

"Superb in terms of both his preparation and his courtroom delivery. A top man for big fraud cases. In the eyes of many he is the best." (Chambers and Partners, 2012).

He has long been established as a specialist in commercial fraud defence and corporate crime with a reputation as someone who is "exceptional at client management" and "brilliantly focussed on getting the best out of the client" (Chambers and Partners). More recently, whilst he continues to defend in substantial commercial fraud prosecutions, he has widened his practice to embrace civil fraud and is now regularly instructed in the VAT and Duties Tribunal, both First and Upper Tiers, High Court (Chancery and Companies Court), Administrative Court and Court of Appeal, both criminal and civil.

He has a wealth of experience in defending in the criminal courts in tax and duty fraud (R v Anwar 2003, R v Baig 2004/05, R v Sandhu 2007, R v Raykanda and Others 2006, and Rv Allad and Others). In the Tribunal, he is instructed on behalf of traders appealing against decisions of HMRC to withhold the repayment of VAT on grounds of the trader's participation in fraud. In February 2010, he represented the lead appellant in the conjoined appeals of Mobilx, Calltel Opto and Blue Sphere Global before the Court of Appeal. This was the first opportunity for the Court of Appeal to consider the legality of the "Kittel" test and the proper approach of the FTT to its application in domestic law. Since Mobilx, he has appeared in a number of appeals before the FTT and others are to be heard in 2013/14.

In July 2010, he represented the Directors of the bonded warehouse Abbey Forwarding Limited, who were sued for damages by the Liquidator (put in place by HMRC) for breach of duty, being their involvement in excise duty fraud. He also appeared on behalf of Rochdale Drinks Distribution before the Companies Court (Floyd J.) in March 2011 successfully overturning HMRC's ex parte application to appoint a provisional liquidator on the ground that the company had been engaged in duty evasion. This decision was appealed by HMRC in September 2011 where RDDDL were able to resist.

HMRC's argument that there should be a lower threshold of proof in cases where HMRC sought a PL having presented a winding up petition on assessments raised on suspicion of fraud.

During 2010/2011, he was engaged on behalf of the Directors of Eastenders PLC in challenges to restraint and management receivership orders obtained by the CPS on grounds of suspected excise duty fraud. In January, the Court of Appeal quashed orders made by the Central Criminal Court in December 2010, and in February 2011 on a renewed application, the Directors achieved a similar result. He has conducted associated challenges to search warrants obtained by HMRC for the premises of Eastenders and other parties, before the Divisional Court in April, May and June 2011 as well as similar challenges to the legality of search warrants in the conjoined applications of Glenn & Co., Medway Soft Drinks and Dale Wholesale.

In addition to his work in both criminal and civil fraud, he has experience in professional discipline work, both at Tribunal Statutory Committee and Higher Court level in the Administrative Court and Court of Appeal; representing Police Officers, Pharmacists and Solicitors.

## VAT/Tribunal

**CCA Distribution Limited v HMRC – Appeal against denial by Commissioners of the right to deduct input tax.** Appeal heard in March 2012. The decision in CCA has now been released. The Appellant/trader was appealing against the decisions of the Commissioners to withhold repayments of input VAT for 04/06, 05/06 and 06/06 amounting to just short of £10M, on ground that the disputed transactions were connected with fraud. The Tribunal found by a split decision for the Appellant. The Tribunal judge found for the Appellant whilst the lay member found for HMRC. The judge had the casting vote. The Tribunal found that the Appellant's transactions formed part of a scheme to defraud the Revenue but that the Appellant through its director Mr Trees did not know its transactions were so connected nor should it have known. It was possible so the Tribunal found for an innocent trader to be an unknowing participant in such a scheme and whilst the banking evidence from FCIB showed the scheme in operation it did not assist when it came to the question of knowledge. The Appellant impressed as an honest witness, the Tribunal finding it highly improbable in the circumstances that at a time when he was subject to intense scrutiny by HMRC he would have been "consciously collaborating in an organised fraud". This is a highly significant and important decision post Mobilx emphasising the shift away from slavish examination of a trader's due diligence and looking more at its overall trading patterns to determine whether the only reasonable explanation for the circumstances of these transactions was that they were connected with fraud.



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## PRACTICE AREAS

Business Crime & Financial Regulation

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**Mobilx, Calltel/Opto, Blue Sphere Global v HMRC** – An appeal brought by the trader Mobilx against the decisions of both the First Tier Tribunal and High Court to uphold decision of the Commissioners to deny its right to deduct input tax. Joined with other appeals of Calltel and Blue Sphere by order of the Appellant/trader was appealing against the decisions of the Commissioners to withhold repayments of input VAT for 04/06, 05/06 and 06/06 amounting to just short of £10M, on ground that the disputed transactions were connected with fraud. The Tribunal found by a split decision for the Appellant. The Tribunal judge found for the Appellant whilst the lay member found for HMRC. The judge had the casting vote. The Tribunal found that the Appellant's transactions formed part of a scheme to defraud the Revenue but that the Appellant through its director Mr Trees did not know its transactions were so connected nor should it have known. It was possible so the Tribunal found for an innocent trader to be an unknowing participant in such a scheme and whilst the banking evidence from FCIB showed the scheme in operation it did not assist when it came to the question of knowledge. The Appellant impressed as an honest witness, the Tribunal finding it highly improbable in the circumstances that at a time when he was subject to intense scrutiny by HMRC he would have been "consciously collaborating in an organised fraud". This is a highly significant and important decision post Mobilx emphasising the shift away from slavish examination of a trader's due diligence and looking more at its overall trading patterns to determine whether the only reasonable explanation for the circumstances of these transactions was that they were connected with fraud.

**Mobilx, Calltel/Opto, Blue Sphere Global v HMRC** – An appeal brought by the trader Mobilx against the decisions of both the First Tier Tribunal and High Court to uphold decision of the Commissioners to deny its right to deduct input tax. Joined with other appeals of Calltel and Blue Sphere by order of the C of A. Appeals were heard by the Court of Appeal between 15th and 19th February 2010. These were the first appeals of their kind to reach the Court of Appeal, which was invited to consider not only the legality of the application of the Kittel test in domestic law (transposition), but also whether that test, as it has been applied in a domestic context, offended fundamental principles of EU law. These were ground breaking appeals, affecting hundreds of similar cases presently awaiting decisions before the Tribunal across the UK. The Court of Appeal gave guidance as to the test laid down by the ECJ in Kittel and the meaning of "knew or should have known" in the context of a trader's right to deduct input tax. Application to the Supreme Court for permission to appeal was refused.

**BTS and NTS v Commissioners of HMRC** – Appeals against denial by Commissioners of the right to deduct input tax. Two separate appeals which have been conjoined for hearing in 2011. The appeals raise issues as to principle in the field of MTIC fraud, interpretation of authority, European jurisprudence and its application before the domestic Tribunals. In 2010 application was made by the Commissioners to the Manchester Tribunal for twelve separate appeals to be joined. This application was successfully resisted; had the Commissioners succeeded it could have had significant implications for the future conduct of appeals in this field, and particularly the funding of such appeals.

**Advent Worldwide Distribution Limited v HMRC**

**Direct Communications UK Limited v HMRC** – Appeal against denial by Commissioners of the right to deduct input tax. Appeal will be heard in 2013.

**CCA Distribution Limited v HMRC** – Appeal against denial by Commissioners of the right to deduct input tax. Appeal heard in March 2012. Decision awaited.

**3D Computer Systems Limited v HMRC** – Appeal against denial by Commissioners of the right to deduct input tax. Appeal is likely to be heard in 2013/2014. Similar issues arise as in other appeals to the Tribunal.

## Excise & Duties

**European Brand Trading v HMRC** – Appeal by taxpayer against refusal by HMRC to restore seized goods. The Commrs had seized substantial quantity of alcoholic gds belonging to App on grounds that they were non-duty paid. The App initially challenged condemnation proceedings brought by the Commrs in the Mags Ct, but then withdrew. Appeal on grounds that the decision on review of decision not to restore, was unreasonable. HMRC argued that the scope for the Tribunal on appeal was restricted and it could not look at whether the goods were or were not duty paid. Tribunal considered that it was entitled in considering the reasonableness of the original decision to hear evidence as to what steps if any had been taken to determine whether or not duty had been paid. That did not offend the principle in Jones. On second day of hearing HMRC withdrew opposition and conceded the appeal. Directions given for future conduct, including further review.



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## Chancery Division/Companies Court

**Abbey Forwarding Ltd (in liquidation) v Hone & Ors** – Claim for damages (£7million) brought by the liquidator of Abbey Forwarding, a bonded warehouse, against the former directors of the company. The claimant alleged breach of fiduciary duty, breach of statutory duty, and/or negligence. The allegation was one of fraud against the directors, whom the liquidator alleged to have participated in a substantial diversion fraud depriving the Revenue of Excise Duty and VAT. 3 week hearing in Chancery Division. Judgment in favour of defendants, with costs. Appeals brought by the Directors on behalf of the company were listed for hearing before the First Tier Tribunal in September 2011. The Appeals were not opposed by HMRC and the assessments against the company (in excess of £6 million) withdrawn, with orders for costs. The Directors' claims for damages are pending before the High Court.

**Rochdale Drinks Distribution Limited v HMRC** – Application by RDDDL to discharge provisional liquidator appointed by the High Court (Chancery Division) on ex parte application by HMRC alleging excise duty fraud against the company and its directors. Hearing before Floyd J. who ruled that such appointment was unnecessary and disproportionate PL was discharged.

**HMRC v RDDDL** – Appeal brought by HMRC against decision of Floyd J. alleging that decision was wrong and that in cases where HMRC allege fraud against a trader and seek to wind up that company on the grounds of its inability to pay the assessment raised on the alleged fraudulent conduct, the threshold of proof should be lower than in normal commercial cases. Appeal was allowed on the grounds that the decision of Floyd J. was wrong (relying in part upon post-judgment events) but refusing to rule that HMRC are entitled to a lower threshold of proof.

## Powers of Search and Seizure

**Windsor, Hare and Superbrew v HMRC** – Challenges made by way of Judicial Review of search warrants obtained by HMRC before the Bristol Crown Court in December 2010 on reasonable grounds to believe commission of excise duty fraud. Search warrants had been established to be unlawful in previous Panesar, Windsor proceedings in April 2011. Application for interim relief granted in April, unlawfulness of search warrants conceded by HMRC at hearing before Kenneth Parker J. in May and full ruling on relief given by Divisional Court in June/July 2011. Significant decision in that whilst conceding that warrants were unlawful, HMRC claimed they were entitled to retain copies of the material for use in proposed applications pursuant to s59 Police and Criminal Justice Act 2001. Applications to the Crown Court pursuant to s59 PCJA to be heard by CCC in early 2013.

**Eastenders PLC, Windsor and Hare v CPS** – Appeals brought by shareholders of Eastenders PLC and the Directors Kulwant Singh Hare and Alex Windsor against the refusal to vary or discharge restraint and management receivership orders made before the CCC in December 2010. The Appeals were heard by the Court of Appeal in late January 2011, the Court finding in favour of the Appellants with costs. They permitted CPS to make fresh applications (on new evidence) before the CCC which application was heard by Mackay J. in February 2011.

**CPS/HMRC v Windsor and Hare** – Renewed application by CPS for restraint orders against proposed Defendants on grounds that there was reasonable cause to believe that the individuals concerned had benefited from proceeds of their criminal conduct. New evidence was relied on. 3 day hearing before Mackay J. at the CCC. Mackay ruled that, if anything, the new evidence assisted the Defendants. CPS had failed to show reasonable cause to believe and the applications were refused with costs.

**Commissioner of Police for the Metropolis v Shammi Atwal** – Application by Metropolitan Police for cash forfeiture order under POCA in respect of a quantity of cash recovered from the home of the Defendant and alleged to be proceeds of criminal conduct, namely his benefit from the excise duty fraud he participated in together with the directors of Abbey Forwarding. Application to stay as abuse of process. Proceedings concluded in favour of Defendant.

**HMRC v Manjit Deol, Mardom Corporation** – Cash forfeiture. Application by HMRC for order making forfeit £215,000 in cash recovered from the possession of MD on 11.4.11. Five day hearing. Case raised arguments as to what evidence was necessary before the Court could infer that the cash was probably recoverable property. No evidence that either MD or Mardom were engaged in unlawful conduct. Indeed all the evidence suggested that the cash was payment received in the course of legitimate business transactions. Nevertheless the DJ held that the cash was recoverable, and made the order sought by HMRC. Decision appealed to the Crown Court.



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## Proceeds of Crime

**R v Darren Bagnall** – Unique confiscation case following on conviction for money laundering offence. Original trial involved simple issue of fact as to Defendant's possession of £100,000. It was a lifestyle offence and the assumptions applied. Crown alleged in the confiscation proceedings that D's benefit was £43million acquired from MTIC (VAT) fraud which they accepted they could not prove to the criminal standard, but under POCA it was for D to disprove. Raised complex and novel issues of law (human rights, abuse of process etc.). Extensive legal argument, followed by 4/5 weeks of evidence. Final judgment given March 2010.

**R v Darren Bagnall and Another** – Hearing of appeal against confiscation order. Court of Appeal ruled that in confiscation proceedings before the Crown Court under POCA, upon conviction for a qualifying offence, the Crown were entitled to adduce evidence of the suspected commission of further offences, unrelated to the original conviction, with which the D had not been charged let alone convicted. This did not amount to allegations of "such a nature and degree" as to constitute the bringing of a new "criminal charge" engaging the protections of Articles 6(1) and 6(2) ECHR (para 34 Phillips v UK). Permission to appeal to Supreme Ct refused. Application for permission to appeal to ECHR pending.

## Commercial and Criminal Fraud

**R v Clive Smith and Others** – Leading S.F.O. prosecution. High profile and substantial fraud on the Stock Exchange. Trial lasted 12 months. Represented lead Defendant.

**R v Julie Bloor and Others** – £27 Million fraud. HMRC prosecution.

**R v Trevor Beacock and Others** – Major fraud within the Yorkshire power industry. Defence of the principal D.

**R v Marshall Ronald and Another** – Prime bank instrument fraud. S.F.O. prosecution.

**R v David Grindley and Others** – Fraudulent obtaining of Government grants for the clearance and development of contaminated land.

**R v Anwar and Others** – High profile carousel (MTIC) fraud within the mobile phone industry. Indictment quashed after lengthy legal argument.

**R v Amjad Baig and Others** – Substantial Customs prosecution. £112 million fraudulently evaded. High profile MTIC fraud within the mobile phone industry.

**R v Jaswant Ray Kanda and Others** – Large scale multi operation MTIC fraud. £54 million VAT defrauded. For lead defendant. Complex issues of law re: disclosure, severance and abuse of process. Confiscation order made in sum of £3.7 million including substantial amount of "hidden assets". Permission to appeal.

**R v Monmohan Sandhu** – Large scale MTIC fraud. Defendant originally convicted in Oct 03 and sentenced to 7 years. Not trial counsel. Instructed on appeal (Feb 06) which was successful (material non-disclosure). A retrial was ordered. Further issues on disclosure giving rise to substantial abuse argument, resulting in the Crown offering no evidence on morning of trial.

**R v Peter Stott and Another** – Major SFO prosecution arising out of the collapse of highly successful North West company Altagas plc in 2001 owing £43million. Extensive and complex fraud engineered by principal defendant and presented to investors by Stott, the de facto FD.

**R v Mustaq Patel and Others** – Largest ever Revenue prosecution on Northern Circuit. Represented principal defendant, the oldest of 3 brothers running multi-million £ business. He was the finance director. Co. was a Leading North West company; a great success story, but now 8 defendants faced allegations of defrauding the Revenue over 15-year period. Massive case requiring lengthy preparation. Significant legal issues both as to liability and confiscation.

**R v Zaka Ud-din & Others** – £125million money laundering investigation. Represented principal defendant. Highly complex computerised accounting records and detailed audit trail.



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# James Pickup Q.C.

Call to the Bar: 1976  
Queen's Council: 2008

**R v Malcolm Bradley and Others** – Substantial SFO prosecution. Was originally a multi handed conspiracy to defraud investors in a high yield investment programme on a 23 count indictment with a six month estimate. The indictment was severed. Trial 2 (10 counts) began in Feb 2009. Over £23million invested in highly speculative scheme to process gold and other precious metals from waste fly ash obtained in the US from power stations. Complex chemistry, let alone matters of high finance, share dealings and corporate mergers. Represented chartered accountant, non-exec director of failed co. and involved in the corporate restructuring. In the event he was tried alone, all other Ds having pleaded and was acquitted.

**R v Abdullah Allad and Others** – Significant MTIC fraud. Defendant director of Eurosabre Limited instrumental in fraud on the Revenue in excess of £50M. Defendant subject to restraint order since 2007. Protracted preliminary hearings with numerous applications as to admissibility, abuse of process etc. Defendant absented himself from jurisdiction in November 2010. Thereafter continued to represent absent Defendant as to challenges to prosecution evidence. Trial listed to commence May 2011. Application to try Defendant and one other in their absence. Issues raised as to trial in absence when Defendant had not been arraigned, no defence statement served, core exhibits not served and inadequate disclosure. Judge ruled that AA should be tried in absence. Counsel withdrew. AA convicted and sentenced in his absence to 12 years. Leave to appeal granted. CA in December 2012 ruled that Court will hear the appeals of the Appellants in their continued absence. Appeals to be heard in May 2013.

## Professional Disciplinary/Regulatory

**R v Ziad Khatab** – Pharmacist charged with manslaughter as result of dispensing error. First prosecution of its kind.

**Khatab v Royal Pharmaceutical Soc. G.B.** – Hearing before the statutory committee.

**Kuforiji v Royal Pharmaceutical Soc G.B.** – Appeal against the removal of pharmacist from the Register.

**R v Chief Constable of Merseyside ex p. Bennion [CO 1221/2000]** – Application for Judicial Review on grounds of bias. Extension of the principle in Pinochet Ugarte No. 2. Leave to appeal to C.A.

**Chief Constable of Merseyside v Bennion [C/2000/2549]** – Appeal by Chief Constable. C.A. rule that extension of “personal interest” principle unwarranted. Leave to appeal to H.L. refused.

## Excise & Duties

**Millennium Cash and Carry v HMRC** – Application for interim relief in judicial review proceedings brought by cash and carry warehouse. Issue raised was as to proper interpretation of s139 Customs and Excise Management Act, powers of detention and seizure of goods (“liable to forfeiture”). Finding in favour of Claimants. Eventual JR proceedings compromised.

**Glenn and Co., Medway Soft Drinks and Dale Wholesale v HMRC** – Rolled up hearing before Divisional Court for judicial review arising out of search warrants executed by officers of HMRC at a number of cash and carry warehouses in the London area. Issues raised as to legality of warrants. Detailed argument present to the Court. Ruling, by a narrow margin, in favour of HMRC.



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