



Appeal number: UT/2019/0029

*VAT – value of supply – Value Added Tax Act 1994, schedule 6, paragraph 4 – goods or services supplied on terms allowing a discount for prompt payment – “the supply” – the “terms” of the supply – whether “allowing a discount for prompt payment” - whether appellant could rely on schedule 6 paragraph 4 - no*

**UPPER TRIBUNAL  
TAX AND CHANCERY CHAMBER**

**VIRGIN MEDIA LIMITED**

**Appellant**

**- and -**

**THE COMMISSIONERS FOR HER MAJESTY’S  
REVENUE & CUSTOMS**

**Respondents**

**TRIBUNAL: MR JUSTICE MORGAN  
JUDGE HELLIER**

**Sitting in public in the Royal Courts of Justice, Rolls Building, Fetter Lane,  
London EC4A 1NL on 13 & 14 February 2020**

**David Scorey QC and Edward Brown (instructed by Deloitte LLP) for the  
Appellant**

**Kieron Beal QC and Andrew Macnab (instructed by the General Counsel and  
Solicitor to HM Revenue and Customs) for the Respondents**

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## DECISION

### Introduction

1. This is an appeal against the decision of the First-tier Tribunal (Tax Chamber) (Judge Harriet Morgan) (“the FTT”) released on 25 September 2018.

2. The appeal concerns the operation of paragraph 4 of schedule 6 to the Value Added Tax Act 1994 (“VATA”) as it applied before being amended, with effect from 1 May 2014. We will refer to this provision as “paragraph 4”. Paragraph 4 then provided:

“(1) Where goods or services are supplied for a consideration in money and on terms allowing a discount for prompt payment, the consideration shall be taken for the purposes of section 19 as reduced by the discount, whether or not payment is made in accordance with those terms.

(2) This paragraph does not apply where the terms include any provision for payment by instalments.”

3. Virgin Media Limited (“VML”) provides telephony services to customers through fixed lines. These services include the rental of a fixed line together with broadband and telephony services. In the period 28 August 2012 to 30 April 2014 VML provided a fixed line rental (the “FLR”) in return for either (i) monthly payments or (ii) a single payment for 12 months’ service. Although the amounts paid varied somewhat over the period, we shall take, as the parties did before us, the monthly payments as £13.90 and the 12 months’ payment as £120. We term those who paid monthly “monthly customers”, and those who paid £120 “saver customers”.

4. VML submitted its VAT returns for this period on the basis that the 12 month option was a “discount for prompt payment” and that paragraph 4 applied to deem the monthly customers to have given consideration for the FLR supply made to them by reference to £10 per month (being 1/12<sup>th</sup> of £120) rather than the £13.90 per month they actually paid.

5. HMRC concluded that paragraph 4 did not apply in relation to the supplies to the monthly customers and assessed VML accordingly.

6. VML appealed to the FTT. The FTT dismissed the appeal. It held that VML’s supplies to the monthly customers were not “supplied on terms allowing a discount for prompt payment”. This was because it held that the supply to monthly customers and the supply to saver customers were different supplies on different terms. We will refer to this as the “Different Supplies Issue”.

7. Having so found, that was sufficient to dispose of the appeal to the FTT, but the FTT went on to consider three issues which arose if it were wrong in that conclusion. They were:

(1) what was called the “Time of Supply Issue”, which concerned the meaning of “are supplied” in paragraph 4(1); the FTT rejected an

argument put forward by HMRC that these words applied only if a supply or a deemed supply occurred before payment was made;

(2) what was called the “Instalments Issue”, namely, whether VML’s supplies to the monthly customers were made on terms which “include[d] provision for payment by instalments” so that paragraph 4(2) would prevent paragraph 4(1) from applying; the FTT found that they were not; and

(3) what was called the “Payment Issue”, namely, whether the deeming effect of paragraph 4(1) and in particular the words “whether or not payment is made in accordance with those terms” was that supplies to the monthly customers would be taken as being for consideration of £10 per month rather than £13.90 per month; the FTT held that this would be the effect of paragraph 4(1).

8. VML appeals with the permission of the FTT against its conclusion that the FLR services were not supplied on terms allowing for a discount for prompt payment. VML contends that the FTT was wrong on the Different Supplies Issue.

9. HMRC has served a Respondent’s Notice challenging the FTT’s conclusions in relation to the Time of Supply Issue, the Instalments Issue and the Payment Issue.

10. As will be seen, our decision deals with the Different Supplies Issue and we have not found it necessary or appropriate to deal with the issues raised by the Respondent’s Notice.

11. Mr Scorey QC and Mr Edward Brown appeared on behalf of VML and Mr Beal QC and Mr Macnab appeared on behalf of HMRC. We are grateful to them for their very helpful submissions.

### **Factual and Contractual Background**

12. The FTT set out its findings of fact in [30] to [90] of its decision and included in those paragraphs its description of the contractual terms between VML and its customers. The following is a summary of those findings with some citations from the contractual documentation. References in this section to [paragraphs] are to paragraphs of the FTT’s decision.

13. Customers who wished to receive digital television services, broadband internet services and/or fixed line telephony services from VML had to enter into a written contract with VML for FLR services, as the provision of a fixed landline connection to the VML network was necessary for the receipt of those services [33]. The FLR services included the making of “free” telephone calls [34].

14. The terms of the contract were set out on VML’s website. They comprised the “main terms”, the price guide and “other legal stuff”. There was no material variation in the terms in the relevant period [37], [39].

15. Those terms provided that if the customer kept to the terms of the agreement VML would provide the service and the customer would pay the price “set out in the price guide or notified to [him or her]” by the due date for payment shown on the bill. VML could change the charges; if it increased them the customer could terminate by giving 30 days-notice [40], [53].

16. No VAT invoices appeared to have been sent to customers [45] but monthly customers were sent bills every month in either paper form or by electronic notification. The bill separately itemised the charges for the FLR services and other services. Monthly payments were collected by VML by cash, cheque, credit card, debit card or direct debit. [43]

17. VML issued a bill to a customer prior to the date on which the billing period commenced. The FTT gave this example of the standard billing sequence for FLR services for dates in 2014:

Bill Date	Billing Period	Payment Date
23 January	5 Feb to 4 March	11 February
21 February	5 March to 4 April	11 March
21 March	5 April to 4 May	11 April
23 April	5 May to 4 June	12 May

The FTT accepted that whilst bills went out to customers in advance of the period billed for, payment by a monthly customer (or by a saver customer in respect of services other than FLR) might not be made until later in the period, by which time the FLR service for that month was already being received by the customer. [43(6)]

18. Where a customer had opted for saver terms and paid the £120, monthly bills showed a price of £0.00 for FLR and an explanation that this represented the 12 month saver discount. [70]

19. Customers were subject to minimum commitment periods. In general, such a period operated from the time a customer first signed up with VML or took a new package [50]. If a customer terminated the contract within the minimum period, he or she was subject to additional charges [47]. VML typically imposed a minimum period of 12 or 18 months [49]. At the end of the minimum period “a customer usually continued to receive the relevant services unless the customer or VML terminated the relationship”.

20. Section J of the main terms dealt with ending the agreement. Clause J1 provided that either the customer or VML “may end this agreement at any time (including during or at the end of any minimum period) by the giving of 30 days’ notice.” In relation to termination the FTT said [53]:

“throughout the relevant period customers were entitled to give 30 days’ notice to terminate the contract with VML (as could VML) but, if they did so within the minimum period, they were charged an early disconnection fee calculated by reference to the remainder of the minimum period at the termination date.

“...where a saver customer terminated before the end of a minimum period, VML was not entitled to charge an early disconnection fee as regards the FLR services to the extent that element had already been paid for by the saver price.

“A customer could also terminate the agreement if VML was in breach of the terms and conditions of the agreement.

“...VML was entitled to terminate a contract where the customer failed to pay for the services whether the customer was within or outside the minimum period and whether or not the customer paid on the saver basis...

“...there was a “non-paid disconnect” procedure whereby VML could take steps to restrict the FLR service provided to a new customer from a fixed line if the customer did not make any payment ... as set out in the documents, as saver customers paid for their “line rental upfront”, this restriction did not apply to them.”

21. The terms relating to the ability to pay £120 for 12 months’ FLR (the “saver basis”) were, in the relevant period, included in neither the main terms of the contract between VML and its customer nor in the “other legal stuff” [69 and elsewhere].

22. But the FTT found, in relation to the saver basis, that “[i]t was offered repeatedly via a variety of media channels; it was a choice open to all during the relevant period. Existing customers could take up the saver basis at any point.” [54]. The “saver terms” were offered by call centres, door drop leaflets, VML’s website and in stores. At the launch of the saver basis it was advertised to customers with their bills. It was notified with communications about price rises. [56-62].

23. The words used to describe the saver terms by call centres, in door drop leaflets, and in guides in stores were essentially £120 “for 12 months line rental” [55 & 56]. Messages included with bills said “simply pay an upfront fee of £120 for 12 months’ line rental rather than monthly” [57(1)]. The phrases used in other material were similar. [57 and 64]

24. Where a customer wished to go on to the saver basis they had to pay £120 “there and then” [64]: “payment was taken upfront via debit or credit card and the saver basis was then applied to a customer’s account. The FLR service was not available on the basis that a customer signed up now but paid sometime later after the date of commencement of the agreement for the provision of the service.” [63]

25. The terms on which the saver basis was offered included a statement that, absent cancellation within 7 days, the £120 was not refundable and that after the 12 month period the customer would move to standard line rental terms at the then applicable price. But VML wrote to saver customers before the expiry of the 12 month period for which they had paid, inviting them to take advantage of the saver basis for a further 12 month period. [74].

26. Although not explicit in the FTT’s decision, it is clear that the agreement with a saver customer was governed by the main terms and the other legal stuff and subject to the terms of the saver offer rather than the price guide. The terms of the saver offer were the price “as otherwise notified to you”. As to termination by VML of an agreement with a saver customer, the FTT considered that position later in its decision at [154], to which we will later refer.

27. Changes in the monthly charge for FLR made during the currency of a 12 month saver period did not result in additional charges being recoverable from the saver customer.

### **The FTT’s Decision on the Different Supplies Issue**

28. After a review of the authorities the FTT set out [142] the approach it would adopt to the determination of the nature of the supply for the purposes of paragraph 4(1). There was no challenge to this approach:

“(1) It is necessary to assess (a) the contractual effect of the arrangements between VML and its customers in relation to the provision of the FLR services in the relevant period, (b) in the light of the contractual nature of the arrangements, what was supplied to whom for what consideration and on what terms and (c) in the light of that analysis, whether the FLR services “are supplied for a consideration in money and on terms allowing a discount for prompt payment” within the meaning of paragraph 4(1).

(2) In assessing the nature of the contract between VML and its customers, as set out in *Secret Hotels2* [*Secret Hotels2 Ltd v HMRC* [2014] STC 937], the tribunal must consider the words used, the provisions of the agreement as whole, the surrounding circumstances in so far as they were known to both parties, and commercial common sense.

(3) In analysing the effect of the arrangements for VAT purposes it must be borne in mind that consideration of economic and commercial realities is a fundamental criterion for the application of VAT. Whilst the contractual position normally reflects that reality, the contractual position may be vitiated on the relevant facts if, for example, the contractual terms constitute a wholly artificial arrangement. This is also reflected in the principle that there is a supply for consideration only if there is a legal relationship between the provider of the service and the recipient pursuant to which there is reciprocal performance. It follows that a supply of services is objective in nature and applies without regard to the purpose or results of the transactions concerned.”

29. The FTT set out its conclusions in relation to the contractual position at [146]:

“In my view, the effect of the provisions, as interpreted having regard to the surrounding circumstances as regards the manner in which VML did business

with its customers and commercial common sense, is that, as HMRC argued, there were in effect two different sets of contracts with monthly and saver customers pursuant to which the parties had materially different entitlements and obligations:

(1) In return for a payment of £13.90 per month, a monthly customer contracted with VML to receive FLR services for one month at a time (albeit on an on-going month by month basis) subject to the parties' rights to terminate. In that case the customer was potentially subject to price rises but could terminate on one month's notice for no further charge subject to an early disconnection fee if termination was within a minimum period.

(2) On payment of a fixed non-refundable amount of £120 a saver customer contracted with VML to receive FLR services for a defined period of 12 months on the basis that, thereafter, he/she would become a monthly customer. Such a customer could also terminate on 30 days' notice but, if he or she did so within the applicable 12 month period, he or she did not receive a refund of the saver price. If the customer terminated the contract within a minimum period there was no disconnection fee by reference to the FLR services as the customer had already paid in full for the FLR services over the 12 month period."

30. At [154], the FTT considered whether it was open to VML to terminate the contract with a saver customer before the end of the 12 month period for which the saver customer had paid. VML had argued before the FTT that it could so terminate and refund part of the saver price to the customer, but that argument was rejected by the FTT. It held that VML could not terminate the contract and refund part of the saver price when the relevant terms expressly provided that the saver price was non-refundable. The FTT held that if VML withdrew the FLR service, it would be in breach of a contractual obligation to provide that service for 12 months and the customer might be able to claim compensation for that breach.

31. The FTT found at [155] that "The contractual position entirely reflects the commercial and economic reality, namely, that a monthly customer was entitled to receive one months' worth of services for a monthly price of £13.90 and a saver customer was entitled to receive 12 months' worth of services for a single fixed upfront non-refundable price of £120."

32. The FTT concluded at [157] "that during the relevant period correspondingly VML made two different sets of supplies to saver and monthly customers. In accordance with the contractual position (1) VML supplied FLR services to monthly customers for one month at a time for £13.90 per month and (2) VML supplied FLR services to saver customers for a 12 month period for a non-refundable price of £120 (and thereafter made monthly supplies (unless the contract was terminated or the saver basis was taken again))".

33. It added at [159]: "In this case the different values of £13.90 and £120 paid by a monthly and a saver customer reflect the different nature of the contractual relationship between the parties:

(1) The payment of the higher monthly amount reflected that VML was obliged to provide and a monthly customer was entitled to receive a supply of services for one month at a time on the basis that the customer thereby had the flexibility to terminate on one month's notice with no additional payment (except as regards a possible disconnection fee if within a minimum period) but that VML had the ability to increase the monthly price.

(2) The lower saver price reflected that VML was obliged to provide and a saver customer was entitled to receive 12 months of services for a fixed price but with no refund on termination (and no disconnection fee as regards the FLR services if termination was within a minimum period).”

### **The legislation**

34. Article 79(a) of the Principal VAT Directive provides that the taxable amount shall not include price reductions by way of discount for early payment.

35. By section 4 VATA, VAT is chargeable on a supply of goods or a supply of services in the circumstances set out in section 4. By section 5(2)(a) VATA, “supply” includes all forms of supply but not anything done otherwise than for a consideration. Section 2 VATA provides that VAT is charged on the value of the supply as determined under VATA. Section 19(1) VATA provides that the value of any supply of goods or services shall be determined in accordance with section 19 and schedule 6 to VATA. Section 19(2) provides that if the supply is for a consideration in money its value shall be taken to be such amount as, with the addition of the VAT payable, is equal to the consideration. The prompt payment discount provision is in paragraph 4 of schedule 6; we have set out the terms of paragraph 4 which were in force in the relevant period at paragraph [2] above.

### **The rival submissions on the Different Supplies Issue**

36. What follows is a summary, in our own words, of the detailed written and oral submissions of the parties.

37. Counsel for VML accepted what had been common ground before the FTT as to the nature of a prompt payment discount: there was such a discount where the consideration for the supply is to be provided either by payment of (i) a sum, X, on or by a specified date or (ii) a lower sum, Y, on or by a date falling before X is otherwise due.

38. VML submitted that the FTT had gone wrong in its analysis of the contractual arrangements made between VML and its customers. It submitted that the position ought to have been analysed as follows:

(1) VML supplied the same FLR service to its customers, whether they were monthly customers or saver customers;



- (2) VML's supply to its customers was the same service and the same supply;
- (3) In all cases, the contract of supply was a rolling contract of indeterminate duration;
- (4) Every monthly customer had available to him the option of continuing to pay on monthly terms or to pay on the saver basis;
- (5) These options were included in the terms on which VML supplied its monthly customers;
- (6) On the basis of the figures used by both parties in the course of the argument, the monthly customer could pay £13.90 per month or could pay £120 up front for 12 months.

39. VML submitted that, based on the above contractual analysis, paragraph 4 applied as follows:

- (1) Paying £120 up front involved prompt payment;
- (2) Paying £120 for 12 months as compared with paying £13.90 per month for 12 months involved a discount;
- (3) The discount was for prompt payment;
- (4) It followed that the FLR service was supplied on terms allowing a discount for prompt payment within paragraph 4;
- (5) Paragraph 4 required the consideration of £13.90 per month to be valued as reduced by the discount and this meant that the consideration of £13.90 was to be reduced to £10 per month which was £120 (the price for 12 months) divided by 12.

40. VML pointed to various errors which it said the FTT had made. In particular, it submitted:

- (1) Contrary to what the FTT had said, paragraph 4 did not require the terms as to a discount for prompt payment to be part of any contract between the parties;
- (2) The FTT ought to have held that it was sufficient in this case that a monthly customer at all times had the ability to take up the option of paying on the saver basis;
- (3) It was accepted that VML could have withdrawn the option of paying on the saver basis and so that option could not be described as a contractual option but that was irrelevant; at all material times, that option was available; (we note that at various places in the skeleton argument of Mr Scorey and Mr Brown for VML, it appeared to be submitted that the option was a contractual option or a contractual term, but at the hearing we understood Mr Scorey to accept that VML could have withdrawn the option of paying on the saver basis at any time before that option was accepted);

(4) If a monthly customer took up the option of paying on the saver basis, that did not result in a new contract between VML and the customer; it was simply that there were two payment options available and that was the situation in any case of a prompt payment discount.

41. VML submitted that the FTT had been correct to conclude that minimum commitment periods were wholly irrelevant to the appropriate analysis.

42. Counsel for HMRC submitted that the FTT had reached the right conclusion on this issue and essentially for the right reasons.

43. In addition, HMRC submitted:

(1) VML offers two different deals, or two different sets of terms, to its customers;

(2) The first set of terms provides for monthly payment; under this set of terms, either party can terminate the contract on 30 days' notice; until the contract is terminated, VML is obliged to provide the FLR service and the customer is obliged to pay for the FLR service; VML is entitled to revise, in particular increase, the charge payable by the customer;

(3) The parties agree that the minimum commitment period is not relevant to the appropriate analysis; in particular, there are many monthly payment customers who have been customers for more than the minimum commitment period;

(4) The second set of terms is the saver basis; under this set of terms, the customer pays the charge for a 12 month period at the beginning of that period; VML is obliged to provide the FLR service for the period of 12 months; if VML fail to provide the FLR service for the period of 12 months, then it will be in breach of its obligations to the customer and will be liable to pay compensation to the customer; the customer can give 30 days' notice to end the provision of the FLR service but is not entitled to a refund of the initial payment; VML cannot increase the charge during the 12 month period;

(5) It is wrong to analyse the situation, as VML seeks to do, as involving one set of terms with two alternatives as to payment;

(6) Each set of terms gives rise to its own contract of supply;

(7) For a monthly payment customer, the fact that he could change to the saver basis does not mean that he has a single contract of supply which contains the terms as to the saver basis;

(8) Although the saver basis is a possible alternative to the monthly payment basis, the monthly payment customer is not subject to the terms of the saver basis unless and until he takes up that alternative and, in particular, pays a fixed sum for the full 12 months of supply;

(9) The underlying FLR service may be the same irrespective of whether the customer is on the monthly payment basis or the saver basis, but the

supply will be different depending upon the length of the period of commitment of both VML and the customer pursuant to the alternative bases;

(10) Accordingly, the two bases as to payment involve two different supplies;

(11) The supply to a monthly payment customer is on the terms appropriate for a monthly payment customer and is not on the terms appropriate to a saver customer;

(12) It cannot be said, for the purposes of paragraph 4, that just because a monthly payment customer could choose to become a saver customer that the supply to him is on the terms of both the monthly payment customer and the saver basis customer;

(13) Accordingly, it cannot be said, for the purposes of paragraph 4, that the supply to the monthly payment customer is on terms allowing that customer to pay on the saver basis;

(14) It follows that the terms which apply to a monthly payment customer do not come within paragraph 4.

### **Discussion and conclusion on the Different Supplies Issue**

44. By section 4 VATA, VAT is chargeable on “any supply” of goods or services. By section 2, VAT is charged by reference to the “value of the supply”. Section 19 sets out how the value of a supply is to be determined. Paragraph 4 of schedule 6 has effect pursuant to section 19.

45. For para 4(1) to apply: (i) there must be terms on which a supply is made, (ii) those terms must allow a discount and (iii) the discount must be for prompt payment.

46. Thus, paragraph 4 is dealing with the value of a particular supply: although it speaks of services being “supplied”, its purpose is to prescribe the value of a particular “supply”. Before it can be applied, the supply to which it is to be applied has to be identified. In this case we are concerned with the supply to the monthly customers (it being accepted that the supply to the saver customers was for £120, the amount actually paid).

47. As the parties recognised, in order to resolve the present issue, it is necessary to analyse the contractual arrangements between the parties. The key question is: is there a single contract which provides for two possibilities as to payment (monthly payment or saver basis) for the same supply, as VML contends, or are there two possible contracts, each with different terms, as HMRC contend?

48. We consider that the right analysis of the contractual arrangements is that there are two possible contracts, each with different terms.

49. We do not accept the analysis put forward by VML as to there being a single contract with two possibilities as to payment. The monthly payment customer has the benefit of, and is subject to, a contract with a set of terms which provide for monthly

payments. That contract does not provide for the monthly customer to pay for 12 months in advance. Instead, the monthly customer has the option of changing the terms which govern and becoming subject to an alternative set of terms which provide for payment for 12 months in advance. The monthly customer only becomes subject to the contractual terms relating to the saver basis on making the payment for 12 months and not before he does so.

50. We agree with the finding of the FTT, at [154], that in the case of a saver customer who has paid for 12 months, VML is not entitled to cease to supply the FLR service during that 12 months.

51. The differences between the two possible contracts extend beyond the date or dates for payment. The terms relating to the monthly payment customer permit either party to terminate the contract on 30 days' notice; VML is entitled to revise the charge payable for any subsequent month. The terms relating to the saver basis involve the customer paying for a full 12 months of services and he is not entitled to a refund if he chooses to terminate the contract earlier than the expiry of the 12 months. VML is obliged to supply the services for the full 12 months. VML is not entitled to revise the charge payable during the 12 month period.

52. The contractual terms under which the provision of services is made to the monthly customer are therefore different from those under which provision is made to the saver customer. The commercial nature of what is supplied is also different: one is supplied with a month's services for £13.90 and the other with 12 months' services for £120. They are therefore different supplies for VAT purposes.

53. Even if it could be said that the terms on which the month's supply is made to the monthly customer may allow him or her to elect to take a different supply for a different consideration, that is not the same as allowing a discount on the consideration for the supply of a month's services. Thus paragraph 4 cannot apply to the supply to the monthly customer.

54. The above reasoning provides the answer to the issue as to the application of paragraph 4, namely, that VML cannot rely on paragraph 4 to reduce the consideration payable to it by its monthly customers.

55. In any event, we do not see how the difference between a set of terms which provide for £13.90 per month and a different set of terms which provide for £120 for 12 months can be said to involve "a discount for prompt payment". It is true that £120 is less than 12 times £13.90 and it is also true that the payment of £120 is made earlier than the dates of the monthly payments. However, the differences between the two sets of terms do not necessarily involve a "discount" and even if they did the discount is not "for prompt payment". As to the "discount", a payment of £120 for 12 months is not less than, for example, three payments of £13.90 in a case where the customer terminates the monthly arrangements at the end of 3 months. Further, given the different commitments by the customer (paying for 12 months rather than paying on a monthly basis with a right to terminate the arrangement) the difference between £120 and 12 times £13.90 must reflect the fact that the customer on the saver basis is

committing himself to a longer period of taking the services and cannot be said to be exclusively due to the fact that the £120 is paid earlier than the dates of the monthly payments.

56. We add that the result contended for by VML itself suggests that VML's approach involves a misapplication of paragraph 4. VML's case is that the saver basis involves a discount for prompt payment as compared with the monthly payment basis. VML says that the discounted consideration is £120. However, VML does not pay VAT in relation to the consideration of £120 at the time when the £120 is paid to it but instead VML creates an entirely notional set of terms involving payments of £10 per month and then pays VAT on the notional basis that it has not received a one-off payment of £120 but instead it receives £10 every month for 12 months. But VML does not offer a set of terms which allows payment of £10 per month for 12 months. Paragraph 4 refers to a set of terms "allowing" a payment and cannot apply to a notional set of terms which VML does not allow.

57. For these reasons, we dismiss the appeal against the decision of the FTT.

### **The Respondent's Notice**

58. As we are dismissing the appeal against the decision of the FTT, it is not necessary to consider the points raised by the Respondent's Notice. Although we heard full argument in relation to those points, we have concluded that it would not be appropriate to engage in what would be only an obiter discussion of them. Further, one of the points, the Payment Issue, can only arise in relation to the wording of paragraph 4 before its amendment which took effect from 1 May 2014.

**MR JUSTICE MORGAN  
JUDGE HELLIER**

**JUDGES OF THE UPPER TRIBUNAL  
RELEASE DATE: 8 April 2020**