



**TC05250**

**Appeal number: TC/2015/04629**

*Excise duty restoration of goods - restoration of vehicle adapted for smuggling- appeal of review decision-honesty of the appellant – implicit but not explicitly stated in review decision- decision reasonable- appeal dismissed*

**FIRST-TIER TRIBUNAL  
TAX CHAMBER**

**LUKASZ KIALKA**

**Appellant**

**- and -**

**BORDER FORCE**

**Respondents**

**TRIBUNAL: JUDGE GETHING  
MEMBER Mrs RUTH WATTS DAVIES**

**Sitting in public at Fox Court, Court 12, 4th Floor, 30 Brooke Street, London EC1N 7RS on Wednesday 29 June 2016**

**Dr Anton Van Dellen for the Appellant**

**Mr David Harris, instructed by the General Counsel and Solicitor to HM Revenue and Customs, for the Respondents**

## DECISION

1. This case concerns an appeal against a decision of a Reviewing Officer made on 9 July 2015 not to restore to Mr Kialka a vehicle owned by Mr Kialka which had been seized by HM Revenue & Customs at the Port of Dover in January 2015 by reason of being adapted for the purpose of concealing goods under section 88 of the Customs and Excise Management Act 1979. Mr Kialka had challenged the lawfulness of seizure of the vehicle in the Dover Magistrates Court. Mr Kialka did not appear at the original hearing of the Magistrates Court fixed to consider the lawfulness of the seizure nor did he appear at the re-scheduled hearing. In consequence the appeal against the seizure was dismissed. No appeal against that decision of the Magistrates Court was made. This Tribunal may not reconsider the lawfulness of the seizure but it may consider the lawfulness of the decision of the Reviewing Officer.

2. We heard evidence from Mr Kialka who gave evidence under oath with the assistance of an interpreter. We also heard evidence under oath from Mr David Michael Harris, the Review officer and Mr Matthew Castle-Turner, the arresting officer at Dover.

3. Mr Kialka contends that:

(1) he had no prior knowledge of the concealed compartment discovered by the arresting officer;

(2) he had bought the car from a third party whose details he did not have but which can be discovered from DVLA, and

(3) in reviewing the decision not to restore the vehicle to Mr Kialka, the Reviewing Officer ought to have taken into account the absence of knowledge of the adaptation of the vehicle on the part of Mr Kialka, and other relevant factors such as the hardship Mr Kialka suffered because of the seizure. Mr Kialka has a substantial bank loan (which we infer was to buy a new vehicle) and his ability to work had been disrupted.

4. For the reasons set out below we consider that the decision of the Reviewing Officer was properly made and we dismiss this appeal.

5. The evidence of Mr Kialka

(1) The vehicle concerned was a Mercedes car with registration GP07 USN.

(2) Mr Kialka could not recall when he acquired the vehicle. He thought it was about 6 months' prior to the seizure. (The sales slip in relation to the purchase which Mr Kialka had in his possession at the time of the seizure in January 2015 indicates that Mr Kialka acquired the vehicle on 10 July 2014.)

(3) The sales slip showed Mr Kialka's address as being in Southampton.

(4) Mr Kialka has an address in London where his construction business is located. Mr Kialka's fiancé lives in Southampton. Mr Kialka lives in both Southampton and London.

(5) Mr Kialka has lived in the United Kingdom for 10 years.

5 (6) Mr Kialka said his construction company is called "Safety Property". Mr Kialka says the company referred to as Protection of Property Limited in the Reviewing Officer's decision letter of 9<sup>th</sup> July is the same company as Safety Property Limited.

6. When he was stopped by the arresting officer Mr Kialka was returning from a two month holiday in Poland. He returns to Poland 3 times a year. The arresting officer recorded in his notebook that Mr Kialka said he has a lending business in Poland and loans were secured on property. Mr Kialka said the arresting officer was mistaken. Mr Kialka said he had replied that he had a construction company called Security Property.

15 7. Mr Kialka did not have the assistance of a translator at the border at the time of the seizure in January 2015.

8. Mr Kialka had been travelling backwards and forwards to Poland for 10 years, 3 times a year and had never had tobacco, alcohol or a vehicle seized by Border Force. He had once had cash seized but it was later returned as Mr Kialka was able to show the cash was obtained legitimately.

9. Mr Kialka says he was unaware of the concealed compartment until he was stopped and the Border Force brought it to his attention. The compartment is under the carpet under the rear seats. Access is from above but goods can be installed in the compartment from underneath the car. The compartment is not visible from above without removing the seats. Mr Kialka claimed never to have looked under the car.

10. Mr Kialka had a criminal conviction for smuggling cannabis into prison. He had done so at the request of a friend. The incident was 8 years ago and he had pleaded guilty and was sentenced to 45 days in prison.

11. Mr Kialka accepted that his English language capability was sufficient to enable him to get by working as a builder in the UK and as the sole director of a construction company in the UK.

12. When he was stopped at the border in January 2015 he had no problem understanding the questions and in providing answers in English. He later said there was no conversation at the border. He had been stopped, the car was searched and he had been arrested.

13. Mr Kialka insisted that he had said his company was called Safety of Property which the arresting officer must have confused with lending money secured on property. (We note that his company is not called Safety of Property and that Mr Kialka had previously said there was no conversation.)

14. Mr Kialka accepted his company is called Protection of Property Limited and had been so called for 10 years.
15. Mr Kialka accepted that the form V5C/4 which is completed by a purchaser of a vehicle shows his address as a London address. The address on the Insurance certificate shows a Southampton address.
16. The notes of the officer at the border indicate that Mr Kialka had explained it was cheaper to insure the car in Southampton.
17. Mr Kialka says that Southampton is the address of his fiancé. When asked why he did not mention that to the officer at the border he said he did not speak to anyone. He was simply arrested.
18. Mr Kialka's lawyer corresponded with Border Force on 7th June 2015 by email but did not mention his fiancé living in Southampton.
19. Mr Kialka said the car had a valid MOT certificate when he bought it but could not recall when it would have had to be renewed.
20. Mr Kialka paid £12,500 for the car and that he earns between £30,000 and £40,000 per annum.
21. Mr Kialka bought the car through Auto Trader on-line. He had checked that the car had not been stolen or in a collision but otherwise he had not asked a reputable garage to look at it. He had looked at other cars before he bought.
22. Mr Kialka had instructed the law firm Imran Kahn to assist in resisting the seizure of the car. Mr Kialka had not given the firm any information about the former owner to prove Mr Kialka's case that he had not modified the vehicle or had been aware of the modification.
23. Mr Kialka has done nothing to track down the former owner subsequent to the Magistrates Court proceedings even though the owner has according to Mr Kialka caused him to suffer hardship and confiscation of the car.
24. Mr Kialka claims that he was prevented from attending the second hearing at the Magistrates Court because he was entering the UK that morning at Dover and he had been detained at the Border for 5 hours. When he was released he did not then go to the Magistrates Court to explain the situation. He said the solicitors had explained to the Court why he was late. He had not appealed to the Court of Appeal. He said he did not understand these things.
25. Mr Kialka used the car for business and personal use.

Mr Castle-Turner gave evidence as follows:

26. He is an officer of Border Force doing customs work since 2001. He was working at Dover at the end of the Channel Tunnel when Mr Kialka's car was stopped on his way from Coquilles in France.

27. He had re-read his note book which records the exchange between himself and Mr Kialka. He recalls the incident. He recalls Mr Kialka understanding his questions put in English and replying in English. He said he has no access to interpreters and he makes the best of it with non-fluent English speakers. He was confident Mr Kialka understood his questions and he understood Mr Kialka's answers.

28. The officer made notes at 12.26 of the exchange at 12.03. The time of the exchanges is in brackets in the margin. The notebook indicates that:

(1) Mr Kialka was returning from 2 months in Poland where he works in his business lending money. (There are words in brackets "(MONEY LENT SECURED BY PROPERTY)" which the officer explained to us was his own clarification of his earlier note.)

(2) The officer noted that the insurance certificate shows a Southampton address but the DVLA keeper's certificate shows a London address. Mr Kialka had explained it was cheaper to insure in Southampton.

(3) Mr Kialka has a building company in the UK that goes by his own name.

(4) The vehicle was directed to the garage at 12.13 where a full rummage of the vehicle was carried out. At 12.52 officer Jarvis informed the officer that he had found what he believed to be a controlled drug. The officer then arrested and cautioned Mr Kialka. Following the rummage the officer discovered the concealed compartment and at 14.48 Mr Kialka was informed that the vehicle was being seized due to being adapted for smuggling.

29. Mr Castle-Turner explained that the concealed compartment was operated from below through an envelope opening but goods would have to be extracted from above. It was a sophisticated compartment. The compartment was hidden by a heat shield of the exhaust. The metal clips which hold the entry point were rusted. They would not have been factory fitted. They would in his opinion have rusted within weeks of being installed.

30. In relation to the second Condemnation hearing before the Magistrates Court when Mr Kialka said that Border Force had detained him for five hours, Mr Castle-Turner informed the Tribunal that Border Force and Customs & Excise keep a record of all cars that are stopped and all interviews conducted and all detentions. He had searched the records and found no record of Mr Kialka being questioned, stopped or detained on the day of the Magistrates Court hearing. If any vehicle had been stopped for five hours that would have been highly irregular and there would have been repercussions. Yet there is no such record. There is a record of all passports swiped at the port of entry but that information is not available in civil proceedings.

31. Mr Castle-Turner noted that Mr Kialka had not produced his ticket to show he entered Dover the morning of the Magistrates Court hearing.

32. Mr Castle-Turner considered the concealed compartment to be sophisticated. It is not detectable by an uninformed member of the public from the saloon or from the side of the vehicle. It was detectable from below. There was nothing in the compartment when Mr Kialka was stopped but there was evidence that amphetamines had been in the compartment.

Mr Harris the Review Officer also gave evidence under oath.

33. He had joined the Customs & Excise in 1980. He has been a Reviewing Officer since 2001.

34. He had re-read his decision set out in the letter of 9 July 2015 in which he upheld the decision not to restore the vehicle. He considered that he had heard nothing during the hearing before this Tribunal which would cause him to change his decision.

Three paragraphs of the 9<sup>th</sup> July letter were highlighted by Dr Van Dellen on which the Review Officer had made his decision. They are at the bottom of page three of the letter. They read as follows:

*"It would seem that Mr Kialka is no stranger to fraudulent behaviour. I say this because he has admitted to the Officer of the day of seizure, that he uses an address in Southampton for the vehicle's insurance because it is cheaper to use that address than his real address which is London. In addition I see that he registers the Southampton address with DVLA as his address for the ownership of the vehicle. This again would seem to be untruthful.*

*This is no casual concealment and I cannot see that it would be reasonable for me to allow back on the streets, a vehicle containing such a sophisticated concealment.*

*In addition I see that far from being a simple builder unable to work because he no longer has the vehicle, Mr Kialka told the officer that he has a business of lending money in Poland and that he has a business in the UK registered under his name. From records available to me I note that Mr Kialka is the sole director of a company called Protection of Property Ltd. The business is registered to Mr Kialka's London address and has been in existence since March 2014."*

35. The letter indicates that the Review Officer had read all of the documents and other materials available to Border Force both before and after the time of the original decision not to restore. The Review Officer notes that Mr Kialka through his representatives were asked to provide any further evidence to support his request for restoration but no such evidence was provided.

36. The Review Officer notes at page 3 of the letter that the burden of proof in restoration cases lies with the applicant and refers at page 3 to the case of McGeown International in 2011, in which Judge Huddleston wrote:

*(1) ... it is the function of this tribunal only to consider if HMRC have erred in law, or if they have taken a decision which is so unreasonable that no other Review officer would have come to the same conclusion.*

5 (2) *The burden of proof in relation to that question firmly rests with the Appellant. The Appellant appeared to suggest that the onus of proving alleged unlawful activity rested with HMRC. That is simply not the case. ...HMRC were within their powers to seize the vehicle. HMRC then have a clear statutory discretion as to the terms on which a vehicle once seized may be restored (or not) and this appeal is only concerned with the examination of whether, on the facts, that discretion was properly exercised."*

10 37. In relation to the statement about the insurance, the Review Officer considered this affected the credibility of Mr Kialka as a witness. Dr Van Dellen suggested that there were other potential reasons for Mr Kialka putting Southampton as his address such as the place where his fiancé lives. [The Review Officer accepted that might be the case but Mr Kialka had not volunteered any such information.

15 38. In relation to the sophisticated concealment this was a relevant factor. It is certainly not apparent to a lay observer. Someone had gone to a lot of trouble to create it. Although others had owned the vehicle before Mr Kialka as he had made no efforts to find the former owner, on the balance of probabilities the Review Officer considered that Mr Kialka had created the concealment. The Border Force had not sought information of the former owner as suggested by Mr Kialka's lawyers.

20 39. The Reviewing Officer's comments in the third paragraph indicated that Mr Kialka was not a simple builder as claimed. From information available on the internet he was able to discover that Mr Kialka is the sole director of a construction business in the UK registered to his address in London. This affected the Reviewing Officer's view of Mr Kialka's credibility. The Review Officer was persuaded that Mr Kialka knew of the concealment, although he does not use those words in his letter.  
25 The Review Officer also concluded there was no undue hardship other than the hardship that naturally arises from seizure. He therefore considers his decision not to restore was correct.

30 40. As the Reviewing Officer had concluded that Mr Kialka had knowledge he did not need to consider whether the adaptation could be removed. In re-examination the Reviewing Officer informed the Tribunal that the cost of removing the adaptation would be more than the value of the car.

41. The Reviewing Officer did not mention the empty nature of the compartment because that was common ground and is recorded in the papers he had reviewed. There were traces of controlled drugs found in the concealment.

35 42. The Reviewing Officer confirmed that his decision would be the same if the concealment contained goods.

### **The Appellant's submissions**

40 43. The review decision is unlawful as The Review Officer had failed to consider the state of knowledge of Mr Kialka. Section 88 C&EMA is not a strict liability offence as knowledge is a component. If the Review Officer did not consider Mr Kialka's state of knowledge in reaching his the decision, the vehicle should be

restored to Mr Kialka. In this connection Dr Van Dellen made the following assertions:

5 (1) The Review Officer had taken the sophisticated nature of the concealment into account. Dr Van Dellen referred the Tribunal to the case of *Gjana v Director of Border Force* [2016] UKFTT 0105 (TC), a First-tier tribunal decision (which Dr Van Dellen accepted did not bind this Tribunal) in which one factor which was taken into account by the Tribunal was that a lay person would not have noticed the modification to the rear seat belts that had been necessary to create a concealed cavity by a prior owner.

10 (2) The issue of Mr Kialka using the Southampton address for insurance purposes to obtain a cheaper premium may affect Mr Kialka's credibility but that is not the same as evidencing his knowledge of the concealment. Knowledge is a very high threshold. It requires some awareness.

15 (3) The Border Force officers found the concealment because they know where to look. The previous owners could have modified the vehicle. When Mr Kialka bought the vehicle he undertook some checks but as a lay person would not be aware of the concealment.

20 (4) If the vehicle were to be restored to Mr Kialka it could be restored to its original state so the policy of not allowing into circulation vehicles adapted for smuggling would not be thwarted.

(5) If Mr Kialka had not been delayed at the border on the day of the Magistrates hearing more evidence could have been before that Court.

(6) The concealment was empty. This fact should be taken into account as it was in *Gjana*.

25 **The Respondents' submissions**

44. Counsel for the Respondents was a Mr David Harris. As the Reviewing Officer is also called Mr David Michael Harris, to avoid confusion we refer to the Respondent's representative as Counsel and the Appellant's representative as Dr Van Dellen.)

30 45. Counsel for the Respondents submitted that Section 88 C&EMA has no bearing on these proceedings. It is relevant to the proceedings which Border Force may bring in the Magistrates Court to condemn goods liable to forfeiture. The sole issue before this Tribunal is whether the decision of Border Force not to restore the vehicle was reasonable.

35 46. The entitlement of a person to require the review of a decision of the Commissioners of Revenue & Customs is set out in Section 14(2) Finance Act 1994. The options available to the Commissioners are set out in section 15. They may either confirm the decision or withdraw or vary the decision and take such further steps (if any) in consequence of the withdrawal or variation as they may consider appropriate.

40 47. Section 16 sets out a right of appeal. Section 16 (4) sets out the powers of an appeal tribunal on an appeal under section 16. It provides as follows:



"...where the Tribunal are satisfied that the Commissioners or other person making that decision could not reasonably have arrived at it, to do one or more of the following, that is to say-

- 5 (a) To direct that the direction, so far as it remains in force, is to cease to have effect from such time as the tribunal may direct;
- (b) To direct that the direction, so far as remains in force, is to cease to have effect from such time as the tribunal may direct:
- (c) To require the Commissioners to conduct, in accordance with the directions of the tribunal, a further review of the original decision;
- 10 (d) 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  
15 future."

48. Counsel indicated that the jurisdiction of this Tribunal is to consider whether the Review Officer's decision of 9th July 2015 on the application of the policy of restoration of vehicles adapted for smuggling, was reasonable. The Tribunal must consider what should and should not have been taken into account in reaching that  
20 decision.

49. The general policy of the Commissioners (which is not the subject of this review) is normally to refuse to restore vehicles adapted for smuggling unless the Commissioners are satisfied that the owner had no knowledge of the adaptation, in which case the vehicle may be restored on certain conditions, which would include  
25 the removal of the adaptation.

50. Counsel accepted that if Mr Kialka had no knowledge of the adaptation or if he were an innocent third party that fact would have to be taken into account. Counsel explained the Review Officer in Gjana relied on an assumption that a purchaser of the vehicle would have noticed the adaptation of the vehicle. It was a decision on the  
30 facts. Mr Harris, the Review Officer in this case did not proceed on that assumption. Knowledge is relevant to the application of the policy, but the issue before this Tribunal is whether the decision not to restore was reasonable on the evidence.

51. Counsel also indicated that if the Tribunal considers on the evidence before it, the decision would not be different if the Commissioners were required to make the  
35 decision again, it serves no purpose to send the decision back for a further review and the Tribunal is entitled not to do so.

52. Counsel noted that the burden of proof that the decision was unreasonable lies with the Appellant. Border Force must show it has exercised the discretion in the application of the policy fairly and has not been a slave to the policy.

40 53. Counsel for the Respondents noted Dr Van Dellen's assertion that the Review Officer had not expressly considered the state of knowledge of Mr Kialka, not given

weight to the facts that the concealed compartment was empty, that Mr Kialka is not a prolific smuggler and that had Mr Kialka's innocence been taken into account a different limb of the policy ought to have applied.

54. Counsel for the Respondent asserted that it is irrelevant that there is no express statement about Mr Kialka's state of knowledge, the content of the compartment, or the fact that Mr Kialka is not a prolific smuggler in the July 9<sup>th</sup> letter, but what is relevant is what is meant by the Review Officer.

55. Counsel for the Respondent submitted that the Review Officer considered Mr Kialka to have knowledge of the concealment. He had come to that conclusion on the information available to him. Specifically the note of the conversation at the Border about the use of a Southampton address to secure cheaper insurance, the complete failure of Mr Kialka to provide any information about prior owners of the vehicle, and the deliberately vague wording of the email to Border Force from Mr Kialka's solicitors. The Review Officer considered Mr Kialka not to be credible. The information about Mr Kialka's conviction for smuggling drugs into a prison was not mentioned in the letter but it is a fact which this Tribunal could take into account in assessing Mr Kialka's credibility. Counsel for the Respondents asserted that in view of the overall picture from the evidence given it was reasonable to conclude that Mr Kialka was not credible.

56. Counsel for the Respondents asserted that if the decision was to be made again the following would have to be taken into account:

(1) The failure to produce information about the seller of the vehicle and the deliberately vague information provided by Mr Kialka's solicitor in the email of 7 June 2015. Counsel considered this failure was due to the fact that Mr Kialka did not wish the former owner to be identified. That would exonerate the seller and implicate Mr Kialka or implicate both if they were both aware of the adaptation. Mr Kialka's evidence was incredible having regard to the value of the vehicle and Mr Kialka's potential loss if the car were not restored. If Mr Kialka had been implicated by the seller's actions he would have attempted to track down the seller. He would have a legitimate claim against the seller. There was no evidence of Mr Kialka having attempted to gather any such evidence. The case can be distinguished from Gjana in this respect. In Gjana the appellant had bought the vehicle from a reputable dealer.

(2) The sophisticated concealment has a greater value to a smuggler. It is not credible that a smuggler would sell such a vehicle as to do so would put the smuggler at risk of discovery. A person who has gone to such trouble to adapt a vehicle is unlikely to wish to sell it.

(3) In relation to the insurance issue on which the Respondents rely to assess Mr Kialka's credibility, Mr Kialka made no attempt to explain the position in correspondence, and in cross examination Mr Kialka denied he had had any conversation with the officer at the Border. Counsel for the Respondents considered Mr Kialka to be dishonest.

5 (4) The arresting officer recalls Mr Kialka was able to understand English and was able to answer his questions adequately in English. Counsel noted that at the hearing Mr Kialka claimed there was a misunderstanding with the officer at the Border. Mr Kialka has lived and worked in the UK for 10 years. He is the sole director of an English limited company. He has a 5 year old child and fiancé in the UK. He carries out work as a builder in the UK. It was not credible said Counsel that Mr Kialka had no understanding of the conversation at the border. Counsel considered this to be dishonest. Counsel asserted the same is true of Mr Kialka's account of why he was unable to attend the Magistrates Court hearing and of Mr Kialka's account of his earlier conviction for smuggling drugs into prison when requested to do so by a friend. These are all indicative of Mr Kialka's dishonesty. Counsel remarked on the striking similarities between that event carrying goods into prison on his person and carrying goods in a concealed compartment in a car across borders.

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57. Mr Harris the Review Officer came to the conclusion that Mr Kialka had knowledge of the concealment. It is not explicit in the letter of 9<sup>th</sup> July but it is implicit. Not all facts known to the officer are listed but the witness statement of the Review Officer lists all the documents on which he relied. The Review Officer must apply the facts and determine on a balance of probabilities whether an innocent person would have provided a positive case.

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### **The facts**

58. On the balance of probabilities we find Mr Kialka to have had knowledge of the concealment. We base our finding on the following:

25 (1) It is not credible that Mr Kialka did not have sufficient English to answer questions at the border about his car, his insurance and his occupation given he has lived and worked as a builder in the UK for 10 years, has a fiancé and a 5 year old child in the UK and is the sole director of an English limited company. It is not credible that there was any confusion between the officer and Mr Kialka at the border.

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(2) Mr Kialka's attempt to explain away the record made by the officer about his money lending business in Poland as being a confusion with the name of his UK building company which he had owned for 10 years is not credible. It is inconceivable that Mr Kialka thought his company was called "Security for Property" or "Safety of Property" when its name is "Protection of Property".

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(3) Mr Kialka's failure to produce any evidence of his being at Dover on the day of the Magistrates Court hearing when he claims he was prevented from giving evidence to challenge the seizure of the vehicle owing to his detention at the Border by Border force is incredible. He has no Eurostar ticket, ferry ticket, or telephone record. If Border Force did detain him unlawfully it is inconceivable that he would not appeal against the Magistrates Court decision.

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(4) If Mr Kialka is an innocent purchaser of the vehicle it is inconceivable that he would not have obtained information about the former owner, who he claims, modified the vehicle.

5 (5) As Border Force had mentioned in the review decision the mis-use of an address in Southampton to secure insurance at a cheaper rate, it is inconceivable that Mr Kialka would not provide to this Tribunal an explanation and evidence of his occupation at that address but no evidence was provided.

10 (6) It seems to us unlikely that Mr Kialka carries on business as a builder in London but keeps the vehicle in Southampton given that the loss of the vehicle would cause Mr Kialka hardship because he needs it for his business.

(7) Dr Van Dellen indicated that he thought Mr Kialka owned a building company rather than him being a builder. We do not accept that conjecture as it is asserted in the Appellant's statement of case that Mr Kialka is a builder.

15 (8) Mr Kialka's former conviction for smuggling of drugs into prison is also a factor we have taken into account in assessing the credibility of Mr Kialka's evidence.

We further find that the record made by Mr Castle-Turner the arresting officer of the conversation is a true record of the answers made by Mr Kialka to the questions asked.

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### **Our decision**

25 59. This tribunal must determine in relation to the decision of the Review Officer whether the Review Officer could not reasonably have arrived at it having regard to the all of the surrounding facts and circumstances, in accordance with Section 16(4) Finance Act 1994.

We consider that although there is no express statement in the Review Officer's letter of 9th July, that Mr Kialka had knowledge of the concealment, the Review Officer's decision was implicitly based on a belief that Mr Kialka knew of the concealment, and that the decision of the Review Officer was reasonable.

30 If we are wrong and an express statement as to the knowledge of Mr Kialka is required on the face of the decision, we also consider, in light of the evidence heard by this Tribunal and our findings of fact, that no useful purpose would be served by directing that the decision could not reasonably have been come to and requiring the Commissioners to undertake a further review of the original decision dated 9th July  
35 2015.

We dismiss the appeal.

40 60. This document contains full findings of fact and reasons for the decision. Any party dissatisfied with this decision has a right to apply for permission to appeal against it pursuant to Rule 39 of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009. The application must be received by this Tribunal not later than 56 days after this decision is sent to that party. The parties are referred to

“Guidance to accompany a Decision from the First-tier Tribunal (Tax Chamber)”  
which accompanies and forms part of this decision notice.

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**JUDGE GETHING  
TRIBUNAL JUDGE**

**RELEASE DATE: 14 JULY 2016**

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