Neutral Citation: [2022] UKFTT 448 (TC)

Case Number: TC08657

FIRST-TIER TRIBUNAL
TAX CHAMBER

In public by remote video hearing

Appeal reference: TC/2019/07381

EXCISE DUTY – confiscation of wine – restoration refused – decision to refuse upheld on review – reasonableness of review decision - further review directed

Heard on: 2 November 2022
Judgment date: 2 December 2022

Before

TRIBUNAL JUDGE NIGEL POPPLEWELL
MR NOEL BARRETT

Between

S & B DISTRIBUTION LIMITED

Appellant

and

THE DIRECTOR OF BORDER REVENUE

Respondents

Representation:

For the Appellant: David Bedenham of counsel instructed by Rainer Hughes solicitors

For the Respondents: Daisy Kell-Jones of counsel, instructed by the General Counsel and Solicitor to HM Revenue and Customs

DECISION

INTRODUCTION

1. The appellant appeals against a decision as upheld on review, by which the respondents refused to restore to the appellant 7,200 litres of wine ("**the wine**") which had been seized by the respondents on 16 June 2019 at the port of Dover. It is the respondents' case that the wine was accompanied by an Administrative Reference Code ("**ARC**") ending 544 ("**the ARC**"), and the ARC had been used on two previous occasions. This is illegal as an ARC is intended to be used only for the load for which it is specifically issued. The respondents believed that the appellant knew this. The appellant claims that it had no knowledge of any such prior use.

THE LAW

2. There was no dispute about the relevant legislation which is set out in the appendix to this decision. In simple terms, we have to decide whether the review decision, set out in a letter dated 14 October 2019 from the reviewing officer, Officer Summers to the appellant, (the "**review decision**") was one which he could reasonably have arrived at. If we find that it was, then the appeal fails. If we find that it was not reasonably arrived at, then we cannot order restoration. We can however require the respondents to conduct a further review of the decision not to restore.

THE EVIDENCE AND FINDINGS OF FACT

3. We were provided with a bundle of documents. Oral evidence on behalf of the appellant was given by its director, Mr Zenel Bytiqi. Oral evidence on behalf of the respondents was given by the review officer, Officer Summers. From this evidence we find the following:

Background

(1) The appellant purchased the wine from a supplier in Italy ("**the supplier**"). It had purchased wine from the supplier on many occasions. In the circumstances of this appeal, the appellant paid €10,656 for the wine which attracted excise duty of £21,425.04.

(2) The appellant paid this duty to a registered excise dealer, Customs Insights, approved by the respondents. The reason why such a dealer is used is because when importing excise goods into free circulation into the UK, the excise duty must be paid before the importation can take place. It is very difficult for an individual organisation to arrange the cash flow so that payment is made to the respondents at the time of importation. So instead, an importer pays the duty to a registered dealer who does not have to account for that duty to the respondents, immediately, but does so on a monthly basis. The customer, having paid the duty to the dealer is therefore free to arrange for goods to be imported as it knows that the duty will be paid by the dealer to the respondents.

(3) In the case of this appeal, the appellant was invoiced for the wine by the supplier on 1 June 2019 and paid the supplier on 17 June 2019. The appellant had paid the duty to Customs Insights on 28 May 2019. The appellant had given the details of the wine to Customs Insights who worked out how much duty the appellant needed to pay on it.

(4) In order to evidence that excise goods imported into the UK are duty paid, the driver who is driving the vehicle on which the goods are carried needs to be able to show to the respondents an ARC at the place of import. Given that so many lorries pass through the port of Dover, not

all drivers are checked for whether they hold a valid ARC. An ARC can only be used once, for the excise goods for which it was issued.

(5) The issue of an ARC is reasonably straightforward. The sending warehouse taps into a computer system known as EMCS, and types in details of the proposed movement of the goods. This then creates the ARC which can be seen electronically by the customs authorities of the sending and receiving jurisdictions. A hard copy is then printed out and given to the driver so that, if challenged, the driver has evidence of the ARC. An ARC cannot be issued unless and until either the duty has been paid in advance (as would be the case if an individual importer was not using a registered dealer) or it has been paid to a registered dealer. Once entered into the EMCS, the importation usually has to take place within 3-4 weeks.

(6) On 16 June 2019 at the port of Dover, vehicle EM879GH43, towing trailer AA25637 was selected for examination. The load was fully examined and revealed the wine. The wine was accompanied by the ARC. The consignor was the supplier and the consignee was the appellant. The load on that trailer was manifested as wine.

(7) The ARC was examined and the examining officer was of the opinion that the ARC had been used on two previous occasions which was fraudulent. On this basis, the wine was seized, as was the vehicle in which it was being imported.

(8) The driver was handed a seizure information notice which explained that the legality of the seizure could be challenged in the magistrates court, by sending a notice of claim to the respondents within one month of the date of seizure. No such challenge was made.

(9) By email dated 18 June 2019, the appellant's representatives wrote to the respondents to request restoration of the wine.

(10) In a letter dated 23 June 2019, from the Revenue Fraud Detection Team (the "**Fraud Team**") to the appellant, the Fraud Team explained the basis on which the wine was liable to forfeiture. In that letter, it is stated that Border Force had identified that on 2 June 2019, vehicle EM879GH and trailer AB95465 travelled to the UK carrying goods manifested as food and wine. On 9 June 2019, vehicle EM879GH (i.e. the same vehicle) and trailer AA25637 travelled to the UK carrying goods manifested as wine and flexibles. On 16 June 2019 the same vehicle and the same trailer travelled to the UK carrying goods manifested as wine (i.e. the wine). That letter goes on to say that "these are all within the lifetime of the e-AD and ARC number are (sic) were carrying excise goods accompanied by [the ARC]." We suspect that "are" in the foregoing sentence should read "and".

(11) In a letter dated 7 August 2019 from the National Post Seizure Unit, an officer of that unit responded to the appellant's representatives' email of 18 June 2019 seeking restoration (the "**restoration letter**"). The restoration letter included a summary of the policy for the restoration of excise goods, explaining that the general policy is that excise goods seized because of an attempt to evade excise duty should not normally be restored, but that each case is examined on its merits. The officer went on to say that in considering restoration he had looked at all of the circumstances surrounding the seizure, but had not considered the legality or the correctness of the seizure itself. It went on to detail the previous dates of travel of the vehicles and trailers set out in the Fraud Team's letter of 23 June 2019. It explained that the officer's conclusion was that there were no exceptional circumstances that would justify a departure from policy. This was on the basis that the details of travel, and vehicle, and trailer information were "all within the lifetime of the e-AD and [the ARC]". The officer decided that the wine should not be restored (the "**restoration decision**").

(12) By email dated 30 August 2019, the appellant requested a review of the restoration decision.

(13) Officer Summers undertook the review of the restoration decision, and in his letter to the appellant's representative dated 14 October 2019 (the "**review letter**") explained the basis on which he had undertaken his review and upheld the decision set out in the restoration letter that the wine should not be restored.

The review letter and the review decision

(14) The review letter included a summary of the background to the case, the respondents' policy for restoration of seized goods, the reasons for the officer's decision, and the appellant's further right of appeal. It also included a summary of the applicable law, and notes about importation of excise goods and other relevant matters.

(15) As regards background, it recites the details of the seizure, and records that the officer who examined the ARC at Dover was satisfied that the wine had been acquired with a view to the fraudulent evasion of excise duty, resulting in a seizure.

(16) He summarised that the general policy is that seized excise goods should not normally be restored. But that each case is examined on its merits to determine whether or not restoration may be offered exceptionally. In other words it reiterated the statement of policy which had been set out in the restoration letter.

(17) He did not set out, in detail, what that policy was, nor that there were different policies which might be applied to taxpayers exhibiting different behaviours.

(18) It went on to justify why the restoration officer had not considered the legality or the correctness of the seizure (basically there had been no challenge in the magistrates court).

(19) It was Officer Summers' opinion that he had not been provided with details of exceptional circumstances that would result in the wine being restored. He also set out a number of positive "*additional*" reasons for concluding that the wine should not be restored.

> "Having had the opportunity to fully investigate the importation, other issues have come to light which questions the validity of the importation.
>
> On 02/06/2019 at 19.18 hours vehicle EM879GH towing trailer number AB 95465 (the trailer listed on the ARC) imported a quantity of wine using [the ARC]. On 09/06/2019 at 16.27 hours, vehicle EM879GH towing trailer AA25637 imported a further quantity of wine. The same ARC was used but the trailer was not the one listed on EMCS. The haulier has been unable to provide any paperwork relating to this importation or give a credible explanation as to why the trailer number differed to the one on the EMCS. On the 16/06/2019 vehicle EM879GH again towing trailer AB25637 [this is likely to be a typo and should be "AA25637"] imported another consignment of 7,200 litres of wine. I believe that the failure to provide an explanation as to previous loads is because the same ARC was used three times in its lifetime. Had the ARC only be used on the 16/06/2019 then I would consider this to be a disproportionately long time and commercially uneconomical trip from Italy.
>
> The driver presented old paperwork relating to a previous importation and then claimed that it was a mistake. I do not believe that any paperwork existed which related to the

load on the day as it was travelling on a previously used ARC. The driver must have known that the ARC had been used previously, as did the haulier as they are responsible for the paperwork. I have examined the driver's employment contract and there is no clause in the contract to discourage drivers from smuggling illicit goods through Border Controls".

(20) The letter then concludes that in Officer Summers' opinion, the application of the Border Force policy in this case treats the appellant no more harshly or leniently than anyone else in similar circumstances, and that non-restoration of the wine in the circumstances would be appropriate. He had found neither sufficient or compelling reasons to offer restoration and he considered that decision to be both reasonable and proportionate in relation to the circumstances and seriousness of the case.

Officer Summers' evidence

(21) The respondents do not publish their policies on restoration. This would enable smugglers to plan round them. The respondents have more than one policy. They run to many pages.

(22) There are different policies for taxpayers who are complicit in illegal activity ("**complicit policy**") or are not complicit in illegal activity ("**non-complicit policy**") (our definitions, not definitions provided by Officer Summers).

(23) The appellant provided no evidence of exceptional circumstances to justify a departure from the general policy on restoration.

(24) Culpability is a factor which is relevant to exceptional circumstances.

(25) He had access to an electronic file which contained information from the Fraud Team. His evidence initially was that having interrogated that electronic file, it showed that the ARC had actually been produced to an official at the time of the importation on 2 June 2019. In answer to subsequent questions, it was clear that this was not right, and that he did not know whether the drivers of the vehicles undertaking importations on 2 June 2019 and 9 June 2019 had been stopped and the ARC produced. He did not, therefore, know with certainty that the ARC had been used on three occasions. However, he had been told this was the case by the Fraud Team and had accepted it. It is possible to identify the use of an ARC even if a vehicle is not stopped at the point of importation. It is for this reason that he was not certain whether the vehicles had been stopped on each of the two previous occasions, but because the Fraud Team had told him that the ARC had been used on those previous occasions, he had no reason to doubt it, and he was "governed" by what the Fraud Team had told him.

(26) He had also made an assumption that because these three importations took place within the lifetime of the ARC that, as set out in the restoration letter, the ARC had been used on all three occasions.

(27) He had also taken the view that the ARC must have been generated between 28 May 2019 and 2 June 2019, as he had treated as a matter of fact that the ARC had been used for an importation on the later date.

(28) It was on this basis that he thought that waiting to use the ARC until 16 June 2019 made no economic sense as traders usually want to import goods they have paid for, and sell them

on, as quickly as possible. In this case he thought that the appellant had paid for the wine on 28 May 2019.

(29) He had taken the view that the same driver working for the same haulage company had imported the goods on 2 June 2019, 9 June 2019, and 16 June 2019. There were common vehicle numbers and trailer numbers for each of these importations, and the goods manifested on each of these importations was similar, if not identical. In view of the fact that the same ARC had been used for each of these importations, he thought that, on the balance of probabilities, the appellant knew of this and was therefore complicit in the illegal importation of those goods, including the importation of the wine on 16 June 2019. He had therefore applied the complicit policy when reviewing the decision not to restore.

(30) Furthermore, the appellant had provided no evidence to him that they had not used the ARC on 2 June 2019 or 9 June 2019.

(31) He had not set out, in stark terms, in the review letter, his opinion that the appellant had been complicit in the fraudulent evasion of duty. But in his view this was implicit in the fact that he had rejected restoration.

(32) He accepted that the appellant had no influence over the terms and conditions of employment of the haulier's drivers.

(33) He had heard the evidence of Mr Bytyqi, but stated that it would have made no difference to his review if he had heard this evidence before undertaking his review. The appellant had had issues with the respondents before involving the use of an ARC on more than one occasion. He accepted, however, that this had not been reflected in his review letter.

Mr Bytyqi's evidence

(34) Mr Bytyqi denied any knowledge that the ARC had been used on 2 June 2019 and 9 June 2019. The ARC related to a single order of the wine for which the appellant paid the price to the supplier and the duty to Customs Insights. The wine was imported into the UK on 16 June 2019. It had been confiscated. The appellant has had no benefit from it. It has paid the price and the duty on wine, but has not been able to access or sell it. Notwithstanding that, however, the appellant had been able to carry on business and the seizure has not caused a significant disruption to the appellant's business.

DISCUSSION

4. In summary Mr Bedenham submitted as follows:

(1) A decision will not have been reasonably arrived at if:

(a) there was a failure to take into account all relevant considerations;

(b) there was a failure to leave out of account all irrelevant considerations;

(c) there was an error of law;

(d) inappropriate or unjustified weight was given to a particular factor such that no reasonable decision maker could have acted in such fashion; and

(e) the decision maker otherwise reached a decision which no reasonable decision maker could have reached.

(See paragraphs 308 - 309 of *Corbelli Wines v HMRC* [2017] UKFTT 615 (TC)).

(2) The review decision is an unreasonable one. Officer Summers took as gospel truth the fact that the ARC had been used on two previous occasions. This is not an established fact and he should have questioned it. He now accepts that it was not an established fact.

(3) He applied the complicit policy when he should have applied the non-complicit policy. There was no evidence that the appellant had been complicit in the fraudulent importations on 2 June 2019 and 9 June 2019. Furthermore, he did not set out, in the review letter, the basis on which he alleged that the appellant was complicit.

(4) He took into account an irrelevant matter, namely that it was uneconomical not to use the ARC only once in a three-week period, as a trader would normally wish to turn goods to account in a much shorter time, yet his evidence was that he had never had the financial information on which to base a decision regarding economic benefits or otherwise.

(5) He had not set out the relevant policy, in full, in the review letter. He had simply set out a summary of the policy. This was not the behaviour of a reasonable decision-maker and was exacerbated by the fact that he never stated, explicitly, that he believed that the appellant was complicit in an attempt to fraudulently evade duty.

(6) Failure to properly take into consideration that the seizure and refusal to restore engaged the appellant's rights under Article 1 to the first protocol of the European Convention on Human Rights, namely the entitlement to the peaceful enjoyment of possessions, and the refusal to restore was disproportionate.

(7) There was no proper basis on which Officer Summers could conclude that the appellant was complicit in fraud. This was central to his conclusion and therefore that conclusion must be flawed. The decision not to restore should be remitted for a further review on the basis that the appellant was not complicit in fraud.

(8) Nor was it the case that even if Officer Summers had not made these errors, he would have inevitably reached the same conclusion.

5. In summary Miss Kell-Jones submitted:

(1) The burden of establishing that the review decision was an unreasonable one lies on the appellant.

(2) There is no need for the respondents to disclose their policy, and it is entirely reasonable, for the reasons given by Officer Summers, for them not to do so. It would allow smugglers to adapt their behaviour.

(3) It was entirely reasonable for Officer Summers to rely on the information provided to him by the Fraud Team, who had told him that the ARC had been used on three separate occasions. The Fraud Team have access to information which was not available to Officer Summers.

(4) It was also entirely reasonable for him to conclude that because the ARC had been used on three occasions, the appellant had been complicit in that re-use, and thus had been complicit in the fraudulent evasion of duty. The timeline shows that Customs Insights were instructed on 28 May 2019 and the invoice for the wine was raised on 1 June 2019. The first importation using the ARC was on 2 June 2019.

6. As mentioned above, we have no power to order restoration. However, if we think that review decision is an unreasonable one then we can direct that the respondents must carry out a further review of that decision. The burden of establishing that the review decision is an unreasonable one, lies with the appellant. The standard is the balance of probabilities.

7. When deciding whether the review decision was an unreasonable one, we adopt the principles set out in Mr Benham's submission to which Miss Kell-Jones made no challenge. We can only take into account facts which were in existence at the time of the review decision, but we are able to take into account such facts even if they were not known about by Officer Summers. If we come to the conclusion that the review decision was an unreasonable one because, for example, Officer Summers had taken into account matters which were irrelevant, we can dismiss the appeal if we think that it was inevitable that had Officer Summers not taken those matters into account, he would have come to the same decision.

8. To our mind, the reasonableness of the review decision boils down to whether it was reasonable for Officer Summers to firstly rely on the information provided by the Fraud Team as to the previous uses of the ARC, and secondly whether it was reasonable for him to conclude from the information in his possession that the appellant had been complicit in an attempt to smuggle, or fraudulently import, excise goods (namely the wine) into the UK.

9. For the reasons given below, we think it was reasonable for him to rely on the information provided by the Fraud Team, but it was not reasonable for him to conclude that the appellant was complicit in smuggling.

10. We do not think it was reasonable for Officer Summers to conclude that simply because the three importations had been made within the lifetime of the ARC, the same ARC had been used on all three occasions. And if this had been the only justification for his conclusion of previous use, we would have decided that it was an unreasonable conclusion for him to reach. However, it is clear from the review letter that Officer Summers based his conclusion that the ARC had been used for all three importations on the information that he had received from the Fraud Team.

11. It is clear from the Fraud Team's letter to the appellant dated 23 June 2019 that it was aware by that time that the ARC had been used on two previous occasions before the importation on 16 June 2019. However, that justification for non-restoration was not reflected in the restoration letter, where justification is only made on the basis that the three trips were made within the lifetime of the ARC.

12. Officer Summers, having interrogated his database, and having established that the ARC had been used on two previous occasions, was entirely justified in taking this into account when coming to his decision. It is prima facie evidence that something was wrong, and to his mind it was evidence of fraud. Mr Bedenham suggests that the Officer Summers should have challenged this information when he was made aware of it by the Fraud Team. But we accept Officer Summers' evidence that his experience was the Fraud Team was privy to a great deal of information to which he was not, and we think it was entirely reasonable for him to take that evidence at face value and not challenge it. We suspect that, operationally, this is what happens

in practice, and when the Fraud Team provide information to officers at the coalface, it is treated as reliable, and such officers would not challenge its veracity nor its source. In failing to do this, Officer Summers has not acted unreasonably.

13. Mr Bedenham also impugned Officer Summers for not mentioning his interaction with the Fraud Team as a source of information when undertaking his review. This does not render the review decision in any way flawed. It is abundantly clear from the review letter that Officer Summers thought that the appellant might have been involved in smuggling. The use of the ARC on two previous occasions was one of the facts on which he relied. Having been told by the Fraud Team that it had been used on two previous occasions, Officer Summers was entitled to treat that as a fact, and not test it.

14. However, Officer Summers then went on to base his decision on two further matters. The first was that because the same vehicle had been used on all three importations, the same trailer had been used on two of those three importations, and the same driver had made those importations, it was more likely than not that the appellant knew of the use of the ARC on the two previous occasions and was thus complicit in an attempt to smuggle in excise goods. The second was his conclusion that it would be commercially uneconomical to generate an ARC at the end of May/ beginning of June 2019, yet use it only for the first time on 16 June 2019, as in his experience traders wished to turn goods to account in a shorter timescale.

15. We do not think that Officer Summers' view that it was more likely than not that simply because the same driver, same tractor unit, and on two occasions the same trailer, were used to import goods into the UK using the ARC is evidence of the appellant's complicity in smuggling. Mr Bytyqi denied any knowledge of previous use, and we believe him. Officer Summers said that one reason he did not restore was because the appellant did not show evidence to him that they did not know that the ARC had been used on two previous occasions. But that, with respect to Officer Summers is unjustifiable. The appellant's case is that he did not know of the previous use, so how could it have provided evidence of that.

16. We also take the view that for it to be reasonable for him to rely on evidence for non-restoration. the "more likely than not" test which Officer Summers adopted requires (if it is indeed the right test) very cogent evidence which demonstrates that the appellant was complicit in fraud. We do not think it was reasonable for him to infer that simply because the same driver driving for the same haulage company had imported the goods on three occasions, it followed that the appellant was complicit in fraud. This is notwithstanding that the driver was driving the same vehicle, and on two occasions the same trailer. It seems to us very likely that a haulage company which had been used on previous occasions by the appellant to import wine would employ the same driver using the same vehicle to undertake that importation on all three occasions.

17. There might be a number of reasons why the ARC had been used on the two previous occasions in ignorance of the appellant. The obvious one being, (as Mr Bedenham put to Officer Summers) that the haulier and/or the driver had used the ARC in ignorance of the appellant, in order to divert the goods imported on 2 June 2019 and 9 June 2019, and put them into duty paid circulation in the UK. Indeed in the review letter, Officer Summers himself says that the driver must have known that the ARC had been used previously, as did the haulier as they are responsible for the paperwork. No mention here is made of the knowledge of the appellant. Illegal importation and release of the goods into duty paid circulation into the UK by the driver and/or the haulier seems to us just as likely a circumstance as that posited by

Officer Summers, namely that it was the appellant who had done that. In our view that was an unreasonable conclusion to come to on the evidence before him.

18. As regards whether it was commercially uneconomical to wait until three weeks after the ARC had been generated to use it for the first time, we are again critical of Officer Summers' conclusion. He was under the misapprehension that the wine had been paid for at the end of May/beginning of June when in fact, on the evidence before us, it is clear that whilst the duty had been paid to Customs Insights, the price for the wine was not paid until 17 June 2019. That is a fact in existence at the time of the review decision which we can take into account even if it was unknown to Officer Summers. Furthermore, there were no figures set out in the review letter which demonstrated the economic downside to the delayed use of the ARC. There was simply Officer Summers' supposition based on some unidentified experience that if the ARC had been used on only 16 June 2019, that would be a disproportionately long time and render commercially uneconomical a single trip from Italy. There is no rational basis for this view. It is our view that no reasonable officer, properly directed, would have come to the same view on the facts.

19. It was on the basis of his conclusion that the appellant should be regarded as having been complicit in smuggling, that Officer Summers then applied the complicit policy and denied the restoration. We do not know what the complicit policy states, but by applying it, Officer Summers acted unreasonably.

DECISION

20. We therefore direct that the review decision, so far as it remains in force, is to cease to have effect from the date of this decision; and we further direct that the respondents should conduct a further review of the restoration decision.

RIGHT TO APPLY FOR PERMISSION TO APPEAL

21. 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.

NIGEL POPPLEWELL
TRIBUNAL JUDGE

Release date: 02nd DECEMBER 2022

APPENDIX

Relevant law

Statutory provisions

1. Section 139(1) of the Customs and Excise Management Act 1979 ("**CEMA 1979**") provides that any thing liable to forfeiture under the customs and excise Acts may be seized (or detained) by an appropriate officer.

2. Schedule 3 to CEMA 1979 provides in relevant part:

> "(3) Any person claiming that any thing seized as liable to forfeiture is not so liable shall, within one month of the date of the notice or seizure…give notice of his claim in writing to the Commissioners…
>
> …
>
> (5) If on the expiration of the relevant period under paragraph 3 above for the giving of notice of claim in respect of any thing no such notice has been given to the Commissioners…the thing in question shall be deemed to have been duly condemned as forfeited".

3. Section 152 CEMA 1979 provides:

> "The Commissioners may, as they see fit –
>
> …
>
> (b) restore, subject to such conditions (if any) as they think proper, any thing forfeited or seized under [the customs and excise Acts]".

4. Section 14 Finance Act 1994 ("**FA 1994**") permits a person affected by a decision not to restore a seized item to request a review of that decision. Where such a request is made in time, the review must be performed in accordance with s15 FA 1994. If the person that requested the review remains dissatisfied, that person can appeal to the Tribunal under s16 FA 1994.

5. Pursuant to s16(8) FA 1994 and paragraph 2(1)(r) of Schedule 5 of the FA 1994, a decision pursuant to s152(b) CEMA 1979 is a decision as to an "ancillary matter".

6. Section 16(4) FA 1994 provides:

> "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".