Neutral Citation Number: [2022] EWHC 425 (Admin)

Case No: CO/2273/2021

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
ADMINISTRATIVE COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 2nd March 2022

Before :

LADY JUSTICE WHIPPLE

and

MRS JUSTICE COLLINS RICE

- -

Between:

(1) STEPHEN JOHN PUGSLEY **(2) RED LION HOJ LTD**	**Appellants**
- and -	
DIRECTOR OF PUBLIC PROSECUTIONS	**Respondent**
OXFORD MAGISTRATES COURT	**Interested Party**

- -
- -

Bruce Stuart (instructed by direct access) for the **Appellants**
Alex Young (instructed by **CPS Appeals Unit**) for the **Respondent**

Hearing date: 22nd February 2022

- -

Approved Judgment

Lady Justice Whipple:

Introduction

1. This is an appeal by way of case stated pursuant to section 111 of the Magistrates Courts Act 1980 against the refusal of DJ (MC) Rana, sitting at Oxford Magistrates Court, to stay the prosecution against them as an abuse of process. The appellants are in the pub business and the first appellant is the sole director of the second appellant. The appellants were prosecuted for supplying goods and services between 7 March 2019 and 31 October 2019 in contravention of a condition imposed by HM Revenue and Customs ("HMRC") by notice dated 7 February 2019 (the "Notice"). The Notice required the appellants to provide security for the payment of VAT as a condition of continuing to supply goods and services. That security was not provided.

2. The Notice was issued on 7 February 2019 by Mr David Pell, an officer in HMRC's fraud investigation service. That same officer conducted an internal reconsideration and by a letter dated 24 April 2019, he told the appellants that he had concluded that the Notice should be upheld. The appellants argue that they were entitled to a review by an officer not previously connected with this matter (referred to by Judge Rana and by the parties generally as an "independent review" – although of course such a review would not be truly independent because it would remain a review internal to HMRC) and that in the absence of such a review, the prosecution amounted to an abuse of process which should have been stayed.

3. Judge Rana heard argument on the appellants' application but refused to stay the prosecution. She acceded to the appellants' request to state a case for the High Court, in which she posed the following two questions:

    i) Was I as the District Judge correct in determining that Ss.83(1) and 83A-F of the Value Added Tax Act 1994, the Notice and Fact Sheet SS/FS2 taken together did not require HRMC to conduct an independent review of their decision to require a security for the payment of VAT?

    ii) Was I as the District Judge correct in concluding that the failure to conduct an independent review in the circumstances of this case did not amount to an abuse of process?

4. On this appeal, Bruce Stuart represented the appellants and Alex Young represented the DPP. Oxford Magistrates' Court was named as an interested party, but in the usual way did not appear and was not represented. I am grateful to counsel for their helpful and succinct submissions.

Extension of Time

5. The appellants' notice was lodged on 30 June 2021. The case stated in its final form was dated 9 June 2021. By CPR PD52E paragraph 2.2, an appellant's notice in an appeal by way of case stated must be filed within 10 days of the date of the case stated which meant that time for lodging an appellant's notice in this case expired on 19 June 2021 and the appellants' notice was out of time by some days. Mr Stuart for the appellants explains various difficulties he encountered in filing the appellants' notice, and notes that his first attempt to file (electronically, only to be told the Court would

not accept electronic filing) was within time. The respondent was neutral on the appellants' application for an extension of time.

6. In the exercise of my case management powers under CPR 3.1(2)(a), I would extend time for this appeal to 30 June 2021, for these reasons: the extension sought is a short one; the delay in bringing the matter before this court has not caused any prejudice to the respondent or the Court, nor has it increased costs; the reason for the delay has been satisfactorily explained and was not caused by any failure or default on the part of the appellants. In overview, the overriding objective is best served by granting the application for extension.

The Facts

7. The following summary draws on the case stated and documents provided to this Court.

8. On 7 February 2019, Mr Pell issued the Notice. It was headed "Notice of Requirement to Give Security …". It explained that under powers contained in paragraph 4(2) of Schedule 11 to the VAT Act 1994 ("VATA") and for the protection of the revenue, HMRC required the appellants, as a condition of their supplying goods and services under a taxable supply, to give security by way of cash deposit or performance bond in the amount of £18,232.79. Under the heading "What to do if you disagree with this notice", the Notice said this:

> "If you do not agree with my decision, you can
>
> - immediately send me any further information that you want me to consider,
>
> - ask for my decision to be reviewed by an HM Revenue and Customs officer not previously involved in the matter, or
>
> - appeal to an independent tribunal.
>
> If you opt for a review you can still appeal to the tribunal after the review has finished.
>
> If you want a review you should write to this office at the above address within 30 days of this letter, giving your reasons why you do not agree with my decision.
>
> …"

9. Attached to the Notice was HMRC factsheet SS/FS2a entitled "Securities in respect of VAT at risk" (the "Fact Sheet"). The Fact Sheet provided information about the requirement for a security. Under a heading "What if we require security from you and you disagree with our decision?" it said this:

> " … you have the right to an independent review of that decision. You should request a review within 30 days of the date of the notice of requirement to give security if you:

- think there are facts that may not have been fully considered
- can provide further information that you believe will alter our view

If you prefer, you can appeal direct to an independent tribunal within 30 days of the date of the notice of requirement or, if you have opted for a review, within 30 days from the date of our letter telling you about the review decision.

You can find more information about appeals and reviews in factsheet HMRC1, 'HM Revenue & Customs decisions -what to do If you disagree·. You can get this factsheet from our website. go to www.hmrc.gov.uk/factsheets/hmrc1.pdf or phone our orderline on 0300 200 3610. …"

10. On 26 February 2019 (in fact sent by email the following day, 27 February 2019), the first appellant wrote to Mr Pell. This is an important letter, upon which much of the appellants' case turns:

"Dear Mr Pell,

Further to you letter in regards securities for our company:

After discussing the letter with one of your colleagues, **I would like to put forward a case for the consideration of reviewing the decision** for the company to leave a cash security deposit with HMRC.

Having changed our accountant and working management practices we are now confident that all returns and liabilities can be paid and submitted on time.

All returns and liabilities are now completely up to date and I will ensure that this remains the case moving forward.

Going forward we are in a position to submit monthly returns and make weekly payments to our VAT account.

…" (emphasis added).

11. Mr Pell replied to the first appellant by letter dated 24 April 2019. He noted that the first appellant had "put forward a case for the consideration of reviewing the decision…" (quoting the words used in the first appellant's letter of 26 February 2019). He continued:

"HMRC has the ability to offer a local review carried out by the original Decision Maker, an Independent Review carried out by an HMRC Officer not connected with the case and finally appeal to an Independent Tribunal. These options are included in the letter of 7th February 2019.

> A local review of the decision dated 7th February 2019 has now been completed.
>
> My review conclusion is that the decision made by HMRC is upheld. I am writing to explain how I reached my conclusion and to advise that you may now request an Independent Review to be carried out by an HMRC Officer not connected with the case, or, you may decide on an appeal to an independent tribunal. …"

12. At the end of that letter, Mr Pell repeated what had been said in the Notice, namely that:

> "If you do not agree with my decision, you can
>
> • immediately send me any further information that you want me to consider,
>
> • ask for my decision to be reviewed by an HM Revenue and Customs officer not previously involved in the matter, or
>
> • appeal to an independent tribunal …"

Mr Pell directed the first appellant to the HMRC website where there was more information available about appeals and reviews.

13. In addition to the letters referred to above, the Court has seen undisputed witness statements which were before Judge Rana. The first is from Lynne Hughes of HMRC's fraud investigation service dated 4 February 2020. She spoke to the first appellant on the telephone on 14 February 2019 and explained to him how the amount of the required security had been calculated; she also told him about his options regarding the Notice. In her words, he could "pay, make representations to Officer Pell, the decision-maker, ask for an Independent Review, Appeal to Tribunal or Cease to Trade." She explained that if he continued to trade without paying the security he could be prosecuted. She records that: "Mr Pugsley said he intended making representations to Officer Pell". On 17 May 2019, she spoke to Mr Azam, an accountant instructed by the appellants, who had requested a review by letter to HMRC dated 8 May 2019 (that letter is not before the Court). She asked whether Mr Azam was asking for an independent review and she records that Mr Azam said he would like Officer Pell to reconsider his decision.

14. The second witness statement is from Caroline Barfield, also of HMRC's fraud investigation service, dated 28 January 2020. She says that she spoke to Mr Azam on 28 May 2019. She explained that the appellants could request an independent review, even though strictly the time limit for that had already expired following Officer Pell's reconsideration dated 24 April 2019, but she asked Mr Azam to let her know by 31 May 2019 if an independent review was required. (It is common ground that no request for an independent review was made, following this conversation.)

15. Turning back to the correspondence to complete the story: the appellants did not respond to Mr Pell's letter of 24 April 2019. By letter dated 18 June 2019, HMRC (by Lynne Hughes) wrote to the first appellant to draw his attention to the fact that no

security had been received. On 1 July 2019, the first appellant replied by email, enclosing a letter dated 26 February 2019, in which he said he was happy to offer the amount of £18,232.79 as security on the basis of staged payments of £3,000 per month. By a letter dated 3 July 2019, Mr Pell accepted the proposal to provide the security in instalments, which Mr Pell timetabled to start on 19 July 2019 and be paid monthly thereafter until 19 December 2019. On 15 August 2019, Lynne Hughes wrote to the first appellant noting that the first instalment due on 19 July 2019 had not been paid and requiring immediate payment of the full security deposit. The security deposit was not paid.

16. On 23 March 2020, an information was laid and a postal requisition was issued in respect of both appellants, alleging contravention of the Notice between7 March 2019 and 31 October 2019. It was alleged that the second appellant had made taxable supplies of food and drink during this period, and that that the first appellant had "consented, connived or was neglectful" in respect of those supplies. The matter proceeded to a hearing in the Magistrates Court on 29 January 2021, when Judge Rana refused the appellants' application to stay the prosecution. The appellants initially entered not guilty pleas and a case management hearing with a view to trial was listed. On 2 March 2021 the appellants changed their pleas to guilty and were sentenced by Judge Rana to fines of £1,000 each, and ordered to pay costs and compensation, as well as a surcharge.

The Law

17. Part V of VATA is headed "Reviews and Appeals". Within that part, section 83 sets out various provisions on appeals to the tribunal. Sections 83A to 83G were inserted by the Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009, SI 2009/56, article 3, Schedule 1 paragraph 220, with effect from 1 April 2009.

18. Section 83A is headed "Offer of Review" and provides as follows:

> "(1) HMRC must offer a person (P) a review of a decision that has been notified to P if an appeal lies under section 83 in respect of the decision.
>
> (2) The offer of the review must be made by notice given to P at the same time as the decision is notified to P.
>
> (3) This section does not apply to the notification of the conclusions of a review."

19. It is common ground in this case that the Notice was an appealable decision under section 83, that the appellants were persons notified of that decision, and that in consequence HMRC was required to offer the appellants a review, pursuant to section 83A(1).

20. Section 83C is headed "Review by HMRC". It provides that:

> "(1) HMRC must review a decision if—
>
> (a) they have offered a review of the decision under section 83A, and

> (b) **P notifies HMRC accepting the offer** within 30 days from the date of the document containing the notification of the offer.
>
> …" (emphasis added).

21. There are issues of fact and law in relation to section 83C(1)(b), to which I will come.

22. Section 83E is headed "Review out of Time" and requires HMRC to review the decision even if P has not accepted the offer of a review within 30 days, so long as certain conditions are met, namely that P notifies HMRC in writing of a request for review, HMRC are satisfied that P has a reasonable excuse for not accepting the offer of a review within the time allowed and that there was no unreasonable delay. No issue arises under section 83E in this case: if a review was requested by the appellants on 26 February 2019, it was in time. It is common ground that there was no other request for a review by the appellants at any stage.

23. The nature of a review is addressed by section 83F, as follows:

> "(1) This section applies if HMRC are required to undertake a review under section 83C or 83E.
>
> (2) The nature and extent of the review are to be such as appear appropriate to HMRC in the circumstances.
>
> …"

24. An issue arises in relation to section 83F. The appellants say that a review necessarily means an independent review, undertaken by an officer of HMRC who has not been involved in the matter; the respondent says that section 83F is sufficiently wide to permit a local reconsideration, such as the one undertaken by Mr Pell in this case (24 April 2019), to amount to a review for statutory purposes.

The Case Stated

25. In a clear and comprehensive case stated, Judge Rana set out the history of the case and summarised the rival cases and the law. Then she set out the reasons for her decision. She considered there were three issues for determination, see [29], whether:

> "… a) Ss.83A and 83F VAT Act 1994 required HMRC to conduct an independent review of their decisions to require the payment of a security deposit, when requested.
>
> b) In the circumstances of this case, the Notice and the Fact Sheet created a legitimate expectation that any review requested would be an independent review and if so,
>
> c) Whether failure to conduct an independent review amounted to an abuse of process."

26. She concluded that under section 83F, the nature of a review was left to HMRC to determine having regard to all the circumstances; there was no requirement in the

statute for an independent review. Thus, in answer to the first issue, she concluded that there was no requirement for an independent review (in the sense of a review by an officer of HMRC not previously connected with the matter) and that in the circumstances, HMRC had offered and conducted a review (I infer, in the form of Mr Pell's internal reconsideration of the matter) which was appropriate by HMRC and in accordance with HMRC's statutory duty (see [30]-[33]).

27. She concluded that the Notice and the Fact Sheet taken together provided clear guidance in respect of the actions required of the appellants if they disagreed with the Notice; in essence, the appellants had three options: to provide further information to the original decision-maker, seek an independent review, or appeal to the tribunal. She found that the first appellant had not specified in his letter of 26 February 2019 what type of review he wanted. She concluded that the form of review was contingent on the steps taken by the appellants and that in the circumstances of this case, and in answer to the second issue, the Notice and the Fact Sheet did not create any legitimate expectation that the review requested would be an independent review, particularly in view of the lack of clarity in the first appellant's response which she found to be "general and unspecific in nature". She distinguished the case of *Eurfan Ahmed Chaudry v HMRC* [2007] EWHC 1805 on which the appellants relied (see [34]-[48]).

28. Having found that no legitimate expectation was created in this case, she then considered all the circumstances and whether it would be fair to continue the proceedings or whether they should be stayed as an abuse. She noted that the appellants had not initially sought advice in relation to the Notice, that there had been protracted and continued communication between the appellants and HMRC which afforded the appellants further opportunities to address the grounds for review and provide further information, that there were no factual matters in issue between the parties and that the matter was clear and unambiguous. She concluded in answer to the third issue that there was no unfairness and no abuse of process (see [49]-[51]).

29. She posed the two questions for the Court. The first and second issues (relating to statutory interpretation and legitimate expectation, respectively) are contained in the first question and the third issue (of fairness and abuse of process) was the main focus of the second question (see the questions at paragraph 3 above).

Parties' Submissions

30. Mr Stuart advances two grounds of appeal against Judge Rana's ruling, as follows:

    i) The learned judge was wrong to decide that the requirement to offer a review of the decision to require security for VAT, section 83A, was satisfied by a reconsideration of the decision by the original decision maker.

    ii) The Respondents, having not complied with section 83A VATA 1994, the Requirement to provide security was invalid and the criminal charges under section 72(11) VATA 1994 an abuse of the court process.

31. In his submissions, Mr Stuart emphasised that the Notice offered an independent review. The Fact Sheet only refers to an independent review and makes no reference to any review or reconsideration by the original decision-maker. He says that the first

appellant's letter dated 26 February 2019 was an acceptance of HMRC's offer of an independent review. HMRC were required to conduct such a review, and have failed to do so, so they are in breach of section 83C. He argues that Judge Rana was wrong on the first issue she identified relating to statutory interpretation; he says that a review for section 83A purposes means a review by an officer not previously involved in the matter (ie an "independent review", to adopt the parties' terminology) and the term "review", as it is used in the statute, does not include an internal reconsideration by the original decision-maker (which is what Mr Pell provided on 24 April 2019, although he referred to it in that letter as a "review"). He relies on the Fact Sheet and other HMRC guidance in the public domain to support his case. He submits that there is an established review procedure publicised by HMRC, which involves an officer not otherwise connected with the case undertaking the review. Officer Pell was the decision-maker and his reconsideration of the case was not a review within the statute.

32. From this starting point he argues that the appellants had a legitimate expectation that an independent review would be conducted. That legitimate expectation has been frustrated, and that is unfair. That unfairness is grave and amounts to an abuse of the criminal process, and for that reason the prosecution should have been stayed.

33. Mr Young argues that Judge Rana was correct for the reasons she gave. He says that VATA only requires HMRC to offer a "review", and that the nature and extent of that review is for HMRC to determine, noting the breadth of the discretion conferred on HMRC by section 83F. Thus, it is open to HMRC to undertake an internal reconsideration which will count as a "review" for the purposes of the statute, so long as HMRC consider that to be appropriate. HMRC, by Mr Pell, did consider that to be appropriate in this case. Accordingly, a statutory review was provided. However, in the alternative and if the Court disagrees on the issue of statutory interpretation, the appellants anyway fail on the facts because the appellants never asked for an independent review; rather they asked for, and got, an internal reconsideration. In those circumstances, no legitimate expectation of an independent review was ever created and there was no unfairness in this prosecution. In the further alternative, he contends that the threshold for abuse of process is high; a prosecution will only be stayed if it is "an affront to justice". The mere frustration of a legitimate expectation, even if that could be established on the facts here (which he argued it could not), would not meet that high bar; detrimental reliance on the alleged promise could not be shown.

Decision

34. Like Judge Rana, I turn first to the provisions of VATA. HMRC is required to undertake a review (whatever "review" means, a point I shall come to) only if such a review has been offered (noting the terms of section 83A) and if the person has notified HMRC that they accept the offer of review (section 83C(1)(b)).

35. At the heart of the appellants' case lie the twin propositions, that the term "review" as it is used in the statute means an independent review, and that the appellants accepted HMRC's offer to provide such a review (ie an independent review) in their letter of 26 February 2019. From those twin propositions, the rest of the appellants' case flows: that HMRC was obliged to undertake an independent review which they failed to do, leading to a frustration of the appellants' legitimate expectation, unfairness and ultimately abuse of process.

36. For present purposes and without deciding the point, I assume in the appellants' favour that the word "review", as it is used in VATA, means an independent review (as distinct from a reconsideration by the decision-maker). I shall explain why below.

37. HMRC did offer an independent review in the Notice (see paragraph 8 above and so Judge Rana found: see [35] of the case stated). Section 83A is met.

38. The issue, as it seems to me, is whether the appellants accepted that offer. That is a question of fact, or perhaps a question of mixed fact and law.

39. Both parties addressed the Court on their analysis of the correspondence and in particular on the proper construction of the appellants' letter of 26 February 2019, taking opposing positions on that matter. I turn to Judge Rana's findings for the answer. She found that the letter of 26 February 2019 was equivocal; she said that the "the nature of the review was not specified" ([10] and [41]]), that the response lacked clarity ([44]) and was "general and unspecific in nature" ([48]). She did not find, on the evidence, that the letter was an acceptance of the offer of an independent review, quite the contrary.

40. However, Mr Stuart maintains that as a matter of law and despite Judge Rana's findings, his clients were entitled to an independent review. That is on the footing, he argues, that the Fact Sheet refers (only) to an independent review, and on the basis that the Fact Sheet augments the legislation which (as I have assumed for present purposes) is only concerned with an independent review. So, he says, the only offer the appellants could have been accepting was an offer of an independent review. It is in this context that he relies on *Eurfan Ahmed Chaudhry v HMRC* [2007] EWHC 1805 for the proposition that a legitimate expectation can arise from HMRC's published policy (that case concerned a representation that a person would not be prosecuted if a notice of appeal was entered in time, which is not the same issue as arises in this case, as Mr Stuart accepts).

41. Mr Stuart is right to say that in principle HMRC can be fixed with statements of policy published to the world at large (which is the point he seeks to extract from *Chaudhry*, a case which involved very different facts; there are many cases which deal with that issue, perhaps most famously *R v Inland Revenue Commissioners, ex p MFK Underwriting Agents Ltd* [1990] 1 WLR 1545). The question here is whether HMRC's offer was narrowed by the Fact Sheet or by the statute to a single option of an independent review. Judge Rana did not think so. She said that the Notice and the Fact Sheet had to be considered together and that there were three options put to the appellants ([35]), that the Notice and the Fact Sheet together provided clear guidance to the appellants ([38] and [39]), and that that the form of review was contingent on the steps taken by the appellants ([43]).

42. I agree with Judge Rana. The Notice and Fact Sheet must be considered together. They were sent to the appellants at the same time and together reflected HMRC's position. It is artificial to extract statements from the Fact Sheet relating to the possibility of an independent review, without considering the contents of the Notice which the Fact Sheet supplemented. Further and in direct answer to Mr Stuart's case on the law, it is wrong to consider sections 83A-83G in isolation; HMRC have statutory powers of care and management as well, and they were at liberty to offer an

internal reconsideration alongside an independent review (and, indeed, a statutory appeal).

43. Like Judge Rana, I conclude that the appellants were offered three options: a local reconsideration, an independent review and an appeal to the tribunal. I reject Mr Stuart's argument that in law there was only one option. As Judge Rana found, it was up to the appellants to say which option they wished to pursue.

44. For the appellants' case to get off the ground, they must show that they accepted the offer of an independent review. This is what section 83C(1)(b) requires ("P notifies HMRC accepting the offer…"). Judge Rana did not make that finding; to the contrary, she found that the appellants' response was equivocal. That seems to me to present an insuperable obstacle to the appellants' case: the section 83C condition of acceptance of the offer is not met on the facts.

45. It is perhaps arguable that the construction of the letter of 26 February 2019 is a matter of mixed fact and law amenable to review by this Court. If so, and for completeness' sake, I record Mr Young's submission that the letter, given a fair reading and in context, was an acceptance by the appellants of the offer of an internal reconsideration (and implicitly a rejection of the offer of an independent review). He points to the fact that the letter used the word "consideration" as well as review, and that it referred to an earlier discussion with one of Mr Pell's colleagues, which must be the conversation which Ms Hughes describes in her witness statement as taking place on 14 February and in the course of which the first appellant told Ms Hughes in terms he wanted an internal reconsideration and not an independent review. Mr Young says that the position becomes even clearer if account is taken of events after Mr Pell's letter of 24 April 2019 was received by the appellants: there was no complaint by the appellants about Mr Pell's review when they received it; at no subsequent stage, even though the possibility of an independent review was offered to the appellants in Mr Pell's letter and on other occasions, did the appellants in fact request such a review (as noted in the case stated at [12]); and Mr Azam told Lynne Hughes on 17 May 2019 that his clients wanted an internal reconsideration (again). Finally, no evidence has ever been put before the Court from the first appellant to say what he intended by the letter, and there is no challenge to the evidence of Lynne Hughes or Caroline Barfield that an internal reconsideration was being sought. Thus, says Mr Young, there is overwhelming evidence that the appellants intended to, and did, accept the offer of an internal reconsideration (ie reconsideration by the original decision-maker, Mr Pell).

46. Mr Young's points have force. If it is open to this Court to review the findings about the letter of 26 February 2019, I would infer that the letter was intended and received as an acceptance of the offer of internal reconsideration. On that alternative analysis too, this appeal fails.

47. I come to the issues considered by Judge Rana and to the questions posed for this Court. Judge Rana thought there were three issues in the case. The first relates to the question of whether a statutory "review" can comprise, in an appropriate case and at HMRC's election, an internal reconsideration. I have side-stepped that issue, assuming the point in the appellants' favour. The point is potentially significant to HMRC, given that it relates to the nature and scope of the review scheme implemented by the amendments to VATA in 2009. But HMRC is not a party to this

appeal and has not provided any submissions on the point. Given that it is unnecessary to decide the point in order to dispose of this appeal, I consider it preferable to leave the point open for another day.

48. The second issue related to the question of legitimate expectation. Mr Stuart accepted that if there was no request for an independent review, his case on legitimate expectation failed. For reasons already set out, I have concluded that there was no request for independent review. It follows that there was no legitimate expectation of such a review.

49. The third issue related to unfairness in prosecuting the appellants for breach of the Notice. The appellants' case on unfairness was predicated on establishing a legitimate expectation of such a review. For reasons given, the appellants' case on unfairness consequent on the lack of independent review falls away.

50. Judge Rana considered the issue of fairness more broadly. She noted that the appellants had not sought advice in responding to the Notice and that there had been protracted and continued communication between HMRC and the appellants which afforded the appellants further opportunities to address the grounds for review and provide further information ([50]). She held that there was no unfairness and no abuse of process ([51]). I agree. I would add that the appellants were warned (by Mr Young's count, on seven separate occasions) that they faced prosecution if they did not comply with the Notice, and that they breached the agreement they had proposed to pay by instalments. Taking a wider view, this prosecution was not unfair, nor did it amount to an abuse of the criminal process.

Conclusion

51. I would answer the questions for the Court in the affirmative, although in relation to the first question I have taken a different route to the same end point as Judge Rana:

    i) Yes, Judge Rana was correct to decide that HMRC was not required to conduct an independent review of their decision to require security for the payment of VAT; and

    ii) Yes, Judge Rana was correct to conclude that the failure to conduct an independent review in the circumstances of this case did not amount to an abuse of process.

52. I would dismiss this appeal.

Mrs Justice Collins Rice:

53. I agree.