[2019] UKFTT 0492 (TC)

TC07295

Appeal number: TC/2018/00641

INCOME TAX – whether clinical commissioning group contract appointing GP Elected Member was made with the Appellant or a related company – the Appellant – whether contract was for the services of the Appellant or to compensate company – for the services of the Appellant – whether payments made under that contract, on the instruction of the Appellant, constituted remuneration of the Appellant – yes – appeal dismissed

FIRST-TIER TRIBUNAL
TAX CHAMBER

BRUCE CAWDRON **Appellant**

- and -

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

TRIBUNAL: JUDGE JANE BAILEY
MS JANE SHILLAKER

Sitting in public at Havant Justice Centre on 18 July 2019

The Appellant in person

Mrs Carwardine, presenting officer, for the Respondents

DECISION

Introduction

1. This appeal by Dr Cawdron (the "Appellant") is against a review decision by HMRC, upholding an earlier closure notice, that payments totalling £51,519.80 by the South Kent Coast Clinical Commissioning Group ("CCG") constituted remuneration paid for the Appellant's performance of duties as an office holder.

Issue between the parties

2. The issue between the parties was whether the sum of £51,519.80 constituted emoluments to the Appellant (as contended by HMRC), or was paid to the medical practice which employed the Appellant by way of compensation for the practice's employment of a locum on the days when the Appellant worked for the South Kent Coast CCG (as contended by the Appellant).

Preliminary issue – late appeal to the Tribunal

3. HMRC's review decision was issued on 5 December 2017, and so the deadline for an in-time appeal to the Tribunal was 4 January 2018. The Tribunal received the Appellant's appeal on 23 January 2018, 19 days late. The Appellant explained his delay in appealing to the Tribunal was due to making an application for ADR. This application had been refused. HMRC made no objection to the appeal being admitted out of time. Following the guidance in *Martland v HMRC* [2018] UKUT 178 (TCC), we decided to admit the appeal out of time. We informed the parties of this decision at the beginning of the hearing.

The documents before us and witness evidence

4. The Tribunal had issued Directions to the parties on 20 August 2018 to enable them to prepare for the hearing. Direction 1 required the parties to exchange their lists of documents no later than 28 September 2018. The Appellant failed to comply with this Direction. On 17 October 2018, the Tribunal reminded the Appellant that a list of documents was required. In response the Appellant emailed the Tribunal (but not HMRC) to state:

> All documents have been made available as the only ones are my Practice Accounts.

5. On 30 October 2018, in response to the Tribunal's email earlier that day chasing the Appellant with regard to his witness statement, the Appellant emailed the Tribunal (but again not HMRC) to state:

> I have previously forwarded the Practice Accounts and also copies of my personal Bank statements. These showed that the sums in question were not paid directly to me but to the Practice account. All monies were declared in. The Practice accounts.
>
> Hoping this is what is required.

6. On 1 November 2018, HMRC's presenting officer emailed the Tribunal to inform them that HMRC had yet to receive the Appellant's List of Documents.

7. On 27 February 2019, a Tribunal caseworker wrote to the Appellant, copied to HMRC, to explain why a list was required:

> A list of documents was due on or before 28/09/2018. I note the contents of your email of 30/10/2018 (attached for the benefit of HMRC). This is not a list of each documents and does not include any dates of the documents. You will need to confirm an exact list of the documents you wish to be included in the hearing bundle and provide anything that has not already been sent to HMRC (so that they have a copy to include in the bundle). HMRC have provided their list of documents on 15/08/2018, so hopefully you will help you to understand the format required.
>
> Please note that if you do not provide your list of documents the judge at the hearing may not let you rely on any documents other than those included within HMRC's hearing bundle.

8. The Appellant emailed the Tribunal on 28 February 2019 to state that he was confused by the Tribunal's instructions, that HMRC had already received copies of his personal bank account statements, that his accountant had sent letters to HMRC and that his "original, and subsequent, letters made my case for the Tribunal". This email was not copied to HMRC, and no list was sent to HMRC. The Appellant sent a further copy of this email to the Tribunal on 22 March 2019.

9. On 13 April 2019, in the continued absence of a list from the Appellant, the Tribunal directed HMRC to provide a bundle made up of the documents on HMRC's list. A letter was sent to the Appellant to inform him that this had been directed, with the relevant part of that letter concluding:

> I understand that you may have provided HMRC with documents but if you have not provided HMRC or the Tribunal with a list of the specific documents you wish to have included in the bundle, then it is difficult to see how HMRC could know which documents to include.

10. The Appellant did not reply to that emailed letter. HMRC confirmed that a copy of the bundle (comprising the documents on their list) had already been sent to the Appellant.

11. The Appellant attended the hearing without a copy of the bundle prepared by HMRC which had been sent to him. A spare copy was proved to the Appellant, who confirmed that he had seen the bundle previously and that he did not need more time to re-familiarise himself with the contents. The Appellant complained that the bundle did not contain copies of statements from his personal bank account. The Appellant had not brought copies of these with him, or sent a copy to HMRC's presenting officer, but told us that the bank statements were necessary to show that the payments in issue were not made into his personal bank account.

12. We took the view that the bank account into which the payments were made was not in dispute, and that in any event the Appellant had been given sufficient warning that he must specify to HMRC the documents he wished to have included in the bundle. We therefore decided to continue with the hearing despite the absence of bank statements.

13. Direction 2 of the Tribunal Directions had required the parties, no later than 26 October 2018, to file statements from any person who would be called to give evidence. On 30 October 2018, the Tribunal chased the Appellant for his witness statement. (The Appellant's email of 30 October 2018, apparently sent in response to the chasing email by the Tribunal, is set out above.) On 20 May 2019, the Appellant filed a statement with the Tribunal. (This was filed at a time when the Appellant was unsure whether his health would permit him to attend.) We decided to treat this statement as providing belated compliance with Direction 2, and so permitted the Appellant to give oral evidence.

14. The Appellant's evidence was interspersed with his submissions, and the Appellant answered questions from the panel and from HMRC.

15. We formed the view that the Appellant was an honest witness. However, the Appellant's belief that he and the medical practice of which he was a sole practitioner were "one and the same" caused the Appellant to give answers which, on occasion, appeared to conflict with earlier answers, and which required further clarification.

Findings of fact

16. On the basis of the documents in the bundle before us, and the oral evidence of the Appellant, we found as follows:

a. At all relevant times, the Appellant was the sole shareholder and sole director of Warehorne Consultants Limited ("Warehorne"). Warehorne traded as the Martello Medical Practice.

b. At all relevant times the Appellant practised as a GP. Prior to April 2013, the Appellant was the sole GP practicing from the Martello Medical Practice. We find that the Appellant worked five days each week for the Martello Medical Practice. In

the period from 1 October 2013 to 31 December 2014, the Appellant received salary of £7,000 from Warehorne. In that period, Warehorne also recorded a benefit to the Appellant of £100,000 by way of acceptance of the novation of an onerous contract.

c. In or around late 2012 the Appellant was appointed as a GP member of the South Kent Coast CCG Board. The appointment was from 1 April 2013 to 31 March 2015 but the Appellant left the role on 31 May 2014. On 1 July 2013, the Appellant signed a copy of the Terms and Conditions of Appointment to indicate his agreement with those Terms and Conditions.

d. At the top of the Terms and Conditions was printed the Appellant's name and home address. The Role was described as "GP Elected Member". The Terms and Conditions included the following:

> **1. Statutory basis for appointment**
>
> This appointment is governed by those arrangements set out in Equity and Excellence: Liberating the NHS for establishment of GP Consortia, provided for in the Operating Framework for the NHS in England 2011/12.
>
> This appointment is made as a Governing Body member of South Kent Coast CCG and represents a contract for services between you and the CGG.
>
> …
>
> **3. Employment law**
>
> Appointments are not within the jurisdiction of Employment Tribunals. Neither is there any entitlement for compensation for loss of office through employment law. Nothing in this contract shall render or be deemed to render you an employee or agent of South Kent CCG and you hereby agree that you are an independent appointee and not an employee or agent of South Kent Coast CCG.
>
> This contract does not create any mutuality of obligation between you and South Kent Coast CCG.
>
> …
>
> **6. Fees**
>
> You will be paid a fee of £51,520 per annum
>
> You will be paid monthly in arrears which will be subject to an annual review by the Governing Body
>
> South Kent Coast CCG will reimburse you for all reasonable and properly documented expenses you incur in the performance of your duties of your office.

You will be remunerated by South Kent Coast CCG for so long as you continue to hold office under contract as a Board member of the CCG. You are entitled to receive remuneration only in relation to the period for which you hold office.

There is no entitlement to compensation for loss of office.

It is determined that this role is NHS pensionable income for the purpose of GP "Governing Body and clinical advisory" pensionable work. You will be responsible for informing NHS Pensions of this work.

7. Tax and National Insurance

South Kent Coast CCG reserves the right to deduct tax and National Insurance from your fee prior to payment if they are advised to do so by HMRC.

Notwithstanding this, both parties acknowledge that the remuneration is taxable under Schedule E and subject to Class 1 National Insurance contributions. Any queries on these arrangements should be taken up with the Inspector of Taxes or the Contributions Agency respectively. South Kent Coast CCG and you declare and confirm that it is the intention of the parties that you shall be responsible for all income tax liabilities and national insurance or similar contributions in respect of your fees and accordingly you hereby agree to indemnify South Kent Coast CCG in respect of any claims that made be made by the relevant authorities against the CCG in respect of income tax and national insurance or similar contributions relating to your services under this contract.

8. Time commitment

Your fees have been calculated based on you working two days per week (based on 7.5 hours excluding meal breaks) for South Kent Coast CCG under the terms of this contract. If the number of days changes your remuneration will be changed by mutual agreement. The breakdown of this commitment will be agreed by you and your line manager for South Kent Coast CCG.

By accepting this appointment you have confirmed that you are able to allocate sufficient time to meet the expectations of your role. The agreement of the CCG should be sought before accepting additional commitments that might impact on the time you are able to devote to your role as a Governing Body member of South Kent Coast CCG.

e. HMRC submitted that this contract was between the Appellant as an individual and the South Kent Coast CCG. The Appellant argued that as he was a sole practitioner, the contract should be viewed differently. He told us:

> In effect, the contract was with the practice as the practice was only one person. If the contract was with me then it was with the practice as I was the practice. There was no one else in the practice that the contract could have been with.

f. We find that this contract was between South Kent Coast CCG and the Appellant as an individual. We do not accept the Appellant's construction of this contract, nor do we agree that the Appellant was synonymous with the Martello Medical Practice. Warehorne traded as the Martello Medical Practice; we find that Warehorne was not a party to this contract, and that the South Kent Coast CCG did not intend to, and did not, contract with Warehorne.

g. We find that the agreement between the Appellant and South Kent Coast CCG was that the Appellant would be appointed to an office and he would be paid monthly in arrears for the work he carried out as an office holder. We find that the fee paid to the Appellant was subject to tax, under Schedule E, and National Insurance contributions.

h. Although the contract provided that the Appellant should work for two days each week, in correspondence with HMRC (letter dated 26 April 2017) the Appellant had stated that he worked one or two days each week, depending on the CCG workload. In his oral evidence to us, the Appellant said that he worked for the South Kent Coast CCG one day a week, and that this was every Wednesday. This oral evidence of working one day each week was confirmed in the New Starter information form which had been provided by the CCG to HMRC, and which was in our bundle. This gave a starting date for the Appellant's officeholding of 1 April 2013, and stated a starting salary of £25,760 for one day's work each week.

i. From the payslips for June 2013 to May 2014, which appeared in our bundle, we find that find that in June 2013, the Appellant was paid the gross amount of £2,146.67, and arrears of £4,293.34 (which, on the balance of probabilities, we find was pay for April and May 2013). Tax of £1,288 and National Insurance of £396.68 was deducted from the gross pay, leaving net pay in that month of £4,755.33. In July, August and September 2013, the Appellant was paid gross pay of £2,146.67 each month and net pay of £1,537.39. However, in the Appellant's October 2013 payslip, arrears of £12,879.97 were shown, in addition to gross pay of £4,293.16. From November 2013 to May 2014, the Appellant's gross pay was shown as £4,293.33 each month. Tax of £858.60 and National Insurance of £353.75 was deducted, leaving net pay for each month from November 2013 to March 2014 of £3,080.98, and for April and May 2014 of £3,079.52.

j. On the basis of the payslips we find that the pay provided by the CCG for the services of the Appellant was £51,520, as stated in the Terms and Conditions (and not the £25,760 as stated on the New Starter information form). Although this would suggest that the Appellant worked two days a week for the CCG, as set out in the Terms and Conditions, we consider the Appellant's letter of 26 April 2017 (which is closest in time to the events after they have occurred) is most likely to be correct, and on the balance of probabilities we find that the Appellant provided his services to the CCG on one or two days each week, depending on the requirements of the CCG. In summary, we find that the salary of £51,520 was paid by the CCG for the Appellant's services, and that those services were provided on one or two days each week.

k. The Appellant told us, and we accept, that the fee of £51,520 was a fixed amount, and each GP Elected Member of the CCG Board was paid the same.

l. The Appellant could not simultaneously work at the Martello Medical Practice on the days on which he worked for the South Kent Coast CCG. The Appellant told us, and we accept, that Warehorne hired a locum doctor on the days when the Appellant was providing his services to the South Kent Coast CCG. The amended accounts of Warehorne for the period 1 October 2013 to 31 December 2014 show subcontractor costs of £50,840 in that period, and costs of £23,151 for the preceding year. The Appellant told us, and we accept, that the cost of a locum was about £500 per day. As the amounts shown in Warehorne's accounts suggest that a locum was engaged for more than one day each week, this confirms our finding that the Appellant sometimes worked two days a week for the CCG.

m. In response to a question from the panel the Appellant agreed that, from the perspective of South Kent Coast CCG, the fee he was paid related only to the time he spent working for the CCG, and that it was unrelated to the costs of employing a locum.

n. The salary paid by the South Kent Coast CCG in respect of the Appellant's services was not paid into the personal bank account of the Appellant. The New Starter information form shows the details of the Martello Medical Practice bank account as the account into which the payments are made. It was not disputed by HMRC that the payments made by the South Kent Coast CCG were paid into the Martello Medical Practice bank account. We find that the salary earned by the Appellant was paid into the bank account of the Martello Medical Practice, and therefore to Warehorne.

o. In a letter to HMRC, dated 21 October 2016, the Appellant's then accountant informed HMRC:

> I have spoken at length with [the Appellant] with regard whether authority was ever given for the Clinical Commissioning group ("CCG") to pay this direct to the Practice. The Appellant was ill at the time suffering from depression and he has confirmed to me that he was not in contact with the CCG and that he did not give authority for this payment to be made to the Practice account. Indeed, knowing my client, if he had received any notification from the CCG with regard to this payment, he would have had it directed to his personal account.

p. In his evidence before us the Appellant told us that this statement was "nonsense", and incorrect. The Appellant told us that he had been in meeting with a representative from the CCG, that he would have been asked which account he wished to have the money paid into and that he would have said that it should be paid into the practice account. The Appellant told us he would have chosen this account because then the money was available to the practice to pay for locums. The Appellant confirmed that it was his choice as to the account into which the salary was paid by the South Kent Coast CCG.

q. Faced with this conflict between the documentary evidence and the oral evidence of the Appellant, we have concluded that it is more likely that the Appellant (rather than his agent) would know the correct position. We conclude that the Appellant must have provided the South Kent Coast CCG with the details of the bank account of the Martello Medical practice at some stage, for the CCG to have those account details. We consider it unlikely that the CCG would pay any amount into a bank account which they had not been instructed to use. Therefore, on the balance of probabilities, we find that (contrary to the letter of 21 October 2016) the Appellant instructed the South Kent Coast CCG to pay his salary into the bank account used by the Martello Medical Practice. We find that the choice of the Martello Medical Practice bank account was the Appellant's, not the South Kent Coast CCG's, and all payments of salary made by the CCG were made in accordance with the Appellant's instructions.

r. Within our bundle was a copy of a P60 End of Year certificate for the year 2013/14. This had been provided by the CCG and sent to the Appellant. This showed pay "in this employment" of £51,519.80. There was a star by this figure and a highlighted box which stated:

> The figures marked * should be used for your tax return, if you get one.

s. The Appellant's agent had previously denied in correspondence that a P60 had been received, or seen, by the Appellant. However, the Appellant told us that he did receive the P60 and the payslips, which were sent to his home address, and that he had handed these to the practice manager at the Martello Medical Practice, who had passed them to the external accountant who prepared the accounts for Warehorne and the tax returns for both Warehorne and the Appellant.

t. When Mrs Carwardine drew the Appellant's attention to the P60, and asked him if he had thought to include the amount of £51,519.80 on his return, the Appellant told us that it was up to his accountant whether the amount was included on the return as that was the accountant's job. It was subsequently clarified that, although Mrs Carwardine intended to ask about the Appellant's personal tax return, the Appellant's answer was in relation to the tax return prepared on behalf of Warehorne.

u. Mrs Carwardine asked the Appellant if he had been presented with the tax return to check before it was submitted. The Appellant told us that he had briefly seen the return and he believed that the payments were shown on the return, but that he left tax to the accountant to sort out for him. In light of the subsequent clarification we understand the Appellant again to be referring to the tax return of Warehorne.

v. On 31 May 2014, the Appellant's appointment as a GP Elected Member ended.

w. On 9 January 2015, the Appellant filed his personal tax return for 2013/14. This return included emoluments of £3,000 received from Warehorne in the tax year 6 April 2013 to 5 April 2014, but the Appellant did not include the £51,519.80 declared on the P60 issued to him by the South Kent Coast CCG. The Appellant declared

dividends of £10,706 and pension income of £11,320. The total income tax due under this self assessment was £201.

x. On 14 September 2015, HMRC opened an enquiry into the Appellant's self assessment for 2013/14. HMRC referred to the figures provided by the South Kent Coast CCG and asked the Appellant to explain why the figures differed.

y. There was correspondence from the Appellant's accountant, in which he explained he was trying to identify the source of the discrepancy. On 9 February 2016, HMRC issued a closure notice for 2013/14, with a revised calculation following amendments to the Appellant's self assessment. Although the CCG had deducted tax and National Insurance from the payments it had made, the tax was deducted at basic rate. After revising the Appellant's tax return to include the £51,519.80 paid by the South Kent Coast CCG, the Appellant became due to pay tax of £7,487.45.

z. On 13 April 2016, the Appellant appealed against the closure notice. On 6 June 2016, HMRC acknowledged this appeal and asked the Appellant to provide additional information. HMRC also asked the CCG to provide information.

aa. On 27 June 2016, the Appellant provided further information. On 25 July 2016, HMRC suggested that the contract with the CCG showed the Appellant as the office holder, and so they would have expected the income and tax to be declared on his personal tax return. HMRC requested more information in response. On 8 August 2016, the Appellant wrote again to HMRC, providing copies of statements from his personal bank accounts. On 17 August 2016, the Appellant's accountant also wrote to HMRC as follows:

> I agree with your comments with regard to the ideal treatment of funds received from the Kent Clinical Commissioning Group in that if we had received the necessary paperwork indicating that this payment was separate from the normal funding, we would have responded to the payment in a totally different way, and declared this on [the Appellant's] personal tax return. As there was no paperwork, we responded to the payment as income for the medical practice.

bb. Correspondence continued. In a letter dated 14 September 2016, the accountant set out what he described as the bare facts of the matter, adding:

> In my view the payment should never have been paid to the Practice account, but direct to [the Appellant] which would then have led to the correct reporting on the tax return.
>
> [The Appellant] maintains that he has never received any confirmation from the CCG nor has ever received a P60 or P45 from the CCG, which again would have achieved clarity on the situation. [the accountancy firm] certainly had no paperwork passed from [the Appellant] for entering into the tax return.

cc. By letter dated 3 October 2016, HMRC wrote to the accountant. In that letter, headed with the Appellant's name, HMRC wrote:

> As you say, it is clear that the payment was your clients. There is still doubt as to who gave the NHS the instruction to pay the money to the Practice and not your client as the employee. As a result, and the fact that your client did not receive a P60, I will, in due course withdraw the penalty.

dd. On the basis of the Appellant's oral evidence, we have found that the Appellant did give the instruction to pay the money into the Martello Medical practice bank account, and the Appellant did receive the P60.

ee. In that letter of 3 October 2016, HMRC suggested that Warehorne pay the £51,519.80 to the Appellant and amend their 2013/14 accounts. The accountant replied by letter dated 21 October 2016, denying that the Appellant had given his authority for the money to be paid to the practice (as noted above) and informing HMRC that amended accounts for Warehorne had been filed but that as Warehorne was insolvent, steps had been taken to dissolve it.

ff. HMRC sent a holding letter to the accountant on 30 November 2016. On 21 April 2017, HMRC confirmed their position was that the £51,519.80 constituted emoluments and should have been included on the Appellant's tax return.

gg. The Appellant replied on 26 April 2017, noting that the payments were to compensate the Martello Medical Practice for the locum fees which it had paid, and that these fees exceeded £51,520. The Appellant stated that the amounts paid by the South Kent Coast CCG was compensation for locum payments and treated that way in the Practice accounts.

hh. HMRC provided a substantive reply on 12 October 2017. In that letter HMRC accepted that the cost of a locum was a factor in setting the level of payment, but stated:

> However, the fact that the need for a locum is a factor in determining the level of determination does not mean that the payment is made as compensation for the accruing of locum fees. It remains the case that the remuneration is paid for the performance of the duties of the office of a GP Elected Member. As such it is employment income and liable to tax and NICs.
>
> For the same reason, locum fees cannot be claimed directly against the office holder income. Notwithstanding the fact that the need for a locum is a factor in determining the level of remuneration, the two things remain separate entities.

ii. The Appellant replied on 22 October 2017:

> I remain confused regarding your decision. This has arisen through misunderstanding of CCG and payments. These were made to compensate locum payments to enable me to attend CCG meetings. ALL these payments were made into the Practice account, confirmed previously, and were shown in the Accounts. These were agreed by you with my Accountant and all payments made to HMRC.

jj. The Appellant asked HMRC to undertake a review. On 5 December 2017, HMRC provided a review decision, upholding their earlier decision that the payments constituted emoluments. On 23 January 2018, the Appellant appealed to the Tribunal.

17. **Burden of proof**

18. The onus of proof is upon the Appellant to displace the figures in the revised calculation in the closure notice issued by HMRC. The standard of proof is the civil standard of the balance of probabilities.

19. **Appellant's submissions**

20. The Appellant's case (as set out in his statement of 20 May 2019) was that the payments made by the South Kent Coast CCG were made to compensate the practice for paying locum fees as a result of his absence from the practice. The Appellant stated that the locum fees were approximately £500 per day and the payments from the CCG were approximately £2,000 each month, and so some months the practice was out of pocket.

21. Before us the Appellant stated that he was a sole practitioner, and that the payments by the CCG were compensation for the time he spent out of the practice. The Appellant told us that he worked each Wednesday for the CCG, that the practice had to pay a locum, and so the practice was out of pocket in every month which had five Wednesdays. The Appellant told us that all the payments were made to the practice account, and said that he did not understand why he should pay tax because HMRC felt that the payments were made to the wrong person. The Appellant suggested that if he were a decorator, then the revisions to his self assessment would not have happened.

22. The Appellant also told us that he could understand the position in a larger practice where the partners might be able to cover for each other, and did not need the CCG payment to pay for a locum. However, in his case, the Appellant said that he had to have a locum to keep the practice open.

23. **HMRC's submissions**

24. HMRC's submissions were that the contract was between the South Kent Coast CCG and the Appellant as an individual, and that the nature of the payment was remuneration for services provided by the Appellant. HMRC submitted that the payment was the income of the Appellant, and should have been declared on his personal tax return.

25. HMRC submitted that the nature of the payment was not altered by the fact that the South Kent Coast CCG paid the money to the Martello Medical Practice, rather than to the Appellant directly. As a result of the Appellant accepting that he gave the instruction to the CCG, HMRC submitted that this demonstrated that the Appellant was the person with entitlement to direct how the money was paid.

26.

27. **Discussion and decision**

28. In considering whether any payment is liable to tax, it is necessary to start by understanding the nature of the payment and why it is made.

29. In this case we have found that a contract for services was concluded between the Appellant and the South Kent Coast CCG. We have found that contract was for the services of the Appellant as a GP Elected Member on the CCG Board. We have found that the payments were made as payment for the Appellant's services as a GP Elected Member of the Board. We reached these conclusions on the basis that the contract is expressly stated to be for the services of the Appellant, and that the terms are consistent with a contract for services. There are no terms which are inconsistent with the agreement being a contract for services.

30. The Appellant argued that, as a sole practitioner, he was the Martello Medical Practice but we do not agree that this is correct. The Martello Medical Practice was the trading name of Warehorne. Warehorne and the Appellant are separate legal entities. There are no references to Warehorne in the contract, and the references to other issues (such as pension rights, physical attendance at meetings and public speaking) make it unlikely that the contract was between South Kent Coast CCG and a company, rather than with an individual.

31. The Appellant told us that he understood the contract to be in standard terms but argued that the contract should be construed differently because he was a sole practitioner (and not a member of a multi-member practice). While all contracts should be construed in their own factual context, we do not agree that the contract was with Warehorne, as the Appellant argued, or that it is a contract in which the South Kent Coast CCG agreed to provide Warehorne with compensation. There are no references in the Terms and Conditions to compensation or to the cost of a locum. If the contract was in standard form, as suggested by the Appellant, then it would be illogical for the CCG to use the same Terms and Conditions for sole practitioners and for members of multi-member practices if, as the Appellant argued, the nature of the payments made by the CCG was different when a sole practitioner was elected as a GP Elected Board member. It would also be illogical for the payments to be of a fixed amount, as the Appellant suggested was the case, if it was intended to be a payment to compensate for the cost of employing a locum. There is reference in the contract to expenses, but these are expenses incurred by the Appellant in the performance of the duties of the office, and not the expenses incurred by Warehorne in releasing the Appellant to work as a GP Elected Member.

32. The Appellant argued that it was not economically feasible for him to take up a position on the CCG Board if the practice did not have the funds to pay a locum to replace him on the days he was undertaking CCG work. We agree that when the Appellant reduced the number of days he was able to work for Warehorne, the cost to Warehorne of providing medical services on five days a week became considerably more expensive. The cost of a locum was £500 per day and the salary paid to the Appellant was only £3,000 per year. However, while we can see that those economic realities are what led the Appellant to direct that his salary should be paid to

Warehorne, that does not change the nature of the contract between the Appellant and the South Kent Coast CCG, and it does not change the nature of the payment to the Appellant.

33. The Appellant argued that he did not receive the payments, and so they could not have been his salary. We agree that the payments by the CCG did not go into the Appellant's personal bank account. However, as the Appellant was able to choose into which account the money was paid, we consider that the payments were made at his instruction and, at the moment of instruction, the Appellant was able to control the payments. The nature of the payments does not change because the Appellant has chosen to have the amounts paid into an account other than his personal bank account. The outcome would be no different if the Appellant had chosen to have the amounts paid first into his personal bank account, and then transferred the amounts to the practice bank account.

34. Having concluded that the payments of £51,519.80 were paid by the South Kent Coast CCG at the instruction of the Appellant and as remuneration for the services of the Appellant, it follows that we agree with HMRC that the amounts are the income of the Appellant and, as advised on the P60, should have been included on the Appellant's personal tax return.

35. We conclude that HMRC's revised calculation of the tax due from the Appellant for 2013/14, as set out in the Closure Notice dated 9 February 2016, is correct. The Closure Notice is confirmed in the amounts stated.

Conclusion

36. For the reasons set out above, this appeal is dismissed. We announced our decision to the parties at the conclusion of the hearing, and informed them that we would issue our decision in writing.

37. 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.

JANE BAILEY

TRIBUNAL JUDGE
RELEASE DATE: 30 JULY 2019