[2021] UKUT 0199 (TCC)

Appeal number: UT/2019/0166

VAT – Exemption under Article 135(1)(a) of the Principal VAT Directive (PVD) – for insurance and reinsurance transactions, including related services performed by insurance brokers and insurance agents – economic purpose and commercial reality of Appellant's services were not that of insurance transactions but making claims for compensation in respect of mis-sold payment protection insurance (PPI) – not acting as an insurance agent nor performing services related to insurance transactions – appeal dismissed

UPPER TRIBUNAL
TAX AND CHANCERY CHAMBER

CLAIMS ADVISORY GROUP LIMITED **Appellant**

- and -

THE COMMISSIONERS FOR HER MAJESTY'S REVENUE & CUSTOMS **Respondents**

TRIBUNAL: Mr Justice Michael Green
Judge Rupert Jones

Sitting in public at The Rolls Building, 7 Rolls Buildings, London EC4 on 11 & 14 June 2021

Roderick Cordara QC and Stephen Donnelly, Counsel, instructed by Rosetta Tax Ltd, for the Appellant

Sarabjit Singh QC, Counsel, instructed by the General Counsel and Solicitor to HM Revenue and Customs, for the Respondents

DECISION

Introduction

1. The Appellant company makes claims on behalf of individual customers who have been mis-sold payment protection insurance ('PPI') by financial institutions. When those claims are successful, compensation is paid to the Appellant's customers in sums equivalent to the premiums they have paid to the financial institution for the mis-sold PPI plus interest. The Appellant receives a fee for its services, which is calculated as a percentage of the compensation paid to the customer by the financial institution.

2. The Appellant appeals the decision of the First-tier Tribunal (Tax Chamber) ('FTT') dated 6 August 2019 in which it decided that the Appellant's supplies to its customers were liable to VAT. The FTT decided that the Appellant's services fell outside the exemption under the Principal VAT Directive (2006/112/EC) ('PVD') because: (1) the supplies were not insurance transactions for the purposes of Article 135(1)(a) of the PVD (and item 1 of Group 2 of Schedule 9 to the Value Added Tax Act 1994 ('VATA')); and (2) they were not services performed by an insurance broker or insurance agent that were related to insurance transactions and as such were not within the exemption under Article 135(1)(a) of the PVD (nor item 4 of Group 2 of Schedule 9 to VATA).

3. The issues in this case are whether the Appellant's services provided to its customers are exempt from VAT by virtue of being (1) insurance transactions or (2) services performed by an insurance agent related to insurance transactions.

4. The Appellant submits that the FTT erred in law in deciding both issues against it.

The Law

5. Article 135(1)(a) of the PVD (which was previously article 13B(a) of the Sixth Directive (77/388/EEC)) exempts the following supplies from VAT: "*insurance and reinsurance transactions, including related services performed by insurance brokers and insurance agents*".

6. Pursuant to the UK domestic legislation implementing the exemption, "*Insurance transactions and reinsurance transactions*" are exempt under item No. 1 of Group 2 of Schedule 9 to VATA, and related services performed by insurance brokers and insurance agents are exempt under item No. 4.

7. Item 4 exempts:

"*The provision by an insurance broker or insurance agent of any of the services of an insurance intermediary in a case in which those services—*

(a) are related (whether or not a contract of insurance or reinsurance is finally concluded) to an insurance transaction or a reinsurance transaction; and

(b) are provided by that broker or agent in the course of his acting in an intermediary capacity"

8. Therefore, in order to be exempt under item No. 4, services must be: (a) of an insurance intermediary, (b) provided by an insurance broker or insurance agent acting in an intermediary capacity, and (c) related to an insurance or reinsurance transaction.

9. Note 1 to Group 2 defines what "*services of an insurance intermediary*" for the purposes of item 4 are, stating as follows:

"*For the purposes of item 4 services are services of an insurance intermediary if they fall within any of the following paragraphs—*

(a) the bringing together, with a view to the insurance or reinsurance of risks, of—
(i) persons who are or may be seeking insurance or reinsurance, and
(ii) persons who provide insurance or reinsurance;
(b) the carrying out of work preparatory to the conclusion of contracts of insurance or reinsurance;
(c) the provision of assistance in the administration and performance of such contracts, including the handling of claims;
(d) the collection of premiums"

10. Note 2 to Group 2 defines what acting "*in an intermediary capacity*" for the purposes of item 4 is:

"*For the purposes of item 4 an insurance broker or insurance agent is acting `in an intermediary capacity' wherever he is acting as an intermediary, or one of the intermediaries, between—*
(a) a person who provides insurance or reinsurance, and
(b) a person who is or may be seeking insurance or reinsurance or is an insured person"

11. Article 135(1)(a) of the PVD was at all material times of direct effect, and so, if the Appellant's supplies to its customers fall within the terms of Article 135(1)(a), it succeeds in this appeal, and there is no need to consider the terms of the exemption in domestic law.

12. The exemption in domestic law would potentially need to be considered if it were wider than the terms of the exemption in Article 135(1)(a) that it purports to implement. In that case, if the Appellant could show that its supplies fell within the terms of the domestic legislation, it would succeed in the appeal even if it failed under Article 135(1)(a).

13. However, the parties agree that the exemption as implemented in domestic law is not wider, as in more generous to the taxpayer, than the exemption in Article 135(1)(a). That is because, as set out above, the domestic legislation incorporates all the

requirements of Article 135(1)(a) and then adds requirements not expressly found in the language of Article 135(1)(a).

14. The effect of the domestic legislation is therefore the same as the effect of Article 135(1)(a), as was common ground in *Century Life v C & E Comrs* [2001] STC 38 (at [6] ('*Century Life'*); the reference there was to the exemption in the Sixth Directive, which was identical to the exemption in Article 135(1)(a)).

The facts as found by the FTT

15. References made to numbered paragraphs in square brackets, [xx], unless stated otherwise, are references to paragraphs in the FTT's decision dated 6 August 2019. The primary facts as found by the FTT at [9] to [23] of the decision, were not in dispute, although the interpretation to be placed upon them was.

16. PPI was generally provided by insurers and offered by financial institutions on behalf of insurers to customers who entered into a credit agreement with the financial institution. PPI was intended to cover the customer's repayments of credit if the customer was unable to make those repayments due to an insured risk such as sickness or redundancy.

17. Financial institutions were typically incentivised by insurers to sell PPI to customers through being offered a lucrative sales commission by insurers when PPI was sold. This tended to result in financial institutions being overly keen to encourage their customers to take out PPI, which resulted in many cases in the mis-selling of PPI. For example, customers may have been told by financial institutions that they had no choice but to take out PPI in order to enter into a credit agreement with the financial institution, or they may have been prevailed upon to take out PPI even though they were ineligible for its benefits (FTT at [9]).

18. Customers began to realise that PPI they had paid for and/ or were liable to pay for was unsuitable for them, and it was identified that the problem lay with the mis-selling of PPI by financial institutions. It also became clear that customers were able to seek compensation from financial institutions in respect of such mis-selling.

19. The Appellant's business was to act on behalf of customers in claiming compensation from financial institutions for the mis-selling of PPI to those customers. The Appellant described its main business activities in its application for VAT registration dated 26 November 2009, as: "*Recovery, on behalf of consumers, of overcharged fees levied by banks and other financial institutions*" (FTT at [11]).

20. As at June 2013 the Appellant employed 175 staff to use "*a range of bought-in data*" to make telephone calls to members of the public, the purpose of which was "*to prompt consumers who consider that they have been mis-sold PPI to make a claim against the financial institution that sold the insurance to them, and to do so using* [the Appellant's] *services as their representative*" (see FTT at [12]).

21. If it was established in the telephone conversation that the prospective customer may have been mis-sold PPI, a documentation pack was sent out by the Appellant to

the customer, which contained, inter alia, a letter of engagement, a letter of authority, a questionnaire and a copy of the Appellant's terms and conditions (see FTT at [13]).

22. The engagement letter stated that: "*By signing this letter, you are making a legally binding agreement with Claims Advisory Group Ltd…in relation to payment protection policies ('the PPI policies') you were sold and or unreasonable or erroneous credit card charges levied. We agree to review your complaint/s and (if appropriate) claim compensation for PPI policies or credit card charges…The full terms of our agreement with you are set out in the terms and conditions document that is enclosed with this letter…If we are successful in claiming compensation for you, we will charge a fee of 39% of the value of the compensation…*" (see FTT at [14]).

23. The letter of authority stated, inter alia, that: "*I have appointed Claims Advisory Group Limited…to act as my sole representative for the purposes of DISP2* [a reference to the rules and guidance of the Financial Ombudsman Service on dispute resolution/ complaints] *and generally to review my complaint and if appropriate make and pursue a claim or claims on my behalf for compensation in respect of the payment protection insurance policy or policies that I was sold in relation to my loans, credit cards, other products or other accounts that I have with you, or unreasonable or erroneous credit card charges…*" (see FTT at [15]).

24. The Appellant's terms and conditions described the Appellant's services to customers as follows, under the heading "*The service*" (as confirmed at FTT [16]):

"*2.1 We will request and gather documentation that we believe are relevant to your claim or claims for compensation.*
2.2 We will consider and review this information and confirm whether we will go ahead with a claim…
2.3 If we decide to go ahead with a claim, we will update you on our progress in line with our normal procedures.
2.4 We will review any offers of settlement made by the person against whom the claim has been made. You agree that we can accept any reasonable offer of settlement on your behalf such as where the offer is for the full amount of your claim, or for the full amount of your claim but excluding interest where the interest is not a significant part of your claim and that we can enter into any binding agreements, and do everything as we may consider reasonably necessary. If we receive an offer of settlement which is unreasonable, we will recommend that you reject the offer.
2.5 We will meet our responsibilities as a claims management company in providing information to you about your claim in accordance with the Conduct of Authorised Persons Rules published by the Ministry of Justice…
2.6 If we receive any amounts to settle your claim, we will deduct any fees due to us for providing our services in accordance with this agreement and send the rest of the funds to you within 10 days of receipt.
2.7 We will provide our services with reasonable skill and care.
2.8 You accept that even if we decide to make the claim there is no guarantee that the claim will be totally or partially successful."

25. The terms and conditions reiterated that the Appellant's fees were 39% of any compensation which was paid (or due to be paid) for each claim the Appellant made on the customer's behalf (para 5.1). They also indicated that generally no fees were payable to the Appellant if any claim was not successful or if the Appellant considered that a claim was unlikely to be successful (para 6.1) (FTT at [17]).

26. The end of the first page of the terms and conditions stated as follows, in large print: "*Sign your name, make your claim*" (FTT at [18]).

27. The questionnaire the Appellant sent to the prospective customer sought to establish whether they might have been mis-sold PPI, for example by asking questions such as "*Were you told that taking out a PPI policy would increase the chances of your application being approved?*", "*Did you feel pressured into applying for a PPI policy?*", "*Did you find that a PPI policy had been added, even though you hadn't asked for it?*", and "*Was it made clear to you that a PPI policy was optional?*" (FTT at [19]).

28. If a customer signed up and the Appellant agreed to act on the customer's behalf, the Appellant would make a claim for compensation/complaint on the customer's behalf to the financial institution that was said to have mis-sold that customer PPI (FTT at [20]).

29. An example complaint letter made by the Appellant on a customer's behalf to the financial institution MBNA (referred to by the FTT at [21]) stated that:

"*We are appointed by the Policy Holder in relation to a complaint regarding the sale of a Payment Protection Insurance Policy ("the Policy") attached to the Loan referred to above ("the Claim")…*
Our client's account of events from the time of the sale has led us to believe that the PPI was mis-sold.
Our Client's position is that:
1. It was not made clear that the PPI Policy is optional.
2. I was not aware that PPI Policy was paid up-front by a single premium.
3. I was not told that I would have to pay interest on the single premium for the duration of the PPI Policy.
The Policy Holder wishes to proceed with the Claim and demands repayment of all premium(s) paid to date, all interest charges applied in respect of the premium(s) & 8% statutory interest.
Please issue your Final Response to this complaint in accordance with FSA complaint handling guidelines. Please also provide a copy of the Policy Holder's Loan Agreement and statement of Demands and Needs".

30. The financial institution would then acknowledge the complaint (e.g. see the acknowledgment letters by MBNA, by Lloyds/ TSB and by RBS all referred to by the FTT at [22]). If following further correspondence the financial institution did not pay up, the Appellant might threaten to involve the Financial Ombudsman Service ("FOS") or proceed to make a complaint about the financial institution on the customer's behalf to the FOS (FTT at [22]).

31. If an offer of settlement by way of payment of compensation was made by the financial institution and accepted by the Appellant on behalf of the customer, the customer would receive 61% of that compensation and the Appellant would receive 39%, in consideration of its service to the customer of successfully obtaining compensation from the financial institution on the customer's behalf (FTT at [23]).

The FTT's decision on the two issues

Issue one – insurance transactions

32. The FTT's reason for finding that the Appellant's supplies were not insurance transactions was that the commercial reality and economic purpose of its contract with its customers was for them to obtain monetary compensation for the mis-sold PPI rather than to terminate the original insurance contract. The compensation was calculated by reference to the premiums paid plus interest. The Appellant received a fee for its services, namely a percentage of the compensation obtained by the customers. The true nature and purpose of the Appellant's supplies was not to cancel or terminate the original contracts for PPI provided to its customers through the financial institutions, even if this also happened in many cases.

33. The FTT's consideration began at [38] and concluded at [54]-[56]:

'54. We agree that it is the "cause" and economic purpose of the contract between the Appellant and its customers that we must have regard to. The economic purpose of the contract for the customers is, we think, to obtain a sum of money which is compensatory in nature. That sum may be more (because there is an element of interest compensation in the award) or less (because the authority provided by the customer expressly allows the Appellant to accept any reasonable offer of settlement) than the premiums paid. The economic purpose for the Appellant is to obtain a fee for the service provided. In the present case the service is provided on a "contingent fee" basis and the Appellant is entitled to 39% of the "compensation". That is to say that the Appellant will get nothing for the work that it has done if the claim does not succeed, but 39% of the compensation if the claim does succeed. The fee for the work done is, perhaps for obvious reasons, not linked to whether or not the insurance contract was terminated. This is firstly because, in our judgment, the customer would have little or no interest in terminating the insurance contract. This can easily be tested by asking oneself whether or not the customer would have engaged the Appellant for the sole purpose of terminating the insurance contract. The clear answer is "no". Contrast this with the position where the question asked is would the customer have engaged the Appellant for the sole purpose of claiming compensation for mis-sold PPI. The answer, we suggest, is "yes". The value of the service to the customer is the recovery of compensation – in pounds, pence and shillings.

55. The second reason why there appears to be no link between the fee and the termination of the insurance contract is because some of the relevant insurance contracts in question will have long run their course (either because they were terminated or because the term of the relevant loan had expired) and no part of the service provided by the Appellant in these cases went to terminating the insurance contract. Without the necessary evidence we cannot say what percentage of the Appellant's customers this might relate to, but we are content to conclude that this would have applied to at least some customers. It should be noted that we are not saying, here, that an insurance transaction cannot exist long after the insurance policy was incepted. That is a separate point. We are only dealing, here, with the economic purpose or cause of the contract.

56. In light of our above findings we have little hesitation in concluding that the nature of the service provided was the making of compensation claims on behalf of customers and not the assessment and subsequent terminating of insurance contracts. That the insurance contracts were assessed in all cases and terminated in many instances was a consequence of the claim for compensation and not the service that was provided. Accordingly, we hold that the answer to the first issue before us is that the supplies provided by the Appellant were not insurance transactions.'

Issue two – first limb – insurance agent or broker

34. The FTT concluded that the Appellant was neither acting as an insurance agent nor insurance broker because it was not in the business of bringing together potential clients and insurance companies for the provision of insurance. It provided its reasons at [63]-[64]:

'63. Even if we are wrong about that we have grave doubts as to whether or not the Appellant is an insurance agent or broker. Simply put, the Appellant does not, in our judgment, possess the "essential characteristics" of an insurance agent or broker. It is not in the business of putting insurance companies in touch with potential clients. There can be little doubt that the Appellant acts as an agent for its customers. However, even if it could be argued that its actions in instigating a claim against its customers' insurers (or former insurers) could be characterised as "putting in touch" it would still be the case that the customers are already or have already been clients of the insurance companies in question. They are not potential clients, but existing or former clients.

64. The Appellant also argues that it is providing the services of an intermediary between the client and the insurance company. It says it does this because it provides "*assistance in the administration of [contracts of insurance or reinsurance], including the handling of claims*" and "*the collection of premiums*" [Note 1 to Group 2 of Sch 9 of the VATA]. It says that it administers the PPI policy by assessing (we assume before the contract of insurance is entered into) whether the policies are suitable or reviewing (we assume at a point after the contract of insurance is entered into) whether they are suitable and then collects the premium (a negative amount). As we have already set out elsewhere in this decision we think that to describe what the Appellant does as assessing or reviewing the insurance needs of its customers is to mis-characterise the service that it provides. The focus of the Appellant's service is to make a claim for compensation on its customers' behalf. In order to do that it reviews the customers' circumstances that existed at the time that s/he entered into the insurance contract. The Appellant has no other interest in the insurance needs of its customers and does not, for example, search for or make alternative recommendations of insurance as one might expect when an assessment of insurance needs is carried out. Further we cannot agree that the collection of premiums includes the collection of a negative amount. To hold so would do violence to the clear meaning of the words used. Collection refers to the act of 'collecting in'. Insurance premiums (in the context of a contract of insurance) must, in our view, be paid by the assured to the insurer. The premiums may be paid on behalf of the assured by an agent of the assured and collected in by an agent of the insurer. There is simply no part in the transaction for an agent of the assured to collect in a premium. The assured's agent may request the return of premia paid or may collect in and hold monies paid out to the assured pursuant to a claim – but that is not the same as collecting in the premium.'

Issue two – second limb – related services

35. The FTT gave reasons for further deciding the Appellant's services were not related to insurance transactions at [67]-[70]:

'67. The insurance transaction in question in this case [can], in our judgment, is the entering by customers of the Appellant into the PPI contract. The Appellant argues that there is a close nexus between that original transaction and the services that the Appellant provides (which it describes as the assessment of insurance, a refund of premium and if appropriate the termination of the transaction). We do not agree with that contention for the following reasons.

68. First, there is the fact that in very many of the cases that the Appellant deals with there will be, at the time the claim is intimated, no continuing obligation on the part of either the assured or the insurer. This is because of the nature of the insurance provided. It is helpful to revisit this here. The assured will have taken on a loan and at the same time "purchased" payment protection insurance to provide cover in the event that the assured is unable to make repayment of the sums borrowed for specified reasons. The insurer's obligation is likely to have been extinguished with the repayment of the loan. We do not think that an obligation to return premia following a claim for rescission on the part of the assured which renders the contract *void ab initio* represents the sort of obligation that Jacob J had in mind in *Century Life*. This is not least because if the fiction created under English law in such situations, i.e. that the original insurance contract is treated as never having existed, was followed to its logical conclusion then there would be no original insurance transaction in relation to which a nexus could be established. The fact that in the present case there are rarely continuing obligations relating to the original insurance contract by the time that the Appellant is involved, in our view, sufficiently distinguishes the present circumstances from those that existed in *Century Life*.

69. Secondly, whilst it can be argued that checking that the policy complies with regulation points to the service being intimately related to the original insurance transaction; for the reasons that we have already set out, we think that to describe the services provided by the Appellant as the "assessment of insurance" is a mis-characterisation of the services provided by the Appellant. The Appellant is engaged in the making of claims for compensation on behalf of victims of the PPI scandal and to the extent that it checks if the policy complies with regulation (in other words checks the suitability) those checks are ancillary and incidental to the main service that it provides.

70. We are, therefore, of the view that the Appellant's services are not related to the original insurance transaction.'

Grounds of Appeal and issues to be determined

36. The Upper Tribunal granted permission to appeal on two grounds – that the FTT erred in law in concluding from the facts that it had found that the services the Appellant supplied were neither:

i) exempt from VAT on the basis that they were insurance transactions (Ground 1); nor

ii) exempt from VAT on the basis that they were supplied by a broker, agent or intermediary and were related to insurance transactions (Ground 2).

The Appellant's submissions

37. Mr Cordara QC, on behalf of the Appellant, argued that: (i) the Appellant's supply to its customers involved the procurement of an insurance transaction in the shape of the cancellation of the policy (Ground 1) or (ii) the Appellant was acting as an insurance agent and providing a service related either to (a) the original transaction (inception) of the PPI or (b) the transaction that cancelled the PPI (Ground 2).

Ground 1 – cancellation of the original policy is an insurance transaction

38. Mr Cordara QC submitted that the Appellant's supplies were exempt insurance transactions for the purposes of Article 135(1)(a) of the PVD because the cancellation of the original PPI policy was an integral and necessary pre-cursor to the return of the premiums paid such that the nature of the Appellant's transactions, their commercial reality and economic purpose, was the cancellation of PPI and the return of the premiums paid in respect of the PPI. Further he submitted that cancellation of insurance is as much an insurance transaction as the original provision or procurement of the insurance.

39. He submitted that no supply by the Appellant occurs unless or until the premium is agreed to be or is returned (which also defines the consideration). In essence, the Appellant makes the supply of arranging, or procuring, the return of the premium. The insurance is terminated in line with the aim of the FOS of restoration to pre-insurance status. Commercial common-sense dictates that, with the repayment of the premium, no live insurance could remain – nor does it on the facts. The two are indissociable. No insurer would stay on risk after repaying the premium, hence cancellation is made a condition of settlement of the claim. The fact that certain polices may have terminated long before the Appellant becomes involved is irrelevant if they are all being terminated ab initio. Therefore, cancellation of the insurance policy is fundamental to settlement of the claim and a necessary part of the commercial reality and economic purpose of the transaction.

40. Mr Cordara QC therefore argued that the cancellation, termination or extinguishment of an insurance transaction constitutes an 'insurance transaction' within article 135(1)(a) of PVD. He had originally relied upon the principle in *Lubbock Fine v HMRC* [1994] STC 101 ('*Lubbock Fine*') in support of this proposition (as noted by the FTT at [44] to have been common ground) by reference to its ratio that 'a change in the contractual relationship, such as termination of the lease for consideration, can constitute transactions which are exempt.'

41. However, before us he relied far more on what the Court of Justice of the European Union ('CJEU') said in *CSC Financial Services v Commissioners of Customs and Excise* [2002] STC 57 ('*CSC*'), in which the concept of negotiation was under consideration in the context of Article 135(1)(d) – the exemption for financial services. The CJEU in *CSC* stated by way of example of its application, that exempt financial services "transactions" in Article 135(1)(d) include "transactions liable to create, alter or extinguish parties' rights and obligations in respect of securities": see [33].

42. Mr Cordara QC submitted that the CJEU cases which deal with the limits of 'insurance transaction' include: Case C-349/96 *Card Protection Plan Ltd v Customs*

and Excise Comrs [1999] STC 270 ('*Card Protection Plan*'); Case C-240/99 *Re Försäkringsaktiebolaget Skandia* (*publ*) [2001] STC 754*,('Skandia');* Case C-8/01 *Taksatorringen v Skatteministeriet* [2006] STC 1842 ('*Taksatorringen');* Case C-224/11 *BGZ Leasing sp z oo v Dyrektor Izby Skarbowej w Warszawie* [2013] STC 2162 ('*BGZ Leasing*'); and Case C-40/15 *Minister Finansów v Aspiro SA* [2016] STC 1255 ('*Aspiro').*

43. However, he submitted that these authorities only address the circumstances of the *procurement* of insurance. In none of those cases (whichever way they went on the facts) was anything said as to whether amendments or cancellations to insurance transactions could themselves be insurance transactions.

44. Mr Cordara QC submitted that no case has yet considered the question of whether a transaction consisting of an amendment or cancellation of an insurance is itself an insurance transaction. There is no reason to believe that it is not: it is a transaction in the generic sense in that it involves a 'reciprocal agreement' between parties and for VAT purposes that is enough.

Ground 2 – first limb - insurance agent

45. Mr Cordara QC accepted that the Appellant was not acting as an insurance broker but submitted that it was acting as an insurance agent. He submitted that the Appellant is an 'insurance agent' within the meaning of the PVD when it acts as agent of an insured, making a claim for compensation in the nature of a request for the return of premium based on the inappropriate characteristics of the insurance policy, leading to a negotiation which results in the policy being terminated and a refund of the premium.

46. He submitted that the phrase 'insurance agent' in the PVD has been repeatedly construed to cover any entity that has an agency role operating between insurer and insureds (with both of whom the Appellant is in direct touch). The CJEU authorities relied upon by HMRC are not of assistance, since none of them applies to supplies by an agent to the insured, rather they focus on agents of the insurer.

47. Mr Cordara QC further submitted that there is no additional requirement that the Appellant be facilitating new insurance cover. He submitted that there are powerful grounds both legally and practically not to affirm the FTT's 'fresh introduction' approach to the concept of an 'insurance agent'.

Ground 2 – limb 2 - related services to an insurance transaction

48. Mr Cordara QC submitted that as a matter of ordinary language and commercial common sense the Appellant's services are related to both the original insurance transaction (because of the return of the original premium and/or the ab initio cancellation) and to the new transaction – the refund and termination. He submitted that there was no dispute that what the Appellant did was a 'service' – it was done for a consideration and involved a defined course of action. The question is to what did it *relate*?

49. Mr Cordara QC noted that the FTT accepted at [67] that '[*t*]*he insurance transaction in question in this case …, in our judgment, is the entering by customers of the Appellant into the PPI contract.'*

50. Whether the Appellant's service was one of negotiation for compensation/refund of premium, or one which involved being authorised to cancel, it is clear that it *related* to the original PPI policy as well as being a transaction in its own right, to which the Appellant's service will also be related. The original policy was the repository and focus of the problem. The unwinding, or amendment, of that policy was clearly the desired outcome of the Appellant's service.

HMRC's submissions

51. Mr Singh QC, for HMRC, submitted that the FTT came to the correct conclusion on each of the issues for the correct reasons. On Ground 1, he submitted that the economic purpose of the Appellant's supplies to its customers was that of a compensation claim rather than that of an insurance transaction and that termination of insurance could not constitute an insurance transaction. On Ground 2, he submitted that the Appellant was not acting as an insurance agent because it did not perform the essential nature of that role in that it did not bring together potential clients and insurers for the purpose of providing insurance. He further submitted that the Appellant did not perform related services because there was an insufficient nexus between its activities and the original supply or the later cancellation of PPI.

Discussion

Ground 1

52. We reject the first ground of appeal: we are satisfied that (1) the economic purpose and commercial reality of the Appellant's supplies was not that of an insurance transaction; and (2) there is no CJEU or domestic authority which provides that cancellation of an insurance contract constitutes an insurance transaction; in any event, cancellation of insurance was not the purpose of the Appellant's supplies.

(1) The economic purpose and commercial reality of the supplies were not those of an insurance transaction

53. We agree with the FTT at [54]-[56] of its decision ([34] above) that the economic purpose and commercial reality of the Appellant's supplies was not that of an insurance transaction but making claims for compensation for mis-sold PPI.

54. The correct approach for the objective analysis of a transaction for VAT purposes and determination of its economic purpose was classically expounded by Jonathan Parker LJ in *Tesco plc v Customs and Excise Commissioners* [2003] STC 1561 (CA) at [159].

55. The contractual documents set out at [11]-[23] of the FTT's decision reveal that the economic purpose and commercial reality of the Appellant's contract with its customers was that the Appellant would pursue a claim for compensation on their behalf

for mis-sold PPI. Contrary to the Appellant's contention, the termination of the insurance contracts was not a material part of the purpose.

56. The engagement letter that the Appellant sends out to a prospective customer (see [23] above) tells its customers that the Appellant will be claiming compensation on behalf of them in relation to PPI policies that have been mis-sold to them. The engagement letter does not mention the termination of the PPI Policy.

57. Likewise, the letter of authority sent to the Appellant's customers (see [24] above) only refers to claiming compensation and gives no authority to terminate the PPI policy. The Appellant's terms and conditions (see [25] above) do not mention termination or cancellation of the insurance contract.

58. The first time cancellation is referred to is right at end of the process, when an offer of settlement is made by the financial institution to the customer in respect of the PPI policy. This is long after the contract between the Appellant and customer is agreed and only if the PPI policy happens to be still in force. Even then, cancellation appears to arise simply because the financial institution (not the Appellant or customer) unilaterally insists on it.

59. Further, in some of the contractual documentation, the nature of the claim made by the Appellant on the customers' behalf included an additional claim for damages of £300 for inconvenience. In an example case, the claim for compensation as pursued to the FOS was not limited to the amount of the premiums plus interest but included £300 "*for the inconvenience caused through the mis-selling of PPI in line with your compensation scheme*". This underlines that it was a claim for compensation that was being made, not the cancellation of an insurance transaction.

60. It is also significant that compensation is sought from the financial institution that mis-sold the PPI policy, not the underlying insurer with which the insurance was placed. Even though we are unaware of the arrangements between the underlying insurer and the financial institution, the fact that compensation is sought from and paid by the financial institution indicates that such compensation has been calculated by reference to the premiums that were paid rather than being an actual return of premiums as a consequence of the termination of the policy with the insurer.

61. We have concluded that the economic purpose and commercial reality of the supplies by the Appellant was not the termination of PPI policies but was the claiming of compensation from financial institutions that had mis-sold such policies. That disposes of this ground of appeal. Nonetheless, we go on to consider the Appellant's argument that the CJEU's judgment in *CSC* is authority for the proposition that cancellation of insurance is capable of constituting an insurance transaction.

62. We also reject this argument. There is a wealth of authority on the meaning of an exempt 'insurance transaction' for the purposes of the PVD and its predecessor. In order to constitute an insurance transaction, the CJEU has consistently held that an insurer or procurer of insurance must agree to provide indemnity for risk of loss in return for the payment of a premium by the insured.

63. In *Card Protection Plan*, Advocate General Fennelly stated that: "*The essentials of an insurance transaction are, as generally understood, that one party, the insurer, undertakes to indemnify another, the insured, against the risk of loss (including liability for losses for which the insured may become liable to a third party) in consideration of the payment of a sum of money called a premium: it is the giving of the indemnity that constitutes the insurance and, thus, the supply of the service*" [34]. This statement was approved (and paraphrased) by the CJEU at [17] "…*as the Advocate General states in para 34 of his opinion, the essentials of an insurance transaction are, as generally understood, that the insurer undertakes, in return for prior payment of a premium, to provide the insured, in the event of materialisation of the risk covered, with the service agreed when the contract was concluded*".

64. This has been repeated throughout the authorities including in *Skandia*, at [41] and in *BGZ Leasing* at [58] and [66].

65. There does not need to be a direct contractual relationship between the insurer and the insured in order for there to be an insurance transaction. However, the authorities provide that there must still be a customer who obtains the benefit of insurance cover in order for there to be an insurance transaction.

66. The most recent authority on the meaning of an insurance transaction from the CJEU is in *Aspiro* where the court restated the principles at [22]-[25]:

"22. As regards, in the first place, insurance transactions, the essentials of such transactions are, as generally understood, that the insurer undertakes, in return for prior payment of a premium, to provide the insured, in the event of materialisation of the risk covered, with the service agreed when the contract was concluded…

23. The court has stated that the expression 'insurance transactions' covers not only transactions carried out by the insurers themselves and, is, in principle sufficiently broad to include the provision of insurance cover by a taxable person who is not himself an insurer but, in the context of a block policy, procures such cover for his customers by making use of the supplies of an insurer who assumes the risk insured. However, such transactions necessarily imply the existence of a contractual relationship between the provider of the insurance service and the person whose risks are covered by the insurance, that is to say, the insured party (see judgment in *Taksatorringen*, paras 40 and 41).

24. However, in the present case, a provider of services such as Aspiro does not itself undertake to ensure that the insured person is covered in respect of a risk and is not connected in any way to the insured person through a contractual relationship.

25. Consequently, even though the claims settlement service at issue in the main proceedings, such as it is described by the referring court, is an essential part of an insurance transaction in that it includes, in the present case, the determination of liability and the amount of damage, and the decision to pay or refuse compensation to the insured person, it must be held that the service—provided moreover to the insurer—does not constitute an insurance transaction, within the meaning of art 135(1)(a) of the VAT Directive.''

67. The Appellant's transactions do not result in any customer obtaining the benefit of insurance cover. In the Appellant's case, the essentials of an insurance transaction

are not present. The Appellant was not indemnifying its customers against the risk of any loss, either directly or, as in *Card Protection Plan*, indirectly through an insurer. The Appellant's services are not insurance transactions on the basis of the test expounded in *Aspiro*. The Appellant does not itself undertake to ensure, either as an insurer or through procurement of insurance from an insurer, that any insured person is covered in respect of any risk.

68. Therefore, there was no insurance transaction and the FTT was correct in giving its reasons at [54]-[56] for finding so.

(2) There is no CJEU nor domestic authority which provides that cancellation of an insurance contract constitutes an insurance transaction

69. The Appellant argues that the CJEU and domestic authorities only address the procurement or provision of insurance as constituting insurance transactions but Article 135(1)(a) of the PVD does not confine insurance transactions to such circumstances. It is submitted that the fact that there is no authority on the alteration or cancellation of insurance transactions does not limit the definition but merely represents the nature of the cases that have been litigated.

70. As referred to above, Mr Cordara QC effectively abandoned reliance on the principle in *Lubbock Fine* which he had relied upon before the FTT. The FTT rightly concluded that the Court in *Lubbock Fine* did not decide that the surrender of a lease was an exempt letting of immovable property *because* it amounted to a termination. It was because the surrender itself had the characteristics of an exempt letting of immovable property, and therefore it followed that it ought to be exempt. Applying *Lubbock Fine* to the Appellant's case means that the Appellant would have to show that its services, which may have the effect of terminating insurance contracts, are exempt because they have the characteristics of an insurance transaction as outlined by the CJEU in *Card Protection Plan*, *Skandia* and *Aspiro*. As we have already stated, they do not.

71. Mr Cordara QC relied on the CJEU's decision in *CSC* in which the CJEU stated that 'transactions in securities' meant "*transactions liable to create, alter or extinguish parties' rights and obligations in respect of securities*" [33]. His argument, by analogy, is that the concept of "*insurance transactions*" in Article 135(1)(a) includes the extinguishment (or cancellation or termination) of insurance transactions.

72. However it is important to recognise that *CSC* concerned the proper interpretation of 'transactions in securities' under Article 135(1)(f) of the PVD rather than 'insurance transactions' in Article 135(1)(a). They have very different wording.

73. As the Court in *Aspiro* stated at [27]-[29]:

"27. That finding is not undermined by the argument, made by Aspiro and the Polish government, that it is appropriate to align the treatment of insurance transactions for the purpose of VAT with the treatment applicable to financial services. According to that company and government, since claims settlement services are a key element of the business of providing insurance, while constituting a distinct whole, they should, as with the solution adopted for

financial services, benefit from the exemption laid down in art 135(1)(a) of the VAT Directive…

28. In that regard, it is true that the court has held, in a judgment concerning financial institutions, that if the services provided, viewed broadly, in that case certain IT services, form a distinct whole and fulfil the specific, essential functions of the financial services described in points (d) and (f) of art 135(1) of the VAT Directive, they benefit from the exemption laid down in that provision (see, to that effect, judgment in SDC, para 66).

29. However, the court has held that the analogy with financial services cannot be applied in relation to insurance transactions, emphasising the difference in wording between art 135(1)(a) of the VAT Directive, which only refers to insurance transactions in the strict sense, and art 135(1)(d) and (f) of that directive, which refers to transactions 'concerning' or 'relating to' certain banking operations (see, to that effect, judgment in *Taksatorringen*, para 43)".

74. We do not consider that there is any support in the authorities, including *CSC*, for the proposition that mere cancellation of an insurance policy, or the procurement of such a cancellation, is an 'insurance transaction' within the meaning of Article 135(1)(a) of the PVD.

75. For all these reasons, the FTT did not err in its decision on whether these were 'insurance transactions' within the meaning of Article 135(1)(a) of the PVD and Ground 1 is dismissed.

Ground 2

76. The FTT found that the Appellant was neither an insurance agent (first limb) nor performing related services to an insurance transaction (second limb).

The first limb - an insurance agent?

77. The Appellant has disavowed any claim to be an "insurance broker". Therefore, the first limb of this ground only requires consideration of whether the Appellant is an "*insurance agent*" within the meaning of Article 135(1)(a) of the PVD.

78. We begin by considering Directive 77/92/EEC (the 'Insurance Directive'), because it is repeatedly referred to and relied upon by the Advocates General and the CJEU in a number of the cases on the meaning of 'insurance brokers' and 'insurance agents' for the purposes of the VAT insurance exemption. The Insurance Directive was not a VAT directive but a directive promoting the free movement of insurance brokers and insurance agents. It is no longer in force and was replaced in 2002.

79. It provided the following definitions of insurance brokers and insurance agents:

> "Article 2
>
> 1. This Directive shall apply to the following activities...:
>
> (a) professional activities of persons who, acting with complete freedom as to their choice of undertaking, bring together, with a view to the insurance or reinsurance of risks, persons

seeking insurance or reinsurance and insurance or reinsurance undertakings, carry out work preparatory to the conclusion of contracts of insurance or reinsurance and, where appropriate, assist in the administration and performance of such contracts, in particular in the event of a claim; [an insurance broker]

(b) professional activities of persons instructed under one or more contracts or empowered to act in the name and on behalf of, or solely on behalf of, one or more insurance undertakings in introducing, proposing and carrying out work preparatory to the conclusion of, or in concluding, contracts of insurance, or in assisting in the administration and performance of such contracts, in particular in the event of a claim; [an insurance agent]

(c) activities of persons other than those referred to in (a) and (b) who, acting on behalf of such persons, among other things carry out introductory work, introduce insurance contracts or collect premiums, provided that no insurance commitments towards or on the part of the public are given as part of these operations" [an insurance sub-agent]

80. As Article 2(2) of the Insurance Directive indicates, the activities in Article 2(1)(a), 2(1)(b) and 2(1)(c) above are customarily described in the UK as the activities of an insurance broker, an agent and a sub-agent respectively.

81. In *Card Protection Plan*, the CJEU did not consider the essential activities undertaken by an insurance broker or insurance agent (see [24]). Advocate General Fennelly did, however, and the essence of what he said was later adopted by the CJEU. The Advocate General stated at [32]: "*The authors of the Sixth Directive chose to refer separately to 'insurance agents' and 'insurance brokers', rather than to use a more general term such as insurance 'intermediaries'. In my view, they thereby described persons whose named professional activity comprises the bringing together of insurance undertakings and persons seeking insurance as provided by art 2 of EC Council Directive 77/92.*

82. Likewise Advocate General Saggio in *Skandia* stated at footnote b to [19] of his opinion: "*From these texts it can be seen that, as a general rule, the business engaged in by brokers and agents entails putting insurance companies in touch with potential clients for the purpose of concluding insurance contracts, or bringing insurance products to the attention of the general public or even the collection of premiums. In all cases, however, it is clear that such business is characterised by a direct relationship with the insured*"

83. In *Taksatorringen* the CJEU stated at [44]-[45]:

"44. As to whether such services are 'related services performed by insurance brokers and insurance agents', it must be stated, as the Advocate General has set out in para 86 of his opinion, that this expression refers only to services provided by professionals who have a relationship with both the insurer and the insured party, it being stressed that the broker is no more than an intermediary.

45. With regard to Directive 77 /92, without its being necessary to rule on whether the terms 'broker' and 'insurance agent' must necessarily be construed in the same manner in Directive 77/92 as they are in the Sixth Directive, suffice it to note that, for the reasons stated by the

Advocate General in paras 90 and 91 of his opinion, the activity of an association such as Taksatorringen fails to satisfy the conditions of art 2(1)(a) or 2(1)(b) of Directive 77/92. The assistance in the administration and performance of contracts of insurance referred to in art 2(1)(a) of that directive is in addition to the activities involved in introducing persons seeking insurance and the insurance companies and in preparing and concluding insurance contracts and that referred to in art 2(1)(b) of that directive involves the power to render the insurer liable in respect of an insured person who has incurred a loss".

84. The essential activity of an insurance agent, as confirmed in *Taskatorringen*, is to introduce or put in touch persons seeking insurance and insurance companies. That is their defining activity, what makes them insurance agents, and as a consequence other services that they perform that are related to insurance transactions are made exempt from VAT. The activities set out in Article 2(1)(b) of the Insurance Directive must be "*in addition*" to their essential activity of "*introducing persons seeking insurance and the insurance companies*".

85. The CJEU authorities were considered by the Court of Appeal in *Insurancewide.com Services Ltd v Revenue and Customs Commissioners* [2010] STC 1572 ('*Insurancewide*') upon which the FTT relied in making its decision.

86. In that judgment at [85], Etherton LJ (as he then was) stated the relevant principles in relation to the predecessor to article 135(1)(a) of the PVD - article 13B(a) of the Sixth Directive (77/388/EEC):

> "(3) The exemption for 'related services' under art 13B(a) only applies to services performed by persons acting as an insurance broker or an insurance agent. Although those expressions are not defined by EU legislation, they are independent concepts of Community law which have to be placed in the general context of the common system of VAT.
>
> (4) Whether or not a person is an insurance broker or an insurance agent, within art 13B depends on what they do. How they choose to describe themselves or their activities is not determinative.
>
> (5) The definitions of 'insurance broker' and 'insurance agent' in the Insurance Directive are relevant to the meaning of the same expressions in art 13B(a) to the extent, but only to the extent, that they should be taken into consideration as reflecting legal reality and practice in the area of insurance law. It is not necessary, in order to invoke the exemption in art 13B(a), for the taxpayer to perform precisely the description of activities in art 2(1)(a) or (b) of the Insurance Directive.
>
> (6) On the other hand, the mere fact that a person is performing one of the activities described in art 2(1)(a) or (b) of the Insurance Directive or the definition of 'insurance mediation' in the Insurance Mediation Directive does not automatically characterise that person as an insurance agent or an insurance broker for the purposes of art 13B(a).
>
> (7) It is an essential characteristic of an insurance broker or an insurance agent, within art 13B(a), that they are engaged in the business of putting insurance companies in touch with potential clients or, more generally, acting as intermediaries between insurance companies and clients or potential clients.

(8) It is not necessary, in order to claim the benefit of the exemption in art 13B(a), for a person to be carrying out all the functions of an insurance agent or broker. It is sufficient if a person is one of a chain of persons bringing together an insurance company and a potential insured and carrying out intermediary functions, provided that the services which that person is rendering are in themselves characteristic of the services of an insurance agent or broker"

That is not a description of what the Appellant does.

87. At [87] Etherton LJ also stated:

"For the reasons I have given, I reject the proposition of law advanced by HMRC that neither InsuranceWide nor Trader Media can claim the benefit of the insurance intermediary exemption because they did not have a legal relationship with either the insurer or the insured or the prospective insured. It is sufficient that they were providing services characteristic of an insurance broker or agent, and which were vital to the process of introducing those seeking insurance with insurers, even if they were only part of a chain of such persons".

88. In the subsequent CJEU authority of *Aspiro*, the Advocate General and CJEU focused on two requirements that had to be met for a person to be an insurance broker or agent: (i) a relationship with both the insurer and the insured party, and (ii) performing the core or essential activity of an insurance broker or insurance agent.

89. On (i) the relationship with the insurer and insured party, the Court stated at [38]:

"38. The first of those conditions is met by a service provider such as Aspiro. That service provider is in a direct relationship with the insurance company, since it performs its activities in the name and on behalf of the insurance company, and it has an indirect relationship with the insured party, in the context of the examination and management of claims".

90. On (ii) the essential nature of the activity of an insurance agent, the Court stated at [39]-[41] in *Aspiro*:

"39. On the other hand, as regards the second of those conditions, relating to the services provided by insurance brokers and agents, or their sub-contractors, those services must be linked to the essential aspects of the work of an insurance broker or agent, which consists in the finding of prospective clients and their introduction to the insurer with a view to the conclusion of insurance contracts (see, in particular, judgments in *Taksatorringen*, para 45; *Arthur Andersen*, para 36, and *Beheer*, para 18). As regards a subcontractor, it is necessary for it to be involved in the conclusion of insurance contracts (see, to that effect, judgment in *Beheer*, paras 9 and 18).

40. The settling of claims by and on behalf of an insurer, such as that at issue in the main proceedings, is not linked in any way to the finding of prospective clients and their introduction to the insurer with a view to the conclusion of insurance contracts.

41. It follows that such an activity is not within 'related services performed by insurance brokers and insurance agents', within the meaning of art 135(1)(a) of the VAT Directive"

91. Applying these principles to the facts of the Appellant's case it is manifest that it did not satisfy either of the requirements of an insurance agent: (i) the relationship with the insured and insurer; nor (ii) performing the essential activity.

92. The Appellant was never involved at the stage of a person or customer seeking insurance and has no relationship of any kind, direct or otherwise, with a *potential* insured. It cannot therefore be an insurance agent.

93. The Appellant does not even have a de facto or indirect relationship with the insurer. It has no relationship with the insurer. What it does is threaten the financial institution that sells the insurance with the potential for the involvement of the FOS if it does not pay compensation. That cannot be regarded as a de facto or indirect relationship with the *insurer*. Sending a few letters before claim is not sufficient to establish a de facto or indirect relationship with the financial institution, let alone with the underlying provider of the insurance, with whom the Appellant has no involvement at all.

94. There was no evidence before the FTT nor us of what, if any, involvement the financial institution itself has with the insurer. So there is no evidence for example that the financial institution is required to contact or correspond with the insurer whenever it receives a letter from the Appellant accusing it of mis-selling insurance. Nor was there any evidence before the FTT nor us that the repayment of the premiums for the mis-sold insurance comes from the insurer rather than from the financial institution that mis-sold it. Indeed, the FOS factsheet suggests payment comes from the financial institution. As far as the evidence was presented, the chain of claiming compensation may come to an end at the stage it reaches the financial institution, without the insurer ever being involved.

95. Neither does the Appellant perform the essential activity of an insurance agent set out in [85(7) & (8)] of *Insurancewide*. The Appellant does not undertake the 'essential aspect' of the work of an insurance agent of actively engaging in finding and introducing prospects and insurers. It is not involved at all in "the business of distribution of insurance products". The only sense in which the Appellant 'brings together' an existing or former policyholder with a financial institution is that it engages with such policyholders so that they can complain about and get compensation from the financial institution, which is how the Appellant gets paid.

96. The fact that the authorities consider the agents of an insurer rather than agent of insured does not change the definition of the minimum requirements of an insurance agent. It does not matter whether this applies in relation to the original insurance contract or the later compensation claim, which incidentally may cancel that insurance contract. In any of the circumstances the Appellant does not have a sufficient relationship with insured and insurer and does not perform the essential activity of bringing them together for the sake of providing insurance.

97. For all those reasons, the Appellant is not an insurance agent within the meaning of Article 135(1)(a). The FTT was correct to find so for the reasons it gave at [63]-[64] of its decision. That is sufficient to dispose of Ground 2 and to dismiss the appeal.

Second limb – related services

98. Given our conclusion above that the Appellant is not an insurance agent within the meaning of Article 135(1)(a), it is unnecessary to consider whether its services are "*related*" to insurance transactions. Nonetheless, we do so out of completeness and because the FTT addressed the issue at [67]-[70] of its decision.

99. Even if, contrary to our decision above, the Appellant's services are performed by an insurance broker or insurance agent, they would still have to be "*related*" to insurance transactions – whether the services are related to the initial supply of PPI by the financial institution (on behalf of the insurer) or the later cancellation and compensation claim.

100. We are satisfied that the Appellant's services are not so related.

101. When considering if the Appellant's services are related to the original transaction of the provision of PPI, the Appellant placed reliance on the Court of Appeal's decision in *Century Life*.

102. In *Century Life*, the Claimant, an insurance agent, was acting on behalf of Lincoln Assurance Ltd ('Lincoln') to review the personal pension policies it had sold to see if there had been mis-selling. There was a regulatory obligation on pension companies, imposed by the Securities Investment Board and Personal Investment Authority, to review all personal pensions Lincoln had sold during a particular period to identify those entitled to redress and to provide it. Lincoln outsourced that work to Century Life, which it carried out in Lincoln's name. The Court of Appeal held that ensuring that a policy complied with regulations was intimately related to it [16], and therefore the close nexus [15] required for Century Life's service to be treated as 'related' to the selling of the policy was present.

103. *Century Life* is easily distinguishable from the present case in that there was no regulatory obligation on PPI providers, whether financial institutions or underlying insurance companies, to review the selling of PPI policies for compliance purposes. The close nexus of the kind seen in *Century Life* is therefore not present in the Appellant's case. Even if there had been such a regulatory obligation, the Appellant did not act for any PPI provider, and so its transactions cannot in any event be seen as closely related to their transactions

104. The original insurance transaction has long since taken place by the time the Appellant becomes involved. The customer has already been sold PPI. Whilst the Appellant could say that it is in a chain of persons between the insurer at one end and the customer at the other, that chain does not lead to the provision of insurance to the customer nor to any other insurance transaction. The Appellant's involvement in the chain cannot therefore be regarded as being related to an insurance transaction. The most it could be said to be related to is the manner in which the original insurance transaction took place some time previously.

105. Additionally, little reliance can be placed in any event on *Century Life* given that it preceded all the relevant CJEU decisions on the insurance exemption, save for *Card*

Protection Plan. As Nugee J (as he then was) stated in *Westinsure Group Ltd v HMRC* [2014] UKUT 00452 (TCC) about the decision in *Century Life*: "*…there may be some doubt whether its reasoning, or the result, is consistent with the later decisions. In particular it may be that the activities Century Life was carrying out were not activities characteristic of an insurance agent, but were rather more like the back office activities carried out by ACMC in Arthur Andersen*…" [32].

106. We are also satisfied the Appellant was not providing related services to the later cancellation of the insurance transactions for the reasons set out in relation to Ground 1. There are three further factors pointing against the Appellant having any close nexus with any insurance transactions: 1) the Appellant was never involved in any chain of transactions that led to an insurance transaction; 2) there is no evidence that the chain the Appellant was involved with, of claiming compensation, ever led to the insurer (because it appears the financial institution paid the compensation); and 3) the timing of the Appellant's involvement is not contemporaneous with the insurance transactions but occurs years later.

107. In summary, the services provided by the Appellant of making a compensation claim are not a related service to the original contract of insurance provided at the outset nor the later compensation claim (which may result in cancellation of the insurance contract). The Appellant's connection and services are too remote. If it had been involved in cancelling the original insurance contract then its services may have been related but as we have already decided, when properly analysed, its purpose was to act as an agent for compensation claims rather than to set aside or cancel the original insurance contract.

108. For those reasons, even if the Appellant had been acting as an insurance agent, its services were not related to insurance transactions and the FTT made no error in coming to the same conclusion.

109. This ground of appeal is dismissed.

Disposition

110. The FTT did not err in law in making its decision. The FTT was correct to conclude that the Appellant's supplies to its customers were not insurance transactions, and in the alternative were not services performed by an insurance agent that were related to insurance transactions. The appeal is dismissed.

SIGNED ON ORIGINAL

MR JUSTICE MICHAEL GREEN **JUDGE RUPERT JONES**

UPPER TRIBUNAL JUDGES

RELEASE DATE: 16 August 2021