TC07662

NICs – whether or not fuel was either not used for private use or if it was the whole of the expense was made good – yes as regards one employee – no as regards the remainder of the relevant employees – penalties - whether or not the appellant was careless – yes – appeals allowed in part

FIRST-TIER TRIBUNAL
TAX CHAMBER

Appeal number: TC/2018/02518
TC/2018/07041

BETWEEN

CONTRACT SERVICES (MILLENIUM) LTD **Appellant**

-and-

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

TRIBUNAL: JUDGE RICHARD CHAPMAN QC
MRS RAYNA DEAN

Sitting in public at Alexandra House, 14-22 The Parsonage Manchester, M3 2JA on 9 September 2019

Mr F Michael Cochrane, Accountant, for the Appellant

Mrs Helen Roberts, litigator of HM Revenue and Customs' Solicitor's Office, for the Respondents

DECISION

INTRODUCTION

1. This appeal is in respect of decisions dated 31 October 2017 in respect of what HMRC say were undeclared employee benefits for the tax years 2012/13 to 2016/17 in the total sum (following variations after a review) of £7,950.73 ("the Decisions") and penalties (again following variations after a review) in the total sum of £1,192.58 ("the Penalties").

2. The essence of the dispute is as to whether or not the Appellant, Contract Services (Millenium) Ltd ("Contract Services"), has provided sufficient evidence to establish that the whole of the expense for any private use of fuel provided to Contract Services' employees was made good to Contract Services by those employees.

FINDINGS OF FACT

3. Save as set out below, the facts were not contentious. We were provided with witness statements from Mr F Michael Cochrane (an in-house accountant) and Mr Nicholas Deal (also an in-house accountant as well as the financial controller of the Ruttle Group) on behalf of Contract Services and Mr Stalker on behalf of HMRC. All witnesses attended the hearing and gave oral evidence. We are satisfied that their evidence was credible and that they were doing their best to assist the Tribunal.

4. We make the following findings of fact. In doing so we bear in mind that the burden of proof is upon Contract Services to establish its basis for reducing or setting aside the Decisions whereas the burden of proof is upon HMRC to establish that the Penalties are due. The standard of proof in both these regards is that of the balance of probabilities.

5. Contract Services is connected to a group of companies referred to by the parties as the Ruttle Group of companies. The Ruttle Group carries on business in plant hire (particularly diggers), the provision of skilled workers to operate the plant, and ancillary activities. Contract Services supplies workers to the rest of the Ruttle Group. Some of those workers are self-employed and others are employed by Contract Services.

6. Contract Services also employs either two or three (the number fluctuates from time to time) travelling salesmen. The salesmen identify potential hirers from trade magazines, word of mouth and visiting building sites. They visit Contract Services' head office at least once a week, but otherwise travel around between potential and actual customers. The salesmen, and selected other employees, were provided with company cars (together "the Relevant Employees"); namely, Mr Dale Cunliffe ("Mr Cunliffe"), Mr David Cunliffe, Mr David Carpenter, Mr Darren Robinson, Mr S Ralph and Mr R Bell. The Relevant Employees were at the relevant times entitled to use their company cars for private purposes as well as for work.

7. Contract Services also provides fuel (namely, diesel) for the Relevant Employees. Both Mr Cochrane and Mr Deal explained the way in which fuel is provided to, and used by, the Relevant Employees. Contract Services provides the Relevant Employees with access to the Ruttle Group's own fuel pump. The Relevant Employees are allowed to fill up their tanks from this fuel pump once per week. They are entitled to use the fuel for private use but are required either to replace or pay for all fuel so used.

8. Specific evidence was given about the fuel used by Mr Cunliffe. Mr Cochrane informed HMRC in a letter dated 2 July 2018 (the contents of which he adopted in his witness statement) that Mr Cunliffe had not used his car at all for private purposes until he was told in 2018 (and so after the periods to which the Decisions and the Penalties relate) that he could do so. We have been shown a spreadsheet entitled "Dale Cunliffe Fuel Records" prepared by Contract Services from records and information provided to them by one of the Relevant Employees,

Mr Dale Cunliffe. These records relate to the week commencing 4 April 2016 until the week commencing 20 March 2017. They show that all of Mr Cunliffe's mileage was work related. This is reinforced by a manuscript mileage log prepared by Mr Cunliffe relating to the period from 9 January 2017 to 11 February 2017. We have also been shown a manuscript mileage log prepared by Mr Cunliffe relating to the period from 9 April 2018 until 30 April 2018. This does show private mileage which has been reimbursed and is after the time when he was told that he could use the car in this way. We note that Mr Cunliffe had previously kept a mileage log for a three month period in 2011 during a compliance check (about which we say more below) which, Mr Cochrane and Mr Deal asserted, showed that Mr Cunliffe had not used the car (and so had not used the fuel) for private purposes.

9. Mr Cunliffe did not give evidence and so Mr Cochrane's and Mr Deal's evidence in this regard is hearsay insofar as it relates to what Mr Cunliffe actually did. No specific challenge was made by HMRC to this evidence during the cross-examination of either Mr Cochrane or Mr Deal. In submissions, there was a suggestion that Mr Cochrane's analysis of the miles per gallon that Mr Cunliffe's car would do was flawed. However, this was not put to Mr Cochrane in cross-examination and no contrary evidence was adduced. The absence of a positive challenge to the evidence is particularly significant as regards Mr Cochrane being told by Mr Cunliffe that he had not used the car for private use and being reminded in 2018 that he could do so. In the course of submissions, Mrs Roberts doubted the credibility of Mr Cunliffe's records. However, we have not seen or heard any evidence to doubt those records. Although the hearsay evidence has limited weight, there is an absence of contrary evidence. Taking all these matters into account, we find that on the balance of probabilities Mr Cunliffe did not use the fuel provided by Contract Services for private purposes for any part of the tax years from 2012/13 to 2016/17.

10. None of the Relevant Employees other than Mr Cunliffe kept any records of their private mileage or the fuel that they have provided or paid for. Contract Services is reliant upon the Relevant Employees for information as to private use and so has no further records of its own.

11. Mr Cochrane and Mr Deal said that they were confident that the Relevant Employees knew not to use Contract Services' fuel without accounting for it by way of replacement or payment. They said that this was Contract Services' clear policy and that any of the Relevant Employees caught using company fuel for private purposes without reimbursement would be regarded as having stolen that fuel and would be subject to disciplinary action that might even include dismissal. They also said that this approach reflected the ethos of the Ruttle Group as a whole. The chief executive officer of the Ruttle Group is Mr Harry Ruttle, who (we were told) is parsimonious as to the level benefits provided to employees, pays less than the expenses which are otherwise standard in the marketplace and (as Mr Cochrane put it), it is not in Contract Services' culture to provide more than necessary for the Relevant Employees to do their jobs. Mr Deal said that Mr Ruttle. "takes no prisoners in the office or outside." He is strict on anything connected to benefits and will come down heavily on anybody taking fuel without permission. Two workers (plant drivers rather than Relevant Employees) were found to have taken fuel for their own purposes and were dismissed immediately. There was no serious dispute taken by HMRC as to these matters and we accept them as correct.

12. We note, however, that whilst these matters establish that the Relevant Employees *should not* use fuel for private use without reimbursement, Contract Services has not provided any evidence that the Relevant Employees other than Mr Cunliffe *in fact did not* use fuel for private use without reimbursement. The burden of proof is upon Contract Services to do so and we find that this burden has not been discharged. Crucially, there is no witness evidence from any of the Relevant Employees, who are the only people who can say whether or not they in fact did use fuel for private use without reimbursement. Other than in respect of Mr Cunliffe, no

information has been provided as to the extent to which the cars (and so the fuel) were used for private purposes, still less whether or not it was reimbursed and if so whether in money or in kind. The company ethos is not enough to establish on the balance of probabilities that there was no private use without reimbursement. Mr Cochrane and Mr Deal are not in a position to know what those other Relevant Employees actually did and (unlike for Mr Cunliffe) are not saying that they have been given any information from those Relevant Employees as to what they actually did. There is no evidence of any checks being made by Contract Services to prevent or oversee such use. There is no evidence of any occasions upon which reimbursement was made, whether by way of replacement fuel or payment to Contract Services. Further, the ethos would only guard against deliberate misuse and, without any procedures or record keeping could not cater for any inadvertent failure to reimburse or make good. We therefore find that Contract Services has failed to establish that no fuel was used by the Relevant Employees other than Mr Cunliffe for private use without reimbursement between 6 April 2012 and 5 April 2017.

13. As we have already mentioned, HMRC conducted a compliance check in respect of Contract Services' PAYE records. HMRC raised a concern about the Relevant Employees' use of fuel within this check. HMRC are unable to locate full documentation in respect of this compliance check and so the documentary evidence is limited to various items of correspondence. The most important of these is a letter dated 21 November 2011 from HMRC to Mr Cochrane, which includes the following:

> "…
>
> At the meeting a question arose regarding mileage records and fuel provided by the employer. The mileage records were not immediately available and I requested that a record be produced for a three month period in respect of business mileage.
>
> At this time I considered that tax *may* be due and informed Nick Deal of the HRA.
>
> In most circumstances the HRA message and fact sheet should be issued once the Compliance Officer has identified an inaccuracy by examining the employer's records and the employer cannot offer an acceptable explanation to refute your belief that there is an inaccuracy.
>
> In this case, Nick Deal and yourself have provided details of Dale Cunliffe's business mileage and it has been accepted that no further duties are due.
>
> …
>
> I have now completed my employer compliance review of the records for Contract Services (Millennium) Ltd and found these to be satisfactory. However, as mentioned in Mr Robinson's letter dated 20 October 2011, improved records should be kept regarding fuel provided by the company for use in company cars."

14. HMRC opened a further check of Contract Services' PAYE compliance on 26 February 2015. A compliance meeting took place on 7 May 2015. In the course of this meeting, Mr Deal confirmed the position that there were no records of company fuel use and explained the position about the ethos of the company in a similar manner to the way in which it has been described in the course of this hearing.

15. A long process of communications passed between HMRC and Contract Services after this initial meeting. There has been a great deal of criticism of HMRC's approach to the

investigation, which Mrs Roberts fairly took on board. However, this is not relevant to this decision and so we say no more about it.

16. The Decisions were issued on 31 October 2017. Contract Services requested a review of the Decisions. By a review conclusion letter dated 23 March 2018, some of the Decisions were upheld, others were cancelled, and one was varied. The outcome was that the Decisions now under appeal are in the total sum of £7,950.73. £5,525.10 of this total sum relates to fuel, a further £1,177.14 relates to other car benefits and £1,248.49 relates to medical benefits. Only the fuel benefits in the sum of £5,525.10 are in dispute within this appeal.

17. The Penalties were issued on 16 July 2018 in the total sum of £2,297.60. As regards the fuel benefits, this was on the basis of a deliberate but not concealed inaccuracy and, as regards the car and medical benefits, this was on the basis of a careless inaccuracy. A decision was taken not to suspend the Penalties.

18. Contract Services requested a review of the Penalties, which resulted in a reduction by way of a review conclusion letter dated 19 October 2018. This is because HMRC decided to treat the whole matter as due to a careless inaccuracy. The Penalties as varied by the review are in the sum of £1,192.58, being 15% of the Decisions. This is the lowest level of penalty available in such circumstances. £828.74 of the Penalties relates to the fuel benefit and £363.84 relates to the car and medical benefits. However, in the course of this appeal, HMRC has accepted that the Penalties should be reduced by the £363.84 as it accepts that Contract Services did not act carelessly in respect of the car and medical benefits. Again, therefore, only the element relating to fuel benefit is in dispute. The review also resulted in a suspension of the Penalties. Again, there is no dispute about the suspension or its conditions, subject to any Penalties being due at all.

19. Contract Services appealed against the Decisions by a notice of appeal dated 3 April 2018 and against the Penalties by a notice of appeal dated 29 October 2018. The appeals were directed to be heard together on 10 December 2018.

THE ISSUES

20. The following issues arise for determination:

(1) Whether or not (and, if so, the extent to which) Contract Services is liable to Class 1A Social Security Contributions on the provision of any fuel benefit to the Relevant Employees.

(2) Whether or not (and, if so, the extent to which) Contract Services acted carelessly in the provision of inaccurate returns.

21. We note that Mr Cochrane does not submit that Contract Services has a reasonable excuse for the inaccuracies or that there are any special circumstances justifying any reduction in the Penalties.

FUEL BENEFIT

The legal framework

22. There was no dispute about the legal framework.

23. The relevant parts of sections 149 to 151 and 171 of the Income Tax (Earning and Pensions) Act 2003 in their form applicable at the relevant time provide as follows.

> "149. Benefit of car fuel treated as earnings
>
> (1) If in a tax year—

(a) fuel is provided for a car by reason of an employee's employment, and

(b) that person is chargeable to tax in respect of the car by virtue of section 120,

the cash equivalent of the benefit of the fuel is to be treated as earnings from the employment for that year.

(2) The cash equivalent of the benefit of the fuel is calculated in accordance with sections 150 to 153.

(3) Fuel is to be treated as provided for a car, in addition to any other way in which it may be provided, if—

(a) any liability in respect of the provision of fuel for the car is discharged,

(b) a non-cash voucher or a credit-token is used to obtain fuel for the car,

(c) a non-cash voucher or a credit-token is used to obtain money which is spent on fuel for the car, or

(d) any sum is paid in respect of expenses incurred in providing fuel for the car.

(4) ...

…

150. Car fuel: calculating the cash equivalent

(1) The cash equivalent of the benefit of the fuel is the appropriate percentage of £14,400.

(2) The “appropriate percentage” means the appropriate percentage determined in accordance with sections 133 to 142 for the purpose of calculating the cash equivalent of the benefit of the car for which the fuel is provided.

(3) But the cash equivalent may be—

(a) nil where either of the conditions in section 151 is met;

(b) proportionately reduced under section 152;

(c) reduced under section 153.

151. Car fuel: nil cash equivalent

(1) The cash equivalent of the benefit of the fuel is nil if condition A or B is met.

(2) Condition A is met if in the tax year in question—

(a) the employee is required to make good to the person providing the fuel the whole of the expense incurred by that person in connection with the provision of the fuel for the employee's private use, and

(b) the employee does make good that expense.

(3) Condition B is met if in the tax year in question the fuel is made available only for business travel (see section 171(1)).

…

171. Minor definitions: general

(1) In this Chapter –

…

"business travel", in relation to any employee, means travelling the expenses of which, if incurred and paid by the employee, would (if Chapter 2 of Part 4 did not apply) be deductible under sections 337 to 342, section 353 or under Chapter 5 of Part 5 (other than section 377)."

24. Section 8(1)(c) of the Social Security (Transfer of Functions etc) Act 1999 provides as follows:

"(1) Subject to the provisions of this Part, it shall be for an officer of the Board –

…

(c) to decide whether a person is or was liable to pay contributions of any particular class and, if so, the amount that he is or was liable to pay."

25. The parties were agreed that if there was any private use of fuel without the whole of the expense being made good, all fuel for that employee for that tax year would be chargeable.

Submissions

26. Mr Cochrane submitted that both conditions A and B were met. His position was that the ethos and policies of Contract Services and Mr Ruttle were such that none of the Relevant Employees would use fuel for private use without reimbursement (fulfilling condition A) and that the fuel was only made available for business use (fulfilling condition B) in that use without reimbursement would be theft. Mr Cochrane further submitted that whilst there was an obligation to retain existing records, there was no obligation to create records. Further, a failure to do so did not preclude the Contract Services from establishing a nil cash equivalent.

27. Mrs Roberts submitted that Mr Cunliffe's records were incomplete and that the absence of any other records is an insuperable problem for Contract Services. Mrs Roberts referred us to *Couldwell Concrete Flooring Ltd v Commissioners for Revenue & Customs* [2016] UKFTT 776 (TC) (Judge Richard Thomas and Mrs Gay Webb) at [23] for the general principle of the importance of keeping records in order to evidence that a return is correct and complete.

28. Mrs Roberts also relied upon paragraph 26 of Schedule 4 to the Social Security (Contributions) Regulations 2001, which provides as follows:

"(1) An employer must keep and preserve all contribution records which are not required to be sent to HMRC by other provisions in these Regulations for not less than –

(a) three years after the end of the tax year to which they relate; or

(b) for documents or records relating to information about the amounts of Class 1A and Class 1B contributions, three years after the end of the year in which a contribution became payable."

29. Further, Mrs Roberts drew our attention to *Qualapharm Ltd v HMRC* [2016] UKFTT 100 (TC) (Judge Barbara Mosedale) at [49], in which the First-tier Tribunal stated as follows:

"[49] But so far as Item 6 is concerned, an employer is obliged to keep and preserve information by the Income Tax (PAYE) Regulations 2003 at reg 97. These regulations are not part of the Taxes Acts, but I find that they are another

> ‘enactment relating to a tax’ as per (b) of para 62 Sch 36 (above at §43), albeit in this case they relate to tax due to be paid by the employer’s employees or by the employer on behalf of the employees. While the PAYE regulations are only secondary legislation, they are still an ‘enactment’ by Parliament, albeit by an instrument under an Act of Parliament. I find that the information required by Item 6 (payrolls and benefits/expenses) was all information required to be kept and preserved by Reg 97 (in particular reg 97(3)(a) for payroll and (b) for expenses and benefits).”

30. Mrs Roberts also referred to *Little v HMRC* [2011] UKFTT 324 (TC) (Judge W Ruthven Gemmell and Mrs Charlotte Barbour). The First-tier Tribunal stated as follows at [61]:

> “[61] The Tribunal considered whether the car fuel benefit charge applied automatically because fuel is provided for a car that is made available for private use to an employee who is not in excluded employment. The legislation provides that the charge applies automatically where fuel is provided for the car and places the onus on the taxpayer to prove a negative, that is to say, that no fuel is provided for the car. Albeit that it may be difficult to do so, this is what must be done to shift this presumption. In relation, therefore, to the position where fuel for cars is being paid for by company credit cards, detailed records must be kept not only of the business mileage but also any private use to also ascertain whether or not the nil rate applies.”

31. Finally, Mrs Roberts relied on *Nicholson v Morris* [1976] STC 269. Walton J stated as follows at 280:

> “It is the duty of every individual taxpayer to make his own return and, if challenged, to support the return he has made, or, if that return cannot be supported, to come completely clean; and if he gives no evidence whatsoever he cannot be surprised if he finally lumbered with more than he has in fact received it is his own fault that he is so lumbered.”

32. We note that Walton J’s judgment was upheld by the Court of Appeal (see [1977] STC 162, especially *per* Goff LJ at 168-169).

Discussion

33. The focus of the dispute is as to whether or not the Relevant Employees used the fuel for private use at all and, if they did, whether or not they made good the expense of such fuel either by reimbursement to Contract Services or by replacing the fuel. We accept that there is an obligation upon an employer to keep, maintain and retain supporting documentation. However, the absence of, or any inadequacy relating to, such records is not determinative of itself. The effect of shortcomings in recordkeeping is that it is all the more difficult for an employer to establish that, on the balance of probabilities, the employee either did not use fuel for private use or made good the expense of such fuel. This is therefore a matter of evidence rather than the provision of satisfactory records being a pre-requisite to qualifying for a nil cash equivalent.

34. We do not accept Mr Cochrane’s submission that the fuel was not available for private use. The whole basis of Contract Services’ procedure for reimbursement in cash or in kind anticipates the availability of the fuel for private use.

35. As we have already set out above, our findings of fact as regards Mr Cunliffe are different to those as regards the other Relevant Employees. It follows from our findings of fact that, on the balance of probabilities, Mr Cunliffe did not in fact use his car (and so did not use the fuel in his car) for private purposes during the relevant period. We therefore allow the appeal in respect of Mr Cunliffe. However, it also follows from our findings of fact that there is insufficient evidence for Contract Services to establish on the balance of probabilities that any

of the other Relevant Employees either did not use their cars (and so did not use the fuel in their cars) for private purpose or alternatively did use the fuel for private purposes and then either reimbursed Contract Services or replaced the fuel at their own cost. We therefore dismiss the appeal in respect of the Relevant Employees other than Mr Cunliffe.

THE PENALTIES

The legal framework

36. Again, there was no dispute as to the legal framework in respect of the Penalties.

37. Regulation 81(1) of the Social Security (Contributions) Regulations 2001 provides as follows.

> "(1) Schedule 24 to the Finance Act 2007 (penalties for errors) applies to the return of contributions referred to in regulation 80(1) (return by employer) as if –
>
> (a) Class 1A contributions were a tax; and
>
> (b) that tax and the return of contributions in relation to it were listed in the table in paragraph 1 of that Schedule.
>
> (1A) That Schedule also applies to decisions made under section 8(1)(c) of the Social Security Contributions (Transfer of Functions, etc) Act 1999 regarding Class 1A contributions and for that purpose a reference in the Schedule to an assessment is to be treated as if it included a reference to a decision and "under-assessment" shall be construed accordingly."

38. Schedule 24 to the Finance Act 2007 provides for penalties for errors. The only contentious matter in the present case is as to whether or not the inaccuracies in the returns were careless. Paragraph 3 of Schedule 24 differentiates between different categories of conduct as follows.

> "(1) For the purposes of a penalty under paragraph 1, inaccuracy in a document given by P to HMRC is –
>
> (a) "careless" if the inaccuracy is due to failure by P to take reasonable care,
>
> (b) "deliberate but not concealed" if the inaccuracy is deliberate on P's part but P does not make arrangements to conceal it, and
>
> (c) "deliberate and concealed" if the inaccuracy is deliberate on P's part and P makes arrangements to conceal it (for example, by submitting false evidence in support of an inaccurate figure).
>
> (2) An inaccuracy in a document given by P to HMRC, which was neither careless nor deliberate on P's part when the document was given, is to be treated as careless if P –
>
> (a) discovered the inaccuracy at some later time, and
>
> (b) did not take reasonable steps to inform HMRC."

Submissions

39. Mrs Roberts submitted that "reasonable care" must be considered in the light of the particular person's abilities and circumstances and by reference to what an ordinary and prudent taxpayer would do. Mrs Roberts also submitted that ignorance of the law is of no assistance where a prudent and reasonable taxpayer would have taken steps to ascertain the law. She relied upon *Ashton v HMRC* [2013] UKFTT 140 (TC) (Judge Christopher Staker and

Mr Richard Thomas) at [35] to [37] in this regard. Mrs Roberts also submitted that an innocent omission can still be careless, relying upon *Verma v HMRC* [2011] UKFTT 737 (TC) (Judge Roger Berner and Mr John Whiting) at [13]. Mrs Roberts' position was that Contract Services had acted unreasonably in claiming a nil cash equivalent for fuel when it was not in a position to do so.

40. Mr Cochrane accepted that it was not enough that Contract Services was acting honestly. He said that the relevant time was as to when a nil cash equivalent was claimed on the form. He accepted that it would have been better to keep records but that it is not unreasonable, or careless, not to have had those records. Mr Cochrane relied upon *Cannon v HMRC* [2017] UKFTT 859 (TC) (Judge Geraint Jones QC and Mr Ian Menzies-Concaher) to the effect that reasonableness should be viewed objectively. He also relied upon *Dugan v HMRC* [2016] UKFTT 618 (TC) (Judge Richard Thomas and Miss Ann Christian).

Discussion

41. As set out above, HMRC has accepted that the Penalties for benefits other than fuel should be cancelled. We therefore allow the appeal against the Penalties in that regard.

42. The Penalties can of course only apply to the Decisions which relate to the Relevant Employees other than Mr Cunliffe. We therefore also allow the appeal against those that relate to Mr Cunliffe.

43. The burden of proof is upon HMRC to establish that Contract Services acted carelessly in respect of the Relevant Employees other than Mr Cunliffe. We find that HMRC has discharged this burden.

44. Crucially, this is because the reasonable and prudent taxpayer would have realised that there was insufficient evidence to justify a nil cash equivalent being entered on the returns. We find that it was not reasonable for Contract Services only to rely upon their company ethos and assumption that it was being followed. The absence of records means that Contract Services could not check the position in respect of the use of fuel and had no way of knowing whether or not its policy was being followed. This is reinforced by Contract Services' own understanding of the position in that it had been told of the need for records in the course of the 2011 compliance checks. This is particularly stark given that there is no evidence that the Relevant Employees other than Mr Cunliffe were even asked whether or not they used the fuel for private uses or whether they had reimbursed Contract Services in money or in kind before filing the returns.

45. We note that the Penalties have been calculated at the lowest level possible. We also note that no submissions have been made (or argument otherwise raised) as to reasonable excuse or special circumstances. Further, we have not been asked to amend the suspension conditions.

46. We therefore dismiss the appeal against the Penalties as regards the Relevant Employees other than Mr Cunliffe.

DISPOSITION

47. For the reasons set out above:

(1) As regards the appeal against the Decisions:

(a) We allow the appeal insofar as it relates to Mr Cunliffe.

(b) We otherwise dismiss the appeal.

(2) As regards the appeal against the Penalties:

(a) We allow the appeal insofar as it relates to benefits other than fuel benefits.

(b) We allow the appeal insofar as it relates to Mr Cunliffe.

(c) We otherwise dismiss the appeal.

48. The recalculation of the Decisions and the Penalties in the light of this outcome is not immediately clear from the documents before us. Further, the parties have not had an opportunity to address us upon such a recalculation. As such, each of the parties has liberty to apply to restore the appeals before us, limited to a hearing upon the quantification of the Decisions and the Penalties if agreement cannot be reached.

RIGHT TO APPLY FOR PERMISSION TO APPEAL

49. 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.

RICHARD CHAPMAN QC
TRIBUNAL JUDGE

RELEASE DATE: 1 APRIL 2020