

James Pickup KC

Call: 1976 | Silk: 2000



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James Pickup KC has long been established as a specialist in commercial fraud defence and corporate crime with a reputation (Chambers and Partners) as someone who is “*exceptional at client management*” and “*brilliantly focused on getting the best out of the client*”.

More recently, whilst he continues to defend in substantial commercial fraud prosecutions, he has widened his practice to embrace civil fraud and is now regularly instructed in the VAT and Duties Tribunal, both First and Upper Tiers, High Court (Chancery and Companies Court), Administrative Court and Court of Appeal, both criminal and civil.

Expertise

Tax

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

In July 2010 he represented the Directors of the bonded warehouse Abbey Forwarding Limited, who were sued for damages by the Liquidator (put in place by HMRC) for breach of duty, being their involvement in excise duty fraud. He also appeared on behalf of Rochdale Drinks Distribution before the Companies Court (Floyd J.) in March 2011 successfully overturning HMRC’s ex parte application to appoint a provisional liquidator on the ground that the company had been engaged in duty evasion. This decision was appealed by HMRC in September 2011 where RDDDL were able to resist HMRC’s argument that there should be a lower threshold of proof in cases where HMRC sought a PL having presented a winding up petition on assessments raised on suspicion of fraud.

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

Recent Cases:

- [CCA Distribution Ltd v Revenue And Customs \[2017\] EWCA Civ 1899](#)
- [BTS Specialised Equipment Ltd & Anor v Revenue and Customs \(VAT – input tax\) \[2017\] UKUT 159 \(TCC\)](#)
- [European Brand Trading Ltd v HM Revenue and Customs \[2016\] EWCA Civ 90 \(16 February 2016\)](#)
- [BTS Specialised Equipment Ltd & Anor v Revenue & Customs \[2015\] UKFTT 136 \(TC\)](#)
- [HT & Co \(Drinks\) Ltd & Anor, R \(on the application of\) v HM Revenue & Customs \[2015\] EWHC 659 \(Admin\)](#)
- [Eastenders Cash and Carry plc & Ors, R \(On the application of\) v Revenue and Customs \[2014\] UKSC 34](#)

BTS and NTS v Commissioners of HMRC

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

Mobilx, Calltel/Opto, Blue Sphere Global v HMRC

An appeal brought by the trader Mobilx against the decisions of both the First Tier Tribunal and High Court to uphold decision of the Commissioners to deny its right to deduct input tax. Joined with other appeals of Calltel and Blue Sphere by order of the C of A. Appeals were heard by the Court of Appeal between 15th and 19th February 2010. These were the first appeals of their kind to reach the Court of Appeal, which was invited to consider not only the legality of the application of the Kittel test in domestic law (transposition), but also whether that test, as it has been applied in a domestic context, offended fundamental principles of EU law. These were ground breaking appeals, affecting hundreds of similar cases presently awaiting decisions before the Tribunal across the UK.

The Court of Appeal gave guidance as to the test laid down by the ECJ in Kittel and the meaning of “knew or should have known” in the context of a trader’s right to deduct input tax. Application to the Supreme Court for permission to appeal was refused.

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Professional Discipline

In addition to his work in both criminal and civil fraud, he has experience in professional discipline work, both at Tribunal Statutory

Committee and Higher Court level in the Administrative Court and Court of Appeal; representing Police Officers, Pharmacists and Solicitors.

Cases:

R v Ziad Khatab

Pharmacist charged with manslaughter as result of dispensing error. First prosecution of its kind.

R v Chief Constable of Merseyside ex p. Bennion [CO 1221/2000]

Application for Judicial Review on grounds of bias. Extension of the principle in Pinochet Ugarte No. 2. Leave to appeal to C.A.