Importation of goods liable to excise duties – Whether Appellant can show exoneration from excise duties because goods are for own use – Goods and vehicle seized – Commissioners' discretion to restore – Commissioners' policy – Reasonableness – Tribunals limited jurisdiction – Appeal dismissed

LONDON TRIBUNAL CENTRE

MARCEL WATTS Appellant

- and -

&THE COMMISSIONERS OF CUSTOMS AND EXCISE Respondents

Tribunal: MR PAUL HEIM CMG (Chairman)

MR R D CORKE FCA

Sitting in public in Cardiff on 14 December 2001

Mr G Jones of Spiketts, solicitors, for the Appellant

Mr P Harris counsel, instructed by the Solicitor for the Customs and Excise, for the Respondents

DECISION

1. Mr Marcel Watts appeals against a decision taken by the Commissioners on 18 February 2001 whereby they refused to restore to the Appellant excise goods, namely 18 kilograms of hand-rolling tobacco, 80 cases of beer, and 6 litres of still wine, together with a Toyota motor vehicle, the goods and vehicle having been seized from the Appellant and his wife in the early hours of the morning of Saturday 27 January 2001 at the UK Control Zone at Coquelles in France.

2. At the hearing of this appeal the Appellant was represented by Mr G Jones of Spicketts, Solicitors, and the Commissioners by Mr P Harris of counsel.

The Appellant's case

3. The Appellant's case is based on his own evidence. It is that he and his wife owned a Toyota van. On 26 January they went to France and bought a large quantity of hand-rolling tobacco, beer and wine, namely 18 kilos of hand-rolling

tobacco, 80 cases of beer, representing 480 litres, and 6 litres of wine. This cost something over a £1000. He used money left to him by his mother who had died two weeks previously. On her death some cash was found in her house amounting to about £3,500, and this was shared out, in anticipation of probate. He had been laid off from his employment eight weeks previously. He had then been asked whether he wanted his old job back. That would have required him to work long hours, seven days a week. He decided therefore to make the journey to France as he would not be able to make another for a long time. The tobacco and beer would have been for his own use over a long period of time. Also his daughter was to have a birthday in February and some of the goods were to be put by for that. There was no intention of selling them. When stopped he told the officers exactly what goods he had. He showed them his Euro Tunnel pass and said how many times he had crossed the Channel in the past year. That had been in a different vehicle, which could carry less in the way of goods. It was the first time that he had crossed in the vehicle in issue. On previous journey he bought what he could afford. The beer which he had in the vehicle when stopped was all of the same type, called "ESP", as this was a type which they enjoyed. They were not wine drinkers. In cross-examination Mr Watts admitted that he had told the officers that on previous trips he brought over 60 cases of beer on average. He said that at that hour of the morning at the end of the statement he wanted to get away. He would have agreed to 60 cases. What he said was incorrect. It might have been up to 50 depending on what he could afford. Those were also for barbecues and parties as they socialised a lot. There might be 150 to 200 people at their barbecues. His sisters also gave barbecues. He would take some beer to other people's houses. They knew that he got it cheaper. It was up to him, he did not have to do so. He would not be asked to bring beer. He did not sell beer. He had never taken beer to parties for payment. He only brought ESP lager. People knew that that was what he had. If they did not like that they could fetch their own. As far as the 18 kilos of hand-rolling tobacco were concerned, he did not know that the guideline amount was only 1 kilo. All the tobacco was for his personal use. He smoked 40-50 cigarettes a day. He got 80-100 cigarettes out of a 50 gram pouch. He had bought tobacco on previous trips. He had bought 300 pouches that is to say 120 boxes containing perhaps 360 pouches in January. All this was for personal use. It was kept in a cupboard, sealed in cellophane. It was kept in a cold room. He had never had a problem with it drying out. He said that he would be a liar if he said that he never gave any away, but he might give it away as a favour for things he had had done for him. He never sold any. Friends had asked him to buy such products for them, and he had done so. He had been given money to buy drinks, and perfume. That had happened but not regularly. Not on this occasion. This was the biggest amount he had ever bought. This purchase was not for other people. It was because his mother had died, leaving him some money, and because of his new job. He admitted that he might have given some of these products to people who had done him a favour, perhaps work on his house, or a job on his car. Sometimes people would do him a favour and would not take money. This was not the reason for buying so much.

4. He said he smoked throughout the day, depending on his schedule. He could not explain why the ashtray in the car seemed not to have been used. He did say that the money came from his mother's Will even though the Will had not been processed and the money in fact came from her home. He had explained that she had left him the money. The officers put great emphasis on the question of who financed the purchases. £3,500 had been found in his mother's house and that had been divided up between the brothers and sisters. Each received about £1000 in cash. Asked whether the money was then not part of his savings as he had said, he said, "well it was because he had put it in the bank and then withdrew it". The money was in his mother's house. The bank accounts were frozen. They could not even deposit it in her account. They did not know what to

do with it and kept it for funeral expenses. He had a joint account with his wife. The Commissioners put to Mr Watts pages from his bank statement showing the amounts paid in and out of his joint account with Lloyds TSB between 8 January 2001 and 8 March 2001, and he replied that he had more than one account, but at that time there was only this account. He was not able to point to the payment in of the amount in question. He said that he must have thought they would use the money to go to France and not pay it in as there was no point in doing so. Asked whether in fact it had therefore not been paid into the account he replied:

"I would have thought we would have done it".

He admitted that he had been incorrect in saying that he had banked it. He did not have £1000 worth of savings at the time. He was redundant at the time. He had received no redundancy payment. He admitted that previous to the trip the income which he had was his wife's wages and his benefit payments.

6. The Appellant says that the Commissioners' powers of seizure, and their policy on non-restoration are not in issue. What was in issue was the presumption that the goods were for commercial purposes, which was contested. The goods were for the Appellant's own use. If small gifts were to be made that would be perfectly normal and de minimis. The Commissioners had no evidence to dispute the Appellant's version. The amounts, the availability of cash, and the purpose had been perfectly well explained. The Commissioners had made no attempt to disprove the Appellant's version. The only evidence the Commissioners had were the Appellant's own explanations, which should have been accepted, as there was no other evidence to contradict them.

The Commissioners' case

7. The Commissioners' case relies on the evidence of Mr Ian Frederick McEntee, senior officer of HM Customs and Excise, currently employed as a review officer. It was he who took the decision of 3 May 2001 now the subject of this appeal. He said that before taking his decision he conducted a review of the contested decision, and from the record of interview and the invoices he established the background of the case to be that at 12.10am on 27 January 2001 Mr and Mrs Watts were stopped at the UK Control Zone at Coquelles in France. He took account of the information given by Mr Watts, as recorded by the officer in his statement, and signed as correct by Mr Watts. He noted that Mr Watts had said that he had travelled six times in the previous year, the last occasion being November when he had bought beer and tobacco. On each occasion he bought about 60 litres of lager. Mr and Mrs Watts were then informed that they had excise goods in excess of the guide limits and were required to satisfy the officer that these were not for a commercial purpose. The officer was not satisfied that the goods were not for a commercial purpose and these, together with the car were then seized. The reasons given for seizure were that Mr and Mrs Watts had goods in excess of the guide levels and had failed to satisfy the officer that they were not for a commercial purpose. They had made frequent trips to buy large quantities of beer and their income was not commensurate with their level of purchase. Their request for restoration of the vehicle was refused on 18 February, whereupon they requested a review of that decision. He considered the request for review on the basis of the grounds stated in the Appellant's solicitor's letter, that the tobacco carried in the vehicle was intended for use by himself and his wife over a long period of time and that the beer was intended for consumption at a number of private parties to be hosted by the Appellant. The reason for the large quantities of excise goods carried by the Appellant on the occasion in issue was that he was about to commence a new job, working longer hours and more

days and would be unable to make such trips in the future. Although Mr Watts was unemployed at the time, he was due to start the new job in February, and as his mother had recently died and he stood to inherit a substantial sum under her Will once Probate had been granted the expenditure was not incommensurate with the goods imported.

8. Mr McEntee said that in confirming the decision not to restore the goods and the vehicle he had regard to the fact that the tobacco would have lasted Mr and Mrs Watts at least 90 weeks, and the lager, at the rate at which Mr Watts said he purchased it, would have required a daily consumption of 8.7 pints for each single day. He did not find this to be plausible. He noted that the ashtray in the vehicle was clean and that neither person smoked throughout the interview.

9. He had regard to the Commissioners' policy as set out in the letter of refusal of 18 February 2001. That letter states:

"The department's efforts are directed towards deterring and detecting fraud, failure to pay excess duty that is due, irregularities and to encourage compliance with the procedures established to control the movement of excise goods. In this way protection will be given to both Revenue and the legitimate trade in the UK. The creation of a single market meant the removal of fiscal frontiers, this significantly increases opportunities for smuggling and the irregular movement of goods with less risk of detection. Thus routine restoration, even on fairly stringent terms, would thoroughly undermine the department's objective of reducing the incidence of fraud, failure to pay excise duty that is due and irregularities. To maximise deterrent and encourage compliance, the normal policy in these cases is to refuse to restore the seized goods".

10. Mr McEntee went on to say that he had regard to this policy and to the possibility of exceptions to it. There were such exceptions, such as for example the case of courtesy cars, or vehicles sold on credit. Similarly, where the seizure of goods was not appropriate, restoration could take place. Hardship and humanitarian grounds would be reasons for restoration. He would not shut his eyes to that. Having reviewed all the facts before him and regarded all that was said including the three reasons given for the original decision not to offer restoration he decided that that decision was to be maintained. He did not have before him the bank statements which had been showed to the Tribunal.

11. In answer to cross-examination Mr McEntee said that the departmental policy was made by Head Office, although he did not know by whom and that the power to make such a policy was under section 152 of the Customs and Excise Management Act 1979. He had the evidence before him and applied the policy to those facts. He admitted that he had no direct evidence to contradict what the Appellant had said, nor any evidence of sale of the goods. He considered that the Appellant's story was unreasonable and not correct. The Appellant had a tremendous amount of tobacco. The amount of beer was unreasonable. It was up to the traveller to rebut the presumption of commerciality. He was not aware of any investigation that had taken place. It was put to him that it was unreasonable to reach the decision which he did when there was an explanation given by the Appellant and no evidence to show that what the Appellant has said was incorrect. The witness replied that he had regard to all the evidence in front of him and he found the Appellant's version totally unreasonable. His own decision was not unreasonable. He dealt with such cases regularly. He had a grasp of what was reasonable. It was not that he was reluctant to depart from the policy fixed by head office, it was that he saw his job as taking a reasonable decision. He would overturn an earlier decision if he thought it was unreasonable.

12. In re-examination he said that it was open to the officers to require any person to satisfy them that imported excise goods were for their own use. In this case the Appellant failed to satisfy the officers. Accordingly a presumption of commerciality arose. He bore this presumption in mind when reviewing the decision. The process was that he first looked to see if the seizure was appropriate. Then, when making the review decision he was assessing what the officer did in refusing to restore the goods and vehicle, and the presumption of commerciality. He did not disregard the Appellant's version. He considered it but found no exceptional circumstances to warrant restoration. He said that he had found inconsistencies between the records of the statements of Mr and Mrs Watts regarding on how the purchases were financed.

13. Mr McEntee was then asked about the statement recorded by the officer at page 38 of the bundle of documents in the following terms:

"You are not under arrest you are free to go but if you choose not to stay then the goods and vehicle will be seized do you understand … we will interview you both and ask a series of questions and then decide".

14. He said that this statement would have been made after the Appellant had been read a "commerciality statement" which made it clear that Mr and Mrs Watts had a responsibility to justify the importation of the goods. He had no problem with that. It was not an unfair inducement. The commerciality statement made the gravity of the situation clear.

15. A copy of such a statement was handed in to the Tribunal; it is headed:

"Officer's statement to travellers in civil cases regarding application of Article 5(3) of the Excise Duties (Personal Reliefs) Order 1992.

You have in your possession (or control) excise goods in excess of the guidance levels. (Explain if required)

Relief from payment of UK excise duty is afforded subject to the condition that these goods are not imported or held or used for a commercial purpose. I require you to satisfy me that these have not been imported for a commercial purpose. If you fail to do so then the goods will be seized as being liable to forfeiture.

Do you understand?".

16. The Commissioners called Mr Gerry Dolan, an officer of Customs and Excise to give evidence about the Commissioners' policy. He said that after an earlier more lenient approach the policy was now more robust in regard to tobacco and alcohol smuggling and was, since 13 July 2000, that vehicles would be seized and not restored on the first attempt that they are detected being used as smuggling. When vehicles were seized and not restored, individual applications for restorations were considered on their merits and officers bore in mind the need for proportionality.

17. In answer to questions Mr Dolan said that there was a nationwide problem of illicit import of excise goods, costing the Exchequer £4 billion. There was a deterrent effect on people who were caught. There was a publicity effect on others. The policy was designed to protect the honest taxpayer. Honest businesses were being undermined by smuggling. The policy had been advertised in all the national papers. There had been a large publicity campaign in different

media, trade outlets, radio, television and trade magazines. There was a Customs leaflet made available to all transport operators. Exceptions to the policy not to restore goods and vehicles were possible. There was a discretion. The value of vehicles was not considered. The policy was blind to the value of the vehicle.

18. Mr McEntee recalled on this question informed the Tribunal that he did not consider the value of the vehicle as an issue of proportionality unless the value of the goods was very low.

19. The Commissioners' case is that the importation of tobacco and alcohol products, even from other Member States to the European Union, is subject to excise duties, unless they come within the terms of the Excise Duties (Personal Reliefs) Order 1992 as being for the own use of the person holding them. It was for him to satisfy the Commissioners that the goods were for personal use, failing which they were presumed to have been imported for a commercial purpose. If the person importing the goods was not able to satisfy the Commissioners that they were for own use, the goods, and any vehicle in which they were transported were liable to forfeiture under sections 141(1)(a) and 139(1) of the Customs and Excise Management Act 1979.

20. The Commissioners say that the legality of the seizure and forfeiture of the goods and vehicle could have been challenged by the Appellant, who has been legally represented throughout, but that it has not been. This appeal therefore relates only to the Commissioners' decision on review to confirm the refusal to restore them.

21. The Commissioners say that the Appellant failed to discharge the burden of showing to the Commissioners' officers at the entry point to the Channel Tunnel that the goods were not for commercial purposes and thus not liable to duty. Having failed to discharge that burden, the Commissioners were entitled to seize both the goods and the vehicle. The decision for seizure and forfeiture could not be the subject of this appeal, which relates only to the decision not to restore them.

22. The Commissioners say that the decision to refuse to restore taken on review was not an unreasonable one in the way in which the expression "reasonableness" has been defined in the authorities, and that nothing has been shown to satisfy the Tribunal that either the original decision or the decision under review was unreasonable.

23. The Commissioners say that nothing advanced by the Appellant has been disregarded, that the Commissioners had regard to that which was relevant, and they have made no mistake of law. It was reasonable for the Commissioners in the circumstances described to have a rigorous policy on restoration of motor vehicles. Exceptions were possible. The legal requirement was on the person importing the goods to satisfy the officers of Customs and Excise that the goods were for personal use. Guideline levels were in force. The goods in issue vastly exceeded those guideline levels. The Appellant was not able to satisfy the officers that the goods were for own use so that the presumption of commerciality arose. In the light of the quantities involved it could not be said that any of the decisions taken were unreasonable. The Commissioners' policy was not inflexible. However, no exceptional circumstances had been adduced. The main thrust of the Appellant's argument was that the goods were for own use, that the Commissioners should have been satisfied of that, and that their decision to refuse to restore was thus unreasonable. However there were perfectly good grounds on the Appellant's own statements, on the amounts, on the indications

that some of the goods might be given away in return for services, for the Commissioners to have reached the decision they did.

The issue

24. The decision in issue is the Commissioners' refusal to restore the Appellant's vehicle and the excise goods carried in it in the early morning of 27 January 2001.

25. The Appellant has not contested the seizure, the Commissioners' policy in regard to non-restoration, or the legislation under which it exists or was applied. His case is that his explanations given in the morning of 27 January 2001 should have been accepted, and acted on by the Reviewing officer. The goods were for own use. Explanations were given which should have been accepted in the absence of evidence to the contrary. No such evidence existed or was sought. It was therefore unreasonable to apply a presumption against the Appellant and to act upon it. Such a presumption could have been applied if he had not offered full explanations. The refusal to restore was thus an unreasonable decision.

The facts

26. It is not disputed that the Appellant was importing the quantity of goods described by the officers, that he was asked to satisfy them that they were for "own use" and that they were not satisfied by his explanations, and did not accept them as showing that the goods were for own use. It is clear that his explanations that the goods were for `own use' were disbelieved, and that the officers did not take this to be a normal case of a family shopping trip. The goods and the vehicle were seized and forfeited.

27. The Appellant's explanations were given after a `commerciality statement was read out to him by the officers, and after he had been given the terse warning quoted earlier that he was free to go, but that if he chose to do so, the goods and vehicle would be seized.

28. Read by itself, that warning has a minatory tone. Read with the commerciality statement it is clearer, and allows the person to whom it is read to understand that there is an onus to satisfy the officer about the importation. The warning is thus understandable, that if the importer makes no effort to satisfy the officers, they will conclude that they are not satisfied. The Tribunal sees no unfairness in these statements, in the circumstances of this case, and in the Commissioners reliance on them in deciding whether they were satisfied that the goods were for own use.

The law

29. The Commissioners' powers to seize and forfeit excise goods, subject to the reliefs in force, under sections 139, 140 and 141 of the Customs and Excise Management Act 1979 are not in dispute, nor is their power under section 152(b) to restore any thing forfeited. The powers extend to vehicles carrying such goods. Seizure and forfeiture can be contested under the special provisions provided in Schedule 3 to that Act, but there has been no recourse to that procedure.

30. The Excise Duties (Personal Reliefs) Order 1992 affords relief from the duty of excise on condition that the goods in question are not held or use for a commercial purpose, and specifies in section 3A(3) that where the goods exceed

any of the quantities shown in the Schedule the Commissioners may require the person holding the goods to satisfy them that the goods are not held for a commercial purpose. Where he fails so to do his failure "shall cause the goods to be treated as goods held for a commercial purpose".

31. The distinction is thus made between the case where the person transporting the goods can satisfy the Commissioners that they are for his own use, and those where he cannot. In the latter case, they will be presumed to be held for commercial purpose. Is it of course possible to see circumstances where goods which are not for own use are nevertheless not imported for sale, but the legislation to which reference has been made makes it clear that where the officers are not satisfied that they are for own use, they are to be treated as goods held for a commercial purpose and that accordingly the relief from duty is not available.

32. In the present appeal the Appellant was not able to convince the officers that the goods were for own use. The reasons which were given that the goods were in excess of the Minimum Indicative Limits, which for beer is 110 litres and for hand-rolling tobacco 1 kilogram per person, while the quantities transported were 18 times that level for the hand-rolling tobacco and over 4 times that indicative level for the beer. The further reason given was that the Appellant had made frequent trips abroad at which he had the opportunity, and did use the opportunity, to purchase such goods, so that he would not have needed to purchase such a large quantity of excise goods for his own use on this occasion, and that his income was considered to be incommensurate to the expenditure on them.

33. The explanation given by Mr Watts were that the goods were for his own use, were rejected by the officers, and later by the Review Officer. It is the reasonableness of that decision which is attacked.

34. In this context, "unreasonableness" has been defined in the appeal of Customs and Excise Commissioners v Corbitt (Numismastists) Ltd (HL) [1980] STC 231 at page 239 as follows:

"... the Commissioners have acted in a way in which no reasonable panel of commissioners could have acted; if they had taken into account irrelevant matter or disregarded something to which they should have given weight ."

35. In the appeal of Hopping v Commissioners of Customs and Excise (released on 10 October 2001) LON/8003 the tribunal expressed the test in the following way:

"The Tribunal must consider whether it is satisfied that the Commissioners could not reasonably have arrived at the decision under review. We take reasonableness in this context to have the same meaning as "Wednesbury reasonableness" adjusted to take account of any "human rights" of the individual affected by the decision. It follows therefore that the Commissioners' decision can be found unreasonable in the present circumstances if Mrs Hopping can show that they have acted in a way in which no reasonable panel of commissioners could have acted, that they have taken into account some irrelevant matter or have disregarded something to which they should have given weight or made some other error of law ...".

36. The Tribunal applies the reasonableness test in that way, bearing in mind first that the burden of showing that the Commissioners have acted unreasonably is

on the Appellant, and secondly that the decision under review is that taken by the Commissioners at the time, and on the material available to them.

37. The burden of proof is not only that established by general principles, but that expressed in article 3A(3) of the 1992 Excise Duties (Personal Reliefs) Order in the following terms:

"Where the shuttle train goods exceed any of the quantities shown in the Schedule to this Order, the Commissioners may require the person holding the goods to satisfy them that the goods were not held for a commercial purpose".

38. Article 3A(5) provides :

"If the person holding the goods is required to do so but fails to satisfy the Commissioners that he does not hold them for a commercial purpose, it shall be presumed that the goods are held for a commercial purpose".

39. The reasonableness of the Commissioners' decision not to restore is attacked because it is based on the alleged unreasonableness of the refusal to accept the Appellant's version. It is said that in the absence of evidence to the contrary the Appellant's version should have been accepted. It is not open to the Tribunal to treat this appeal as an appeal against the original decision by the officers that they were not satisfied that the goods were for own use, and to substitute its own decision for that. It must deal with the decision on review.

40. That review decision is a decision as to an "ancillary matter" under section 16, and paragraph 2(1)(r) of Schedule 5, of the Finance Act 1994, and section 152(b) of the Customs and Excise Management Act 1979. In accordance with section 16(4) of the Finance Act 1995 the Tribunal's jurisdiction over a review decision on ancillary matters is purely supervisory. That subsection provides:

"In relation to any decision as to an ancillary matter, or any decision under 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 persons making the 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 that repetitions of the unreasonableness do not occur when comparable circumstances arise in the future".

Conclusions

41. The Tribunal is obliged to consider the reasonableness of the Reviewing Officer's decision in the light of the material before him. It is rightly suggested on

behalf of the Appellant that a decision originally unreasonable does not become reasonable by being confirmed. The Tribunal's jurisdiction is to decide whether the Commissioners' decision on review was one which no reasonable body of commissioners could have taken. The Commissioners' decision is based upon their rejection of the Appellant's arguments. They did not accept, in spite of the explanations given, that that quantity of goods was for personal use. It seems clear to the Tribunal that it is reasonable to consider the proportion by which goods sought to be imported exceed the guideline limits. The presumption that goods which cannot be shown to be for own use should be treated as being for commercial purposes is obviously more easy to support when those goods are sought to be imported in what amounts to commercial quantities. The officers clearly took that view on the facts before them, as did the Review Officer.

42. It is suggested for the Appellant that it was unreasonable for the Commissioners not to test their refusal to accept the Appellant's version by further investigations. However, the burden of proof was on the Appellant. It was for him to satisfy the Commissioners' officers that the goods were for own use. The Commissioners' officers clearly did not think that the explanation which they were offered was plausible. With regard to the resources used to finance the purchase, they were again not convinced, and there was certainly a lack of coherence in the explanation given.

43. The question for the Tribunal is whether Mr McEntee's reliance on that refusal to be convinced was unreasonable in the way in which that term has been defined by the authorities cited earlier.

44. The legislation requires the person importing the goods to satisfy the Commissioners that the goods are for own use. It is clear that there will be occasions when they are not satisfied and where they reject the arguments advanced to them as not reaching the standard required so to satisfy them. Where their reasons for not being satisfied are so arbitrary that their decision is invalidated, the decision under review would, as Mr McEntee agreed, serve to upset the original finding. However, it appears clearly to the Tribunal that Mr McEntee had before him an original decision which was not arbitrary, and which is based on the reasons expressed in it. There were thus grounds on which Mr McEntee could affirm the decision to refuse to restore, applying as he did the robust policy of the Commissioners.

45. Of course as far as an Appellant is concerned he has a decision refusing to restore the goods and the vehicle, and whether that decision is taken on grounds individual to his case or whether there is incorporated a decision of policy, the result is the same. However the Tribunal in considering that result has to consider also whether the policy introduces an unreasonable element. On the evidence before the Tribunal this is not so. The policy has a legitimate aim, and is applied on review on a case by case basis. What the policy does not express is an element of proportionality relating to the degree of transgression to the consequence of it. The Tribunal thinks it should, but the matter does not arise before it in those terms, nor has argument been advanced on it. The argument has been limited to one ground, and that ground fails.

46. The Appellant has not shown that the decision under review was one which no reasonable body of commissioners could take and accordingly this appeal must be dismissed.

PAUL HEIM CMG

CHAIRMAN

RELEASED:

LON/01-8056-WATTS.HEIM