



TC02901

Appeal number: TC/2011/01812

Excise Duty - Importation of tobacco products – Concealment - Seizure and confiscation of tobacco and vehicle - CEMA 1979 sections 139 and 141 - Refusal of restoration of vehicle - Whether refusal reasonable in the circumstances - Yes - Whether exceptional hardship - No - Appeal dismissed.

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

MAREK PLESZCZYNSKI

Appellant

- and -

DIRECTOR OF BORDER REVENUE

Respondents

**TRIBUNAL: JUDGE MICHAEL S CONNELL
MARYVONNE HANDS**

Sitting in public at Nottingham MJC on 4th March 2013

The Appellant did not attend

David Griffith officer of the Home Office UK Border Agency for the Respondents

DECISION

1. This is an appeal by Mr Marek Pleszczyski (“the Appellant”) against the decision of the Respondent following a departmental review, under s14(5) and Schedule 5 of the Finance Act 1994, not to restore the Appellant’s vehicle, a Renault Clio registration GR53MYV (“the vehicle”), which was seized on the 23 November 2010 because it was used for the carriage of goods that were liable to forfeiture, namely 24.5 kilograms of hand rolling tobacco with a revenue risk in respect of this quantity of imported tobacco (hereinafter known as “the excise goods”) of £3,174.96.
2. The Appellant did not attend the hearing. He had previously notified the Tribunal that he would be unable to attend because he was suffering from back problems. The Tribunal was therefore satisfied that the Appellant had been given notice of the appeal hearing date and venue and that it was in the interests of justice to proceed

BACKGROUND

3. On 23 November 2010 the vehicle was stopped by an Officer of the Respondent at the UK Control Zone, Dover Eastern Docks, Dover. The Appellant was driving the vehicle registration number GR53 MYV and Miss Tatjana Panfilova was a passenger. The Appellant, Marek Pleszyznski, is the owner of the aforementioned vehicle.
4. On initial questioning the Officer explained the prohibitions and restrictions on importing certain goods into the UK and asked if the Appellant had any such goods, to which both he and the passenger replied that they were aware of the prohibitions and restrictions and had no such goods. The Appellant said that he and his passenger resided in the UK and had travelled to visit a friend who was in hospital in Calais. The Appellant confirmed that the vehicle was his and he had owned it for about two years. When the Officer asked “have you bought any cigarettes, tobacco, beer or wine?” the Appellant replied, ‘some tobacco.’ When the Officer asked ‘how much tobacco?’ the Appellant opened the boot of the vehicle and showed the Officer a holdall, which the Appellant opened to show that it contained tobacco. The Officer asked ‘how much is there?’ to which the Appellant replied ‘3 kilograms’. The Officer tallied the tobacco and counted 10 boxes x 250g and also noted empty black carrier bags used for excise goods. The Officer asked ‘how much tobacco exactly do you both have in total?’ to which the passenger, Ms. Panfilova, replied, ‘I have 3 kilograms as well, which she said was in a holdall on the rear seat.
5. The Officer asked if the Appellant had receipts and the Appellant removed some receipts from his credit card wallet. The Appellant removed two and passed them to the Officer and tried to put the rest back in to his wallet but the Officer said ‘I will have all the receipts,’ and then the Appellant handed the Officer nine receipts for tobacco totalling 394 x 50 gram pouches which totalled 19.7 kilograms of mixed tobacco. The vehicle was then rummaged and during the search a large quantity of tobacco was found concealed in the spare wheel well, under front seats and in a cushion. When asked by the Officer why he had concealed the tobacco the Appellant replied because he liked to smoke. When the Officer asked why he did not declare the tobacco the Appellant replied “we just lied”.

5 6. The Officer was satisfied that the tobacco was held for a commercial purpose, which made it liable to forfeiture under section 49(1)(a)(i) of the *Customs and Excise Management Act 1979* ('CEMA') and under Regulation 88 of the *Excise Goods (Holding, Movement and Duty Point) Regulations 2010*. The tobacco was seized under s139(1) of CEMA.

10 7. The vehicle was also seized, under sections 139(1) and 141(1)(a) of CEMA because it had been used for the carriage of goods liable to forfeiture.

15 8. When the excise goods were seized the Appellant was issued with a "Seizure Information Notice" and Customs Notice 12A ("Goods and / or vehicles seized by Customs"). The notice explained that the owner could challenge the legality of the seizure in a Magistrates' Court by sending Customs a notice of claim within 1 month of the date of seizure.

20 9. The Appellant did not challenge the legality of the seizure of the excise goods or the vehicle within the one month time limit or at all. The Respondent says that implicitly confirmed that the excise goods were held in the UK for a commercial purpose. Therefore, the excise goods and the vehicle were condemned as forfeit to the Crown by passage of time under paragraph 5 of Schedule 3 of CEMA and their ownership passed to the Crown.

25 10. On 12 December 2010 the Appellant wrote to UKBA asking for his car to be restored. The Appellant stated that he did not realise the legal amount of tobacco that he could bring back into the country and that he wanted the vehicle back because he used it for work to provide for his partner and son.

30 11. On 6 January 2011 an Officer wrote asking the Appellant to provide proof of ownership of the vehicle which he did in correspondence received on 12 January 2011.

35 12. On 19 January 2011 an Officer of the Post Seizure Unit replied to the Appellant refusing to restore the vehicle.

40 13. On 21 January 2011 the Appellant wrote again asking for a review of the decision dated 19 January 2011. The Appellant wrote that he apologised for his behaviour, that he had purchased the car on credit and still has to pay for it for another three years, and that he is now on sick leave because he has a bad back and that is why his financial situation is not the best.

45 14. On 27 January 2011 an Officer wrote to the Appellant explaining the review process and inviting him to provide any further information in support of his request for a review. Nothing more was received by the time of the review.

15. On 22 February 2011 the Review Officer wrote to the Appellant with the review decision to confirm the original decision not to restore the vehicle, the decision which is subject to appeal.

5

THE LAW

16. The relevant legal provisions are as follows:

10 a) Section 2(1) of the *Tobacco Products Duty Act 1979* provides that:

“There shall be charged on tobacco products imported into or manufactured in the United Kingdom a duty of excise at the rates shown.... in the Table in Schedule 1 to this Act.”

15

b) Regulation 13 of the *Excise Goods (Holding, Movement, and Duty Point) Regulations 2010* provides that:

20

(1) Where excise goods already released for consumption in another Member State are held for a commercial purpose in the United Kingdom in order to be delivered or used in the United Kingdom, the excise duty point is the time when those goods are first so held.

25

(2) Depending on the cases referred to in paragraph (1), the person liable to pay the duty is the person—

(a) making the delivery of the goods;

(b) holding the goods intended for delivery; or

30

(c) to whom the goods are delivered.

35

(3) For the purposes of paragraph (1) excise goods are held for a commercial purpose if they are held—

(a) by a person other than a private individual; or

40

(b) by a private individual (“P”), except in a case where the excise goods are for P’s own use and were acquired in, and transported to the United Kingdom from, another Member State by P.

45

(4) For the purposes of determining whether excise goods referred to in the exception in paragraph (3)(b) are for P’s own use regard must be taken of—

(a) P’s reasons for having possession or control of those goods;

- (b) *whether or not P is a revenue trader;*
 - (c) *P’s conduct, including P’s intended use of those goods or any refusal to disclose the intended use of those goods;*
 - 5 (d) *the location of those goods;*
 - (d) *the mode of transport used to convey those goods;*
 - 10 (e) *any document or other information relating to those goods;*
 - (g) *the nature of those goods including the nature or condition of any package or container;*
 - 15 (h) *the quantity of those goods and, in particular, whether the quantity exceeds any of the following quantities—*
 - *3200 cigarettes,*
 - *400 cigarillos (cigars weighing no more than 3 grams each),*
 - 20 • *200 cigars,*
 - *3 kilograms of any other tobacco products;*
 - (i) *whether P personally financed the purchase of those goods;*
 - 25 (j) *any other circumstance that appears to be relevant.*
- (5) *For the purposes of the exception in paragraph (3)(b)—*
- (a) *.....*
 - 30 (b) *“own use” includes use as a personal gift but does not include the transfer of the goods to another person for money or money’s worth (including any reimbursement of expenses incurred in connection with obtaining them).”*
- 35 c) Regulation 88 of *The Excise Goods (Holding, Movement, and Duty Point) Regulations 2010* provides that:
- 40 *“If in relation to any excise goods that are liable to duty that has not been paid there is –*
- (a) *a contravention of any provision of these Regulations, or*
 - 45 (b) *a contravention of any condition or restriction imposed by or under these Regulations,*
- those goods shall be liable to forfeiture.”*

d) Section 49(1) of CEMA states:

“Where-

5

a) except as provided by or under the Customs and Excise Acts 1979, any imported goods, being chargeable on their importation with customs or excise duty, are, without payment of that duty-

(i) unshipped in any port,

10

(ii) unloaded from any aircraft in the United Kingdom,

f) any imported goods are concealed or packed in any manner appearing to be intended to deceive an Office,

15

those goods shall...be liable to forfeiture.”

e) Section 139(1) of CEMA provides:

20

“Any thing liable to forfeiture under the customs and excise Acts may be seized or detained by any officer or constable or any member of Her Majesty’s armed forces or coastguard.”

f) Section 141(1) of CEMA states that *“...where any thing has become liable to forfeiture under the customs and excise Acts”-*

25

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

30

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

shall also be liable to forfeiture”.

35

g) Section 152 of CEMA provides that:

“The Commissioners may, as they see fit-

40

...(b) restore, subject to such conditions (if any) as they think proper, anything forfeited or seized under the Customs and Excise Acts.”

h) Paragraph 2 (1) (r) of Schedule 5 to the Finance Act 1994 states:

45

SCHEDULE 5 DECISIONS SUBJECT TO REVIEW AND APPEAL

The Management Act

2. (1) The following decisions under or for the purposes of the Management Act, that is to say—

(r) any decision under section 152(b) as to whether or not anything forfeited or seized under the customs and excise Acts is to be restored to any person or as to the conditions subject to which any such thing is so restored;

5 i) Sections 14 to 16 of the *Finance Act 1994* provide:

Section 14 (2):

“(2) Any person who is—

10 (a) a person whose liability to pay any relevant duty or penalty is determined by, results from or is or will be affected by any decision to which this section applies,

(b) a person in relation to whom, or on whose application, such a decision has been made, or

15 (c) a person on or to whom the conditions, limitations, restrictions, prohibitions or other requirements to which such a decision relates are or are to be imposed or applied,

may by notice in writing to the Commissioners require them to review that decision.”

20 Section 15(1):

“Where the Commissioners are required in accordance with this Chapter to review any decision, it shall be their duty to do so and they may, on that review, either-

25

(a) confirm the decision; or

(b) withdraw or vary the decision and take such further steps (if any) in consequence of the withdrawal or variation as they may consider appropriate.”

30 Sections 16 (4) to (6):

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

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

(b) to require the Commissioners to conduct, in accordance with the directions of the tribunal, a further review of the original decision; and

40 (c) in the case of a decision which has already been acted on or taken effect and cannot be remedied by a further review, to declare the decision to have been unreasonable and to give directions to the Commissioners as to the steps to be

taken for securing that repetitions of the unreasonableness do not occur when comparable circumstances arise in future.

5 (5) *In relation to other decisions, the powers of an appeal tribunal on an appeal under this section shall also include power to quash or vary any decision and power to substitute their own decision for any decision quashed on appeal.*

(6) *On an appeal under this section the burden of proof as to—*

10 (a) *the matters mentioned in subsection (1)(a) and (b) of section 8 above,*

(b) *the question whether any person has acted knowingly in using any substance or liquor in contravention of section 114(2) of the Management Act, and*

(c) *the question whether any person had such knowledge or reasonable cause for belief as is required for liability to a penalty to arise under section 22(1) or 23(1) of the Hydrocarbon Oil Duties Act 1979 (use of fuel substitute or road fuel gas on which duty not paid),*

15 *shall lie upon the Commissioners; but it shall otherwise be for the Appellant to show that the grounds on which any such appeal is brought have been established.”*

THE APPELLANT’S CASE

20

17. In the Notice of Appeal dated 2 March 2011, the Appellant said that he “*did not think that because of my mistake they will take my car away. I thought that if something they will take tobacco and I will have to pay something. My friends asked him to bring them some tobacco but I did not think that it is going to be so serious. It was my first time and I am really very sorry about all that situation*”.

25

It was also stated that “*we tried to explain that it was for friends but they (the Respondent) did not accept that things. I am really sorry again but I needed my car and I am still paying credit for it*”.

30

THE RESPONDENTS’ CASE

35

18. To the extent that the Appellant is arguing that the decision not to restore the vehicle was unreasonable and disproportionate, the Respondent contends that the review decision not to offer the seized goods for restoration was one that could reasonably have been arrived at, for the following reasons:

40

a) The Review officer in making his decision took as the starting point that the seizure was legal and the excise goods were held in the UK for a commercial purpose (not for own use).

b) The Respondent had regard to and applied its stated policy that seized excise goods should not normally be restored. However, each case is examined on its merits to determine whether or not restoration may be offered

exceptionally. The review officer examined the circumstances of the case on the following basis:

1. If the excise goods were held for profit the vehicle should not normally be restored unless a small quantity was involved and it was a first offence – 24.5 kilos was self-evidently not a small quantity;
2. If the excise goods were to be passed on to others on a ‘not for profit’ reimbursement basis, whether there were aggravating circumstances (such as a previous offence by the individual or the importation of more than 6 kilos of hand rolling tobacco) because if there were not, then the vehicle should normally be restored for a fee. If there were aggravating circumstances, then whether the degree of that aggravation should result in the refusal to restore the goods;
3.
4. In all cases, whether there are exceptional circumstances that should result in restoration of the goods; and
5. In all cases, whether the result is fair, reasonable and proportionate in all of the circumstances.

c) The Respondent submits that the goods were held for a commercial purpose on a ‘for profit’ basis. Various factors support this contention such as:

- i. The quantity of hand-rolling tobacco imported (24.5 kilos) was eight times the guideline amount for importation from the EU (3 kilos). Smuggling such a vast quantity into the UK represents a serious attempt to damage legitimate trade in the UK.

In the case of Mr Robert Hardie (MAN/03/8116 17/5/2004) Judge J D Demack commented at paragraph 15:-

There comes a point in every decision where the tribunal has to consider the quantity of excise goods being imported. It is but one factor to be taken into account in determining whether an importation is commercial, and must be viewed in the light of all the other evidence, not in isolation. Nevertheless, on any view 36 kilos is a commercial quantity of tobacco.”

- ii. The travellers were stopped by a UKBA Officer in uniform and must have known that they were expected to answer questions truthfully and to disclose the full quantities of any excise goods carried with them in the vehicle. The travellers deliberately lied to the officer in an attempt to mislead him. The Appellant failed to disclose all of the excise goods, thus misleading the Officer about the true quantity of them.
- iii. When asked for receipts the Appellant was actually carrying nine receipts for the full quantity but only attempted to give the Officer two of them, and he clearly knew that he was misleading the Officer.

- iv. The majority of the tobacco had been concealed throughout the vehicle, which can only be construed as a deliberate attempt to smuggle the tobacco into the country.
- v. When asked why he had not declared the tobacco the Appellant replied “we just lied”. So he admitted misleading the Officer. On these grounds there is good reason to doubt the traveller’s credibility even though they were not questioned.

In the case of Barber & Towers v Commissioners of Customs and Excise Judge Johnson (Chairman) said the following at paragraphs 35 and 36:

“In certain circumstances it must be reasonable for a Customs officer to take a robust view of whether an attempt is being made to deceive her. In those circumstances, it is not required of her that she should continue to question the individual whom she is convinced is engaged in deception. She would then be entitled to stop all further questioning immediately and simply rely upon the powers arising from the fact that deception appears to be in progress. As we see it, that was the case here. The findings of fact made are such that, whatever we personally might have said or done at the time, we must find that the officer was justified in taking the line she did. One course that might have been adopted was for her to have read a commerciality statement, and then explored the means of the travellers, their respective rates of consumption (especially of the tobacco), what exactly they intended for the goods, and so forth. That is what Customs officers commonly do, but it was not done in this particular case. We hold that it was unnecessary for the officer, ... to have done that, if she had justifiably become convinced that deception was in progress.”

- vi. Deliberately and repeatedly misleading Officers is reasonable grounds alone for doubting the traveller’s credibility.
- vii. The reason given for travelling was that the Appellant had visited a friend who was in hospital in Calais but this is doubted as he left the UK at 01.05 hours that morning and was stopped returning at 20.30 hours that evening.
- viii. Records show that the Appellant also made a day trip to the continent a week earlier on 15 November 2010, again leaving late at night and returning the same day. As on the one occasion that the Appellant was stopped he was found to be in possession of a large quantity of tobacco it is averred that it is reasonable to assume that the purpose of the previous trip was also to buy tobacco.

Per Tribunal Chairman, Mr Colin Bishopp, in the case of *Michael Robert Brealey*:

5 *“If travellers lie to Customs about the frequency of their trips, the quantities of goods they have bought or the quantities they already have at their house, they cannot be surprised, nor can they complain, if Customs doubt everything else they say.....it cannot, in our view, be regarded as unreasonable if Customs Officers, having detected lies, conclude that a traveller’s purposes are not as innocent as he claims.”*

10 Also Judge Bishopp in paragraph 9 of the decision in the case of Mr Gordon Grimshaw (MAN/04/8070 11/11/04):
“In our view it cannot be an unreasonable inference that travellers who conceal trips they have made abroad, give conflicting information and provide unconvincing explanations are not telling the whole truth, and are attempting to conceal the true reason for their importation of goods.”

15 Also Judge Dr Avery Jones (CBE) in paragraph 15 of the decision in the case of Peter John Dumphy (LON/02/8282) stated in relation to previous travel:
20 *‘...The Appellant having been caught out in this easily verifiable point the Commissioners understandably did not believe the rest of the answers.....’.*

 In paragraph 15 of the judgment in Lakhbir Khatkar (LON/04/8030), Judge Sir Stephen Oliver QC said:
25 *“Bearing in mind that Mr Khatkar had been found to have been importing large quantities of excise goods on the occasions when he was stopped, it was, we think, reasonable to conclude that Mr Khatkar had been importing large quantities on those other occasions when he had not been stopped.”*

30 d) Further the Respondent contends that non-restoration of the vehicle was reasonable and proportionate particularly in light of the trade value of the vehicle being £1,900 according to the Glass’ Guide valuation when compared with the duty evaded which exceeds £3,000 and the aggravating circumstances, namely the mis-declaration to the Officers, and the amount
35 imported. The total revenue involved was actually £3,174.96, being the 24.5 kilos of tobacco purchased and transported by the vehicle on the day in question. In any event, it is the Respondent’s submission, that the value of the vehicle is not relevant given the commercial nature of the importation. Applying the dicta in *Lindsay -v – Customs and Excise Commissioners*
40 [2002] 1 WLR 1766

 Per Lord Phillips:-
45 *‘...Those who deliberately use their cars to further fraudulent commercial ventures in the knowledge that if they are caught their vehicles will be rendered liable to forfeiture cannot reasonably be heard to complain if they lose those vehicles. Nor does it seem to me that, in such circumstances, the value of the car used need to be taken into consideration. Those circumstances will normally take the case beyond the threshold where that factor can carry*

significant weight in the balance. Cases of exceptional hardship must always, of course, be given due consideration....'

Per Lord Justice Judge:-

5 *'...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 a profit, even for a small profit, should be seized as a matter of policy...'*
[emphasis added]

10 Judge Dr K Khan in the case of David Arthur Hemms (LON/2008/8057) dated 9 December 2009 at paragraph 22:-

15 *"Where people attempt to evade excise duty and try to deceive HMRC officers, with conflicting explanations as to why items were purchased and proceed to give half truths and feeble explanations for the reason for the importation of goods, in such circumstances, those people would not have a right to complain when the vehicle being used for smuggling is confiscated".*

20 e) The Review Officer also paid particular attention to the degree of hardship caused by the loss of the vehicle. He reasonably concluded that one must expect considerable inconvenience as a result of having a vehicle seized by Customs and perhaps considerable expense in making other transport
25 arrangements or even in replacing the vehicle. Replacement of a seized vehicle with another does not necessarily require replacement with a vehicle of equal specification and value if as more basic and/or cheaper vehicle will perform adequately. Hardship is a natural consequence of having a vehicle seized and it would have to be exceptional hardship for the vehicle to be restored. The inconvenience and expense caused to the Appellant was not
30 exceptional hardship over and above what one should expect in the circumstances. Furthermore, from official records, the Appellant is shown as the keeper of a Peugeot 307 motor vehicle registration number YJ02 SNU since 25 November 2010 and this is only 2 days after the seizure of his goods and vehicle. In the circumstances, there was no reason to disapply the
35 Respondents' policy of not restoring the vehicle in all of the circumstances.

40 e) The review officer was guided by the policy but not fettered by it and considered the case on its merits and concluded the policy treated the Appellant no more harshly or leniently than anyone else in similar circumstances.

45 f) In summary, for the reasons set out above, the Reviewing Officer was justified in concluding that, on the balance of probabilities, the excise goods were being imported for profit. Given that the goods were held for profit, and that misleading and contradictory statements were provided the Respondent submits that it is fair, reasonable and proportionate in the circumstances not

to restore the vehicle. There are also no exceptional factors that militate towards disapplying the Respondents' policy and restoring the goods.

CONCLUSIONS

- 5 19. The Appellant does not dispute that he attempted to mislead the officer about how much tobacco he had in the car. Neither does he dispute that there was 24.5 kg in the vehicle and that he was attempting to import the tobacco without paying excise duty. The Appellant does not challenge the legality of the seizure, but rather challenges the reasonableness of the refusal to restore the vehicle.
- 10 20. It is clear that the tobacco was not being imported for the Appellants own use. The tobacco amounted to approximately 8 times the guideline amount. He Appellant also attempted to mislead the officer in respect of the receipts which he was carrying and when asked why he had not declared the tobacco admitted that he had "just lied". This clearly has to call into question his assertion that this was the first time that he had imported tobacco. His journey times were inconsistent with his story that he had been visiting a friend in hospital in Calais. The Appellant had also made a day trip to the continent a week before the seizure of the vehicle and it is a reasonable inference that the Appellant smuggled tobacco on that trip.
- 15
21. The value of the vehicle, which has been seized, is irrelevant when the reasonableness of the seizure is what is being considered. *Lindsay v Customs and Excise Commissioners* [2002] 1 WLR. The seizure and non-restoration of the vehicle was reasonable and proportionate when the trade value of the vehicle of £1900 is compared to the duty evaded, which exceeded £3000.
- 20
22. The reviewing Officer considered the hardship caused by the seizure of the vehicle and in our view, reasonably concluded that there was no hardship of an exceptional nature beyond that to be expected on seizure of a vehicle. It also appears from the evidence subsequently gathered by the Respondent that the Appellant became the keeper of another vehicle only two days after the seizure of the tobacco and the vehicle.
- 25
- 30 23. The function of the Tribunal is to determine whether the Respondent's decision not to restore the vehicle to the Appellant was a decision which could not have been reasonably arrived at. In assessing whether the decision was reasonable, we find that the decision maker, was guided by established policy, properly considered all relevant matters and did not take into account any irrelevant matters.
- 35 24. In summary, for the reasons set out above, our conclusion is that the Reviewing Officer was justified in his conclusions. The decision appealed against is therefore in our view reasonable and proportionate, and not one that could not have been reasonably arrived at.
25. For the above reasons we dismiss the appeal.
- 40 26. 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.

5

**MICHAEL S CONNELL
TRIBUNAL JUDGE**

RELEASE DATE: 26 September 2013

10