TC02993

Appeal number: TC/2011/04078

Excise duty - seizure of vehicle - owner not present – restoration – whether decision on review unreasonable- appeal dismissed.

FIRST-TIER TRIBUNAL
TAX CHAMBER

DARREN TALLON **Appellant**

- and -

THE DIRECTOR OF BORDER REVENUE **Respondents**

TRIBUNAL: JUDGE CHARLES HELLIER
PAUL ADAMS

Sitting in public in Plymouth on 30 September 2013

The Appellant in person

Russell James, counsel, instructed by the General Counsel and Solicitor to HM Revenue and Customs, for the Respondents

DECISION

Introduction

1. Mr Tallon's six seater minibus was stopped by officers of the UK Border Agency ("UKBA") (as it was then called) on Friday, 7 January 2011 at the UKBA's post in Coquelles in France. The bus was being driven by Andrew Nolan and who was accompanied by five others. Mr Tallon was not one of the party.

2. The UKBA officers interviewed the travellers, who were carrying between them 1,000 cigarettes and 25 kg (3 stone 13lb) of hand rolling tobacco. After the interviews the officers decided that these products were liable to duty which had not been paid and seized them. They also seized Mr Tallon's minibus.

3. On 11 January 2011 Mr Tallon wrote to UKBA saying that he was "writing to recover" his vehicle which he had "lent to Andy Nolan". He said: "I was told that he needed to borrow it because he was going to London with a few friends".

4. UKBA treated this letter as a request for the restoration of the minibus and sent Mr Tallon questionnaire which he completed and returned. In that questionnaire Mr Tallon said that he had agreed to lend the minibus to Mr Nolan for the weekend for golf/football and that he did not know that the vehicle was being taken abroad. He also indicated that he had previously lent the mini bus to Chris Wakeham and Nigel Barker for football or golf.

5. On 9 February 2011 UKBA wrote to Mr Tallon offering restoration of the vehicle for a fee of £4,425.88. This sum was paid and the vehicle recovered. On 18 March 2011 Mr Tallon's representatives wrote to UKBA seeking a review of the restoration decision. In that letter his representatives say that Mr Nolan had asked Mr Tallon if he could use of the vehicle for Friday and Saturday to take a group of friends to a Plymouth Argyle football match in Bournemouth; and that they wished to stay overnight in Bournemouth on the Friday before the match. They say that Mr Nolan showed Mr Tallon tickets for the match on Saturday.

6. On 5 May 2011 Mr Sked of UKBA wrote with the conclusions of his review. He concluded that the vehicle should be restored on payment of a fee, thus supporting the decision previously made; but following representations from Mr Tallon's advisers about the relevant rates of applicable duty, he concluded that the fee should be £3,288.02 rather than £4,425.88.The fee that had been paid was therefore too great and UKBA made a repayment.

7. Mr Tallon appeals against this decision. The core of his case is that, because he did not know of Mr Nolan's trip abroad and could not reasonably have done anything else to guard against the use of his vehicle for smuggling, he should be treated as an innocent man in the application of UKBA's restoration policy, and that the vehicle should therefore have been restored to him without the demand of a fee.

The law.

8. Section 49 Customs and Excise Management Act 1979 ("CEMA") provides that if goods which are liable to excise duty are imported into the UK without payment of duty they shall be liable to forfeiture. Section 141 of that Act makes liable to forfeiture any vehicle used to carry such goods. Section 139 permits anything liable to forfeiture to be seized by an officer of the Respondent.

9. If the Respondent's officers seize anything, Schedule 3 CEMA provides a means for the owner to require the legality of the seizure to be adjudicated by a Court in the UK. Paragraphs 3 and 4 of that schedule set out the procedure for instigating that process:

> "3. Any person claiming that anything seized as liable to forfeiture is not so liable shall, within one month of the date of the notice of seizure or, where no such notice has been served on him, within one month of the date of the seizure, give notice of his claim in writing to the Commissioners at any office of customs and excise."

10. Paragraph 5 of the schedule provides that if the owner does not give such notice or if any requirement of paragraph 4 is not complied with, "the thing in question shall be deemed to have been duly condemned as forfeited.". We discuss the effect of this statutory deeming in the following section.

11. Section 152 CEMA gives the Respondent a power to restore, subject to any conditions it thinks proper, things which have been forfeited or seized.

12. Section 14 Finance Act 1994 requires the Respondent to conduct a review of any decision in relation to that restoration power if the owner so requires.

13. Section 15 provides:

> "15. Review procedure
>
> (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–
>
> (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.

Section 16 of that Act permits the owner to appeal to this tribunal against any decision made (or deemed to have been made) on that review:

> 16 Appeals to a tribunal

(1) Subject to the following provisions of this section, an appeal shall lie to an appeal tribunal with respect to any of the following decisions, that is to say–

(a) any decision by the Commissioners on a review under section 15 above (including a deemed confirmation under subsection (2) of that section); and …

…

(4) In relation to any decision as to an ancillary matter [an expression defined to include an appeal of this nature] , 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

(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.

14. It will be seen that section 16(4) FA 1994 limits this tribunal's powers and duties on such an appeal to a consideration of whether or not the Respondent's decision was reasonable, and also limits the tribunal's powers, if it decides that the decision was not reasonable, to direct that the decision be remade, or remade subject to particular directions.

The effect of paragraph 5 Schedule 3.

15. If no claim is made that something is not liable to forfeiture, paragraph 5 Schedule 3 deems that thing to have been duly forfeited.

16. Mr Tallon's letter of 11 January indicated that he was writing to recover his vehicle. There was nothing in his letter which suggested that he disputed the legality of the forfeiture. It does not seem to us that it can be construed as a claim that the vehicle was not liable to forfeiture.

17. Thus, because no claim disputing forfeiture was made, the minibus is to be treated as duly forfeited. We understand that no claim was made in relation to the tobacco products and concluded that they too must be treated as duly forfeited.

18. The deeming of paragraph 5 carries with it such deemed factual findings as would have been necessary in the circumstances to find that the relevant items were duly forfeited. In the case of the minibus that means that it must be treated as having carried tobacco products on which duty should have been paid but was not; in the case of the tobacco products it carries with it the finding that the that they were not for the owners' own use.

The evidence and our findings of fact.

19. We had a bundle of correspondence, copies of the UKBA's officers' notebook entries of the interviews with the travellers, a printout from the UKBA's record of vehicle journeys between the UK and France, a copy of the booking for Mr Nolan's journey to France, and written statements from Mr Nolan, Mr Tallon, Mr Sked, and Mr Benton, an officer of UKBA who stood in for Mr Sked on his absence.

20. We heard oral evidence from Mr Nolan, Mr Tallon and Mr Benton, and accepted in evidence an internet page shown on Mr Benton's phone showing the date and time of the Plymouth Argyle football match in Bournemouth on Saturday, 8 January 2011.

21. We find that Mr Tallon acquired the mini bus on about 15 July 2010 for about £22,000. Mr Tallon had insurance cover for the minibus which did not extend to other drivers. Mr Nolan had insurance cover which gave him third party insurance cover when driving a vehicle belonging to someone else.

Mr Nolan's evidence.

22. In his witness statement Mr Nolan says:

> "I had borrowed the vehicle from Mr Tallon having told him that it was to be used by me to go to a football match with friends. I had even got hold of some football tickets so that I could show them to him to prove to him where I was going
>
> "I was not being honest with Mr Tallon. The reason I wanted to borrow the vehicle was to drive to the continent and bring back tobacco goods. Had I told him the real reason he would not have let me borrow the vehicle.
>
> "Mr Tallon told me that I would be responsible for any speeding or parking fines and I agreed to that. I was driving the vehicle on my own insurance in a third party capacity; this does not cover use abroad.
>
> "I was interviewed by Officers about the goods in the vehicle. During this interview I told them that the owner of the vehicle was Mr Tallon and that he knew where I had been. This again was not true. I was afraid I would be in more trouble if I told them that he was unaware of where the vehicle had been and because they may decide to contact him. At this time I did not know that I would lose the vehicle completely so did not believe that Mr Tallon needed to know at all.

"I was totally responsible for misleading Mr Tallon and therefore I paid the restoration fees so that he could get his vehicle back."

23. We found ourselves unable to rely on Mr Nolan's evidence. That was for the following reasons:

(1) Mr Nolan told us at the start of his oral evidence that when he first arranged to borrow Mr Tallon's minibus he did not intend to go abroad; his intention was just to go to a football match. But he said that the night before he had said to the others, "Let's go to Belgium to get some cigarettes". He said that the others had agreed and so they all left Plymouth early (and in the dark) on Friday and drove to Dover, with the intention of going to Belgium and back, and then going on to the football match in Bournemouth (which started at 3 pm); after which he said they would have gone home to Plymouth

However the ferry booking form showed that the ferry crossing had been booked by Mr Nolan on Wednesday 5 January. Thus the suggestion of a trip to Belgium cannot have been a spur of the moment idea on the day before the minibus was borrowed. At the earliest - allowing for the time it would take to contact the other travellers and book the ferry, the idea must have been promulgated on Tuesday 4 January.

These contradictions indicated either a faulty memory, a lack of regard for detail, or a lack of interest in the truth.

(2) Then in reply to Mr James' questions Mr Nolan first said that he had picked up the minibus on Friday. However when shown the ferry booking, which showed the channel crossing as being on Friday (starting at 5:51 am and returning at 10:24 am) he said that the football match must have been on the Friday. Thus he implied the whole trip was intended to take place on the Friday. He said that if, after the journey, he had been too tired, he would have returned the minibus to Mr Tallon on the Saturday.

However the evidence from the Internet indicated that the Plymouth Argyle football match was on the Saturday. Thus the trip to Belgium took place on the day before the football match. That meant that the intended journey cannot have been as recounted by Mr Nolan; and, after arriving back at Dover at 10:24 am the party would have had a day and a half to spend for before the football match in Bournemouth at 3 pm the next day.

These contradictions indicated either a faulty memory, a lack of a regard for detail, or a lack of interest in the truth.

(3) Mr Nolan's evidence was that he had lied to Mr Tallon about the purpose for which the vehicle would be used. That suggests a measure of disregard for the truth in his dealings with his friend which might permeate his attitude to his evidence to us.

(4) When stopped at Coquelles Mr Nolan told the officers that Mr Tallon knew where the minibus was being taken. His evidence to us was that he had not told Mr Tallon of the trip to Belgium: Mr Nolan said that he had lied to the UKBA officer because he did not want the officer to ring Mr Tallon up tell him

where he was going and what was going on. Mr Tallon, he said, would have "gone mental" had he been phoned by UKBA officers.

Mr Nolan's statement to the officers was made before any formal interview took place. Whilst we accept that, confronted by a person in authority a member of the public may panic a little, this willingness to lie casts some doubt on Mr Nolan's respect for the truth: a person with a greater respect for the truth but worried about consequences would have given a more equivocal answer to the officers.

(5) In Mr Nolan's witness statement he said that he "had even got hold of some tickets so that he could show them to Mr Tallon to prove where he was going".

This statement gives the impression that the production of the football tickets was a ruse, and suggests that Mr Nolan and his party were not going to go to a football match at all.

Mr Nolan's witness statement although signed by him was not drafted by him. His willingness to sign a statement in this form suggests to us carelessness for detail and accuracy, or perhaps, a lack of concern with the whole truth.

(6) We understood from the comments made by Mr Benton to Mr James, and also from Mr Nolan and Mr Tallon, that the restoration of fee of £4,425.88 had been paid to UKBA by Mr Nolan using his credit card and that Mr Tallon contributed £1,000 to Mr Nolan. We were told that the repayment of that part of that fee which resulted from Mr Sked's review was made to Mr Nolan. Mr Tallon and Mr Nolan told us that that repayment had been retained by Mr Nolan.

Mr Nolan therefore had a financial interest in the outcome of this case. For that reason we were prepared to hear various submissions to Nolan which we would not have been willing to countenance had he been an uninterested party, but it also meant that we approached his evidence mindful of his financial interest in the outcome of the case.

24. We concluded that we could not rely on Mr Nolan's evidence that he did not tell Mr Tallon where he was taking the minibus, or on any part of his description of his conversation with Mr Tallon about borrowing it.

Mr Tallon's evidence

25. In Mr Tallon's witness statement he said:

(1) that he had lent the minibus to his friend Andrew Nolan who had asked if he could borrow the vehicle to take him and some friends to a football match. (His representatives' letter to UKBA said that he had known Mr Tallon for some 20 years);

(2) that the vehicle was not insured to be driven abroad and, had he known that that was Mr Nolan's intention, he would never have allowed him to borrow the vehicle;

(3) it was impossible for him to put measures in place to prevent his vehicle being used to smuggle goods because the thought that it might be so used had never entered his head and it had no reason to;

(4) that the fee of £4425.68 was paid by Mr Nolan;

(5) that, although he had said on the questionnaire that he had in the past lent the vehicle to Mr Wakeham he had no knowledge that the vehicle had been taken abroad by Mr Wakeman; and

(6) that although he allows his friends to borrow the vehicle, he does not allow them to borrow it to do as they wish. They tell him "why they want it, which is to go to football or golf with friends".

26. Mr Tallon told us in his oral evidence that he had bought the minibus for £22,000 in 2010. He had intended it as a family vehicle to transport his ageing parents, his girlfriend, and a child with which she was pregnant. He also kept a Range Rover. Since buying it he had used it principally for golfing trips at the weekends with a number of friends. He had played football professionally in the past but did not attend many matches.

27. Mr Tallon told us that some 50 yards from his house lived a Mr Wakeham. Mr Wakehan, he said, had been successful in business and kept a number of very expensive fast cars which he allowed Mr Tallon to borrow at any time. On one occasion in 2010 Mr Tallon had lent the minibus to Mr Wakeham. Mr Wakeham had used it for a week or 10 days. Given the freedom with which Mr Wakeham let him use his expensive cars, Mr Tallon was not inclined to seek to query Mr Wakeham's use of his mini bus. Either at that time or possibly at another time in 2010 he had travelled with Mr Wakehan to the continent to buy tobacco. Mr Wakeham had driven: he had been before and knew where he was going. Mr Tallon had bought wine. Mr Tallon told was that he had travelled through the Channel Tunnel with Mr Wakeham.

28. Mr Tallon told us that his insurance policy for the minibus covered himself and gave third-party cover him while driving other people's vehicles. He initially told us that he thought that such third-party cover did not cover driving outside the UK but later agreed that it probably did.

29. Mr Tallon later told us that his net income was some £175,000 per annum although it varied quite a bit.

30. There were a number of inconsistencies in Mr Tallon's evidence and between it and other evidence before us:

(1) His letter of 11 January 2013 states that the car was being used to go to London – a strange mistake if the journey was to Bournemouth as it was written only a few days after the seizure and in view of his evidence at the hearing that he had been told they were going to Bournemouth.

(2) In his witness statement he said that he had occasionally gone abroad before and brought back tobacco products for his own use. At the hearing he admitted that this was inaccurate and as he did not smoke, he had never brought

back tobacco. This suggests some lack of regard for accuracy, for the truth or lack of memory.

(3) Mr Tallon confirmed that he had been told that the football match was to be played on the Saturday afternoon. The internet page confirmed this. If that was the case, why did Mr Tallon not enquire of Mr Nolan why he wanted the minibus on Thursday rather than Friday? Mr Nolan, who gave his oral evidence before Mr Tallon, said at first that he took the minibus on Friday evening, when it must have been taken on the Thursday evening if the travellers were to get to the crossing by 5am – but Mr Tallon did not attempt to correct him. Mr Tallon also stated in the questionnaire that the vehicle was lent for the "weekend" when it was lent on a Thursday..

(4) Although in his witness statement Mr Tallon says that Mr Nolan paid the restoration fee, before us he admitted that he had contributed £1,000 to Mr Nolan to enable him to make the payment. The nature of his responses to the questions about this – and particularly the uncharacteristic delay in them – contributed to a sense that he had not been wholly accurate or fair in his witness.

(5) It was difficult to reconcile parts of Mr Tallon's account of the use of the vehicle with the list of cross channel journeys undertaken by the minibus after its acquisition in July 2010 recorded by HMRC:

	Date	Time abroad	Crossing type	Driver
1	27 July	6 hrs	Ferry	Wakeham
2	2 Aug	5 hrs	Tunnel	
3	4 Aug	?	Tunnel	
4	10 Aug	4 ½ hrs	Tunnel	
5	12 Oct	4 ½ hrs	Tunnel	
6	19 Oct	8 hrs	Ferry	Smith
7 [Seizure]	7 Jan	3 hrs	Tunnel	Nolan

Mr Tallon said that he lent the vehicle to Mr Wakeham for about 10 days. The driver in journey 1 was Mr Wakeham. Thus if Mr Tallon lent the van to Mr Wakeham for 10 days, it may well have done trips 1 to 3 while it was in Mr Wakeham's possession. At least two of those trips were short there-and-back excursions.

Mr Tallon described Mr Wakeham as being wealthy. We found it difficult to believe that a wealthy man with a stable of expensive fast cars would want to drive five or 600 miles (Plymouth to the continent and back) in a day in the minibus in order to buy reduced duty tobacco and alcohol. Mr Tallon suggested that Mr Wakeham may, unbeknown to him, have lent the minibus to someone else who undertook trips, after all Mr Wakeham was free with his cars. But the UKBA records show that trip 1 was undertaken by Mr Wakeham travelling on

the ferry, and Mr Tallon said he had travelled with Mr Wakeham through the tunnel. Thus Mr Wakeham must have travelled more than once.

(6) Mr Talllon said that one of the reasons he had bought the minibus was because the salesman had described it as being a good bargain. It seems unusual for a person who has just spent that much on a car to lend it out in such circumstances for 10 days or so, two weeks after its purchase and to be unconcerned about where it was taken.

31. Mr Tallon bought the car for £22,000 in July 2010. In his witness statement of 17 January 2013, Mr Tallon says 'it would be ludicrous for me to put such an expensive vehicle at risk'. Yet at the hearing he explained that his income was some £175,000 pa and that this meant that he could be relatively generous, and that as a result he was not overly concerned about who used the minibus or for what. He trusted his friends: it was clear that he had not cross examined Mr Nolan about his intentions. He also recognised before us that Mr Nolan and others driving the van would be likely to be insured only for third party liabilities, and that he would therefore be exposed to their credit if they damaged the van. Nevertheless we find it difficult to believe that Mr Tallon would knowingly risk the forfeiture of a vehicle he bought for £22,000; and that suggests to us that he may not have known what Mr Nolan intended.

Mr Sked's Review

32. Having set out the uncontroversial facts and summarised the correspondence and representations, Mr Sked turns to UKBA's policy on the restoration of vehicles to owners who were not in the vehicles were when they were seized. He says that the policy is that vehicles may be restored subject to conditions. He describes the policy thus:

- Innocent third-party owner

This applies where enquiries have shown that the owner could not reasonably have suspected to what use the vehicle was being put and has been duped. This might apply, for example, where the vehicle was stolen prior to the smuggling attempt or where the owner can show that they have taken reasonable steps to prevent the smuggling attempt. In these cases, restoration can be free of charge.

- Third-party owner failed to take reasonable steps

This applies where enquiries suggests that someone was not complicit in the smuggling attempt but has nonetheless been negligent in permitting the use of their vehicle. Someone who lent their vehicle but cannot show they took reasonable steps to prevent misuse would fall into this category. In these cases restoration should be for a fee"

He then sets out the policy in relation to the amount of the fee.

33. Mr Sked then considers into which of these categories Mr Tallon falls. He takes account of:

(1) his lending of the vehicle to Mr Wakeham and of the fact that UKBA's records showed the vehicle as having been taken to the continent via Dover/Calais by Mr Wakeham on 27 July 2010

(2) the discrepancy between Mr Nolan's repply to UKBA officers that Mr Tallon knew his destination, and Mr Tallon's statement in his letter of 2 February that he did not know that the vehicle was to be taken abroad;

(3) the discrepancy between Mr Tallon's letter of 11 January in which he refers to a trip to London and his his representatives' letter of 18 March in which it is said that Mr Tallon was told that Mr Nolan needed the vehicle to go to Bournemouth.

34. He concludes that Mr Tallon could not be treated as an innocent third-party for the purpose of the policy as "[i]t appears he was either fully aware of the purpose of the trip or, at the very least, gave the vehicle to Mr Nolan for him to use as he wished." He then says he is accordingly satisfied that Mr Tallon should be treated as a third-party who failed to take reasonable steps to prevent misuse. Accordingly he applies that part of the UKBA's policy.

Mr Tallon's arguments

35. Mr Tallon asks what more he could have done to prevent the misuse of the vehicle. He says that he was not told that Mr Nolan intended to take it abroad. He had no reason not to trust his friends. What further reasonable steps could he have taken?

Discussion.

The application of UKBA's policy

36. Mr Sked used UKBA's policy on restoration to reach his decision. We should start by mentioning two issues in relation to this approach and our conclusions on them.

37. The first is whether that policy itself is unreasonable. A decision made on the basis of an unreasonable policy is unlikely to be a reasonable decision. It seems to us however that, as represented in Mr Sked's letter it is not. The policy deters smuggling but allows for the relative culpability of the owner. It may be harsh but it is not unreasonable.

38. The second is whether Mr Sked failed to give any independent consideration to the facts of this case and in effect blindly applied the policy. Such an approach would be unreasonable particularly if there were relevant matters before us which were not encompassed by the policy. In this case however, there was no evidence before us or Mr Sked which indicated relevant factors which were not encompassed by the terms of the policy. Further although Mr Sked does not expressly say that he did not consider himself bound by the policy, his conclusion "the application of the policy in this case treats Mr Tallon no more harshly or leniently than anyone else in similar circumstances" suggests to us that Mr Sked did not fail to exercise an independent discretion.

Was the decision unreasonable?

39. Our powers in this appeal are, as explained above, limited to considering whether the "person making [the] decision could not reasonably have arrived at it".

40. In determining whether that is the case we are required to find such facts as are proved by the evidence before us.

41. The onus of proof is on the appellant (see section 16 (6) FA 1994).

42. In this appeal Mr Tallon says that he did not know that Mr Nolan intended to take the minibus abroad, and that he did not have, or should not have had, any reasonable concern that the minibus would be taken abroad. If he can prove both of those propositions then it seems to us that Mr Sked's decision would have been unreasonable since Mr Tallon would then have fallen into the "innocent third-party" category of UKBA's policy, and Mr Sked was purporting to apply that policy.

43. We therefore ask ourselves whether Mr Tallon proved both that he did not know for what purpose Mr Nolan wanted the vehicle, and that he had no reason to suspect that the vehicle would be used for the illicit import of goods from abroad.

44. We tended to the view that, despite the inconsistencies in some of his evidence, Mr Tallon did not know that Mr Nolan was going to use the van abroad. However for the reasons which follow we were not persuaded that Mr Tallon did not know that if he had asked more probing questions it was likely that he would have received uncomfortable answers. We concluded that the evidence reasonably permitted the conclusion that Mr Tallon suspected that the vehicle might be used for the purpose of the illicit importation of alcohol and tobacco but did not want to know whether that was the case.

45. It seemed to us that some of the inconsistencies in Mr Tallon's account were consistent with a desire not to know too much about Mr Nolan's journey. A studied lack of interest would explain his confused recollections about the destination, London or Bournemouth, and his failure to ask about the use of the minibus during the Friday.

46. Turning a blind eye is also not inconsistent with Mr Tallon's attitude to the possible loss of the vehicle if it was found to have been involved in some form of smuggling. If he knew that seizure was possible he may also have suspected that there was less chance of the vehicle being wholly forfeit if he could show that he was innocent. And a willingness to take that risk - the risk that either he was wrong, or could be found not to have been innocent - is consistent with his willingness to take the risk that the vehicle, driven by someone with only a third party insurance, might be damaged and that he might be unable to recover the cost of the vehicle from the driver.

47. We find that the vehicle had been abroad and back six times in its first six months of ownership, and that on almost every occasion the time spent out of the UK

was indicative of a shopping trip. We find it likely that at least some hint of those trips reached Mr Tallon's ears.

48. Mr Tallon may well have been wealthy enough to be generous in his lending of his vehicle to other people. Such frequent generosity is unusual but not incomprehensible. A lack of curiosity about what happens on a trip or when a van was lent is likewise unusual. The combination of the two seems in our view unlikely. We find it unlikely that Mr Tallon did not have some inkling of how his vehicle was being used.

49. We conclude that Mr Tallon must have had grounds for a reasonable suspicion that his van was being used for short shopping trips to the continent to buy alcohol and tobacco, and that, given the number of times it was so used in the first six months of his ownership, it would have been reasonable for him to consider whether or not its use was for the illicit importation of alcohol and tobacco.

50. Such a conclusion would make it reasonable to make fairly detailed enquiries of the borrower, and to ensure that the borrower's account was consistent and believable. It was plain that Mr Tallon did not do that.

51. We conclude that that Mr Tallon did not prove that he did not have, or should not have had, any reasonable concern that the minibus would be taken abroad and used for the illicit importation of alcohol and tobacco, and that a conclusion that he did not take reasonable care to ensure that such was not the case was one which Mr Sked could reasonably reach.

52. We therefore find that Mr Sked's decision that, within the terms of UKBA's policy, Mr Tallon could not be treated as an innocent third party, was one at which he could reasonably have arrived.

Conclusion

53. We therefore dismiss the appeal.

Rights of Appeal

54. 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.

CHARLES HELLIER
TRIBUNAL JUDGE

RELEASE DATE: 21 October 2013