RESTORATION REFUSAL - Vehicle - Appellant disabled - Importing cigarettes and tobacco 5 times guideline - Heavy smoker - Part to be reimbursed by family - Larger quantity allowed through 7 weeks earlier - Little detail recorded but Notice 1 served - Disability not regarded as relevant by Review Officer - Wrong test applied by Review Officer - Need for proportionality - Finance Act 1994 s.16(4) - Further review directed with proper reasons
LONDON TRIBUNAL CENTRE

ANTHONY HENDY Appellant
- and -
THE COMMISSIONERS OF CUSTOMS AND EXCISE Respondents

Tribunal: THEODORE WALLACE (Chairman)
JOHN BROWN CBE FCA ATII
MICHAEL SILBERT FRICS

Sitting in public in London on 11 January 2002

Mr J Sibley, friend, for the Appellant

Mr Hugh McKay, Counsel, instructed by the Solicitor for the Customs and Excise, for the Respondents

DECISION

1. This was an appeal by a registered disabled person against the refusal by the Commissioners to restore his car, which was seized at Dover on 31 January 2001 because he was carrying excess tobacco and cigarettes bought in Belgium. The goods were about 5 times the indicative limits and the Appellant told the officers that the cigarettes and part of the tobacco were for his family who would reimburse him.

The review decision

2. The appeal, which was under the Finance Act 1994, s.16(4), was against the decision on review under section 15 by Mrs Diane Florence by letter dated 27 May 2001 confirming the initial decision refusing restoration. The review decision was a four paragraph standard form letter, which gave no reasons but merely stated that having considered the evidence put before her, the current correspondence, the legislation and current departmental policy, the decision was confirmed.

3. Section 16 of the 1994 Act applies to all Customs and Excise appeals and was enacted to comply with Article 243 of the Community Customs Code 1992 (EEC Council Regulation No.2913/92). It is difficult to see how a review decision without reasons could comply with Article 243.

4. This appeal is not covered by Article 243; however in the Tribunal's judgment a determination without reasons is not a proper compliance with section 15.

5. The appeal concerned the Appellant's civil rights under Article 6.1 of the European Convention on Human Rights and also the protection of property under Article 1 of the First Protocol. The Appellant is entitled under Article 6.1 to a fair

hearing in the determination of his civil rights. It must be implicit that the reasons for the decision under appeal be adequately stated.

6. Mrs Florence put in a statement dated 20 July 2001 producing 16 exhibits and gave oral evidence being cross-examined. This is not however a substitute for a proper review decision. Nor was the paragraph in the Statement of Case setting out the Commissioners' contentions.

7. The inadequacy of the review decision creates a real problem in the light of the wording of section 16(4).

The evidence

8. The evidence before us consisted of oral evidence by Mr Sibley, as to the Appellant's condition and what the Appellant had told him, and by Mrs Florence as to her decision and documentary evidence.

9. The documentary evidence consisted of the notebook entries by the officers at Dover who intercepted the Appellant and interviewed him, three letters by the Appellant, invoices for the goods, the ticket, vehicle registration document showing taxation class as disabled, an orange disabled person's badge issued by Barking and Dagenham Council, certificate of entitlement to disability living allowance from 25 March 1996 with extract from benefit book and a vehicle hanger issued by P&O for Lane 19 containing the words,

"Remember you can buy as much as you like.
No limit applies to purchases for personal consumption."

Facts

10. We find the following facts.

11. The Appellant was born on 16 July 1955.

12. He is retired on a full disability pension from the Post Office following an accident at work lifting a heavy package from overseas. His work had been at the International Centre of Parcelforce where overseas parcels and packages are received. The Appellant sustained an injury to his leg and to a disc and did not work thereafter. Mr Sibley used to work there also and had been the health and safety officer elected by staff and, although he had left by the date of the accident, helped the Appellant make a claim.

13. The Appellant sought Mr Sibley's help on the present matter although Mr Sibley had moved to Poole. Mr Sibley drafted a letter for the Appellant dated 7 February and subsequent letters. He also helped the Appellant fill in the appeal notice.

14. Mr Sibley could not tell the Tribunal much about the Appellant's condition apart from the fact that he had a limp and walked with a stick. The leg injury was on the right side. The Appellant sometimes had trouble getting out of a chair. The Appellant had not provided him with any medical evidence. He said that the Appellant was very nervous and "a shaker". The Appellant had told Mr Sibley that he did not feel well enough to attend; we assume that this was on the previous day since Mr Sibley left his home in Dorset at his home in Dorset at 5.30am.

15. He said that the Appellant's wife has Carpal Tunnel Syndrome preventing her from moving one wrist. He had only met her once. She could not drive.

16. The Appellant told him that he had trouble lifting things but did not tell him how the car had been loaded with 18 cases of beer or how it would have been unloaded. His daughter lived 10 minutes away from him.

17. This brings us to the seizure.

18. The Appellant crossed to Calais with his 'P' registration 5-door Ford Mondeo by the 8.30am boat on 31 January 2002 returning by the 2.00pm crossing (Central European Time). There was no suggestion that it was specially adapted for his use. He was intercepted at Eastern Docks at 2.40pm by Mr N Farghers who made notes starting at 2.53pm.

19. Mr Farghers' note, which the Appellant signed at 3.37pm after the second interview, recorded that he had been that day to France and Belgium to buy beer, wine and cigarettes. He recorded that the Appellant said that he had bought, "12 Stellas and a few FSPS and 18 sleeves of cigarettes and 80 pouches of tobacco." He was travelling alone because his planned companion had a cold. The car was his but he was still paying for it. 18 sleeves and 80 pouches was all he had : it was in the boot, which he had packed himself. He opened the boot at the officer's request. Mr Farghers noted that he found 23 cartons of cigarettes and 100 pouches of tobacco. Asked about the discrepancy, he said "Yes, I didn't remember exactly as it's an order. But that's it all there." The officer appears to have accepted this because he noted that he said, "OK"; furthermore the incorrect answer was not pursued by Mr Locks nor was it among the reasons at paragraph 25 below. The note stated that the ticket was for another car, that of the Appellant's daughter. The ticket exhibited to us did not carry a number.

20. The Appellant elected for an A-J interview under Article 5 of the Excise Duties (Personal Reliefs) Order 1992 to show that the goods were not for a commercial purpose. He was interviewed by Mr P Locks who took notes.

21. The Appellant said that the cigarettes were for his family who would pay him when he told them how much. The tobacco was for him, his father and his boys. They would "square" him up. He said that he had spent about £700 in cash and produced receipts.

22. He said that he smoked 50-60 a day and that a 2oz pouch would probably last a day and a half. The purchase would last about six weeks including those for the others.

23. The Appellant said that he was medically retired from the Post Office with an income of £500 a month including disability pension. His wife did not work because she had Carpal Tunnel Syndrome (RSI); she had a disability pension and paid the mortgage. He paid £50 a month for the car.

24. He told Mr Locks that he went to Belgium and France "about every six weeks not always for cigarettes or tobacco." He had bought about the same amount at the beginning of December when his dad and family had reimbursed him for their share. He had been stopped by Customs before but they had said they were happy and let him go. He had been shown a leaflet with the guidance levels. Asked if he was aware of the levels he said, "I don't really know."

25. The Appellant wrote, "I agree this is a true and accurate account" and signed at 3.35pm. He then signed Mr Fargher's note. Mr Locks noted that he informed the Appellant that his goods and vehicle were seized. He recorded the reasons as:

"1. Excess MILS
2. Consumption rate
3. Supplying others so PRO does not apply."

MILS is Minimum indicative limits; PRO is Personal Reliefs Order.

26. Mr Farghers listed 5 kgs of hand rolling tobacco, 4600 cigarettes, 100 cigars, 155 cigarillos, 18 cases of beer, 3 boxes and 2 loose bottles of wine and 6 litres of spirits.

27. The four invoices from three different shops were for a total of £792.25, all in sterling.

28. The Appellant wrote on 7 February 2001 to appeal against the seizure of the car. The letter pointed out that he and his wife were registered as disabled with the DHSS and the local authority. The seizure officer knew that he was disabled and left him stranded 75 miles from his home; the journey had taken 4½ hours and on 2 February his doctor had prescribed strong pain killers. He wrote that he had not been aware of the new policy on seizure. He had answered all questions truthfully and honestly. He could not replace the car. It was the only means for getting shopping and attending medical appointments for himself and his wife. He asked for his car to be released.

29. Customs wrote asking whether he was appealing against seizure in which case no decision on restoration would be given until condemnation proceedings. He replied on 15 February simply requesting restoration.

30. Mr Arnott, team leader, replied on 16 March that he recommended "that the vehicle on this occasion, is not offered for restoration for the following reasons:

"You were found to be carrying excise goods in excess of the Guidelines as per Article 5 …

You failed to declare all of the goods upon initial interception.

You admitted being aware of the Customs Notice No.1 which clearly states the Guidelines.

You are a regular traveller to the Continent.

Your stated consumption rate is deemed excessive.

You stated that you were to supply the Excise goods to members of your family and you were to receive money from them."

The letter then stated that the Department's efforts were:

"directed towards deterring and detecting fraud, failure to pay excise duty that is

due, irregularities and to encouraging compliance with procedures established to control movements of excise goods."

The letter cited s.141(a) and (b) of the Customs and Excise Management Act 1979 and continued,

"There are no exceptional circumstances in this case which would justify a departure from this policy."

31. We observe that the letter did not state the policy but only its objective and made no mention of the matters raised in the Appellant's letter.

32. The Appellant replied on 18 April 2001. He wrote (inter alia):

"I admit that I informed the Officer that I will offer some goods to my immediate family. However I also informed your Officer that I would show the receipts, and I would only want to be reimbursed the exact amount that the goods cost me.

I did not realise that by offering my family any excess shopping/goods would be an offence.

I wish to make it clear that I am not appealing for the goods back, only my disability car.

I feel that Team Leader Mr Arnott has branded me in the same light as the proverbial WHITE VAN BRIGADE that we hear so much about."

His letter also stated that he had not failed to declare the goods which were in plain view and that he had not understood the guidelines.

Notice 1

33. Notice 1 which was handed to the Appellant in December 2000 was headed "A customs guide for travellers entering the UK August 1999". Most of the Notice is not concerned with excise goods but with customs treatment of goods from outside the EU.

34. The first part is however concerned with goods bought in the EU and contains this:

"You do not have to pay any tax or duty in the UK on goods you have bought in other EU countries for your own use, but please remember the following.

- 'own use' includes gifts, but you may be breaking the law if you sell goods that you have bought. If you are caught selling the goods, they will be taken off you and you could get up to seven years in prison.

- Any vehicle you used to transport the goods could also be taken off you.

- The law sets out guidelines for the amount of alcohol and tobacco you can bring into the UK. If you bring in more than this, you must be able to satisfy our officer,

if you are asked, that the goods are for your own use. If you can't, the goods may be taken off you."

The guidelines were then set out including 800 cigarettes and kilogramme of tobacco.

35. Four pages later is a section headed "smuggling" however this appears to be directed at prohibited and restricted goods rather than EU excise goods.

The review officer's evidence

36. The statement of Mrs Florence covered over three pages of typescript; she confirmed this as her evidence. She listed the following material which she had considered on review: the notebooks, ticket, receipts, seizure documents, P&O "hanger" and the Appellant's letters. From the interviews she stated that the Appellant was medically retired with a pension of £500 a month and his wife who also received disability benefit paid the mortgage; that in December he had bought the same amount being reimbursed and had been stopped before but been allowed to proceed and had been given Public Notice 1. She stated that the Commissioners' Restoration Policy was as follows:

"With effect from 14 July 2000 the Commissioners' policy regarding privately owned vehicles used for the improper importation of excise goods is that they will not be restored, even on the first occasion they are so used. That policy applied at the time of the seizure of the vehicle. A car may, however, be restored to a third party where it has been stolen and the matter was reported at the time."

Her statement continued,

"Before considering whether the decision Mr Hendy was contesting was one which a reasonable body of Commissioners could not have reached, I first examined the seizure of the goods."

We observe that this was not the correct test. Her duty was to review the decision afresh in the light of all the material before her, not merely to consider whether the original decision was unreasonable.

She stated that the Appellant was outside the Personal Reliefs Order because he was to be reimbursed in part, that he had "clearly misled" the officer over the quantity initially and that he was importing five times the guidelines.

37. Her written statement then said that on 12 December 2000 the Appellant was stopped when importing 11 kgs of tobacco and 10,000 cigarettes. That was only 7 weeks earlier. She concluded that the goods were liable to forfeiture and that the only issue was restoration. She stated:

"I have read the Appellant's correspondence to see whether he had made out a case for disapplying the Commissioners' policy. Mr Hendy had travelled previously and therefore could easily have made enquiries with Customs regarding the legislation governing the importation of excise goods. I am of the view that there are no exceptional circumstances that would warrant a departure from that policy. I accept that the loss of a vehicle would cause hardship and distress but I am of the view that this was a matter for Mr Hendy to consider before he travelled and not one for Customs to consider afterwards."

38. She gave oral evidence that as a review officer, she could uphold the decision, allow restoration or vary it. From the papers she was aware of the Appellant's disability and gave it due consideration. However he had travelled on a regular basis, was alone and had purchased a reasonable quantity of goods. By "reasonable" she meant over the limits, well below what an organised business would import but considerable.

39. She told the Tribunal that she must have telephoned to obtain extra information about the December crossing when neither goods nor car had been seized, however the records gave no further information apart from the date and quantity.

40. She told Mr Sibley that the policy is designed to be robust so as to act as a deterrent to prevent loss of revenue.

41. She told the Tribunal that she had asked no questions about the Appellant's disability. Her reasons were that he was to load the goods, having travelled alone; that he was travelling frequently; that his disability had not stopped him buying excise goods; and that having travelled in December, he was aware of the consequences which he should have considered before he travelled. She said that no new version of Notice 1 had been issued since 1999.

42. The Commissioners also served a statement by Robert Ian Pennington as to policy. This described the policy without producing any document and did not make the witness' source clear. Its status as evidence is unclear particularly since it was not directed to the present case. In any event the concern of the Tribunal is with the review officer's decision and reasons. We take judicial knowledge of the extensive problem regarding improper imports of excise goods from across the Channel.

Submissions

43. Mr McKay said that the Tribunal should consider how the Appellant would have appeared to the officers. He had been able to push the beer into the boot of the hatchback in spite of his back and had been travelling alone. He had initially mis-described the quantity.

44. He accepted the approach of the Tribunal in Hopping v Commissioners of Customs and Excise (2001) E170 at paragraph 23.

45. He said that it was for the Appellant to take a view of the risk of seizure. The Appellant having run the risk, the Commissioners need not take his disability into account. He was on notice after receiving Notice 1 in December, although it made no mention of disability. He relied on paragraph 28 in Hopping.

46. He said that the Commissioners had appealed against the decisions in Williams (2001) E 171 and Lindsay (2001) E 174. He referred to Moon (2001) E 183 and to the decision of the European Court of Human Rights in Air Canada v United Kingdom (1995) 20 EHRR 150.

47. He contrasted the cost of the goods both on this trip and in December with the Appellant's income.

48. Mr McKay accepted that proportionality is required under Article 1 of Protocol 1, but said that disability was not a bar to non-restoration. It was not a relevant

factor since the Appellant had his eyes open. Even if it was a factor, the Appellant's knowledge of the risk must be material.

49. He said that even if all matters had not been considered, it was not a decision which could not reasonably have been reached. It was not necessary for the Tribunal to go as far as holding that the decision must have been the same.

50. This last referred to the test in John Dee Ltd v Commissioners of Customs and Excise [1995] STC 941, CA.

51. Mr Sibley said that the Appellant had been allowed through in December. He did not fully understand the notice and Customs must have seen that he had a stick. He referred to the Disability Discrimination Act 1995.

Conclusions

52. This is not an easy case being one of the first, if not the first, involving seizure of a vehicle from a disabled person. It is most unfortunate that the Appellant was not able to attend and was not professionally represented. Legal funding is not available for appeals of this type. There was no real cross-examination of the Review Officer. There are limits to the questions which the Tribunal can properly ask.

53. Some basic facts are clear.

54. The goods were liable to seizure since a substantial part was on the Appellant's own admission not for his own use. He could not personally have financed more than a small proportion. It was not suggested at any stage that the Appellant was reselling at a profit. Although this might have been a possibility, the Appellant was not questioned as to this when interviewed. The quantity of goods was modest if resale was intended; it was less than that in Lindsay v Commissioners of Customs and Excise (2002) to which we refer later. There was no evidence of physical concealment.

55. The Appellant had been allowed through 7 weeks earlier with an amount recorded as 11kgs of tobacco and 10,000 cigarettes: considerably more than on this occasion. If any record was kept of questions on that occasion, the Review Officer was not informed. Nothing was seized. There was no record of any warning beyond the issue of Notice 1 which is not specific to excise. The only possible conclusion was that on that occasion the officers accepted that the cigarettes and tobacco were for personal use; the issue of Notice 1 was in that context.

56. The Appellant is disabled with maximum disability benefit.: this will have involved a medical examination. He walks with a stick. However he was able to cross the Channel to buy the goods and on his own admission had done so about every six weeks, although not always for tobacco and cigarettes. On any view the loss of his car must bear heavily on him. His wife is disabled.

57. The Appellant has forfeit goods which cost him £792 against which he does not appeal. The car being a P Registration Mondeo is on any view worth several times more than the excise duty involved. The Appellant is still liable to pay the hire purchase company for the car notwithstanding the seizure.

58. The main question for our consideration is whether the reviewing officer was entitled to disregard the Appellant's disability. The team leader whose decision she confirmed made no reference whatsoever of this factor. Apart from what the Appellant said in his letters Mrs Florence had no information and sought none. She cannot have regarded it as relevant. Mr McKay said that since the Appellant took the risk it was not a matter for Customs. Neither the review officer nor counsel contended that although the Appellant's disability was relevant it was outweighed by the other factors to be balanced. While there is nothing in the Disability Discrimination Act 1995 which applies, that does not mean that the impact of seizure on a disabled person is irrelevant.

59. Section 16(4) of the Finance Act 1994 provides:

"(4) In relation to any decision as to an ancillary matter, or any decision on the review of such a decision, the powers of an appeal tribunal on an appeal under this section shall be confined to a power, where the tribunal are satisfied that the Commissioners or other person making that decision could not reasonably have arrived at it, to do one or more of the following, that is to say -

(a) to direct that the decision, so far as it remains in force, is to cease to have effect from such time as the tribunal may direct;
(b) to require the Commissioners to conduct, in accordance with the directions of the tribunal, a further review of the original decision; and
(c) in the case of a decision which has already been acted on or taken effect and cannot be remedied by a further review, to declare the decision to have been unreasonable and to give directions to the Commissioners as to the steps to be taken for securing the repetitions of the unreasonableness do not occur when comparable circumstances arise in future."

This is to be contrasted with subsection (5) under which the tribunal can substitute its own decision. Here subsection (4) applies because it is an ancillary matter within section 16(8) and Schedule 5, paragraph 2(r), being an appeal against non-restoration.

60. The form of words make nonsense if read literally since the tribunal would have no power to dismiss an appeal but, unless satisfied that the decision could not reasonably have been arrived at, could only state the fact and that it therefore had no power to make any order. Read literally it could make no procedural directions under the Rules. The Tribunal has regularly dismissed appeals where appropriate and has given directions under the Rules. Furthermore if the Tribunal was satisfied that the outcome of a review was irrational, it is difficult to see the point of directing a further review.

61. From the first appeals under the Finance Act 1994, the Commissioners have accepted that the subsection should not be narrowly construed, see Bowd v Commissioners of Customs and Excise [1995] V&DR 212 paragraphs 51 onwards. The approach at paragraphs 60 and 61 in Bowd was followed in Lindsay and Williams and accords with paragraph 23 of Hopping, which Mr McKay accepted. In particular the tribunal considered not only the end result of the decision but whether it was unreasonable in the legal sense. When considering the exercise of a discretion the courts have consistently concentrated on whether the factual and legal basis was correct rather than whether they would have come to the same conclusion. On this approach the words of section 16(4) are directed at the route to the decision and are not limited to irrationality in the result.

62. In our judgment if the right of appeal against non-restoration is limited to cases where the result can be shown to be irrational, that would not comply with Article 1 of the First Protocol to the European Convention on Human Rights, which Protocol was adopted in 1952.

63. It was held in Air Canada v United Kingdom (1995) 20 EHRR 150 that "the rights of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties" under Article 1(2) must be construed in the light of Article 1(1) that,

"Every natural or legal person is entitled to the peaceful enjoyment of his possessions."

The European Court of Human Rights said this at paragraph 36,

"According to the Court's well-established case law, the second paragraph of Article 1 must be construed in the light of the principle aid down in the Article's first sentence. Consequently, an interference must achieve a 'fair balance' between the demands of the general interest of the community and the requirements of the protection of the individual's fundamental rights. The concern to achieve this balance is reflected in the structure of Article 1 as a whole, including the second paragraph : there must therefore be a reasonable relationship of proportionality between the means employed and the aim pursued."

64. The consideration by the Court of the fair balance or proportionality was in relation to the circumstances of the particular case. The court observed at paragraph 41 that the seizure of the aircraft and its release subject to payment of £50,000 were "undoubtedly exceptional measures". It stated at paragraph 42 that the measures conformed to the general interest in combatting international drug trafficking.

65. The Court then considered the submission that the courts could only consider "reasonableness" and that proportionality was not part of English law and said this at paragraphs 46 and 47:-

"46. The Court recalls that on a previous occasion it reached the conclusion that the scope of judicial review under English law is sufficient to satisfy the requirements of the second paragraph of Article 1 of Protocol No.1. In particular, it is open to the domestic courts to hold that the exercise of discretion by the Commissioners as unlawful on the grounds that it was tainted with illegality, irrationality or procedural impropriety.

Furthermore, there have been cases in which the courts have found that the Commissioners had acted unreasonably in the exercise of their powers under the 1979 Act.

There is no reason to reach a different conclusion on this point in the present case notwithstanding the qualified exclusion of the proportionality principle as a separate ground of review.

47. Finally, taking into account the large quantity of cannabis that was found in the container, its street value as well as the value of the aircraft that had been

seized, the Court does not consider the requirement to pay £50,000 to be disproportionate to the aim pursued, namely the prevention of the importation of prohibited drugs into the United Kingdom.

48. Bearing in mind the above, as well as the State's margin of appreciation in this area, it considers that, in the circumstances of the present case, a fair balance was achieved. There has thus been no violation of Article 1 of Protocol No.1."

66. The decision was only reached by a margin of 5 to 4. It seems unlikely that the UK would have succeeded if the powers on judicial review had not been extensive. Two of the dissenting judges considered that judicial review was itself insufficient. Two more considered that there was an infringement of Article 1 of the First Protocol.

67. As already observed the majority decision was based on proportionality on the facts of that case. It is clear that the impact on the company was considered relevant. The value of the aircraft was specifically mentioned as well as the restoration sum demanded.

68. The logic of the approach of the European Court is that in deciding whether to restore the Commissioners should consider the value of the excise goods, the value of the car, the circumstances of the seizure and the impact on the individual. This must include the extent of the Appellant's disability and the financial impact on him.

69. We are not saying that in the present case the Appellant's disability must outweigh all other matters, merely that it must receive adequate consideration and that he should be invited to provide more facts such as a medical report. The Commissioners are entitled to weigh that against the source of finance and whether the tobacco was to have been resold at a profit. In relation to this we do not consider that the review officer was entitled, in the absence of further material, to conclude that the Appellant "clearly misled" Mr Farghers, given that the matter was not pursued at the time and was not among Mr Locks' reasons for seizure (see paragraph 25 above). None of these matters was addressed. Notice 1 falls far short of a clear "Use it and lose it", it merely mentions the possibility.

70. We conclude that the decision was not reasonably arrived at. Since not all the necessary material was obtained the question whether the result could have been the same is hypothetical.

71. Since this matter was heard the Court of Appeal has on 20 February 2002 unanimously dismissed the Commissioners' appeal in Lindsay v Customs and Excise Commissioners, refusing leave to appeal. That decision confirms our view. In particular a distinction is drawn between the commercial smuggler intending to sell at a profit and the person importing goods for social distribution to family or friends without profit. The amount of goods in that case was significantly greater.

72. Since the appeal is against the review decision and how it is arrived at, it must state clearly and succinctly the material on which it is made, the factors considered and the reasons. The review required is a full review on all the material before the review officer on which he or she exercises the powers delegated by the Commissioners. It is not a consideration of whether the earlier decision was reasonable. From the extract at paragraph 36 above it seems that Mrs Florence applied the wrong test. This emphasises the importance of adequate

reasons being given in review decisions. The amount of goods in Lindsay was significantly greater.

73. We direct that under section 16(4)(b) of the Finance Act 1994 within 28 days the Commissioners conduct a further review of the decision not to restore taking account of this decision and that of the Court of Appeal in Lindsay. The further review should take account both of the Appellant's disability and of the value of the car. If the decision is maintained or conditions all imposed full reasons should be given. If the decision is adverse, the Appellant will be entitled to appeal again to the Tribunal.

74. The further review should also consider the facts that the goods have been forfeit and that the Appellant has already been deprived of his car for a year, itself a significant deterrent.

THEODORE WALLACE
CHAIRMAN

RELEASED:

LON/01/8095-HEN.WAL