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Case No: CO/3117/2017

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 23/03/2018

Before:

THE HONOURABLE MRS JUSTICE WHIPPLE

Between :

The Queen **On the application of Dr Simon Emblin and Others**	**Claimants**
- and -	
Commissioners for HM Revenue and Customs	**Defendants**

- -
- -

James Ramsden QC and Rory Dunlop (instructed by **Reynolds Porter Chamberlain**) for the Claimants
Christina Michalos and Richard Vallat (instructed by the **Solicitor for HMRC**) for the Defendants

Hearing dates: 14 and 15 February 2018

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Approved Judgment

Mrs Justice Whipple:

Introduction

1. The Claimants are investors in two tax schemes known as Goldfinger and Volatility. Dr Simon Emblin, one of the investors, is the representative Claimant. There are around 630 Claimants in all, comprising individual and corporate investors. Dr Emblin is also a director of Redbox Tax Associates LLP ("Redbox") which was the promoter of the schemes. Redbox has a number of corporate associates. I shall refer to Redbox and its corporate associates together as "Redbox".

2. Redbox engaged Paul Hunt, an independent financial advisor ("IFA"), to advise prospective investors in Goldfinger and Volatility. Mr Hunt had access to documents held by Redbox in connection with its business. Mr Hunt was also an investor in Volatility and was at one stage a member of a "fighting fund" set up to defend the arrangements if they were challenged by HMRC.

3. On three separate occasions, namely 30 June 2015, 9 September 2015 and 4 July 2016, Mr Hunt disclosed to HMRC various documents and information belonging to Redbox (the "disclosures"). The disclosures were not authorised by Redbox.

4. Redbox found out about the disclosures in August 2016. In September 2016, the Claimants met with HMRC to discuss the disclosures and to complain about HMRC's receipt of the material, on the basis that the information disclosed was confidential to Redbox and its clients and HMRC had no right to receive it or retain it. On 18 November 2016, the Claimants by their then advisors, Smith & Williamson ("S&W"), wrote to HMRC setting out their complaint with greater clarity. HMRC initially responded on 17 February 2017, dismissing the complaint. S&W sought a review. HMRC concluded that review by letter dated 30 March 2017 in which HMRC upheld the initial response and dismissed the Claimants' complaint.

5. On 27 June 2017, the Claim Form was issued, challenging HMRC's decision of 30 March 2017. HMRC lodged their Acknowledgement of Service on 28 July 2017. I granted permission on the papers on 2 October 2017 and gave directions. On 4 December 2017 HMRC lodged their Detailed Grounds and filed evidence. On 16 January 2018, the Claimants lodged a Reply and filed further evidence to answer that filed by HMRC. And so the matter came before me on 14 and 15 February 2018.

6. The central plank of the Claimants' complaint, and now claim, is that Mr Hunt was induced by HMRC to make the disclosures. The inducement took the form of encouragement by HMRC that in exchange for the disclosures, Mr Hunt's own tax affairs would be resolved in a manner which was advantageous to him. This, it was said, amounted to unlawful conduct by HMRC (the case was put on grounds that HMRC's conduct was unreasonable, irrational, and/or *ultra vires*). The remedy sought was a declaration that HMRC had acted unlawfully, together with an order requiring HMRC to return the documents disclosed and a prohibition on HMRC using any of the information disclosed or work product derived from the disclosures.

The Claimants' case in outline

7. The Claimants' complaint is that HMRC wrongly induced Mr Hunt's disclosures. The grounds of challenge attached to the Claim Form asserted:

   i) Inducement to breach the Claimants' right of confidence in the documents and information disclosed. It was said that HMRC had knowingly connived in, instructed and induced Mr Hunt to breach the duty of confidence he owed to his former clients.

   ii) Inducement to breach the Data Protection Act 1998 ("DPA"). It was said that HMRC had knowingly connived in, instructed and induced Mr Hunt to breach his statutory obligations under the DPA.

   iii) Inducement to breach legal professional privilege ("LPP"), in relation to certain documents covered by the privilege which had been included within the disclosures. The Claimants' grounds made reference to two opinions from Counsel (Michael Sherry and Jonathan Gilman QC) which Mr Hunt had disclosed. It was said that HMRC had knowingly connived in, instructed and induced Mr Hunt to disclose material covered by LPP. It was said that the breach of LPP amounted to a breach of the Claimants' rights under article 6 of the ECHR.

8. By the time of the hearing before me, the issues had narrowed. The Claimants recognised that alternative remedies for alleged breach of the DPA existed under section 14 of the DPA, and the second ground was not pursued before me (although the assertion of breach of the DPA was not abandoned).

9. As to the third ground relating to LPP, matters had moved on: in their Detailed Grounds served on 4 December 2017, HMRC had agreed to return the two legal opinions referred to in the Claimants' grounds and had indicated their willingness to give undertakings not to use work product derived from those documents. Following a further request by the Claimants, HMRC had also agreed to return instructions to one of those Counsel on similar undertakings. In their Reply, the Claimants for the first time stated that there were two further documents covered by LPP which should be returned, namely:

   i) A tax advice letter from Friend LPP dated 23 January 2013; and

   ii) A tax advice letter from TFO Tax dated 1 September 2014 (the "two tax advice letters").

   HMRC did not accept that the two tax advice letters were covered by LPP. Whether they were covered by LPP was a live issue before me.

10. The Claimants did not pursue any argument under the ECHR before me.

11. So far as remedy for the alleged breaches was concerned, the Claimants proposed, and HMRC accepted, as did I, that if I were to find in the Claimants' favour on the claim, issues relating to remedy should be held over to a separate hearing when submissions on that matter could be better focussed in the light of my findings.

12. Thus, the central issue at the hearing was whether HMRC had induced a breach of confidence by Mr Hunt. In relation to that, and with one caveat, HMRC accepted that the material disclosed by Mr Hunt was confidential as between Mr Hunt and the Claimants. The caveat related to the principle of law that there can be no confidence in iniquity, as to which see below.

13. After stripping away the various parts of the Claimants' pleaded case which had resolved in one way or another before the hearing, the Claimants' case on inducement came to this: (i) HMRC had induced Mr Hunt to breach the duty of confidence he owed to the Claimants, and (ii) HMRC's conduct in so doing was unlawful in a public law sense.

14. The Claimants, appearing by Mr Ramsden QC leading Mr Dunlop, accepted that if I found that the disclosures were made voluntarily and without encouragement or persuasion by HMRC, then that was the end of their case on breach of confidence: they would have failed on (i) above. I was greatly assisted by the clarity of Mr Ramsden's submissions, and specifically by his acceptance that this was indeed the critical issue in the case.

15. Apart from the inducement issue and regardless of the outcome of that issue, there was also the LPP issue in relation to the two tax advice letters.

HMRC's case in outline

16. HMRC resisted this claim on the following bases:

    i) The Claimants should have pursued an alternative remedy (in granting permission, I had preserved HMRC's right to argue alternative remedy at the substantive hearing if HMRC so wished). It was argued that the Claimants had the following remedies available which together or separately provided an adequate alternative to a claim for judicial review in the Administrative Court:

        a) a right of appeal to the First Tier Tribunal ("FTT"),

        b) a complaint to the independent Adjudicator's Office ("AO"),

        c) alleged breaches of the DPA could be addressed in the County Court (this was, as I have mentioned above, in fact accepted by the Claimants),

        d) a private law claim against HMRC for the tort of inducement to breach contractual duties owed by Mr Hunt to the Claimants or to breach statutory duties under the DPA or to breach the Claimants' right to LPP in certain documents.

    ii) There had not been any inducement of Mr Hunt by HMRC in fact. Mr Hunt's disclosures were entirely voluntary.

    iii) There was no breach of confidence by Mr Hunt in any event because the information was not confidential as against HMRC:

a) Some, at least, was information already known to HMRC from other sources, or information which would have become so known to HMRC in due course, in any event;

b) Alternatively, the information was not confidential because as a matter of law there can be no confidence in iniquity, and this information related to tax avoidance which is iniquitous.

iv) In any event, HMRC had not committed the tort of inducing a breach of confidence, because the Claimants could not demonstrate that they had suffered damage as a result of HMRC's actions, even if the breach had been induced.

v) HMRC were in any event entitled to receive Mr Hunt's disclosures relying on section 316B of the Finance Act 2004.

The Evidence

17. The following evidence was before the Court (I do not set out evidence received since the hearing of this matter, which relates to the Claimants' application to amend, addressed separately below):

i) for the Claimants, the first witness statement of Dr Emblin dated 23 June 2017 with exhibits, and his second witness statement dated 15 January 2018 with exhibits in answer to HMRC's Detailed Grounds and the evidence filed by HMRC;

ii) for HMRC, a witness statement of Cameron Wilson, officer of HMRC dated 1 December 2017 with exhibits, a witness statement of Karen Fowler, officer of HMRC dated 1 December 2017 with exhibits, the first witness statement of Michaela Comb, officer of HMRC dated 4 December 2017 with exhibits, and the second witness statement of Michaela Comb dated 10 January 2018 (misdated 2017, I think) with exhibits, to correct and clarify her first witness statement. There were, in addition, three documents disclosed during the course of the hearing by HMRC without objection by the Claimants, but with the reservation of their right to comment on those documents in writing after the hearing if so advised.

18. The Court did not have before it any evidence from Mr Hunt, nor did it have any evidence from the four HMRC officers who first had substantive contact with Mr Hunt and attended a meeting with him on 30 June 2015.

Facts

19. The factual background, relating to the course of conduct between HMRC and Mr Hunt and subsequently, is not in dispute. The details are contained in documents and witness statements provided to the Court. I have summarised that course of dealing, and the train of events which leads to this application for judicial review, in the Appendix to this Judgment.

20. One part of the timeline needs to be highlighted here: by mid-2016, Redbox had become suspicious that Mr Hunt had made disclosures to HMRC. On 4 August 2016, Redbox obtained an order for search and seizure against Mr Hunt. During the course of that search, Redbox discovered correspondence which had passed between HMRC and Mr Hunt relating to the disclosures. This is how Redbox came to know that Mr Hunt had made the disclosures.

21. At some point (it is not clear to me precisely when), Redbox also discovered a draft letter of complaint from Mr Hunt to the Information Commissioner ("ICO"). That draft letter was produced to the Court as an exhibit to Dr Emblin's first witness statement. In the draft letter, Mr Hunt said that he had "concerns" that individual HMRC officers put pressure on him to hand over confidential client data in an indiscriminate and unlawful manner, that he had been at that time in a vulnerable state of mind, that HMRC had failed to act towards him in a responsible manner, and that he was "actively encouraged" to hand over private and confidential client data. He purported to ask the ICO to investigate HMRC's possible breach of the DPA in the manner in which it received disclosure from him. I shall return to this draft letter later in this judgment. It is the only evidence in the case which supports the Claimants' case in terms. The draft letter apart, the Claimants' case rests on inferences which they invite me to draw.

Claimants' application to amend

22. Following the oral hearing of this matter, and in response to material disclosed by HMRC during the course of the hearing, the Claimants applied to amend their grounds to raise a new challenge to HMRC's decision of 30 March 2017. HMRC resist the Claimants' application and have adduced further witness evidence and submissions in support of their position that I should refuse permission to amend.

23. I am satisfied that the Claimants' application to amend, and HMRC's answer to it, does not touch on the matters raised in the original grounds on which I have already heard argument.

24. I have listed the Claimants' application for oral hearing at the hand down of this judgment on 23 March 2018.

Issues

25. The issues in this case can be gathered under the following headings:

    i) Alternative remedy

    ii) Inducement of breach of confidence

    iii) Other arguments relating to breach of confidence

    iv) Statutory Defence

    v) Legal Professional Privilege.

Alternative Remedy

26. HMRC argues that the Claimants have an alternative remedy in the FTT, combined as necessary with a complaint to the OA, a private law action in tort, and County Court proceedings under the DPA.

27. There are a number of problems with the submission that the FTT is the proper forum for these complaints, this being the mainstay of HMRC's case on this issue. First, HMRC has not as at today's date raised assessments or made decisions against a majority of the Claimants. Without appealable decisions, there is nothing to appeal against and nothing to go before the FTT. Ms Michalos suggests that the Claimants could initiate proceedings in the FTT by seeking closure notices in relation to those enquiries. But this would be putting the cart before the horse, because it is not clear whether the Claimants would want closure notices (they may prefer to let the enquiries run their course in the hope that nothing will come of them).

28. Secondly, the FTT does not have jurisdiction to deal with the matters raised in this judicial review. The Claimants challenge the way HMRC dealt with and handled Mr Hunt, said to be conduct which is unreasonable, irrational or *ultra vires* and unlawful as a matter of public law. The FTT has no jurisdiction to address those sorts of arguments: see *RCC v Noor* [2013] STC 998 at [25]-[31], especially [28] citing *Marks and Spencer plc v CCE* [1999] STC 205 at 247, and see *Hok* [2013]STC 225. These cases form part of a long line of authority which establishes the boundaries of the jurisdiction of the FTT (as it now is). Ms Michalos invited me to refuse jurisdiction in my discretion, relying on *R (Glencore Energy UK Ltd) v RCC* [2017] 4 WLR 213 at [54]-[55]. But *Glencore* was different, because in that case the taxpayer did have an alternative remedy available to it in the FTT (see [59], [65] and [69]). That is not the case here, see above. This is an exceptional case of the sort identified in *Glencore* at [62].

29. Thirdly, and in any event, it is difficult to see how the Claimants could obtain the relief they seek, namely the return of their confidential information and the prohibition on HMRC's use of it, in FTT proceedings (even if, for present argument, it was accepted that such proceedings could exist in the FTT and could fall within its jurisdiction). I was shown no authority or provision of statute to support the proposition that the FTT could make those sorts of orders.

30. I conclude that there is no suitable alternative remedy available under the statute.

31. To the extent that Ms Michalos relied on a combination of the other alternatives (being the OA, a tort action in the County Court, or DPA proceedings), they all suffer the same handicap of not providing a suitable vehicle for the resolution of the Claimants' case. Specifically, in relation to the proposed tort action, Ms Michalos herself identified a number of difficulties with such a claim which would doubtless be subject to an application for summary judgment or strike out, on the grounds that it was misconceived, as soon as it was made.

32. So far as the OA goes, he or she can only make recommendations. He or she has no jurisdiction or power to make the orders which the Claimants seek.

33. So far as the DPA is concerned, the Claimants agree that an alternative remedy exists in the County Court, and so do not press their case for breach of the DPA before me; but there is much more in their case beside the DPA issues.

34. There is no alternative remedy open to the Claimants. The Claimants have brought their case, appropriately, to the Administrative Court.

Inducement of breach of confidence

The duty of confidence

35. The starting point is agreed by the parties to be *Coco v AN Clark (Engineers) Ltd* [1968] FSR 415 at 419. Three elements are required: (i) the information must have the necessary quality of confidence about it; (ii) the information must be imparted in circumstances importing an obligation of confidence; and (iii) there must be unauthorised use of that information. It is unclear whether detriment must be shown as part of this third element, a point discussed in Gurry on Breach of Confidence (2nd ed) at paragraph 15.42. Leaving aside for the moment HMRC's reliance on the maxim that there can be no confidence in iniquity, which I will address separately, it is common ground that the information disclosed was confidential as between Mr Hunt and Redbox.

36. As to the legal basis for the obligation of confidentiality, Mr Ramsden points to the fact that Mr Hunt was engaged as an IFA working with Redbox. Whether or not his engagement was recorded in writing (if it was, I was not shown it), there was clearly a contract between Mr Hunt and Redbox, and it was said that the duty of confidence must have been an implied term of that contract. But Mr Hunt was not just an IFA engaged by Redbox, he was also an investor in the Volatility scheme. He was at one point a member of the fighting fund for the Volatility scheme, and that too imposed clear duties on him to safeguard confidentiality. Thus, Mr Ramsden's case was that Mr Hunt was under a contractual obligation to retain confidence in the Claimants' information. That obligation endured even after the relevant contracts came to an end.

37. I did not understand HMRC to dispute these propositions.

Breach of the duty of confidence

38. Mr Ramsden submitted that Mr Hunt breached his duty of confidence on each of the occasions when he made disclosures to HMRC. The breach could be characterised as a breach of contractual duty. It might also be characterised as a breach of the equitable obligation of confidence. Again, I did not understand HMRC to dispute this in principle.

Law on Inducement

39. The Claimants' case hinged on its submission that HMRC had induced Mr Hunt's breach of confidence. In examining what inducement means, as a matter of law, Mr Ramsden starts with Clerk & Lindsell on Torts (22nd Ed), paragraph 24-35 of which states:

> "The most obvious form of direct inducement is active persuasion or enticement of the contracting party himself. In such a situation, it matters not whether it was the inducer or the inducee who spoke the first word. In addition to persuasion, procurement or inducement of the contract breaker, dealings inconsistent with the contract have been recognised as a form of indirect inducement. It is not enough for actions of the defendant to have an "influence" on the mind of someone to whom they were not directed; the persuasion has to be directed at one of the parties to the contract. ..."

The text goes on to say, at 24-40:

> "Direct inducement must be distinguished from other types of statement, for example the communication of mere information or advice. A 'mere statement of, or drawing of the attention of the party addressed to, the state of facts as they are' is not an inducement but only transmission of information; and before it becomes an inducement giving rise to liability it must contain some element of 'pressure, persuasion or procuration'. Without that element, transmission of 'information' is not an inducement by itself, even if the defendant knew certain consequences might follow and, indeed, desired that they should. …"

40. Mr Ramsden took me to *Stocznia Gdanska SA v Latvian Shipping Co & Ors (No 2)* [2002] EWCA Civ 889, [2003] 1 CLC 282, [107] – [108]. In examining the meaning of inducement, the Court of Appeal referred to an earlier edition of Clerk and Lindsell and noted the "delicacy of the issues which can arise as to whether some action does or does not amount to the required status of persuasion or inducement".

41. I was then taken to *OBG v Allan and Ors, Douglas and Hello! Ltd and Ors, Mainstream Properties Ltd v Young* [2007] UKHL 21, [2008] 1 AC 1, and particular to the speeches of Lords Nicholls and Hoffman. Lord Hoffman's speech includes the following passages:

> "[39] To be liable for inducing breach of contract, you must know that you are inducing a breach of contract. It is not enough that you know that you are procuring an act which, as a matter of law or construction of the contract, is a breach. You must actually realise that it will have this effect. Nor does it matter that you ought reasonably to have done so. …"
>
> …
>
> [42] The next question is what counts as an intention to procure a breach of contract. It is necessary for this purpose to distinguish between ends, means and consequences. If someone knowingly causes a breach of contract, it does not normally matter that it is the means by which he intends to achieve some further end or even that he would rather have been able to achieve that end without causing a breach. …
>
> [43] On the other hand, if the breach of contract is neither an end in itself nor a means to an end, but merely a foreseeable consequence, then in my opinion it cannot for this purpose be said to have been

> intended. That, I think, is what judges and writers mean when they say that the claimant must have been "targeted" or "aimed at". ..."

42. Finally, I was taken to *Bents Brewery Co Ltd v Luke Hogan* [1945] 2 All ER 570 as an example on its facts of a person being induced by a third party to break a contract by disclosing information confidential to that contract.

43. Ms Michalos does not challenge Mr Ramsden's submissions on the law. She simply reminds me of the following points: (i) I could only conclude that HMRC had induced a breach of contract if I found, on the facts, that there was some act of persuasion or enticement (see para 24-35 of Clerk and Lindsell). (ii) A distinction is to be drawn between active persuasion and enticement on the one hand, and the mere provision of information on the other (see para 24-40 of Clerk and Lindsell). (iii) The issues are fact sensitive (referring to the "delicacy" identified in *Stocznia Gdanska*). (iv) Lord Hoffman's distinction between ends and means to an end on the one hand, and "mere" consequences on the other, provides a useful route for analysis.

44. I accept what Ms Michalos says.

Inducement on the Facts

45. The Claimants' case is that Mr Hunt was encouraged to make his various disclosures by the prospect of preferential treatment of his own tax affairs by HMRC. This is a precedent fact which the Claimants must establish if their judicial review is to have any prospect of success. I have indicated above that there were three separate "phases" of disclosure, and I shall consider each in turn.

Phase 1: Disclosure on and after 30 June 2015

46. Mr Hunt's initial contact with HMRC was unprompted. He called HMRC's press office out of the blue. He spoke to Ms Tyson and then emailed her. There is nothing at all to suggest that he was given any encouragement at this stage. To the contrary, he initiated the contact and said he would be "delighted" to discuss matters with HMRC.

47. Following that first exchange with Ms Tyson, there were further contacts between Mr Hunt and HMRC, with Mr O'Brien who indicated that HMRC would "love to have" any material which Mr Hunt wished to share, and Mr Read who confirmed that HMRC were "very interested" in what Mr Hunt had to say. By these exchanges, HMRC demonstrated an enthusiasm to receive the information, certainly, but I do not accept that HMRC's response tipped over into persuasion or enticement at this stage.

48. It appears that Mr Hunt may have asked for something from HMRC at around this time. His email dated 27 June 2015 to Mr Read of HMRC refers to "queries" earlier this week and in that email Mr Hunt suggested that he would be reluctant to proceed "until this has been dealt with". There is no response from Mr Read in the papers. But it is clear from exchanges involving Mr Read on 2 July 2015 that Mr Read recognised that it was not for him to agree any particular treatment or to confer any advantage on Mr Hunt. On 2 July 2015, Mr Read had a long conversation with Ms Comb before emailing Mr Hunt to record that he had "promised to put [Mr Hunt] directly in touch with [Ms Comb]" and that Ms Comb could "take it from here". This

tells me what Mr Read had said to Mr Hunt a week or so earlier, namely, that he would put Mr Hunt in touch with Ms Comb; it also tells me that Mr Read knew that he could not himself offer any assistance to Mr Hunt.

49. Mr Ramsden argues that even the promise to put Mr Hunt in touch with Ms Comb constituted an encouragement to Mr Hunt: he argued that Ms Comb was a senior officer at HMRC and Mr Hunt was being given privileged access which would not have been available to other taxpayers. I reject that argument. The mere indication that Mr Hunt would be put in contact with Ms Comb, whatever her rank, did not in and of itself amount to persuasion or enticement of Mr Hunt. He was being offered an opportunity to discuss his tax affairs with a senior HMRC officer, nothing more. It stretches the facts too far to characterise these exchanges as amounting to some form of encouragement or persuasion.

50. These exchanges took place in the period before the meeting of 30 June 2015. Mr Hunt attended that meeting voluntarily, and not because he had been offered a reassurance by HMRC about his personal tax affairs.

51. There is no evidence that Mr Hunt was given any such reassurance at the meeting on 30 June 2015, either. None of the officers who were interviewed by Mr Wilson suggested that he was given any reassurance. The two long notes of that meeting, taken by Mr Broadhurst and Mr Haynes, contain no such suggestion either. Those two notes are broadly consistent with each other in content and with the subsequent records of interview of the officers by Mr Wilson. I consider these documents, taken together, to provide reliable evidence about what was said at that meeting.

52. Following the meeting on 30 June 2015, the exchange of 2 July 2015 took place. Following that exchange, Mr Hunt knew that Ms Comb was the person he needed to talk to about his own tax affairs.

53. On 6 July 2015, Mr Goringe sought some clarification from Mr Hunt of matters discussed at the meeting. Mr Hunt replied on 14 July 2015 and clarified the information already disclosed at the earlier meeting. This was an addition to the disclosure made at the meeting on 30 June 2015 and falls to be considered in the same way.

54. I conclude that there is no evidence of any active persuasion or enticement leading to the first phase of disclosure. That disclosure was volunteered.

<u>Phase 2: Disclosure on 9 September 2015</u>

55. On 8 July 2015, the three-page letter was sent (so it appears) by Mr Read to Mr Hunt. The letter was authored by Mr Broadhurst. Mr Ramsden makes specific complaint about this letter which he says was a clear encouragement to Mr Hunt to disclose confidential information.

56. However, on 14 July 2015 Ms Comb had a conversation with Mr Hunt. Ms Comb told Mr Hunt that she had to treat all taxpayers equitably and that HMRC could only settle for the right amount of tax and that all users would be treated in the same way. Ms Comb told Mr Hunt, in terms, that she could not just make the enquiries "go

away". Ms Comb knew what she was being asked. In her first witness statement, she says this at [17]-[18]:

> "[17] Mr Hunt said that it was his desire to get the enquiry into his own affairs closed and he was keen to get matters settled. He said that he was going to supply information to HMRC and wanted to know if we were able to just close his enquiries, and make them "go away". I took this to be a suggestion that we may be able to treat Mr Hunt's tax affairs more favourably in exchange for him providing information. I said that I was required to handle all enquiries equitably, and could only settle for the full amount of tax due under the law. I emphasised that we would treat all users in the same way.
>
> [18] I explained to Mr Hunt that the alternative to a closure notice would be a contract settlement, which involves a negotiated settlement with a taxpayer. I emphasised that we were required to handle all cases in line with HMRC's published Litigation and Settlement Strategy. Mr Hunt said that he didn't have the wherewithal to fund a settlement, but I emphasised HMRC is not able to do deals outside of its published policies."

57. If Mr Hunt had, before having this conversation with Ms Comb, harboured a hope that he would be treated preferentially by HMRC, such a hope was now dashed. It was perfectly clear from 14 July 2015 that HMRC would not do a deal in relation to Mr Hunt's tax affairs.

58. The Claimants contend that the tenor of the letter dated 8 July 2015 was "encouraging". But looked at in context, this letter simply followed up discussions on 30 June 2015 when Mr Hunt had (so it appears) asked HMRC what they would like to see. Mr Broadhurst responded with a shopping list. This letter did not overstep the line between willingness to engage on the one hand and encouragement (by way of inducement) on the other. In any event, even if Mr Broadhurst did go too far, the discussion with Ms Comb supervened, and she made it very clear that no tax deals would or could be done.

59. On 27 July 2015, Mr Hunt raised the question about whether he could be paid. In the event, this was not pursued (see his email of 10 August 2015).

60. In the period following the conversation on 14 July 2015 between Mr Hunt and Ms Comb, Mr Hunt continued to have contact with HMRC. He returned the draft witness statement sent to him on 8 July 2015, with amendments. He said the documents were ready for HMRC whenever they wished to take receipt (email dated 10 August 2015) and chased Mr Read on 5 September 2015 asking whether HMRC was yet ready to receive that information. Mr Hunt indicated to Mr Broadhurst that he was very keen for HMRC to investigate Redbox (recorded in Mr Broadhurst's email of 8 July 2015). Then Mr Hunt made the disclosures on 9 September 2015.

61. I reject the suggestion that the second phase was the product of encouragement offered by HMRC. As it was put in HMRC's internal note dated 7 October 2015, doubtless Mr Hunt was "hankering" after some sort of deal on his own tax affairs, but Ms Comb had made clear to Mr Hunt on 14 July 2015 that no deals were possible. He continued to engage nonetheless. I conclude that he was a willing volunteer.

Phase 3: Disclosure on 4 July 2016

62. Mr Hunt contacted Mr Broadhurst on 27 June 2016 to say that he had discovered some more documents which might help with regard to Redbox. On 4 July 2016, Mr Hunt emailed scanned copies of further documents.

63. There is no evidence that anything had occurred between September 2015, when the second phase was disclosed, and July 2016 when the third phase was disclosed, to indicate to Mr Hunt that matters had changed and HMRC was now able to offer him some advantage. Indeed, Mr Hunt appears to have offered the third phase of disclosure without any prompting or even discussion. Again, he was a willing volunteer.

Other evidential issues

64. There remain a number of loose threads on the evidence. The first is: why did Mr Hunt make the disclosures, if it was not for personal gain? There is a ready answer to that question on the evidence before me. Mr Hunt had fallen out with his old friend, Mr Reid of Redbox; in consequence, Mr Hunt was excluded from the fighting fund set up to defend Volatility and found himself unrepresented and facing an HMRC enquiry into his own tax affairs. That is why Mr Hunt may have wanted to exact some sort of retribution on Mr Reid and Redbox. One way to cause difficulty for Mr Reid and Redbox was to give HMRC the details of Redbox's business and the schemes marketed by Redbox. This was likely to cause inconvenience to Redbox in the form of an HMRC investigation.

65. The second loose thread is: why did Mr Hunt write what he did, in draft at least, to the ICO? Here too there is a ready answer on the evidence before me. By the time this letter was written, it is very likely that Mr Hunt knew that Redbox knew that he had made the disclosures. He may also have suspected or known that Redbox was investigating the possibility of bringing a legal action against him. I believe the letter is self-serving. It is consistent with Mr Hunt seeking to shift the blame for the disclosures onto HMRC. In any event, I note that Mr Hunt does not make any clear assertions that he was induced, he merely expresses concerns that HMRC "may" have acted unlawfully which leads me to doubt the accuracy of his allegation: if he had been pressurised into making the disclosures, he would surely have said so in terms. I conclude that this letter is not reliable evidence of the truth of the assertions contained within it.

66. The third loose thread is: why have the four HMRC officers who first dealt with Mr Hunt (namely, Mr Broadhurst, Mr Goringe, Mr Haynes and Mr Read) not put witness statements before the Court to assist on matters of fact? Ms Michalos said that the officers had not been invited to provide witness statements for the Court because the challenge was to HMRC's review decision dated 30 March 2017 and HMRC's evidence went to the cogency of the review, first and foremost, and not to the underlying events. Mr Ramsden disputes this and argues that the Claimants' complaint has from the outset related to the unlawful disclosure of their confidential information and not to the process by which their complaint was internally investigated. He invites me to draw an adverse inference against HMRC from the absence of evidence attested by a statement of truth from the four officers.

67. In hindsight, it might have been better if the four officers who had contact with Mr Hunt in June and July 2015 had provided evidence directly to the Court. But I cannot determine based on hindsight. I must consider whether it would be right and fair to draw an adverse inference against HMRC based on all the circumstances of the case, including the position as HMRC understood it to be as they prepared to defend this application for judicial review.

68. Having reflected on the evidence as a whole and considered the submissions of both parties, I am satisfied that it would not be right or fair to draw an adverse inference, and I decline Mr Ramsden's invitation. Standing back, the contemporaneous documents contain a consistent and coherent account of what occurred: Mr Hunt tried to curry favour with HMRC by offering the disclosures in the hope that HMRC would make his personal tax problems "go away", but HMRC told him that they could not do a deal and Mr Hunt chose to make the disclosures anyway. HMRC's refusal to do a deal is, itself, consistent with HMRC's Litigation and Settlement Strategy (a policy document to which Ms Comb refers in her statement and with which the four HMRC officers involved were doubtless familiar). The evidence fits together to give a clear picture. The only evidence which suggests something different is the draft letter to the ICO from Mr Hunt, and I have already given reasons for not finding that to be reliable.

69. Further, I accept Ms Michalos' explanation for not adducing evidence from the four officers. The Claimants made a number of allegations against HMRC in the early rounds of skirmishing, leading up to the issue of proceedings. Those allegations included procedural as well as substantive matters. I am prepared to accept that in the fog, HMRC did not appreciate what would become the focus of the Claimants' case before me.

Summary on Inducement

70. I find that none of Mr Hunt's disclosures was induced by HMRC. Mr Hunt was a willing informant who was not pressurised, incentivised or encouraged to provide the disclosures. That is the end of the Claimants' case on breach of confidence.

Remaining arguments relating to breach of confidence

71. There were a number of other strands of argument relating to the Claimants' case on breach of confidence. None of these were good points, although they consumed a fair amount of time at the hearing. Given my conclusion on inducement, I need only deal with them briefly.

No confidence in iniquity

72. Ms Michalos submits that the information disclosed by Mr Hunt was not capable of being confidential because there is no confidence in iniquity and by analogy, no confidence in information which goes to tax avoidance which is iniquitous, in the sense of being contrary to the public interest. She relied on *Attorney-General v Guardian Newspapers (No 2)* [1990] 1 AC 109, *Gartside v Outram* [1857] 26 LJ Ch 113, and a passage from *Initial Services v Putteril* [1968] 1 QB 396 at p 405-6 where Lord Denning confirmed that the exception to the law of confidence in relation to

iniquity extends not just to crimes or civil wrong, but also to "misdeeds", provided the disclosure would be in the public interest.

73. I accept that there is an obvious public interest in HMRC being put in a position where it can combat tax avoidance. But it is not established that the information disclosed in this case does reveal tax avoidance. That is the very issue which is currently being investigated by HMRC, and HMRC have not reached any conclusion on it in relation to any one of the Claimants or Redbox or its corporate associates. Iniquity has not been established. I therefore reject the submission that the material is not confidential because it is iniquitous.

74. Ms Michalos put the iniquity argument alternatively on the basis that there was a general public interest defence to breach of confidentiality, where the information relates to tax avoidance. This argument is better addressed in the context of section 316B, which creates a statutory public interest defence. It is not necessary to consider whether such a defence exists beyond the statute.

No confidence in information known or knowable to HMRC in any event

75. Ms Michalos argued that much of the information disclosed by Mr Hunt was already known to HMRC or would have become known to HMRC in due course in any event. Thus, she says, it was not confidential at all. Whilst I am prepared to accept (without deciding the point) that Ms Michalos might be right to the extent that the information was already in the hands of HMRC at the time of disclosure, I cannot accept her submission to the extent that it relates to information which was not at the time in HMRC's possession. Disclosure of information in that latter category was novel to HMRC and did, subject to the statutory defence to which I shall come, constitute a breach of confidence by Mr Hunt. What would or might have occurred in the future is not relevant.

Incomplete tort

76. Ms Michalos asserts that the Claimants have not made out the tort of breach of confidence, and on that basis the Claimants' claim must fail. I do not set out the various ways in which Ms Michalos says that the Claimants' claim is defective, because there is an overarching answer to her submissions under this head. This is a claim in public law. The Claimants do not need to show that HMRC has committed a complete tort by its actions. What the Claimants have to show is that HMRC have acted unlawfully in a public law sense and this they seek to do by reference to the case law (in tort) on inducement, but they do not advance a broader case in tort, nor do they need to. The various points made by Ms Michalos under this heading are irrelevant.

Schedule 36

77. Mr Ramsden argued that HMRC could have obtained the information disclosed by Mr Hunt pursuant to Schedule 36 of the Finance Act 2008. This was an adjunct to his argument on inducement. He suggested that HMRC possessed the power under Schedule 36 to obtain this material, and should have used that power, as the proper basis for obtaining disclosure from Mr Hunt, in a manner which would draw a fair balance between the private rights of taxpayers and the public interest in disclosure.

78. I have no doubt that the Claimants would have preferred HMRC to seek to obtain the disclosure under Schedule 36 – not least because that would have given them the right to object to it.

79. Mr Ramsden accepted that Schedule 36 was not an exhaustive provision and that HMRC is entitled to receive information which is volunteered, even where it relates to a third party's tax affairs (we discussed at the hearing the possibility of neighbours making disclosures about each other, and there are many other possible scenarios which can be imagined). This brings us back to first base. The fact (as I have found) that this information was volunteered is the answer to Mr Ramsden's Schedule 36 point: once volunteered, there was no need for or obligation on HMRC to use Schedule 36.

Statutory Defence

80. There is, however, one further good point made by HMRC, which I record. In one sense, it too is surplus to requirements because I have already decided on the facts that the disclosures were voluntary. But that conclusion is itself highly material to HMRC's reliance on s 316B of Finance Act 2004, which provides as follows:

> "[316B] No duty of confidentiality or other restriction on disclosure (however imposed) prevents the voluntary disclosure by any person to HMRC of information or documents which the person has reasonable grounds for suspecting will assist HMRC in determining whether there has been a breach of any requirement imposed by or under this Part."

81. There are two elements to this statutory defence. The first is whether the disclosure in any given case is voluntary, and I have found that it was.

82. The second element relates to whether the person making the disclosure has reasonable grounds for suspecting that it will assist HMRC in determining whether there has been a breach of any requirement of Part 7 of the FA 2004, which contains anti-avoidance legislation. Mr Ramsden suggested that such a reasonable suspicion did not exist on the facts here, because the schemes (he asserted) were not aimed at tax avoidance. To support his argument, he returns to the fact that HMRC had not required Goldfinger (or its predecessor) to be registered under DOTAS. But s 316B requires only that the person disclosing has a reasonable suspicion that the information will assist HMRC in determining whether there is tax avoidance. Mr Hunt plainly did have such a suspicion, evident from the way he described the disclosures (his first email to HMRC on 9 June 2015 was headed "Tax Avoidance Schemes", and his subsequent contacts with HMRC were predicated on the disclosures relating to tax avoidance by Redbox). Although Mr Hunt may have been motivated to make the disclosures for reasons other than public interest, he suspected that Redbox was involved in tax avoidance. HMRC suspect that too, as is evidenced by the enquiries which HMRC is now conducting into the schemes. Further, I was shown a recent decision of the FTT in *HMRC v Roots2Tax Ltd and another v HMRC* (11 September 2017, FTT ref TC06115) where the FTT found that the taxpayer was involved in tax avoidance; Ms Michalos argued that the scheme at issue in that case was similar to Goldfinger and Volatility, a proposition which Mr Ramsden did not accept. But the issue is not whether Goldfinger and/or Volatility are, in fact and law,

tax avoidance; the issue is whether Mr Hunt reasonably suspected that HMRC would be assisted in their enquiries into tax avoidance by the disclosures. I am satisfied that this relatively low hurdle was met on the facts.

83. The two elements of the statutory defence are satisfied. Section 316B applies. The consequence is whatever duty of confidence was owed by Mr Hunt to Redbox did not prevent the disclosure of this material to HMRC. In addition to the position at common law, HMRC has a statutory defence to this claim.

Summary on breach of confidence

84. The crux of this case on breach of confidence is the issue of fact, namely, whether Mr Hunt's disclosure was voluntary. I have decided that it was. It follows that: (i) the Claimants' case on inducement as a matter of common law fails; and (ii) the statutory defence in the form of s 316B applies (given that the other element of the statutory defence is also made out on the facts).

Legal Professional Privilege

85. Mr Ramsden contends that the two tax advice letters disclosed by Mr Hunt were subject to LPP and so should be returned by HMRC and subject to undertakings similar to those already given by HMRC in relation to the instructions to and advice from counsel. HMRC's position is that these documents are not subject to LPP.

86. It is common ground that LPP extends only to legal advice, and not to advice from accountants, for example on the tax law aspects of any given transaction: *R (Prudential plc and anor) v Special Commissioners of Income Tax* [2013] UKSC 1; [2013] 2 AC 185.

87. The first letter is from Friend LLP, a firm of accountants, to Mr Crawford, who is one of the Claimants, dated 23 January 2013. The letter is headed "Tax Advice Letter" and it relates to the use of losses which arise as a result of his participation in the Volatility scheme. There is no reference at all to any legal advice obtained or relied on by the authors. The letter is tax advice given by accountants. It is not covered by LPP.

88. The second letter is from TFO Tax, a firm of tax advisors who are not accountants, to the directors of Manchester Chemicals Ltd, dated 1 September 2014. The letter is headed "Tax Advice Letter" and it relates to the tax treatment of Goldfinger. It sets out the steps involved in the Goldfinger scheme, the tax assumptions which underlie the scheme, the tax analysis, the likely challenge by HMRC and how that challenge can be resisted. Under the heading "General Anti-Abuse Rule ("GAAR")" reference is made to advice from tax counsel; the letter summarises that advice, to the effect that Goldfinger is not caught by GAAR. The letter then emphasises the inherent legal uncertainty which attaches to the scheme and offers a conclusion which includes this: "It is our opinion however, that although it is not impossible for HMRC to successfully challenge the planning, you have the stronger position and have a good chance of success, subject to the comments above." Mr Ramsden argues that this letter is closely based on Counsel's advice, and is a means by which that advice was communicated to Manchester Chemicals Ltd. Ms Michalos disputes this, contending

that this is a letter from tax advisors seeking to "sell" Goldfinger to clients; it is not simply a means of communicating legal advice to those clients.

89. I agree with Ms Michalos. This letter is not covered by LPP. It may be that the authors modelled their own advice to clients on advice previously given by Counsel. The authors are entitled to take whatever advice they wish to in order to inform their own advice to clients, and they are at liberty to refer to any such advice in their correspondence with clients. But that does not mean that their own advice or correspondence is covered by LPP, and in this instance, it is not. This letter contained TFO Tax's own advice on the scheme. TFO Tax used the advice received from Counsel to support its own advice now given to clients, as part of its selling operation. This use of and reference to Counsel's advice falls outside the scope of LPP.

Conclusion

90. Subject to the application to amend, I dismiss this application for judicial review. I conclude that:

    i) The disclosures by Mr Hunt were voluntary, not induced by HMRC as a matter of fact.

    ii) In any event, s 316B applies and HMRC were permitted to receive the disclosures.

    iii) Neither of the tax advice letters are covered by LPP.

91. It follows (again, subject to the application to amend) that HMRC are entitled to read and make use of the information disclosed by Mr Hunt as part of their ongoing investigations.

92. I thank all Counsel involved for their arguments and assistance in this matter.

APPENDIX

SUMMARY OF FACTS

First Contact between Redbox and HMRC in 2009

1. Redbox first had contact with HMRC in 2009, in relation to a scheme which was described as the precursor to the Goldfinger scheme. Following meetings and correspondence, HMRC confirmed that Goldfinger did not need to be formally disclosed to HMRC under the provisions of "DOTAS" (a statutory scheme requiring disclosure of tax avoidance schemes, contained in the Finance Act 2004), although HMRC would keep the matter under review.

2. The precursor scheme to Goldfinger was in fact disclosed under DOTAS to HMRC and was in fact given a DOTAS registration number. But HMRC took no action on its registration, and the consequences of DOTAS registration were not pursued by HMRC.

3. Volatility was never notified to HMRC under DOTAS and there was never any discussion of that scheme with HMRC.

Mr Hunt's first contact with HMRC

4. On 9 June 2015, Mr Hunt called HMRC's press office and spoke to Carol Tyson. At 11.21 that day, Mr Hunt emailed Ms Tyson to follow up the initial contact. The email was headed "Tax Avoidance Schemes". In that email, he thanked Ms Tyson for her assistance and said:

> "… Although you have given me the HMRC number that can be used to report instances of tax avoidance, I feel that the arrangements I wish to report are exactly the sort that Mr Harra [the director-general for business tax at HMRC] is interested in. …
>
> I have extremely detailed knowledge of various arrangements going back several years. Until recently I acted as a financial advisor to the participants being active connected to an arrangement called 'Goldfinger' – a scheme which Margaret Hodge referred to in a PAC [Public Accounts Committee] meeting a while ago. …."

He said that he had detailed knowledge of the schemes which had sheltered at least £1 billion for taxpayers over the years and outlined the information he had. He ended saying:

> "I would be delighted to discuss this issue with Mr Harra or one of his colleagues…"

5. Ms Tyson forwarded Mr Hunt's email to a colleague in HMRC called Patrick O'Brien. Mr O'Brien responded to Mr Hunt saying that:

> "… we would love to have any material, you would like to share with us."

6. It appears that phone calls subsequently took place between Mr Hunt and officers of HMRC. These are not separately recorded but can be inferred from contemporaneous email traffic. Specifically, on 19 June 2015, Simon Read, another officer of HMRC, emailed Mr Hunt confirming that they had spoken earlier, that HMRC "are very interested in what you have to say", and asking Mr Hunt to provide a witness statement, and allow HMRC investigators to examine the documents he had in his possession. A meeting was to take place on 30 June 2015 at Mr Hunt's home in Birmingham, which Mr Read would attend with three other officers of HMRC: Steve Goringe, Phil Broadhurst and Chris Haynes.

7. On 27 June 2015, Mr Hunt emailed Mr Read saying that he had yet to hear anything from Mr Read about "my queries I raised earlier this week". He said that there had been developments at Achilles Products (a company connected with Redbox) and "I would be reluctant to continue until this has been dealt with". There is no response to this email in the papers.

30 June 2015 meeting: first phase of disclosure

8. On 30 June 2015, the planned meeting between HMRC and Mr Hunt took place at Mr Hunt's home. There are two sets of notes of that meeting, both handwritten, taken by Mr Broadhurst and Mr Haynes respectively. Amongst other things, Mr Hunt said that he had been a very good friend of Mark Reid who ran the business with Dr Emblin but that he had had a "very severe fall-out" with Mr Reid as a result of a text sent by Mr Reid in error to Mr Hunt which (Mr Hunt said) contained a racial slur which related to Mr Hunt's partner who was called Shof. Mr Hunt explained the schemes: who was involved, how they worked, the fee structure. He said that he had now been sacked from participating in the Volatility fighting fund. He said that Shof had worked for Redbox but had been sacked and was suing for unfair dismissal in the Employment Tribunal. He confirmed that none of the information he was prepared to give HMRC had come from Shof. He gave the officers a handwritten diagram showing the company structure of Redbox and its associates. At some point, it appears that Mr Hunt took Mr Goringe and Mr Broadhurst upstairs to show them material on his computer.

9. There is nothing in either note of this meeting recording any discussion about what HMRC might be able to do for Mr Hunt by way of *quid pro quo* for the disclosure of information and documents. Mr Hunt is not recorded as asking for anything and the officers are not recorded as having offered anything.

30 June – 9 September 2015

10. On 2 July 2015, there was a telephone call between Mr Read and Ms Comb. Ms Comb is a grade 7 civil servant employed in the counter-avoidance directorate of HMRC. Ms Comb made a note of the phone call. Mr Read explained that he had met with Mr Hunt (a reference to the meeting on 30 June 2015). Mr Read explained that Mr Hunt was concerned about the application for a closure notice which had been made on his behalf and that Mr Hunt had said that he had been thrown out of the fighting fund and was concerned now that he was no longer being represented. Ms Comb recorded this:

> "Simon [Read] wasn't sure that Mr Hunt was looking to settle, and avoided having that type of conversation with him, because we do not do deals".

Mr Read asked if he could put Mr Hunt in touch with Ms Comb directly and she appears to have agreed to this.

11. At 17.31 that afternoon, Mr Read sent an email to Ms Comb, copied to Mr Hunt, saying:

> "… Mr Hunt is concerned about the resolution of his own affairs especially as he is no longer covered by the fighting fund arrangements. When we met I promised to put him directly in touch with you. I'll leave you to take it from here."

12. On 6 July 2015, Mr Goringe emailed Mr Hunt asking for more information.

13. On 8 July 2015, Mr Broadhurst wrote to Mr Hunt. This was a three-page letter which started in this way:

> "I am putting my information request in writing so that you can consider the matter further and determine what documents you may hold in your archives".

It listed various documents and categories of documents. Under the heading "Goldfinger", Mr Broadhurst listed a series of bullet points, one of which was

> "Information or documents showing that Redbox wanted the arrangements kept confidential from either HMRC or other promoters and, if so, why, EG a confidentiality agreement or letter of engagement containing such clauses".

That letter also enclosed a draft witness statement prepared by Mr Haynes following the meeting on 30 June 2015. Mr Broadhurst stressed that the statement must be in Mr Hunt's own words and must be factually correct. The letter ended by saying that Mr Hunt should feel free to submit anything else that he thought might be of interest to HMRC.

14. On 14 July 2015, Mr Hunt spoke to Ms Comb on the phone. Ms Comb made a detailed note of that conversation. Mr Hunt was hoping something could be done about his own tax enquiry. The note recorded:

> "It is Mr Hunt's desire to get the enquiry into his own affairs closed and he is keen to get the matters settled. Mr Hunt is going to supply the information to us, but he wanted to know if we were able to just close his enquiries, and make them go away. I said that I was required to handle all enquiries equitably, and could only settle for the right measure of tax. However I tried to emphasise that we treat all users in the same way."

Later in that note, she records saying to Mr Hunt: "we are not able to do deals".

15. On 14 July 2015, Mr Hunt emailed Mr Goringe. This was at 22.03, after he had spoken to Ms Comb. The email attached a spreadsheet containing the identities of all

UK taxpayers who had participated in Goldfinger. This information had been collated by Mr Hunt for HMRC. The email ended: "If you require any more detail, please let me know".

16. On 27 July 2015, Mr Hunt emailed HMRC asking about whether he could be paid. This was followed by a telephone call between Mr Hunt and Mr Read on 31 July 2015, of which a detailed note was taken by Mr Read. Mr Read explained that it was possible for HMRC to pay people in certain circumstances but the outcome was by no means certain; there was a strict process and governance around any decision. Mr Read said it was not for him to make the decision but he would explore the possibility further.

17. On 2 August 2015, Mr Hunt returned the draft witness statement with some changes. He detailed the Goldfinger and Volatility schemes, the legal advice which had been taken and the various advisors involved in them.

18. On 10 August 2015, Mr Hunt emailed Mr Read saying that he did not want payment after all, giving two reasons: first, the item which took the most time was the witness statement and that was now done; secondly, he thought collating the information would take a long time but in fact was mostly in electronic format and the parts which were not in electronic format had been easily accessed and "were ready to send to you whenever you wish". He ended the email saying:

> "Now … we can focus on the really important issue which is to place as much information on Redbox and their arrangements in your hands as quickly as possible. Please let me know when you are ready to receive our files."

19. On 5 September 2015, Mr Hunt chased Mr Read by email, asking him if he was yet ready to receive the information relating to Redbox. Mr Read replied on 7 September 2015 saying that HMRC was just sorting out the logistics at their end.

20. On 8 September 2015, Mr Broadhurst spoke to Mr Hunt. Mr Broadhurst then emailed Mr Read to say that Mr Hunt was proposing to send the material in a series of emails. Mr Broadhurst also recorded that Mr Hunt had been very keen for HMRC to investigate the LLP status of Redbox as he believed that it was simply a structure designed to avoid paying employer's national insurance contributions.

9 September 2015 – second phase of disclosure

21. On 9 September 2015, Mr Hunt emailed information about Redbox and its clients in a series of emails. Specifically, he disclosed information about Goldfinger and Volatility, including the complete files for two clients who had invested in Volatility and one who had invested in Goldfinger. He also disclosed a revised list of UK taxpayers who had invested in Goldfinger and the tax advice letter from TFO Tax.

22. On 10 September 2015, Mr Hunt emailed Mr Broadhurst with further information about Redbox.

23. On 15 September 2015, Mr Broadhurst acknowledged receipt of the information from Mr Hunt, thanking him and saying it was "extremely helpful". Mr Hunt responded on

the same day saying "I would be happy to assist you further should you need my help".

October 2015 – June 2016

24. On 7 October 2015, various HMRC officers, including Mr Broadhurst and Ms Comb, met to discuss the Redbox schemes. The note of that meeting (which was also disclosed at the hearing) records Mr Broadhurst saying that Mr Hunt's information had been illuminating, that Mr Broadhurst was really grateful for it, but that HMRC did not really want to have an ongoing dialogue with Mr Hunt if that could be avoided, but that "he is a user of Volatility, we have an open enquiry, and he was hankering after some sort of give and take on his affairs – we have assured him this will not happen."

25. On 8 October 2015, Mr Hunt emailed Mr Read to say that he had had contact with the Solicitors Regulation Authority and the Financial Conduct Authority in relation to Redbox. He wanted to pass on Mr Read's contact details to those bodies "so the three organisations might work together".

26. On 5 January 2016, Mr Hunt emailed Mr Broadhurst. He had come across another issue which he felt needed to be clarified, namely the sale of a house in which had been owned by Mr Reid and Dr Emblin at Acocks Green in Birmingham to an employee of Redbox. Mr Hunt suggested that the sale was at an undervalue and might have been some sort of disguised remuneration.

4 July 2016 – the third phase of disclosure

27. Mr Hunt called Mr Broadhurst on 27 June 2016 to say that he had discovered some more documents that might help with regard to Redbox.

28. On 4 July 2016, Mr Hunt emailed Mr Broadhurst enclosing scanned copies of further documents which he said he had come across. There included the notes of advice from two Counsel together with instructions to one of those Counsel.

The Claimants' discovery of Mr Hunt's disclosures and the complaint to HMRC

29. On 4 August 2016, Redbox obtained an order for search and seizure against Mr Hunt. During the course of that search, Redbox discovered the correspondence between HMRC and Mr Hunt and the fact that Mr Hunt had made the disclosures.

30. On 16 September 2016, a meeting took place between Dr Emblin and Mr Reid of Redbox, represented by Mr Millington of S&W, and two officers from HMRC. A detailed note was prepared by S&W. There was discussion of Mr Hunt's disclosures. Mr Millington suggested that HMRC had committed a criminal offence under s 55 of the DPA and that HMRC had breached the DPA in other ways as well and that they had breached his clients' human rights as well. Mr Millington said that he would invite the FTT to issue closure notices for all the enquiries on the basis that the information leading to enquiries being opened was tainted, and that HMRC had breached its duty of care to Mr Hunt who was facing bankruptcy, and civil and criminal proceedings against him.

31. On 18 November 2016, S&W wrote to HMRC in response to HMRC's request that S&W should set out "exactly why we thought your colleagues had broken the law". The letter asserted that "four of your colleagues – in the way they sought and obtained information from Paul Hunt – may have broken the law under the Data Protection Act 1998 and possibly other legal obligations". The complaint was that "information gathering appears to have been initiated in this instance by individual inspectors in an indiscriminate manner, outside the scope of established HMRC process and without the authorisation (or knowledge) of relevant supervisors". Reference was made to the law of confidence and to the unfairness of HMRC's processing of the disclosed material. S&W expressed concerns about the way the complaint had been handled, about the breach of HMRC's internal protocols about the use of emails in the way HMRC had corresponded with Mr Hunt, the failure to use the process under Schedule 36, and the failure to provide Mr Hunt with notes of the meeting of 30 June 2015. Under a heading "breach of confidentiality", S&W referred to Redbox being mentioned in emails between Mr Hunt and HMRC. A lengthy appendix of communications between Mr Hunt and HMRC was attached with comments and criticisms marked in italics.

32. On 21 November 2016, Mr Hunt met with Mr Millington and Mr Reid. A note of that meeting was taken by Mr Millington. Mr Hunt confirmed that he had given the information to HMRC. Mr Hunt was made aware that Dr Emblin had been advised that Mr Hunt, by making the disclosures, had breached the DPA.

HMRC's investigation

33. On 10 October 2016, Mr Wilson, a grade 6 civil servant in the Wealthy and Mid-Sized Business Compliance Directorate of HMRC, was asked to act as independent fact finder in relation to a complaint about the four officers involved in the 30 June 2015 meeting (Mr Read, Mr Goringe, Mr Broadhurst and Mr Haynes).

34. Between 4 November 2016 and 7 December 2016, Mr Wilson met with each of Mr Broadhurst, Mr Haynes, Mr Goringe and Mr Read. Notes of each of those meetings were taken and have been disclosed. There is no suggestion in any of them that Mr Hunt was offered any advantage in exchange for the information he was offering.

35. Mr Wilson concluded his investigation by a report dated 9 February 2017. That report was internal, and not shared with S&W, Redbox or any of the Claimants at the time. It was disclosed within this litigation, under cover of Mr Wilson's witness statement dated 1 December 2017. On the issue of inducement, he concluded:

> "S&W go on to say that "the clandestine way in which individual inspectors appear to have behaved…in encouraging Mr Hunt to hand over Redbox files…indicates a worrying level of reckless disregard for established legal procedures or, worse, wilful misconduct…" S&W neglect to recognise the apparent enthusiasm their former associate had for handing over information, not only to HMRC, but also to the Chair of the PAC, Solicitors' Regulatory Authority and Financial Conduct Authority. I have found no evidence whatsoever that PH was treated as anything other than a willing informant."

36. On 17 February 2017, Mr Wilson formally responded to S&W's complaint set out in their letter of 18 November 2016. He apologised for the delay in responding. Under a heading "Alleged unlawful activities of HMRC officers", Mr Wilson wrote:

> "The facts have been thoroughly investigated, including the specific allegation that HMRC officers breached the Data Protection Act 1998. HMRC is satisfied that its officers acted lawfully and in accordance with the Data Protection Act 1998 and the Human Rights Act 1998."

The rest of the letter dealt with other matters raised by S&W. Mr Wilson rejected the complaint.

37. On 2 March 2017, S&W requested a review.

38. On 30 March 2017, Ms Fowler, assistant director in the Charities, Large Partnerships and International Wealthy and mid-size business Directorate, wrote in response. This is the decision under challenge. She wrote:

> "I have now completed a full review of all the available information and I can confirm I am satisfied that Mr Wilson has reviewed all appropriate matters and consulted with all relevant persons. I am also satisfied that Mr Wilson has made the appropriate conclusions as set out in his letter dated 17 February 2017."

39. On 27 June 2017, the Claimants issued their Claim Form seeking to challenge the 30 March 2017 decision.