# First-tier Tribunal (Tax)


URL: *https://www.bailii.org/uk/cases/UKFTT/TC/2026/678.html*
Cite as: [2026] UKFTT 678 (TC)

Neutral Citation Number: [2026] UKFTT 678 (TC)

Case Number: TC 09878
Appeal reference: TC/2023/09810

**FIRST-TIER TRIBUNAL**
**TAX CHAMBER**

Taylor House, London

**Heard on:** 23 - 27 March 2026
**Judgment date:** 08 May 2026

**Before**

**TRIBUNAL JUDGE AMANDA BROWN**

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**Between**

**HC-ONE NO.1 LIMITED** **Appellant**

**- and -**

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

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**Representation:**

For the Appellant: Jonathan Peacock KC and Edward Hellier of Counsel, instructed by Slaughter and May

For the Respondents: Francis Fitzpatrick KC, Sarah Black, and Emile Simpson of Counsel, instructed by the General Counsel and Solicitor to HM Revenue and Customs

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HTML VERSION OF JUDGMENT

***SDLT*** *- (1) whether the solvent liquidation of a company above the vendor of property subject to group relief within 3 years pursuant to paragraph 4(4) Schedule 7 Finance Act 2003 represents tax avoidance - no - targeted anti avoidance provisions contained in paragraph 2(4A) Schedule 7 Finance Act 2003 thereby not triggered - appeal against associated assessments allowed.*

*(2) whether liquidation (referred to above) and subsequent share sale "involved in connection with" disposal by OpCos and acquisition by Appellant under section 75A Finance Act 2003 - no - section 75A therefore providing no justification for notices of determination in connection with any notional transaction - appeal against determinations allowed.*

*(3) obiter dicta view expressed on ancillary matters concerning (a) main purpose, (b) whether assessments issued without adjustment for chattels valid, (c) whether block assessments valid and (d) concerning matters of quantum calculation.*

## DECISION

**INTRODUCTION**

1. This appeal concerns the Stamp Duty Land Tax (**SDLT**) consequences of a substantial corporate reorganisation undertaken by the BUPA corporate group (all companies within the BUPA corporate group, unless otherwise defined, are referred to as **Group**) as part of a planned divestment of a large portfolio of care homes, a project initially described internally as Project Graceland but subsequently as Project Oval (**Oval**). Before embarking on the divestment, Group needed to unwind a previous securitisation arrangement (**Securitisation Unwind**). Between July and November 2016, 98 English care home properties were transferred on an intra-group basis from eight operating companies within Group ("**OpCos**") to HC-One No.1 Limited (**Appellant**), a newly incorporated subsidiary intended to serve as the sale vehicle. Group relief from **SDLT** was claimed on each of those transfers. The Appellant was subsequently sold to an unrelated third-party purchaser, HC-One. The contract for sale was signed on 29 June 2017 and completed on 14 December 2017, less than three years after the intra-group transfers. Immediately prior to entering into the share sale agreement, Group placed the relevant parent company of the OpCos into members' voluntary liquidation. The Securitisation Unwind, intra-group transfers, the liquidation and ultimate sale to HC-One are the arrangements under consideration in the Appeal (**Arrangements**).

2. The central question in this appeal is whether **SDLT** was due on or by reference to the intra-group transfers.. HM Revenue & Customs (**HMRC**) issued ten discovery assessments (**Assessments**) (pursuant to paragraph 28 Schedule 10 (**para 28**) FA 03) on the basis that group relief claimed under Schedule 7 (**Sch 7**) Finance Act 2003 (**FA 03**) was not available and ten revenue determinations (**Determinations**) (pursuant to paragraph 25 Schedule 10 (**para 25**) FA 03) on the basis that s75A FA 03 (**s75A**) applied. They contend, first, that the intra-group transfers formed part of arrangements of which a main purpose was the avoidance of **SDLT,** such that the targeted anti-avoidance provision in Sch 7 paragraph 2(4A) (**para 2(4A)**) applies. Secondly and in the alternative, HMRC rely on s75A, asserting that the intra-group transfers, the liquidation, and the subsequent sale constitute "scheme transactions" which together yield less **SDLT** than a notional transaction would require.

3. The Appellant disputes both limbs of HMRC's case under para 2(4A). It contends that the Arrangements were driven by commercial purposes, including regulatory, operational, and employee-related constraints; and that the liquidation was a genuine liquidation meeting the statutory terms of para 4(4) of Sch.7 and there was no avoidance. In its defence against

the s75A Determinations, the Appellant contends that the subsequent share sale was not a transaction "involved in connection with" the prior intra-group acquisitions. The Appellant further challenges the procedural validity of the Assessments and, in the event that the Assessments stand despite the other challenges, that they overstate the amount of tax due.

4. The issues I am required to determine are therefore:

(1) whether group relief is denied by reason of the Sch.7 (**Main Purpose Issue**);

(2) whether s75A applies to recharacterise the intra-group acquisitions (**Involved Issue**);

(3) whether the Assessments were lawfully made because HMRC made assessments for sums that they did not genuinely consider to be due (**Assessment Validity - Deliberate Over Assessment Issue**);

(4) whether some of the Assessments were unlawfully made because they were made on a global basis and not in respect of individual chargeable interests (**Assessment Validity - Block Assessments Issue**);

(5) if the Assessments were validly made, the correct method for determining chargeable consideration (**Quantum Issue**).

5. The parties presented these issues differently: however, they accepted that the Assessment Validity Issues are logically first. If the Assessments are invalid, strictly there is no need to determine the remaining issues. However, at the invitation of the parties, I do determine all of the issues. I structure this judgment on an issue-by-issue basis, setting out, as relevant, the statutory test, the relevant agreed facts and evidence, the parties' submissions, and my determination.

6. For the reasons set out below I have decided:

(1) Group relief was available to the Appellant when claimed and the appeal succeeds on the Main Purpose Issue.

(2) Section 75A does not apply to recharacterise the intra-group acquisitions and the appeal succeeds on the Involved Issue.

(3) The Assessments were validly made both on best judgment grounds and on the basis that having made a return as if the linked transactions between the same vendor and purchaser were a single transaction it was appropriate for HMRC to assess on the basis that there was a single transaction for each OpCo. I would therefore have refused the appeal on the Assessment Validity - Deliberate Overassessment and Block Assessments Issues.

(4) Again, although unnecessary for the determination of the appeal, I have determined the Quantum Issues on one hypothesis against the Appellant and in the second hypothesis in the Appellant's favour.

**EVIDENTIAL PRELIMINARIES**

7. Though initially unable to agree a statement of agreed facts, by the end of the hearing, the parties were able to reach such agreement which, due to its length, I attach as Appendix 1 to this judgment. My factual findings on each issue draw from and identify the facts which were agreed and those that I have found on the evidence.

8. I was provided with a three-part documents bundle: A - Core Bundle of 244 pages, B - Witness Statements and Contemporaneous Documents of 2128 pages, and Bundle C - Interparty and Tribunal Correspondence of 647. I reminded the parties that I would take account of documents within the bundle to which I was specifically referred (in the skeleton arguments or in submissions and those to which the witnesses were taken) but would not

trawl the bundles more generally. This approach is in accordance with the guidance provided by the Upper Tribunal in *Adelekun v HMRC* [2020] UKUT 244 (TCC) in which it was stated:

> "... It cannot be assumed that just because a document appears in a hearing bundle that the tribunal panel will take account of it; if a party wants the tribunal to consider a document then the party should specifically refer the tribunal to it in the course of the hearing (see *Swift & others v Fred Olsen Cruise Lines* [2016] EWCA Civ 785 at [15]). This is not least to give the tribunal adequate opportunity to consider and evaluate the document in the light of the reliance a party seeks to place on it, but also to give the other party the opportunity to make their representations on the document. That is particularly so where, as here, there were several hearing bundles before the FTT relating to the various previous proceedings and the one containing the relevant additional documents was voluminous comprising 434 pages."

9. I heard sworn testimony from three witnesses: Mr Charles Richardson, former Strategy and Mergers & Acquisitions Director of Group, Ms Amy Crowley, and Mr Paul Hegarty both officers of HMRC. I found all three witnesses to be honest and credible. They each provided candid answers to the questions put to them. I accept their evidence as given as a true reflection of their own view of the matters on which they gave evidence.

10. The burden of proof in all matters in this appeal is on the Appellant. The standard of proof is on the balance of probabilities.

**BACKGROUND AND CHRONOLOGY**

11. In 2015 Group undertook a strategic review of its UK care home business. It concluded that a significant disposal was required, driven by concerns about brand risk, regulatory pressures, operational complexity, and declining returns in parts of the sector. The objective became the sale of a large portfolio of homes as a coherent standalone business, while retaining a smaller core portfolio. From the outset Group assumed that the disposal would be effected by way of a corporate sale rather than an asset sale, in order to reduce execution risk, manage regulatory approvals, and present a purchaser-friendly structure.

12. A material precursor to the disposal was the Securitisation Unwind of an existing securitisation structure established in 2000. Approximately 115 care homes, including around 60 intended for sale, were subject to that structure. In February 2016 Group acquired control of the securitisation issuer, making it UK-resident. On 1 April 2016, the issuer redeemed £235 million of notes, paying a premium of £146.6 million funded by Group. To restore unencumbered title to the properties, a series of intra-group lease surrenders took place in June and July 2016.

13. The corporate reorganisation proceeded in parallel. On 22 June 2016 certain operating companies were placed beneath Bupa Care Homes Group Limited (**BCHGL**), with the effect that all relevant OpCos were held within the same sub-group. On 29 June 2016 Bupa Care Homes (Holdings) Limited (**BCHHL**) was incorporated as a subsidiary of Bupa Finance plc, and on 30 June 2016 the Appellant was incorporated as a wholly-owned subsidiary of BCHHL to act as the sale vehicle.

14. Between July and November 2016, 98 care home properties intended for sale were transferred intra-group from the OpCos to the Appellant. The principal transfers took place on 22 July 2016, with further transfers on 16 August, 18 October, and 2 November 2016. Group relief from **SDLT** was claimed on each transfer. Following those transfers, the Appellant granted tenancies at will back to the OpCos so that the homes could continue to operate pending regulatory approvals.

15. The sale process commenced in summer 2016. A teaser and Information Memorandum were issued in September 2016, and first-round bids were received in October 2016. HC-One emerged as the preferred bidder. In the meantime, on 11 November 2016 the Appellant

entered into a business transfer agreement with the OpCos, conditional on regulatory approval, together with a staff services agreement under which employees continued to be provided pending completion. Responsibility for employees was deliberately retained within the OpCos until shortly before completion in order to manage TUPE and regulatory risks.

16. During the sales negotiation process, on 27 January 2017 2 properties which would not form part of the sale were transferred from the Appellant to BCHHL (**Extracted Properties**).

17. On 29 June 2017 BCHGL was placed into members' voluntary liquidation. Later that day BCHHL entered into the Sale Agreement for the sale of the Appellant to FC Skyfall Topco Limited, a company established by HC-One for the acquisition, together with transitional services arrangements. The liquidation had the effect that the OpCos ceased to be members of the same **SDLT** group as the Appellant.

18. Regulatory approvals were obtained in stages during 2017. The TUPE process was completed in December 2017. Completion of the sale to HC-One took place on 14 December 2017, less than three years after the intra-group property transfers.

**MAIN PURPOSE ISSUE**

## Legislation

19. This Issue centres on whether the provisions contained in para 2(4A) apply such that the group relief claimed in respect of the intra-group transfers was not available at the effective date of those transfers.

20. Para 2(4A) sets out a targeted anti avoidance provision which, in so far as relevant to this appeal, applies such that:

> "Group relief is not available if the transaction:
>
> (a) ..., or
>
> (b) forms part of arrangements of which the main purpose, or one of the main purposes, is the avoidance of liability to tax.
>
> "Tax" here means .... tax under this Part"

21. Paragraph 3 provides for withdrawal of group relief in certain circumstances unless excepted under paragraph 4. The relevant parts of these provisions are:

> "3(1) Where in the case of a transaction ("the relevant transaction") that is exempt from charge by virtue of paragraph 1 (group relief):
>
> (a) the purchaser ceases to be a member of the same group as the vendor:
>
> (i) before the end of the period of three years beginning with the effective date of the transaction, or
>
> (ii) in pursuance of, or in connection with, arrangements made before the end of that period,
>
> and
>
> (b) at the time the purchaser ceases to be a member of the same group as the vendor ("the relevant time"), it or a relevant associated company holds a chargeable interest:
>
> (i) that was acquired by the purchaser under the relevant transaction, or
>
> (ii) that is derived from a chargeable interest so acquired,
>
> and that has not subsequently been acquired at market value under a chargeable transaction for which group relief was available but was not claimed, group relief in relation to the relevant transaction, or an

> appropriate proportion of it, is withdrawn and tax is chargeable in accordance with this paragraph.
>
> ...
>
> 4(1) Group relief is not withdrawn under paragraph 3 in the following cases.
>
> ...
>
> (4) The second case is where the purchaser ceases to be a member of the same group as the vendor by reason of anything done for the purposes of, or in the course of, winding up the vendor or another company that is above the vendor in the group structure. (**para 4(4)**)"

**Case law**

***Main purpose***

22. The starting point is *IRC v Brebner* [1967] 2 AC 18 (***Brebner***) which established the essential architecture of the statutory "main purpose" test. It confirmed that taxpayers are entitled to arrange their affairs so as to minimise tax, but that this entitlement does not displace clear statutory conditions directed to tax avoidance. *Brebner* established that whilst it is the subjective purpose of the taxpayer that matters such subjective purpose is to be determined by reference to an assessment of all the evidence (see page 30).

23. That framework was confirmed and applied in *Lloyds TSB Equipment Leasing (No 1) v HMRC* [2014] EWCA Civ 1062 (***Lloyds***). *Lloyds* developed the main purpose approach by emphasising the evaluative nature of the inquiry. The Court of Appeal confirmed that the Tribunal must identify the relevant arrangements and assess purpose by examining the stated purposes by reference to their structure, operation, and consequences in the real world. Lloyds clarified that a distinction should be drawn between tax effects which are merely incidental to commercial arrangements and those which are intended and significant features of the structure (see paragraphs [51] - [52]).

24. *Travel Document Services v HMRC* [2018] EWCA Civ 549 (***TDS***) confirmed and applied those principles in a fact-sensitive context. It added emphasis to the Tribunal's role in drawing reasonable inferences from a disparity between the scale of the tax advantage and the commercial benefit obtained whilst confirming that simply because a tax advantage is more than trivial it does not necessarily equate to a main purpose (see paragraph [48]).

25. *Delinian Ltd v HMRC* [2023] EWCA Civ 1281 ***(Delinian***), provides a fact-sensitive application of the main purpose principles where the First-tier Tribunal had found, on the facts, that a tax motivated step did not constitute a main purpose of, in that case, a relevant share exchange. The Court also confirmed that the main purpose assessment is undertaken at the level of the particular arrangements or steps under scrutiny, not by reference to possible alternative arrangements that could have been implemented (see paragraphs [8] and [49]).

26. The Court of Appeal in *BlackRock Holdco 5 LLC v HMRC* [2024] EWCA Civ 330 (***BlackRock***) confirmed that ascertaining the main purpose of arrangements involves an enquiry into the subjective intentions, rather than the conscious motivations, of the relevant actor; but that purpose is to be distinguished from effect. Effects or consequences, even inevitable ones, are not necessarily the same as objects or purposes. Some results or consequences may be so inevitably and inextricably involved in an activity that, unless they were merely incidental, they had to be a purpose for it. It is for the fact-finding tribunal to determine the object or purpose sought to be achieved, and that question is not answered simply by asking the decision maker. Subjective intentions are not limited to conscious motivations (see paragraphs [124], [150] and [166]).

27. In *Kwik-Fit Group Ltd v HMRC* [2024] EWCA Civ 434 (***Kwik-Fit***), the Court of Appeal confirmed the approach in *BlackRock* and emphasised the importance of identifying

the relevant tax advantage (or in that case advantages) sought to be secured when identifying whether they were a main purpose of the reorganisation (see paragraphs [75] and [79]). In that context, the significance of the tax advantage must be considered by reference to the relevant legislative code. A tax advantage which is simply a feature or relevant factor and which does not represent even the "icing on the cake" was considered not to be a main object (see paragraph [87]).

***Definition of tax avoidance***

28. *IRC v Willoughby* [1997] 1 WLR 1071 (***Willoughby***) sets the foundation for drawing a distinction between tax avoidance and tax mitigation. The hallmark of tax avoidance being that a taxpayer reduces its tax liability without incurring the economic consequences that Parliament intended to be suffered by any taxpayer qualifying for such a reduction. Where a taxpayer mitigates their tax liability, they must bear the fiscal and commercial consequences associated with the tax benefit.

29. In *UBS AG v HMRC* [2016] UKSC 13 (***UBS***), the Supreme Court confirmed that the inquiry must be undertaken by reference to the arrangements viewed realistically and as a whole. As such, it is reasonable to expect that targeted anti-avoidance legislation, in particular, will usually (but not always) tax by reference to real world events with economic consequences and without reference to transactions or component elements of transaction which serve no economic purpose (see paragraph [64]).

30. In *Watts v HMRC* [2025] EWCA Civ 1615 (***Watts***) the Court of Appeal reviewed the approach to interpreting tax statutes adopting the observation in *Rossendale Borough Council v Hurstwood Properties Ltd* [2021] UKSC 16 (***Rossendale***) that it is not to be expected that Parliament intends to exempt from tax transactions having no purpose other than tax avoidance (see paragraph [37(ii)]).

**Evidence**

***Documents***

*Board minutes/papers*

31. Board minutes of British United Provident Association Limited for 17 September 2015 record that Mr Richardson joined the meeting for the part of the discussion concerning a review of the portfolio of care homes with a view to reducing the number of homes operated from 300 to circa 105. It is apparent that at that time Group were considering various options by which to divest itself of the homes it no longer wished to continue to operate. The board determined the next steps to be establishing a methodology for separation, a financial evaluation of the sustainability of the proposed retained portfolio verses complete divestment and a review of the options for dealing with the securitisation. At that time, the paper indicated that the book value of the homes to be removed from the portfolio was circa £670 million.

32. At the board meeting held on 11 February 2016, Mr Richardson was again in attendance, and the board were updated on the work undertaken regarding the care home portfolio review. By this point, the homes had individually been evaluated as suitable to be retained or sold. A sale was proposed for June 2016 either by a single disposal of 170 homes or in "clusters". Approval was given in principle for the sale of the majority of the portfolio. The briefing update for this meeting records that Solicitors (Slaughter and May) and accountants (PwC) had been appointed to assist with the planning phase for the transaction for which approval was then given.

33. On 16 June 2016 Oval was again presented to the board. Little of the minute is relevant to the decision I have to take, however it does record that the board were "reminded of the rationale for the disposal, namely that it was not possible to run the homes to the standard Group would like given its brand standing." The board resolved to approve a sales process and enter into bilateral discussion with HC One.

34. On 29 June 2017 BCHGL resolved that the company would be wound up.

***PwC appointment and step plan***

35. PwC were appointed on 27 January 2016 to provide "tax structuring services" to Group. The engagement letter stated that PwC would assist with tax structuring in connection with Oval. PwC would review the current corporate structure highlighting any material tax risks associated with the proposed property divestment "and comment on opportunities to obtain tax efficiencies via pre-transaction structuring". An additional scope of work identified undertaking pre-liquidation checks for a member's voluntary liquidation pre-sale. It is not apparent from the letter that the specific and ultimate liquidation had been conceived at that stage.

36. In February 2016 PwC prepared a restructuring step plan. By reference to the covering letter, the plan was limited to advice on some tax matters. PwC identified and advised that the preferred option for disposal would be "sale of newcos followed by liquidation of transferors". A series of 9 steps were set out, and it was noted that steps 1 - 7 (pre-sale restructuring) would be carried out prior to the marketing of the business. The report considered that the preferred option was consistent with the commercial objectives of Group and permitted flexibility in the event that the disposal portfolio could not be sold as a whole. Provided that the steps plan was followed it was considered that "there should be no adverse tax consequences resulting from the pre-sale reorganisation" though obtaining HMRC clearance was advised.

37. The key tax objectives were identified as ensuring: no adverse tax implications of the proposed pre-sale reorganisation; no de-grouping liabilities within the proposed sale newcos; and **SDLT** group relief. The proposed steps were as follows:

> "Step 1 - BCH (CFG) Plc sets up a Sale Newco (s) and Retain Newcos(s) with nominal share capital
>
> Step 2a - BCH (ANS) Ltd [distributes/transfers] its shareholding in RCVH Ltd and Belmont Care Ltd to Bupa Finance Plc
>
> Step 2b - BCH (GL) Ltd [distributes/transfers] its shareholding in Fulford Grange Medical Centre Ltd to BCH (CFG) Plc
>
> Step 3 - Bupa Finance Plc transfers its shareholding in BCH (ANS) Ltd to BCH Group Ltd
>
> Step 4 - Collapse leases in existing securitisation structure
>
> Step 5 - transfer properties being sold to Sale Newco(s)
>
> Step 6 - transfer trade and properties being retained to Retain Newco(s)
>
> Step 7 - BCH Group Ltd's subsidiaries transfer any residual assets or trade from subsidiaries
>
> Step 8 - BCH Group Ltd enters into solvent liquidation
>
> Step 9 BCH (CFG) Plc sells its shareholding in Sale Newco(s)"

38. The consideration of step 3 identified:

> "In order to qualify for group relief from stamp duty there must be no arrangements in place for BCH Group Ltd to be de-grouped, nor for a third party to acquire control of BCH Group Ltd but not of Bupa Finance Plc and Bupa Care Homes (CFG) Plc. An intention to liquidate BCH Group Ltd (or other companies) should not preclude the availability of stamp duty group relief as these liquidations will not result in a third party acquiring BCH Group Ltd together with the assets that were transferred at Step 3 (i.e. BCH Group Ltd is not being used to 'envelope' assets so that they can be

transferred outside the group to a third party purchaser without incurring stamp duty)."

39. As regards step 5 the report advised:

"**SDLT** group relief is available (under paragraph 1 Sch 7 FA 03) on land transactions between companies which are members of the same "group". In this case BCH (CFG) Plc is the parent of both the vendor companies and the Sale NewCo(s) and therefore the vendor and purchaser companies are members of the same ....

Group relief is not available (under paragraph 2 Sch 7 FA 03) if at the effective date of the transaction there are arrangements in existence by virtue of which, at that or some later time, a person or persons has or could obtain control of the purchaser but not of the vendor. Group relief is also not available if the transaction is effected in pursuance of, or in connection with, arrangements under which any part of the consideration for the transaction is to be provided by someone other than a group company; or the vendor and the purchaser are to cease to be members of the same group by reason of the purchaser ceasing to be a 75% subsidiary of the vendor or a third company.

**It is therefore crucial that there are no arrangements in place for a third party to acquire Sale NewCo(s) at the date that the properties are transferred to Sale NewCo(s).**

Whilst there may be arrangements in place for the vendor companies to be de-grouped via a future liquidation of BCH Group Ltd this should not result in group relief being denied as the vendors and Sale NewCo(s) are not de-grouped by reason of the Sale NewCo(s) ceasing to be a 75% subsidiary(ies) of the vendor or a third company.

Group relief is also not available (under paragraph 2(4A) Sch 7 FA 03) if the transaction is not effected for bona fide commercial reasons; or forms part of arrangements of which one of the main purposes is the avoidance of a liability to tax. The main objective of the overall transaction is to reorganise the group and split the care home business between the part to eventually be sold and the part to be retained. On this basis the anti-avoidance requirements in paragraph 2(4A) should not apply to deny group relief." (original emphasis)

40. The **SDLT** implications of step 8 are articulated as:

"The liquidation of BCH Group Ltd will result in the vendor companies (at Step 5 and Step 6) being de-grouped from the purchaser companies (i.e. Sale Newco and Retain Newco). Where the purchaser ceases to be a member of the same group as the vendor within 3 years of a transaction in respect of which **SDLT** group relief was claimed, that group relief is usually subject to a clawback (under paragraph 3, Sch 7 FA2003).

However, group relief is specifically stated not to be withdrawn where the vendor and purchaser companies are de-grouped as a result of the winding up of the vendor or another company that is above the vendor in the group structure (under paragraph 4, Sch 7 FA2003). So long as the de-grouping occurs as a result of BCH Group Ltd entering into solvent liquidation then no **SDLT** clawback charges should arise.

Whilst a strict application of [s75A] could impose an **SDLT** charge where just the liquidations form part of the same arrangements as the property transfers, this would be contrary to published group relief guidance and override the scope of the specifically drafted group relief and clawback rules."

***Slaughter and May papers***

41. Slaughter and May provided a paper in the CQC application process in April 2016. Over four pages Group were advised of the steps that needed to take place for the proposed transfer from a CQC registration perspective.

***Steerco papers***

42. The executive summary of the April 2016 Steerco identified three main value drivers for the transaction workstream: (1) establishing a clean sale vehicle to allow a purchaser to undertake a sale and leaseback intended to maximise the attractiveness of the Oval portfolio, including minimisation of tax on the sale for both the vendor and the purchasers both aspects supporting the investor thesis; (2) creating a business transformation plan; and (3) a separation plan which reduced central costs. The corporate structure update specified that 148 homes were for sale under Oval, 99 being retained, there were a further 33 homes within a third group (named Colorado). Pre-sale restructuring was noted as having "significant TUPE, CQC, **SDLT** implications".

43. The papers for the 9 May 2016 meeting identified that the recommended option was the sale of a clean company with identified milestones. The second milestone recorded was obtaining an **SDLT** clearance from HMRC. It was at least implied that the clearance application would be sent immediately following the Steerco meeting with an anticipated 4-week response time from HMRC. Further milestones included engagement with the CQC (anticipated time for even an expedited process - 20 weeks), completion of the "people process" with a target of 16 June 2016 and, following board approval, launch of the transaction process in early July 2016.

44. The update and decision slide set out the factors considered in the evaluation of the options as: simplifying the legacy corporate structure and employment arrangements; minimising people related issues, execution risk and business disruption; maximising the attractiveness of the portfolio to an acquirer (including tax treatment for an opco/propco structure) and minimising Group's tax bill on sale.

45. Slides for 6 June 2016 Steerco summarise progress on Oval as: (1) meetings had been held with potential purchasers including HC-One; (2) a working model business plan had been developed; (3) on advice it was considered that seeking HMRC clearance for **SDLT** was no longer necessary and approval to proceed without a clearance request was invited from the committee; (4) a proposed corporate structure was recommended but was contained in legally privileged documents not provided to me. The milestones previously identified were updated and now included liquidation of BCHGL on 3 October 2016 with a note that "this needs to happen before the signing of the sale agreement". In terms of timing the proposed milestone sat between submissions of non-binding indicative offers and completion of vendor due diligence. Separate slides addressed the "**SDLT** Decision" a placeholder marked the provision of privileged advice but a non-privileged summary confirmed that advice had been sought to determine whether **SDLT** group relief would apply were the properties transferred from the OpCos to the Appellant without clawback "if, as part of the planned restructuring, BCHGL [was] put into members' voluntary liquidation before the share purchase agreement [was signed] and whether HMRC clearance was required". The position reached was recorded as that no **SDLT** group relief clawback would arise and clearance was not required.

***Internal emails***

46. At a very early stage in the evaluation of a potential sale, internal correspondence into which Mr Richardson was copied concerned the estimated transaction costs for a disposal. At that time alternative values for sales proceeds were identified as £650m and £500m. In both instances **SDLT** was showing as a nil.

47. As is apparent from the PwC engagement letter the internal tax team at Group (**Tax Team**) were involved in Oval from at least January 2016. In an email of 11 March 2016, the Tax Team sought confirmation on the property lists to be able to commence work relating to obtaining CQC and **SDLT** clearances. Further correspondence in March 2016 indicates that the cost of tax advice received from PwC was a concern.

48. The Tax Team were involved in advising on the tax consequences of the various proposals to shape the sale. During the course of the emails evidencing the advice sought and provided, the Tax Team highlight the risk of **SDLT** group relief clawback if there are multiple transactions intra-group prior to the eventual external disposal.

49. On 21 April 2016 Mr Richardson sent an email concerning the pre-sale restructuring and attaching slides. The email narrates that, as the assets were spread across a number of companies with a mix of assets to be retained and assets to be sold, restructuring was required. Two options for restructure were proffered: (1) put the Oval portfolio into a new company and sell it, or (2) transfer the retained portfolio into a new company and sell the existing companies. Mr Richardson stated that the choice between the options was complex and that there was a clear preference for the sale of a new clean company containing the Oval portfolio, but that sale of the existing companies presented a solution to the employment law issues that arose from the clean company sale structure. Both routes required a transfer of a group of employees. However, transferring employees to be retained in the group avoided an early disclosure of an intention to divest of the Oval portfolio. Moving the Oval employees and not disclosing the potential sale was considered to give rise to a penalty of up to £42 million under TUPE rules and a materially increased risk of unionisation. It was stated that "if the unions get formally involved in the business, the advice we have is that any deal would collapse". However, moving the retained employees and selling the existing companies presented a downside from a deal perspective, with increased vendor due diligence required and a risk that purchasers would seek an asset sale rather than a share sale thereby extending time between exchange and completion. It was considered imperative that the pre-sale restructuring be commenced as soon as possible. With the CQC process expected to take up to 20 weeks Mr Richardson explained in the email that the pre-sale reorganisation needed to start with the expectation that delaying the restructure could trigger the tax charge (estimated at £20 million) and result in a "messy phase 2" that would reduce value and delay the deal. The analysis in the email was then reflected in the attached slide pack. The summary of options slide provided a comparative consideration of the two proposed options against: people risk (TUPE fine and unionisation), tax, regulatory requirements, and execution of the deal.

50. By email dated 8 May 2016, Mr Richardson provided a background and recommendation concerning the Oval corporate restructuring. This email was redacted in some regards. The recommendation was described as the "least bad option". A history of the evolution of the recommendation was set out. The First Plan was a sale of a clean company; it was identified as permitting CQC approval of the re-organisation thereby minimising the time between sale and completion and transfer of the properties could be effected without having to pay **SDLT** on the transaction and delivery of a tax advantage to the buyer. However, the TUPE risk associated with the First Plan necessitated the Second Plan in which the retained employees would be transferred to a new "retain co". Further, reflection had resulted in a conclusion that the Second Plan did not address the TUPE risk. The Third Plan was to delay restructure until after the announcement of a deal. This was considered to be very unattractive as it would require a 3 - 5-month delay between exchange and completion whilst the TUPE process was carried out; would make the deal more complicated for the potential purchaser; would trigger a £20 million **SDLT** charge; and was likely to result in a less favourable tax position for the purchaser. Plan Four was to do two TUPE transfers at different stages of the process whereby all employees would be moved to a service co

reducing (but not eliminating) the communication challenges and wider TUPE risk and facilitating the other restructuring steps.

51. There was an email exchange between Mr Richardson and the Tax Team on 18 May 2016. This exchange is heavily redacted, and it is therefore difficult to contextualise the exchange. However, it is apparent that Mr Richardson was seeking some comfort that if the existing companies needed to be sold (rather than selling a clean company with the assets in it) no **SDLT** clearance would be required. It is apparent that there was an imperative of avoiding a provision on the balance sheet. The response agreed that no clearance would be required for the sale of the legacy companies; the Tax Team also questioned whether, if a clearance application were denied, the deal would proceed as a legacy company sale and whether provisioning could be managed through a strong opinion from solicitors. Mr Richardson's response was:

> "Could do
>
> Unattractive
>
> Appetite to push that will depend on investor appetite and competitive tension, neither of which we will know for a while; if weak - would not wish to do it.
>
> So can't give you a definitive answer at this stage"

52. On 27 April 2017 there is a series of emails concerning the proposed transaction. The initial email sets out notes for a structuring session said to have been derived from meetings with the Tax Team and Slaughter and May. They seek "complete certainty" on the following topics: property, tax, people, regulatory approvals, new docs, and separation. The narrative on tax centres on testing the risk of a £40m **SDLT** charge. Concerning people TUPE issues and the potential of a £50m fine are flagged.

***Sale process documentation***

53. In September 2016 a "teaser" document was issued to the market together with a draft information memorandum. These documents stated that the subject matter of the proposed sale were the shares in a newly incorporated business. The separation plan and transaction structure were set out. I was not taken by either party to the detail of the separation plan in the Information Memorandum; however, having briefly reviewed it I observe that it explains that: (1) Group were carving out the Oval portfolio having transferred the majority of the properties into a newco (the Appellant), implementation of a lease and lease/licence back structure permitting the OpCos to continue to deliver care, with staff to be provided under a staff services agreement with a proposal to transfer remaining assets and relevant liabilities to the Appellant following CQC approval; (2) Following signature of the share sale agreement the TUPE process would be carried out and employees then transferred to the Appellant. The schedule is silent on the tax implications of the restructuring.

54. The share purchase agreement was dated 29 June 2017. I was taken to limited parts of the agreement. HMRC drew attention to the warranties which provided:

> "19.15 The Company has made a valid claim for group relief under Part 1 of [Sch 7] or Schedule 10 to the Land and Buildings Transaction Tax (Scotland) Act 2013 ("**SDLT/LBTT** Group Relief Claim") in respect of the transfer to it of each of the Relevant Properties and Pearl Homes. No **SDLT/LBTT** Group Relief Claim is subject to any dispute or disagreement with or enquiry by any relevant Tax Authority.
>
> 19.16 Bupa Care Homes Group Limited has, prior to signing of this Agreement, entered into members' voluntary liquidation."

**Witness evidence**

***Charles Richardson***

55. Mr Richardson's witness statement was prepared at a time when there was no agreed statement of facts. It therefore covered ground which, in the end, did not need to be proven.

56. Mr Richardson's evidence concerned the background to, structuring of, and implementation of the Arrangements. His evidence addressed both the commercial objectives of the transaction and the reasons for adopting particular legal and structural steps. Mr Richardson represented the guiding mind for Group in connection with the sale and the pre-sale reorganisation steps. During the Oval period he was also a director of several companies within the care homes group, including entities central to the eventual sale structure.

57. He described the context in which Group decided to dispose of part of its UK care homes portfolio. I do not summarise that evidence because the parties agree that the divestment of the Oval portfolio was commercially driven.

58. In June 2015 he prepared the paper summarised in paragraph 31 above presented at the June 2015 Board meeting setting out three broad options for achieving the group objectives for the care home business. He explained that the partial disposal option would not adequately address brand concerns and that the other options raised issues connected with an existing securitisation, under which debt had been raised against revenues from many care homes. Both a substantial partial disposal and a full exit would require early redemption of the securitised notes at significant cost.

59. Mr Richardson described the work undertaken to identify which homes should be sold and which retained. This involved a detailed, line-by-line analysis of the portfolio, with external input, to create a sale business that would be attractive and coherent as a standalone operation. At the same time, preparations began for the management of the sale process, including the appointment of a shadow management team for the sale business.

60. From the outset, Mr Richardson assumed that any disposal would be structured as a corporate sale rather than an asset sale. In his evidence he explained that a share sale was, in his experience, the normal approach for a transaction of this size and complexity, involving many properties and employees. A corporate structure would simplify the proposition for purchasers, reduce execution risk, and prevent buyers from selecting individual homes rather than acquiring the portfolio as a whole.

61. In Mr Richardson's view the critical factor in that assessment was the regulatory regime. He explained that a change in ownership of a care home business triggered regulatory approval requirements, whereas a sale of shares in a company owning care homes did not. On an asset sale, Group would need an identified purchaser approved by regulators before transfers could proceed, introducing delay and uncertainty. By contrast, under share sale of a new corporate entity Group could begin the process of re-registering the care home businesses internally, while disclosing the intention to sell, thereby reducing the overall timetable risk. In oral evidence he confirmed that the length and uncertainty of the regulatory approval processes, particularly in Scotland, were a material concern and that he regarded early engagement with regulators as important to de-risking the transaction.

62. Mr Richardson also described the governance arrangements for Oval. A working group met frequently to develop proposals, while the Steerco provided oversight and took decisions within parameters set by the board. Ultimate decisions rested with the board, which received updates and approved key steps.

63. He explained that the Securitisation Unwind was a necessary precursor to any sale. More than 100 homes were subject to the securitisation arrangements, and many were expected to be included in the sale portfolio. This was undertaken as set out in the agreed

facts (see paragraphs 3 - 5 of Appendix 1 below). Mr Richardson explained that the size of the premium paid for the Securitisation Unwind reflected prevailing interest rates and contractual penalties. In cross-examination he accepted that the cost was very significant but maintained that redemption was unavoidable if the transaction, delivering the desired commercial outcome, was to proceed.

64. Mr Richardson then addressed the development of the eventual sale structure. Early thinking involved transferring properties into a new sale company, ultimately the Appellant, and retaining others in a separate group, with an intermediate holding company placed into liquidation to avoid **SDLT** de-grouping clawback charges. He explained that tax advice was obtained on **SDLT** and capital gains consequences and that one objective of the structure was to avoid unnecessary tax costs, provided this did not undermine the commercial viability of the deal.

65. During the planning for the transaction, a major issue arose in relation to employees. The care homes were operated through numerous employing entities with differing terms. Mr Richardson explained that transferring employees into the Appellant before marketing the business risked breaching TUPE consultation obligations unless the intended sale was disclosed, with potential exposure to very substantial fines and industrial relations consequences. This emerged as a critical issue in April 2016. In cross-examination Mr Richardson accepted that tax considerations had initially favoured early transfers but maintained that once the TUPE risk was understood it became a "red line".

66. Various alternative structures were considered. One option would have delayed reorganisation until after announcement of a sale, but this would have sacrificed **SDLT** group relief. Another involved an intermediate service company for employees, but this was rejected as operationally complex. Ultimately, the agreed structure involved delaying the transfer of employees into the sale vehicle until after a sale agreement had been signed, enabling full disclosure and compliance with TUPE. Mr Richardson explained that this approach balanced regulatory, employee and execution risks, even though it constrained the options for managing tax that could be undertaken.

67. In oral evidence he accepted that **SDLT** considerations were relevant but emphasised that, from his perspective, they were secondary to avoiding risks that could derail the transaction, such as TUPE breaches or regulatory delays. He described his overall objective as ensuring that nothing materially undermined the prospects of completing the sale while also protecting the retained business.

68. His witness statement confirmed that whilst HMRC clearance had initially been contemplated, the complexity of the evolving structure and the need to prioritise commercial and regulatory objectives led to a reassessment as to the need for such clearance to be obtained. In cross examination Mr Richardson accepted that the original preference for obtaining a clearance from HMRC to provide accounting certainty in respect of the tax treatment of the transaction had been superseded by the provision of a "should" opinion from Slaughter and May.

69. In summarising the factors influencing the final structure, Mr Richardson identified three primary concerns: (1) managing TUPE and unionisation risks; (2) securing regulatory approvals in a timely manner to avoid prolonged signing-to-completion periods and onerous conditions; and (3) presenting a purchaser-friendly structure that minimised legacy liabilities. Other matters, including **SDLT,** capital gains tax, pensions issues and commercial contracts, were considered but were treated as issues of cost or value rather than deal viability.

70. In his statement Mr Richardson described the sales process which duplicated what became the agreed facts (see the Appendix).

71. As part of the agreed structure, BCHGL was placed into members' voluntary liquidation 56 minutes before the sale and purchase agreement was signed on 29 June 2017. Mr Richardson said that the timing was driven by the **SDLT** analysis but also explained that as BCHGL's original purpose, as a securitisation guarantor, had fallen away once the notes were redeemed, its elimination made commercial sense. He accepted that this latter rationalisation was not otherwise evidenced in contemporaneous documentation.

72. The sale to HC-One was effected by a share purchase agreement entered into in June 2017, together with transitional services arrangements to ensure continuity of operations.

**Parties' submissions**

73. The Appellant submits that group relief under Sch 7 FA 03 was available in respect of the intra-group transfers and was not disapplied by the targeted anti-avoidance rule in para 2(4A). In this regard the submissions were made on two substantive bases: (i) whether the arrangements involved "avoidance of liability to tax", and (ii) if so, whether avoidance was a main purpose of the arrangements.

74. The Appellant contends that the arrangements did not involve "avoidance" of **SDLT** at all as the liquidation of BCHGL met the requirements of para 4(4) of Sch 7 interpreted purposively and applying that provision to the facts viewed realistically. In enacting para 4(4) as an exception to the circumstances in which group relief is withdrawn, the Appellant contends that Parliament expressly provided that group relief is not withdrawn where de-grouping occurs "by reason of anything done for the purposes of, or in the course of, winding up" the vendor or a company above it. The provision contains no limitation by reference to solvency, commercial necessity, or tax motivation. By contrast, other parts of Sch 7 (including paragraphs 2(4A), 4ZA and 4(6)) are carefully circumscribed. It is contended that the omission of any qualifying language from para 4(4) must be assumed to be deliberate when the terms of Sch 7 are construed as a whole.

75. Applying the orthodox distinction between mitigation and avoidance articulated in *Willoughby*, the Appellant submits that this was a case of taking advantage of a fiscally attractive option expressly afforded by Parliament while suffering the economic consequences Parliament intended. The liquidation of BCHGL was legally effective, following the Securitisation Unwind it was commercially explicable, and carried real economic consequences. A taxpayer availing itself of para 4(4) in those circumstances is not a course of action designed to defeat the intention of Parliament.

76. If and to the extent that the submissions on avoidance fail the Appellant submits that avoidance was not a main purpose, or one of the main purposes, of the arrangements.

77. Drawing on authority on the "main purpose" test, including *BlackRock, Kwik-Fit and TDS*, the Appellant emphasised that "main" connotes importance, not mere presence. A tax advantage may be more than trivial without being a main purpose. The inquiry is evaluative, based on all the evidence, and distinguishes purpose from effect.

78. The Appellant relied on *Brebner* and *Delinian* for the proposition that the presence of tax considerations influencing a particular step does not fix the character or purpose of the arrangements as a whole. It is said that those cases establish that a taxpayer is entitled to choose a fiscally advantageous course without thereby rendering the overall arrangements tax-avoidant, and that a step undertaken for tax reasons may form part of wider arrangements whose main purposes are commercial. In particular, *Delinian* confirms that avoidance present in part of a multi-step arrangement does not "infect" the whole, and that the tribunal must identify the relevant arrangements and then evaluate, holistically, the relative weight of their purposes.

79. On the facts, the dominant purposes of Oval are said to be commercial. The evidence of Mr Richardson, supported by extensive contemporaneous documentation, is claimed to

establish compelling non-tax drivers: reputational risk to the Bupa brand arising from under-performing and poorly rated care homes; declining profitability and the need for substantial capital expenditure; managerial constraints in operating a large portfolio; fragile market conditions requiring a purchaser-friendly structure; regulatory constraints imposed by the CQC; legacy liability concerns favouring a clean sale vehicle; contractual complexities; and significant TUPE and unionisation risks, including a potential £42m penalty.

80. Those considerations are claimed to have shaped the structure and timing of the transaction. Critically, the Appellant submits that had avoidance of **SDLT** been a main purpose, an alternative "hive-out" structure could have been adopted which would have ensured a no risk route to ensuring that there was no **SDLT** charge. That option was considered and rejected for commercial reasons. The Appellant was prepared to proceed even if **SDLT** relief were unavailable, did not seek **SDLT** clearance, and incurred costs vastly exceeding any **SDLT** benefit, including the £146.6m Securitisation Unwind premium.

81. **SDLT** was acknowledged to be a relevant consideration in certain steps, particularly the liquidation, but it was submitted that it was subordinate to, and outweighed by, the commercial imperatives. Weighed holistically, any **SDLT** advantage was incidental to the achievement of overwhelmingly commercial objectives and was not a main purpose of the arrangements.

82. The Appellant also contends that the Extracted Properties did not form part of the Arrangements as a whole. They were not under the ownership of the Appellant when BCHGL was liquidated and para 2(4A) cannot apply.

83. HMRC submit that this Issue falls to be determined by application of the targeted anti-avoidance rule in para 2(4A)(b). Group relief is unavailable where the intra-group transfers form part of "arrangements" of which a main purpose, or one of the main purposes, is the avoidance of liability to tax, including **SDLT.** "Arrangements" are defined broadly and extend beyond the immediate land transactions.

84. HMRC contend that the provisions of Sch 7 must be construed purposively and as a coherent whole, relying in particular on *Rossendale*. They contend that group relief is designed to facilitate genuine intra-group reorganisations but is tightly circumscribed by safeguards, including the three-year clawback in paragraph 3. Para 4(4) is said to be a narrow relieving provision intended to mitigate harsh outcomes where liquidation is commercially necessary; and is not intended to provide a general route by which group relief may be preserved in anticipation of a third-party sale. Construing para 4(4) otherwise would, they contend, subvert the structure and purpose of the regime.

85. HMRC submit that the Arrangements display the classic characteristics of tax avoidance identified by the Court of Appeal in *Watts* and the Supreme Court in *UBS*, namely the insertion of steps which are commercially unnecessary but designed to defeat the operation of a charging or clawback provision. On HMRC's case, the liquidation of BCHGL served no commercial purpose other than preventing withdrawal of group relief on transfers which were always intended to be followed, within three years, by a sale of the transferee out of the group.

86. As to the "main purpose" test, HMRC submit, relying on *Tower One*, that this is an evaluative question of fact for the Tribunal. HMRC agree that "main" denotes importance rather than exclusivity but relying on *Lloyds* contend that a tax purpose may be a main purpose even where substantial commercial objectives are also present provided that, as here, the tax objective materially shapes its structure.

87. They contend that *BlackRock* and *Kwik-Fit* require that the Tribunal must ascertain the subjective purposes of the Appellant in formulating and executing the Arrangements and must do so by reference to objective evidence, not merely by accepting witness assertions. In

this context, HMRC contend that applying the principles in *Gestmin v Credit Suisse* [2003] EWHC 3560 (***Gestmin***) I should prefer contemporaneous documentary evidence rather than the current reflections and view of Mr Richardson.

88. Applying those principles, HMRC submit that avoidance of **SDLT** was a main purpose of the arrangements as a whole. Contemporaneous documents demonstrate that **SDLT** exposure was identified and treated as a significant issue from an early stage; that the liquidation of BCHGL was "hard-baked" into the structure from the outset; and that, notwithstanding changes driven by other commercial considerations, liquidation consistently remained the chosen solution to the **SDLT** problem. HMRC place weight on the close temporal proximity between the liquidation and the execution of the share sale agreement, and on the absence of any contemporaneous documentary justification for the liquidation other than its tax effect. They contend that **SDLT** avoidance was treated as important, discussed alongside other key transaction objectives such as regulatory approval and TUPE, and, as accepted in oral evidence, a consideration that was actively managed. They contend that the presence of genuine commercial objectives does not preclude the conclusion that **SDLT** avoidance was a main purpose.

89. Defending the Assessments of the Extracted Properties HMRC submit that para 2(4A) applies even if the arrangements ultimately failed, in whole or in part, to achieve their intended tax outcome. The relevant inquiry is the purpose of the Arrangements at the time the intra-group transfers were effected, not whether the anticipated tax advantage was ultimately realised.

**Was there avoidance?**

***Findings of fact***

90. From the evidence, including the agreed statement of facts, I find the following facts relevant to this issue:

(1) BCHGL had been a company used for the purposes of the securitisation.

(2) I infer that BCHGL had been incorporated as a special purpose vehicle for the purposes of the securitisation. Whilst there is no direct documentary evidence to support that it no longer had a purpose, I am prepared to accept Mr Richardson's evidence to that effect. However, I find there was no evidenced commercial reason why it needed to be wound up.

(3) As a matter of fact and law a resolution to wind up BCHGL was passed on 29 June 2016.

(4) The timing of the winding up was determined by the desire to invoke para 4(4).

(5) The liquidation process was formally progressed through all relevant clearances, asset distributions and dissolution thereby accepting the economic consequence of liquidation.

***Discussion***

91. The Appellant accepts that the liquidation resulted in a beneficial **SDLT** position compared with there being no liquidation or one which post-dated the sale of the Appellant, but says that it has accepted a fiscally attractive option open to it and suffered the economic consequences of that advantage.

92. Sch 7 provides a comprehensive framework in which group relief from **SDLT** is available. It is structured by way of a general provision for relief (paragraph 1) which is subject to the restrictions provided in paragraph 2. Group relief is withdrawn under paragraph 3 subject to paragraphs 4, and 4ZA.

93. Paragraph 3(1) provides for group relief to be withdrawn where the purchaser (in this case the Appellant) ceases to be a member of the same group as the vendors (OpCos) within

3 years of the relevant property transaction (i.e. those on 22 July 2016) and continues to hold the chargeable interest transferred with the benefit of group relief. Paragraph 4 provides that paragraph 3 will not apply in the following three circumstances in which the purchaser ceases to be a member of the same group as the vendor:

(1) "... by reason of anything done for the purposes of, or in the course of, winding up the vendor or another company that is above the vendor in the group structure."

(2) Subject to further conditions, the acquisition of shares in circumstances in which the relief provided under section 75 Finance Act 1986 (relief on acquisition under a scheme of reconstruction) applies.

(3) Again, subject to further conditions, the transfer of whole or part of a business to which section 96 Finance Act 1997 (demutualisation of insurance companies) applies.

94. Paragraph 4ZA provides that group relief shall not be withdrawn where the vendor leaves the group provided that the purchaser remains under the control of the group which the vendor leaves. In this context control of the purchaser is specifically stated to change if the purchaser is wound up.

95. I must determine the scope of para 4(4). The Appellant contends it is to be interpreted on its terms and not subject to a gloss or interpretation which reads in conditions not otherwise provided in its wording. HMRC contend that the exclusion from withdrawal of group relief cannot be unconstrained in the manner asserted by the Appellant as, in essence, it represents an invitation to tax avoidance which cannot and should not be inferred. They contend that group relief is permitted where the transferred assets remain within the relevant corporate group for 3 years. Para 4(4) provides latitude where the group connection is broken inadvertently in consequence of the insolvent liquidation of a company in the group.

96. I entirely agree with HMRC that para 4(4) must be read in its proper statutory context (I do not consider that Mr Peacock disagreed). But I cannot agree that the statutory context drives the conclusion that HMRC invite. Para 4(4) relieves a group from the clawback of group relief where the purchaser and vendor cease to be members of the same corporate group by reason of the winding up of the vendor or a company above the vendor. It is an unconstrained exclusion. It is not limited to insolvent liquidation or liquidation with a commercial motivation. That is to be contrasted with the other provisions of paragraph 4 and that of paragraph 4ZA all of which are drafted in a more circumscribed way.

97. I take the view that, had Parliament appreciated that taxpayers might liquidate a vendor company or a company above the vendor in order to preserve a group relief claim which would otherwise be the subject of a clawback, it may well have drafted the provision differently. However, I do not consider that an interpretation giving rise to a surprising result is, of itself, sufficient to read words into the legislation which are not there and which the context does not require. Once a company has been wound up, various legal and economic consequences follow, this is not a case in which the tax advantage has been taken without accepting those legal and economic consequences and, as such, the interpretation advanced by the Appellant and which I accept does not give rise to an absurd result.

98. I have carefully considered paragraph [37] in *Watts* to which I was directed by HMRC. [37] *Watts* provides a statement of the principles to be applied to statutory construction when considering the correct application of taxing statutes. Whilst I accept and entirely agree that purposive statutory construction is required, the approach reviewed and summarised in *Watts* does not permit me to read into the statute words which are not there nor to infer a purpose which is not apparent from the statutory language chosen. I cannot discern a statutory purpose from the words chosen or the wider statutory context in which those are found to infer that Parliament intended to limit the type or motive for the winding up of the vendor provided that the winding up is legally effective. This is so despite my accepting that the

liquidation of BCHGL served no commercial purpose on its own or within the context of the Arrangements.

**Main purpose**

***Findings of fact***

99. Having concluded that effecting a winding up of BCHGL to preserve group relief does not amount to tax avoidance it is unnecessary for me to determine whether securing that outcome was one of the Appellant's main purposes. However, as invited I make the relevant findings of fact as to main purpose on the alternative premise that designing the structure to ensure no clawback amounts to tax avoidance.

100. In making the following findings I have taken account of all of the evidence to which I was referred. As indicated, I found Mr Richardson an honest and engaged witness; however, and consistent with the judgment in *Gestmin* (at paragraphs [15] - [23]), I have used his evidence to bring alive the documentary evidence. With the passage of time, fallibility of memory and the naturally self-serving nature of oral evidence generally, where appropriate I have preferred the documentary evidence:

(1) Group wanted to divest itself of part of its care home portfolio for entirely commercial reasons. Those commercial reasons included that the part to be sold was operationally inconsistent with the Bupa brand and required significant investment to bring it physically and operationally up to a level which would be brand consistent.

(2) From the outset, Group's preferred and commercially driven mechanism for divestment was by share sale of a company holding the care home assets in order to maximise potential purchaser interest in the portfolio at a time when market conditions for selling the portfolio were becoming more challenging.

(3) The decision to divest required the Securitisation Unwind which crystalised significant costs by way of an up-front payment of future interest charges and the spens penalty. These were unavoidable costs incurred by Group in order to achieve the commercial divestment objective.

(4) I repeat the finding at paragraph 90(2) above.

(5) The process of evaluating the go to market strategy identified particular issues which needed to be appropriately and effectively managed:

(a) Employment/employee relations which I accept represented a red line; Group were not prepared to act in a way that triggered a TUPE penalty from either a brand protection perspective or because of the potential increase in operational costs and difficulties for the retained care home portfolio.

(b) No disposal was possible without CQC approval, as the lead time for approval was anticipated to be at least 20 weeks and needed to be undertaken on a care home by care home basis, the processes needed to be effectively managed in a timely way.

(c) Legacy liability issues which may have existed within the OpCos.

(d) Appropriate management of supplier and main customer contracts to ensure the effective separation of the portfolio to be divested from the retained portfolio.

(e) Tax, specifically **SDLT.**

(6) PwC were appointed to advise how to manage the potential tax costs associated with the proposed divestment in January 2016. In February 2016 PwC advised Group that should a NewCo structure be required to manage other risks, the **SDLT** risk inherent within and arising from such a structure could be managed, preserving group

relief through liquidation of BCHGL. The advice was clear as to the precise and necessary timing of the liquidation.

(7) From that time, as the structure evolved to manage the other identified risks, Group sought advice (internally and externally) to ensure that the identified tax solution remained effective.

(8) Each of the transactions by which the business and properties of the OpCos were transferred to the Appellant was a commercially rational means of putting that part of the portfolio which was to be divested into a vehicle to achieve the intended sale.

(9) On 17 November 2016 PwC was engaged to prepare and execute the liquidation of BCHGL with the resolution effecting a member's voluntary liquidation taken on 29 June 2017 in accordance with the plan which had been put in place. I find that the purpose of the liquidation was to meet the terms of para 4(4) seeking to ensure no group relief clawback.

(10) I repeat the finding at paragraph 90(5) above.

(11) The Arrangements achieved the commercial objective of the divestment of the Oval portfolio without precipitating any of the risks identified in paragraph (5) above.

(12) I find that the management of each of the five identified risks associated with the sale of the Oval portfolio carried different weight and the weight attributed with each varied over time.

(13) I accept Mr Richardson's evidence that as the process progressed the **SDLT** risk weighed less heavily. However, the fact that the **SDLT** risk came to be perceived as less pressing over time does not diminish its significance in shaping the structure; rather, it reflects that the risk had already been addressed by embedding liquidation into the Arrangements.

(14) I am satisfied, taking account of all of the evidence that Group may have proceeded with the sale of the Oval portfolio even were group relief to have been clawed back. But from early in the process it was believed that group relief was available if BCHGL was liquidated before the contract for sale of the Appellant was signed. The liquidation was therefore "baked in".

(15) I do not accept that were it known that group relief would be lost that BCHGL would have been liquidated.

(16) Preserving group relief (which I do not consider to be tax avoidance) was, in my view, one of the main purposes of specific Arrangements used for the divestment of Oval. Group relief was preserved through the precisely timed liquidation of BCHGL.

101. On the basis of these findings I conclude that, had the retention of group relief through the liquidation of BCHGL been avoidance, the terms of para 2(4A) would have been met and group relief would have been denied as per the Assessments.

**Extracted properties**

102. In view of my conclusion on avoidance the differential in treatment between the properties which were owned by the Appellant when BCHGL was liquidated urged by the Appellant falls away. However, were I to have concluded that the Arrangements constituted avoidance, I would have considered that as the Extracted Properties were transferred pursuant to the same Arrangements and with the same intent; the fact that they were not ultimately sold with the rest of the Oval properties was not a relevant factor to take into account. This conclusion is confirmed in *Tower One* at paragraph [81].

**Conclusion**

103. For the reason given I would allow the appeal on the Main Purpose Issue.

**INVOLVED ISSUE**

## Legislation

104. The Determinations are issued on the basis that section 75A applied. This provides:

> "**Anti-avoidance**
>
> (1) This section applies where:
>
> (a) one person (V) disposes of a chargeable interest and another person (P) acquires ... it ...,
>
> (b) a number of transactions (including the disposal and acquisition) are involved in connection with the disposal and acquisition ("the scheme transactions"), and
>
> (c) the sum of the amounts of stamp duty land tax payable in respect of the scheme transactions is less than the amount that would be payable on a notional land transaction effecting the acquisition of V's chargeable interest by P on its disposal by V.
>
> (2) In subsection (1) "transaction" includes, in particular:
>
> (a) a non-land transaction,
>
> ...
>
> (d) a transaction which takes place after the acquisition by P of the chargeable interest.
>
> ...
>
> (4) Where this section applies:
>
> (a) any of the scheme transactions which is a land transaction shall be disregarded for the purposes of this Part, but
>
> (b) there shall be a notional land transaction for the purposes of this Part effecting the acquisition of V's chargeable interest by P on its disposal by V.
>
> (5) The chargeable consideration on the notional transaction mentioned in subsections (1)(c) and (4)(b) is the largest amount (or aggregate amount):
>
> (a) given by or on behalf of any one person by way of consideration for the scheme transactions, or
>
> (b) received by or on behalf of V (or a person connected with V within the meaning of section 1122 of the Corporation Tax Act 2010) by way of consideration for the scheme transactions.
>
> (6) The effective date of the notional transaction is:
>
> (a) the last date of completion for the scheme transactions, or
>
> (b) if earlier, the last date on which a contract in respect of the scheme transactions is substantially performed.

## Case law

105. *Project Blue Limited v HMRC* [2018] UKSC 30 (***Project Blue***) concerned the sale of Chelsea Barracks by the Ministry of Defence (**MOD**) to Project Blue Limited (**BPL**). A series of connected transactions was implemented using Shari'a-compliant Ijara finance the asserted result of which was that the acquisition of land by BPL bore little or no **SDLT.** One of HMRC's challenges to the structure was brought under section 75A.

106. In confirming that no tax motive is required for section 75A to apply at [42] Lord Hodge notes that the provision was enacted to counteract avoidance which resulted in the

use of a number of transactions to effect the disposal and acquisition of a chargeable interest. The task in determining whether section 75A is applicable as provided in [44] is to identify where (and hence whether) a tax loss has occurred as a result of the adoption of the scheme transactions in relation to the disposal and acquisition of the relevant interest in land. The provision is targeted at transactions which reroute the underlying disposal between vendor and purchaser (though no intention to do so is required) and which thereby reduce the tax due on that disposal/acquisition. When analysing the application in the factual context of Project Blue, Lord Hodge considered all the transactions, including the financing transactions, by which the disposal of the MOD's land interest resulted in PBL's acquisition. The intervening transactions being determined as being transactions "involved in connection with" the disposition and acquisition of the land interest. At [69] when considering the interaction of section 75A and 75B (which together determine the value of the notional transaction) Lord Hodge observes that the exclusion of incidental transaction ensures that tax is charged on the de facto and actual transaction of disposal and acquisition.

107. *The Tower One St George Wharf Ltd v HMRC* [2025] EWCA Civ 1588 (***Tower One***) concerned a corporate group which developed a large residential property. As a final step in the development, the group wished to transfer the Tower into a special purpose vehicle in order to ring-fence development risks and improve financial flexibility. The group implemented a series of transactions intended to increase the tax base of the property without giving rise to corporation tax. The company owning the property granted a 999-year lease to another group company. The shares in that other company were then acquired by a special purpose vehicle, following which the lease was transferred to it by way of a distribution. Group relief was said to relieve the transactions undertaken from **SDLT.** HMRC challenged the efficacy of the arrangements on alternative bases including a challenge under section 75A and on the basis that the disposal and acquisition were effected through a scheme of transactions which reduced the **SDLT** payable below that which would arise on a notional direct transfer.

108. At [78] Falk LJ observed that resolving whether section 75A applied depended on the extent to which the deemed notional transaction replaced the actual facts. It is apparent from paragraph [82] that there was no dispute in that case as to which parties were V and P and it was accepted that there were a number of scheme transactions involved in connection with the disposal and acquisition of the relevant land interest. The critical issue was whether the notional transaction resulted in a higher tax charge than the actual transactions. HMRC's reliance on section 75A assumed that the scope of "scheme transactions" was wide enough to include not only the granting of the lease but also the share sale, capital contribution, and distribution by which the land interest was disposed and acquired.

109. Having determined that consideration on the notional transaction was greater than the actual transaction only by including the consideration paid on each of the transactions which HMRC contended were within the scope of the scheme transactions Falk LJ turned to analyse whether the consideration paid on the share sale was properly a scheme transaction. The Court concluded that the share sale in question was a transaction involved in connection with the disposal and acquisition of the land interest and was not an incidental transaction meeting the terms of section 75B (and thereby excluded). The Court accepted that applying a realistic and purposive approach the share sale formed an integral and necessary step within the planned series of transactions by which the lease was vested in the taxpayer, and which gave rise to a tax shortfall. The Court noted that the step plan required the share sale to occur before the land was transferred and thereby treated the land transfer as being conditional on the share sale as a matter of practice. In reaching this conclusion the Court rejected the taxpayer's case that the share sale fell outside the scheme transactions by which the land transfer was effected because it was a step which made no difference in that regard because it was a step necessary for the corporation tax planning.

**Parties' submissions**

110. In respect of this Issue, the parties are agreed on the statutory framework and structure of section 75A. They accept that s75A is a broad anti-avoidance provision which applies irrespective of motive, and that it requires a sequential analysis: identification of a disposal by V and acquisition by P; identification of "scheme transactions" which are transactions "involved in connection with" that disposal and acquisition; and a comparison between the **SDLT** payable on the actual scheme transactions and that payable on a notional land transaction. It is common ground that the OpCos are the vendors (V), the Appellant is the purchaser (P), and that the intra-group transfers of the care homes constituted the relevant disposals and acquisitions for s.75A(1)(a). The parties also agree that non-land transactions can, in principle, fall within "scheme transactions", and that timing alone does not preclude a transaction from being a scheme transaction. Further, there is no dispute that s.75A applies mechanically if its conditions are met.

111. The Appellant submits that section 75A does not apply because the share sale of the Appellant and the liquidation of BCHGL were not transactions "involved in connection with" the earlier intra-group disposals and acquisitions of the care homes. It argues that the statutory focus of section 75A is on transactions which effect, facilitate, or participate in the transfer of the chargeable interest from V to P. On the facts, the Appellant contends that the disposal and acquisition of the properties were completed in 2016, and the later share sale in 2017 was a separate corporate transaction which neither transferred land nor facilitated the earlier transfers. The Appellant accepts that there was a factual and commercial connection between the two stages but submits that mere contextual or "but for" connection is insufficient. The Appellant contends that *Project Blue* and *Tower One* demonstrate that the statutory test of being involved in connection with support a participatory test requiring that in order to be treated as a scheme transaction, the transactions in question must play an operative role in effecting or financing the land transfer. In the alternative, the Appellant contends that if and to the extent that a notional transaction is required, on the facts of the present case, the transaction date should be at a point in time when the OpCos and the Appellant were members of the same corporate group and it too is a transaction to which group relief applies.

112. HMRC contend that section 75A applies because both the liquidation of BCHGL and the share sale of the Appellant were transactions "involved in connection with" the disposals and acquisitions of the care homes. They emphasise that the statutory phrase is deliberately broad, combining "involved" with "in connection with" thereby expanding rather than narrowing a very broad scope. They contend that it is intended to capture a wide range of transactions forming part of the overall scheme by which **SDLT** is reduced. HMRC submit that a transaction need not itself transfer a chargeable interest to qualify; it is sufficient if it is an integral or important component of the plan linking the disposals and acquisitions. On the evidence, the intra-group transfers, the restructuring to bring the OpCos under BCHGL, the liquidation of BCHGL, and the subsequent share sale were all part of a pre-conceived and co-ordinated step plan directed at selling the Oval portfolio while preventing the withdrawal of group relief. The liquidation and share sale were timed and structured precisely to determine when the group relationship ceased. HMRC rely, in particular, on *Tower One* to demonstrate that share sales and other non-land transactions can be scheme transactions where they are an important component of the plan under which the land ends up vested in the purchaser. Accordingly, the effective date of the notional transaction is the completion of the share sale, when the group relationship had ended, so the **SDLT** payable on the notional transaction exceeds that on the actual transactions, bringing section 75A into play. The Determinations assess the notional transaction as taking place on 14 December 2017.

**Discussion**

113. This issue is one which is entirely a matter of law.

114. Having carefully considered the two relevant authorities I derive the following propositions:

(1) Section 75A is a deeming provision, to be interpreted as such and subject to the limits for which the deeming is required (paragraphs [42] - [43] *Project Blue* and [78], [79] and [99] *Tower One*).

(2) Section 75A's focus is on the transaction or transactions by which the relevant legal interest is disposed of by V and acquired by P in circumstances which a tax shortfall is generated (paragraphs [2], [46] - [48] *Project Blue* and [78] *Tower One*).

(3) The scope of "scheme transactions" is very broad and by virtue of section 75A(2) and section 75B includes non-land transactions, transactions which occur after P has acquired the relevant land interest, and incidental transactions (paragraphs [40], [41], [46] and [47] *Project Blue* and [86], [87] and [116] - [120] *Tower One*).

(4) The boundary of investigation is not, however, limitless; unless the transactions contribute directly or indirectly to the means by which the relevant land interest finds its way from V to P they are not transactions involved in connection with the disposal and acquisition and not therefore scheme transactions (paragraphs [48], [69] and [70] *Project Blue* and [118] - [120] *Tower One*).

(5) Scheme transactions do not therefore simply include all transactions forming part of a commercial transaction where an alternative form of transaction may have been adopted (paragraphs [69] and [78] *Project Blue* and [79] and [99] *Tower One*).

115. I start from the position that V is the OpCos and P is the Appellant. This was a matter which I consider was rightly agreed between the parties as it is the transaction in respect of which group relief was claimed and, on the basis of my decision on the Main Purpose Issue, in respect of which the claim was valid.

116. It appears to me that with the focus of attention on the V - P transaction HMRC's position is defeated. I accept that the liquidation and subsequent share sale are transactions of a type which conceptually could be capable of meeting the definition of scheme transaction on its terms and in light of the provisions of section 75A(2) and (3). I also accept that the phrase "involved in connection with" is an extremely broad concept. I do not consider that I need to determine whether strictly "involved" broadens or narrows "in connection with" because the composite phrase applies to "**the** disposal and acquisition" (emphasis added) i.e. the disposal by V and the corresponding acquisition by P.

117. HMRC have tethered their case, and hence the notional transaction, to the share sale by BCHHL to HC-One as the final transaction in the scheme (though I note that the share sale and the liquidation were on the same date so would give rise to the same relevant date were the final scheme transaction to have been the liquidation). In my view, the share sale is not a transaction "involved in connection" with the transaction between the OpCos and the Appellant even at its most broad. Applying the language used by Falk LJ in *Tower One* the share sale did not "form part of the series of transactions by which the [chargeable interests] found their way from the [OpCos] to the [Appellant]". The OpCos to Appellant transactions were involved in connection with the share sale and the liquidation was a transaction also involved in connection with the share sale, the latter being pursuant to (and thereby conditional on) a warranty that BCHGL had been liquidated prior to the contract having been signed. But that is looking the wrong way up the telescope.

118. Whilst I fully accept that ex post disposal transactions can be scheme transactions, they must nevertheless be involved in connection with the prior disposal and acquisition

transaction. As articulated in *Project Blue*, the statutory language requires that such transactions are an integral part or component of the disposal by V and acquisition by P. The share sale was the means by which the chargeable interest which had been acquired by P was transferred, together with the business operations conducted from those premises to HC-One. That is not the V - P transaction. The liquidation was a step in the plan which ensured, by application of the provisions of para 4(4), that there was no group relief clawback but it was not, in my view, "involved in connection with" the disposal by the OpCo and the acquisition by the Appellant. (I note in this regard that I do not view anything said by the Appellant in its skeleton or in the submissions of Mr Peacock which conceded that the liquidation was involved in connection with the relevant disposal and acquisition as asserted by HMRC in its skeleton).

119. I therefore reject HMRC's submission that the liquidation and share sale were "involved in connection with" the disposal by the OpCo and acquisition by the Appellant merely because they all formed part of the Oval divestment and thereby the Arrangements.

**Conclusion**

120. I therefore allow the Appellant's appeal on the Involved Issue.

**ASSESSMENT VALIDITY ISSUE - DELIBERATE OVER ASSESSMENT ISSUE**

**Legislation**

121. Para 28 relevantly provides:

> "28(1) If the Inland Revenue discover as regards a chargeable transaction that:
>
> (a) an amount of tax that ought to have been assessed has not been assessed, or ...
>
> (c) relief has been given that is or has become excessive,
>
> they may make an assessment (a "discovery assessment") in the amount or further amount that ought in their opinion to be charged in order to make good to the Crown the loss of tax.

**Case law**

122. There was no material dispute between the parties concerning the test I must apply when determining whether HMRC, acting through the assessing officer (in this case Officer Crowley), raised valid assessments.

123. It is accepted that the language of para 28 "in the amount ... that ought in their opinion to be charged" requires the same of HMRC as their power to assess VAT "to the best of their judgment". The leading authority in this regard is that of *Customs and Excise Commissioners v Pegasus Birds Ltd* [2004] EWCA Civ 1015 (***Pegasus***) in which the Court of Appeal contrasted the circumstances in which an assessment may be vitiated as a whole from those in which the Tribunal or Court should accept the validity of the assessment but amend its quantum. That judgment recognises:

> (1) The statutory language recognises that HMRC are only required to raise assessments where there has been some failure to assess on the part of the taxpayer (who has all the information necessary to self-assess), as such the process of assessing will "necessarily involve an element of guesswork" (see paragraph [10])
>
> (2) An assessment should not be considered to be invalid simply because the Tribunal would not have exercised its assessment in the same way, a valid assessment requires that HMRC have made an honest and genuine attempt to make a reasoned assessment. Where an assessment is wholly unreasonable in amount it need not automatically be set aside. The focus remains on the appropriate inferences to be drawn

from the evidence and whether there was a genuine and honest attempt to assess. (see paragraph [21] quoting from *Rahman (no 2)*, [58] [77] and [79])

(3) The primary task of the Tribunal is to find the correct amount of tax, a decision as to invalidity will be exceptional. Thus, even where HMRC have failed to exercise best judgment (and in this context therefore identified the amount that ought in their opinion to have been charged) it does not necessarily result in a conclusion that the assessment is invalid. Where justice can be served by correcting the assessment the appropriate course is for the Tribunal to uphold the validity of the assessment and adjust the quantum. Only where the defect in assessing is so serious or fundamental should the whole assessment be set aside (see paragraphs [23], [29], [38], [88] and [90])

124. This summary is consistent with the Upper Tribunal judgment in *HMRC v Sintra Global Inc and another* [2024] UKUT 346 (TCC).

**Evidence**

***Documents***

*Valuations*

125. By instruction dated 18 September 2013 Knight Frank were instructed to carry out valuations of Group's care home portfolio on a "fully equipped as an operational entity and having regard to trading potential" basis as at 30 November 2013 for accounting and insurance adequacy regulation purposes. It notes that fully equipped includes plant and equipment, trade fixtures, fitting, furniture, furnishings, and equipment. Market value was defined as "the estimated amount for which an asset or liability should exchange on the valuation date between a willing buyer and a willing seller in an arm's length transaction after proper marketing and where the parties had each acted knowledgeably, prudently and without compulsion". Such valuation was used for insurance regulations.

126. In May 2016 Group undertook an internal revaluation which excluded chattels/equipment.

127. Knight Frank was, again, instructed to provide a valuation for inclusion in the financial statements and under insurance regulations as at 30 November 2016. The valuation was undertaken on the same basis as that in 2013.

***Correspondence***

128. By email dated 13 February 2020 Officer Crowley sought guidance from **SDLT** specialists within HMRC.

129. On 4 March 2020 Officer Crowley wrote to Group requesting information under the heading **SDLT.** HMRC sent a draft notice of requirement to provide the information requested. The scope of the request was wide. By return Group indicated that they were willing to provide the information and proposed a scheme of engagement with HMRC through which the information could be gathered and provided. By draft letter dated 19 March 2020 responses were provided to some of the questions and/or requests. A further 75 files were transferred using Dropbox on 24 April 2020. Written correspondence continued with Group continuing to provide information and responding to further queries raised by HMRC.

130. The 2013 and 2016 Knight Frank valuations were provided to HMRC together with the May 2016 internal spreadsheet on 16 June 2020. In the form originally provided some of the cells in the spreadsheet could not be read. HMRC requested an alternative copy of the spreadsheet and asked Group the basis of the 2013 and 2016 Knight Frank valuations. Group responded by return. It was explained that the Knight Frank valuations included chattels. An explanation was given for the basis on which the transfers to the Appellant had been valued

using the Knight Frank 2013 information and subject to other considerations and adjustments which were explained.

131. On 1 July 2020 there was a call between the Tax Team and HMRC including valuation specialists. On that call, it was confirmed to HMRC that Knight Frank had valued the properties on a going concern basis. The note shows that HMRC were told that the valuation therefore included equipment values and that as the transfer documents for the disposition to the Appellant were included in the data room for the Oval sale it had been ensured that each transfer was made at market value. HMRC requested further information on the basis of the valuation and transfer values arrived at as they were concerned about the differences in valuation as recorded. It was agreed that 10 properties would be selected for review. The note also records that the market value for the properties was difficult to determine as the market was declining; the original estimate of value of the portfolio had exceeded the final sale by over £100m.

132. On 6 July 2020, the Tax Team wrote to HMRC providing the **SDLT** analysis justifying the conclusion that **SDLT** group relief was available and the basis on which a section 75A charge did not arise.

133. On 3 July 2020 Officer Crowley had sent instructions to colleagues internally requesting that they undertake the interest calculations on the assessments she said she was "preparing ... [to send] out". The draft assessment letters were attached, and the colleagues were informed that the assessments needed to be sent by 17 July 2020 at the latest. The **SDLT** was calculated on a property-by-property basis taking as the assessable value for each property the higher of the Knight Frank May 2016 valuation and the value included in the TR5. The interest calculations were confirmed by email on 7 July 2020.

134. HMRC did not accept the Tax Team's explanation concerning valuation and by letter dated 10 July 2020 HMRC requested further information in respect of a sample of 10 properties. Despite sending that letter Officer Crowley also issued the Assessments to the Appellant on 10 July 2020.

135. The Tax Team provided a response to the 3 July 2020 letter and the Assessments on 13 July 2020 indicating that further provision of valuation information was costly particularly in the context of a third-party transaction for which the price paid for the businesses had only exceeded the property values on the intra-group transaction by circa 10%. It was contended that the third-party sale represented the best evidence of the value of the properties even though the internal transactions had occurred some 6 - 12 months earlier. The fact that the market value obtained needed to be adjusted for chattels was specifically flagged.

***Assessment schedule***

136. HMRC's assessment schedule records the two Knight Frank valuation and the internal May 2016 value. The assessed value is the higher of the sum on the stamp duty land tax return and the 2016 Knight Frank valuation.

**Witness statement**

***Amy Crowley***

137. Officer Crowley explained that she became involved in the Appellant's affairs in June 2019 after being asked by a corporation tax colleague to consider the **SDLT** implications of the Securitisation Unwind. Her initial involvement was document-based and internal. She did not have direct contact with the Appellant until March 2020.

138. Between June 2019 and early 2020, Officer Crowley obtained information about the steps taken in the Securitisation Unwind. As she explored the information available to her, she considered that there was scope to challenge the arrangements to dispose of the Oval portfolio under para 2(4A) of Sch 7 and s75A FA 03. She considered that she made the relevant discovery to raise assessments under para 28 on 20 April 2020.

139. Officer Crowley's written evidence explained that, in making the Assessments, she understood that section 53 FA 03 was engaged because the Appellant was connected with the OpCos. She stated that she was therefore required to assess **SDLT** by reference to the higher of market value and transaction price. The information available to her at the time included several valuation sources: Knight Frank valuation reports from November 2013 and November 2016, internal Group valuations from May 2016, and the values stated in the relevant transfer documentation. She prepared a spreadsheet comparing these figures.

140. Officer Crowley stated that, because the Assessments had to be issued within statutory time limits and no later than the fourth anniversary of the intra-group transfer on 21 July 2016, she needed to assess on what she regarded as the best evidence available to her at the time. She adopted, for each property, the higher of the figure in the transfer documentation and the value stated in the 2016 Knight Frank report. She accepted in her oral evidence that she knew that the Knight Frank valuation included more than the bare land and buildings and to reflect operational assets associated with the care homes. But she said that given the valuation differential in some cases she could not be sufficiently confident that the Group's land only valuation was correct. She explained that in 27 instances the Knight Frank valuation was in excess of £1m more than that shown in the Group's valuation after excluding chattels. She did not consider that there was sufficient time to resolve these differences before the statutory deadline to issue the Assessments and determined that in order to avoid underassessment the best evidence was the 2016 Knight Frank valuation.

141. Officer Crowley was also cross-examined on whether she appreciated that **SDLT** is chargeable only on land and interests in land. She accepted that principle but maintained that, given the information available to her at the time, and the statutory requirement to assess market value in a connected-party context, she proceeded on the basis that the 2016 Knight Frank valuations represented a proxy for market value in circumstances where further analysis was not practicable within the time available.

142. It was accepted that the Appellant did engage with HMRC's information requests and correspondence. Officer Crowley accepted that information was provided, in some instances by return, but stated that information was often supplied incrementally and required further clarification or follow-up questions. She described the exchanges as protracted, with HMRC seeking additional documents or explanations as its understanding of the transactions developed. Officer Crowley did not characterise the Appellant as refusing to comply, but maintained that the pace and form of responses, together with the statutory time limits she faced, meant that she proceeded to issue discovery assessments.

**Parties' submissions**

143. At least in the context of the Assessment Validity Issue, the Appellant accepts that as it and the OpCos are connected parties, if the provisions of para 2(4A) apply, **SDLT** is due on the higher of the market value of the land value of the care home and the transaction value ascribed to the transfer.

144. The Appellant also accepts that Officer Crowley acted honestly when making and issuing the Assessments. However, it contends that where the Assessments used the Knight Frank 2016 valuation as representing the market value of the property Officer Crowley did not make a genuine attempt to assess the amount of **SDLT** which ought to have been charged. This, they say, is because Officer Crowley knew that **SDLT** is assessable on the value of land transaction excluding chattels, she knew that the Knight Frank valuations included chattels and made no attempt to exclude any value attributed to the chattels when assessing on the basis of each Knight Frank which exceeded the transaction price. The Appellant contends that there was evidence before Officer Crowley that would have enabled her to make an adjustment to the assessed value to remove chattels. It was accepted that she did not need to adopt the valuation of the chattels as provided for in the adjustment

spreadsheet prepared by Group, but it is contended that it was not an option for her to do nothing.

145. It was submitted that as the Assessments were issued on 10 July 2020 and there remained 11 days in which to make the assessments before the statutory time limit expired. All engagement between Officer Crowley and Group had been attentive and timely such that she could reasonably expect a response to her letter of 10 July 2020 in which she had requested information to assist in valuation of the chattels. There was nothing to indicate that HMRC would not be provided with any further information that may have been required to make a reasoned and founded adjustment to the valuation to remove value attributed to chattels. Particularly as Officer Crowley had already engaged with valuation colleagues who could have assisted her. Mr Peacock argued that there was a qualitative difference between a case in which an officer made a genuine attempt to arrive at a figure, even a cautious one which may well prove to be excessive, and a decision to make an assessment which is known to be excessive for a particular reason.

146. HMRC contend that the statutory test for "ought in their opinion" is a low threshold and that the bar for invalidating assessments is high. They submit that there is no evidential basis for contending that Officer Crowley did not make an honest or genuine attempt to determine the amount that ought to be charged and if and to the extent that it transpired that the Assessments were excessive it was open to me to amend them in order that the correct amount of **SDLT** be assessed. There was an imperative to assess before the statutory time limit expired and it was not therefore possible to wait for a valuation exercise to be undertaken.

**Findings of fact**

147. On the basis of the evidence and the agreed statement of facts and issues I make the following findings:

(1) The Appellant submitted **SDLT** returns in connection with the transfer from the OpCos to the Appellant on the basis that it was entitled to **SDLT** group relief. It concluded that the clawback provisions contained in paragraph 3 of Sch 7 FA 03 did not arise.

(2) As Officer Crowley was not challenged in this regard, I accept that she discovered what she considered was a failure to assess **SDLT** on or about 20 April 2020.

(3) In its engagement with HMRC on behalf of the Appellant, Group was responsive in providing information as requested and within the timeframe stipulated by HMRC and often sooner. As was almost inevitable the provision of the information requested promoted further questions from HMRC. However, I do not consider that the fact that further queries were raised is any indication that the Appellant was unwilling to provide such information as HMRC required.

(4) The Appellant (and Group on its behalf) were not provided with an opportunity to respond to HMRC's letter of 10 July 2020, thereby providing relevant information to assist with the valuation of the identified sample of properties and thereby determining the accuracy or otherwise of Group's valuation of chattels as set out in its May 2016 spreadsheet.

(5) I was not provided with any direct evidence that in the period from May 2016 to November 2016 there was a material reduction in the value of the properties generally. HMRC's assessment spreadsheet shows that in no instance was the transfer value attributed in July 2016 lower than the adjusted valuation in May 2016. Further, of the 98 properties in the schedule there were only 18 instances in which the November 2016 valuations were lower than May 2016.

(6) By the time the Assessments were raised Officer Crowley had engaged internally with valuation specialists. Those specialists participated in a call with Group on 1 July 2020.

(7) As it is accepted, and in any event, Officer Crowley behaved honestly.

(8) Officer Crowley knew that the Knight Frank valuations included chattels which could not properly be assessed to **SDLT.**

(9) Acting honestly, and having consulted with the valuation specialists, Officer Crowley was not sufficiently confident that the basis of the May 2016 adjusted values represented an accurate reflection of the value of the land and buildings excluding chattels.

(10) On 10 July 2020, Officer Crowley requested additional information from the Appellant/Group which could have been used to amend as relevant and appropriate the Assessments that she had put in train to issue and issued later that day.

(11) Officer Crowley believed that in making the Assessments she was acting on the best information available to her, knowing that the Assessments may very well be excessive but concerned that without more information concerning valuation she was satisfied that the Assessments were raised to ensure that the correct amount of tax would be collected and not lost due to the statutory time limits.

**Discussion**

148. The parties agree that I must determine whether Officer Crowley made an honest and genuine attempt to assess the amount which ought to have been charged to **SDLT** in the event that group relief was not available.

149. The Appellant asked that I focus on whether there was a genuine attempt to assess the amount that ought to have been charged because it was accepted that Officer Crowley acted honestly. I have carefully considered the analysis of the Court of Appeal in *Pegasus* as summarised in paragraph 123 above and it is clear to me that the Court considered "honest and genuine" as a composite phrase and in my view, consistent with the analysis of the Court, that phrase does not lend itself readily to fracturing. Chadwick LJ references "honest and genuine" as also being "honest best" (*Pegasus* [77], [84] and [88]). The evolution of the phrase is used to describe the antithesis of:

(1) "such a nature that it compels the conclusion that no officer seeking to exercise best judgment could have made it. Or there may be no explanation; in which case the proper inference may be that the assessment was, indeed, arbitrary" (*Pegasus* [21])

(2) There is no other "explanation for the errors" (*Pegasus* [54])

(3) The officer "closing [their] mind" (*Pegasus* [76]).

150. Expressly, an honest and genuine assessment may be mistaken (to a great degree) (*Pegasus* [56]) or even "wholly unreasonable" (*Pegasus* [22] and [58]) or "failing to fairly or at all consider some of the relevant material" (*Pegasus* [59]) provided that justice is served in ensuring that the correct amount of tax is collected in upholding, but adjusting, the assessment in question. Ultimately, in my view the question is: is justice properly served by determining that tax for which a taxpayer is actually liable should not be collected at all as a consequence of the failure by HMRC to "do their honest best" in all the circumstances and recognising that the primary responsibility for assessing the right amount of tax in a system of self-assessment rests with the taxpayer. To be invalid it must be shown that the officer acted dishonestly or in a way that cannot be evaluated as their honest best which may well include capriciousness or vindictiveness which falls short of dishonesty. As recognised by

the Court of Appeal, such a situation is likely to be exceptional. I, therefore, agree with HMRC that the hurdle for establishing the invalidity of an assessment is high.

151. There is no dispute that Officer Crowley acted honestly; the dispute is whether she acted honestly and genuinely or put another way did her honest best in the context that she readily admitted that she was aware the chattels are not subject to **SDLT.** This is not, therefore, a case in which HMRC proceeded on the basis of an erroneous view of the law as to the scope of the charge to **SDLT,** nor a case in which an officer knowingly assessed tax on an asset which she believed, as a matter of law, to fall wholly outside the charge. Officer Crowley accepted that **SDLT** is chargeable only on land and interests in land. The difficulty she faced was an evidential one: she was not satisfied that the material then available to her enabled a reliable segregation of land value from chattels with sufficient confidence to avoid a real risk of under-assessment within the statutory time limit.

152. In those circumstances, the use of the Knight Frank figures was not an assertion that those figures were legally correct for **SDLT** purposes, but an evidential proxy adopted as a protective measure to secure HMRC's position pending correction. That approach was undoubtedly imperfect, but what were HMRC to do in that situation. In my view, when faced with a co-operative taxpayer who had willingly provided information and documentation as requested and with a further 10 days to the statutory assessment deadline Officer Crowley could, and probably should, have waited to see if she and/or her valuation colleagues could have become satisfied either that the May 2016 spreadsheet represented a reasonable assessment of the property values and/or there was some other identifiable adjustment that could have been made to remove from the assessment calculations the value of the chattels. She did not do that; however, the authorities make clear that imperfection, excessiveness, or even serious error do not of themselves deprive an assessment of validity. What would be required is a failure to exercise judgment at all, or an assessment of such a nature that no officer seeking to exercise best judgment could have made it.

153. Properly characterised, this case falls on the permissible side of that line. Officer Crowley did not close her mind to the relevance of chattels, nor did she act arbitrarily or capriciously. She made a conscious judgment, under statutory time pressure, to assess on figures which she recognised might require subsequent correction, rather than risk the permanent loss of tax by inaction. In a self-assessment system, and applying the high threshold articulated in *Pegasus*, that judgment does not render the Assessments invalid. The appropriate remedy is amendment to arrive at the correct amount of tax, not the striking down of the Assessments in their entirety.

**Conclusion**

154. For these reasons, and were it necessary to have done so, I would have refused the appeal on the Assessment Validity Issue.

**ASSESSMENT VALIDITY - BLOCK ASSESSMENT ISSUE**

155. In view of my decision on the Main Purpose Issue I have no need to consider this Issue. However, as requested by the parties I set out the relevant findings of fact and the basis on which I would have determined these grounds had it been necessary for me to do so.

**Legislation**

156. Section 6 Interpretation Act 1978 (**IA 78**) provides:

> "6. Gender and number.
>
> In any Act, unless the contrary intention appears:
>
> ...
>
> (c) words in the singular include the plural and words in the plural include the singular.

157. Sections 42, 43, 48, 49, 55, 78, and 108 FA 03 relevantly provide (respectively **sections 42, 43, 48, 49, 55, 78** and **108**):

"*42 The tax*

(1) A tax (to be known as "stamp duty land tax") shall be charged in accordance with this Part on land transactions. ...

*43 Land transactions*

(1) In this Part a "land transaction" means any acquisition of a chargeable interest. As to the meaning of "chargeable interest.

...

(6) References in this Part to the subject-matter of a land transaction are to the chargeable interest acquired (the "main subject-matter"), together with any interest or right appurtenant or pertaining to it that is acquired with it.

*48 Chargeable interests*

(1) In this Part "chargeable interest" means:

(a) an estate, interest, right or power in or over land in England ...

*49 Chargeable transactions*

(1) A land transaction is a chargeable transaction if it is not a transaction that is exempt from charge.

*55 Amount of tax chargeable: general*

(1) The amount of tax chargeable in respect of a chargeable transaction to which this section applies is determined in accordance with subsections ... and (1C).

...

(1C) If the transaction is one of a number of linked transactions, the amount of tax chargeable in respect of the particular transaction under consideration is determined as follows—

Step 1 Apply the rates specified in the second column of the appropriate table in subsection (1B) to the parts of the relevant consideration specified in the first column of the appropriate table. ...

Step 2 Add together the amounts calculated at Step 1 (if there are two or more such amounts).

Step 3 Multiply the amount given by Step 1 or Step 2, as the case may be, by C/R where C is the chargeable consideration for the transaction, and R is the relevant consideration.

...

(4) For the purposes of subsection (1C):

...

(b) the relevant consideration is the total of the chargeable consideration for those transactions.

*78 Returns, enquiries, assessments and related matters*

(1) Schedule 10 has effect with respect to land transaction returns, assessments and related matters.

*108 Linked transactions*

(1) Transactions are "linked" for the purposes of this Part if they form part of a single scheme, arrangement or series of transactions between the same vendor and purchaser or, in either case, persons connected with them ...

(2) Where there are two or more linked transactions with the same effective date, the purchaser, ... may make a single land transaction return as if all of those transactions that are notifiable were a single notifiable transaction.

..."

158. Paragraph 28 is also the relevant legislation for this Issue (see paragraph 121 above) together with paragraphs 30, 31 and 32 which relevantly provide:

"30 Restrictions on assessment where return delivered

(1) If the purchaser has delivered a land transaction return in respect of the transaction in question, an assessment under paragraph 28 ... in respect of the transaction

...

31 Time limit for assessment

(1) The general rule is that no assessment may be made more than 4 years after the effective date of the transaction to which it relates.

...

32 Assessment procedure

...

(2) The notice must state: (a) the tax due, ..."

**Case law**

159. The cases referenced by the parties principally address the circumstances in which a defective discovery assessment/closure notice is remediated by statute such that its validity is preserved:

(1) In *Craven v White* [1989] AC 398 (***Craven***) an issue arose concerning the validity of assessments which it was contended had been issued in respect of the wrong fiscal year. The House of Lords determined that the assessment had been issued for the wrong year and that the year of assessment was of such critical importance that the assessment was invalid despite the provisions of section 114 Taxes Management Act 1970 (**TMA**) (which provides that an assessment made otherwise in conformity with the act shall not be affected by a mistake).

(2) The High Court reached a similar view in *Pipe v HMRC* [2008] EWHC 646 (Ch) (***Pipe***). That case concerned assessments to daily penalties. The dates in respect of which the penalties accrued were incorrectly stated though the correct dates were communicated by letter. Though it was not a matter which required formal determination by the Court, the Court considered that the incorrect dates represented a fundamental error incapable of remediation by section 114 TMA.

(3) In *R (oao Archer) v HMRC* [2018] EWCA Civ 1962 (***Archer***) the Court of Appeal also considered the scope of section 114 TMA. The Court emphasised that section 114 does not cure errors going to the substance of the charge but is capable of remedying defects of form or procedure where the nature, basis and effect of the assessment are reasonably ascertainable. In that case section 114 TMA was considered capable of saving an assessment which had been omitted from a closure notice in circumstances in which the taxpayer was determined to have been aware of the amount by which his self-assessment would be amended by reference to other earlier communications from HMRC.

160. In addition to the cases referred to directly by the parties, I also consider *Fowler v HMRC* [2020] UKSC 22 (***Fowler***) to be relevant. In that case the Supreme Court provided definitive guidance on how to determine the scope and extent of a deeming provision. At [27] Lord Briggs stated:

> "(1) The extent of the fiction created by a deeming provision is primarily a matter of construction of the statute in which it appears.
>
> (2) For that purpose, the court should ascertain, if it can, the purposes for which and the persons between whom the statutory fiction is to be resorted to, and then apply the deeming provision that far, but not where it would produce effects clearly outside those purposes.
>
> (3) But those purposes may be difficult to ascertain, and Parliament may not find it easy to prescribe with precision the intended limits of the artificial assumption which the deeming provision requires to be made.
>
> (4) A deeming provision should not be applied so far as to produce unjust, absurd or anomalous results, unless the court is compelled to do so by clear language.
>
> (5) But the court should not shrink from applying the fiction created by the deeming provision to the consequences which would inevitably flow from the fiction being real. As Lord Asquith memorably put it in *East End Dwellings Co Ltd v Finsbury Borough Council* [1952] AC 109, 133:
>
> > 'The statute says that you must imagine a certain state of affairs; it does not say that having done so, you must cause or permit your imagination to boggle when it comes to the inevitable corollaries of that state of affairs.'"

## Evidence

### *Documents*

161. Land Registry transfers were completed by each of the OpCos in respect of the land transfers made to the Appellant. Six of the OpCos transferred multiple properties and therefore completed a TR5 form. The TR5 identified the transferring OpCo as vendor and the Appellant as the purchaser. Each individual property was identified by title number and address. The nature of the individual land interest transferred, and the associated consideration was identified. The total sum of consideration for all properties identified on the TR5 is also provided in response to question 8.

162. **SDLT** returns were rendered by the Appellant. In respect of the portfolio transfers the Appellant completed **SDLT** 1 and 3 forms. Each return was given a unique identifying reference. The date of the underlying transaction, the transferring OpCo and the Appellant are identified. Total consideration paid by the Appellant to the individual OpCo is identified on the **SDLT** 1 together with the total consideration paid on all linked transactions (i.e. all transfers within Oval). The **SDLT** 1 identifies one property transferred by the relevant OpCo and **SDLT** 3s then provide the property details for the additional properties transferred by that OpCo. Unlike the TR5 form, the **SDLT** return documents do not

provide a breakdown by property of the total consideration paid by the Appellant to the relevant OpCo. The tax self-assessed in each case is shown as nil, relief code 12 (group relief) having been claimed.

163. HMRC issued ten Assessments. Under this Issue the Appellant challenge six of those Assessments. The challenged Assessments are those where the relevant OpCo transferred more than one property to the Appellant. These six Assessments all identify that they relate to the "acquisition of various properties ...". Each Assessment is made by reference to the **SDLT** return unique transaction reference, the effective date of the transaction and the total consideration paid by the Appellant noting that no **SDLT** had been declared on the relevant **SDLT** return (because group relief had been claimed). The Assessments are said to have been issued because HMRC considered that the Appellant was not entitled to the group relief claimed.

***Witness evidence***

164. Officer Crowley explained that the Assessments were made following her conclusion, reached on 20 April 2020, that **SDLT** had been under-assessed in relation to the Appellant's acquisition of the sale portfolio. She identified the quantum to be assessed by reference to a spreadsheet she prepared in June 2020, which collated, for each property, the consideration shown in the transfer documentation (TR5), the Knight Frank valuations (2013 and 2016) and Bupa's internal May 2016 valuations. For each property, she adopted the higher of the consideration stated in the transfer documents and the 2016 Knight Frank valuation. The spreadsheet showing which figure was used for each property this spreadsheet was sent to Group under cover of an email dated 19 June 2020.

165. The **SDLT** assessed was calculated using the total market value determined in accordance with this approach for each OpCo. The tiered rate of **SDLT** was applied on the basis that the transactions were linked transactions.

**Parties' submissions**

166. The Appellant submits that the six Assessments are invalid because they purport to assess **SDLT** by reference to multiple chargeable transactions within a single assessment, contrary to the structure of FA 03. Relying on sections 42(1) and 43(1) the Appellant contends that **SDLT** is a transaction-specific tax, charged on each "land transaction" and a "land transaction" means any acquisition of a chargeable interest. Where multiple distinct chargeable interests are transferred, there are, in the Appellant's submission, multiple land transactions, unless Parliament has expressly provided otherwise.

167. Para 28 empowers HMRC to make a discovery assessment only in respect of "a chargeable transaction". The Appellant submits that this language cannot accommodate a single assessment relating to multiple land transactions, particularly where those transactions may have different effective dates and different statutory consequences. The incompatibility is reinforced by the time-limit regime in paragraph 31 Schedule 10 and the requirement in paragraph 32(2) to state the tax due in respect of the chargeable transaction assessed.

168. The defect is not cured by section 83. The failure to identify and assess individual chargeable transactions is a fundamental error, not a mere procedural irregularity and hence in accordance with the determinations in *Craven* and *Pipe* and the Court's guidance in *Archer* errors going to the substance of the statutory charging mechanism cannot be saved by general curing provisions. Accordingly, the "block" assessments are invalid.

169. HMRC submit that, on a proper construction of the statutory scheme, a "chargeable transaction" is capable of encompassing the acquisition of multiple chargeable interests where the transfer arises under a single contract, between the same vendor and purchaser, with a single effective date such that such transactions are linked pursuant to section 108(2). That construction is said to be consistent with the breadth of sections 43, 48 and 49 FA 03, the use of the term "any" acquisition, and s 6 Interpretation Act 1978.

170. Even if contrary to HMRC's primary case a "chargeable transaction" was confined to a single chargeable interest, HMRC submit that the Assessments are nonetheless valid. Each assessment corresponds to a single **SDLT** return and an identifiable transaction reference. The Appellant was fully informed as to the nature, basis, and effect of each assessment. Any alleged defect is, at most, formal and is cured by s 83(2) FA 03.

**Findings of fact**

171. From the evidence available I find the following facts:

(1) Each OpCo transferred their respective interest in each of 98 registered titles to the Appellant.

(2) The transfers were part of arrangements by reference to which the business and properties of the care homes which were part of Oval were transferred by the various OpCos and centralised into the Appellant.

(3) Using the facility available to them, six of the OpCos, each of which had transferred multiple property titles, competed a TR5 document. The TR5s notified the Land registry of each title transferred and the associated identified consideration.

(4) The Appellant completed and rendered one **SDLT** 1 and accompanying **SDLT** 3s per portfolio of properties purchased from each OpCo.

(5) Those returns were each rendered on the basis that each of the land transactions and collectively the group of linked transaction qualified for group relief.

(6) Officer Crowley concluded that the Appellant was not entitled to group relief and, as such, that an amount of tax that ought to have been assessed had not been assessed to **SDLT** and/or that relief that had been given was at the time it was claimed excessive.

(7) On the basis that the OpCos and the Appellant were connected parties Officer Crowley undertook a line-by-line calculation in order to determine what she considered to be the correct market value for each property taking the market value as the higher of the Knight Frank 2016 valuation and the consideration recorded on the TR5. These were recorded in a spreadsheet (**MV Spreadsheet**).

(8) The MV Spreadsheet was provided to Group on 19 June 2020.

(9) On or about 28 June 2020 Officer Crowley prepared a further spreadsheet (**Assessment Spreadsheet**) in which she calculated tax due. She treated all the transactions as linked transactions. She did not attribute the tax payable within each Assessment back to the individual care homes rather she treated each of the transactions returned as a single transaction. She treated all transactions as linked and applied the 0% and 2% **SDLT** bands to the transfers by a single OpCo (Bupa Care Homes (ANS) Ltd (**ANS**)) and assessed the ANS balance and all other transfers at 5%.

(10) HMRC issued a single Assessment in respect of each group of linked transactions notifying a global sum assessed.

(11) There is no evidence available to me which indicates when, prior to the disclosure exercise in this appeal, the Assessment Schedule was provided to Group or the Appellant. However, by reference to the MV Spreadsheet and the Assessments the tax chargeable on each care home was readily discernible.

**Discussion**

172. In the context of this appeal under para 28 HMRC have the power to assess where they discover "as regards a chargeable transaction" that the Appellant's self-assessment to **SDLT,** as provided on its **SDLT** returns (**SDLT** 1 and 3) failed to assess an amount of

**SDLT** which ought to have been assessed or a relief has been incorrectly claimed. This is on the hypothesis that the Appellant was not entitled to group relief, as claimed on the relevant returns.

173. Section 6 IA 78 provides that words in the singular include the plural and vice versa unless the contrary intention appears. The Appellant contends that such contrary intention appears.

174. Section 42 provides for **SDLT** to be chargeable on "land transactions" which are then defined in section 43 by reference to the acquisition of chargeable interests which are defined in section 48. Such chargeable interests together with interests or rights appurtenant or pertaining thereto form the "subject matter" of the transaction (section 43(6)). Section 44 treats a transaction effected by way of contract and completion as a single land transaction. Section 55 provides for the calculation of the amount of tax chargeable on a chargeable transaction. The amount of tax so calculated is determined by applying rates of tax to "slices" of the consideration. Where transactions are linked (as defined in section 108) the chargeable consideration for the linked transactions is aggregated, the relevant rates applied to that aggregated sum to produce the tax chargeable on the linked whole with the total tax then pro-rated between the transactions in accordance with section 55(1C). However, pursuant to section 108(2) the purchaser may make a single return "as if all [the linked transactions] ... were a single notifiable transaction."

175. Having stepped through the legislative structure, it appears to me that the Appellant is correct that **SDLT** is chargeable on and assessable by reference to, the subject matter of individual land transactions even where those transactions are linked subject to determining the extent of the deeming provisions provided for in section 108(2), which I do applying the guidance provided in *Fowler*. In the context of that guidance, I note, in particular, that section 108(2) provides for the rendering of a single return as if there were a single transaction. The language used is specific and appears on its terms, and in context, to represent a statutory fiction intended to ease the administration associated with the taxation of linked transactions with the same effective date.

176. That view would also appear to be consistent with the terms of the return itself, and the accompanying guidance provided by HMRC. Question 10 on **SDLT** 1 asks "what is the total consideration ... payable for the transaction notified?", in the context of a return completed in accordance with section 108(2) that sum is the total consideration for the linked transactions between the identified vendor and purchaser. Question 13 concerns linked transaction more generally and requires notification of the total consideration for all linked transactions. Questions 14 and 15 on **SDLT** 1 require that the tax be based on the total chargeable consideration shown in box 10 and that for linked transactions "you need to calculate the tax based on the total consideration for all the linked transactions in Q13 and then apportion it to this transaction. You should enter the apportioned amount of the tax payable for this property as the tax due".

177. Question 26 identifies that the return relates to multiple properties. The details of one property are provided in answer to questions 27 - 33 on the **SDLT** 1 and the same property details are provided for the additional linked transactions between the identified vendor and purchaser on the accompanying **SDLT** 3 forms. The **SDLT** 3 forms do not require the identification of tax apportioned to the properties identified on those forms.

178. Thus, it is apparent to me, that the notifiable and thereby chargeable transaction returned, when the facility afforded under section 108(2) is accepted, is a composite single transaction comprising of the linked transactions included on the return in question. From this point, a statutory fiction is applied for the purposes of the overall administration and collection of the tax as provided for by section 78 and Schedule 10. In this context Schedule 10 provides for the contents and prescribed form of a return (paragraph 1), correction of a

return where there is an obvious error (paragraph 7), the duty to keep records and information associated with the return (paragraphs 8 and 9), enquiries into returns (paragraphs 12 and 13), amendments to the return (paragraphs 17 and 18), the issue of closure notices (paragraph 23), the power to issue a determination if no return has been rendered and their effect (paragraphs 26 - 27), power to issue discovery assessments where the amount that ought to have been assessed has not been assessed, the assessment is insufficient or relief is excessive (paragraph 28), the time limit for assessments (paragraph 31) and the details for such assessment (paragraph 32).

179. It is my view that the natural and intended consequence that inevitably flows from a fiction creating a single transaction for the purposes of the return is that it is that single transaction which is then the relevant chargeable transaction which must be considered for the purposes of para 28. The requirement that the fiction applies only where the transactions were on the same date ensures that paragraph 31 can be complied with. The tax due on the single transaction must then be communicated in accordance with paragraph 32.

180. On the facts I have determined Officer Crowley discovered that there was an amount of tax which ought to have been assessed and was not and/or that the group relief claimed was excessive (because it should not have been claimed) and that (had she been correct in reaching that conclusion) she was correct to assess on the basis of that single returned transaction.

181. For the reasons I have given I consider the issue to be determined by reference to the scope of the deeming under section 108(2). I have expressly not determined whether the answer might be different had the Appellant not rendered a single return per OpCo. That is not the factual situation presented in this case and any decision would be hypothetical.

182. If I am wrong in that conclusion such that it was the case that the Assessments needed to be made and notified on the basis that the tax due on each of the linked transactions was separately identified in accordance with section 55(1C) I am satisfied that the Assessments are, nevertheless, valid.

183. This is because the Assessment Spreadsheet shows the market value adopted for each property (taken from the MV Spreadsheet) it applies the 0% and 2% slice to the ANS transactions and assesses the ANS balance and the remaining OpCos at 5%. In my view the amount that would have been attributed per property whilst not expressly stated is reasonably apparent because of the calculation specified in section 55(1C). On that basis I do not consider that the failure to do the final reattribution calculation was an error so fundamental to the integrity of the legislation that it is capable of rendering the Assessments ineffective. Put another way I am satisfied that the Assessments were made substantially in conformity with the relevant provisions of FA 03 and, applying section 83, they are not therefore ineffective. As such I do not consider that this situation can be aligned with those in either *Craven* or *Pipe*.

184. The position on notification of the Assessments is more nuanced because Officer Crowley did not provide the Appellant with a copy of the Assessment Spreadsheet when the Assessments were issued. However, she had previously provided the MV Spreadsheet. Attribution per property requires only that the tax calculated per Assessment is pro-rated by reference to the consideration for each property as a proportion of the total consideration. Each of those figures had been communicated to the Appellant with or shortly prior to the notification of the Assessments. The attribution back per property was therefore something "reasonably ascertainable" by the Appellant and the terms of section 83(2) are again met vis a vis the notification of the Assessments. In this sense this appeal is similar to that in *Archer*.

**Conclusion**

185. Had I needed to determine this Issue I would have dismissed the appeal.

**QUANTUM ISSUE**

186. This issue relates only to the six Assessments considered in respect of Validity of Assessments - Block Assessment Issue and therefore arises only in the circumstances in which the Main Purpose Issue is determined against the Appellant. As with that issue I express my view as requested by the parties despite it not being determinative of the appeal.

## Legislation

187. Section 53 FA 03 (**section 53**) provides:

> "*Deemed market value where transaction involves connected company*
>
> (1) This section applies where the purchaser is a company and:
>
> (a) the vendor is connected with the purchaser,
>
> ...
>
> (1A) The chargeable consideration for the transaction shall be taken to be not less than:
>
> (a) the market value of the subject-matter of the transaction as at the effective date of the transaction, ..."

188. Section 50 defines chargeable consideration by reference to the provisions of Schedule 4. Paragraphs 1 (**para 1**) and 4 Schedule 4 FA (**para 4**) provides:

> "1 *Money or money's worth*
>
> (1) The chargeable consideration for a transaction is ... any consideration ... given for the subject matter of the transaction ...
>
> *4 Just and reasonable apportionment*
>
> (1) For the purposes of this Part consideration attributable:
>
> (a) to two or more land transactions, or
>
> ...
>
> shall be apportioned on a just and reasonable basis.
>
> (2) If the consideration is not so apportioned, this Part has effect as if it had been so apportioned.
>
> (3) For the purposes of this paragraph any consideration given for what is in substance one bargain shall be treated as attributable to all the elements of the bargain, even though:
>
> (a) separate consideration is, or purports to be, given for different elements of the bargain, or
>
> (b) there are, or purport to be, separate transactions in respect of different elements of the bargain."

## Evidence

### *Documents*

189. The following documents are relevant to this issue:

(1) The Knight Frank valuations (summarised in paragraph 125 to 127 above)

(2) The TR1/5s (summarised in paragraph 161 above)

(3) The **SDLT** returns (summarised in paragraph 162 above) and

(4) The business transfer agreements (summarised in paragraphs 14 and 15 of the statement of agreed facts set out in the Appendix).

**Parties' submissions**

190. The parties agree that the combined effect of section 53 and para 4 are that where a purchaser is a company connected to the vendor, the chargeable consideration for the transaction is the higher of the market value of the subject matter of the transaction and the consideration given for that transaction.

191. The Appellant submits that HMRC's approach to quantification of the six Assessments is wrong in principle because HMRC have calculated the Assessments by reference to the line-by-line application of the MV Spreadsheet. They say that approach is inconsistent with the basis on which the Assessments were made (i.e. on the basis that each return related to a single transaction) and wrong in any event because each of the transactions formed part of arrangements pursuant to which the consideration was determined as a whole and as such a single bargain such that the Assessment should be calculated on a bargain by bargain basis. This they say results in overassessment to tax.

192. HMRC contend that by virtue of section 43(6) even in a situation in which there was one chargeable transaction for the purposes of para 28 the basis assessment of the charge to tax is the subject matter of the underpinning individual chargeable interests acquired. Where a land transaction comprises more than one chargeable interest, the chargeable consideration must be identified by reference to each of those interests. On HMRC's case, this is not an optional analytical step but a mandatory consequence of the statutory definition. It follows that it is necessary to identify consideration referable to each chargeable interest.

193. HMRC then submit that, even if the Appellant's legal analysis were correct, it fails on the facts because each property was transferred for a single price identified in the TR5 documents and as supported by the Knight Frank valuations. HMRC challenge the relevance of the SDLT returns in the context the identified individual valuations.

**Findings of fact**

194. From the documents and on the basis of limited reliance on the evidence of Mr Richardson (summarised in paragraph 55 to 72 above) I make the following findings of fact:

(1) Each of the properties was transferred along with the businesses operated from the properties as part of Oval with a view to Group divesting itself of part of its care home portfolio which would ultimately be achieved by way of selling the shares in the Appellant.

(2) Each property was individually valued by Knight Frank in 2013 and 2016 for accounting purposes (rather than for the purposes of this transaction) but demonstrating that there was an independent valuation for each.

(3) There is no evidence to which my attention was specifically directed (and I did not trawl the bundle for evidence of cash transfers or accounting entries) which demonstrated how the consideration payable on the transfers was provided but I consider it likely and therefore reasonable to infer that that indebtedness was met by way of single entry or payment.

(4) Albeit completed on a consolidated basis for each OpCo the TR5s attributed an identified value to each care home.

(5) The SDLT returns were completed in accordance with the opportunity offered by section 108(2) on a linked transaction basis.

**Discussion**

195. I start with analysing the situation which follows from my conclusion on the Assessment Validity - Block Assessments Issue. For the reasons stated in reaching that conclusion it is my view that it inevitably flows from the statutory fiction provided for pursuant to section 108(2) that there is a single chargeable transaction, the subject matter of

which is the package of linked transactions between the single vendor and purchaser, with a single chargeable consideration, albeit that the consideration is derived from the underlying linked transactions. On that basis section 53 requires that it is the market value of that single transaction which must be determined. Without needing to decide the issue in my view it would not be appropriate to assess the value of the package of linked transactions on a line by line basis, rather the total of the Knight Frank valuations of the package of linked transactions (adjusted to remove the value attributed to chattels) should be compared to the total of the values included on the TR5s. The higher total figure should then form the basis of the Assessments.

196. If I was wrong to have concluded that there was a single transaction in respect of each of the six Assessments I need to determine whether, on the facts, the transfers were made in circumstances in which the consideration given by the Appellant to each OpCo was given for the subject matter comprising two or more land transactions. On the basis of the facts I have found (and despite the one reasonable inference I have made) I conclude that there were 98 identified sums payable by way of consideration for each of the 98 chargeable interests transferred. There was not a single bargain per OpCo for a number of properties and a consolidated consideration to which para 4 applies. On that basis the application of section 53 would justify Assessments calculated on the basis of the higher of the market valuation (adjusted to remove chattels) and the figure on the TR5 on a property-by-property basis.

**Conclusion**

197. On the hypothesis that there was a single chargeable transaction by virtue of section 108(2) I would have given the guidance identified at paragraph 195 above and allowed the Appellant's appeal in this regard.

198. On the hypothesis that there were multiple chargeable transactions I would have refused the Appellant's appeal.

**RIGHT TO APPLY FOR PERMISSION TO APPEAL**

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

**Release date:**
08 May 2026

## Appendix 1

## Statement of Agreed Facts

The statement of agreed facts has been amended to reflect defined terms used in the body of the judgment.

**Transactions**

1. Group wanted to sell around half of its care homes. These were spread across a number of OpCos which also operated care homes that were to be retained by Group.

2. In order to implement the sale, the sale assets (properties, businesses, and employees) were collated into the Appellant over the period July 2016 to December 2017; the sale then completed on 14 December 2017 (Completion). Initially the remaining care home assets were to be collated in another Group company, but this part of the plan never came to fruition.

**Securitisation unwind**

3. Around 60 of the properties to be sold were amongst 115 care homes held within a securitisation structure, set up in 2000, under which a Guernsey resident "orphan" company (Issuer) had issued £235m of notes to the market. For the sale to go ahead, the securitisation had to be terminated.

4. To effect this, Group acquired control of Issuer in February 2016 and it then put senior London executives on the board, making Issuer UK resident. Issuer redeemed the notes on 1 April 2016, paying the principal and a premium of £146.6m (which was funded by Group); the premium reflected the above market interest carried by the notes plus an early redemption penalty.

5. Interest payments under the notes had been funded by rent paid by some of the OpCos to Issuer under rack rent leases; and as the OpCos generally held the freeholds in the securitisation properties, the securitisation had involved several tiers of leases such that Issuer could be the OpCos' landlord. To give the OpCos unencumbered title to the relevant properties, the various leases were therefore the subject of intra-group surrenders (on 23 June 2016, in almost all cases).

**Corporate reorganisation**

6. On 22 June 2016 the first stage of a corporate reorganisation took place. Bupa Care Homes (Bedfordshire) Limited and Bupa Care Homes (ANS) Limited, with its wholly-owned subsidiary Bupa Care Homes (AKW) Limited, were transferred to the ownership of Bupa Care Homes Group Limited (BCHGL). The other relevant OpCos were already direct or indirect subsidiaries of BCHGL.

7. On 29 June 2016 Bupa Care Homes (Holdings) Limited (BCHHL) was incorporated as a subsidiary of Bupa Finance plc and on 30 June 2016 the Appellant was incorporated as a subsidiary of BCHHL, to act as a vehicle for the sale of the portfolio of care homes. BCHHL then subscribed for 465m £1 shares in the Appellant, to fund its acquisition of the care home properties and businesses from the OpCos.

8. On 29 November 2016 BCHGL dropped six OpCos beneath Bupa Care Homes (ANS) Limited: Bupa Care Homes (Partnerships) Limited, Bupa Care Homes (Bedfordshire) Limited, Bupa Care Homes (BNH) Limited, Bupa Care Homes (CFC Homes) Limited, Bupa Care Homes (CFC Care) Limited and Bupa Care Homes (GL) Limited.

**Property transfers**

9. On 22 July 2016 all but three of the properties intended for the sale were transferred from the respective OpCos to the Appellant by way of intra-group transfers; the remaining three were transferred on 16 August, 18 October, and 2 November 2016. Group relief was claimed on the transfers.

10. The Appellant acquired most of the properties in multiple transfers from six of the OpCos. Each of those six OpCos and the Appellant implemented the multiple property transfers between them using a single Land Registry Transfer of portfolio of titles form TR5;

and each form TR5 set out a total figure for the consideration paid by the Appellant to the relevant OpCo, but also apportioned that total between the properties covered by the form.

11. The Appellant granted tenancies at will back to the OpCos in order to allow the operation of each care home to continue. These were intended to remain in place until the Appellant received approval to operate the care homes from the relevant care homes regulator; for the homes in England and Wales, this was the Care Quality Commission (CQC).

**Sale process**

12. With assistance from Bank of America Merrill Lynch (BAML), Group ran an extensive sale process and received interest from a number of parties. In September 2016, the bank sent out a "teaser" to potential purchasers of the Appellant, followed by the full Information Memorandum.

13. First round bids were received just prior to 21 October 2016. Four parties put in bids, with HC-One and Advinia (another care home operator) leading on headline price. Some months later HC-One became the frontrunner, though (as set out below) the parties were not able to sign an agreement until 29 June 2017.

**Business transfer agreement**

14. On 11 November 2016, the Appellant entered into a business transfer agreement with the OpCos (English BTA) pursuant to which the OpCos agreed to transfer to the Appellant the relevant English care home businesses (other than the employees, as explained below). Completion of the transfer of the businesses was conditional on the Appellant receiving approval from the CQC.

15. The English BTA was amended a number of times thereafter (on 20 January 2017, 31 January 2017, 29 June 2017, and 31 August 2017).

**Employees and the Staff Services Agreement**

16. Around 15,000 employees were associated with the sale homes (in-home employees and those providing shared and support services to the sale homes) and these also had to be transferred to the Appellant.

17. The pre-sale restructuring was designed so that in-home employees would transfer to the Appellant, under the Transfer of Undertaking (Protection of Employment) Regulations 2006 ("TUPE"), immediately before Completion. Until then employees remained employed by their previous employer, typically the relevant OpCo.

18. Pending Completion, in-home employment services were provided to the Appellant under a staff services agreement (SSA). The Appellant had entered into the SSA (with the OpCos and two other members of the Group) when it entered into the English BTA, on 11 November 2016, but the SSA only became effective on completion of the English BTA. The SSA was amended on 31 January 2017 and then 31 August 2017.

**CQC clearance and completion of the business transfers**

19. CQC clearance for the transfer of all but five of the English care home businesses to the Appellant was granted on 31 January 2017 and the English BTA completed on the same date in respect of those businesses. It took longer to obtain approval for the remaining five, but these transferred between April and November 2017.

20. The interim tenancies at will which had been granted to the various OpCos by the Appellant in respect of the English care homes were duly terminated when the English BTA completed in respect of the relevant home.

**Liquidation of BCHGL**

21. On 17 November 2016, the Group had contracted with PricewaterhouseCoopers (PWC) for the preparation and execution of the liquidation of BCHGL.

22. On 29 June 2017 BCHGL was put into members' voluntary liquidation. The effect of this was that the OpCos ceased to be members of the same group for **SDLT** purposes as the Appellant.

23. PwC had requested corporation tax clearance on 11 June 2017 as a precursor to distributing BCHGL's assets, and filed the company's final corporation tax return in December 2017. HMRC provided corporation tax clearance on 26 April 2018 and clearance from Debt Management Enforcement and Insolvency Services was received on 15 May 2018. PwC distributed BCHGL's assets to Bupa Carehomes (CFG) plc in December 2018 and BCHGL was dissolved in June 2019.

**Entry into the Sale Agreement and associated documentation**

24. Later on, on 29 June 2017, BCHHL entered into an agreement for the sale of the Appellant (Sale Agreement) with FC Skyfall Topco Limited (FCSTL), a company that had been set up by HC-One for the purpose. This provided, inter alia, for a tax indemnity in respect of pre-completion tax liabilities of the Appellant to be entered into at Completion.

25. As Group retained day-to-day control of key operational contracts that sat in the OpCos and covered both the homes it was selling and the homes it was retaining, a transitional services agreement was also entered into on 29 June 2017; the parties were Bupa Finance plc, Bupa Care Homes (ANS) Limited, the Appellant and HC-One. This agreement provided for the OpCos to pass on to the Appellant, for a specified period following Completion, certain services made available under those contracts.

**Amendments to the Sale Agreement and extraction of certain homes**

26. The Sale Agreement was novated on 13 July such that FCSTL transferred its rights and obligations as purchaser to another company set up by HC-One for the transaction, FC Oval Bidco Limited, with FCSTL remaining a party as guarantor. It was then amended on 9 August 2017 to extend the date by which the purchaser had to satisfy a particular condition, and again just before Completion as there were difficulties relating to the intended sale homes located in Wales (which in the event could not be transferred).

27. Before the parties entered into the Sale Agreement, they had agreed that 23 of the sale properties (12 in England and 11 in Scotland) would be taken back out of the Appellant. Accordingly, the relevant properties were transferred by the Appellant to another new company in the Group on 31 August 2017, with the associated businesses following once regulatory approval was obtained and interim arrangements put in place to allow for the provision of staff services. Group sold this new company (holding the extracted care homes) to Advinia six months later.

**TUPE process and Completion**

28. A TUPE process of informing and consulting with representatives of affected employees began at the end of August 2017. BCHHL notified HC-One on 14 December 2017 that this process had completed and that the SSA could be terminated. The relevant employees transferred to the Appellant under TUPE and Completion followed immediately afterwards.

29. At this point, the Appellant held 96 English care homes (together with some care homes in Scotland), and it is these 96 properties, together with the two properties referred to in the endnote in Annex 1, that are the subject of the Appeal.

30. The headline price for the purchase of the Appellant was £288,800,000, subject to customary completion accounts adjustments. On the basis of cash, debt and working capital estimates as at Completion, the completion payment from the purchaser to BCHHL was £294,902,686.

31. After Completion, the parties carried out the completion accounts adjustment process. The outcome of this was that Group agreed to pay HC-One £2,696,458 in settlement of the completion accounts. Therefore, the final consideration paid for the Appellant by the purchaser when adjusted for this was £292,206,228.

**Assessments and Determinations**

32. HMRC did not enquire into the returns submitted by the Appellant for the property transfers. However, in the context of the Group's business risk review in early November 2019, HMRC asked some questions concerning returns submitted for the land transactions described in paragraphs 7, 11 and 29 above and "degrouping" returns submitted following the sale to Advinia in February 2018 (also paragraph 29). Group provided answers a few weeks later and around the end of February 2020, correspondence began between Amy Crowley of the Stamp Office and Group.

**Assessments**

33. Following that correspondence, Ms Crowley issued eight **SDLT** assessments to the Appellant on 10 July 2020. In her covering letter (July 2020 Letter) she cited Part 5 of Schedule 10 of the FA 03, stated that she did not consider the relevant group relief claims were valid and added that the assessments had "been made to protect HMRC's position in view of the fact that the fourth anniversary of the [transfers] is approaching". Ms Crowley issued a further two such assessments on 9 October 2020 (as above together with the first eight, these are the Assessments).

34. On 9 November 2020, the Appellant's representatives wrote to HMRC to appeal against the Assessments.

**Determinations**

35. On 10 July 2020 Ms Crowley also issued notice to the Appellant under paragraph 5 of Sch 10 to deliver returns in respect of notional transactions HMRC considered had arisen under s75A, with an effective date of 29 June 2017.

36. In their letter of 9 November 2020 appealing against the Assessments, the Appellant's representatives said that in their view there were no notional transactions and therefore it was not appropriate to submit further returns.

37. On 25 June 2021, HMRC issued the Determinations under paragraph 25 of Sch 10 now giving the effective date of the notional transactions as 14 December 2017.

38. On 20 July 2021, the Appellant appealed against the Determinations.

**Background to procedural issues**

**Assessments**

39. Each Assessment relating to the transfer of more than one property provided a global figure for the consideration, and another for the **SDLT,** covering all of the properties to which it related.

40. In each case the global figure used for the consideration was higher than the amount actually paid by the Appellant, with a consequent impact on the **SDLT** claimed under the Assessment. The July 2020 Letter referred to section 53 FA 03 (s53) but there was no detail as to how the global figures for consideration and **SDLT** had been determined.

41. Before she issued the Assessments, Ms Crowley had been provided, by Group, with valuation reports for the care homes in the Group's portfolio, prepared by Knight Frank as at 30 November 2013 and 30 November 2016 (respectively provided on 11 and 12 June 2020). She asked Group on 17 June 2020 whether "the figures given in the schedules of value for the 2013 and 2016 reports are just for the land and buildings of the care homes (and so do not take any moveable equipment into account)". Group confirmed by return that "the valuations

are for the owner-occupied properties, fully equipped as operational entities", noting that the "basis of valuation" in the reports said this:

> "The properties have been valued having regard to their trading potential, as defined above, as operational concerns and inclusive of trade furniture, furnishings and equipment."

42. The methodology behind the Assessments was as follows. Where the November 2016 Knight Frank report provided a valuation for a particular care home (including loose plant and machinery) that was higher than the amount actually paid by the Appellant for the transfer of that property (excluding loose plant and machinery), Ms Crowley took the higher figure as the market value of the property for SDLT purposes. Where the valuation was lower than the amount actually paid, the figure used was the amount paid. Each Assessment then added together the resulting figures for the properties it covered, to produce a single chargeable amount under the Assessment.

**Determinations**

43. As with the Assessments, each Determination relating to the transfer of more than one property provided a global SDLT figure covering all of the properties to which it related (based on the actual consideration given by the Appellant).

**Appeal**

44. HMRC issued their view of the matter on 26 January 2023, following further correspondence between the parties.

45. An independent review was requested on 24 February 2023 and a review conclusion letter was issued on 20 July 2023, upholding all of the Assessments and Determinations.

46. The Appellant notified its appeal to the Tribunal on 18 August 2023 and on 4 October 2023 the Tribunal notified HMRC of the appeal.

**Annex 1**
**Assessments and Determinations under appeal**

**Assessments**

| Date of Notice | Vendor | Acquisition date | Properties acquired | Consideration assessed | SDLT claimed |
|---|---|---|---|---|---|
| 10 July 2020 | Bupa Care Homes (AKW) Limited | 22 July 2016 | 1. Willow Brook Care Home<br>2. Millfield Care Home<br>3. Waterside Care Home | £5,010,000 | £250,500 |
| 10 July 2020 | Bupa Care Homes (ANS) Limited | 22 July 2016 | 1. Bakers Court Care Home<br>2. Brierton Lodge Care Home<br>3. The Cambridge Care Home<br>4. Market Lavington Care Home<br>5. Elstree Court Care Home<br>6. Fieldway Care Home<br>7. Greengables Care Home<br>8. The Harefield Care Home<br>9. Hillside Care Home<br>10. The Hornchurch Care Home<br>11. Haven Care Home<br>12. Coppice Court Care Home<br>13. The Polegate Care Home<br>14. Regency Court Care Home<br>15. Warrens Hall Care Home | £49,376,047 | £2,458,302 |
| 10 July 2020 | Bupa Care Homes (Bedfordshire) Limited | 22 July 2016 | Ridgeway Lodge Care Home | £3,670,000 | £183,500 |
| 10 July 2020 | Bupa Care Homes (BNH) Limited | 22 July 2016 | 1. Alexandra Care Home<br>2. Aspen Court Care Home<br>3. Clare House Care Home<br>4. Grosvenor Park Care Home<br>5. Highclere Care Home | £23,027,908 | £1,151,395 |

| Date of Notice | Vendor | Acquisition date | Properties acquired | Consideration assessed | SDLT claimed |
|---|---|---|---|---|---|
| | | | 6. Oakwood House Care Home<br>7. Oakhill House Care Home<br>8. Pinehurst Care Home | | |
| 10 July 2020 | Bupa Care Homes (CFC Homes) Limited | 22 July 2016 | 1. Acacia Lodge Care Home<br>2. Altham Court Care Home<br>3. Avon Court Care Home<br>4. Brompton House Care Home<br>5. Branston Court Care Home<br>6. Bereweeke Court Care Home<br>7. Croft Avenue Care Home<br>8. Cold Springs Park Care Home<br>9. The Elms Care Home<br>10. Forest Court Care Home<br>11. The Gables Care Home<br>12. Gable Court Care Home<br>13. The Glen Care Home<br>14. Highfield Care Home<br>15. Harnham Croft Care Home<br>16. The Hyde Care Home<br>17. Ilsom House Care Home<br>18. Manor House Care Home<br>19. The Red House Care Home<br>20. Shelton Lock Care Home<br>21. Summerhill Care Home<br>22. St James' Park Care Home<br>23. The Westbury Care Home<br>24. Winters Park Care Home | £66,246,438 | £3,312,321 |
| 10 July 2020 | Bupa Care Homes (CFH Care Limited) | 22 July 2016 | 1. Admirals Reach Care Home<br>2. Amerind Grove Care Home<br>3. Barton Brook Care Home<br>4. Broadoak Manor Care Home<br>5. Carders Court Care Home | £156,615,928 | £7,830,796 |

| Date of Notice | Vendor | Acquisition date | Properties acquired | Consideration assessed | SDLT claimed |
|---|---|---|---|---|---|
| | | | 6. Chaseview Care Home<br>7. Court House Care Home<br>8. Colton Lodges Care Home<br>9. Copper Hill Care Home<br>10. Dove Court Care Home<br>11. Godden Lodge Care Home<br>12. Ghyll Grove Care Home<br>13. Gallions View Care Home<br>14. Greenfield Care Home<br>15. Grey Ferrers Care Home<br>16. Himley Mill Care Home<br>17. Knowles Court Care Home<br>18. Meadow Bank Care Home<br>19. Mornington Hall Care Home<br>20. Monmouth Court Care Home<br>21. Mersey Parks Care Home<br>22. Old Gates Care Home<br>23. Perry Locks Care Home<br>24. Priory Mews Care Home<br>25. Birch Court Care Home<br>26. River Court Care Home<br>27. Rowan Garth Care Home<br>28. Seabrooke Manor Care Home<br>29. Stadium Court Care Home<br>30. Saltshouse Haven Care Home<br>31. Shaw Side Care Home<br>32. Summerville Care Home<br>33. St Christopher's Care Home<br>34. St Nicholas Care Home<br>35. Woodlands View Care Home<br>36. Wombwell Hall Care Home | | |

| Date of Notice | Vendor | Acquisition date | Properties acquired | Consideration assessed | SDLT claimed |
|---|---|---|---|---|---|
| 10 July 2020 | Bupa Care Homes (GL) Limited | 22 July 2016 | 1. Airedale Care Home<br>2. The Borrins Care Home<br>3. The Crest Care Home<br>4. Sabourn Court Care Home<br>5. St Mark's Care Home<br>6. St Mary's Care Home<br>7. Straven House Care Home<br>8. Westmoor View Care Home | £10,400,000 | £520,000 |
| 10 July 2020 | Bupa Care Homes (Partnerships) Limited | 22 July 2016 | Bankhouse Care Home | £1,780,000 | £89,000 |
| 9 October 2020 | Bupa Care Homes (CFH Care) Limited | 2 November 2016 | Ringway Mews Nursing Home | £6,580,000 | £329,000 |
| 9 October 2020 | Bupa Care Homes (BNH) Limited | 18 October 2016 | Capwell Grange Nursing Home | £8,770,000 | £438,500 |
| **Totals:** | | | | **£331,476,321** | **£16,563,314** |

**Determinations**

| Date of Notice | Vendor | Acquisition date | Properties acquired | Consideration assessed | SDLT claimed |
|---|---|---|---|---|---|
| 25 June 2021 | Bupa Care Homes (AKW) Limited | 22 July 2016<br><br>EDT - 14 December 2017 | 1. Willow Brook Care Home<br>2. Millfield Care Home<br>3. Waterside Care Home | £3,028,401<br>£2,311,418* | £151,420<br>£115,420* |
| 25 June 2021 | Bupa Care Homes (ANS) Limited | 22 July 2016 EDT – 14 December 2017 | 1. Bakers Court Care Home<br>2. Brierton Lodge Care Home<br>3. The Cambridge Care Home<br>4. Market Lavington Care Home<br>5. Elstree Court Care Home<br>6. Fieldway Care Home<br>7. Greengables Care Home<br>8. The Harefield Care Home<br>9. Hillside Care Home<br>10. The Hornchurch Care Home<br>11. Haven Care Home<br>12. Coppice Court Care Home<br>13. The Polegate Care Home<br>14. Regency Court Care Home<br>15. Warrens Hall Care Home | £36,477,997<br>£36,015,497* | £1,813,399<br>£1,800,774* |
| 25 June 2021 | Bupa Care Homes (Bedfordshire) Limited | 22 July 2016 EDT – 14 December 2017 | Ridgeway Lodge Care Home | £3,283,869 | £164,193 |
| 25 June 2021 | Bupa Care Homes (BNH) Limited | 22 July 2016 EDT – 14 December 2017 | 1. Alexandra Care Home<br>2. Aspen Court Care Home<br>3. Clare House Care Home<br>4. Grosvenor Park Care Home<br>5. Highclere Care Home<br>6. Oakwood House Care Home<br>7. Oakhill House Care Home | £16,437,161 | £821,858 |

| Date of Notice | Vendor | Acquisition date | Properties acquired | Consideration assessed | SDLT claimed |
|---|---|---|---|---|---|
| | | | 8. Pinehurst Care Home | | |
| 25 June 2021 | Bupa Care Homes (BNH) Limited | 18 October 2016 EDT – 14 December 2017 | Capwell Grange Nursing Home | £7,570,270 | £378,513 |
| 25 June 2021 | Bupa Care Homes (CFC Homes) Limited | 22 July 2016 EDT – 14 December 2017 | 1. Acacia Lodge Care Home<br>2. Altham Court Care Home<br>3. Avon Court Care Home<br>4. Brompton House Care Home<br>5. Branston Court Care Home<br>6. Bereweeke Court Care Home<br>7. Croft Avenue Care Home<br>8. Cold Springs Park Care Home<br>9. The Elms Care Home<br>10. Forest Court Care Home<br>11. The Gables Care Home<br>12. Gable Court Care Home<br>13. The Glen Care Home<br>14. Highfield Care Home<br>15. Harnham Croft Care Home<br>16. The Hyde Care Home<br>17. Ilsom House Care Home<br>18. Manor House Care Home<br>19. The Red House Care Home<br>20. Shelton Lock Care Home<br>21. Summerhill Care Home<br>22. St James' Park Care Home<br>23. The Westbury Care Home<br>24. Winters Park Care Home | £52,482,649 | £2,624,132 |
| 25 June 2021 | Bupa Care Homes (CFH Care) | 22 July 2016 EDT – 14 | 1. Admirals Reach Care Home<br>2. Amerind Grove Care Home | £134,028,794 | £6,701,439 |

| Date of Notice | Vendor | Acquisition date | Properties acquired | Consideration assessed | SDLT claimed |
|---|---|---|---|---|---|
| | Limited | December 2017 | 3. Barton Brook Care Home<br>4. Broadoak Manor Care Home<br>5. Carders Court Care Home<br>6. Chaseview Care Home<br>7. Court House Care Home<br>8. Colton Lodges Care Home<br>9. Copper Hill Care Home<br>10. Dove Court Care Home<br>11. Godden Lodge Care Home<br>12. Ghyll Grove Care Home<br>13. Gallions View Care Home<br>14. Greenfield Care Home<br>15. Grey Ferrers Care Home<br>16. Himley Mill Care Home<br>17. Knowles Court Care Home<br>18. Meadow Bank Care Home<br>19. Mornington Hall Care Home<br>20. Monmouth Court Care Home<br>21. Mersey Parks Care Home<br>22. Old Gates Care Home<br>23. Perry Locks Care Home<br>24. Priory Mews Care Home<br>25. Birch Court Care Home<br>26. River Court Care Home<br>27. Rowan Garth Care Home<br>28. Seabrooke Manor Care Home<br>29. Stadium Court Care Home<br>30. Saltshouse Haven Care Home<br>31. Shaw Side Care Home<br>32. Summerville Care Home<br>33. St Christopher's Care Home | | |

| Date of Notice | Vendor | Acquisition date | Properties acquired | Consideration assessed | SDLT claimed |
|---|---|---|---|---|---|
| | | | 34. St Nicholas Care Home<br>35. Woodlands View Care Home<br>36. Wombwell Hall Care Home | | |
| 25 June 2021 | Bupa Care Homes (CFH Care) Limited | 2 November 2016 EDT – 14 December 2017 | Ringway Mews Nursing Home | £4,129,250 | £206,462 |
| 25 June 2021 | Bupa Care Homes (GL) Limited | 22 July 2016 EDT – 14 December 2017 | 1. Airedale Care Home<br>2. The Borrins Care Home<br>3. The Crest Care Home<br>4. Sabourn Court Care Home<br>5. St Mark's Care Home<br>6. St Mary's Care Home<br>7. Straven House Care Home<br>8. Westmoor View Care Home | £6,778,101 | £338,905 |
| 25 June 2021 | Bupa Care Homes (Partnerships) Limited | 22 July 2016 EDT – 14 December 2017 | Bankhouse Care Home | £796,873 | £39,843 |
| **Totals:** | | | | **£265,013,365** | **£13,240,164**<br>**£13,191,539*** |

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