



Neutral Citation: [2023] UKFTT 00416 (TC)

Case Number: TC08817

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

By remote video hearing

Appeal reference: TC/2016/05707

EXCISE – smuggling of over 2.6m cigarettes – seizure of vehicle – whether to restore – whether appellant a reliable witness – whether earlier journey was also for the purposes of smuggling – appeal refused

Heard on 23 March 2023 and 26 April 2023

Judgment date: 10 May 2023

Before

**TRIBUNAL JUDGE ANNE REDSTON
MR LESLIE HOWARD**

Between

**GRZEGORZ SZCZEPANIAK
t/a PHU GREG-CAR**

Appellant

and

THE DIRECTOR OF BORDER REVENUE

Respondents

Representation:

For the Appellant: Michael Wiencek of Euro Lex Partners LLP, instructed by the Appellant

For the Respondents: Michael Newbold of Counsel, instructed by the General Counsel and Solicitor to the Director of Border Revenue

DECISION

INTRODUCTION AND SUMMARY

1. Mr Szczepaniak operates a haulage business based in Poland, which trades as “Greg-Car”. On 28 April 2016, a tractor and trailer unit (the “Vehicle”) owned by Mr Szczepaniak travelled to the UK (“the Journey”). The Vehicle was stopped and searched by Border Force officers. It contained 2,687,800 cigarettes concealed among a load of dried pasta; the duty sought to be evaded was £614,195.90.
2. The Border Force seized the Vehicle as liable to forfeiture under the powers given by s 141 of the Customs and Excise Management Act 1979 (“CEMA”). The driver of the Vehicle, Mr Andrzej Imanski, was arrested, charged and sentenced to three years imprisonment.
3. Mr Szczepaniak did not contest the legality of the seizure in condemnation proceedings, but asked the Border Force to exercise its discretionary power under s 152 of CEMA to restore the Vehicle. The Border Force refused, and maintained that decision following a review carried out by Officer Deborah Hodge which was issued on 21 September 2016.
4. Mr Szczepaniak appealed to the Tribunal; the case was heard on 9 May 2017 and his appeal was dismissed. However, the Upper Tribunal overturned that decision and remitted the case to be heard by a differently constituted Tribunal, see *Szczepaniak v DBR* [2019] UKUT 295 (TC) (“*Szczepaniak UT*”).
5. We heard the relisted appeal over two days, with the parties attending by video. Professional interpreters fluent in the Polish language attended on both hearing days and translated the proceedings for Mr Szczepaniak; on the first day, the interpreter also translated Mr Szczepaniak’s oral evidence.
6. In restoration appeals such as this, the Tribunal’s jurisdiction is limited, as we explain in more detail at §8ff below. In summary, we cannot order restoration, but if we decide that the Border Force’s decision not to restore was unreasonable, we can direct the Border Force to make a new decision, taking into account specific findings of fact.
7. In this case, we found as a fact that Mr Szczepaniak was complicit in the smuggling for the reasons explained in the main body of this decision. We considered all of Mr Wiencek’s other submissions as to why Officer Hodge’s decision was not reasonable, but did not accept them. We therefore upheld her decision and refused Mr Szczepaniak’s appeal.

THE TRIBUNAL’S JURISDICTION

8. Where, as in this case, the Border Force has seized a vehicle, CEMA s 152 allows the Border Force to restore the vehicle on application. If the Border Force refuses restoration, the Border Force can be required to carry out a review of that decision under Finance Act 1994 (“FA 1994”) s 14. Sections 15A and 15C of that Act respectively provide that the Border Force can offer a review at the time of issuing the refusal decision, and if that offer is accepted, must carry out the review. Section 15F is headed “Nature of Review etc”, and so far as relevant, reads:

“(1) This section applies if HMRC are required to undertake a review under section 15C or 15E.

(2) The nature and extent of the review are to be such as appear appropriate to HMRC in the circumstances.

(3) For the purposes of subsection (2) HMRC must, in particular, have regard to steps taken before the beginning of the review--

(a) by HMRC in making the decision, and

(b) by any person who is seeking to resolve disagreement about the decision.

(4) The review must take account of any representations made by P, or the other person, at a stage which gives HMRC a reasonable opportunity to consider them.”

9. Although the section (and other parts of FA 1994) refer to HMRC rather than to the Border Force, the term is deemed to encompass the Border Force by virtue of CEMA s 8(2).

10. If the person is dissatisfied with Border Force’s review decision, FA 1994 s 16 allows the person to appeal to the Tribunal. So far as relevant, that section reads (emphasis added):

“(1) An appeal against a decision on a review under section 15 (not including a deemed confirmation under section 15(2)) may be made to an appeal tribunal within the period of 30 days beginning with the date of the document notifying the decision to which the appeal relates....

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

(a) to direct that the decision, so far as it remains in force, is to cease to have effect from such time as the tribunal may direct;

(b) to require the Commissioners to conduct, in accordance with the directions of the tribunal, a review or further review as appropriate 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 review or further review as appropriate, 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.”

11. Subsection (8) read with Sch 5 para 2(1)(r) of the same Act, provides that a restoration decision is an “ancillary matter”. As a result, the Tribunal’s jurisdiction is limited. We can only interfere with the a review decision if we are satisfied that the review officer could not reasonably have arrived at that decision. Even if that requirement is satisfied, we can only take the steps set out in s 16(4)(a) to (c).

12. However, in *Gora v C&E Comms* [2003] EWCA Civ 525, Pill LJ accepted that in deciding whether the Border Force’s decision was unreasonable, a Tribunal is not bound by the facts found by the review officer. Instead, the Tribunal is able to consider all the evidence, including evidence that was not before the review officer, and find its own facts in the light of all the evidence.

13. The Court of Appeal in *Behzad Fuels (UK) Ltd v HMRC* [2019] EWCA Civ 319 confirmed the correctness of the approach accepted in *Gora*. Henderson LJ gave the only judgment, with which Green and Hamblen LJ agreed. He said at [7]:

“It is common ground that a decision made by HMRC under section 152(b) of CEMA 1979 is an ‘ancillary matter’ for the purposes of section 16, from which it follows that the powers conferred on the FTT on an appeal from the relevant review decision are confined to those set out in subsection (4), and are also dependent upon the FTT being satisfied that the decision is one which HMRC ‘could not reasonably have arrived at’. The apparent strictness of this approach

has, however, been significantly alleviated by the decision of this court in *Gora v Customs and Excise Commissioners* [2003] EWCA Civ 525, [2004] QB 93, where Pill LJ accepted the submission of counsel for HMRC (Mr Kenneth Parker QC, as he then was) that the provisions of section 16 do not oust the power of the FTT to conduct a fact-finding exercise, with the consequence that it is open to the FTT on an appeal from a review decision to decide the primary facts and then determine whether, in the light of the facts it has found, the decision was one which could not reasonably have been reached: see the judgment of Pill LJ at [38] to [39]. The correctness of this approach has not been challenged before us, and in [*Revenue & Customs Commissioners v Jones and another* [2011] EWCA Civ 824] Mummery LJ said at [71](6) that he ‘completely agree[d] with the analysis of the domestic law jurisdiction position by Pill LJ in Gora's case’.

14. In *Szczepaniak UT*, Mr Szczepaniak’s appeal was allowed for the following reason:

“...the FTT did not properly appreciate that it needed to try to establish whether the Respondent's central allegation, that the Appellant was responsible for or complicit in the smuggling attempt, was true or not. Findings on that crucial issue would almost certainly have determined the appeal. If the Respondent's central allegation was true then the Respondent would plainly have been acting in accordance with its policy in refusing to restore the vehicle. Moreover, if the Appellant had been responsible for, or complicit in, an attempt to smuggle over 2.6m cigarettes, it is highly unlikely that the FTT would have concluded that a refusal to restore the vehicle was disproportionate. If the FTT had concluded that the Respondent's central allegation was not true, then the Respondent's review decision would have been unreasonable since it would have taken into account an irrelevant, and indeed incorrect, consideration (that the Appellant was responsible for, or complicit in, the smuggling attempt) or conversely would have failed to take into account a relevant consideration (that the Appellant was not so responsible or complicit).”

15. The UT went on to say that “since the FTT did not appreciate the scope of its fact-finding power and duty it did not find the necessary facts”, and did not “appreciate the full scope of the FTT's power, and duty in appropriate cases, to find facts afresh and judge the reasonableness or otherwise of the Respondent's decision in the light of those facts”.

16. Thus, in making our decision on Mr Szczepaniak’s appeal, we have first made findings of fact on the basis of the evidence before us, including findings on whether Mr Szczepaniak was complicit in the smuggling attempt.

THE EVIDENCE

17. The evidence consisted of documents and witness evidence.

The documents

18. The Border Force provided a bundle of documents which included:

- (1) correspondence between Mr Szczepaniak’s representative, Euro Lex Partners LLP (“Euro Lex”), and the Border Force, and between the parties and the Tribunal;
- (2) various documents relating to the importation and seizure on 28 April 2016, and others relating to a journey made in the Vehicle by the same driver on 5 and 6 April 2016 (“the Earlier Journey”).
- (3) various communications between Mr Szczepaniak and others relating to both Journeys; and

(4) a transcript of Mr Imanski’s interview under caution, carried out by two HMRC officers via an interpreter on 28 April 2016, the day of the seizure.

The witness evidence

19. Mr Szczepaniak and Officer Summers both attended the hearing to give witness evidence, see further below. The Bundle also included witness statements from Ms Fiona Martin, Mr Michael Trott and Ms Mirosława Kluczniak; these had been given for the purposes of the criminal proceedings against Mr Imanski. The Tribunal refused permission for a third person, Mr Bizior, to give evidence.

Mr Szczepaniak

20. Mr Szczepaniak provided a witness statement dated 25 April 2022; he was cross-examined by Mr Newbold and answered questions from the Tribunal. He gave his oral evidence via the interpreter, and Mr Wiencek, who speaks Polish, confirmed that the interpreter had correctly translated Mr Szczepaniak’s responses.

21. When Mr Szczepaniak first entered the witness box, Mr Wiencek asked him if he wanted to clarify any points in his witness statement. Mr Szczepaniak said no, that its content was set out “to the best of the knowledge that I have”. However, Mr Szczepaniak subsequently contradicted parts of his witness statement, see §42ff and §57. He also significantly elaborated other parts, see §40ff and he changed some of his new oral evidence under cross-examination, see §50 and §46. He was unable to provide credible explanations for some parts of his story, see §59 and §61. He refused to accept, even with the benefit of hindsight, that the Earlier Journey was not a genuine transportation of goods, and this stance further undermined his credibility, see §63.

22. We agreed with Mr Newbold that (a) Mr Szczepaniak was an unreliable witness, and (b) the reason for some of his changes of position was that he was seeking to improve his story at the last minute so as to increase his chances of succeeding in this appeal.

Officer Summers

23. The review decision was issued on 21 September 2016 by Officer Hodge, not by Officer Summers. However, Officer Hodge had retired by the time witness statements were required under the directions given for the rehearing of the appeal. Officer Summers said in his witness statement that he was also a Border Force review officer, and that having read Officer Hodge’s decision, he was “satisfied that the decision not to restore the unit and trailer was correct and reasonable”. He went on to say that:

“I therefore adopt this case, wholeheartedly, in that, had I reviewed this case I would have come to the same decision.”

24. In *Paniec t/a Pan Pol* [2020] UKFTT 0360 (TC) (“*Paniec*”), Judge Redston was the presiding judge, sitting with Mr Robertson. The review officer in *Paniec* was Officer David Harris, but as he had unfortunately passed away by the hearing date, Officer Summers provided a witness statement. In *Paniec*, the Tribunal accepted that a witness can adopt evidence where he can give the same factual evidence from his own experience, but went on to say (emphasis in original):

“However, the position in this appeal was different. Officer Harris had made a particular decision, and his witness statement essentially said that he stood by that decision. The decision and the related exhibits were in the Bundle for the hearing. The issue before the Tribunal was whether the decision *which Officer Harris had made* was unreasonable. We doubted whether it was possible for a witness statement of this type to be ‘adopted’ by someone else.

Officer Summers' witness statement said that he was 'satisfied the decision...was reasonable' and he 'would have come to the same decision' as Officer Harris. However, that is not evidence, but opinion. It is the role of the Tribunal, not the Border Force, to decide whether Officer Harris's decision was unreasonable."

25. For the same reasons, we place no reliance on Officer Summers's views about the rationale for Officer Hodge's review decision. We have instead considered the review decision itself and come to our own conclusions.

26. However, in *Paniec* the Tribunal went on to say:

"We accepted that in a situation where the decision-making Officer is unable to attend a restoration hearing, the Border Force may wish to put forward evidence as to their policies and practices."

27. Mr Szczepaniak's grounds of appeal included submissions about the Border Force's policy and practices, on which Mr Wiencek cross-examined Officer Summers. There was no dispute that as an experienced Border Force Officer, Officer Summers was in a position to give oral evidence on those matters.

28. Officer Summers also gave evidence from his experience as to the amount of space in the Vehicle taken up by the smuggled goods. That evidence was unchallenged and we accepted it. We found Officer Summers to be a wholly honest and credible witness.

Ms Martin

29. Ms Fiona Martin was the administration and projects manager for Freightlink Solutions Ltd, a specialist ticket agent which sells ferry tickets to hauliers. Her evidence concerned the tickets purchased for both Journeys; no part of that evidence was in dispute and we accepted it.

Mr Trott

30. Mr Trott is a consultant forensic scientist who acts as an expert witness in relation to tachograph analysis. His witness statement set out evidence about both Journeys; this was not challenged and we accepted it.

Ms Kluczniak

31. Ms Kluczniak is employed by a company called Peko Spedycja Miedzynarodowa. Her evidence on behalf of that company was accepted by Mr Szczepaniak.

Mr Bizior

32. Directions for the relisted hearing of Mr Szczepaniak's appeal had been issued on 21 January 2022. Direction 4 provided that all witness evidence was to be filed and served "no later than 25 April 2022". As noted above, Mr Szczepaniak's witness statement was filed and served on that date.

33. On 7 March 2023, around two weeks before the beginning of the hearing, a witness statement from Mr Bartlomiej Bizior (also dated 7 March 2023) was filed and served. On 15 March 2023, the Border Force objected to the admission of that statement. At the beginning of the hearing, we asked the parties for submissions.

34. Mr Wiencek said that it was in the interests of justice to allow Mr Bizior's witness evidence to be admitted, because it was relevant to the issue before the Tribunal; he told us that Mr Bizior was in the same building as Mr Szczepaniak and so could attend for cross-examination. However, Mr Wiencek was unable to provide any information as to why the witness statement had been made, filed and served so late.

35. Mr Newbold emphasised both (a) the lack of any explanation for the failure to comply with the Tribunal’s directions and (b) the contradictions between the information in Mr Bizior’s and Mr Szczepaniak’s witness statements. Mr Newbold added that it was also not clear whether Mr Bizior had even been employed by Mr Szczepaniak at the relevant time, as the Vehicle was seized on 28 April 2016, and Mr Bizior said only that he had been employed “since 2016”. We invited Mr Wiencek to reply to these submissions, but he was unable to do so.

36. We took time for consideration, and then gave our oral interlocutory judgment refusing to admit Mr Bizior’s witness evidence, together with summary reasons. We said that we would provide a fuller statement of reasons as part of the substantive decision, and these are as follows:

(1) Mr Szczepaniak had failed to comply with the Tribunal’s directions requiring service of witness statements by 25 April 2022. The Tribunal must therefore apply the three-stage process set out in *Denton v White* [2014] EWCA Civ 90 (“*Denton*”). That this is the correct approach can be seen from *Wolf Rock (Cornwall) Ltd v Langhelle* [2020] EWHC 2500 (Ch) at [35]. It is now well-established that the Tribunal should apply a similar approach to the courts in relation to compliance with directions, see for example *BPP v HMRC* [2017] UKSC 55.

(2) Mr Bizior’s witness statement had been filed almost a year after the deadline set by the directions, and just over two weeks before the hearing. The failure was thus both significant and serious” No reasons had been given for the delay.

(3) The third stage of the *Denton* approach is to consider all relevant circumstances, and we took into account the following:

(a) It is clear from *Denton* that “particular importance” must be given to the “need for ‘litigation to be conducted efficiently and at proportionate cost’, and to “enforce compliance with rules, practice directions and orders. No reason, let alone a good reason, had been given for the delay in providing the witness statement or for the failure to comply with the directions. These factors weigh heavily against admitting the evidence.

(b) Although in *Mobile Export 365 Ltd v HMRC* [2007] EWHC 1727 (Ch) (“*Mobile Export*”), Lightman J said at [20(2)] that “the presumption must be that all relevant evidence should be admitted unless there is a compelling reason to the contrary”, we find on the balance of probabilities that the evidence was not relevant but instead relates to a period after the events in question, because:

(i) Mr Bizior’s evidence as to what was happening in the business contradicts that in Mr Szczepaniak’s witness statement; and

(ii) Mr Bizior did not say he began working for Mr Szczepaniak before the seizure.

(c) In *Mobile Export*, Lightman J went on to say at [21] that springing surprises on opponents and the Tribunal was “not acceptable conduct today in any civil proceedings” and was “clearly repugnant to the Overriding Objective” and to the duty of the parties and their legal representatives to help the court to further that objective. By producing a witness two weeks before the hearing of an appeal made to the Tribunal over six years ago, when witness statements were required to be filed almost a year previously, Mr Szczepaniak was plainly “springing surprises” on the Border Force.

FINDINGS OF FACT

37. The Tribunal makes the findings of fact in the next part of this decision on the basis of the documentary and witness evidence, taking into account our findings on reliability and credibility.

The business

38. On 14 January 2016, Mr Szczepaniak leased the tractor unit which formed part of the Vehicle from a firm in Warsaw. On 22 January 2016, he obtained a licence from the Polish authorities entitling him to provide international road transport services; he had previously worked as a lorry driver but had no experience of cross-border transportation.

39. On 5 April 2016 he leased the trailer part of the Vehicle from a company based in Gorzów Wielkopolski; this was the same day as the Vehicle began the Earlier Journey; we return to this at §66. The profit from Mr Szczepaniak's transport business provides the only source of income for his family of four.

Mr Imanski

40. On 3 March 2016, Mr Szczepaniak engaged Mr Imanski as a driver. Mr Szczepaniak also employed another driver and he drove short distances himself. There was conflicting evidence as to the checks Mr Szczepaniak had carried out before recruiting Mr Imanski:

(1) On 25 May 2016, Euro Lex wrote to the Border Force in relation to the application for the restoration of the Vehicle ("the May 2016 Letter"). This stated that before Mr Szczepaniak had employed Mr Imanski, he required Mr Imanski to provide a criminal records check and "a certificate of psychological fitness as a driver". Copies of those documents were sent to the Border Force as attachments to the May 2016 Letter. The criminal records check was clear, but was dated 30 December 2008, some eight years before Mr Imanski had been hired by Mr Szczepaniak; the certificate of psychological fitness was dated 3 October 2011, over five years before Mr Imanski was hired. The May 2016 Letter also said that Mr Szczepaniak had interviewed Mr Imanski and he had "made a good impression".

(2) Under cross-examination, Mr Szczepaniak said he had also obtained a reference from a previous employer of Mr Imanski and had contacted that employer. Mr Newbold challenged that evidence on the basis that there had been no mention of the reference or subsequent contact in the May 2016 Letter, or in Mr Szczepaniak's witness statement, and suggested that Mr Szczepaniak was belatedly trying to "improve his story".

41. We agree with Mr Newbold. Had Mr Szczepaniak obtained a reference from Mr Imanski's previous employer, and had he contacted that employer, it is not credible that those important facts would have been omitted from both the May 2016 Letter and his witness statement. We find as a fact that Mr Szczepaniak had not obtained or checked Mr Imanski's reference before employing him, and that Mr Szczepaniak's new evidence was unreliable.

Whether Mr Szczepaniak took steps to prevent smuggling

42. There was also conflicting evidence as to whether Mr Szczepaniak took steps to prevent smuggling. The May 2016 Letter said that:

"our client did not consider to have included in their internal procedures any specific terms, eg on the topic of smuggling. The reason of the above was that they did not envisage that anyone would have attempted to use them (a haulier) for any unlawful purposes. Our client has only recently been licenced to conduct international road transport...until the event in question, they have never encountered any such occurrence and did not expect that in their practice."

43. Mr Szczepaniak's witness statement similarly said:

“At the time of the seizure, I was new on the market and was unaware of the risks associated with international transport orders and of such circumstances that could warrant special attention...I was not experienced on the market and did not know the practice enough to appreciate any risk associated with international transport orders.”

44. However, under cross-examination Mr Szczepaniak changed his evidence, saying:

(1) before he began his new business, he had attended a training course and carried out internet research so that he was aware of “the protective measure that needed to be applied” in relation to “people trafficking” and “illegal products”;

(2) from inception, he “followed all the CMR rules”; and

(3) he trained his drivers “when they started and every month as to what to pay attention to” and “passed [his] knowledge to the drivers so they were aware of what rules to follow”.

45. We reject this evidence too as unreliable. It is entirely inconsistent with that given in the 2016 Letter and in Mr Szczepaniak's witness statement. We find as a fact in reliance on the earlier evidence, that before the seizure on 28 April 2016, Mr Szczepaniak had no procedures in place to reduce the risk of smuggling.

The Earlier Journey

46. On 31 March 2016, Mr Szczepaniak received an email purporting to be from a company called “Piko Spedycja Międzynarodowa” (“Piko”). Mr Szczepaniak initially told Mr Newbold this was his first contact with Piko, but when the email was translated by the interpreter at the request of the Tribunal, it read: “I am sending an attachment of the order according to the instructions please be punctual”. Mr Szczepaniak then changed his evidence, and accepted that he had had one or more earlier contacts with Piko.

47. Mr Szczepaniak's explanation as to why he had not exhibited any written communications from Piko seeking to establish whether he had space on a lorry to make this delivery was that the arrangements “must have been over the phone”, and that these entirely oral arrangements also included him agreeing to purchase the ferry tickets, and that he would only be paid after the delivery. Mr Newbold submitted that it was not credible that a transport business would have no written record of these key contractual terms, and that the lack of any documentation indicated that this was not a normal commercial arrangement, and we agree.

48. This email was followed by an order for Mr Szczepaniak to collect a load of pasta on 5 April 2016 from a company called AB Foods Polska (“AB Foods”), with an address in Nowa Sól, and to deliver it to Howard Tenens Organix (“HTO”) in Ashby de la Zouch, Leicestershire, for a fee of €2,000.

Piko

49. The order gave Piko's address as being in Gdansk, and included a Polish tax identification number known as a Numer Identyfikacji Podatkowej (“NIP number”). The NIP used by Piko belonged to a genuine company based in Gdansk called Peko Spedycja Międzynarodowa. That company knew nothing of the two Journeys and was not involved in any way. There is also a genuine company called Piko sp zoo, but this has a different NIP and is based in Dobrzeń; that company also knew nothing of the Journeys and was not involved.

50. Mr Szczepaniak said in oral evidence that he had checked Piko's NIP number and location. However, when Mr Newbold pointed out that subsequent Border Force enquiries had established that there was no company called Piko in Gdansk, Mr Szczepaniak changed his

evidence, and said he had not checked the location, but only whether the NIP number was valid in the sense of being in existence.

AB Foods

51. Mr Szczepaniak checked that the address of AB Foods given on the order was correct, and he also checked that the company was genuine by using google streetview. However, it was not in dispute that AB Foods had not in fact supplied the pasta which was the subject of the order.

HTO

52. HTO is based in Ashby de la Zouch, as stated on the order. However, the Border Force was told by HTO after the seizure that it never purchases pasta, and had never heard of Piko. Moreover, its stock was always delivered to Andover in Hampshire, not to its warehouse in Ashby de la Zouch.

What happened on 5 and 6 April 2016

53. In reliance on Ms Martin's evidence, we find that on 4 April 2016, Mr Szczepaniak set up an account with Ferrylink and on the same day, booked and paid for both the outbound ticket for the Earlier Journey from Dunkirk to Dover, and the return ticket. In contrast, all ferry journeys undertaken by Mr Szczepaniak's business for a different client were paid for by the client.

54. On the following day, 5 April 2016, Mr Imanski began the Earlier Journey. He did not collect pasta from AB Foods, as there was no such contract in place.

55. Mr Imanski drove the Vehicle to Dunkirk and thence to Dover. He provided a CMR at the border which said that the load consisted of pasta. He then travelled for some 49 minutes; that driving time was consistent with having travelled to a service area such as at Maidstone, and not consistent with having travelled to Ashby de la Zouch, the address for HTO given on the delivery note, or to Andover in Hampshire, where HTO's goods inwards are received.

56. Mr Szczepaniak's evidence as to what happened after the Vehicle arrived in the UK, as set out in his witness statement, was that:

“the driver [Mr Imanski] advised me over the phone that he received a phone call directly from AB Foods to return with the load, which was loaded mistakenly, that it was some warehouse error. He then drove back directly to AB Foods and the load was unloaded there.”

57. Under cross-examination, instead of confirming the evidence in his own witness statement that AB Foods had called Mr Imanski and told him to return the load to its warehouse, Mr Szczepaniak changed his evidence (emphases added):

(1) He said that Piko had realised that the lorry had been loaded “with the wrong type of product”; that *Piko* had contacted him and *he* had called Mr Imanski. Mr Newbold pointed out to Mr Szczepaniak that this was not what he had said in his witness statement.

(2) Mr Szczepaniak then added further elaboration, saying “I had been informed that *AB* had contacted Piko to tell them that the wrong type of foods had been loaded”.

(3) When asked why his witness statement gave different information, his response was that the driver might have *said* he had been contacted by AB Foods, but “it would have been Piko that contacted him”. Mr Szczepaniak could not explain why his own witness statement had set out, as a fact, that it was AB Foods which had contacted Mr Imanski.

58. Mr Newbold submitted that Mr Szczepaniak's evidence about contacting the driver to return with the load was unreliable. We agree.

59. Mr Szczepaniak accepted that in order to return with the load, Mr Imanski would have needed to have the relevant customs paperwork. However, he was unable to give a coherent explanation as to how Mr Imanski had obtained that paperwork, instead saying that "he has documents from the company where he is supposed to offload the goods". Since HTO does not purchase pasta, it is not credible that it would have provided the relevant customs documents for pasta to be returned to Poland. Moreover, as is clear from the tachograph evidence, the Vehicle did not go to Ashby de la Zouch (or to Andover), so could not have collected the customs paperwork from HTO.

60. On 12 May 2016, Mr Szczepaniak emailed Piko as follows::

"With reference to the Border Force proceedings pending against PHU Greg-car in relation to the transport orders dated 1 April 2016 and 26 April 2016 (PL AB Foods Polska sp. z o.o. ul. Przemyslowa 67-100 Nowa Sol – Howard Tens Organix, LE65 1DR Ashby de la Zouch, Dents Rd) I would seek detailed information concerning the above orders:

- Who, acting on behalf of your company, sent the order dated 1 April 2016 from email: Spedycja Piko <Spedycja.piko@gmail.com to email <phu-greg-car[redacted];
- Is Mr Winnicki your employee?
- Would you please explain the second order dated 26 April 2016? Is the following email Jan Winnicki <Spedycja.piko@gmail.com your company email?
- Did your company receive any correspondence from Border Force or did they contact you over the phone?

I would appreciate your prompt response to the above questions."

61. Mr Szczepaniak received no response to that email.

62. Mr Newbold asked Mr Szczepaniak whether he accepted that the Earlier Journey was not a genuine shipment of pasta. Mr Szczepaniak denied that that he had any concerns, saying that the Earlier Journey, was "a normal assignment like any other". However, he was unable to explain why, if that were the position, he had asked Piko to explain both Journeys in his email of 12 May 2016.

63. Given that (a) Mr Szczepaniak accepted that AB Foods had not booked Piko (a non-existent company) to transport pasta, and (b) also accepted that HTO does not purchase pasta, taken together with (c) Mr Szczepaniak's own email of 12 May 2016, his assertion that the Earlier Journey was "a normal assignment like any other" lacks credibility.

The nature of the Earlier Journey

64. Having considered all relevant evidence and Mr Szczepaniak's changes of position, we find as a facts that Earlier Journey was, as Mr Newbold submitted, either for the purposes of smuggling or was a dummy run for the purposes of the later Journey and thus "an illegitimate journey". We come to this finding because:

- (1) Piko is not a genuine company;
- (2) AB Foods did not contract with Piko for pasta to be collected from its premises on 5 April 2016;
- (3) HTO did not purchase pasta from AB Foods;

- (4) the journey from Dover lasted some 49 minutes, insufficient to reach the stated destination of Ashby de la Zouch; and
- (5) the order and related documentation was false.

Mr Szczepaniak's knowledge

65. We also find as a fact that Mr Szczepaniak knew that that Earlier Journey was not a genuine movement of goods. We come to that finding for the following reasons:

- (1) Mr Szczepaniak carried out only the most cursory checks on Piko, namely that the NIP on its order was a valid NIP;
- (2) he gave conflicting and unreliable evidence as to the nature and extent of his checks on Piko;
- (3) he was unable to explain why he had checked that AB Foods was a genuine company by confirming its address and by using Google Streetview, but had not done the same with Piko;
- (4) there is no documentary evidence confirming any contact between Piko and Mr Szczepaniak as to the availability of a lorry to deliver the load, or as to other key contractual terms;
- (5) Mr Szczepaniak's evidence as to subsequent communications with Mr Imanski about the alleged return of the pasta are inconsistent and unreliable;
- (6) HTO did not provide Mr Imanski with the relevant paperwork to return a load of pasta to Poland from the UK;
- (7) it is not credible that Mr Szczepaniak would genuinely believed, at the time of the hearing, that HTO had provided that paperwork, given that he knew HTO had no contact with Piko and did not purchase pasta; and
- (8) Mr Szczepaniak was unable to provide any credible or coherent explanation as to how Mr Imanski was able to obtain the relevant paperwork so as to return from the UK with the Vehicle's original load.

66. In coming to the above findings, we have not taken into account the fact that the trailer part of the Vehicle was not leased until 5 April 2016, in other words:

- (1) almost a week after Piko's email of 31 March 2016 confirming the order by saying "I am sending an attachment of the order according to the instructions please be punctual"; and
- (2) the day after the date on which the Vehicle was booked on the ferry to the UK, that booking having been made on 4 April 2016.

67. We have not taken that fact into account because the date of the lease agreement was not drawn to our attention by either party in the course of the hearing, and we only became aware of it when reviewing the documents after the hearing had ended. Given our other findings of fact in this case, we decided it was not necessary to ask the parties for submissions, or to ask Mr Szczepaniak for evidence, in relation to this point.

The Journey and the seizure

68. The May 2016 Letter also stated that having "advertised free space for loading", Mr Szczepaniak was contacted by a Mr Winnicki of Piko, who provided an order dated 26 April 2016 for Mr Szczepaniak to deliver a second load of pasta on 28 April 2016. As with the Earlier Journey:

- (1) there was no documentary evidence of the contact between Mr Szczepaniak and Piko, other than the order;
- (2) as a result, key terms of the purported delivery contract were undocumented, including when payment would be made, and that Mr Szczepaniak would purchase the ferry tickets;
- (3) the pasta was said to be from AB Foods, with the same address in Nowa Sól, but as with the Earlier Journey, AB Foods did not supply the pasta and was not involved in the shipment;
- (4) the pasta was to be delivered to HTO in Ashby de la Zouch, but HTO was not the consignee;
- (5) Mr Imanski was again the driver;
- (6) the fee was also €2,000;
- (7) the Vehicle was the same; and
- (8) the ferry was once again booked and paid for by Mr Szczepaniak.

69. Mr Szczepaniak provided Mr Imanski with a CMR giving AB Foods as the consignor, and a delivery note giving HTO as the consignee. Mr Szczepaniak subsequently accepted that the AB Foods stamp on the CMR was false.

70. Mr Imanski did not go to Nowa Sól, but instead drove in a different direction to Poznań; the Vehicle remained near Poznań for 1.5 hours. There were no other stops of any significance.

71. After Poznań, Mr Imanski drove the Vehicle to Dunkirk, from where he crossed the channel to Dover, where the Vehicle was stopped, and Officer Frost carried out a search. She identified 2,687,800 cigarettes in the centre of the load, with pasta on the outside. As noted earlier in this decision, we accepted Officer Summers's evidence that this number of cigarettes filled 13,439 boxes and that the cigarettes took up "a very very large part of the lorry" leaving very little room for the pasta.

72. It was the Border Force's case that given the huge volume of cigarettes, they would either have to have been loaded originally, or the lorry would have had to be unloaded and reloaded using a fork-lift truck. We agree. Taking into account the tachograph information, and accepting Mr Szczepaniak's unchallenged evidence that he was not present at the loading, we further find that the cigarettes were loaded onto the Vehicle near Poznań at the same time as the cover load.

73. The duty payable on the cigarettes was £614,195.90. The load and the Vehicle were seized; Mr Imanski was arrested and questioned via an interpreter under caution. During that interview he stated that he had collected pasta from AB foods in Nowa Sól at the beginning of both the Journey and the Earlier Journey. Those statements were not true. Mr Imanski was later charged, convicted, and sentenced to three years imprisonment.

Mr Szczepaniak's complicity in the smuggling

74. Taking into account the above, we further find that Mr Szczepaniak knew that this second load contained smuggled goods and was therefore complicit in the smuggling. In making that finding we rely in particular on the following:

- (1) This was smuggling on a large-scale. It was pre-planned and organised, involving significant quantities of cigarettes and false paperwork which used genuine company names for both the consignor and the consignee in an attempt to disguise the illegal importation.

(2) Both Piko and Mr Imanski, were self-evidently knowingly involved in the illegal activity. It is not credible that the criminal organisers of commercial smuggling on this scale would have relied on an unwitting and innocent party sitting in the very middle of the chain to provide the Vehicle. We take into account in particular that the smugglers must have known that:

- (a) Mr Imanski would be selected for the Journey (and not Mr Szczepaniak's other driver);
- (b) the Vehicle would be available at short notice: the order was made on 26 April 2016 and the Journey began two days later; and
- (c) Mr Szczepaniak would not carry out reasonable checks to establish whether Piko was a genuine company; he only checked that the NIP was valid.

(3) There was no documentary evidence of the alleged contractual arrangements relating to payment dates and the ferry payments, which would be normal practice between commercial operators.

(4) We have already found that Mr Szczepaniak knew that the Earlier Journey was illegitimate, for the reasons set out at §65. The circumstances of that Journey were essentially identical to this one: the driver was the same, the same purported consignor and consignee were included on the paperwork which Mr Szczepaniak had handed to the driver; Mr Szczepaniak had paid for the ferry; the same fictitious freight forwarder (Piko) was involved, and the legitimate cover goods were also pasta.

(5) The points set out at §65(1) to §65(3) which relate to the cursory checks made on Piko in the context of the Earlier Journey, apply here also.

(6) Mr Szczepaniak's checks on Mr Imanski were manifestly inadequate: the criminal records check was dated eight years previously, and the certificate of psychological fitness was dated over five years previously.

(7) As we said at §21-22, Mr Szczepaniak's witness evidence was unreliable, including that relating to both Journeys.

75. In finding that Mr Szczepaniak was complicit in the smuggling, we did not overlook the fact that he was not present at the loading of the Vehicle. However, that did not come close to outweighing the other factors set out above, given that it was clearly possible for him to be complicit in the smuggling without being present at the loading.

The Border Force policy on restoration

76. The Border Force policy on restoration ("the Policy") sets out a number of high level principles, which include stating that it:

- (1) allows for each case to be considered on its merits to determine whether restoration may be offered and under what terms;
- (2) offers restoration exceptionally but not as a matter of course; and
- (3) does not intend to penalise innocent third-parties.

77. The Policy provides that the Border Force's approach differs depending on whether:

- A: neither the driver nor the operator are responsible; or
- B: the driver but not the operator is responsible; or
- C: the operator is responsible (whether or not the driver is responsible).

78. Under heading A, the Policy says:

“If the operator provides evidence satisfying Border Force that neither the operator nor the driver were responsible for, or complicit in the smuggling attempt then:

(1) If the operator also provides evidence satisfying Border Force that both the operator and the driver carried out basic reasonable checks (including conforming with the CMR Convention) to confirm the legitimacy of the load and to detect any illicit load, the vehicle will normally be restored free of charge.

(2) Otherwise,

a) On the first occasion the vehicle will normally be restored for 20% of the revenue involved in the smuggling attempt (or for 100% of the trade value of the vehicle if lower).

b) On a second or subsequent occasion (within 12 months) the vehicle will not normally be restored.”

79. Under heading B, the Policy reads:

“If the operator provides evidence satisfying Border Force the driver but not the operator is responsible for or complicit in the smuggling attempt then:

(1) If the operator provides evidence satisfying Border Force that the operator took reasonable steps to prevent drivers smuggling then the vehicle will normally be restored free of charge unless

a) The same driver is involved (working for the same operator) on a second or subsequent occasion in which case the vehicle will normally be restored for 100% of the revenue involved in the smuggling attempt (or for the trade value of the vehicle if lower) except that

b) If the second or subsequent occasion occurs within 12 months of the first, the vehicle will not normally be restored.

(2) Otherwise

a) On the first occasion the vehicle will normally be restored for 100% of the revenue involved (or the trade value of the vehicle if lower)

b) On a second or subsequent occasion the vehicle will not normally be restored.”

80. Under heading C, the Policy reads:

“If the operator fails to provide evidence satisfying Border Force that the operator was neither responsible for nor complicit in the smuggling attempt then:

(1) If the revenue involved is less than £50,000 and it is the first occasion, the vehicle will normally be restored for 100% of the revenue involved (or the trade value of the vehicle if less).

(2) If the revenue involved is £50,000 or more or it is seized on a second or subsequent occasion, the vehicle will not normally be restored.”

The application for restoration and the decision

81. On 29 April 2016, Euro Lex called the Border Force on behalf of Mr Szczepaniak, and followed this up with an email the following day asking for the Vehicle to be restored. The Border Force responded on 5 May 2016 requesting further details, and on 25 May 2016, Euro Lex sent the May 2016 Letter referred to earlier in this decision.

82. On 4 July 2016, the Border Force refused restoration. The decision letter said that the Vehicle was “liable to forfeiture because it was used to carry excise goods that were liable to forfeiture” and that the importation relied on documents for “a fictitious business transaction as the consignor did not send the goods and the consignee was not expecting them” and Mr Szczepaniak had therefore “failed to take measures to prevent his smuggling attempt”. The decision letter also included a summary of the Policy and an offer of a review. On 15 August 2016, Euro Lex accepted the review offer.

Officer Hodge’s decision

83. The review was carried out by Officer Hodge. Her letter included the text of the Policy set out at §77 and §78, and went on to say that having considered the decision afresh, including the circumstances of the events and related evidence, she had decided that heading C2 of the Policy applied and the Vehicle should not be restored. She also said she:

- (1) had taken into account that “this was no casual concealment or one which could easily be made without the involvement of both the operator and the driver”, and that the excise duty was over £600,000;
- (2) doubted the legitimacy of the Earlier Journey, as the supporting documents were false, AB Foods had not supplied the goods and HTO do not deal in pasta;
- (3) had considered proportionality, but taking into account the duty on the smuggled goods and Mr Szczepaniak’s complicity, decided it was proportionate to refuse to restore;
- (4) had also considered the degree of hardship caused to Mr Szczepaniak, taking into account that his business provides the only source of income for his family of four, but also noting that all vehicle seizures cause inconvenience and cost to the owner, and that there was no evidence of “exceptional hardship” in Mr Szczepaniak’s case; and
- (5) had considered whether there were any other mitigating or exceptional circumstances which should be taken into account but decided there were not.

84. On 3 October 2016, Euro Lex wrote to Officer Hodge challenging elements of the review decision; Officer Hodge confirmed her decision on 7 October 2016. On 30 October 2016, Mr Szczepaniak appealed to the Tribunal. On 26 April 2017, the Border Force provided Mr Szczepaniak with a document headed “Restoration Policy for Disclosure”, which contained some general principles, including those set out at §65.

THE PARTIES’ SUBMISSIONS

85. Mr Wiecek’s main submission was that Officer Hodge’s decision was unreasonable because there was no evidential basis for her conclusion that Mr Szczepaniak was complicit in the smuggling. That ground of appeal is refused, because our findings of fact confirm Officer Hodge’s decision that Mr Szczepaniak was complicit.

86. Mr Wiecek made a number of other submissions, each of which we consider below. In doing so he referred to a considerable body of case law. However, most of those judgments set out general principles which were not in dispute, and many concerned non-commercial small scale importations in private cars which had taken place at a time when the Border Force had a different forfeiture policy. Although we read and considered all the case law to which he referred, we decided it was not necessary to include citations from those decisions in this judgment.

Whether the Policy was unreasonable and disproportionate

87. Mr Wiecek submitted that the Border Force Policy was unreasonable because it did not “treat the innocent differently from the guilty”, and was thus disproportionate and a breach of Article 1, Protocol 1 (“A1P1”) of the European Convention on Human Rights (“ECHR”).

88. One of the cases he relied on was *Lindsay v HMRC* [2002] EWCA Civ 357. The relevant events happened in 2000, so some sixteen years before the facts with which we are concerned. The Master of the Rolls, giving the only judgment with which Carnwath LJ (as he then was) concurred, criticised HMRC’s failure to distinguish between commercial smugglers and those who were importing for “social distribution to family and friends”, but also said at [63]:

“I would not have been prepared to condemn the commissioners' policy had it been one that was applied to those who were using their cars for commercial smuggling, giving that phrase the meaning that it naturally bears of smuggling goods in order to sell them at a profit. Those who deliberately use their cars to further fraudulent commercial ventures in the knowledge that if they are caught their cars will be rendered liable to forfeiture cannot reasonably be heard to complain if they lose those vehicles.”

89. He added at [72]:

“Given the extent of the damage caused to the public interest, it is, in my judgment, acceptable and proportionate that, subject to exceptional individual considerations, whatever they are worth, the vehicles of those who smuggle for profit, even for a small profit, should be seized as a matter of policy.”

90. It is plain that the Policy which was applied by Officer Hodge, some sixteen years later, *does* distinguish between the innocent and the guilty, see §76ff. Part A provides that where both the driver and the operator are innocent, and the operator has carried out “basic reasonable checks” the vehicle will normally be restored; Part B applies where the operator (but not the driver) is innocent, and Part C allows for restoration of a vehicle even where the operator is complicit, if the duty involved is less than £50,000. As the Master of the Rolls says in *Lindsay*, forfeiture of vehicles involved in commercial smuggling such as that in issue here was clearly “acceptable and proportionate”. We thus reject Mr Wiecek’s submission that the Policy as a whole is disproportionate and unreasonable.

Whether Part B of the Policy should have been applied

91. Mr Wiecek submitted that Officer Hodge had “no or insufficient evidence to decide that the Appellant (not the driver) was responsible for the smuggling attempt” and that as the driver was clearly involved, Officer Hodge should have applied Part B of the Policy.

92. This is to misunderstand the Policy. Part B applies where (our emphasis) “the driver but *not the operator* is responsible for or complicit in the smuggling attempt”. Part C applies where the operator fails to provide evidence of his own non-complicity in the smuggling; in other words, irrespective of whether the driver was, or was not, involved in the smuggling. We have found as a fact that Mr Szczepaniak was complicit in the smuggling, and given the duty involved, Officer Hodge was plainly correct to apply Part C(2) of the Policy.

Whether the Policy as applied to Mr Szczepaniak was unreasonable/disproportionate

93. Mr Wiecek submitted that as refusal to restore was a “draconian” action as it interfered with a person’s A1P1 rights, it was unreasonable and disproportionate to refuse to restore the Vehicle to Mr Szczepaniak.

94. We have found as a fact that Mr Szczepaniak was complicit in an attempt to smuggle 2,687,800 cigarettes, and thus of attempting to evade duty of £614,195.90. As the Master of the Rolls found in *Lindsay*, forfeiture in such circumstances is both reasonable and proportionate, given that no “exceptional individual circumstances” have been pleaded. We agree with Officer Hodge that refusing to restore the Vehicle to Mr Szczepaniak was reasonable and proportionate.

Failure to publish the Policy?

95. Mr Wiecek also submitted that it was unreasonable of the Border Force not to publish the Policy, given that it set out the basis on which they would decide whether to restore, and this “touches the heart of the principle of proportionality in the context of a paramount legal principle affording the protection of ownership”.

96. This issue was considered at [40] of *Szczepaniak UT*, which reads:

“Whether or not the Respondent could, or should, publish its policy on restoration is of no relevance to this appeal. That is because, in this appeal the Respondent makes the serious allegation that the Appellant was responsible for, or complicit in, an attempt to smuggle 2.6m cigarettes into the UK. If that allegation is true (which the differently constituted FTT will have to decide), the Appellant can scarcely complain that it could not have realised that there would be significant repercussions.”

97. Those *dicta* are not binding on us but are set out as an “observation”. However, we respectfully agree with the UT. Whether or not the Border Force should have published the Policy cannot be a relevant factor in Officer Hodge’s decision not to restore the Vehicle. We have found that Mr Szczepaniak was complicit in large-scale smuggling, and as the UT says, he must have realised that there would be “significant repercussions”, such as forfeiture, if Vehicle was stopped and searched.

Policy unclear?

98. Mr Wiecek said that the Policy was “unclear and incoherently disclosed” because the description set out in the original decision was not the same as the text in Officer Hodge’s review decision, while the “Restoration Policy for Disclosure” provided to Mr Szczepaniak on 26 April 2017 was different again.

99. There is nothing in this point. The original decision letter summarised the Policy and the document provided in April 2017 set out general principles; the operational approach was fully disclosed to Mr Szczepaniak by Officer Hodge in the review decision and it is entirely clear how the Policy applies.

Policy incomplete?

100. In a linked submission, Mr Wiecek said that the Policy did not “contain any provisions or conditions relating to vehicles owned by finance companies” and was thus incomplete.

101. The review decision was a response to *Mr Szczepaniak’s* application for restoration, it was not a response to a restoration application made by either of the lessor companies. The reasonableness of Officer Hodge’s review decision is unaffected by the fact that it does not contain any policy approach relating to restoration of leased vehicles to the lessors.

102. The Border Force has said that they will consider the position of the lessors after the end of these proceedings. How they carry out that decision making process is a matter for them; it is not relevant factor in our consideration as to the reasonableness of the review decision.

The decision letter

103. Mr Wiecek sought to rely on the difference between the reasons given for refusing restoration in the original decision letter and those in the review decision. He submitted that:

“The finding of the review decision diametrically differed from the one stated in the original decision, which only led to confusion and ambiguity. Potentially, the Respondent was permitted to change their decision and the reasons behind it, but only if they had some new evidence. This however was not the case.”

104. We set out the relevant law at §10. In summary:

(1) FA 1994, s 16 gives Mr Szczepaniak a right to appeal against the review decision. He does not have a right to appeal against the original decision.

(2) FA 1994, s 15F gives the review officer broad discretion as to “the nature and extent” of the review, saying that it is to be “such as appear appropriate” in the circumstances of the case, but must take into account any representations made by the person affected by the review. In addition, the officer must “have regard to” steps taken by the decision maker.

105. Contrary to Mr Wiecek’s submission, Officer Hodge was therefore not constrained by the original decision such that she could change that decision, or the reasons for the decision, only if she had “new evidence”. Officer Hodge, entirely correctly and reasonably, looked afresh at the events in question and at the basis of the original decision.

Review decision insufficiently reasoned?

106. Mr Wiecek also submitted that the review decision left it “unclear what blame the Respondent attributed to the Appellant to justify their decision not to waive forfeiture” and the reasoning “was not intelligible or adequate”. This is not the case. Officer Hodge’s decision is summarised at §83, and her reasons for refusing to restore the Vehicle are clearly explained and justified.

Failure to take into account the interview notes

107. After the Vehicle had been stopped by the Border Force, Mr Imanski was interviewed under caution, see §73. Mr Wiecek submitted that the contents of that interview transcript were relevant evidence which Officer Hodge should have taken into account when coming to her review decision, and that her failure to do so was unreasonable.

108. Mr Newbold responded by saying that the evidence given by Mr Imanski during his interview under caution contained self-evident untruths, and pointed out that even Mr Szczepaniak’s own witness statement referred to Mr Imanski as “not truthful”.

109. We agree. We have already found that in the interview under caution Mr Imanski confirmed that he had visited AB Foods at Nowa Sól to collect pasta, and that those statements were untrue. It was plainly reasonable for Officer Hodge to disregard Mr Imanski’s evidence when making her decision. We add that Mr Wiecek did not specify what part of the interview notes he considered should have been taken into account; having read those notes, we were unable to identify any fact on which reliance could or should have been placed.

OVERALL CONCLUSION AND APPEAL RIGHTS

110. For the reasons set out above, Mr Szczepaniak’s appeal is dismissed and Officer Hodge’s review decision confirmed.

111. 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.

ANNE REDSTON
TRIBUNAL JUDGE
Release Date: 10th MAY 2023

