



Neutral Citation: [2023] UKFTT 618 (TC)

Case Number: TC08859

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

Sitting in Birmingham

Appeal reference: **TC/2020/03909**
TC/2020/04591
TC/2020/04592
TC/2020/04594
TC/2021/02910

INCOME TAX – sole trade and partnership – closure notice and discovery assessments, deliberate inaccuracy penalty – whether assessments objectively reasonable in circumstances – yes – whether undeclared sales – yes – whether conduct deliberate – yes

VALUE ADDED TAX – sole trade and partnership – change of effective date of registration – failure to notify penalty – whether undeclared sales – yes – whether conduct deliberate – yes

Heard on: 12, 13 and 14 June 2023

Judgment date: 11 July 2023

Before

**TRIBUNAL JUDGE BAILEY
MEMBER TERENCE BAYLISS**

Between

**SYLVIA HOOK (trading as SYLMIS PUPPIES also
known as SYLML PUPPIES)**

and

**SYLVIA HOOK (as nominated partner of the firm
PEDIGREE PUPPIES also known as PINETREES
PUPPIES)**

Appellants

THE COMMISSIONERS FOR HIS MAJESTY’S REVENUE AND CUSTOMS

Respondents

Representation:

For the Appellant: Mr Alastair Kendrick of AK Employment Tax Services Limited

For the Respondents: Ms Gemma Truelove and Ms Sophie Jones, litigators of HM Revenue
and Customs' Solicitor's Office

DECISION

INTRODUCTION

1. There are five appeals before the Tribunal. These appeals were brought by Mrs Hook, either in her own right, or as the nominated partner of a partnership with her husband. HMRC consider that the profits of Mrs Hook and the partnership have been under-declared, and they have assessed the additional profits they consider were made.

2. Mrs Hook and the partnership appeal against closure notices, discovery assessments and penalty notices issued in respect of those alleged additional profits, and they also appeal against the effective date of the registration to VAT for both businesses, and against penalties issued to both businesses for failure to register for VAT at earlier date. Prime VAT assessments have also been issued but, as these can only be replaced through the filing of VAT returns, there is no appeal against those assessments before us and we have no jurisdiction to set aside or vary those assessments.

3. Throughout the bundle, different names have been given as the trading names of Mrs Hook and of the partnership. At various times, Mrs Hook's sole trade is referred to as Sylmis Puppies, Sylml Puppies, Sylml and Sylmls, and the partnership's trading name is referred to as Pedigree Puppies, Pedigree Pups, Sandilands Puppies, Pinetrees Puppies and Pinetrees. Nothing turns on the name used but, for clarity, in this decision we use either the trading names that appear on the bank statements – "Sylml" for the sole trader business, and "Pinetrees" for the partnership business – or "both businesses" when we refer to both the sole trade and the partnership trade together.

APPEALS BEFORE THE TRIBUNAL

4. There are five appeals before the Tribunal. The grounds of appeal for each appeal are the same and it is not particularly easy from the notices of appeal in the bundle (which do not include the decisions that form part of the appeal notice) to identify which decisions were appealed under which Tribunal appeal reference. However, we conclude that the following appeals were made:

– an appeal by Mrs Hook against a closure notice issued to her under Section 28A Taxes Management Act 1970 ("TMA") for the tax year 2015/16, discovery assessments issued to her under Section 29 TMA 1970 for the years 2012/13, 2013/14, 2014/15, 2016/17 and 2017/18, and deliberate inaccuracy penalties issued to her under Schedule 24 to the Finance Act ("FA") 2007 for the years 2012/13, 2013/14, 2014/15, 2015/16, 2016/17 and 2017/18.

– an appeal by Mrs Hook as the nominated partner of Pinetrees against a notice of partnership amendment issued to Pinetrees under Section 28B TMA for the tax year 2017/18, discovery assessments issued to Pinetrees under Section 30B TMA 1970 for the years 2012/13, 2013/14, 2014/15, 2015/16 and 2016/17, and an appeal against deliberate inaccuracy penalties issued to Pinetrees under Schedule 24 to FA 2007 for the years 2012/13, 2013/14, 2014/15, 2015/16, 2016/17 and 2017/18.

– an appeal by Mrs Hook against a decision made under Section 3 Value Added Tax Act 1994 (VATA 1994) to backdate the Effective Date of Registration ("EDR") to VAT for Sylml to 1 November 2011, and also an appeal against a deliberate Failure to Notify penalty (in the sum of £50,396.62) issued under Schedule 41 to FA 2008.

– an appeal by Mrs Hook as nominated partner of Pinetrees against a decision made under Section 3 VATA 1994 that Pinetrees should have been registered for VAT in the period 1 January 2015 to 31 July 2017 (so it was Liable but No Longer Liable ("LNLL")) and also an

appeal against a Failure to Notify penalty (in the sum of £22,300.87) issued under Schedule 41 to FA 2008.

5. This last appeal was out of time as regards the LNLL decision in respect of Pinetrees.

WHETHER TO ADMIT THE LATE APPEAL

6. Pinetrees' appeal against the LNLL decision and related penalty was filed with the Tribunal on 15 December 2020. The review decision in respect of the LNLL decision was issued on 18 May 2020 so the deadline for appealing against that decision to the Tribunal was 17 June 2020. As the appeal was not received until almost six months later, the appeal against this decision was late and that lateness is both "serious" and "significant".

7. We have applied the principles set out in *Martland v HMRC* [2018] UKUT 178 in deciding whether to admit this appeal out of time. While Mr Millett's evidence about why he delayed in filing this appeal and his opinion that "there was no delay really" was far from satisfactory, Mr Kendrick's submissions brought some clarity. Mr Kendrick's submissions, combined with HMRC's lack of objection, have persuaded us that we should, exceptionally, grant the extension of time necessary to admit this appeal for consideration with the other four (in-time) appeals made by the Appellants. We would have decided differently if HMRC had objected to the admission.

EVIDENCE BEFORE US

8. We had before us three bundle of documents, a bundle of legislation and authorities and the parties' skeleton arguments. The largest of the three documents bundles replaced three earlier document bundles that were so badly prepared that the original listing of this appeal had to be cancelled due to the omission of key documents. However, it seemed to us that the new larger bundle still omitted documents we would have expected to have seen (most obviously, the Appellants' accounts and tax returns for the relevant years) and also omitted a few documents that were in the three earlier bundles. Our decision is based solely on the documents that were before us in the most recent bundles, and the oral evidence.

9. We heard oral evidence from eight witnesses.

10. For the Appellants we heard evidence from Mrs Sylvia Hook, Mr Michael Hook, Mr Roger Millett (accountant to the Appellants), Mrs Sharon Wilcox (former book keeper to the Appellants), Mrs Johanna Buitelaar-Warden and Mrs Madeleine Buitelaar, both former dog breeders. There was also a statement in the bundle by Ms Joanna Johnson (a current dog breeder) but she was not able to attend the hearing and so we give limited weight to her evidence. For the Respondents we heard evidence from Officer Timothy Neal and Officer Timothy Holden.

11. This is an appropriate point to note that, prior to the hearing Mr Kendrick had been provided with a paper copy of the hearing bundles but not an electronic copy. Mr Kendrick was not able to copy and distribute the paper bundles and, as a result Mr Millett had not seen the bundles prior to giving his evidence in person, and Mrs Wilcox, Mrs Johanna Buitelaar-Warden and Mrs Buitelaar all gave their evidence online without seeing the bundles at all. We took into account that disadvantage for those witnesses, especially when compared to Officer Holden and Officer Neal who had had sight of the bundles in advance of the hearing.

12. We considered that all of the witnesses were doing their best to assist us and we are grateful to all of them for their time and effort. However, due to the passage of time and other factors, there were some areas where some witnesses were unable to answer certain questions or comment on certain points. In particular, Mr Hook gave evidence that his only involvement with the payment or paperwork side of the partnership was to approve the

accounts at the end of the year, and so – while we appreciate his time and attendance – we did not find he was able to offer us much assistance in respect of the issues we must determine.

13. We have taken into account the personal circumstances which made it difficult for Mr Millett to prepare to give his evidence, and also that Mr Millett had not seen a copy of the bundle before he entered the witness stand. But, even making those allowances, we found Mr Millett's evidence to be of limited assistance. Mr Millett had prepared the accounts for Sylml and Pinetrees and also the tax return of (at least) Mrs Hook. Mr Millett had also corresponded with HMRC on behalf of Sylml and Pinetrees during the enquiry. However, it appeared that, to a large extent, Mr Millett was not relying on his own knowledge of events when giving his evidence but was relying on information provided to him. Due to Mr Millett's first-hand knowledge being restricted, we found that the evidence Mr Millett gave added relatively little to the evidence we had heard first-hand from Mrs Hook and Mrs Wilcox. We comment further where relevant in our findings of facts.

14. We found Mrs Wilcox, Mrs Johanna Buitelaar-Warden and Mrs Buitelaar to be helpful witnesses who gave clear, concise and honest answers to the questions put to them. We accept their evidence in its entirety. With the exception of one minor point where his evidence strayed into an area in which he was not qualified, we also accept the entirety of the evidence of Officer Holden. Officer Holden had been involved with the investigation for a longer period of time than Officer Neal and we consider he had a better recollection of events. There were a few minor points of discrepancy between Officer Holden and Officer Neal, and on those points we prefer the evidence of Officer Holden. We otherwise accept the entirety of Officer Neal's evidence.

15. We found Mrs Hook to be likeable and engaging, and able to demonstrate her expertise in breeding dogs. It was very easy to understand how she became a successful dog breeder, and we do not doubt that she built a rapport with her customers. However, some of Mrs Hook's evidence was at odds with the documentary evidence. We accept some of Mrs Hook's evidence but we do not accept the majority of her evidence, for reasons we explain below in our findings of fact.

FACTS FOUND

16. On the basis of the documentary and oral evidence before us, we find as follows:

17. Mrs Hook is very knowledgeable about certain breeds of dog and has judged dogs at the highest level. Mrs Hook also has decades of expertise in breeding certain breeds of dog, either as a hobby or as a trade.

Commencement of the dog breeding trades

18. From some point in the 2000s, Mrs Hook began to breed puppies for sale to customers. PetPlan (a trading name of an insurer, Allianz) stated that Mrs Hook had a breeder account with them from 27 January 2003, in her witness statement Mrs Hook stated she began trading in January 2005, and the local authority stated that Mrs Hook was licensed to trade as a dog trader from 19 April 2007. On balance we consider that the PetPlan date is most likely to be correct – there would be no reason for anyone to have a breeder account for customers if that person was not breeding and selling dogs to customers – but the precise trading start date does not affect the outcome of this appeal.

19. From inception, Mrs Hook traded both as a sole trader (Sylml) and also traded in partnership with her husband (Pinetrees). We were told that Sylml and Pinetrees were based at addresses next to each other with one being located at the farmhouse and the other being based at other farm buildings. On the basis of the addresses on the bank statements we find that the two businesses had the same postal address.

The reasons for Sylml and Pinetrees

20. In her witness statement Mrs Hook set out her explanation for why there were two businesses and the difference between them. In this statement Mrs Hook stated that Pinetrees originally bred and sold gundogs and cross breeds, and that other dogs were bred and sold by Sylml. In HMRC's note of their first meeting with Mrs Hook, on 16 August 2017, Mrs Hook is recorded first as saying that one business bred and sold puppies intended as working dogs, and the other business bred and sold puppies for homeowners, and then as clarifying that Sylml bred French bulldogs, Boston terriers and King Charles spaniels, and Pinetrees bred Cocker spaniels, Spaniels, Poodles and Cockapoos. In her evidence to us, Mrs Hook was very definite that one business sold pure bred puppies and the other business sold crossbreeds, and that there was no cross-over between the businesses. Mrs Hook also told us that puppies belonging to Kennel Club registered breeds were worth a lot more than the cross-breed puppies. Mr Millett's letter of 17 August 2017 (seemingly dated 7 August 2017 but sent the day after the first meeting between Mrs Hook and HMRC) states:

The reason for two businesses was that they were dealing with different dogs that readily fell into two categories.

21. We do not accept it is true that there was an obvious split between the trade of Sylml and Pinetrees. In cross-examination HMRC put it to Mrs Hook that their analysis of the PetPlan data and the cash books showed that, in the accounting period ended 31 July 2015, 74 Cockapoos had been sold by one business and 43 Cockapoos sold by the other business. When these numbers were put to Mrs Hook, she told us that there was a distinction between different generations of Cockapoos, and some were regarded as pure bred and some were regarded as cross breeds. This explanation does not reconcile easily with the statement, made in the meeting on 17 August 2017, that Cockapoos are not pedigree dogs. While we accept that a distinction between different generations of Cockapoo might be relevant to someone seeking specifically to buy a show dog or working dog, we do not accept that this would have been important or even discernible for anyone seeking to buy a family pet. On the basis of the entries in the cash books we find that Pinetrees' sales jumped from an average of 7.2 sales per month in the period August 2014 to June 2015, to 16 sales in the month of July 2015, a month in which Sylml made no sales. We find that this more than doubling of puppy sales for Pinetrees, in the same month that Sylml made no sales, was possible only because there was sufficient crossover in the breeds of puppies sold by Sylml and Pinetrees for the majority of customers to be happy to buy their puppy from either Sylml or Pinetrees. We conclude it was not the case that the dogs sold by each of Sylml and Pinetrees "readily fell into two categories" as Mr Millett suggested.

22. We also do not accept that there was no cross-over between the two businesses. We asked Mrs Hook if she could explain an oddity in the Sylml cashbook (detailed below) whereby income in Sylml's business bank account was recorded as a sale to Pinetrees (but no entry was made in the dog sales column and so the payment was not included in turnover). Mrs Hook told us she did not know about these entries but that puppies did not move between the two businesses. We do not accept that this is true. We find (as set out in more detail below) that Pinetrees made ten payments to Sylml in the accounting period ended 31 July 2015, that these payments totalled £5,900, and these were payments for puppies sold by Sylml to Pinetrees.

23. In her witness statement, explaining why the partnership (Pinetrees) was wound up on 31 July 2017, Mrs Hook stated that there had been a drop of interest in gun dogs and so the partnership was terminated and the remaining Pinetrees business was merged into Sylml. In his 17 August 2017 letter, Mr Millett states:

Pinetrees sales had been in the doldrums and puppy stock was £nil when the decision to register Sylml for VAT was made. In past years, there has sometimes been a little difficulty in splitting the expenses between the two puppy businesses so the decision was also made at that time for Pinetrees to cease trading effective 31 July 2017. Combined trading would continue through Sylml from that date.

24. In cross examination, Mrs Hook also told us that the two businesses were amalgamated when she came out of showing dogs as well as breeding them.

25. We make no finding about when Mrs Hook ceased showing dogs. However, we do not accept it was true that Pinetrees sales were “in the doldrums” or that the partnership was terminated due to a drop of interest in the puppies sold by Pinetrees. Looking at the declared turnover of Pinetrees, we find that its turnover increased year on year up to the accounting period ended 31 July 2016. That is both an absolute increase of turnover as well as an increasing share of the overall turnover of the two businesses, rising from 36% to 48% between 2011 and 2016. There was a small dip in both the absolute turnover of Pinetrees and in Pinetrees’ share of the overall turnover of both businesses in the accounting period ended 31 July 2017, the year in which HMRC opened their enquiry and Sylml applied to be registered for VAT. However, Pinetrees’ absolute turnover in the year ended July 2017 was still higher than in the year ended July 2015, and Pinetrees’ turnover in the year ended July 2017 still amounted to 45% of the overall turnover of both businesses.

26. We find that Pinetrees ceased trading at the end of July 2017 because, once Sylml had applied for VAT registration (on 18 July 2017, following the opening of the enquiry on or about 5 July 2017), there was no longer any reason for Mrs Hook to split the dog breeding business across two traders.

The declared turnover of Sylml and Pinetrees, and the VAT registration threshold

27. In the table below we set out the declared turnover for each accounting period for Sylml and Pinetrees up to and including the accounting period ended 31 July 2015, the year for which we have bank statements. This table also shows the relevant VAT threshold for that period. In the final row we set out the percentage of sales undertaken by Sylml, as a percentage of the overall sales of both businesses.

	Aug 2011 - Jul 12	Aug 2012 - Jul 13	Aug 2013 - Jul 14	Aug 2014 - Jul 15
Sylml declared turnover	£73,975	£73,335	£74,601	£80,348
VAT threshold	£77,000	£79,000	£81,000	£82,000
Percentage of overall declared turnover	64%	63%	58%	53%

28. Contrasting the figures for declared turnover with the VAT threshold, we find that throughout her trading before 2017, Mrs Hook was careful to ensure that Sylml’s declared turnover did not reach the VAT registration threshold. On the basis of the entries in the cash books for both businesses for July 2015, we find that Mrs Hook took steps, such as stopping

Sylml from making any sales in July 2015, to avoid Sylml's declared turnover reaching the VAT registration threshold.

29. We find that Sylml's declared turnover as a percentage of the declared turnover of both businesses together was gradually decreasing. We find that (in part due to the steps Mrs Hook took to ensure Sylml's declared turnover did not meet the VAT registration threshold) Pinetrees' declared turnover was increasing at a greater rate than Sylml's declared turnover.

Mrs Hook's dog trading registration

30. From 19 April 2007, Mrs Hook was licensed as a dog trader with the local authority. There was one licence to cover the trading of both Sylml and Pinetrees. As of April 2018, Mrs Hook was licensed to have 43 breeding bitches. We find, on the balance of probabilities, that Mrs Hook was not entitled to have any larger number of breeding bitches in the years preceding April 2018.

The Appellants' sales of puppies to customers

31. Customers who wished to buy a puppy would attend the farm to view puppies and select the puppy they wished to buy. Customers also attended the farm to collect the puppy (or puppies) they had reserved.

32. Customers paid for their puppies in different ways. We consider payment and methods of payment in more detail below. Some customers paid a deposit and then made a balancing payment but some customers paid in one lump sum. Some customers bought other items (such as a puppy crate) as well as their puppy but other customers did not buy any extra items. Mrs Hook told us in her oral evidence that 80% of customers would buy additional items and this could amount to £250-300 each time. However, this contrasts with HMRC's note of their 16 August 2017 meeting with Mrs Hook where, in response to HMRC's question about whether she sold food or accessories, Mrs Hook is recorded as saying that

occasionally [the two businesses] would sell a crate if they had any in, however they no longer do this.

33. As is obvious, there is a large difference between 80% and "occasionally". We consider that the 2017 answer was more likely to accurately reflect what had occurred in 2015 than an answer given in 2023. We find, on the balance of probabilities, that a customer would occasionally buy a puppy crate but this was not common practice, and it was not the case that 80% of customers bought additional items. Although there is an invoice in the bundle before us that shows that Pinetrees bought pet blankets (either to be sold or given with a puppy), there is nothing before us to show that either Sylml or Pinetrees bought crates, nor is there anything that shows the price of a crate bought or sold by Sylml or Pinetrees. We make no findings as to the average spent on any additional items bought by customers.

Accounting periods

34. Both businesses had an accounting period of 1 August to the following 31 July. During the times with which we are concerned both businesses operated with a cashbook. Mrs Wilcox was employed as a book keeper to both businesses. Mrs Wilcox attended the businesses at the farm once a week to make entries in each business's cashbook.

The cashbooks

35. The cashbook for each business had one page for each month of sales. Each page had one column for customer names and four columns for three different methods of payment and the total payment. In the Sylml cash book there were three further columns, entitled "Dog sales", "Pinetrees" and "Stud fees". In the Pinetrees cash book there were two further columns, entitled "Dog sales" and "Stud fees". At the end of each month there was a figure

for the cumulative total for payments into the bank account. There was also a total for each column.

36. Below we set out the information shown for the month of June 2015 for Sylml, as an example. (We have omitted a column of sequential figures in red that appeared in the cash column as these do not show cash received by Sylml.)

Receipts								
Date	Details	Cash	Cheque	BACS Debit card	Total	Dog sales	Pinetrees	Stud fee
June 2015								
	Pinetrees			1000	1000			
	Drewell			750	750	750		
	Preston			700	700	700		
	Harris			300	300	300		
	Pinetrees			600	600			
	CUM 97178.54			3350	3350	1750		

37. In the relevant monthly page of the cashbook, Mrs Wilcox entered payments as they appeared in the bank statement for that period. The method of payment is not always shown correctly but we find that the amount of each entry is an accurate reflection of the payments made into the business bank accounts of Sylml and Pinetrees respectively.

38. Having considered the bank statements for the business bank account of Sylml for the same period as covered by the cash books, we find that the CUM figure shown in the bottom row is the cumulative total of payments received into Sylml's bank account in that accounting period. After removing two small payments that appear to be refunds, we find that the income received in Sylml's business bank account in the period 1 August 2014 to 31 July 2015 was £97,148. The turnover declared for that period was £80,348. There was no satisfactory explanation for the difference of £16,800 or why it was excluded from Sylml's turnover.

39. For some – but not all – of the entries where the amount received was excluded from the Dog Sales column of Sylml's cash book, "Pinetrees" was shown as the customer (there were two such entries in the example set out above, and ten entries in total for the year). We asked Mrs Wilcox to explain the absence of a figure in the columns for Dog Sales, Pinetrees or Stud Fees on the occasions when Pinetrees was apparently shown as the customer. In the example page of the cashbook set out above, that question referred to the payments received of £1,000 and £600. Mrs Wilcox did not have a copy of the bundle before her so she could not see the pages from Sylml's cashbook. Given the passage of time, Mrs Wilcox was unable to recall Sylml's cashbook in sufficient detail to give an answer as to why there was no entry in the columns for Dog Sales, Pinetrees or Stud Fees.

40. We have checked the bank statements for Pinetrees and there are ten payments described in those statements as being payments to Sylml in the year. These total £5,900. These ten payments match the ten "Pinetrees" entries in Sylml's cash book. We find, on the

balance of probabilities, that Sylml sold dogs to Pinetrees and was paid for those sales. The payments received by Sylml from Pinetrees for these sales should have appeared in the Dog Sales column of Sylml's cash book.

41. The remaining entries where the amount received was excluded from the Dog Sales column of Sylml's cashbook, show customer names. These amounts received total £10,900. We have considered whether Sylml had, by mistake, received a customer payment that should have been made to Pinetrees because, in fact, Pinetrees was the business selling the puppy (or puppy related goods). On the basis of the credit card receipt slips produced by one customer – which show that she made one payment to Sylml and the other payment to Pinetrees, when both payments were made for the same puppy – we find that payments could be misallocated. However, if the missing entries in the Dog Sales column of Sylml's cashbook reflect payments intended for Pinetrees but made mistakenly to Sylml, and that is why those payments are omitted from Sylml's Dog Sales column, then those amounts received should appear as an entry in the Dog Sales column of the cashbook for Pinetrees and there should be a corresponding transfer of money from Sylml's bank account to Pinetrees' bank account. For example, in December 2014, there are two payments said to be from customer Turner (£300 and £700) that do not appear in the Dog Sales column of Sylml's cash book. Pinetrees' December 2014 page of its cashbook does not show either a customer Turner or a payment of £700. While there is an entry of £300 in the December 2014 page of Pinetrees' cashbook, Mr Millett's analysis has matched that entry to a payment of £300 into Pinetrees bank account (and so that must have been a different £300 and not a payment from Sylml).

42. Given that income of £97,148 was received by Sylml into its business bank account in the period 1 August 2014 to 31 July 2015, we are satisfied that the declared turnover of £80,348 was a significant understatement.

43. Having considered the bank statements for the business bank account of Pinetrees, again for the same period as covered by the cashbook, we find that the CUM figure shown in the bottom row is the cumulative total of payments received into Pinetrees bank account in that accounting period. For Pinetrees, the payments received into the bank account match the cumulative figure entered by Mrs Wilcox in the cash book. We find that the income received into the business bank account of Pinetrees in the period 1 August 2014 to 31 July 2015 was £62,226.

44. No explanation was provided to us for why the declared turnover for Pinetrees for this accounting period was £70,827.

45. We do not know where the difference of £8,601 was banked (if it was banked) or how it came to Mr Millett's attention so as to be included in Pinetrees' declared turnover in the accounts.

46. We note also that Mr Millett's analysis of the cash books (as set out in a spreadsheet sent to HMRC on 20 May 2018) shows far greater sales for Pinetrees in April and May 2015 (both in numbers of sales and in amount of income) than is shown in the April and May 2015 pages of the Pinetrees cashbook that appear in the bundle. The difference is £4,600.

47. While additional sales of £4,600 go part of the way to explaining the £8,601 difference between Pinetrees' banked income of £62,226 and Pinetrees' declared turnover of £70,827, we do not know where Mr Millett found the figures that appear in his spreadsheet for Pinetrees' sales in the months of April and May 2015.

48. In his evidence Mr Millett told us that in preparing the accounts for both businesses he only conducted a sampling exercise to check the bank statements reconciled with the cash

books, and that he did not undertake any form of audit. We accept that no audit of Sylml or Pinetrees was ever conducted.

The names of the customers as entered in the cash books

49. Mrs Wilcox was present at the farm for only a few hours each week and so she was rarely, if ever, present when a puppy was sold. Therefore, Mrs Wilcox had no personal knowledge of the customers who had made purchases. When Mrs Wilcox made an entry in the sale book of a payment that was shown on the bank statement as coming into the business bank account, she was not always able to identify from the bank statement the name of the person who had made that payment. In those occasions – on the instructions of Mrs Hook – Mrs Wilcox made up the name of a customer to allocate to that payment. We find, on the balance of probabilities, that when an entry in the cash book appears with the customer name of “Pinetrees”, that that name was also entered by Mrs Wilcox on the instructions of Mrs Hook.

50. Mrs Hook told us, and we accept, that her diary showed the appointments of customers and potential customers who had visited the farm that week. Mrs Hook told us, and we accept, that members of a family group who together bought a puppy did not necessarily all bear the same surname, and that (on the occasions when a deposit had been paid) the deposit and balancing payment could be paid by people who were members of the same family but who had different surnames. We also accept Mrs Hook’s evidence that her diary could show an appointment booked in one person’s name but the payment for the puppy could be made by a family member with a different surname.

51. Mrs Hook told us, and we accept, that some of the customer names Mrs Wilcox entered into the cash book were the names of visitors booked to visit the farm in the week of the relevant sale. Mrs Hook told us that these bookings were entered in her diary. (There were no diary pages in the bundle before us.) We find that the farm visitors whose names were used in the cash book could be customers but that there was not necessarily any connection between a customer name in one column of the cashbook and the amount of the payment entered in the same row of that cashbook. We find that by the week following the week of payment, Mrs Hook was unable accurately to recall the names of the customers had made payments. If Mrs Hook had been able to remember who had paid what amount then it would not have necessary for her to instruct Mrs Wilcox to invent names. Given that Mrs Hook could not remember the name of a customer or who had paid what amount, we consider it must follow, and we so find, that Mrs Hook was unable to recall with any certainty what a particular customer had paid for – i.e., whether the customer had paid for a puppy and a crate, a puppy alone or a crate but no puppy.

52. We conclude that it was impossible for anyone viewing the cashbook for either Sylml or Pinetrees to accurately state which customer had paid any given amount. We also conclude that there was no breakdown in the sale book of what each payment had been for; this was because Mrs Wilcox could not identify from the bank statements whether a payment made was solely for a puppy or for a puppy plus crate, and because Mrs Hook could not remember the sale in sufficient detail by the time the cashbook entries were made by Mrs Wilcox.

53. We find that the cashbook of each business did no more than reflect the payments that had been made into the bank accounts of each of Sylml and Pinetrees. It follows, and we find, that any payment made into an account other than the business bank account would not be entered into the cashbook for either Sylml or Pinetrees. (Below we consider whether there were additional payments made to Sylml and Pinetrees that were not paid into the business bank account for either business.)

54. Mrs Hook told us, and we accept, that when a customer paid a deposit then an entry was made on the folder that accompanied the relevant puppy. That folder contained relevant information about the puppy, such as his or her vaccination record, the code for the microchip to be activated, and the lineage details for the pure bred puppies. The folder would stay with the puppy, so the folder was handed over to the puppy's new family when the puppy left the farm. Mrs Hook told us, and we accept, that she kept no record of any of the details that had been kept in any puppy folder.

Free pet insurance

55. Sylml and Pinetrees had an arrangement with two insurance companies that each offered pet insurance. Sylml and Pinetrees initially used Allianz, trading under the name PetPlan, but Mrs Hook received feedback that some claims made by her customers were being rejected by the insurer.

56. Mrs Hook decided to try Buddies insurance (now taken over by Allianz but then independent). There was about a year when the arrangements overlapped and both PetPlan and Buddies insurance policies were offered. Under these arrangements, when Sylml or Pinetrees sold a puppy to a customer, that customer was offered pet insurance for a short period of time (usually about a month) that would be provided free of charge by the insurer. The customer would benefit from free pet insurance for that short period, and the insurer would benefit from having the contact details of a person who had just bought a puppy and so would be likely to be interested in buying further pet insurance once the period of free insurance had expired. During the period when both PetPlan and Buddies were being used, customers were offered free insurance by both insurers. Mrs Hook did not appreciate there was anything wrong in offering double insurance even though a customer could make claims against both insurers.

57. In order to obtain the free insurance, Mrs Hook and the customer would usually sit before Mrs Hook's computer to enter information online. Mrs Hook told us that she would enter information about the puppy, including providing a figure for the price paid for the puppy, and she would then hand over to the customer who would enter their personal details and press "send" to activate the free insurance policy. On occasion a paper form was completed but the same process was followed in that Mrs Hook entered information about the puppy, including entering a figure for the amount paid, and the form was then handed to the customer to fill in their own details and then post the form to the insurer. In neither case did Mrs Hook retain any record of the name or address of the customer who had bought a puppy from her.

58. Each insurer compiled the information that was provided to them on each occasion that a free policy was activated. PetPlan, and then Buddies, had the name of every customer who had activated a free policy, the address of that customer and the price that Mrs Hook had entered as the price paid for the puppy.

59. There was dispute between the parties about the price entered by Mrs Hook as the price paid by the customer for the puppy. This dispute was at the heart of the appeal before us.

The prices declared to PetPlan

60. The PetPlan insurance policy required the breeder to declare the price paid for a puppy that was about to be insured.

61. From the outset, Mrs Hook told HMRC that the figure she gave to PetPlan each time as the price of the puppy was around £200 to £250 higher than the actual price paid by the customer for that puppy. Mrs Hook told us that she mis-declared the price of the puppy on the PetPlan contract as she believed that an inflated figure would give comfort to a customer

who would then be in a position to buy another puppy in a few years' time if, at that future time, their young dog should pass away. HMRC challenged this on the basis that Mrs Hook had told them in 2017 that there had been very little increase in the price of puppies over the preceding years, and so it was unnecessary for an inflated figure to be given.

62. Mrs Johanna Buitelaar-Warden and Mrs Madeleine Buitelaar both gave evidence that it was common in the dog breeding industry for the value of a puppy to be inflated when that puppy was insured. We accept that this practice was carried out on occasion by other dog breeders, albeit it was a high risk practice given that the insurer could void every contract for which a false price had been declared.

63. In the bundle was a print of the online PetPlan screen for a customer to enter their details and, below, for a breeder to enter details about the animal to be insured. That contained a declaration:

I understand that if any of the information I have given is incorrect or misleading it could result in a claim not being paid or may affect the cover provided for the animal.

64. Mrs Hook accepted that she had given false information to PetPlan.

65. If Mrs Hook's account of events is correct then the customer would see the amount entered on screen as the price of the puppy and see that it was higher than the price paid they had paid. (If the customer did not see the price declared to PetPlan then they could not have the comfort of an inflated price, which Mrs Hook said was her rationale for the price inflation.) As all of the customers saw the price entered, for Mrs Hook's version of events to be correct that would require each of the customers to have agreed (or at least not objected) to a false price being declared to PetPlan. While some customers might not object, it is inherently unlikely that all or most customers would agree to the deliberate giving of false information to an insurer.

66. HMRC contacted 33 of the customers of Sylml and Pinetrees. We were told that 21 of those customers responded to HMRC but there are only 15 such responses in the bundle before us. Mr Kendrick submitted that the question asked of the customers was misleading as they could have understood that they were being asked the total price that they had paid for their puppy and any other items (such as a crate). The question posed by HMRC to the sample of customers was:

How much did the puppy cost?

67. We do not consider that question was reasonably open to misinterpretation by the customers. The replies from the customers appear to refer to the puppy only, and the customers appear to have understood that they were only being asked about the cost of their puppy.

68. We were invited by Mr Kendrick to ignore the sample entirely, or at least treat it with extreme caution, on the basis that customers could be confused about what they had been asked, and also that the sale had taken place too long ago for anyone to accurately remember the details. In his evidence Officer Holden asserted it would be easier for customers to remember the details of an emotional purchase, such as a puppy, than it would for them to recall other purchases. Officer Holden is not an expert in memory; as there was no scientific material in the bundle to support his assertion about memory we do not accept it.

69. We agree with Mr Kendrick that, given the time that had passed, some customers could have forgotten the exact details, and we find that some obviously had forgotten exact details. Mr Kendrick also submitted that there were flaws in the replies, as identified by Mr Millett in correspondence. Those flaws consist of one customer forgetting the method of payment and

one customer, Mrs Taylor, forgetting that an insurance contract had been entered into. We agree that Mrs Taylor could not accurately remember what had happened, and we also note that another customer, Mr Barnicle, gave a price range rather than a figure for what had been paid. We discount the responses of both of these customers. However, we do not agree that a customer who cannot remember the method of payment is necessarily unreliable when it comes to recollecting the amount paid.

70. All of the remaining 13 customers gave HMRC a figure that correlated with the figure declared to PetPlan. Some of these gave an inaccurate method of payment but some gave very precise information that was either supported by documents (a contract and credit card receipt slips in one case, a contract in another case) that supported their recollection, or they stated amounts that could be identified as incoming payments. Others customers seemed to have looked at their own bank statements to check their recollection, and some of these customers were able to provide the dates of their payments.

71. On the basis of the contract and the credit card receipt slips, we find that customer Rigby paid £950. On the basis of the contract, we find that customer Caston paid £950. Both of these amounts are the same as the price declared to PetPlan. We find that for these customers, the price declared to PetPlan was the correct price.

72. Customers Donaldson, Donnelly, Dunwoodie, James, Shirvill, Siegal, Catlin-Brown, Cope, Lewis, and Phillips provided HMRC with a price paid for their puppy that matched the price declared to PetPlan. However, the absence of correct customer names in the cashbooks of Sylml and Pinetrees means that we cannot reliably link a card payment to a specific customer. (We return to customer Catlin-Brown below.) On the basis of Mr Millett's letter of 11 December 2019, we find that customer Cooper paid £1,000 (a bank transfer of £200 and cash of £800). This is the same as the price declared to PetPlan.

73. We also looked at the bank statements to see if we could identify where a customer had paid by bank transfer, which would enable the payment to be linked to a specific customer.

74. In Pinetrees' business bank account, there are two bank transfers from an Alan Gardener: one of £300 on 13 March 2015, and one of £700 on 2 May 2015. The bank transfers are described as being for "puppy Harvey". On 5 May 2015, a PetPlan policy was activated for a customer named Gardener in respect of a Cockapoo named Harvey. The price declared to PetPlan for this sale was £1,000. Even though no customer with the name of Gardener is entered in either cashbook, we find, on the balance of probabilities, that the Mr Gardener who bought a Cockapoo is the same Mr Gardener as the person who made payments to Pinetrees. The price of £1,000 declared to PetPlan matches the payments made by Mr Gardener to Pinetrees.

75. We find, on the balance of probabilities, that the price declared to PetPlan when an insurance policy was activated was the price for which a puppy was sold to the customer. In reaching this conclusion we take into account the customer responses (and all of those we have seen point in the same direction) but also the inherent unlikelihood of most customers agreeing to declare a false price to PetPlan. We do not discount the evidence of Johanna Buitelaar-Warden and Madeleine Buitelaar that it was common for an inflated value to be given to an insurer. However, it does not follow that Sylml and Pinetrees followed that practice. We consider that the 13 customer responses, the two payments shown by customer Gardener, and the inherent unlikelihood of most customers agreeing to a false declaration, are more persuasive.

Cash payments

76. There was dispute between the parties about the level of cash payments.

77. No cash payments are shown in the cashbook for either Sylml or Pinetrees in the period 1 August 2014 to 31 July 2015. Having considered the bank statements for Sylml, we find that there were five cash deposits into Sylml's business bank account (the method of payment is mis-described in Sylml's cashbook) and the remainder of the payments into that bank account in the accounting year are shown as either bank giro credit or bank transfer. There was one cheque payment into Pinetrees' bank account with the remainder of the payments being shown as bank giro credit or bank transfer.

78. In a letter dated 20 May 2018, Mr Millett wrote to HMRC:

The vast majority of sales were made on credit cards or bank to bank and these were paid direct into the business accounts.

79. Later that year, in a letter to HMRC of 19 September 2018, Mr Millett wrote:

However, we have stated that (high value) puppy sales are a commodity item and as such, purchases are made 100% by bank transfer or debit/credit cards (i.e. no cash sales).

On that basis, the sales as shown in the cashbook and on the bank statements should be sufficient evidence and the Inland Revenue have examined them.

80. In his evidence in chief Mr Millett told us that puppies were "luxury goods" and that payments for them would be by card and not in cash. During cross examination Mr Millett accepted that, unless there was something else to alert him, he would not know if payments to Sylml or Pinetrees had been made in cash if those payments were not entered in the cash books. At the conclusion of his evidence, Mr Millett accepted he had no way of knowing what percentage of Sylml and Pinetrees' sales were cash sales.

81. In response to a question from Mr Kendrick about how cash payments would have been dealt with, Mrs Wilcox told us that Mrs Hook gave her a post office slip that showed the amount that Mrs Hook had banked through the post office. On the basis of that response, we find that Mrs Wilcox would have no knowledge of a cash payment unless that payment was paid into the respective business's bank account (and then that payment would, in any event, be shown on the statements for that bank account).

82. The 13 customers who responded to HMRC include three customers who stated that they paid cash (either in whole or in part).

83. In his letter of 29 May 2020, Mr Millett stated:

The single transaction which does not appear in the records was in respect of insurance by Cooper for £1,000 (...). A £2000 [sic – this should be £200] deposit was located but the balance of £800 received in cash was used to purchase a dog from another trader.

84. Mrs Cooper was one of the 13 customers who replied, and one of the three customers who stated that they paid cash. We find that these three customers did pay Sylml and Pinetrees in cash (in whole or in part) for their puppies.

85. Only five cash deposits were made into Sylml's business bank account in the accounting period ended 31 July 2015. We have found that three of the 13 customers who responded to HMRC made some or all of their payment in cash. We find, on the balance of probabilities, that other customers also paid Sylml and Pinetrees in cash (in part or in whole) for their puppies.

86. On the basis that only five cash deposits are made into Sylml's business bank account in the accounting period ended 31 July 2015, and none were made into Pinetrees business bank account, we find that not all cash payments made to Sylml and Pinetrees were paid into

the business bank accounts. As Mrs Wilcox made entries into the cashbooks solely from what was shown in the bank statements for the business bank accounts, we find that the cashbooks of both Sylml and Pinetrees omitted some of the cash payments they received.

Payments into the personal bank accounts

87. We considered the two personal bank accounts for which there were statements in the bundle. There was a Platinum Enhance bank account for which there were statements from August 2014 to July 2015, and also a Classic account for which there were statements only from February to July 2015.

Cash payments into the personal bank accounts

88. On the basis of the bank statements, we find that cash deposits totalling £17,217.94 were made into Mrs Hook's Platinum Enhance personal bank account in the accounting period ended 31 July 2015. Mrs Hook's declared profits during this period were £13,004.

89. We asked Mr Kendrick if Mr and Mrs Hook had an explanation for the large amount of cash deposits into Mrs Hook's Platinum Enhance bank account. In response we were told that some amounts were gifts by Mrs Hook's mother, some amounts came from the sale of horses, goats and five alpacas, some amounts came from the sale of Jack Russell puppies by Mr Hook, and that £630 was the repayment of a loan.

90. There are already a number of bank transfers into both the Platinum Enhance and the Classic accounts which are shown in the statements to be payments for foals or horses. These bank transfers to £2,000 over the year covered by the Platinum Enhance statements and £3,250 over the six months covered by the Classic statements. We do not accept that any of the cash deposits into Mrs Hook's Platinum Enhance account are also for horse sales.

91. There are also already a number of bank transfers into Mrs Hook's Classic account which are said to be for Jack Russell puppies (these payments are considered further below). These bank transfers amount to £6,800. We do not accept that any of the cash deposits into Mrs Hook's Platinum Enhance account are also for Jack Russell puppies.

92. In her first meeting with HMRC, Mrs Hook stated that she had not received any money as gifts. Therefore, we do not accept that Mrs Hook's mother made multiple payments into Mrs Hook's Platinum Enhance account. We accept that £630 was repayment of a loan. Even if we accept that some of the other cash deposits came from the sale of goats and five alpacas, that would still leave a considerable number of cash deposits for which there is no explanation.

93. We find, on the balance of probabilities, that some of the cash payments made by the customers of Sylml and Pinetrees were banked as cash deposits into Mrs Hook's Platinum Enhance personal bank account.

94. As these cash deposits do not appear in the cash book for either Sylml or Pinetrees, they do not form part of the declared turnover for either business.

Bank transfers into the personal bank accounts that were described as puppy deposits

95. The statements for the Classic account showed a number of bank transfers each described as a deposit for a puppy. The statements had been annotated with the letters JR against these payments, and we were told that these were deposits for Jack Russell puppies sold by Mr Hook. We do not accept that to be true.

96. Our reason for reaching this conclusion is that, in the period from 2 February 2015 (the earliest transaction shown on these statements) to 11 May 2015 (the last date for the PetPlan data in the enquiry period) there are four transactions marked "JR". All four of the names of the customers for these transactions (Henderson, Rowley, Holebrook and Gray) appear on the

list of names provided by PetPlan. In each case a PetPlan insurance contract was activated between one and five weeks after the date shown on the bank statement for receipt of the deposit. (For example, for customer Henderson, the deposit was paid on 30 March 2015, and a PetPlan contract in the name of Henderson was activated on 21 April 2015.) According to the PetPlan data, each insured dog was a Cockapoo sold for a total price of £1,000. We do not consider it likely that on four separate occasions over the space of less than a month, a person paid £300 into Mrs Hook's personal bank account with the intention that this should go to Mr Hook as a deposit for a Jack Russell puppy just a few weeks before another person with an identical surname collected a Cockapoo puppy from Mrs Hook. We find, on the balance of probabilities, that these four payments of £300 each into the Classic bank account were deposits to secure Cockapoo puppies sold by either Sylml or Pinetrees.

97. As the first four payments marked "JR" were deposits for puppies sold by Sylml or Pinetrees (i.e., all of the payments that occur for the period of the PetPlan data), we find, on the balance of probabilities, that the 22 other "JR" deposits shown in the statements for the Classic bank account in the accounting period ended 31 July 2015, all but one of which were also for £300, are also sales by Sylml or Pinetrees. We find on the balance of probabilities that two further bank transfers of £300 which are unmarked are also deposits for puppies sold by Sylml or Pinetrees.

98. In a letter dated 11 December 2019, Mr Millett accepted that three payments, of £300 each, into the Classic account that are described as "Cockapoo", "Cockapoo deposit" or "Cockapoo puppy" (by customers Buddery, Barnes and North) are sales by either Sylml or Pinetrees.

99. In that letter of 11 December 2019, Mr Millett also accepted that two payments, each of £300, which were made into a further bank account (for which only one page of statements was in the bundle) on 30 March 2015 were also payments for dogs sold by Sylml and Pinetrees.

100. In addition, Mr Millett also accepted that three payments into the Platinum Enhance account were also payments for dogs sold by Sylml and Pinetrees (from customers Cooper, Harvey and Catlin-Brown). We have identified two further payments into the Platinum Enhance account that are labelled "puppy" ("Carr-Puppy" and "Puppy Casement") which we consider are also sales of either Sylml or Pinetrees.

101. As none of these 36 payments were made into the business bank accounts of either Sylml or Pinetrees, they do not appear in the cashbook for either business, and so do not form part of the declared turnover for either business.

The number of puppies bred each year

102. There was a dispute between the parties as to the number of puppies bred in a year, or that could be bred in a year. In his letter of 18 October 2017, Mr Millett offered the litter diaries Mrs Hook had for the period from January 2015 to December 2016. (It does not appear that those litter diaries ultimately were disclosed; they do not appear in the bundles before us.) The litter diaries could have provided accurate numbers for the puppies born in each year. Their absence led to conflicting submissions by the parties about how many puppies could have been bred in each year.

103. In HMRC's note of the first meeting that took place, Mrs Hook is recorded as saying that a litter size could be anything between 1 and 10 puppies, depending on the breed. During the course of his evidence, Mr Millett gave evidence that the average litter size was 4.5 puppies. On the basis of Mr Millett's evidence and the evidence of the maximum number of breeding bitches set out in the dog trading licence, Mr Kendrick submitted that the

maximum number of puppies that could have been bred by both businesses together each year was 194 (being 4.5 puppies from each of the 43 breeding bitches, rounded up to a whole number). As we noted to Mr Kendrick, Mr Millett is not an expert witness on the litter size of any breed of dog, and there is no evidence he has any personal experience of dog breeding. We do not accept Mr Millett's evidence on the average litter size of any breed of dog, whatever research he may have conducted.

104. Outside of her formal evidence, Mrs Hook stated that she considered an average litter size was 4.5 puppies. We accept Mrs Hook's experience puts her in a position to express a view on the average litter size of the breeds of dog relevant here. We also accept her evidence that the breeding bitches could have only one litter each year and only three litters in total. However, we do not accept that this leads to the conclusion that a maximum of 194 puppies could be bred each year by Sylml and Pinetrees together. There are two reasons why we reject this analysis.

105. The first reason is that the licence does not require the same 43 bitches to be retained throughout the year. It is possible, during the course of a year, for some breeding bitches to be retired and for other breeding bitches to be brought in. That would enable Sylml and Pinetrees to increase the number of litters without exceeding 43 bitches in total at any given time. Something along these lines must have occurred for Mr Millett to have written in both of his letters of 1 October and 10 November 2018, presumably of the accounting period ended 31 July 2018, that Sylml had:

... just been through an exceptional period of activity and that future turnover will not exceed the Flat Rate Scheme limits.

This increased turnover arose from the combination of putting prices up (to adjust for having to charge VAT following Registration), and **taking the decision to temporarily increase the number of litters by approximately one third.** ... [our emphasis]

This one off action led to a temporary increase in the number of puppy litters which was a genuine commercial activity.

106. Our second reason for not accepting that the maximum number of puppies bred in a year in 194 is that the data provided by both of the insurers shows the number of puppies insured each year. The table below shows the numbers of puppies insured in these tax years:

	PetPlan data	Buddies data	Larger number of the two
2012/13	210		210
2013/14	222		222
2014/15 – both insurers were used	250	167	250
2015/16		273	273
2016/17		297	297

107. Mrs Hook told us that puppies who were retained for future breeding, or given away for medical detection would still be insured under the PetPlan or Buddies policies. If that was true then the only way in which the number of puppies insured in a year could exceed the number of puppies bred in a year would be if a puppy who was returned by a customer was then sold or given to another family. Such a puppy would (or, at least, could) be insured twice.

108. We do not accept that there were a large number of returns. In particular, for the tax year 2016/17, the data provided by Buddies shows that 297 puppies were insured. If only 194 puppies had been bred that year and 10 puppies were retained for breeding, then (even with a 100% survival rate) only 184 puppies would remain to be sold. To achieve the figure of 297 insured puppies would require 103 of the 184 puppies who had been sold to have been returned by customers, and later be rehomed and also reinsured. A return rate in excess of 55% is not credible.

109. We also do not accept that puppies given or sold for medical detection are likely to require one month's free insurance because we consider that commercial organisations are likely already to have insurance for the working dogs they own. In addition, the PetPlan data does not show the name of any commercial organisation as the new owner of relevant puppy. We find, on the balance of probabilities that the recipients of medical detection puppies did not take up free insurance.

110. We find on the balance of probabilities that the number of puppies bred each year and surviving to an age where they could be sold was similar to the number of puppies insured each year. In all years that number exceeds 194.

111. This is a convenient point to mention another set of figures proposed for the number of puppies bred each year. In the earlier correspondence it was stated by Mr Millett that the cashbook sales would show the number of puppies sold. In his letter of 20 May 2018, Mr Millett stated that the number of puppies "sold per the books" were 269 in 2014/15, 246 in 2015/16 and 213 in 2016/17. We have reservations about the accuracy of the cashbooks in terms of recording puppies sold. We conclude that the cashbooks cannot be relied upon as evidence of the number of puppies either bred or sold in a year. Our reasons for not relying on the cashbooks are, firstly, that the cashbooks do not take account of puppies who were retained for breeding, or puppies who were given away free of charge. These omissions would mean that more puppies must have been bred than are shown as sold. Secondly, the cashbooks also do not show the number of puppies returned, and this omission could mean that some puppies were sold (and possibly insured) twice. Thirdly, in addition to the cashbooks not taking account of either retained or returned puppies, a cashbook sale – on Mrs Hook's evidence – could either not include a puppy at all, or include more than one puppy in a single sale. Finally, above we have set out our findings in respect of a number of sales that were not entered in the cashbooks.

112. We turn now to our findings on the number of puppies retained for breeding each year, whether they were insured and under whose name.

Puppies retained for breeding

113. In the correspondence different numbers were given for the average number of puppies retained for breeding. We find that some puppies were retained each year.

114. In the first meeting with HMRC, on 16 August 2017, Mrs Hook told HMRC that she retained 1 or 2 puppies each year for breeding. In his letter of 1 December 2017, Mr Millett stated that Mrs Hook had been able to identify the number of puppies retained each year and that this:

... amounted to 17 in 2012/13, 16 in 2013/14 and 5 in 2014/15.

115. It is unclear if this refers to the accounting period or tax year. Mr Millett also stated that this figure was provided by Mrs Hook from memory. By the time he wrote his letter of 20 May 2018, Mr Millett had revised the figure for retained puppies:

As indicated at interview, a number of puppies are now being retained for breeding purposes. Some of these are insured and could amount to 20-30 puppies a year.

116. In his letter of 20 May 2018, Mr Millett also wrote the following in respect of the 2015/16 tax year:

Our client reports that 12 puppies were kept back for breeding and 10 bitches (old breeding stock) were re-homed FOC but insured.

117. We find, on the balance of probabilities, that no more than 10 puppies were retained in the accounting period ended 31 July 2015. This is more than the 1 or 2 originally mentioned, more or less in line with the figures of 5 and 12, reported but recollected from memory by Mrs Hook in 2017, and fewer than the 20-30 asserted by Mr Millett in May 2018.

118. In reaching our finding on the number of puppies retained, we had regard to the local authority breeding licence. If each breeding bitch could have three litters, one a year, then it follows that, on average, approximately 14 breeding bitches would retire each year and be replaced. We accept that a breeder might wish to retain more puppies than he or she was intending ultimately to breed from, as some puppies might prove to be unsuitable for breeding, and we also accept that some retained puppies would be stud dogs, not breeding bitches. However, on the basis of the bank statements we also find that Sylml spent £8,000 on dogs and puppies in the accounting period ended 31 July 2015, and that a further £4,000 was spent on puppies by Pinetrees. We find, on the balance of probabilities, that those dogs and puppies were bought by Sylml and Pinetrees with the intention that they would be used for breeding. We conclude that fewer puppies would be retained for breeding in a year where a large number of dogs have been bought for breeding.

Were retained puppies insured?

119. There was a dispute between the parties over whether retained puppies were insured. HMRC put it to Mrs Hook that the PetPlan policy did not permit the insurance of a breeder's own dogs and the policy could only be offered to customers. Mrs Hook's response was that, irrespective of PetPlan's terms, she did use the policy for the puppies she was intending to retain so that she could obtain free insurance for four weeks. Mrs Hook told us that these puppies were insured under her own name and her mother's name although, in cross-examination, Mrs Hook accepted that her mother's name was not shown in the PetPlan data. In HMRC's note of the meeting that took place on 2 August 2018, Mrs Hook is recorded as saying that she had made two claims, both of which had been paid by the insurer. No documents were provided to support that assertion.

120. We have considered in detail the data provided to HMRC by PetPlan. No policy was taken out in the name of Hook or Mrs Hook's previous name. No surname appears more than three times in the accounting period ended 31 July 2015. It would be very difficult for any payout to be received and encashed if a completely false name (i.e., not a name Mrs Hook had ever previously had) and address was used. Therefore, we find, on the balance of probabilities, that Mrs Hook did not use the PetPlan policy to have free insurance for her own dogs for four weeks.

HMRC's enquiry, the assessments and penalties

121. In either June or early July 2017, HMRC opened an enquiry into Mrs Hook's SA return. On 18 July 2017, Mrs Hook registered Sylml for VAT. The Pinetrees partnership was terminated at the end of July 2017, and thereafter Mrs Hook traded solely through Sylml.

122. Mrs Hook first met with HMRC on 16 August 2017. The parties then exchanged correspondence and had further meetings over 2018 and 2019. Mrs Hook told us, and we

accept, that this was an extremely stressful and difficult time for her because of the requests for information made by HMRC and the time that the enquiry took. The lockdowns required during the pandemic has exacerbated the time taken and the stress caused to Mr and Mrs Hook.

123. The enquiry was begun as a direct tax enquiry but Officer Neal was brought in to replace earlier direct tax officers who had left HMRC. Officer Holden was brought in to consider whether there were any indirect tax consequences, and he has been involved for a longer period than Officer Neal.

124. Officer Neal gave evidence that, in his opinion, the record keeping was not sufficiently robust as it was not possible to check the point of sale through to the accounts. Officer Neal told us that he believed the responses of Sylml and Pinetrees' customers were truthful, and that those responses could not be reconciled with the Sylml and Pinetrees' records. Officer Neal also told us that he believed there had been a discovery based on the insufficiency of Sylml and Pinetrees records, although he accepted that this explanation had not been relayed to the Appellants.

125. Officer Neal also told us that he agreed with the assessing officer that it was appropriate to also assess the years before and after the enquiry period because Mrs Hook had told HMRC that Sylml and Pinetrees had always been run in the same way.

126. For the direct tax assessment for 2015/16, Officer Neal explained the basis of the assessment. Officer Neal explained that there are 79 names which appear in the cashbooks but which do not appear in the PetPlan data. Officer Neal told us that he believed that the names in the cashbook represented sales of an additional 79 puppies, with a value of £72,599. HMRC's calculation for the accounting period ended 31 July 2015 was that 308 puppies had been sold with a total price of £286,082. Officer Neal told us that he believed that there were additional sales and he believed that the names in the cashbook must have come from somewhere. Officer Neal stood by these figures when challenged on the scale of breeding that would have been required to produce an additional 79 puppies, that is, 79 in addition to the figure of 229 puppies (which we understand to be the 202 puppies insured by PetPlan, scaled up).

127. Officer Neal explained that the assessments for the periods before and after the enquiry period had been calculated on the basis of the insurer data, but no additional dog sales were added in (because there were no cashbooks available for the other years and so HMRC did not know if there were additional customers not included in the insurer data).

128. Officer Neal told us he believed the insurer data was more reliable than the Appellants' records because of the anomalies that HMRC had found in, and the lack of robustness to, the Appellants' records. Officer Neal rejected Mr Millett's evidence about the maximum number of puppies that could be bred in any year on the basis that there were higher figures in the PetPlan data. Officer Neal told us he was not prepared to accept the Appellants' explanations for the differences in puppy numbers without documentary evidence to support the Appellants' explanations.

129. Officer Neal also told us that he believed the Appellants' behaviour to be deliberate as it would have been clear when Sylml or Pinetrees sold a puppy, and such sales could not have been omitted accidentally. Officer Neal explained, as best he could, the penalty weighting that had been calculated by his predecessors, and he told us that he did not consider there were any special circumstances to warrant the reduction of the penalties.

130. Officer Holden explained that he had been brought in to the HMRC enquiry because as the HMRC investigations progressed on the direct tax side, it appeared there could be a

liability to VAT. Once involved, Officer Holden had calculated the rolling turnover to calculate the effective date of registration for Sylml and Pinetrees. Officer Holden stated that he believed the effective date of registration he had calculated was reasonable based on the evidence he had seen.

131. Officer Holden was also satisfied that the insurers' data was more reliable than the records kept by Sylml and Pinetrees. In relation to the 79 additional puppy sales for the enquiry period, Officer Holden explained that when Mr Millett had attempted his reconciliation, it appeared that some of the customers, whose names were in the cashbook but not in the PetPlan data, had made payments into Mrs Hook's personal bank accounts. Officer Holden did not believe that the extra 79 names were already included in the PetPlan data under another name. When challenged on the credibility of the addition of 79 extra puppy sales, Officer Holden pointed to Mr Millett's letter of 1 October 2018, in which Mr Millett had stated that the number of litters had increased by a third, and noted that such an increase was clearly possible.

132. Officer Holden explained the weighting of the penalties, and agreed with Officer Neal that there were no special circumstances to warrant the reduction of the penalties.

133. The assessments and penalties raised, and the effective date of registration were all upheld on review. Appeals were then made to the Tribunal. With the exception of the late appeal (discussed above and admitted out of time) these appeals were made in time.

DISCUSSION AND DECISION

134. In an appeal against discovery assessments and against penalties, the burden is first on HMRC to demonstrate that they have met the legislative requirements to raise those discovery assessments and penalties. This includes demonstrating that the Appellants' behaviour was deliberate so as to justify extra time limit assessments and deliberate behaviour penalties.

135. For the assessments, the onus then switches to the Appellants to demonstrate that the assessment figures should be displaced with their own figures. For the penalties the onus then switches to the Appellants to show that the amount payable should be reduced.

136. In an appeal against closure notices and in an appeal against the effective date of registration to VAT, the burden is on the Appellant to show that their figures are to be preferred to HMRC's figures.

Discovery and the reasonableness of the assessment raised following discovery

137. The Appellants' grounds of appeal in the Notices of Appeal challenged whether HMRC had made a discovery. Having heard the evidence of Officer Neal and Officer Holden, Mr Kendrick accepted that a discovery had been made.

138. Mr Kendrick argued that the discovery assessments that had been raised following the making of a discovery were not objectively reasonable in the circumstances of this appeal, and he argued that these assessments should be set aside. There were two aspects to this submission: firstly, Mr Kendrick submitted that the Appellants' cash books, accounts and returns were all robust, and that HMRC had, essentially, chosen to supplant the Appellants' figures with the PetPlan figures even though the Appellants had provided an explanation for the difference between those figures. Mr Kendrick submitted that the sample of customers was potentially misleading and should not be relied upon. The second aspect of Mr Kendrick's submission was that the conclusion that there were additional sales, not shown in the PetPlan data, was objectively unreasonable given the Appellants had provided an explanation for the mismatch of the names in the cashbooks. Mr Kendrick noted that there was a substantial increase in the enquiry year, producing a figure for Sylml's turnover that

was more than twice the declared amount, and questioned whether those numbers suggested by HMRC were really feasible.

139. We have concluded that both of these submissions fail.

140. Looking at the first point, we have set out above the issues we have identified with the cashbooks and their limitations. We have been unable to consider the accounts as they were not before us but, as Mr Millett's evidence was that the accounts were prepared from the cashbooks, we consider it unlikely that the issues identified with the cashbooks could have been resolved in the accounts. We do not agree with Mr Millett that the cashbooks were robust. In the circumstances we do not consider it was objectively unreasonable for an HMRC officer also to conclude that there were failings in the cashbooks, and therefore the accounts, presented by the Appellants. Mr Kendrick made submissions on what he considered to be the confusion of the customers in HMRC's sample but our findings are that reliance can be placed on that customer data, especially where the customer responses are corroborated by receipts or a contract. The customer data corroborated the data presented by PetPlan, and we do not consider that it was objectively unreasonable for an HMRC officer to reject Mr and Mrs Hook's version of events and instead raise assessments on the basis of the PetPlan data.

141. We also do not consider it is objectively unreasonable for an HMRC officer to conclude that the names entered into the cashbook as if they were the names of customers, were indeed the names of genuine customers, and that the purchase appear to be shown in the cashbooks were genuine purchases – i.e., that there is a correlation between the names shown and the purchases made. This is not the conclusion we have reached but it is not an objectively unreasonable conclusion given that the cashbooks are – on their face – setting out the names of customers to whom puppies were sold.

142. Having concluded that the raising of the assessments was objectively reasonable, the onus switches to the Appellants to persuade us that the figures in the assessments and the closure notices should be revised downwards, or the assessments and closure notices entirely set aside, on the basis that the Appellants' figures are to be preferred.

143. Mr Kendrick submitted that the vast majority of Sylml and Pinetrees' customers paid by bank transfer or by card, and so the sales would appear in the business bank accounts. Mr Kendrick asked where the money had gone if HMRC's figures were correct. Mr Kendrick also urged us to accept that the figures submitted in the tax returns of both Sylml and Pinetrees were accurate, and he reminded us that Mr Millett was satisfied with the robustness of the accounts.

144. Our findings above are that there were a large number of payments that did not go into the business bank accounts of either Sylml or Pinetrees. We do not consider the cashbooks to be robust. Neither the accounts or tax returns were before us but, as they were prepared from the cashbooks, we do not accept they are accurate. We are satisfied that the criticisms that HMRC make of the cashbooks are justified, and that the declared turnover of both Sylml and Pinetrees was a significant understatement of the true turnover. We agree with HMRC that it is not necessary for them to explain the destination of the additional income they consider Mrs Hook received, and we note that the Appellants' case in this regard would have appeared stronger had they not refused to provide a statement of assets and liabilities to HMRC.

145. However, we do accept the Appellants' arguments with regard to the mismatch of customer names in the cashbooks. We have concluded that while there were sales in late May, June and July 2015 that were not shown in the PetPlan data (because the PetPlan data only went up to 11 May 2015), there were not 79 additional sales across the whole of the accounting period ended 31 July 2015 to customers not shown in the PetPlan data.

Our conclusions on the number of puppies sold in the accounting period ended 31 July 2015

146. We have concluded that the names in the cashbooks that do not appear in the PetPlan data are not additional puppy sales.

147. There was very little reason for customers to decline the free insurance offered. We accept the Appellants' argument that it would be possible for one family member, with one surname, to pay for the puppy but another family member, with a different surname, to activate the insurance. We conclude that this explanation, and also Mrs Hook misremembering the names of those who had visited or mis-reading from her diary, is more likely than that there were sales of 308 puppies in the accounting period ended 31 July 2015. We have also taken into account that the PetPlan data does not go beyond 11 May 2015, so the customers whose names are entered in the cashbooks from 12 May onwards would only have insured their puppies with Buddies.

148. So, while we consider that the cashbooks fail to show the true sales made by Sylml and Pinetrees, and that there is a significant understatement, we do not consider that the understatement is quite as large as HMRC concluded.

Deliberate behaviour

149. The onus is on HMRC to establish that the statutory criteria for raising the penalties have been met. In particular, HMRC must show that the Appellants behaviour was deliberate.

150. While the omission of one or two sales from the cashbooks could be careless, we agree with HMRC that the omission of multiple puppy sales from the cashbooks could only be deliberate. We are satisfied that HMRC have established that Mrs Hook and the partnership acted deliberately and that the extra time limit assessments, and the penalties, were justified.

Revision of the direct tax assessments

151. In her submissions, Ms Truelove explained that HMRC were seeking to have the direct tax assessments on Mrs Hook for each year revised down on the basis that the partnership income had been incorrectly included in the calculation. We agree that the assessments should be reduced on this basis.

152. We consider that the closure notice for Mrs Hook for 2015/16 should also be reduced to take into account of our conclusion that the names that appeared in the cash books but which were not in the PetPlan data were not additional sales but were inaccurately recorded customer names.

153. There is also evidence from the sample of customer responses that customer Siegal received a puppy free of charge, to replace an earlier puppy. Both puppies were insured but only there was only one sale. The PetPlan data shows 202 puppies were insured in the period 1 August 2014 to 11 May 2015, with sales totalling £185,400. As one of these insured puppies was the replacement puppy given free of charge to the Siegal family, the sales should be reduced by £1,000 to £184,400. That gives an average price per puppy of £917.41.

154. We have considered how the likely sales for the accounting period ended 31 July 2015 should be calculated. We consider the more appropriate method of estimating sales in this period would be to scale up the PetPlan data. (Our calculation of this appears to differ from HMRC's calculation.) As 201 puppies were sold in the 284 days between 1 August 2014 – 11 May 2015, we consider it possible that Sylml and Pinetrees could have achieved a further 57 puppy sales in the 81 days between 12 May – 31 July 2015. That produces a figure of 258 puppies sold. At an average price of £917.41 per puppy, we calculate likely sales over the entire accounting period ended 31 July 2015 to be £236,693.

155. As a credibility check, we note that our figure of 258 puppies insured in one complete accounting period is higher than the figure of 250 puppies insured in the tax year 2014/15, and lower than the figure of 273 puppies insured in the tax year 2015/16. In addition, our combined sales figure of £236,693 is midway between HMRC's calculations for the sales in the accounting periods ended 31 July 2014, and ended 31 July 2016.

156. As our calculation of sales is derived from the PetPlan data, it takes account only of the amount received for the sale of puppies. Our calculation does not take any account of any other amounts that could have been received by Sylml or Pinetrees for any additional items (because, as is obvious, crates were not insured). In our findings above, we rejected Mrs Hook's evidence that 80% of customers bought additional items, and instead we found that the sale of additional items was an occasional practice and not common. On the basis that crates were not commonly sold by Sylml or Pinetrees, we do not consider it necessary for the sales of Sylml and Pinetrees to be increased to take account of the sales of any additional items that would not be shown in the PetPlan data.

157. We consider our calculations to be a more accurate reflection of the sales achieved by Sylml and Pinetrees in the accounting period 1 August 2014 – 31 July 2015 than the figure calculated by HMRC on the assumption that the names in the cash books were both genuine and also represented genuine sales of un-insured puppies.

Revisions to the direct tax penalties

158. We agree with HMRC that the penalties raised on Mrs Hook should be revised down to take account of the revisions to the assessments. For the avoidance of doubt, the direct tax penalties for 2015/16 for both Mrs Hook and the partnership will also need to be revised down to correspond with the revised Potential Lost Revenue we have calculated.

159. We have also considered the penalty weighting applied by HMRC for the penalties. There was discussion before us about why Mr and Mrs Hook had not provided HMRC with a statement of their assets and liabilities, and Mr Kendrick urged us not to take this absence into account. The fact remains that Mr and Mrs Hook did not provide such a statement, and we consider that HMRC were entitled to take that absence into account in deciding on the appropriate weighting to be applied. We do not consider that any revision to the penalty weighting is required.

The VAT appeals

160. In his submissions, Mr Kendrick relied upon *Georgiou v HMRC* [2022] UKFTT 455 (TC) to submit that the VAT assessments should be vacated on the basis that it appeared that the VAT officer had not independently considered the position and he had simply followed the direct tax officer's conclusions.

161. The VAT assessments are not before us and so we cannot direct they be vacated. In any event, having heard his evidence, we reject the submission that Officer Holden did not give independent thought and consideration to the VAT position of Sylml and Pinetrees. We are satisfied that Officer Holden gave serious thought to the VAT position of the Appellants, that he applied his mind carefully to the matters before him and that, where necessary, he suggested revisions to the calculations proposed by the direct tax officers with whom he worked.

The effective date of registration for Sylml and Pinetrees

162. Given our conclusions in respect of the income of Sylml and Pinetrees, we confirm the effective date of registration for Sylml as 1 November 2011. The appeal of Mrs Hook against the EDR decision is dismissed.

163. As HMRC had calculated that Pinetrees should be registered with effect from 1 January 2015, and that date falls within the period over which HMRC had calculated there were 79 additional sales, we consider it would be appropriate for HMRC to recalculate the date from which Pinetrees should have been registered for VAT using the figures we have reached for the sales achieved by Sylml and Pinetrees in the accounting period ended 31 July 2015.

164. Except for the possibility that the LNL decision for the partnership will be revised due to our calculations above, the appeal of the partnership against the LNL decision is dismissed.

Revision to the VAT penalties

165. As our conclusions about the total sales achieved by Sylml and Pinetrees in the accounting period ended 31 July 2015 have an effect on the total sales achieved by each of Sylml and Pinetrees over the period 1 November 2011 to 1 August 2017, the figure for Potential Lost Revenue used by HMRC to calculate the Schedule 41 penalty imposed upon Mrs Hook and the partnership will need to be recalculated, using our figures for sales. We do not consider that any variation to the penalty weighting is required.

166. As is obvious, the PLR for Pinetrees can only be calculated once the period for which Pinetrees was LNL has been checked.

CONCLUSION

167. The appeal of Mrs Hook against the closure notice and Schedule 24 penalty for 2015/16 is allowed in part, as set out above. Mrs Hook's appeal against the discovery assessments and Schedule 24 penalties for the remaining years under appeal are confirmed in the reduced figures sought by HMRC.

168. The partnership's appeal against the discovery assessment and Schedule 24 penalty for 2015/16 is allowed in part, as set out above. The partnership's appeal against the partnership amendment for 2017/18, the remaining discovery assessments and the remaining Schedule 24 penalties are confirmed in the reduced figures sought by HMRC.

169. Mrs Hook's appeal against the Effective Date of Registration is dismissed. Mrs Hook's appeal against the Schedule 41 penalty is allowed to the extent necessary following from the recalculation of the PLR.

170. The partnership's appeal against the LNL decision requires recalculation to ensure the correct start date has been established but is otherwise confirmed. The partnership's appeal against the Schedule 41 penalty is allowed to the extent necessary following from the recalculation of the PLR.

Revised calculations

171. We hope that the parties are able to agree the mathematics of the revisions required to the assessments, closure notice, penalties and PLR (even if they do not accept the correctness of the conclusions we have reached). If the parties are not able to agree corrected figures within 28 days of the release of this decision, each party should file with the Tribunal their submissions on what they believe to be the correct calculations.

RIGHT TO APPLY FOR PERMISSION TO APPEAL

172. 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.

**JUDGE JANE BAILEY
TRIBUNAL JUDGE**

Release date: 11th JULY 2023