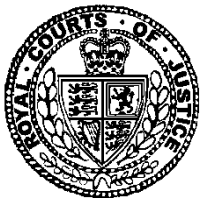

Neutral Citation Number: [2025] EWHC 3401 (Ch)

Case No: CR-2024-001777

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
INSOLVENCY AND COMPANIES LIST (ChD)

IN THE MATTER OF PURITY LIMITED
AND IN THE MATTER OF SECTION 85 OF THE FINANCE ACT 2022
AND IN THE MATTER OF THE INSOLVENCY ACT 1986

Royal Courts of Justice, Rolls Building
Fetter Lane, London, EC4A 1NL

Date: 23 December 2025

Before :

Andrew de Mestre K.C. sitting as a Deputy Judge of the High Court

- -

Between :

THE COMMISSIONERS FOR HIS MAJESTY'S REVENUE AND CUSTOMS	**Petitioner**
- and –	
PURITY LIMITED	**Respondent**

- -
- -

Matthew Parfitt and **Ben Elliott** (instructed by **HMRC**) for the Petitioner
The Respondent was not represented and did not appear

Hearing date: 11 November 2025

- -

JUDGMENT

Andrew de Mestre K.C. :

Introduction

1. On 11 November 2025, I heard the trial of the first ever public interest winding up petition presented by the Commissioners for His Majesty's Revenue and Customs ("**HMRC**") using their powers under section 85 of the Finance Act 2022 ("**FA22**"), a provision which, in broad terms, permits HMRC to present a winding up petition against the promoter of a tax avoidance scheme where it appears to an officer of HMRC that it is expedient in the public interest, for the protection of the public revenue, for the promoter to be wound up.

2. The Petition in these proceedings against Purity Limited ("**Purity**") was presented on 22 March 2024, served on 28 March 2024, and advertised on 22 April 2024. In June 2024, Purity applied for permission to bring a judicial review of the decision of HMRC to present the Petition, and it subsequently applied for a stay of the Petition pending the determination of this application for judicial review. Ultimately, both of these applications were dismissed, and the Petition was set down for trial over six days. The evidence before me included statements made on behalf of Purity not just in opposition to the Petition but also in relation to the failed judicial review proceedings and application for a stay.

3. In the end, Purity was not represented at the hearing and did not appear before me because it was placed into creditors' voluntary liquidation on 15 May 2025 and the liquidators had indicated prior to the hearing that they did not oppose the petition. HMRC was represented at the trial by Matthew Parfitt and Ben Elliott. I am grateful to them for their assistance with the issues arising on this new jurisdiction.

4. At the conclusion of the hearing and having been satisfied that Purity was a "*relevant body*" within the terms of s.85 of FA22 and that it was just and equitable that it should be wound up, I made the relevant order to achieve that. In the light of the novel nature of these proceedings and the submissions to me by Counsel for the Petitioners as to the proper scope of s.85, I indicated that I would put my reasons in a short written judgment. These are my reasons for making the winding up order.

The statutory scheme

5. Sections 85(1)-(4) of FA22 provide as follows:

> "***85 Winding-up petitions by an officer of Revenue and Customs***
> *(1) Subsection (2) applies where it appears to an officer of Revenue and Customs that it is expedient in the public interest, for the purposes of protecting the public revenue, that a relevant body should be wound up.*
>
> *(2) The officer may present a petition to the court for the winding up of the body.*
>
> *(3) On such a petition, the court may wind up the body if the court is of the opinion that it is just and equitable that it should be wound up.*
>
> *(4) In this section—*
> *"court" means—*
> *the court having jurisdiction for the purposes of the Insolvency Act 1986…*

> ...
> *"indirect tax" has the same meaning as in Schedule 17 to F(No.2)A 2017 (disclosure of tax avoidance schemes: VAT and other indirect taxes);*
> *"relevant body" means a body, including a partnership, that—*
> *(a) carries on a business as a promoter within the meaning of Part 5 of FA 2014 (promoters of tax avoidance schemes) as if, in sections 234 and 235 of that Part, references to—*
> *(i) "tax" included value added tax and other indirect taxes, and*
> *(ii) "tax advantage" included a tax advantage as defined for value added tax in paragraph 6, and for other indirect taxes in paragraph 7, of Schedule 17 to F(No.2)A 2017;*
>
> *(b) is connected to a body within paragraph (a) (within the meaning of section 1122 of CTA 2010 ("connected" persons)).*"

6. It will be apparent therefore that HMRC's power to present a petition under s.85 arises where the following conditions are met:

   6.1. The subject of the petition is a "*relevant body*", the meaning of which is derived from Part 5 of the Finance Act 2014 which contains the "*Promoters of Tax Avoidance Schemes*" ("**POTAS**") regime.

   6.2. It appears to an officer of HMRC that it is expedient in the public interest, for the purposes of protecting the public revenue, that the relevant body should be wound up.

7. At the hearing of the petition, the court may wind up the body "*if the court is of the opinion that it is just and equitable that it should be wound up*" (s.85(3)). This is the same test set out in section 122(1)(g) of the Insolvency Act 1986, and which applies to public interest petitions under s. 124A(1) of that Act. I see no reason why the authorities which explain the approach to such petitions - such as Re PAG Asset Preservation Limited [2020] EWCA Civ 1017 at [39]-[40] to which I was referred – should not also be applied to petitions under s.85 of FA22. This reflects the conclusion of Deputy ICC Judge Agnello KC when dismissing the stay application referred to above, a decision reported at [2024] EWHC 2695 (Ch) (with the relevant conclusions on this issue being at [14]-[18] in particular).

8. It is therefore for the Court to judge whether it is just and equitable for the relevant company (or partnership) to be wound up and, in reaching its conclusion, the Court will consider the totality of the evidence before it and balance any competing reasons why the company should or should not be wound up. It is also necessary for the Court to be able to identify for itself the aspects of the public interest which would be promoted by the making of a winding up order.

9. The principal legal question addressed by HMRC at the hearing was whether or not it must demonstrate that the relevant arrangements promoted by the subject of the petition do not work and therefore that there has (definitively) been a loss to the public revenue. This question was not strictly in issue on the petition relating to

Purity because, for the reasons explained further below, HMRC has already established conclusively that Purity has a substantial liability to HMRC arising from the failure of its tax-related arrangements. As to this, I was told that it is relatively unusual for a promotor of tax avoidance schemes to incur such a liability but, here, as Purity did not just promote the arrangements but also operated them, it had incurred a large PAYE and NIC liability. However, as the scope of s.85 is an issue which may arise on a future petition and as the argument was explored before me, I will explain briefly why I agree with the submissions made by HMRC that s.85 does not require it to establish that the relevant arrangements do not work or that the relevant promoter itself has a liability to tax as a result of the arrangements.

10. The starting point is that the language used in s.85 does not include the existence of a tax liability (on the part of the promotor or otherwise) as a pre-requisite either of the ability of HMRC to present a petition or of the jurisdiction of the Court to make a winding up order. Rather, the more general wording described above is used and it is left to the Court to determine, on the evidence before it, whether it is just and equitable to wind up the subject of the petition. Of course, it will often be the case that HMRC does allege in the petition that the tax arrangements are ineffective or even that the relevant body has itself incurred a tax liability (as here), but it is not, it seems to me, a requirement.

11. This reflects the fact that the power in s.85 is directed at those who promote tax avoidance schemes and the POTAS regime contains a wide range of provisions breach of which could result in it being just and equitable to wind up the promoter. Moreover, the more general nature of the jurisdiction under s.85 can be seen from the consultation process prior to its enactment.

12. HMRC's consultation paper dated 23 March 2021 and entitled "*Clamping down on promoters of tax avoidance*" included the following:

    12.1. The policy objectives of the proposal to introduce s.85 included the ability to close down companies at the earliest point possible where it has been shown that they are not operating in the public interest. This could include "*companies that do not comply with their obligations under the anti-avoidance regimes and/or those that are selling tax avoidance schemes where HMRC have a reasonable belief that the scheme will not deliver the tax benefits promised…The government also wants to ensure that directors operating these companies cannot set up similar operations using a new* company": ¶4.1.

    12.2. The proposed legislative changes would strengthen HMRC's ability to tackle those who promote tax avoidance if it was possible to wind up companies on a wider range of grounds. The examples given included "*a significant breach of the anti-avoidance legislation*" and a director's history of closing down companies to avoid paying tax debts: ¶4.17.

    12.3. The Consultation Paper set out further examples of what would constitute "*significant breaches"* at ¶4.29. Tellingly, these included a range of matters related to the POTAS regime and were not limited to the existence of a tax liability itself. The Consultation also explained at ¶4.32 what other factors

might be relevant and identified prior involvement by the company in other schemes or its directors having a history of closing down companies to avoid paying tax.

13. The outcome of the consultation – set out in a document dated 20 July 2021 and entitled "*Clamping down on promoters of tax avoidance: summary of responses*" - reiterated the fact that the target of the proposed legislation included companies "*that do not comply with their obligations under the anti-avoidance regimes*" as well as those selling tax avoidance schemes that will not deliver the tax benefits promised (at ¶1.21).

14. Therefore, the language of s.85 itself, the nature of the POTAS regime, and the background materials make it clear, in my view, that s.85 is directed at a range of potential circumstances and not just a case in which HMRC can assert and prove that the relevant arrangements were not effective.

15. To the extent however, that HMRC does take the latter course and the promoter argues that the arrangements are effective (and there are other proceedings on foot to determine that matter, such as statutory appeals before the FTT), the Court managing the petition proceedings will be able to determine how the various proceedings interact with each other. This is, in fact, what happened in this case when the stay application referred to above was heard and determined by Deputy ICC Judge Agnello KC (see particularly [2024] EWHC 2965 (Ch) at [32]-[36]).

The background and nature of Purity's arrangements in this case

16. I can take the relevant background to the Petition and the description of the arrangements promoted by Purity from the very helpful and thorough skeleton argument served on behalf of the Petitioner.

17. Purity was incorporated on 22 May 2019 but was dormant until April 2022. Purity's sole shareholder after 7 March 2022 was Rebecca Waterfield ("**Ms Waterfield**"). She is also one of its three current directors, having been appointed on 4 March 2022. The other directors are Mr Cian Dafe (appointed 16 November 2020) and Mr Jonathan Pearson (appointed 24 January 2022). Ms Waterfield's evidence was that she did not know that she was Purity's sole shareholder, or how she acquired the shares.

18. Ms Waterfield is a cousin of David Couch ("**Mr Couch**"). Mr Couch is a partner with his sister in a business called David Couch Consulting, based on the Isle of Man. Ms Waterfield previously acted as a director for another company in which Mr Couch was involved called Alpha Republic Limited ("**Alpha Republic**"). Mr Couch recommended Ms Waterfield for that directorship. Alpha Republic's business was materially similar to the Company's business (which is a ground of the Petition as explained below).

19. Purity was an umbrella company whose business involved acting as the employer for individual workers whose work was arranged by employment agencies. Around 10% of Purity's employees chose to be paid entirely via PAYE and paid a relatively small fee to Purity for them to administer their salary in this way. This part of its business was uncontroversial from HMRC's point of view.

20. Around 90% of the employees took advantage of a scheme promoted by Purity which involved the employee being paid a salary in line with the national minimum wage, with the remainder provided as an "advance" to the employee. I was referred to examples where the hourly entitlement of the employee was, say, £50 per hour but only some 20% of this was paid as salary with the remainder being the "advance" (after Purity's fees). Purity said that this advance was a long-term interest-bearing loan which the employee was liable to repay in the future. This combination of salary and advance constitutes the "**Arrangements**" being promoted and operated by Purity. It was no doubt hoped by Purity that payroll taxes would be avoided on the bulk of the money received by its employees on the basis that it considered loans such as these made by an employer to an employee are not taxable. HMRC submitted that this provided a double benefit: not just that employees would get more money in their pockets, but that Purity could take a bigger cut for itself, because much less tax was being paid than under the wholly-PAYE alternative.

21. HMRC's evidence was that it did not know the full extent of Purity's trading, but in a single calendar year to August 2023 it made loans of £45m. HMRC calculated that, at a 45% marginal tax rate, £20,299,254 of tax would have been payable on these loans.

22. Purity charged substantial fees to the employees who received advances. Its charge for its uncontroversial PAYE umbrella services was £17 per week. By contrast, its charge for employees on the Arrangements was 16-20% of the gross contract value.

23. Some months after Purity began operating the Arrangements, it established what it called an "Employee Motivation Scheme" (the "**EMS**") which was a pooled investment arrangement operated from Dubai using part of Purity's earnings from the Arrangements. HMRC described the terms of the EMS as opaque although its apparent purpose was to provide a pot from which the employees' "loans" could, eventually, be repaid (but on a discretionary basis).

24. HMRC was sceptical about the EMS. Purity paid in only £470,000 to the EMS and the chances of this sum growing sufficiently to meet the repayment obligations on just the £45m of loans the Company made in the year to August 2023 was, HMRC submitted, vanishingly small. The annual returns which HMRC had calculated were necessary to turn this £470,000 into £45 million were, on any view, totally unrealistic and unattainable. As a result, the EMS could provide no comfort that the loans to employees would be repaid even if it remained available for that purpose.

25. Purity was issued with a Stop Notice under the POTAS regime in November 2023 and ceased its business as a result in early 2024. The sequence of events after the Petition was presented is set out in paragraph 2 above.

Grounds of the Petition

26. HMRC advanced three grounds on which it was said that Purity should be wound up:

    26.1. First, that Purity's operations resulted in a substantial loss of tax to the detriment of the public revenue.

26.2. Secondly, that Purity has demonstrated a lack of transparency both to its employees and to HMRC.

26.3. Thirdly, that Purity represented a continuation of the business of Alpha Republic which that company had abandoned following an investigation by HMRC.

27. I am satisfied that HMRC has made out each of these grounds and that, whether looked at individually or taken together, they justify the conclusion that it is just and equitable that Purity be wound up in the public interest.

(i) Detriment to the public revenue

28. The principal ground relied on by HMRC was that it had been conclusively established that Purity was subject to substantial tax liabilities as a result of the Arrangements. Those liabilities arise because HMRC had issued PAYE and NIC determinations against Purity and, although these were appealed to the FTT, Purity has since notified the FTT that the appeals were withdrawn. The consequence of this appeal but subsequent withdrawal under the statutory scheme (contained in s.54 of the Taxes Management Act 1970 ("**TMA**")) is that HMRC and Purity are now in a position as if the FTT had determined the appeal on its merits and had upheld the PAYE determinations and NIC decisions without variation.

29. Thus, the making and withdrawing of an appeal gives rise to a statutory deeming or double deeming (through s.54(4) and then s.54(1) of the TMA) the effect of which is that Purity is liable for the PAYE and NIC identified by HMRC and the Arrangements were ineffective to avoid tax.

30. This is sufficient to establish a substantial detriment to the public revenue by reason of the Arrangements. Purity did collect in the employee's income from which the amounts of PAYE and NIC ought to have been (and could have been) deducted but it engaged in the failed scheme instead. I note also that it is now highly unlikely that these liabilities will ever be paid. Purity is insolvent, the EMS referred to above (even if it is available to a liquidator of Purity, which is, at best, uncertain) is manifestly inadequate to provide a fund from which the liabilities can be discharged, and it is far from clear that the employees could be pursued for the tax which was not paid (or that if they could be, that they would have the funds available in any event). It is self-evidently in the public interest for a company engaged in a tax avoidance scheme such as the Arrangements to be wound up and there is no competing interest to counterbalance this.

31. Counsel for HMRC also explained at the hearing why, even absent this statutory deeming, the Arrangements can be shown to give rise to the PAYE and NIC liabilities as determined or assessed by HMRC. Given the conclusion set out above, it does not seem to me to be necessary to deal in any detail with these arguments. I should say however, that, in so far as necessary, I agree with and accept the submissions for HMRC that, both as a matter of law and taking into account the reality of the arrangements, the amount of the salary and the amount of the loan received by an employee were earnings from employment on which income tax and NICs were chargeable. The analysis put forward by HMRC, which I accept, was that:

31.1. Each employee of Purity was entitled to receive the full amount of their assignment rate, less specified deductions for (small) fees and tax/NICs.

31.2. This entitlement was never sacrificed (and in correspondence, Purity stated that the arrangement was not a salary sacrifice arrangement);

31.3. The employees participating in the Arrangements chose to take part of their salary entitlement in the form of a loan.

31.4. However, this was entirely their choice and (a) they remained entitled to their full salary and (b) they could terminate use of the loan arrangement and begin receiving their full salary once again. As to this HMRC was able to identify at least one case where an employee decided to leave the loan arrangements and was immediately paid her full salary (with income tax and NICs deducted).

32. I note also that HMRC had other potential arguments available to it, such as that the loans were shams or otherwise unenforceable as there was no expectation of repayment. However, as these arguments were not developed before me, I do not need to consider them.

(ii) Lack of transparency

33. In the course of the hearing, I was shown some of the materials which are available to HMRC and which illustrate how the Arrangements were described to employees of Purity. I was also shown correspondence in which Purity told employees how to respond to any inquiries from HMRC. These reveal that:

33.1. Employees received a variety of inconsistent explanations when they asked about the nature of the Arrangements. The examples found by HMRC indicate serious problems, and employees seem to have been misled or misinformed about the Arrangements.

33.2. Purity was keen to ensure that its employees did not assist HMRC or provide it with information in relation to the Arrangements. To achieve this, employees were given stock letters to stonewall HMRC and hamper its investigations, and the company suggested to one employee that it would cease being able to "help" him "now or in the future" if he gave information to HMRC without consulting Purity.

34. The legislative materials I have referred to above make it clear that one of the targets of s.85 was companies which were involved with mis-selling tax avoidance schemes. The materials which HMRC have put together demonstrate that this vice was present with Purity and it is therefore in the public interest for Purity to be wound up to provide a clear censure of this type of conduct.

(iii) Continuation of business of Alpha Republic

35. I am satisfied that HMRC's evidence makes good the case that Purity was the continuation of a scheme which was previously operated by Alpha Republic. As to this, it appears that (i) a number of the same individuals or entities were involved in both including Ms Waterfield, Mr Couch and a back-office service provider, Omnificent; (ii) a number of employees participated in both schemes; and (iii) the

same KC appears to have been used by Alpha Republic and then Purity (with it likely that essentially the same advice was given to each).

36. The approach adopted in relation to Alpha Republic is also strikingly similar to that of Purity. Shortly after Alpha Republic was publicly identified as a promotor of a tax avoidance scheme it closed its business (as Purity has done). It then entered creditors' voluntary liquidation very shortly before Purity and, like Purity, it has abandoned its appeals against very large tax determinations (over £26 million).

37. The legislative materials make it clear that another of the targets of s.85 was companies which were involved with continuing the tax avoidance business which had previously been carried on by another entity, particularly where that latter entity had been closed down to avoid payment of a tax liability. This is what appears to have happened here with Alpha Republic and then Purity and it is in the public interest to address this vice by winding up Purity.

Relevance of existing creditors' voluntary liquidation

38. The final issue which I have to consider is whether I should order the compulsory liquidation of Purity given that it is already in creditors' voluntary liquidation and in the hands of office-holders.

39. I was referred to the decision in Re Alpha Club Ltd [2002] EWHC 884 in which the company was wound up in the public interest even though it was in voluntary liquidation. The Court identified a number of factors which were relevant to that decision including the need for a full investigation by an independent officeholder; the desirability of sending a message that the type of business being conducted was not acceptable; and the availability of wider powers to a compulsory liquidator where suspected offences were involved.

40. I consider that these considerations apply with similar force in the case of Purity, particularly the need to make it clear to promotors of tax avoidance scheme that they can and will be made subject both to scrutiny by the Court on a winding up petition and, if winding up is justified, to the full powers available to a compulsory liquidator. These powers cannot be avoided by the simple expedient of stopping the company's business, appointing a voluntary liquidator (who may well not have the funds to investigate historic events), and moving on.

41. It is also relevant and important, in my view, that the Company Directors Disqualification Act 1986 makes provision (in s.8ZF) for compulsory disqualification if a relevant application is made by HMRC in respect of a director or shadow director of a company wound up under s.85 of FA22. It is plainly desirable that this provision is available where the grounds for such a winding up are present and it would be wrong for the effect of this statutory provision to be avoided by a voluntary liquidation.

42. For these reasons I was satisfied at the hearing that a compulsory winding up order should be made.