree with what was said in *D-Media* on this point at [44]:

> In this case, as a matter of policy, the aggregate amount of the security required from D-Media derived from an estimated amount of PAYE and NICs due for a four-month period and the whole of the then current arrears. From the information I have, I do not consider that D-Media was in a position to provide security for the amounts of the arrears. To require it to do so would simply have the effect that it would fail to comply and be criminally liable. That would do nothing to protect the revenue.

78. We are unsure of the basis of HMRC's statement in their review conclusions as cited at footnote 1 above. In any event, we disagree with it.

79. We accordingly conclude that the Notices of Requirement should not have covered the amount of pre-existing PAYE/NIC debt and should be limited to £18,853.00 (PAYE) and £16,834.00. Subject to the matters in¶¶81*ff* below, we would revise the Notices accordingly.

80. We would add, however, that if our jurisdiction were purely supervisory, we could consider HMRC's original decision to include the pre-existing debt in the amounts for which security was sought to be unlawful. Given the fact that the pre-existing debt constituted such a significant proportion of the amount being sought (and could not be dismissed as *de minimis*), that unlawfulness would then have tainted the entirety of the Notices and we would in such circumstances be obliged to set the Notices aside in their entirety. As we do not consider that that accurately reflects our jurisdiction, we do not set aside the Notices for that particular reason.

Subsequent knowledge and events

81. In the light of subsequent events, we consider that there is no longer any purpose in maintaining the Notices of Requirement. In other words, they are no longer acting to protect the revenue but have the effect of punishing the Appellants for the previous failings of their company. In particular:

(1) the company is now in liquidation, not trading and not generating any future exposure to PAYE or NIC liabilities; and

(2) Mr Duma's current business ventures are not currently giving rise to any PAYE or NIC liabilities[7].

(3) Furthermore, Mr Duma is himself impecunious.

82. For these reasons, we would set aside the Notice issued to Mr Duma.

83. In relation to Ms Rockey's Notice, we would set that aside too for the following reasons both individually and (even more so) cumulatively:

[7] Should that position change, it will be for HMRC to decide whether or not the circumstances merit a new Notice of Requirement in the light of the history of Mr Duma's previous businesses.

(1) Ms Rockey had no day-day involvement with the company's payroll and, upon receipt of the Notice, she promptly resigned her directorship to reflect her more limited role in the company;

(2) her illness and work situation (she is not involved in either of Mr Duma's ongoing businesses); and

(3) her current impecuniosity.

84. We do not see how any ongoing need to protect the revenue is served by maintaining these Notices in any form. As a result, we set them aside.

ALLEGATIONS OF UNREASONABLE CONDUCT

85. Mr Young's oral submissions hinted at a complaint that HMRC had conducted this appeal unreasonably. This issue was a significant aspect of his post-hearing written submissions. We observe (without comment) that HMRC's post-hearing submissions made no reference to these complaints.

86. It is noteworthy that Mr Young did not go so far as to make a costs application on behalf of his clients. Instead, as the written submissions concluded:

> Finally, the FTT is invited to make an order for costs on an indemnity basis of its own initiative pursuant to FTT rule 10(2). The FTT will note that costs were ordered on an indemnity basis in the VSP Marketing appeal. Should the FTT make such an order it would ask that it specify costs to be agreed, if not assessed.

87. We decline to make any order on our own initiative: at the very least, HMRC should have the opportunity to make submissions in relation to the complaints made. (We do not consider that HMRC were any under obligation to respond to the complaints made in the Appellant's "non-application" as contained in their submissions.) If the Appellants wish to make an application, they are free to do so within the time limits laid down in Rule 10(4): any such application will then be considered on its merits taking into account any response from HMRC.

88. We are conscious that the Appellants might not have the funds to pay for a detailed costs application. Accordingly, we would provisionally waive any obligation under Rule 10(3)(b) to prepare a detailed schedule of costs at this stage, but would ask instead that the application include a total of the costs being claimed (such total to exclude the costs of, and pursuant to, the application itself).

RIGHT TO APPLY FOR PERMISSION TO APPEAL

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

Release date: 12 February 2026