Excise duty-owner of car lending to a friend-friend on-lending car to another person not knowing that person would use it for smuggling-whether reasonable not to restore car to owner-whether disproportionate violation of owner's right to peaceful possession of the car-appeal allowed

LONDON TRIBUNAL CENTRE

MISS MOLUK ADAM AVLI (ALI) Appellant
- and -
THE COMMISSIONERS OF CUSTOMS AND EXCISE Respondents

Tribunal: JOHN CLARK (Chairman)
RAY BATTERSBY
MRS SHAHWAR SADEQUE MBCS

Sitting in public in London on 25 and 26 March 2002

Susan Meek, Counsel, instructed by Goldwater Sender, Solicitors, for the Appellant

Paul Harris, Counsel, instructed by the Solicitor's Office of HM Customs and Excise, for the Respondents

DECISION

1. This is an appeal by Miss Moluk Adam Avli (Ali), of London W2, against a decision of the Commissioners contained in a letter dated 23 April 2001 upholding, after review, a decision not to restore to her a Toyota Previa vehicle, described as an estate car, registration number N926 HOY.
The vehicle had been seized from a Mr Alan Evera Ennis, who was returning in it from France with 4.5 litres of sparkling wine and 815 litres of beer. As the Customs officer was not satisfied that the goods were not for his personal use, both the excise goods and the car were seized.
Miss Avli, who had only a provisional driving licence and was still trying to learn to drive, had acquired the car in unusual circumstances. A Saudi princess had given it to her. Miss Avli's connection with this princess was through a maid who worked for the princess. This maid was a friend of Miss Avli, from Eritrea, their original home. There was a condition attaching to the gift. As the princess and members of her family regularly came to the United Kingdom, during most summers, the car was to be available to them on these visits.
The vehicle was not new; it was described on the Seizure Information form as being in "fair" condition at the time of seizure. The following details appear from the registration document V5, one of the exhibits to the witness statement of the reviewing officer. It had been registered in May 1996. The transferor was a resident of the same London postal district as Miss Avli, and the date of transfer was in July 1999. It was not apparent from the details shown on the form whether the vehicle had been bought privately, or through a dealer. No formal evidence of the value of the vehicle at the time of the seizure was given, although an informal estimate was advanced on Miss Avli's behalf at the hearing; it was thought to be worth something in the region of £5,000. As this was informal, it was not agreed on behalf of the Commissioners.
Miss Avli did not know Mr Ennis. We set out later the circumstances in which she came to hear about the seizure of the car. Her action on doing so was to write to

Customs asking for the restoration of her car. She did not initiate proceedings in the magistrates' court to contest the seizure. Although we saw a copy of the Customs form notifying the seizure, the copy did not show the details printed on the reverse indicating the actions that an owner could take in the circumstances.

On 23 February 2001 M Marsh, the Team Leader of the Excise Support Team at Dover, wrote to Miss Avli refusing to restore the vehicle; there were no exceptional circumstances in this case which would justify a departure from Customs policy relating to seizure. The paragraphs in the letter giving the Commissioners' approach were not labelled as being their policy; evidence of the policy was given to us in the witness statement of Robert Ian Pennington. The relevant paragraphs of the letter state:

"In order for restoration of the vehicle to be considered, Customs have to be satisfied that at the time the vehicle was seized, it had either been taken without your permission or had been stolen, quoting Police crime reference number.

If the vehicle was used with the permission of the registered keeper (you) then it must be accepted that you accept all risks associated with the lending of the vehicle."

In a very brief letter dated 7 March 2001, Miss Avli asked for a review of this decision. The reply was set out in the letter dated 23 April 2001 mentioned above. This was also brief; the reasons for this were given to us in evidence. The Review Officer, Paula Turner, confirmed the decision.

The legislation

The power to seize a vehicle arises under Section 141 of the Customs and Excise Management Act 1979 ("CEMA 1979"):

"Where anything has become liable to forfeiture under the Customs and Excise Acts¾

(a) any ship, aircraft, vehicle, animal, container . . . or other thing whatsoever which has been used as a carriage, handling, deposit or concealment of the thing so liable to forfeiture, either at a time when it was so liable or for the purposes of the commission of the offence for which it later became so liable, and

(b) any other thing mixed, packed or found with the thing

is also liable to forfeiture."

The power of the Commissioners to restore anything forfeited or seized arises under Section 152(b) of CEMA 1979. This provides:

"The Commissioners may, as they see fit¾

(b) restore, subject to such conditions (if any) as they think proper, any thing forfeited or seized under those Acts."

The jurisdiction of the Tribunal arises under Section 16 of the Finance Act 1994. It includes any decision on a review by the Commissioners under Section 15 of that Act. Under Section 16(4)¾

"(4) In relation to any decision as to an ancillary matter, or any decision on the review of such a decision, the powers of the Tribunal are confined to a power, where the tribunal are satisfied that the Commissioners or other person making the decision could not reasonably have arrived at it, to do one of the following, that is to say¾

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 that repetitions of the unreasonableness do not occur when comparable circumstances arise in future."
Sub-section (8) provides¾
"(8) . . . references in this section to a decision as to an ancillary matter are references to any decision of a description specified in Schedule 5 to this Act which is not comprised in a decision falling within section 14(1)(a) to (c) above."

The decision not to restore the vehicle falls within a description specified in Schedule 5 to the Finance Act 1994, but does not fall within Section 14(1) to (c) of that Act. It is therefore an ancillary matter, and the powers of the Tribunal are limited as set out above.
The evidence
In addition to their witness statements, we heard evidence from Paula Turner, the Review Officer, Miss Avli, Mr Jitendra Patel, Mrs Daxa Patel, and Mr A.R. Awatta. In addition, witness statements of David Luckhurst, Brian Rowland, Robert Ian Pennington, Sharon Ann Shepherd and Leslie Richard Maxted provided in support of the Commissioners' case were accepted.
Miss Turner gave the history of the seizure, and of the subsequent review. On 28 January 2001 Mr Alan Evera Ennis was stopped at the Customs Controls, Dover Hoverport. He was driving vehicle registration number N926HOY. He stated that he had been to Calais to purchase some beer and some wine. He had intended to travel further but did not have the time. He had only purchased beer because "they did not have the wine". He had purchased 400 cigarettes and 2 pouches of tobacco for his father. He said that the vehicle belonged to his brother-in-law, who had owned it for over a year. He stated that he was importing 47 or 48 cases of beer. The goods all belonged to him; they had cost £507 and his son-in-law had given him a contribution of £260 towards the cost of them. His son-in-law was supposed to travel with him but his exhaust had fallen off his car on the way down to Dover and they had now arranged to meet up at the Hoverport so that he could take his beer back as Mr Ennis was worried about the weight of his vehicle. He consumed approximately 30 pints of beer a week. The beer was for himself and his family as they had a christening coming up. He was aware of the guidelines for the import of cigarettes but not of beer, and he knew that it was an offence to sell excise goods without first paying the duty. He had last travelled the previous week with the whole family, including the baby, in the same vehicle, when he had imported food and 5 cases of wine. The vehicle belonged to Mr Abat with whom he worked in Bayswater. Mr Abat knew that he intended to travel abroad in it. Mr Ennis had paid for the ticket in cash. He had travelled approximately 10 to 12 times in the last 6 months. During the interview Mr Ennis gave the officer 3 receipts for beer totalling £607. The Customs Officer then seized the excise goods and the vehicle. The excise goods totalled 4.5 litres of sparkling wine and 815 litres of mixed strength beer. The reasons given were "Excess Mils, previous seizure, third party gave money, and knowledge of the law". A seizure of vehicle notice and a seizure information sheet were issued to Mr Ennis and he left the Customs Controls.
On 1 February 2001 Miss Avli wrote to Customs claiming that she was the owner of the vehicle and requesting that it be restored to her. The refusal of this request was contained in the letter dated 23 February 2001 referred to in paragraph 6 above. Miss Avli's request for a review of the decision was made in her letter dated 7 March 2001, and Miss Turner's letter confirming the decision on review was dated 23 April 2001. We set out the wording of both Miss Avli's letters.
Her letter dated 1 February 2001 was as follows:

"Re: Seizure of my vehicle TOYOTA, PREVIA REG. N926HOY
I knew from Mr Alen [sic] Evera Ennis that my above mentioned vehicle was

seized on 28.01.01.
The vehicle was given by my permission to a friend Mr Jitendra Patel of 14 Dressington Avenue, London SE14 1JG. Mr Patel passed it to Mr Alen, who was the driver at the time of seizure, which I don't mind as far as he knows him.
I lent him the vehicle for social use and had no knowledge that he would take the vehicle abroad.
I kindly request HM Customs and Excise to release my vehicle and submit it to Mr A Awatta of 31 Hawkshead, Stanhope Street, London NW1 3RJ. He is holding the relative documents, (Log Book and M.O.T. Certificate).
For further information, please do not hesitate to contact me."
Her letter dated 7 March 2001 to M Marsh of the Excise Support Team was as follows:
"Thank you for your letter dated 23/02/2001.
As explained in my letter dated 01/02/2001, I have lent my above vehicle to Mr Jitendra Patel. I had no knowledge nor did I give permission to Mr Ennis to drive it.
I kindly request you to consider the circumstances and review your decision."

Miss Turner stated in relation to the review that before considering whether the decision Miss Avli was contesting was one which a reasonable body of Commissioners could not have reached, she first examined the seizure of the goods. We pause to mention that this formulation of the test does not accord with the wording of the legislation as set out above. On the question whether the goods were for Mr Ennis' own use and not for a commercial purpose, she took into account that he had accepted payment from a third party who had not travelled. By doing so he put the goods outside the scope of relief, and for this reason alone, she was satisfied that the goods were appropriately seized. The vehicle was also liable to forfeiture for having transported the goods. At the hearing she indicated that she had not taken into account the question of hardship, which had not previously been raised, nor had she considered the question of the relative values of the vehicle and the duty in respect of the excise goods seized. She did not know the value of the car. In her statement, Miss Turner referred to other circumstances that she had taken into account. Mr Ennis underdeclared the amount of beer that he was importing. He stated that he was importing 47 or 48 cases of beer when he was in fact importing 68 cases. On his stated consumption, the beer would have lasted him 47 weeks. It was not credible that he would purchase such a large quantity of beer for his own use, especially as he had travelled some 10 to 12 times in the previous 6 months, and so was in a position to purchase goods well within the guidelines for his own use. According to records held by Customs, he had been stopped on two previous occasions and had goods seized. Customs also had commercial information available showing that this vehicle had travelled abroad on 10 occasions between November 2000 and January 2001. On two of these occasions Mr Ennis was shown as the lead passenger.
When considering the issue of restoration, Miss Turner stated that as the vehicle was privately owned, the Commissioners' policy was that it should not be restored, and she did not consider that Miss Avli had made out a case for that policy to be disapplied. Miss Avli had stated that she had loaned her vehicle to Mr Patel and that she had no knowledge and had not given her permission for Mr Ennis to drive the vehicle. She approached those responsible for policy regarding restoration to seek clarification as to the Commissioners' position in relation to such cases. The view taken was essentially that in allowing her vehicle to be used by Mr Patel she took a risk. That risk included losing it through it being misused. That was what happened in the present case and her redress for her loss lay with those whose actions caused it. It was not policy to restore in such cases, and Miss Turner considered the refusal to have been reasonable and equitable in that it treated her no more leniently or harshly than anyone else in her position.

At the hearing Miss Turner referred to the number of movements of the vehicle as shown by the commercial information available to Customs. There were 6 occasions in January 2001. On 23 January, the vehicle travelled on the 19.45 P&O Stena Line ferry to Calais, and returned on the 00.30 ferry on 24 January. The passengers listed were Mr Y Patel, the "Lead Name", Miss F Gabb and Mr F Roslam. It travelled again by the same route on the 21.15 sailing on the same date, returning on the 00.30 sailing on 25 January. On this occasion the passengers were Miss F Gadd, the Lead Name (there was no evidence showing whether this was the same individual as Miss F Gabb), Mr M.A. Roslam and Ms E Georgiou. On 25 January, the vehicle was recorded as travelling via the Channel Tunnel at 13.40 from Cheriton, and again later from Cheriton at 23.48. Details of passengers were not recorded, the information being provided from an automatic number plate reader. The vehicle travelled again on the ferry on 26 January from Calais to Dover on the 20.00 sailing; the passengers were Mr M.A. Roslam, the Lead Name, Ms F.C Gabb and Mr P.G Nanena. In her view the timing of these trips was not consistent with bona fide shopping. Taking three trips at odd times of the same day suggested to Miss Turner that bona fide shopping would not be feasible. The vehicle was being used on a very regular basis to go across to the Continent. She accepted that a number of different people had been travelling. She referred to the policy on which she had consulted the relevant colleagues, and maintained that as Miss Avli had willingly lent the car, she had to accept a number of different risks. In November 2000 movements of the vehicle had also been recorded. It had travelled from Cheriton at 12.42 on 2 November. On 4 November, it travelled on the ferry from Dover to Calais on the16.45 sailing, the Lead Name being Mr Ennis, and the passenger being Mr DR Leigh. It returned on the 20.45 sailing the same day. It travelled from Cheriton at 17.56 on 6 November. On 9 November it was on the 21.15 sailing from Dover to Calais; Mr Ennis was the Lead Name, the passenger being Ms DC Connolly. It returned on the 03.00 sailing the next morning. It travelled again from Cheriton at 13.47 on the same day.

Miss Turner accepted in cross-examination that no allegations of avoidance of duty had been made in relation to these other journeys; she agreed that Miss Avli would have no specific knowledge of these trips. Despite the absence of such allegations, Miss Turner considered it unusual for a vehicle to be travelling on such a large number of occasions within a short time. She had not considered the implications under the Theft Act, as this was not required under the terms of the Commissioners' policy. She agreed that she was required to consider whether the car had been taken without Miss Avli's permission, but referred to Miss Avli's letter dated 7 March 2001 which stated that Miss Avli gave Mr Patel permission to use it. When referred to the following sentence stating that permission had not been given to Mr Ennis, Miss Turner referred to Miss Avli's previous letter dated 1 February 2001, which stated " . . . I don't mind as far as he knows him." In Miss Turner's opinion, Miss Avli had given permission for the vehicle to be used. This decision had been taken on the basis of the Commissioners' July 2000 policy. There had been no direction following the Court of Appeal decision in Lindsay v Customs and Excise Commissioners [2002] STC 588 to re-review cases. Miss Turner had taken Miss Avli's two letters into account; she had made no further enquiry, as Miss Avli had put forward no further evidence of hardship. Miss Turner did not feel able to express a view on the value of the car; she was not an expert. She was not prepared to state whether the excise value was greater than that of the car. She did not have the exact figure for the amount of duty evaded, but thought that a rough figure would be around £900. She accepted that there was no evidence of the car being used for overseas trips before November 2000. It was not necessary to take account of the fact that Miss Avli was not the driver at the time, as the policy covered vehicles not owned by the perpetrator. There was a separate policy relating to rental vehicles; generally these were returned on the first occasion, but they were not always returned on subsequent seizures. Miss

Turner accepted that Miss Avli did not go abroad, but it was surprising that Miss Avli was not aware of the high mileage. Miss Turner did not accept that Miss Avli was totally innocent.
Miss Meek asked Miss Turner about the reference to the previous seizure from Mr Ennis. Miss Turner confirmed that the information had been obtained from Customs' computer records. The relevance of this previous seizure was that it had led to Mr Ennis not satisfying the Customs officer that the goods were for his own use. The goods were seized because they were deemed to have been acquired for a commercial purpose, as Mr Ennis was to receive money from his brother-in-law. It was not the quantity of goods that had led to the decision. It was not in the Commissioners' policy to look at the relationship between the value of the goods and the value of the vehicle. In relation to the car, Miss Turner accepted that Miss Avli's state of knowledge was that she had lent the car to Mr Patel. Asked whether it was her view that Miss Avli should bear the risk, Miss Turner said that she followed the policy; Miss Avli had taken a risk.
In re-examination, Miss Turner confirmed that it was not the Customs officer's responsibility to consider who should "bear the loss" arising from the seizure. She referred again to the passage in her statement dealing with redress; the responsibility was with the person to whom Miss Avli had lent the car.
In response to questions from the Tribunal, Miss Turner confirmed that she had not considered further discussion with Miss Avli, who had already said that she had willingly lent the car, and so accepted the risk. In none of the reviews that Miss Turner had carried out, between 80 and 90, had there been any occasion where she had gone back to the appellant for further information. She did go back to her Customs and Excise colleagues if there was a problem with the seizure, if it was not sound; this was the only reason to go back. The fact that Miss Avli was at more than one stage removed from the driver did not suggest to Miss Turner that Miss Avli might be innocent.
The Tribunal also asked Miss Turner about the form of the review letter, which was very brief; was it a standard form? Miss Turner explained that the letter had followed a full review. As at the time a very large number of cases had been under consideration, a management decision had been taken that a shortened version of a review letter should be used where the original decision not to restore the car had been upheld. Her witness statement was based on what she had taken into account at the review stage, much of which would have been contained in the review letter if it had been in longer form. She had made notes at the time of the review, and these had been used for the purposes of her witness statement.
On the question of going back to appellants for further information, Mr Harris asked Miss Turner to explain the sequence of the review. She confirmed that she had considered the letter from M Marsh dated 23 February 2001 and the information leading up to it. She was considering the decision arrived at by the officer on the basis of this information, which was why it was not the practice to go back to appellants and ask them to offer further information. Miss Meek asked whether the decision arrived at as to the giving of permission to use the car was an incorrect conclusion. Miss Turner concluded that Miss Avli gave permission to Mr Ennis to use the vehicle.
Miss Avli's evidence in her witness statement was as follows. She had lived in the United Kingdom since 1990, and had two children born here. She was a single mother. The car had been bought for her second hand in July 1999 for about £12,000 by Miss Jawaher. The insurance of the car was only for United Kingdom use, and Miss Jawaher paid for this, as Miss Avli was on income support and housing benefit. The insurance documents were registered under the name of Mr Mohammed, a family friend, who was helping her and driving the car with her in it occasionally. The reason for this arrangement with the insurance was that Miss Avli had only a provisional driving licence and did not drive the car. She was having occasional driving lessons, but never seemed to see them through. She

had met Mr Patel through his wife. They had helped her, and when they went out, the three of them did so using her car. They paid for the petrol. Miss Avli needed this social interaction and so was more than willing to lend the car to Mr Patel when he required. Sometimes he asked for the car for quite a number of days and she gave it to him because in any event she could not drive it. On 23 January 2001 she lent the car to Mr Patel for a period of 5 days. He did not return it as agreed, but asked for an extension of 2 days, which she accepted. On 30 January 2001 she heard from a Mr Ennis that HM Customs in Dover had seized the car on 28 February 2001. She was shocked to receive this call from a stranger. He informed her that he had obtained her number from Mr Patel, the vehicle was seized due to the lack of the Log Book, and he had been driving it with the permission of Mr Patel. She contacted Mr Patel to find out what the position was and he apologised for lending the vehicle without her permission to Mr Ennis. She contacted Customs, and discovered the seriousness of the matter. She did not under any circumstances realise that Mr Patel was giving her car to third parties for use, especially in respect of travelling abroad when even she was aware that the car was only registered in the United Kingdom. We interpret this as referring to the insurance covering use only in the United Kingdom.

Miss Avli's evidence at the hearing was given through an interpreter. She explained that when the princess came to the United Kingdom, this was normally in a party of 6 persons. The car was an "N" registered vehicle, and took 6 to 7 people. Miss Avli also used the car. She had lent it to Mr Patel, sometimes to Mr Awatta, and sometimes Mr Mohammed as well. Mrs Patel used the car for shopping. Miss Avli did not use the car for driving lessons. Asked whether she was present when the car was used by others, she said: "Sometimes they take it - I don't know where they go. I trust them; I don't ask them." She did not know Mr Ennis; she had never met him. She believed that the car was not allowed to be used outside the United Kingdom. She knew none of the persons listed as travelling by ferry in the car. She had no knowledge of the trips made through the Channel Tunnel. The seizure of the car had caused problems with the lady who had given her the car, and with that lady's sister. The lack of the car had put Miss Avli at a disadvantage socially, as she was unable to attend events and Islamic celebrations; she now hardly went anywhere, as she could not afford taxis. She was unable to use the car to persuade others to drive it and take her out. Asked whether there had been any difficulties with lending the car to others before the first recorded overseas trip in November 2000, she said that there had not; she only lent the car to persons whom she trusted.

In cross-examination, she stated that she did ask Mr Patel what he was going to do with the car, but did not ask exactly what each time; she trusted him and his wife. She was asked about the letter dated 1 February 2001 (see paragraph 14 above). Mr Patel had helped her to write it. Questioned whether it was what she wanted to say at the time, she said that she was asked by Mr Patel to write the letter. Asked whether she was happy to sign the letter at the time, she said that she had done so because Mr Patel had lent the car to Mr Ennis. It was her signature on the letter. Mr Patel helped her to write it. He told her how to draft it. She discussed it with him. Asked to confirm that she had understood it, discussed it and signed it, she said that at the time she did not have exact knowledge; this was before she had any legal help. She confirmed in response to a further question that she would not sign documents when she thought them completely false. The second paragraph of the letter was where it had gone wrong. In the next sentence (which we take to mean the single sentence in the following paragraph of the letter), she meant Mr Patel. Mr Harris asked her whether, when lending the car to Mr Patel, she had not asked him about lending it to others. She said that she had never forbidden this. As she had repeatedly said, she trusted him; she had written this in the letter. She did not mind what Mr Patel did, because she trusted him. The arrangement was that he had to use it; it was not for other people. Mr Patel had never asked her to pay for a parking ticket; he paid

for petrol. He knew her financial situation. He had never asked her to pay for a speeding ticket. Although she had asked him to help, Mr Patel had not offered to pay her the value of the car.
In response to questions from the Tribunal, Miss Avli stated that the car was kept where she lived; she had a parking permit. She had never been on a trip to Calais or Coquelles. She did not normally take the children to school in the car. The Eritrean community centres that she attended were at a driving distance. She did use the bus for local transport. Apart from the correspondence, she had had no contact with Customs officers until the hearing.
In giving his evidence, Mr Patel explained that he had met Miss Avli through his wife about four years before making his witness statement. When available, he drove both families together in the car for shopping and visits to the park; all could fit in the Toyota. He had asked Miss Avli if he could borrow the car in early November 2000, as he had family coming from America and would be taking them around England to visit relatives. He took the three individuals to see relatives in Birmingham and Leicester. He returned the vehicle on 18 November 2000. Before doing so, he lent the car to Alan Ennis, whom he had met through a neighbour. Alan Ennis had assisted Mr Patel in various ways, including repairs on Mr Patel's own vehicle, visiting car auctions, and helping Mr Patel find good deals when buying electrical goods. Mr Patel lent Mr Ennis the car and trusted him because of the help that Mr Ennis had provided. Mr Patel did not realise that Mr Ennis would use the car for the purposes that he did. Mr Patel also borrowed the car from Miss Avli on 23 January 2001, as he needed to travel to Surrey to visit the family for a religious festival. While Mr Patel had the car, Mr Ennis again asked to borrow it on 27 January 2001. At the time Mr Patel did not ask Mr Ennis what he needed it for, as Mr Patel trusted him, and asked him to replace the petrol used, which he had failed to do on previous occasions. Mr Patel was surprised to receive a telephone call from Mr Ennis in late January advising that the vehicle had been seized. Mr Patel was horrified and gave Miss Avli's number to Mr Ennis so that Mr Ennis could explain the position to her. Since then, Mr Ennis had not been contactable.
Mr Patel had not met the princess, who came to England more or less every summer. Miss Avli had total control over the use of the vehicle. He gave the example of the use of the car for the religious festival. The trip to France in the car on 23 January was made by Mr Y Patel, his "cousin brother". He had not said that he was going to France. He was supposed to come to the religious function that day, but did not; Mr Patel lent him the car. In the fourteen months before the car first went abroad, Mr Patel had lent the car to his cousin and to Mr Ennis before. This was for social use as far as Mr Patel knew. Miss Avli and Mr Patel trusted one another; there was no need to give reasons to use the car. Mr Patel did not know any of the other names listed on the schedule of ferry bookings. Mr Patel had not been driving the car on any of the occasions listed in the schedule of Channel Tunnel crossings; he had not taken the car abroad. His reaction to the list of journeys was that he felt cheated. He did not know about Mr Ennis' trips. Mr Ennis was a TV and video repair man, and good with cars mechanically. Mr Patel had not seen Mr Ennis trying to sell alcohol or cigarettes. He did not know the purpose was to bring alcohol back. He had not seen his cousin trying to "offload" alcohol or cigarettes. When he heard about the seizure from Mr Ennis, this was a complete surprise. In relation to the statement made by Mr Ennis to the Customs officer at the time of seizure, Mr Patel confirmed that he was not Mr Ennis' brother-in-law, nor did Mr Patel know a Mr Abat. Mr Patel believed that Mr Ennis had telephoned Miss Avli following the seizure. Mr Patel had helped Miss Avli draft the letter to Customs requesting the restoration of the car. The wording of the second paragraph had been produced after he sought advice from friends; he said that he might have spoken to Customs and Excise. Asked whether Miss Avli had ever said that he could lend the car on to others, he said that she left it to his judgment. He treated the vehicle as if it was a family vehicle. The second

paragraph of the letter to Customs and Excise requesting a review was a true statement. Miss Avli's position socially had been affected by the loss of the car.
In cross-examination, Mr Harris asked Mr Patel why he had not mentioned in his witness statement that he had lent the car to his cousin. Mr Patel answered that he had put down what he thought was necessary; he had not thought it relevant. The dates that he had given for use of the car in November 2000 were, to the best of his knowledge, the relevant dates. Asked who was using the car at the time of the cross-channel trips detailed in the schedule of Channel Tunnel crossings, Mr Patel replied that it was his cousin, or Mr Ennis. Mr Patel confirmed that his wife sometimes used the car. He did not have details of users on those dates. He thought he had the car for a couple of weeks. He was not aware of those trips. He had not mentioned that he had lent the car to Mr Ennis, as he did not think those trips relevant to his statement, on which he was guided by the solicitor. Asked generally about his use of the car, Mr Patel said that he paid for the petrol, and he would have paid any parking tickets, as with any speeding tickets. Mr Harris asked him whether he felt morally responsible for the car being seized, and Mr Patel's reply was "If you put it that way, yes."
In re-examination, Mr Patel said he thought the value of the car to be about £7,000. The Tribunal asked what Mr Patel had done when he saw the Seizure of Vehicle form. He had showed this to Miss Avli. He was unable to say whether a decision had been made not to query the seizure. (No other information on this question could be provided to the Tribunal.) Asked about lending the car to his cousin, Mr Patel confirmed that the relationship was close. They discussed day to day activities, but Mr Patel had not asked what was the purpose for which the car was to be borrowed. Mr Patel was asked about the logistics of 23 January, when the car was used to travel to the religious festival in Surrey, and was on the 7.45 p.m. ferry sailing from Dover. He explained that the lunch had taken place very early, and he was sure that he had returned to his home before 3 p.m. His cousin lived very close to him; the address shown in the schedule of sailed bookings was not his cousin's home address.
Mrs Patel gave evidence. She had known Mrs Avli for over four years; they had become close friends, and their families spent a lot of time together. She regularly took Miss Avli's car with Miss Avli's children and her own children for shopping visits and visits to the park. She had always driven on those occasions in her vehicle and on some occasions her husband came with them and drove in Miss Avli's vehicle. At the hearing, Mrs Patel needed informal interpretation by her husband. She said that she did not know the princess. She confirmed that she also used the car for shopping trips. She did not take other people. Miss Avli phoned her when she wanted to use the car. Mrs Patel said that she used the car about once every three weeks. Her husband used the car most. She remembered going to Surrey for the religious festival. She thought that they were back between 3 and 4 p.m. Miss Avli had felt very bad since the car had been seized.
Mr Awatta, a self-employed cab driver, had known Miss Avli for seven or eight years. They had met through community friends. They belonged to the same community, and he helped her with form filling, letters to be written, applications, and he sometimes drove her. This was sometimes in his car, and sometimes in hers. He drove her for social events and for Islamic occasions. He had taken the car for his own personal use and had been caught for speeding. He lived about twenty to thirty minutes away from her address. He had driven her the previous year to a festival. He had never been out of the country in her car. He paid the speeding fine. Not having the car had had a psychological effect on Miss Avli, as well as affecting her life; she had been unable to travel to an Islamic occasion. Mr Awatta confirmed that he had never lent the car to anyone else. He did not know Mr Ennis.
Arguments for the Appellant
There were two limbs to Miss Avli's appeal. First, Miss Meek argued that once the Commissioners knew that Miss Avli had not given permission to Mr Ennis to drive

her vehicle, they were wrong not to restore the car. Secondly, having regard to the judgments of the Court of Appeal in Lindsay, the Commissioners did not consider proportionality in coming to their decision.

Miss Avli's car was used without her permission by a person unknown to her. The car had not by criminal standards been stolen. Once the car had been used in a manner not envisaged or authorised by Miss Avli, this could be said to be analogous to theft of her vehicle. She was unable to report it as stolen, as the first time she became aware that it had been used outside her authority was after it had been seized. In any event the Commissioners' policy, as outlined in M Marsh's letter (see paragraph 6 above) stated: "In order for restoration of the vehicle to be considered, Customs have to be satisfied that at the time the vehicle was seized, it had either been taken without your permission or had been stolen . . ." (emphasis added). She argued that there was evidence from Miss Avli and Mr Patel at the review stage to this effect, and the Commissioners should have acted within their policy as stated in that letter. It followed that the Commissioners' Statement of Case was incorrect in stating that Miss Avli had given the third party her permission. (We should mention that what the Statement of Case says at the relevant point, in listing the factors taken into account in reaching their decision, is that the Appellant had taken a risk by allowing her vehicle to be used by a third party, and the risk that she took included losing it by misuse.)

If the Tribunal found that the Commissioners had acted within their policy not to restore on the basis that Miss Avli should bear the loss caused by risking lending her car to a third party, Miss Meek argued that the Commissioners did not take into account all relevant matters. They failed to take account of the following. Miss Avli was not the driver of the vehicle at the time. She had not contravened any law, she was not smuggling any goods. Mr Ennis did not have permission to use Miss Avli's car. Miss Avli did not know Mr Ennis and had no knowledge of Mr Ennis' previous trips abroad either in her car or others. They failed to give due regard to her and Mr Patel's explanation regarding the use of the car. They erroneously placed reliance on the fact that the car had travelled abroad on other occasions; Miss Avli was never an occupant, nor was there any allegation of wrongdoing on these journeys. They failed to take into account the issue of proportionality; the Commissioners had not valued the duty avoided by Mr Ennis. They failed to take into account the value of the car seized, approximately £7,000-8,000 at the time of seizure. They failed to take into account Miss Avli's personal circumstances. They did not take into account Mr Ennis' explanation that the goods were for family consumption. There was no evidence to suggest that he was acting on a commercial basis, and the proof or disproof of these issues was completely outside the remit of Miss Avli; she did not know him and could not know his intentions.

The Commissioners had argued that Miss Avli's remedy lay in an action against Mr Ennis. Miss Meek pointed out that Mr Ennis was not attending the hearing. She questioned the proportionality of the Commissioners' treatment of Miss Avli, and referred to the heavy-handedness of that treatment. She referred to Philip J Lett v Customs and Excise Commissioners (Decision number E00200) and Kevin James Granger v Customs and Excise Commissioners (Decision number E00204).

Arguments for the Commissioners

Mr Harris referred to the leading judgment of Lord Phillips, MR in the Court of Appeal in Lindsay. At [63], referring to commercial smuggling, i.e. smuggling goods in order to sell them at a profit, he said:

"Nor does it seem to me that, in such circumstances, the value of the car used need be taken into consideration."

It followed from this, Mr Harris argued, that in "commercial" cases, the value of the vehicle was not relevant.

At [64] Lord Phillips referred to cases where the driver was importing goods for social distribution to family or friends in circumstances where there was no

attempt to make a profit. He said:
"Of course even in such a case the scale of importation, or other circumstances, may be such as to justify forfeiture of the car."
Lord Phillips then went on to deal further with cases where the importation was not for the purpose of making a profit. The particular facts of each case were required by the principle of proportionality to be considered in relation to forfeiture of the car. Among these were the scale of importation, whether this was a first offence, whether there was an attempt at concealment or dissimulation, the value of the vehicle, and the degree of hardship that would be caused by forfeiture.
Mr Harris related these to the present case. The scale was large. This was not Mr Ennis' first offence. Mr Ennis had admitted having 48 cases of beer when the number was actually 68. On the value of the vehicle, this had not been taken into consideration. Mr Harris argued that there was a "sliding scale" between huge commercial smuggling, and bringing in goods for simple reimbursement. He argued that the Court of Appeal could not have meant that there was a definite dividing line. The factors in the present case pointed to "commercial". The Court of Appeal had used the words "or other circumstances". The decision not to restore was reasonable in the light of all the other facts and circumstances of the case. On hardship, the Commissioners had been unaware until the hearing of the circumstances of Miss Avli, but he emphasised that this information was not available to them at the time of the review.
Mr Harris argued that on the facts of the case, the relevance of the car having been loaned was minimal. A loan would be relevant if it was for one purpose, yet the vehicle was used for another purpose. The closer one came to unauthorised use, the closer one approached theft. Reported theft was a very relevant circumstance under the Commissioners' restoration policy. Here, however, there was either express permission given by Miss Avli to Mr Patel to use the car in any way he saw fit, including lending the car on to other persons, or at least there was implied permission. He referred to Miss Avli's first letter (paragraph 14 above). In the light of this, it was simply not credible for her to maintain that there was no express or implied permission. Where there was permission, express or implied, to use the car in any way (which included, by definition, smuggling), there was no relevance at all to the fact that there was a loan. Otherwise all smugglers would use loaned vehicles with impunity. It would be possible for smugglers to arrange for reciprocal loans of vehicles so that each of them could avoid the vehicles being seized. The Commissioners' view was that complete recklessness as to use of the loaned vehicle sufficed to negative any relevance of a loan. Miss Avli had been entirely reckless, over a considerable period of time, as to the use of her vehicle. That recklessness was no sufficient reason to consider the non-restoration decision unreasonable. Were it otherwise, the non-restoration policy would be toothless.
On the facts, he said that Miss Avli had a total relationship of trust with Mr Patel; he did not tell her about the use, and could do what he saw fit with the car. She bore a risk of Mr Patel betraying her trust. Mr Patel had betrayed it, and accepted that he was morally responsible. Miss Avli might have grounds for a civil claim for the loss of her vehicle. The loss fell on her. Whether she pursued anyone else was entirely a matter for her.
Mr Harris referred to the Tribunal decision in Lett. The car had been given by Mr Lett senior to his son, the appellant. The car was kept at the father's house, and the father took it to France and bought a substantial volume of excise goods. The goods and the car were seized. The appellant challenged the decision made on review not to restore the car. He argued that he was in the same position as if his car had been stolen from him, as he was totally unaware of the use to which it was to be put. The Tribunal found that the appellant clearly allowed his father unlimited use of the car, tantamount to ownership. There was no evidence that the appellant incorporated any conditions into his long term loan of the car. The

loan was as wide a transfer of use as could be made without the technical transfer of ownership. The position was not analogous to theft of the car. The other point considered in the case, concerning the value of the car, had been overtaken by the Court of Appeal's decision in Lindsay. The Tribunal had referred the decision for further review, but on a point not affecting Miss Avli's appeal.
Mr Harris also referred to Granger. This case also preceded Lindsay, and was decided on a question of proportionality not relevant to Miss Avli's appeal. The appellant had lent a van to his brother, and knew that the brother was taking it to France to purchase alcohol. At Dover, the van was found to contain a large quantity of tobacco products, as well as wine and beer. The goods and the van were seized. The appellant appealed against the decision on review upholding the decision not to restore the van. The Tribunal concluded that if an individual lends his vehicle and has some indication of its intended use, he is taking a risk of misuse, i.e. use for some undisclosed purpose. There the appellant put himself at risk in that narrow sense only. It followed that the seizure of the van was itself reasonable despite the fact that the appellant, its owner, was himself in no way implicated in importation of cigarettes and tobacco in excess of the indicative limits. However, the review decision was open to challenge on the basis that the appellant needed it for the purposes of carrying on his business as a builder. Mr Harris contrasted these circumstances with those of Miss Avli; she could not even drive the car, and there was no double effect on her as a result of the seizure.
Reply for the Appellant
In reply Miss Meek argued that the Commissioners acted unreasonably when they were informed about the use of the car. The policy adopted took away the concept of innocence. Miss Avli never gave Mr Ennis direct permission to use the car. These were relevant considerations that should have been taken into account. The use was analogous to theft. Miss Meek referred to M Marsh's letter dated 23 February 2001 (paragraph 6 above) which stated that in order for restoration of the vehicle to be considered, Customs had to be satisfied that at the time of seizure, it had either been taken without the owner's permission, or had been stolen, quoting the Police crime reference number. She also referred to Mr Pennington's witness statement, which said: "Vehicles which belong to owners who are not present at the time of detection will also not have their vehicles restored [sic], unless they can demonstrate that they are totally innocent or it would be disproportionate or inhumane not to restore." Here the true owner was Miss Avli, who was neither aware nor involved. Her case was not like that of the appellant in Lett. Mr Ennis never had permission. If she had been aware in time, Miss Avli would have reported that the car had been taken away without her consent. Miss Avli would not have allowed the car to be taken overseas. (Mr Harris challenged this; there was no evidence to this effect.) This was not a case, as in Lett, of allowing Mr Ennis unlimited use of the car. The basis on which she had provided the car was not "tantamount to ownership". Either the circumstances were analogous to theft, or, within the Commissioners' policy, Miss Avli was innocent. The case of Granger was different; the driver had express permission to drive and the owner knew that he was going to France to buy alcohol. The owner could not, within the Commissioners' policy, demonstrate that he was totally innocent; the Tribunal there found that he put himself at risk in a narrow sense only. Miss Avli did not allow the use and take the risk. The decision reached in her case by the Commissioners was flawed; she was far removed from the actual driver. Miss Avli did not give permission to Mr Ennis, she did not even know him, and did not know that the car was to be taken to France. Failure to take these points into account led to the unreasonableness of the Commissioners' decision.
Miss Meek argued that the existence of any possible claim against other persons was not a relevant consideration. On the point put in argument that if loans were permitted, smugglers could construct a "chain" of car loans so as to escape seizure, she contended that this would have to be done in a very artificial way.

She questioned why, if the policy on rented vehicles was that they were returned (we point out that, as mentioned by Miss Turner, this may only apply in the first instance, and is not automatic), why did smugglers not use rented vehicles on every occasion? In seizing cars, the Commissioners were interfering in property rights, and should be open to challenge in appropriate cases. Miss Avli wanted her car back, and this was the only way of obtaining it. It had not been suggested either in Lett or Granger that the proper course of action by the owner was against the driver.

Miss Meek argued that Lindsay did not assist where the owner of the car was a third party. At [63] the reference was to "their cars". The approach in Miss Avli's case was unreasonable; she was highly prejudiced, as she could not challenge Mr Ennis or know his intentions. Miss Avli was unable to show what was required in Lindsay; at [65] Lord Phillips stated that in a case such as the present the driver importing for family or friends should be in a position to demonstrate that that was the case if called on to do so. Miss Avli could not follow this course; she had no knowledge of Mr Ennis' position. Mr Ennis had referred in his interview to a christening; this was a family rather than a commercial reason. The Commissioners had referred to the number of trips made by the car; there was no evidence that these involved breaching any law or policy, and no evidence of bootlegging. On 17 January 2000, a previous occasion involving a seizure, Mr Ennis had not been using this car. When he had been stopped in July 2001, there had been no seizure. In January 2000 he had maintained that the goods were for his family; this had not been challenged by the Commissioners, yet on the basis of Lindsay, this was not "commercial". Proportionality required that the distinction should be drawn. In Miss Avli's case there was no evidence that Mr Ennis' importation was commercial. On the factors listed at [64] in Lindsay, goods had been taken from Mr Ennis in January 2000, but Miss Avli had not committed any offence. He had concealed the fact that he had 68 cases of beer rather than 48; Miss Avli could not challenge this. He was not concealing the fact that he had an excess quantity. Miss Turner had stated that the Commissioners had not considered the value of the vehicle, or the degree of hardship to Miss Avli. Miss Meek argued that the exceptional circumstances in the present case, including Miss Avli's own circumstances, had to be taken into account.

Reasons for decision

Lindsay did not involve the lending of a vehicle. However, we think that it does provide some assistance for such cases. As with cases where the driver is present, the question is whether the application of the Commissioners' policy fits the requirements of proportionality. This necessitates justifying the seizure of the vehicle against the importation of excise goods in excess of the indicative limits. Where the owner is directly involved, Lindsay shows at [63] that seizure in the case of commercial smuggling may well be justified. However, the language used at this point is not of direct assistance in cases involving the lending of the vehicle, whether or not the smuggling was commercial. Lord Phillips refers on three occasions in that paragraph to "their cars". The difficulty in a case where the owner of the vehicle is not involved in the smuggling enterprise is that for him, seizure of the vehicle may be entirely disproportionate whatever the scale of importation. The Commissioners' policy gives some recognition to this, in the defectively worded passage in Mr Pennington's witness statement quoted by Miss Meek (paragraph 44 above). The question is whether the requirement for "total" innocence may lead to disproportionality. The test applied by the Commissioners, that an owner in allowing his vehicle to be used by a third party takes a risk that includes losing it through it being misused, covers a very wide range of possible circumstances. At one extreme, it would be inconsistent with their own policy, because no lending could avoid such risk, and therefore no owner lending a vehicle could be "totally innocent". At the other extreme, the owner may be fully aware of the borrower's intentions, and so may be shown to be implicated.

As shown by cases such as Lett and Granger, the difficulties arise where the facts

fall between these two extremes. The proportionality of the policy varies by reference to the facts of the particular case. As we have mentioned, Lindsay did not consider proportionality in the context of lending vehicles. Although the distinction between commercial smuggling and importing goods for social distribution was clearly relevant in testing the policy as it applied to owners, we consider that there is a material difference where the vehicle has been lent. There is an interference with the owner's entitlement to peaceful enjoyment of his possessions, and this needs to be justified by reference to what another party, the user of the vehicle, has done in bringing excess quantities of excise goods into this country. Article 1 of the First Protocol of the Human Rights Convention, incorporated into United Kingdom law by the Human Rights Act 1998, provides: "Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided by law…
The preceding provisions shall not, however, in any way impair the right 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."
It is clear from the case of Air Canada v UK (20 EHRR 150) that interference by a state 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. There must be a reasonable relationship for the proportionality between the means employed and the aim pursued.
A policy that, without further enquiry, penalises an owner of a vehicle who has had no part in the enterprise of importing excess quantities of excise goods must in our view be disproportionate. This must be the case irrespective of the quantities imported. We conclude, therefore, that proportionality demands an examination of the facts of the particular case in order to establish whether the circumstances in which the vehicle was lent justified the seizure and refusal to restore, or whether the seizure and any subsequent decision not to restore were inappropriate. The relationship between the particular facts and proportionality is clear from Lindsay at [64] and the final two sentences of [63]. Examination of the particular facts enables all the circumstances to be taken into account, so that if smugglers of large quantities of excise goods were to try to use reciprocal loans of vehicles as a means of avoiding seizure, as Mr Harris postulated, it would be proportionate to seize the vehicles on the basis that the owners were at the opposite extreme from total innocence. Taking into account the precise circumstances of the loan would not drive a coach and horses through the Commissioners' policy, as Mr Harris sought to argue. Applying the principle of proportionality would allow the exact degree of the owner's innocence or complicity to be taken into account. We consider that the question of possible remedies for the owner against the third party user does not affect the central question of the proportionality of the seizure and refusal to restore. Similarly, no arguments were put to us on the law relating to the lending of chattels and what terms may or may not be implied in relation to lending on to other parties; we do not think that this affects that central question.
It follows that there can be degrees of innocence not achieving the first extreme of the policy applied by the Commissioners, but sufficient to show that the decision not to restore a loaned vehicle is unreasonable.
The statutory limitations on our jurisdiction are set out at paragraph 10 above. For Miss Avli to succeed, she must satisfy us that the Commissioners could not reasonably have arrived at the review decision. To show unreasonableness, it must be demonstrated either that the Commissioners did not take into account all relevant considerations, or that they did not leave out of account all irrelevant considerations. This follows from the case of Jason Thomas Bowd v Commissioners of Customs and Excise [1995] V & DR 212, citing Associated Provincial Picture Houses Ltd v Wednesbury Corporation [1948] 1 KB 223 at 229.

Applying these principles to Miss Avli's case, we do not think that she could have been regarded as "totally innocent" within the terms of the Commissioners' policy. She exercised a degree of control over the lending of the car, but did not always enquire as to the intended use, because she trusted Mr Patel and the others to whom she lent it. We do not think that the terms on which she lent the car were "tantamount to ownership", as in Lett, where the car was freely available to the father in a way almost continuing his previous ownership. She was unaware of the on-lending of the car to Mr Ennis, or to others listed as having travelled to and from France in it. She had no idea that it was being taken abroad, and was under the impression that the car could only be used in the United Kingdom. She was a victim of breaches of trust by Mr Patel; we are unable to conclude on the evidence whether he gave her specific details of the intended use of the car for the two longer periods of loan coinciding with the series of trips to and from France, but we accept that she had no knowledge of this misuse until after the car had been seized. Although not "totally innocent", we think that she was closer to this end of the scale than to the other extreme mentioned at paragraph 47 above.

To the extent necessary for this decision, we find that the Commissioners had adequate material on which to base their decision that the excise goods should be seized from Mr Ennis. In arriving at this decision, they took into account all relevant factors that should have been taken into account, and there was no material taken into account that should not have been.

The seizure of the car appeared to be justified. Mr Ennis clearly attempted to deceive the Customs officers as to the ownership of the car. He gave two different stories, neither of which was true.

The events following the seizure of the car raise some difficult questions concerning the Commissioners' treatment of Miss Avli's case. Her first letter put them on notice that she was the owner. This letter stated that Mr Ennis "was the driver at the time of seizure, which I don't mind as far as he [Mr Patel] knows him". The following sentence, which is ambiguous, states¾ "I lent him the vehicle for social use and had no knowledge that he would take the vehicle abroad." The ambiguity is in the references to "him" and "he". Did "him" refer to Mr Ennis, or to Mr Patel? We think that the intention was to refer to Mr Patel. Did the "he" who would take the vehicle abroad refer to Mr Patel, or to Mr Ennis? We think that the word is intended to refer to Mr Ennis. It has to be said that the position is unclear. We consider that this should have put the letter to further enquiry before the decision was issued. The question was made more pointed by the second letter requesting a review. This stated: "I had no knowledge nor did I give permission to Mr Ennis to drive it." Given the apparent inconsistency with the interpretation placed by M Marsh on the words used in Miss Avli's first letter, as well as the ambiguity of the wording of that first letter, we consider that further enquiry should have been made into the question of the extent to which Miss Avli had given permission for the use to which the vehicle had in fact been put.

Although Miss Avli said that she regarded the matter as serious, we do not think that she took the advisable course of action in depending on Mr Patel to help her with the drafting of the two letters to the Commissioners. He may have consulted others, but there was no evidence of professional help being obtained. Miss Avli did sign the letters, but trusted Mr Patel to have given her the appropriate help. As Mr Patel had already failed to act in accordance with the trust that she put in him in lending the car to him, it was not the safest course of action to depend on him alone to resolve the problem that he had caused. We find that Miss Avli did sign the letters, and did understand what she was signing, but that she depended on Mr Patel and would not have questioned whether the letters were in the appropriate form.

If the Commissioners had made further enquiry into the extent to which Miss Avli had given permission for the use of the vehicle, they would have been in a position to consider her degree of innocence. In applying their "blanket test"

relating to loans of vehicles in circumstances where they did not consider the owner to be totally innocent, we consider that the Commissioners fettered their discretion in a way that prevented them from taking into account all relevant considerations. They directed their attention to the position of Mr Ennis as the smuggler, but did not take into account the discrepancies between Miss Avli's letters or the proportionality of the seizure in the context of the lack of permission to Mr Ennis mentioned in her second letter. It follows that in our view the decision not to restore the car was one at which the Commissioners could not reasonably have arrived.

Conclusion

The question of hardship was raised for the first time at the hearing. We do not think that the Commissioners can be regarded as failing to take such a consideration into account if it is not raised at the time that restoration is first sought. This is a question on which professional advice could have been taken at the time, and representations made in the initial letter. If it is first raised in the course of the proceedings before the Tribunal, this is too late, given that the powers of the Tribunal are limited to a review of the way in which the Commissioners arrived at their decisions.

The other matter that arose only for the first time at the hearing was that the vehicle had already been "disposed of". It was not clear whether this had already been done by the time of the review. The principal remedy which Miss Avli appeared to be seeking was the recovery of her vehicle. We did not see the wording on the reverse of the Notice of Seizure of Vehicle. If she wished to avoid the vehicle being disposed of while these proceedings were pending, she should have taken professional advice on this issue as well, in the hope that the procedure for disposal could be stopped until the process of decision, review and appeal, and any further review required by the Tribunal, was complete.

The appeal is allowed. We remit the matter to the Commissioners to carry out a further review, taking into account the evidence found that Miss Avli, in giving Mr Patel permission to use the vehicle, did not give him permission to lend it to third parties unknown to her, so that Mr Ennis was not driving the car with her permission. Since arriving at our decision, we have become aware of another case involving the lending of a car (Aykut Ates, Decision number E00188), which, although decided before the release of the Court of Appeal's decision in Lindsay, is consistent with the view that we have reached.

We direct that the Commissioners pay the Appellant's costs, to be assessed, if they cannot be agreed, by a chairman sitting alone, on the application of either party.

JOHN CLARK
CHAIRMAN

RELEASED:

LON/01/8055-AVLI.CLA