

**BRIDPORT AND WEST DORSET GOLF CLUB and others**

**Appellants**

- and -

**THE COMMISSIONERS FOR HER MAJESTY'S REVENUE AND CUSTOMS**

**Respondents**

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**DRAFT WITNESS STATEMENT of VIVIEN INEZ SAUNDERS**

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I, Vivien Inez Saunders of Eynesbury Hardwicke Manor, St. Neots, Cambridgeshire, PE19 6XN will say as follows:

1. I make this statement on behalf of the Association of Golf Course Owners (1993) – AGCO - in order to assist the Tribunal in understanding the term “green fee” which has been used in the case of Bridport and West Dorset Golf Club Ltd and another 457 golf clubs standing behind them in the case. I make this statement in the public interest and on behalf of the UK taxpayer and proprietary golf clubs adversely affected by the judgment.
2. This is to assist the Court in understanding who or what has supplied the service and to whom or what it has been supplied. These issues are fundamental to the claims and have never been addressed in previous hearings.
3. I am the sole shareholder and Managing Director of Abbotsley Ltd which owns and operates the Abbotsley Hotel and Country Club in St. Neots and Cambridgeshire. I bought the golf club in November 1986. I am also one of two joint owners of Cambridge Meridian Golf Club, Comberton Road, Toft, Cambridge CB23 2RY, which we have owned since April 1<sup>st</sup> 1994.
4. I am also Chairman of the Association of Golf Course Owners (1993) which is a Company Limited by Guarantee and represents the interests of many of the 1200 or so proprietary golf clubs in England, Northern Ireland and Wales, together with a few in Scotland.

5. I am a solicitor by profession having qualified in 1981. I no longer practise. I have a PhD in sports psychology, an MBA and an LLM in tax law.
6. I have been involved in golf since the age of seven. I was national coach for England, Ireland and Wales for 25 years, founder and first chairman of the Women's Professional Golf Association, won the British Ladies' Open Championship in 1977 and was awarded the OBE for services to golf in 1997.
7. I was on the Management Committee of the Professional Golfers' Association in my capacity of the Chairman of the Women's PGA and I am a member of the Golf Club Managers' Association. I am a Fellow of the Chartered Management Institute.
8. In response to a request under the Freedom of Information Act Femi Olagundoye responded on behalf of HMRC that the total claim for refunds of VAT for the 457 clubs joined in with Bridport and West Dorset Golf Club is in excess of £115 million. He disclosed that over 1000 member-owned golf clubs had made similar claims. The golf industry has now stated that over two-thirds of member-owned golf clubs have made similar claims, i.e. some 1.500. KPMG, through England Golf, has urged all member-owned golf clubs to make similar claims. Thus it is suggested that the Bridport decision will result in claims for VAT refunds totalling some £500 million.
9. It has also been reported that the Government of the Irish Republic now feels compelled to make refunds of VAT on green fees to their member-owned golf clubs as a result of the Bridport judgment. We believe that other EU member states may be faced with similar claims.

## **INTRODUCTION**

10. Broadly speaking the case involved the nature of green fees as "additional income" and the question of distortion between member-owned golf clubs and proprietary clubs.
11. Underlying this is Article 132(1)(m) of the Principal VAT Directive (Council Directive 2006/112/EEC), which provides that:  
"Member States shall exempt the following transactions:  
(m) the supply of certain services closely linked to sport or physical education by non-profit-making organisations to persons taking part in sport or physical education."
12. The reference to "persons" is transposed into UK legislation as "individuals".
13. Firstly, my evidence is that in many instances the supply is not made by a non-profit making organisation. They are not made by the clubs themselves. They are supplies made by booking agents, Internet services and tourist groups which are commercial operations. These companies are authorised by clubs to make the bookings, they take the customers' fees, deduct their own commission, and then pay the golf clubs.
14. Secondly, my evidence is that in many instances the supply of golf is not made to persons/individuals but is made to societies, organisations, groups and corporations.

15. My evidence is that many of the items termed “green fees” for which a VAT refund is being claimed fail one or other of the supply conditions in Article 132 (1)(m) i.e. who or what is the supplier and to whom is it being supplied?
16. The First Tier Tribunal, Upper Tribunal and the European Court have not been addressed on the term “green fee” or “temporary members” and our case, very simply, is that the evidence given on behalf of Bridport and West Dorset Golf Club Ltd and the case submitted on their behalf by KPMG has completely misrepresented the term “green fee”. As such it has misrepresented the term “green fee” on behalf of the entire community of member-owned golf clubs in the United Kingdom [and potentially throughout the European Union].
17. My information to assist the Tribunal is that the evidence given by Colin Willcox on behalf of Bridport and West Dorset Golf Club Ltd was untruthful in that he falsely misrepresented a “green fee” or “temporary membership” as simply being a supply by the golf club, as a non-profit making organisation, to persons/individuals. In my opinion he knowingly misled the court and the judge by omitting to explain that the figure in the company accounts shown as “temporary memberships” included supplies made to golf societies, organisations and commercial companies.
18. My evidence is that KPMG is fully aware of the corporate golf market and the nature of golf societies and corporate days held at member-owned golf clubs and that they, through their employed solicitor, Amanda Brown, also actively misled the court and the judge as to the nature of the “green fees” which were the subject of the case.
19. My case is that KPMG has actively misrepresented the golf industry by selecting Bridport and West Dorset Golf Club Ltd to front this case and thus to portray this as typical of the golf industry and green fees. There are member-owned golf clubs joined into the case that have annual green fee income in excess of 7 times that of Bridport, e.g. Walton Heath Golf Club Ltd. There are member-owned golf clubs, which may have made similar claims, with annual green fee income 14 times that of Bridport, e.g. Sunningdale Golf Club. The Berkshire Golf Club acknowledges that they are making a claim for a VAT refund. Their visitors’ fees since 1994 have been £13 million plus VAT. The case has thus given a false picture of the golf industry.
20. The evidence given to the First Tier Tribunal gave an untrue picture of the fundamental points within the legislation, namely:  
Firstly, by whom is the supply made? And secondly, to whom is the supply made?
21. Counsel, Raymond Hill, representing HMRC did not deal with these two fundamental questions in the First Tier Tribunal. “Who is the supply made by and to whom is it being made?” That may have been through lack of knowledge of the golf industry or that the Bridport evidence so misrepresented the position that the questions did not seem relevant.
22. After reading the judgment of the First Tier Tribunal I wrote to Julian Winckley in the Solicitors’ Office of HMRC asking to meet HMRC and to give evidence, or a report, on behalf of HMRC so that the court could understand the golf industry in relation to this case. He didn’t respond. The Association of Golf Course Owners (1993) has continued, through its committee and members, in its attempt to give evidence to the

court/HMRC/the Treasury and politicians in relation to this case.

23. In the Upper Tribunal, Counsel, Raymond Hill, acting on behalf of HMRC, did not address Mrs. Justice Proudman DBE on the nature of the supply and the terminology “green fee”. Had Counsel or the Judge understood the golf industry, and not been misled by KPMG, then the fundamental question would have been referred to Europe. *In relation to green fees at Bridport – a) is the supply being made by a non-profit-making organisation and b) is the supply being made to persons?*
24. In view of the huge trading by member-owned golf clubs with non-members, for the sole purposes of subsidising the members’ subscriptions, the third question to have put to Europe was perhaps: Are these member-owned golf clubs actually non-profit making organisations?!
25. Without this understanding of the golf industry, HMRC therefore agreed with Mrs Justice Proudman to eight questions being put to the European Court, all of which dealt with the points relating to additional income and distortion. None dealt with the fundamental supply issue.
26. I made an application to the Upper Tribunal for the Association of Golf Course Owners (1993) and Abbotsley Ltd to be joined in to the Bridport case to the European Court. We made that application through counsel and outlined some of the evidence we might present in a written submission in order to assist the court in understanding the issues. By that time we were of course limited to the 8 questions. But we could have referred to the supply issue as an aside! HMRC did not oppose our application. KPMG of course opposed our application, clearly intent on suppressing the truth. In the event Mrs. Justice Proudman rejected our application to be joined in.
27. We made an application to HMRC under the Freedom of Information Act for them to disclose the written submissions put by HMRC to the European Court but they have refused to produce this.
28. My understanding is that HMRC now sees an opportunity to resist the claims for VAT refunds based on unjust enrichment.
29. My evidence points to a much simpler argument. Many of the supposed “green fees” are not supplied by non-profit making organisations, but through agents, and many are not supplied to persons. My evidence is that HMRC should reject all the claims for VAT refunds on green fees because each and every claim will include “green fees” which fail the supply test. Each and every claim is wrong.

### **BRIDPORT AND WEST DORSET ACCOUNTS**

30. I have read the evidence given by Mr. Willcox, the representative of the Bridport and West Dorset Golf Club Ltd, as recited in the judgment of Judge Colin Bishopp in the First Level Tribunal dated 1<sup>st</sup> June 2011. Mr Willcox is a Member of the Association of Accounting Technicians, (MAAT) and has been employed by Chartered Accountants, Scott Vevers since 1974. Their website shows this. Scott Vevers are the auditors for Bridport and West Dorset Golf Club Ltd. The judgment doesn’t say

whether Mr Willcox disclosed that he is an accountancy professional.

31. Mr Wilcox is reported as saying that to the year ended 30<sup>th</sup> September 2009 the green fees amounted to £90,132 and the membership subscriptions £271,478.
32. The judge recorded that he was told that since 2005 the Bridport and West Dorset Golf Club Ltd has been registered as a Community Amateur Sports Club (CASC) within Chapter 9 of the Corporation Tax Act 2010 and recorded that as such its “functions are limited”. The judge referred to the club being allowed to make “the sale or supply of food or drink as a social benefit which arises incidentally from the sporting purposes of the club”. The whole purpose of CASC registration for golf clubs is to allow them to receive an 80% subsidy in business rates, saving a club like Bridport some £20,000 per annum. The club was portrayed as complying with the CASC regulations (which in fact it does not).
33. The judgment referred to the evidence given by Colin Willcox, on behalf of Bridport and West Dorset Golf Club Ltd. and that evidence read as follows in paragraphs 12 and 13 of the judgment.
34. *“Mr Willcox told me that the appellant set out to attract as many visitors as possible, compatible with the capacity of the course. Some played only once, for example while on a golfing tour, but others played frequently. In particular, regular visitors to the area, which attracts a lot of tourists, might play several times each year and some local residents chose to pay green fees rather than an annual subscription. A golfer paying a green fee had exactly the same playing experience as a member, and was able to use all the facilities of the club. However, members did have some additional rights, in that they were, while others were not, entitled to discounts from the normal charges at the bar and the driving range, and when hiring buggies. Most, but not all, classes of members also had voting rights, which were not available to non-members. There were some competitions open to all players, but others to members only.”*
35. *“The appellant set the annual subscription and the green fees at a level designed to meet its estimated overheads; the budget was calculated, Mr Willcox said, on the assumption of certain levels of income from subscriptions, green fees and other sources such as the bar. He accepted that in the accounting year ended on 30 September 2009 the green fees amounted to £90,132, or 18.7% of the appellant’s total income of £481,517, while the membership subscriptions accounted for £271,478, or 56.4%. The bulk of the balance was made up of bar profits; other activities contributed relatively small sums. Mr Willcox agreed that these figures were typical, and that subscriptions amounted to about three times as much as green fees each year but, he said, green fees nevertheless represented a substantial proportion of the appellant’s annual income, without which it would not be able to survive.”*
36. My evidence is that this is a misrepresentation of the truth and that Mr Willcox as an accountancy professional must have been fully aware that he was in effect fabricating the evidence. I believe this is tantamount to perjury by omission. His evidence portrays the “green fees” as fees paid by tourists and local people. What he omitted to say was that many of the items included as “green fees” in the accounts are in fact supplies by Bridport and West Dorset Golf Club Ltd to companies, societies and groups and NOT to persons or the UK legislation – “individuals”.

37. The judge did refer to the fact that the only oral evidence he heard was from Colin Willcox. I believe that this was to ensure that no other party “spilt the beans” over the true nature of green fees, societies and corporate days.
38. The entire calendar of Bridport and West Dorset Golf Club Ltd since 2004 is published on the club’s website [www.bridportgolfclub.co.uk](http://www.bridportgolfclub.co.uk). This shows a substantial number of commercial golf events, golf societies and corporate days, year after year, together with many private catering functions. Such events are outside the terms of a CASC registration.
39. I am attaching at **Appendix 1** the fixture list of societies, corporate days and group bookings supplied by Bridport and West Dorset Golf Club Ltd for the year ended 30<sup>th</sup> September 2009 which is the year for the accounts presented to the court. This shows a total of 47 golf societies, corporate dates and other group bookings. In addition there are several supplies to groups such as county golf associations and alliances. My evidence is that each of these fails the test of a supply to persons and that this information has been purposely and dishonestly hidden from the Court.
40. Four examples of corporate days at Bridport GC in 2009 are brewers JC & RH Palmer Ltd Co No. 1233923; A.P. Chant Plumbing & Heating Ltd of Bridport, Co No 4015018 VAT No. 665023449; defense systems company -Amsafe (Amsafe Commercial Products Inc.); Fowler Hire and Sales Ltd, Co No 04624220. Presumably in each case the company will have dealt with this as a supply to them and reclaimed VAT accordingly.
41. My evidence is that there are therefore many instances at Bridport and West Dorset Golf Club Ltd where the supply of golf is not to persons or individuals or even groups of individuals. My evidence is that this will apply to every golf club making a claim for a VAT refund on green fees, whether within the Bridport Case or as separate applications.
42. The evidence of Mr Willcox also failed to disclose that there are some, perhaps many, instances where the golfer(s) visiting Bridport are not supplied their golf directly by the golf club but are supplied by some other commercial concern. Such commercial concerns in golf take the customers’ fees, make their booking, deduct commission and then pay the golf club – in this case, Bridport and West Dorset Golf Club Ltd. This fails the supply point because the supplier is not a non-profit making organisation. They are agents, tourist companies and Internet booking services.
43. At Bridport and West Dorset Golf Club such supplies do not appear to be a substantial part of the green fee income but they are a factor. My evidence is that they exist and the nature of these supplies has been purposely hidden from the Court. The Bridge House Hotel in Beaminster, for example, offers inclusive golf packages which include golf at Bridport and West Dorset Golf Club Ltd; “The Bridge House is proud to be an official sponsor of The Bridport and West Dorset Golf Club. As a result hotel guests can take advantage of exclusive greens fees. Subject to availability, a round can be arranged for £25 through hotel reception. Contact the hotel for full details of our exclusive play and stay breaks.”
44. Your Golf Travel has offered a package as the Dorset Golf Tour, <http://www.yourgolftravel.com/the-dorset-golf-hotel> combining a 2 night stay, with bed and breakfast, at the Dorset Golf and Country Club, one round of golf at The Dorset, one round of golf at Bridport and West Dorset GC and full use of leisure

facilities at £225 per person, sharing. Your Golf Travel is the supplier, takes the customers' fee, takes their commission and then pays out the hotels and golf clubs.

45. Bridport and West Dorset Golf Club is actively marketed through Your Golf Travel and through [www.golfempire.co.uk](http://www.golfempire.co.uk).
46. In addition Tee Off Times offers golf fees on the Bridport and West Dorset course, where the supplier is Tee Off Times, the customer pays them, they deduct commission and pay the club.
47. My evidence is that all these supplies, although fairly small at Bridport and West Dorset Golf Club Ltd, have been hidden from the Court and make a large contribution to the green fees on which VAT is being reclaimed at many of the other clubs involved.
48. **Appendix 1** also shows the number of catering functions which do not comply with the CASC regulations. They are not simply an add-on to the sporting activities of the club. In addition many are run in breach of the Club Premises Certificate, number CP0019, granted on 24<sup>th</sup> November 2005 which precludes serving alcohol to people other than members and their bona fide guests. My evidence is that Bridport and West Dorset Golf Club Ltd hides behind a CASC registration, and its Club Premises Certificate, thus misrepresenting itself as a simple members' club, rather than a business open to the public, with corporate clients.

#### **GREEN FEES –THE GREEN FEE BOOK – TO WHOM IS THE SUPPLY MADE**

49. The term “green fees” is not straightforward and includes many forms of fees paid to a golf club. Many golf clubs use the term “temporary memberships” instead of the term green fees. The meaning is identical. Personal green fees paid by individuals can be a) a fee paid by a member for his guest b) a fee paid by a member's guest for himself c) a fee paid by a stranger d) a fee paid by an associate member who pays a modest membership fee and a top up green fee each time he plays. The last type of fee has been unusual until recently.
50. Until very recently, and before the introduction of payment on-line, any individual green fee player would have his or her name shown clearly in the green fee book. In the case of a member's guest this would show the signature of the guest, the club at which he belonged, the signature of the member introducing him and the fee paid. The book should also show who had made the payment. The distinction in who pays the fee is required for Corporation Tax purposes. If the member pays for his guest the fee is not taxable; if the guest pays for himself it is taxable. Where a golfer pays as the guest of a member the fee is always less than for a stranger/visitor. Being signed in was also a requirement under the Licensing Act. Specialist companies such as Straker Golf Stationery provide these purpose-made green fee books.
51. The law on the taxation of green fees in relation to income tax/corporation tax goes back to the cases of Carlisle and Silloth Golf Club 1912/1913, i.e. Carlisle and Silloth Golf Club v. Smith (surveyor of Taxes) at (1912) 2 K.B. 177 and C.A. (1913) 3 K.B. 75. I believe the Tribunal should understand the background for the taxation of green fees because it has implications for VAT and this case, and the terminology used.

52. In the Carlisle and Silloth case the judgments reported that the situation of that golf club was unusual in that they had visiting golfers who were not just guests of a member but “strangers” and paid a green fee. At Carlisle and Silloth GC if a member invited a guest there was in fact no fee payable. But the judges decided that a guest coming to the course with a member in effect took on the characteristics of a member for the day – a kind of “temporary member”. Had there been a fee payable by the member for his guest it would not have been taxable. The fee paid for by the “stranger” – the visitor – was taxable.
53. Our case has always been that member-owned golf clubs attempt to disguise the visitors’ fees which are taxable as “temporary memberships” in order to evade corporation tax. The HMRC manual bears this out. My evidence is that use of the term “temporary membership” is an attempt to suggest that all the visitors’ fees are in effect guests of members, paid for by the member for their guests and are not therefore subject to corporation tax. In terms of VAT refund claims, the use of “temporary memberships” will deceive the tax authorities, and has seemingly deceived the court, to the effect that green fees are some form of payment by persons or individuals when they are not. The term “temporary member” hides the truth of the society and corporate day income.
54. The distinction between a guest of a member, paid for by the member, and any other visitor remains important 100 years later for the purposes of paying corporation tax on visitors’ fees and is clearly set out in HMRC manuals. The HMRC manual acknowledges that there is [potential] abuse by member-owned golf clubs in failing to account correctly for visitors’ fees. The manual acknowledges the attempt by member-owned golf clubs to disguise taxable visitors’ fees by referring to them as “temporary memberships”.
55. In the case of a visitor – a stranger – the golfer will invariably have signed in the green fee book and paid a fee. In most cases the golf club employs a professional golfer to run the shop and give lessons. At the majority of golf clubs, particularly member-owned clubs, the professional owns the stock in the shop, is self-employed and employs his own assistants.
56. Part of the professional’s duty is usually to collect the green fees and account for these, often being paid a small commission of perhaps 5% for collecting the fees. Where the professional golfer owns the shop stock there may simply be one till through which he takes his own fees and also the green fees. In some instances the professional will only take cash for the green fees, not wanting to be responsible for any debit card or credit card charges. In some cases the professional’s shop may house two tills, one for the shop stock and one for the club and its green fee income. It is an area which is potentially open to stealing by staff in the professional’s shop. I have encountered this in my own business and sacked staff as a result. It is less likely to happen, with more golfers paying their green fees by debit or credit card.
57. The green fee book is thus a crucial piece of information for the club and their accountants. It is also crucial for the professional who may be claiming commission as a result of it. Where green fees are taken in the professional’s shop most clubs also issue a green fee ticket, which is usually colour coded and/or serial numbered, with

numbers usually recorded to keep records accurate.

58. In the last few years some golf clubs have adopted systems for golfers to book their tee times on-line. Systems such as BRS and ESP allow members to book their tee times on line. They also allow visitors to book their tee times on line and to make a payment direct to the club using a debit or credit card. Records should be clearly available.
59. Thus for all four categories of individual green fees – whether the guest of a member paid for by the member, the guest paying for himself, the visitor or the associate member – the records of payments should be clearly recorded. The first category should be entirely separate because it is not subject to corporation tax.
60. At almost all golf clubs the members have a discount card or some sort of levy card. This is often topped up with a compulsory payment at the start of the year – anything from £25 to £300 – and can usually be used to make payments at the bar or for food, usually giving a discount against visitors' prices. Where a member specifically pays the green fee of his guest modern day tills allow the levy card to be used. This is the logical and straightforward way to separate this form of green fee from the others. I do not know whether any clubs use this method.
61. Thus where golf clubs are making or have made claims for a refund of VAT on green fees it should be absolutely clear from the green fee books exactly what fee has been paid and by whom. These are the green fees payable by persons/individuals. My evidence is that if there is to be a refund for VAT on green fees it should only be on these ones, with clear records which must have been obtained at the time.

### **SOCIETIES AND CORPORATE DAYS – SUPPLIES NOT TO PERSONS**

62. Also recorded as “green fees” or “temporary memberships” in golf club accounts are several forms of fees supplied to and paid by societies, businesses and other organisations. Some may be calculated on a per head basis; others not. The supply is not to the individual.
63. The invoicing process for these days is entirely different from the casual green fee or the members' guest fee. Invariably the society or corporate fee is invoiced through the club secretary's office and will invariably show the VAT number and VAT element of the charge. It should be a numbered invoice. The society/corporate body invariably pays an initial deposit to secure the booking. The final invoice will usually be presented to the organiser or company on the day and, except with large companies, is usually paid on the day in one lump sum by the organiser. Whether or not he charges a fee to individual participants varies with the kind of event. **Appendix 2** shows the corporate and society golf packages from the year 2000 for several member-owned golf clubs, each of which make reference to VAT, whether included or additional.
64. A corporate or society day can, for example, be a professional organisation such as a bank, firm of solicitors or estate agents, entertaining their clients. There is no fee payable by the individual golfer because he is the guest of the company. Many major golf clubs show an example of their corporate clients on their websites, often with testimonials of the success of the day. Walton Heath is a prime example at

65. The society or corporate day fee is almost always an all-in fee, and usually, but not always, charged according to numbers, and including various items of catering and a round or two of golf. It might be expressed as coffee and bacon rolls on arrival, a round of golf, a light lunch, afternoon golf and a dinner, prizes and a souvenir pack of balls and tee pegs. It might be a more basic coffee and bacon rolls on arrival, golf and lunch. The club will then determine how they apportion that all-in fee between catering and golf and the green fee element reported in the annual accounts as “green fees” or “temporary memberships”. The apportionment between golf and catering may be fairly arbitrary, just working on 2/3 golf and 1/3 food or may be specifically calculated item by item.
66. The fee is not always calculated on a per head basis. Some large clubs, such as Sunningdale, close the golf course for a day or period of time and charge a substantial flat fee to a corporation/company which is not directly related to numbers.
67. Other forms of corporate days, charity days or society days are used to raise money for charity. The supply is to the charity or sponsor and the golfer may or may not pay the sponsor or charity. Some may attend as professionals, special guests or celebrities with no fee payable at all.
68. In other society or corporate days a golfer may enter the event and pay for it as a business expense through his own business or it may be paid for by his employer.
69. In other cases the club may charge an all-in fee to the local county golf union, a branch of the Professional Golfers’ Association or some other golfing association which is not related specifically to numbers of individuals. It may be a golf only charge, with golfers then paying for catering individually. This too is usually shown under the category of green fees or temporary memberships in club accounts. Examples are the local golf alliance, the men’s county golf union, the ladies’ county association, one of the national golf governing bodies. In some cases, member-owned clubs take the fee as a cash payment, keep it away from the accounts, and refer to it as gratuity. Thus the fee for such events may or may not appear in the club accounts.
70. In other cases member-owned golf clubs may run a major national championship with major corporate sponsors paying substantial fees - £10,000’s or even £100,000’s of pounds – and show these as temporary members or green fees.
71. In many cases the corporate client will have treated the fee payable as inclusive of VAT and claimed back their VAT. The supply has clearly been treated by them as a supply to them from the golf club.
72. The most modest form of golf society is where a group simply comes together to form a club solely for the purpose of enjoying golf. Although they may be seen as a group of individuals the supply by the golf club is still to the society through an initial deposit, and then an invoice, with the VAT element usually shown, and the fee collected as a single payment and recorded in the accounts as a society payment.

73. Golf societies often ask for (and obtain) a fee based on 1 in 12 goes free, or some other deal, and the society fee is calculated accordingly as a lump sum. The fee the individual golfer pays to the society organiser may be exactly the fee of the green fee and food. It may be more, to include an element for prizes. Or it may be less, where the society subsidises the golfers' day. In these society days the supply is made to some entity other than "persons" or "individuals".
74. Our case, and our assistance to HMRC and the court, is that the terms green fees and/or temporary memberships include many payments for supplies which are not made to "persons" or "individuals" and fail the basic supply test.

### **PROPORTION OF INDIVIDUAL AND CORPORATE FEES**

75. I can assist the Court with some evidence of the ratio of individual green fees to society fees at a typical golf club. The figures relate to the green fee income at Tandridge Golf Club in Surrey, just outside the M25 near Reigate. The club has referred to the green fees as temporary members and presumably still does. I believe Tandridge Golf Club is typical of an up-market member-owned golf club, with a course of county championship standard.
76. This evidence emerged on discussions and negotiations concerning the way expenses should be allowed against fees from temporary membership fees, based on the Carlisle and Silloth judgment. Broadly speaking the Carlisle and Silloth judgment outlined that expenses should be deducted according to course usage. There would be no deduction of expenses incurred for members alone, full deduction for expenses attributable to the visitors and a proportion of expenses allowed, based on course usage, where the expenses were attributable to both members and visitors. The process of deducting allowable expenses, determined by the Inland Revenue, is supposed to be based on the number of visitors' rounds of golf as a percentage of the total number of rounds.
77. In 1994/5 with correspondence through the Mutual Department of the Inland Revenue (officers Brian Colenutt and Gordon Hetherington) the Inland Revenue agreed a rule of thumb with the golf industry, including the governing bodies of golf, and in particular the English Golf Union, that the total rounds of golf assessed on a golf course should be taken as 40,000 for an 18 hole golf course, or 35,000 in a very rural area, or 70,000 at a 36 hole golf course and 65,000 in a very rural area. These figures still stand and are recited in the HMRC manual.
78. Thus at an average type of member-owned golf course one might assume that 4,000 rounds of golf are played by visitors against a total of 40,000 rounds of golf played. This would give an allowance of 10% of certain expenses to be taken against the green fees.
79. As part of the evidence on the rounds of golf argument, Tandridge Golf Club and their advisers put forward their calculations made to the Redhill Tax Office for 1994. These figures were in the public domain to those of us discussing the round of golf formula with the Inland Revenue. They demonstrate that the club took a total of £ 155,749 in non-members' fees which they described as "temporary memberships". These temporary memberships included societies, guests of members and individual visitors.

The club showed that £112,132 of temporary memberships were golf societies, i.e. 72% of the total – or roughly three-quarters. **Appendix 3**

80. It should of course be possible to track any claim for a refund of VAT on green fees made by Tandridge Golf club to ascertain whether the society fees have been included in the claim.

### **WHO MAKES THE SUPPLY – THIRD PARTY, COMMERCIAL SUPPLIERS**

81. The other fundamental unasked and unanswered question is “Who is the supply being made by?”
82. There are many other forms of fees which are invariably included in golf club accounts as green fees or temporary members which are supplied by travel companies, hotels, booking agents, Internet suppliers and discount houses. In each case the supply is not by a non-profit making organisation. The following are examples.
83. Your Golf Travel and golfbreaks.com. These two large travel companies market golf breaks throughout the United Kingdom and Europe/Rest of the World. Their core business is to sell 1, 2 and 3 night golf breaks at golf hotels which have their own golf courses.
84. As a business at Abbotsley Golf Hotel we deal with both Your Golf Travel and golfbreaks.com. They advertise the golf breaks available at our hotel, make the booking, take the fee from the client, Email us with the booking details, the name of the lead client for any group but no other contact details. The clients arrive and stay. Both companies then pay us our fee, having deducted a 20% commission, usually paying us within 60 days of the client staying with us. They have such a stranglehold on the hotel golf business that golf clubs/hotels can hardly operate without them.
85. It is not even a question of our supplying these companies and that they then pass on the supply. It is a question of our authorising them to make the supply, and after making the supply they pay us, less commission.
86. There are many hotel packages available through Your Golf Travel where the client stays at various hotels in Lancashire and can then play golf at Open Championship venues, Royal Lytham St. Anne’s, Royal Birkdale and Royal Liverpool. These are all-in packages, and, with my experience of Your Golf Travel, the fee will be paid to the hotels/golf courses by Your Golf Travel. The supplier is Your Golf Travel. It is our evidence that these fees will be shown in the golf club accounts as green fees or temporary memberships.
87. **Appendix 4** shows the accounts from 2013 of the Royal Liverpool Golf Club and its reference to temporary memberships. It has packages available through Your Golf Travel and Golbreaks.com.
88. There are many similar booking services where the supplier is a golf holiday group or hotel. The supplier then pays the golf club. The supply is not from the golf club to persons. **Appendix 5** shows the business of The Atlantic Links and Countrywide Golf

Hotels. This company provides golf holidays to Burnham and Berrow Golf Club, Royal North Devon, Saunton East, Saunton West, St. Enodoc and Trevose, linking with local hotels. Trevose is a proprietary club; the others are not. The conditions clearly state that payment is made to Countrywide, include accommodation, food and VAT at 20%. This supplier then pays the golf club for the visitors' golf fees. The documents also show that there is a direct booking service for the green fees, supplied by Countrywide.

89. It is very easy to see the major member-owned golf clubs at which it is possible to organise a golf break through [www.golfbreaks.com](http://www.golfbreaks.com) or Your Golf Travel. In England these include Royal Birkdale, Royal Liverpool, Royal Lytham & St Anne's, Royal St. George's, Royal Cinque Ports. In Scotland they include Prestwick, Western Gailes, Royal Dornoch, Royal Troon, Gullane, Nairn, North Berwick. Northern Ireland includes Royal County Down, Royal Portrush, Castlerock and Portstewart and Wales includes Royal St. David's, Royal Porthcawl, Nefyn and Southerndown. There are many of these agents - [www.southportgolfbreaks.com](http://www.southportgolfbreaks.com) dealing with the championship courses in Lancashire is just an example.
90. There are also a number of Internet tee booking services where the supplier is the service and not the golf club. At Abbotsley we use a company call Tee off Times, which is linked to Golfbreaks.com. It is widely used and their website is [www.teeofftimes.co.uk](http://www.teeofftimes.co.uk). In this case the supplier is the company and the golfer makes a reservation through Tee off Times. The golfer pays the company for his round of golf, usually with discounts for more than one player. The company notifies the club of the golfers' reservations but there is no other contact detail. The customer is theirs and not ours. After the golfer has played Tee off Times pays us, with a deduction of 20%, and usually pays within 60 days. Tee off Times displays an A to Z directory of all the clubs and courses where a fee can be booked directly through them. They supply the golf, then the notify the club, then take their commission and pay the club.
91. A new player in the market is [www.fairwaytofurlong.com](http://www.fairwaytofurlong.com) which combines days at the races with golf. As an example they offer a package at £800 +VAT per person to combine a day at Ascot races with golf at the Berkshire Golf Club.
92. Groupon and other discount voucher businesses sell golf for clubs. Groupon is a company used in the UK by some member-owned golf clubs. Groupon markets a cheap round of golf, usually with some ancillary food or buggy deal, and markets this on their website. The Groupon coupon price is always substantially below the club's market value green fee. Groupon is the supplier. The golfer receives his voucher by collecting it by email from Groupon and may or may not attend the golf club to redeem it. If the golfer attends to play, the club charges Groupon and they make payment, at under 50% of the price they receive for the coupon. If the coupon is not redeemed Groupon keeps the fee. The very exclusive Notts Golf Club (Hollinwell) has used a similar company, Travelzoo, to sell coupons for golf on their course.
93. There are many other booking services, some which act as the agent for the club and the club is paid direct – whether for an individual or society. In that case the supply is to the individual, but he may book for several golfers with one booking, receiving a discount according to numbers. Others act as Tee off Times and are the supplier. They are not non-profit making organisations.

## **CLAIMS BY OTHER CLUBS**

94. This Association made a request under the Freedom of Information Act for HMRC to disclose the names of the other 457 golf clubs which are named parties to the Bridport case. HMRC refused to provide this. Had we received this information we could have analysed the claim of each to assist the court. We have, however, determined that the following five clubs are joined in to the Bridport case through statements made by the clubs.
95. The secretary/accountant for Kenwick Park Golf Club, Louth, Lincolnshire, has stated that the club is making a claim for a VAT refund on green fees, assisted by KPMG.
96. Kenwick Park Golf Club is under entirely separate ownership from the Kenwick Park Hotel, operated by Best Western, which operates within the same estate. Golfbreaks.com and Your Golf Travel both make supplies of golf hotel breaks to the Kenwick Park Hotel, to include rounds of golf. Presumably the hotel or travel companies pay the golf club for tee times. Thus the supply is made by a commercial concern and not the non-profit making organisation.
97. Kenwick Park Golf Club derives “green fee” income through Tee off Times. Tee off Times is the supplier and, on their standard arrangement, pays Kenwick Park, after deduction of commission.
98. In addition Kenwick Park has a substantial trade in golf societies and corporate days, and has numerous corporate members and shareholders. It therefore makes many supplies for golf which are not to “persons”.
99. It is very questionable, given the diversity of members and shareholders, whether this club is actually a non-profit making organisation.
100. Welshpool, Oswestry and Llanymynech Golf Clubs have all collectively acknowledged that they are part of the Bridport and West Dorset Golf Club claim, with Paul Stewert of KPMG working for them. All three clubs trade with Tee off Times, with the “green fees” being sold by this commercial operator, paying the clubs after deduction of commission.
101. Welshpool advertises its golf societies and also shows that it is marketed through golfbreaks.com. Oswestry and Llanymynech actively market society and corporate days.
102. In the accounts of the Walton Heath Golf Club Limited in Surrey for the year end 30<sup>th</sup> September 2011 the Club Chairman stated: *“Members may have heard that HM Revenue and Customs lost a Tax Tribunal relating to charging of VAT on green fees, but they have now appealed this decision. KPMG, who are representing more than 400 clubs including Walton Heath, believe that it is unlikely that the appeal will be heard before the end of 2012. The club would benefit from a significant cash refund, in the event of a favourable decision.”*

103. Walton Heath Golf Club Ltd always shows green fees in their company accounts as “temporary memberships”. There is no distinction in the accounts between visitors’ fees, members’ guests’ fees and society and corporate day fees. I have examined every set of accounts prepared by Walton Heath Golf Club Ltd and available from Companies House since 1990 and Walton Heath Golf Club Ltd has never paid any corporation tax on their “temporary membership” fees. This is the norm and in my opinion is why a small club like Bridport and West Dorset has been chosen by KPMG to front this case.
104. The accounts of Walton Heath Golf Club Ltd for the year ended 30<sup>th</sup> September 2010 showed “temporary memberships” of £625,938, net of VAT. In other words their green fee income is almost 7 times that of Bridport and West Dorset Golf Club, the club chosen to front this case. I believe there may be other clubs with even higher green fee income joined in to the case.
105. Walton Heath’s website [www.waltonheath.com](http://www.waltonheath.com) clearly shows that they are open for business for substantial corporate and society days. Their society package for a minimum of 24 golfers starts at £210 for a round of golf and catering through to two rounds of golf, breakfast, lunch and tea at £240.
106. Walton Heath actively markets the club for major corporate days. Their website shows testimonials from some of their corporate golf clients, Westdeutsche Immobilien Bank, RBS International, The Variety Club of Great Britain and Kiln at Lloyds. It would be unlikely that any participant in a society day or corporate day at Walton Heath would have paid a green fee. The service has been supplied to a corporate body or other business.
107. At **Appendix 2** I show the corporate golf packages for Walton Heath Golf Club from 2000 which make clear reference to the fee being inclusive of VAT at the standard rate. The company accounts for Walton Heath Golf Club for 2000 showed temporary memberships of £470,357, exclusive of VAT, which would have included the fees derived from any individual green fee players and the societies and corporate days.
108. Walton Heath Golf Club Ltd like most other member-owned golf clubs trades with a Club Premises Certificate and not a full liquor license. In running the society and corporate days and serving alcohol to these visitors the club is breaking the terms of its license. My evidence is that this is the norm and serves to create the illusion of a club where the green fees are all from members’ guests.
109. Walton Heath Golf Club is actively marketed through Your Golf Travel, thus having supplies of rounds of golf made by commercial suppliers and not by them as a non-profit making organisation.

### **LEADING AND INFLUENTIAL GOLF SOCIETIES**

110. Certain leading and influential golf societies should be able to assist the Court and HMRC further in understanding that the supply of rounds of golf is frequently not a supply to persons but is a supply to corporate bodies and organisations and therefore

does not satisfy the basic issue of supply set out in Article 132 (1)(m)

111. As an example of a golf society I attach at **Appendix 6** the fixture list and history of the golf society days held by the Bar Golfing Society, the various Inns of Court golf societies and the members. These show the substantial member-owned golf clubs at which the Bar Golfing Society have played, with members of the judiciary having participated. Our case is that all these fees will have been incorporated by the host golf club into their accounts as green fees, or more probably given the elite status of the golf clubs, as temporary members. The Bar Golfing Society should be able to assist the court and HMRC further.
112. We can identify that the Bar Golfing Society has played at the following venues since 1990 and we assume that each will have included the fee payable by the society within their accounts and will have made a claim for a refund of VAT on the fee: Royal Cinque Ports GC, Royal St. George's GC, Rye GC, Hunstanton GC, Royal Birkdale GC, Littlestone GC, Kings Lynn GC, Hillside GC, Royal West Norfolk GC.
113. The Captain of the Bar Golfing Society for 2014, Judge Clement Goldstone QC, is a member of the Dunham Forest Golf Club near Manchester, a member-owned golf club with a substantial business in golf societies and corporate golf. The Captain of the Bar Golfing Society for 2012, Judge Richard Bromilow, is a member of the Bristol and Clifton Golf Club, another member-owned golf club with a similarly substantial business in golf societies and corporate days.
114. Other committee members and officers of the Bar Golfing Society, including Richard Hartley QC, Gordon Pollock QC, Stuart Ritchie QC, plus the numerous judges who are members of the Bar Golfing Society should be able to assist HMRC and the Court. Members of the judiciary should be able to explain the business in golf societies and corporate days at the member-owned golf clubs to which they belong or play and indicate whether claims made for refunds of VAT on green fees have included these sums.
115. Other golf societies which should be able to assist HMRC and the Court further in relation to the VAT refund claims on green fees are those golf societies specifically linked to the Civil Service and to HMRC, through the RCSL (Revenue and Customs Sports) and through FOCERRSA (retired Revenue officers) and their golf days.
116. The Civil Service Golf Championship lists the championship as having taken place at the following prestigious member-owned golf clubs: Alwoodley, Walton Heath, Royal Lytham St Anne's Long Ashton, the Northumberland, Moortown, Gullane, Lindrick, Prince's (proprietary), Southport and Ainsdale, Notts (Hollinwell), Gullane, Moortown, Dunbar, Burnham and Berrow, The Berkshire, Royal Troon, Hillside, Whittington Heath, Royal Portrush, Brancepeth Castle, Portstewart, Scottscraig, Formby, Sandiway, Castlerock, Stoneham, Pannal, Kenwick Park.
117. Records of the Civil Service Championship show the winner of the championship and the department in which he works. Recent winners have been from Customs and Excise, HMRC and the Ministry of Justice. They should be able to assist

the court further and HMRC further on this.

118. Ironically we can identify that none of the following clubs that have hosted the Civil Service Golf Championship pays corporation tax on visitors' fees and parties :- Notts, Burnham and Berrow, Formby, the Berkshire and Walton Heath. We have no evidence on the others.

### **WHY BRIDPORT AND WEST DORSET GOLF CLUB?**

119. My evidence is that the choice of Bridport and West Dorset Golf Club Ltd to lead out this case has served to mislead the Court in two ways. Firstly, it is a very small club in terms of trading and green fee income. It was portrayed by Mr Willcox as simply providing golf to individual tourists and visitors, with its CASC registration, without divulging that much of the income included in the accounts as "green fees" was in fact for societies and corporate days.
120. But the second way in which the choice of Bridport and West Dorset Golf Club Ltd misled the court was in the size of the trading income at Bridport, compared with the size of the trading at Walton Heath and other major clubs standing behind them. The Bridport accounts showed a payment of corporation tax on the green fees, which is certainly not the norm. Thus the Bridport accounts could stand up to the scrutiny of the judge(s) without raising alarm bells over the taxation. The accounts of Bridport and West Dorset Golf Club Ltd show, however, that in 1992 the club made an agreement with the Inland Revenue to pay a certain percentage of tax on the green fees and the fees from the pitch and putt course. Based on that agreement Bridport and West Dorset Golf Club Ltd paid just over £5,000 in corporation tax in the year ended September 2009.
121. It is the mention of this agreement which is indicative of how the golf industry operates. The Bridport agreement almost uniquely required some payment of tax on green fees. Compared with every other member-owned golf club we have investigated Bridport's accountants got a raw deal for the club. The rest simply don't pay any!
122. The level of tax evasion and corruption by accountants can be seen by looking at the accounts of the Clitheroe Golf Club Ltd, one of KPMG's clients. KPMG has acted as Clitheroe's accountants/auditors for the last 20 years. In every year, KPMG state in the accounts: "The company enjoys the status of an incorporated club, and as such the liability to corporation taxation only extends to investment income and chargeable gains". There is, of course, no basis for this statement in tax law.
123. Partners of KPMG have confirmed to one of our AGCO members that KPMG made/condoned this unlawful agreement with the Inland Revenue. As such they were, of course, unable to front the present case with Clitheroe Golf Club. Since 1990 Clitheroe Golf Club has taken some £2 million in visitors' fees (described as "temporary memberships") and has evaded tax on this with the assistance of KPMG.
124. Clitheroe, like Bridport, is relatively small fry but it does show why KPMG couldn't use any of their clients to front the case.

125. The Sports Marketing Inc Survey of 2013, officially supported by golf's governing bodies, reported average green fee income at golf clubs in the UK and the Irish Republic of over £200,000 ex VAT. This figure is borne out by the claims for refunds in the Bridport case. HMRC is now fully aware of the scale of the green fee income since 1990, which appears to be some £3.5 billion on which there has been systematic failure to account for corporation tax. It appears that there has been such systematic collusion and corruption between golf club accountants and the Inland Revenue/HMRC that they are now powerless to go back on the agreements reached. In effect HMRC has waived the corporation tax of all these clubs since 1990 and is now being asked, in addition, to pay back VAT where there has already been corporation tax evasion.

126. It is my evidence that the entire industry of member-owned golf clubs has systematically evaded corporation tax on visitors' fees throughout the entire period from 1990 onwards, not through clever accounting but by false accounting, misleading the Inland Revenue as to the nature of the visitors' fees as temporary memberships. Bridport has been used to front the case because they are presumably the only ones who could go to court with reasonably clean hands.

#### **ARRANGEMENTS WITH INLAND REVENUE/HMRC**

127. As simple examples of such negotiations Hillier Hopkins acts for over 30 golf clubs in the Hertfordshire area and proudly proclaims on their website that their golf club clients invariably don't pay any tax. That would appear to be no tax paid on some £100 million of visitor fee income since 1990. Hillier Hopkins openly states that they negotiate and make arrangements for their golf clubs. These clients include the luxurious Moor Park Golf Club, with substantial corporate business, Royal Blackheath GC – England's most historic club and actively marketed by travel companies and Tee off Times, Denham GC in Uxbridge where Sir Scott Baker (Lord Justice Scott Baker) routinely signed off the club accounts as its chairman, with substantial green fee income and no tax paid, plus the Ellesborough Golf Club, at which the Prime Minister belongs, presumably making a VAT refund claim and paying no corporation tax. Each club actively trades; each club has substantial green fee income. None of the clubs pay tax. It is the norm.

128. In the accounts of Formby Golf Club Ltd Co No 461209, for the year ended 2000 the club captain reported in the accounts (available from Companies House) "In common with many golf clubs the Inland Revenue are currently reviewing guest and visitor green fees in order to determine if a surplus assessable to corporation tax arises there on. If the Inland Revenue accept the proposals submitted on the clubs behalf by HLB Kidsons then the council have been advised that it is remote that any liability will arise in respect of periods to 31st December 2000".

129. Formby Golf Club is one of the premier clubs in England and has a dormy house with hotel accommodation on site. My evidence suggests that Formby Golf Club takes some £500,000 a year in fees from non-members. The club always escapes paying corporation tax on its visitors' fees. Remarkably, the year before this in 1999, the Civil Service Championship was held at Formby Golf Club in Lancashire. It was won by Mr Rob Godley of the North West Division and representing HM Customs

and Excise.

130. I believe this typifies the corruption and collusion between golf clubs, accountants and HMRC officers – not, of course, specifically Mr Godley.

131. Walton Heath is another prime example. The club boasts that it has had more Members of Parliament as members of the club than any other golf club, at one time having 24 members with seats in the Lords and 21 in the Commons. They never pay tax on their sizeable temporary memberships, and reinforce the illusion of a being a club for members and their guests by operating with a simple Club Premises Certificate. They are beyond the law.

132. In Ascot there is the Golden Triangle of Sunningdale, The Berkshire and Swinley Forest, collectively taking £3 million a year in “temporary memberships” and never, ever paying tax.

133. The Berkshire Golf Club routinely takes around £1 million a year in visitors’ fees, including VAT and hidden as “temporary memberships”. The captain of the Berkshire Golf Club even stated in the club report that the club entertained 5,963 visitors as guests of members – actively trying to hide their corporate visitors and societies as untaxable guest of members.

134. Below is a table of the visitor fee income taken by the Berkshire Golf Club since 1994, totalling £12,944,687. In every year the club has evaded corporation tax/struck a deal with HMRC so that they no longer even pay tax on rent and bank interest. The club falsely reports that they make such a loss on nearly £1 million of green fees each year that the loss offsets any tax due on bank interest and rent. This is clear fraud, with HMRC failing to ask why they persist in taking £1 million each year from visitors if it is loss-making.

Berkshire GC	Temporary members		
1994*	463,372	2004	654,091
1995*	468,755	2005	723,056
1996	467,514	2006	700,424
1997	490,929	2007	749,407
1998	505,971	2008	807,300
1999	549,774	2009	851,183
2000	587,771	2010	734,126
2001	628,715	2011	780,617
2002	624,645	2012	724,191
2003	660,840	2013	772,006

\* In 1994 and 1995 the income from visitors (temporary members) considerably exceeded the membership subscriptions.

135. The Berkshire Golf Club reported in their accounts to year ended 2013 that they are making a claim for a refund of VAT on “temporary members”. They also reported that they had their first investigation by HMRC for many years, but the only point at issue appears to have been whether staff accommodation was a benefit in kind. The failure of this club to pay tax any corporation tax on such substantial

visitors' fees can only be through collusion and corruption between the accountants and HMRC. HMRC has seemingly struck a deal with the Berkshire Golf Club, with the fiction that for each of the last 20 years the club has made a loss on its £13 million of visitors. The simple question is: "Then why are you doing it?"

136. By contrast, in every one of those years, from 1994 to date, my business partner and I have paid some tax on our proprietary club at Cambridge Meridian, although in every single year of our business the green fee income at the Berkshire is greater than our entire turnover. We have to make some profit to make capital payments under the mortgage, make capital improvements and to plant trees. For every day since 1994 we have kept entirely separate in our weekly returns the green fees for visitors, green fees for members' guests and the society green fees. The tax treatment for all is identical for us. I have always kept the society fees separate from the personal ones in case there was a retrospective change in VAT. It has always been clear to me that one kind of fee is personal and the other corporate. I have always kept the visitors' fees and guest fees separate just to demonstrate how straightforward it is.
137. The same accountants, Arnold Hill & Co, act for their near neighbours, Swinley Forest Golf Club Ltd. The club portrays itself as a members' only club with the same fiction of "temporary memberships" and a Club Premises Certificate that shouts "members' guests only". The club took just under £500,000 of temporary memberships in 2011 and just over £500,000 in 2012. The club failed to pay the tax which was clearly due. The accounts were signed off by Sir Hugh Stevenson, former Deputy Chairman of the Financial Services Authority and a member of the Advisory Committee on Business Appointments.
138. Sunningdale Golf Club, being near neighbours of the Berkshire Golf Club and Swinley Forest Golf Club, took £1.3 million net of VAT in "temporary memberships" in 2011 and failed to pay any corporation tax. Using any formula or any calculation tax was clearly due on visitors' fees. It was also due on the membership fees of its lady members who are simply associates. The club, as is the norm, paid no tax. It is not through clever accounting but presumably through corruption and collusion.
139. I provided HMRC with reliable calculations for their tax liability, on these major clubs, using the guidance and calculations set out in the HMRC manual. They are still routinely just forgiven their tax. They are in effect beyond the law.
140. All three clubs are classified as "non-profit making organisations" by HMRC. At none of the three is there any philanthropic motive for jointly taking £3 million in visitors' fees each year. The motives are clearly not to enhance the lives or give sporting opportunity to the peasants and riff raff of Ascot and Windsor, but are for the sole purpose of reducing, i.e. subsidising, the membership fees. The subsidy in membership fee at these clubs equates to around £2000 per head at Sunningdale and something over £1000 at the Berkshire and Swinley Forest.

### **GOVERNING BODIES OF GOLF**

141. This association has always protested, and continues to protest, that the green fee income of every member-owned golf club in the UK should be seen as a covert or overt distribution to members, as per the Kennemer case, and serious consideration

should be given to the status of the clubs.

142. This association has addressed HMRC, the Treasury and politicians on many occasions over precisely what does constitute a non-profit making organisation. The interests of the Governing Bodies of Golf, specifically England Golf, are totally at odds with the interests of proprietary clubs. On every occasion that proprietary clubs have attempted to address the distortion issue with the Government England Golf has fought against us. England Golf only represents member-owned golf clubs. As background, owners of proprietary golf courses/clubs cannot be affiliated and are not represented in any way by England Golf. It is only for member-owned clubs and the golfers who play at proprietary courses. Thus the interests of England Golf are entirely at odds with those of us running proprietary golf clubs.
143. England Golf, which is the governing body of amateur golf for England, has fully supported and promoted the Bridport case since 2008. So too has the Scottish Golf Union. England Golf has actively encouraged all member-owned clubs to make a claim for the VAT refund.
144. My evidence is that the officers of both England Golf and the Scottish Golf Union have such a wealth of knowledge about the golf industry that they would be aware that the judgment has been based on false and inaccurate evidence presented to the court. They are fully aware that a green fee at a member-owned golf club a) includes many society and corporate days where the supply is not to persons/individuals and b) that many of the supplies are not made directly through clubs but through commercial third parties.
145. The England Golf Finance Officer is a member of the Notts Golf Club, and has been its treasurer. He is fully aware that much of the green fee income is derived from corporate days and societies, that the club uses coupon companies such as Travelzoo to sell out its golf, and has authorised various commercial organisations to market the golf course and then pay the club. The club had a false CASC registration which had to be withdrawn and never pays corporation tax on its sizeable green fee income or its associate membership fees. The club could not have withstood scrutiny by the court. For that reason the England Golf Finance officer could not be involved giving evidence to the court.
146. The Chairman of England Golf is a member of Burnham and Berrow Golf Club, which is one of the championship courses marketing the course through the Atlantic Golf Holiday business. The club has a substantial trade in societies and corporate days. Much of their income reported as green fees is neither supplied by the non-profit making organisation of the club; nor is it supplied to persons. He confirms that the club never pays corporation tax on its green fees. For that reason he could not be involved in giving evidence to the court.
147. The recent President of England Golf is Chairman of the Huddersfield Golf Club, a club with one of the most questionable CASC registrations. The club operates in Fixby Hall, and operates an active business with a license to hold civil ceremonies. It pretends to be a private, CASC club but then is open to the public for “wedding” ceremonies. It cannot be both. The club has frequently been reported to HMRC who

refuse to act. For that reason she could not be involved giving evidence to court.

148. The Chairman of the Scottish Golf Union is a chartered accountant with his own corporate tax advisory firm, started 1985. He is a member of the Erskine Golf Club, and in particular the Western Gailes Club. The latter is one of Scotland's premier golf clubs, with very substantial green fee income. Much of the green fee income is not obtained directly by the club as the non-profit making organisation but through operators such as golfbreaks.com. Much of the income is from societies and corporate days and thus not supplied to persons.
149. The Scottish Golf Union Business and Marketing Manager is a member of Cruden Bay and Royal Aberdeen, the Finance Director – another chartered accountant – is also a member of Western Gailes, and the President, who was a senior legal advisor to BP, is a member of Falkirk and Crail. All these well-known golf clubs derive income through sales made by commercial organisations acting for them; all have substantial society and corporate clients.
150. All these officers are aware green fees are not necessarily supplied by non-profit making organisations and all are, or course, fully aware of the supply issue that a vast proportion of green fees are supplied to societies and corporate clients.
151. My evidence is that KPMG and the governing bodies of golf are fully aware that the claims made by the member-owned golf clubs falsely represent the term “green fee” and as such the solicitors and accountants are knowingly parties to a false claim of some £500 million in VAT refunds from the UK government and taxpayer.
152. My evidence is that the Bridport case was instigated by or in conjunction with the English Golf Union in 2008. Appendix 7 shows a letter from Craig Wagstaff, Finance Director of the English Golf Union, dated January 2009, and sent to the Treasurers of all member-owned golf courses in England. It refers to a letter dated October 2008 but I do not have that. It refers to member-owned golf clubs taking a joint initiative. My evidence is that the English Golf Union and KPMG clearly knew that the terms “green fees” or “temporary memberships” used in the accounts of golf clubs included society golf fees and corporate golf fees. As such these fees were not within the legislation as supplies to “persons”.
153. Both England Golf and the Scottish Golf Union are clients of KPMG and have instructed and funded KPMG to act for them. This is to prepare a report suggesting that there is distortion in the golf market and asking for Reduced Rate VAT of 5% for golf alone. I believe it is absurd to suggest that the United Kingdom government would give Reduced Rate VAT of 5% to golf alone and ignore the other 117 sports which are considered in the VAT legislation.
154. The Bridport judgment now means that a golfer who is a member at my club, Abbotsley, pays VAT at 20% on the membership fee he pays my company. When he goes as a visitor to a nearby member-owned club, where he has no link, or loyalty, he doesn't pay VAT. The addition of VAT to membership fees has effectively destroyed the businesses and lives of those owning proprietary golf clubs for the last 20 years. The Bridport judgment is set to wipe out the businesses totally. England Golf and many county golf unions have openly expressed a wish that the number of proprietary

clubs would be reduced and that our golf clubs would fail and return to farmland.

155. This association has been pressing for Reduced Rate VAT of 5% for the whole of UK sport, i.e. all 118 sports, as being the only way of eliminating distortion, which adversely affects participants in many sports and has effectively wiped out any small or family business trying to provide sports facilities; it has potentially bankrupted their directors. Our evidence is that there are at least 15 other sports where distortion over VAT is a major problem for sports players and facility owners.

### **NON-PROFIT MAKING ORGANISATIONS IN GOLF**

156. The owner of a proprietary golf club queried the tax position of Sunningdale Golf Club with his MP, the Home Secretary, Theresa May. The Chancellor of the Exchequer responded to Mrs May that if the constitution of Sunningdale Golf Club says it is non-profit-making it is non-profitmaking.
157. In the 1990's proprietary clubs were faced, and still are faced, with member-owned clubs supplying VAT exempt subscriptions while we have to charge VAT. The position is distorted, as borne out in the judgment in Chipping Sodbury and others in 2012 (MAN 2008/0270). In order to combat the distortion several proprietary course owners simply allowed their members to run their own affairs, pay a license fee for the land, and thus enjoy VAT exempt golf.
158. The judgment of the Tribunal in the case involving my club at Abbotsley in 1997 (LON 96/148 – judgment 15043) agreed that the arrangement was perfectly acceptable, and that there was no process of tax avoidance or evasion. This was almost immediately attacked by HM Customs and Excise with the introduction of the VAT (Sports, Sports Competitions and Physical Education) Order 1999. Since then the owners of proprietary courses have no longer been able to enable their members to enjoy VAT exempt golf. Our legal advisors have always advised that the VAT Sports Order 1999 wrongly transposes the provisions of the Principal VAT directive, and that introducing the definition of sports land (from Article 135) into the equation is wrong.
159. Where any owner of a proprietary course has continued with the anti-distortion process of allowing their members to have a non-profit making club, to enjoy VAT exempt sport, HMRC has been determined to stop this. In several instances HMRC has sent in Grant Thornton as “ambulance chasers” in an attempt to bankrupt the individual directors of the clubs. This has been applied at S.....Academy, to G.....Golf Club, H..... Golf Club, P.....Golf Club and Waterstock Golf Club.
160. Other proprietary clubs have effectively had their businesses destroyed by HMRC's insistence in attacking any club/rent/license structure which enables their members to enjoy VAT exempt sport like the members and visitors at the member-owned club.
161. The Bridport case has now exposed the extraordinary level of trading by member-owned golf clubs with non-members. The only reason for these clubs to trade as they do is to reduce the subscriptions of their members. As we have protested for

the last 20 years this trading is in effect a distribution to the members. They do not specifically receive the payment in a cash hand-out, but receive it in reduced subscriptions in that year or the next one. Colin Willcox said in evidence, and this point is valid, that the club budgets for earning as much in visitors' fees as they can and then set their membership fees accordingly.

162. HMRC and the Treasury and Courts are now aware of the extraordinary level of trading by member-owned golf clubs with non-members and for tourism and almost any other business they can attract. It is done for profit; not with philanthropic intentions. The trading is totally alien to the philosophy of non-profit making sports organisations in most other European Member states. And we ask that the question of their status be referred to Europe.

163. We, as AGCO, have urged the United Kingdom Government to remove the VAT distortion in sport for over 20 years and have a wealth of correspondence on the subject. On 18<sup>th</sup> December 2013 we lodged a complaint to the European Commission under reference TAXUD C3 (2014) 895160, asking for the European Commission to take infraction proceedings against the United Kingdom because of the distortion in the VAT system applied to sport, specifically referring to the VAT Sports Order 1999.

164. We have asked the Chancellor of the Exchequer to adopt Reduced Rate VAT for playing sport at 5%, as the UK is entitled to do. We have been urging this with successive UK Governments for 20 years. This year the Chancellors' response was effectively to stick two fingers up at proprietary sport and instead to reduce the VAT rate on BINGO to 10% in the Budget.

165. The proprietary golf market has effectively been destroyed in the most part by the distortion of VAT, the failure by member-owned golf clubs to pay corporation tax on their "temporary memberships", and by the spurious registrations as Community Amateur Sports Clubs, to save the 80% business rates, such as Huddersfield and Notts.

166. We believe that this evidence has shown that the claim for refunds of VAT in the Bridport case should be dismissed because a) many of the supplies are not to individuals but to corporate bodies, societies and organisations and b) because many of the supplies were made by third parties that are not non-profit making organisations. It may be that those two points will have to be referred back to the European Court to clarify the terminology used in their judgment and to clarify precisely what is a green fee. Without this, many other Member States, including the Irish Republic, may find themselves making substantial refunds of VAT in golf where they should not be made. We say that hangs on the false and misleading evidence given by Mr Colin Willcox on behalf of Bridport and West Dorset Golf Club Ltd and supported and with the knowledge of KPMG.

167. If the matter is now referred back to the European Court on either or both of these two points and/or on the question of unjust enrichment may we please ask that three further questions be raised with the European Court, namely,

1. Firstly, to determine whether the VAT (Sports, Sports Competitions and Physical Education) Order 1999, including the mention of sports land, correctly transposes the

terms of the Principal VAT directive as they relate to sport – Articles 132 to 135.

2. Secondly, to determine whether a golf club that actively trades for business with non-members, being those who do not have shares in the club, votes, the right to stand for office and the other true characteristics of a member, with the clear intention of reducing and subsidising the membership fees for playing sport, (by a covert or overt distribution), should be seen as a non-profit making organisation for the purposes of the VAT exemption.

3. Thirdly, to determine how the United Kingdom can eliminate VAT distortion in sport to its sports players if some derive the supply VAT exempt and others have to pay VAT at 20% for an identical supply.

### **MY EVIDENCE TO ASSIST THE COURT**

168. I make this application to put in the relevant evidence to assist HMRC in fighting the potential £500 million VAT refunds and to assist other Member States (particularly the Irish Republic) in fighting their claims. We have notified KPMG and Bridport and West Dorset Golf Club of our evidence, and notified HMRC. But we are concerned at the very close link between HMRC and KPMG and between England Golf and KPMG. We are aware that KPMG stands to make £23 million in commission on this case in the UK. Counsel for HMRC told us that the KPMG solicitor, Amanda Brown, stands to make £1 million. We are uncertain as to whether HMRC really will defend this case and use the evidence presented. The partner at KPMG dealing with this case – Paul Stewart – was previously with HMRC. The Chairman of the Board of HMRC, Ian Barlow, was with KPMG until 2008. The Bridport case started as a result of a review in 2008.

169. This association has made two claims to the European Commission – one being that there is in effect unlawful State Aid in HMRC's actions to waive the corporation tax due by member-owned golf clubs, and the second asking the European Commission to take infraction proceedings against the United Kingdom because of the distortion over the VAT treatment in sport.

170. I am therefore putting the detail of this application and the draft witness summons into the public domain by presenting this evidence to the European Commission and to the UK Treasury secretary, David Gauke MP. We will use it to support our claims of the VAT distortion and the waiving of corporation tax because of corruption and collusion. I am also notifying the Finance Department of the Irish Republic of our evidence.

171. I therefore request that this evidence be placed before the court so that the supply issues are considered and HMRC is assisted in resisting making VAT refunds to member-owned golf clubs on the basis of green fees, falsely misrepresented as by non-profit making organisations and to persons.

Signed *Vivien Inez Saunders.* Date *June 2nd..2014*

Vivien Inez Saunders