

**THE REVENUE COMMISSIONERS AND RANDOM CAR
SEIZURES**

INVESTIGATION REPORT

on the complaint made by

Mr Caprani & Ms Greene,

against

the Office of the Revenue Commissioners

An Investigation under Section 4 of the Ombudsman Act 1980

Office of the Ombudsman

December 2012

Executive Summary

An Ombudsman investigation into the seizure of a car by the Customs and Excise of the Revenue Commissioners

This was an investigation by the Ombudsman Emily O'Reilly of a complaint against the Revenue Commissioners. The complaint concerned the circumstances in which a foreign registered car was detained and seized by officers of the Customs and Excise and the penalty that had to be paid, in order to secure the release of the car.

The Ombudsman found:

- that in detaining and seizing the car, Revenue failed to follow its own procedures and that these actions of detention and seizure, were contrary to fair or sound administration;
- that the complainants suffered adverse affect arising from the imposition of a financial penalty, and the time and trouble taken to deal with the events complained of, and
- that in its dealings with these clients, the Revenue failed to follow its own procedures in relation to proper record keeping.

The Revenue Commissioners accepted the Ombudsman's findings and recommendations.

The Complaint

Mr Caprani complained to the Ombudsman that in August 2005, officers of the Customs and Excise detained his car. At the time his fiancée was sitting in the driver's seat while he went into a shop. The Customs Officers drove the car away. The car was formally seized a few days later. Mr Caprani and Ms Greene had to agree to pay a financial penalty to the Customs and to export the car, in order to have the car released.

Mr Caprani (an Italian citizen) had worked in Ireland on a temporary basis between 2001 and January 2004, when he returned to Italy. While living in Italy in July 2004 he made a down payment on a car with an Italian leasing company. The car was registered in his name. In February 2005 he returned to Ireland with his Irish fiancée and then secured a two year fixed term contract of work. Mr Caprani said

that he had asked Revenue about re registering his car and was told that he did not have to do so as he was entitled to “temporary exemption” from Vehicle Registration Tax (VRT), by virtue of his fixed term contract.

Subsequently, Mr Caprani applied for and was granted a “temporary exemption” from VRT. Mr Caprani complained to the Ombudsman about the seizure and penalty. Mr Caprani argued that Revenue should have issued a formal warning instead of seizing the car and imposing the penalty.

Temporary Exemption

When moving residence to the State, a person may be entitled to either temporary or permanent relief from VRT, depending on personal circumstances. The conditions are set down in Regulations. In order to qualify for temporary exemption a person needs only to satisfy the conditions and it is not necessary to make a formal application. The exemption may be allowed to a person “established *outside* the State” and it is a condition of the exemption that the car should not be driven by a person established *in* the State, an Irish citizen. In this case the condition was breached by Ms Greene, an Irish citizen. A breach of the conditions is an offence.

Revenue Procedures

Revenue policy and procedure in relation to the enforcement of VRT legislation is set down in two documents relied on by staff, the “Section 5 Vehicle Registration Tax Manual (Enforcement)” and the “Customs and Excise Enforcement Procedures Manual”. The procedures outline how breaches of the Regulations may be dealt with. In both cases the procedures provide that first or minor offences may be dealt with by way of warnings rather than seizure of the vehicle. In the case of one document, it is specified that this applies where the car is being driven by a State resident for the first time.

The procedures also set out that “enforcement staff should not engage in random challenges of lone, unregistered vehicles. Instead such vehicles should be targeted primarily on the basis of profiling, local observation, information/complaints...before they are challenged.” The evidence in this case suggested that a random challenge had been taken and that Revenue failed to establish if it was Ms Greene’s first time to drive the car.

The procedures also describe the type of records that should be kept by enforcement staff and the information that should be recorded.

The Investigation

In the course of the preliminary examination the Ombudsman looked for all of Revenue's files on the event, and came to the view that an investigation was warranted to determine

- whether or not Mr Caprani was entitled to a Temporary Exemption;
- whether the seizure and detention of the car and the penalty imposed constituted a fair or proportionate response to the offence, and
- if the correct Revenue procedures had been adhered to.

Responding to the Statement of Complaint and initial views of the Ombudsman, the Revenue clarified its role in relation to enforcement and described contacts between parties involved in this event. Revenue accepted that there was insufficient evidence to determine whether or not this was the first occasion on which Ms Greene had driven the car. In the specific circumstances of this case, Revenue was willing to consider a refund.

When the draft investigation report was sent to the Revenue, the Revenue offered to make a payment of €5300 to the complainants. This was acceptable to the Ombudsman.

Recommendations

As the Ombudsman was satisfied with the payment, no recommendations on this matter were needed in the final report. The Ombudsman did however make recommendations about certain Revenue administrative procedures. In particular she recommended that Revenue:

- should ensure that there is consistency between procedural manuals;
- that the agreed procedures should be adhered to and staff should be reminded of these;
- that complete records should be maintained;
- that notices of detention and seizure should be date stamped on all occasions and that drivers should be informed verbally and in writing, of their right of appeal.

Revenue was also asked to consider a review of the Temporary Exemption, to establish if it would be appropriate to have drivers register that exemption within a set period of entering the country.

Revenue has accepted all of the recommendations. In relation to the proposed review of the exemption, Revenue has clarified that this can only be undertaken in the context of compatibility with EU law and that the matter is in train.

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Chapter 1 Background to the Complaint

The names of the complainants and the Custom Officers have been changed

Introduction

In October 2008, my Office received a complaint from Mr Caprani and Ms Greene in relation to the seizure of Mr. Caprani's car by Customs Officers. Following receipt of this complaint, my Office requested and received a report from the Revenue Commissioners (the Revenue) in relation to the various elements of the complaint. Following a request from my Office, Revenue supplied all of its files and documentation in relation to the matter. Having carried out a detailed preliminary examination, my Office subsequently decided to open a formal investigation of this complaint and a Statement of Complaint was issued to the Revenue on 1 June 2010 notifying them of my intention to conduct a formal investigation into the matter. The Revenue Chairman, Ms Josephine Feehily, responded to the Statement of Complaint on 2 July 2010 (see Appendix 1).

On 13 December 2010 my Office issued a draft investigation report, with findings, to Revenue and provided it with an opportunity to comment on its contents. A response to the draft investigation report was issued by Revenue to my Office on 4 February 2011.

1.1 The Complaint

Mr Caprani (an Italian citizen) had lived in Ireland on a temporary basis from November 2001 to 30 January 2004 while working as an engineer for an Italian company which was carrying out work on infrastructural projects in Ireland. The Italian company paid for his accommodation, company car and regular flights home to Italy and he was due to return to Italy on completion of this contract. The month before he returned to Italy (in approximately February/March 2004) with the intention of residing there permanently, he met Ms Greene (a State citizen). She subsequently moved from Ireland to Italy to be with Mr Caprani. In July 2004, while living in Italy, Mr Caprani made a down payment of €10,000 with an Italian leasing company and proceeded with a lease on a car there.

In February 2005, Mr Caprani and Ms Greene (who was by then his fiancée)

travelled from Italy to Ireland with Mr. Caprani's Italian registered car. While in Ireland Mr. Caprani applied for and secured a two year fixed term contract with an Irish company. Mr. Caprani's car had been leased to him in Italy for more than six months prior to his entering this country in February 2005 and he had been resident in Italy for a year before he came to Ireland. Mr Caprani said that he had asked Revenue about re-registering the car and was told he did not have to as he was entitled to "temporary exemption" (TE) from Vehicle Registration Tax (VRT) by virtue of his fixed term contract. One of the conditions of a temporary exemption from VRT is that the vehicle in question must not be driven by a State citizen.

In August 2005, two Customs Officers approached Mr Caprani's car while it was parked in Baggot Street in Dublin - Ms Greene was sitting in the driver's seat while Mr Caprani was in a supermarket. Customs detained and subsequently seized Mr Caprani's car on the basis that VRT should have been paid because the vehicle was being driven by a State citizen and therefore did not qualify for TE. In order to obtain the release of the car, Mr Caprani and Ms Greene had to agree to pay €3,699 to Customs and then export the car.

However, on 2 November 2005 Mr Caprani applied to Tallaght Vehicle Registration Office (VRO) for a Temporary Exemption from VRT in respect of the car. He applied on the basis that he was employed by an Irish company as a specialist engineer to "*carry out a task of definite duration*" in accordance with Section 135 of the Finance Act 1992 and the Temporary Exemption From Registration of Vehicles Regulations 1993 (S.I. No. 60/1993). On 22 November 2005, a Temporary Exemption was granted by Tallaght VRO for the duration of Mr Caprani's stay or until 5 May 2006, whichever was earlier, on condition that "*the vehicle must not be loaned, sold or otherwise disposed of in the State and in no circumstances may it be driven by a State resident*". Mr Caprani returned his car to the State on 25 November 2005. On 27 April 2006, Tallaght VRO extended Mr Caprani's Temporary Exemption until 5 May 2007. Tallaght VRO has been unable to locate any of this documentation; however Mr Caprani supplied my Office with both a copy of his application to the VRO and his contract of employment.

In October 2008 Mr Caprani and Ms Greene made a complaint to my Office in relation to:

- (a) the detention and subsequent seizure of the car by Revenue rather than the issuing of a formal warning for a first offence. Mr. Caprani pointed out that he was entitled to "temporary exemption" as he was in Ireland on a fixed term contract and that Revenue guidelines say that a first and minor offence (e.g.

where a State resident is found with a TE vehicle on loan) should be dealt with by way of a formal warning rather than by detention and seizure.

(b) the allegedly aggressive behaviour of one of the Customs Officers when the car was being detained.

(c) the fact that €3,699 had to be paid to Customs in order to get the car released.

1.2 Eligibility for Relief from VRT

On moving residence to the State, a person may be entitled to either temporary or permanent relief from VRT depending on his/her personal circumstances.

Temporary Exemption

The conditions in relation to the grant of a temporary exemption from the requirement to re-register a foreign registered vehicle are set down in the Temporary Exemption from Registration of Vehicles Regulations 1993 (S.I. No. 60/1993).

Under Article 2(1) of these regulations, a "*person established outside the State*" means an individual having his/her normal residence outside the State or a person (other than an individual), having his/her only or principal place of business outside the State. "Normal residence" means the place where a person usually lives, that is to say, where he/she lives for at least 185 days in each year, because of personal and occupational ties, or, in the case of a person with no occupational ties, because of personal ties. However, the normal residence of a person whose occupational ties are in a different place from his/her personal ties and who consequently lives in turn in different places situated in two or more countries shall be regarded as being the place of his/her personal ties, provided that such person returns to the place of his/her personal ties regularly. This proviso does not apply if the person is living in a country in order to carry out a task of a "definite duration".

In accordance with Article 5 (1) of these regulations, a temporary exemption shall be granted for a period not exceeding 12 months from the date upon which the vehicle concerned was brought into the State or such longer period as the Revenue Commissioners in their discretion may allow in any particular case, if the vehicle—

- (a) is owned by or registered in the name of a person established outside the State,
- (b) is not disposed of or hired out in the State or lent to a person established in the State, and
- (c) whilst in the State, is not driven by a person established in the State, save with the permission of the Commissioners.

Permanent Relief

The conditions in relation to the grant of permanent relief from the requirement to pay VRT on the import of a foreign registered vehicle are set down in the Vehicle Registration Tax (Permanent Reliefs) Regulations 1993 (S.I. No. 59/1993). The relief applies to a private individual transferring his/her normal residence permanently (*my emphasis*) to the State from abroad. In order to qualify for relief, the applicant must, *inter alia*:

- has had his/her normal residence outside the State for a period greater than 6 months;
- have transferred his/her residence permanently to the State;
- be the owner (*my emphasis*) of the vehicle at the time of transfer;
- have had possession and actual use of the vehicle outside the State for 6 months prior to transfer;
- not be a person who was living abroad in order to carry out a task of definite duration of less than one year and whose personal ties remained in the State during that time.

Chapter 2 Preliminary Examination

2.1 Revenue's initial response to the complaint

On receipt of the complaint from Mr Caprani and Ms Greene, my Office contacted Revenue on 23 October 2008 and requested a report in relation to the issues which had been raised by the complainants. Revenue's response, dated 6 January 2009, indicated that their view was that:

- The question of Mr. Caprani's entitlement to "permanent relief from VRT under the transfer of residence provisions was not considered appropriate at the time of detention/seizure as the vehicle was a leased vehicle and not the personal property of Mr Caprani or Ms Greene. (One of the conditions which must be satisfied in order to obtain permanent relief is that the applicant must be the "owner" of the vehicle at the time of transfer.)
- Temporary exemption from VRT is generally granted to persons who continue to have their normal residence, as defined for VRT purposes, outside the State and can produce evidence of such. Revenue's records suggested that Mr Caprani's personal ties were in Ireland. He came to Ireland in November 2001 and lived and worked here until 30 January 2004. He returned to Italy in February/March 2004 with the intention of residing permanently in Italy. He came back to Ireland in February 2005, got married in September 2006 and continues to reside here.
- When Mr Caprani applied for the Temporary Exemption in November 2005 he had already been living in Ireland for nine months and working for six months. Tallaght VRO processed the application but could not locate the documentation in relation to the application so they don't know on what basis it was granted.
- One of the conditions of Temporary Exemption is that the car must be owned by, or registered in the name of, a non-resident person. (The car was leased.)
- A condition of TE is that the vehicle must not be lent to, or driven by, a person established in the State. Revenue imposed the penalty on Ms Greene

as she was the person in charge of the vehicle. Ms Greene would not have qualified for TE as she was a State resident. She committed the offence by being in charge of the vehicle.

- The provision in Revenue's "Section 5 Vehicle Registration Tax Manual (Enforcement)" which provides for an Irish resident receiving a "warning" for driving a foreign registered car refers to instances where Irish residents claim that they don't know the rules relating to foreign registered vehicles and the relevant Customs Officers are satisfied that the Irish resident is genuine (e.g. visitors from abroad get the Irish resident to drive them somewhere).
- In relation to the events surrounding the detention, Revenue supplied a note, dated 9 September 2005 by Mr Murphy (not his real name), Customs Officer which says *"I informed Ms Greene that I was detaining the vehicle under Section 140 Finance Act 2001. I issued Ms Greene with a notice of detention and Officer Fitzgerald (not his real name) gave her his business card."*
- The notice of detention was issued to Ms Greene as she was the person in charge of the vehicle. Under VRT legislation, the person in charge of an unregistered vehicle is the person who is deemed to be responsible.
- Following the seizure of the vehicle, Revenue received representations from Ms Greene's solicitor and a Dáil Deputy. Revenue's records show that detailed conversations took place with both Ms Greene and her solicitor as Revenue advised of Ms Greene's rights and the options available regarding release of the vehicle. On 12 January 2006, the Principal Officer in charge of Dublin Port District offered to personally meet the solicitor and his clients in order to provide clarification but the solicitor did not take up this offer.
- Revenue is of the opinion that their Customs Officers acted properly in their dealings with Ms Greene. Revenue indicated that this particular aspect of the matter was examined in 2005 by a senior Revenue manager, on receipt of the correspondence from Ms Greene's solicitor. The Custom Officer's notes of the detention record that during the course of the encounter on 19 August 2005, Ms Greene requested that a Garda be called. The Officers agreed to this and were about to hail two Gardaí on foot patrol nearby when Ms Greene asked them not to do so.

- It is Revenue's view that the penalty was properly due and correctly imposed on Ms Greene and that there are no grounds to mitigate the penalty.

2.2 Analysis of the Complaint

The Context of this Complaint

As with any of the complaints I deal with, whether by way of preliminary examination or formal investigation, there are a number of core issues which I have to take into consideration. Firstly, a complaint must relate to the administrative actions of a public body which falls within my remit and there must be *prima facie* evidence that the complainant(s) may have been adversely affected by the actions in question. In examining individual complaints I seek to establish whether the actions complained of may have amounted to maladministration and, if I am satisfied that they do, I then consider whether redress for the complainant is warranted in the case. In all cases I will seek to ensure that any suggested redress is appropriate and proportionate, having regard to the scale and nature of the adverse affect suffered. Where I deem it relevant, I will highlight any procedural or systemic failures which I identify and point out how the body could have avoided these problems and how they can improve their administrative practices and procedures so that they can avoid making similar errors in the future.

As part of my preliminary examination of this complaint, I requested all of Revenue's files and documentation relating to the detention and seizure of Mr. Caprani's car and the relevant Customs and Enforcement Manuals. All of this documentation was examined in detail by my Office, in conjunction with the relevant legislation, in order to

1. establish if Mr Caprani was actually entitled to temporary exemption,
2. ascertain if the penalty imposed for the offence was proper and proportionate in view of Revenue's discretion to issue warnings for first and minor offences, and to
3. confirm that Revenue had carried out the detention and seizure in accordance with the correct procedures.

Chapter 3 Review of Legislation and Relevant Material

3.1 Mr. Caprani's Entitlement to Temporary Exemption (TE)

Residency for TE Purposes

Mr Caprani told my Office that he was informed verbally by Revenue staff in both the Tallaght VRO and Dublin Castle that he would qualify for temporary exemption by virtue of his fixed term contract with an Irish company. There are no formalities required in bringing a TE vehicle into the State - a person need only satisfy the temporary exemption conditions and does not need the actual certificate to claim temporary exemption.

It appears that, notwithstanding his engagement to Ms Greene, Mr Caprani would have qualified for a Temporary Exemption under the residency terms of the Temporary Exemption from Registration of Vehicles Regulations 1993. He was an Italian citizen who had lived and worked in Ireland from November 2001 to 30 January 2004. He was in Ireland during this period on a purely temporary basis as he was working as an engineer for an Italian company which was carrying out work on an Irish infrastructural project. The Italian company paid for his accommodation, company car and regular flights home to Italy and he returned to Italy on completion of this contract. In July 2004, while living in Italy, Mr Caprani made a down payment of €10,000 with an Italian leasing company and proceeded with a lease on the vehicle in question.

Mr Caprani returned to Ireland in February 2005 (one year after leaving) and while in Ireland he obtained work with an Irish company on a contract of definite duration (two years with six months probation). Under the contract, he was given a start date of 5 May 2005 and a termination date of 4 May 2007. He supplied my Office with a copy of that contract (a copy of which was also supplied to Tallaght VRO). Revenue has asserted that Mr Caprani did not come to Ireland on a temporary basis as he went on to marry and settle in Ireland, however, at the time of the seizure his personal ties were in Italy as he was not married to Ms Greene. An email on one of Revenue's files which was dated 3 February 2009 and issued by a member of staff in the VRT Seizures & Prosecutions Unit, IPD Bridgend confirmed that - "*His fiancée is not considered as immediate family ties (personal ties) prior to marriage.*"

Ownership of Vehicle for TE purposes

Revenue said that Mr Caprani was not entitled to Temporary Exemption as the vehicle was leased and therefore not the personal property of Mr Caprani. They also said that the question of Mr. Caprani's entitlement to "permanent relief from VRT" under the transfer of residence provisions was not considered appropriate at the time of detention/seizure as the vehicle was a leased vehicle and not the personal property of either Mr Caprani or Ms Greene. An initial deposit of €10,000 had been paid by Mr Caprani and he had the option to buy out the car in three years. The car was taxed and insured in Italy.

The TE Regulations allow for the vehicle to be "*owned by or registered in the name of a person established outside the State*". Section 130 of the Finance Act 1992 defines the "owner" of a vehicle as meaning:

- (a) in relation to a vehicle (other than a vehicle specified in paragraph (b)), the person by whom the vehicle is kept,
- (b) in relation to a vehicle which is the subject of a hire-purchase agreement or a lease, the person in possession of the vehicle under the agreement or lease (**my emphasis**)

Therefore the "leased" status of the vehicle should not have affected Mr Caprani's eligibility for either a temporary or permanent exemption from VRT.

Validity of TE which was granted

In November 2005, following the seizure, Mr Caprani made a formal application for TE to Tallaght VRO to prove that he was entitled to temporary exemption. He made this application despite the fact that one is not required to apply to Revenue - one must merely be able to show that he/she would be entitled to TE. Revenue queried the basis on which Mr Caprani received this temporary exemption from a particular official in Tallaght VRO as Tallaght VRO was unable to locate records and could not comment on the basis on which this TE was granted. A file note of 3 February 2009 from a member of staff in Revenue's VRT Seizures and Prosecutions Unit said that "*Mr. Caprani's entitlement to TE would be impossible to disprove at this stage as his application papers have been mislaid and the authorising officer is no longer in meaningful employment with Revenue.*" Mr Caprani supplied my Office with a copy of his application, the contract which he submitted to the VRO and the TE which was issued by (and subsequently

renewed by) the VRO and there did not appear to be any irregularities in any of these documents.

3.2 The level of penalty imposed for the offence - (€3,699)

The penalty imposed on the complainants

The Temporary Exemption From Registration of Vehicles Regulations 1993 set out the circumstances in which a foreign registered vehicle may be brought into the State on a temporary basis. (These are summarised in Revenue's Leaflet VRT2). One of the conditions which must be complied with in order to avail of the TE is that the vehicle must not be driven by a State resident - this condition was breached by Ms Greene.

In accordance with Section 139(1) (f) of the Finance Act 1992, it is an offence for a person to contravene or fail to comply, whether by act or omission, with regulations made under Section 141 of the Finance Act 1992. The Temporary Exemption From Registration of Vehicles Regulations 1993 were made under Section 141, therefore the failure to comply with the conditions of these regulations (e.g. by the driving of the vehicle by a State resident) is an offence. As Ms Greene was driving the vehicle contrary to the conditions set down in the temporary exemption, this was an offence and the car was initially detained in accordance with Section 140(3) of the Finance Act 2001 and subsequently seized in accordance with Sections 140(4) and 141(1) of the Finance Act 2001. A vehicle in respect of which such an offence has been committed is liable to forfeiture.

However, Section 4.3 of Revenue's "Customs and Excise Enforcement Procedures Manual" provides for the issuing of warnings in the case of first or minor offences.

Was detention/seizure of the vehicle a proportionate penalty for the offence or would a formal "warning" have been more appropriate for a first offence?

Revenue policy in relation to the enforcement of VRT legislation is set down in the "Section 5 Vehicle Registration Tax Manual (Enforcement)" and the "Customs and Excise Enforcement Procedures Manual".

The Section 5 Vehicle Registration Tax Manual (Enforcement) indicates that Revenue operates a system of proportionality in dealing with VRT offences and that there is discretion to issue a warning where a first and minor offence has been

committed and that it is only cases involving aggravated circumstances or second offences which should be dealt with by way of seizure / legal proceedings.

Revenue is aware that it has this discretion and it refers to it in an internal email dated 26 January 2009 which states *"In relation to the circumstances surrounding the seizure and the imposition of the fine, it seems clear that at the time very extensive efforts were made to advise the parties and to explore every possible avenue in terms of their best options in the circumstances. It appears that, in fact, they withdrew from this process until the current correspondence was received. Nonetheless, a question has arisen again in relation to any possible discretion that the Port District may have had, and if this was used to the fullest extent. This aspect will be examined very closely by the Ombudsman, and I think that we need to be absolutely clear on our position and any alternatives."*

Section 5.4 of this Manual states that the *"policy here is to deal with each vehicle in a manner proportionate to the degree of evasion."* Section 5.3.2. of the same Manual outlines the enforcement approach and says that *"detections which establish minor delays in registration are to be dealt with, for a first offence, by issuing a demand/notice. Where this is ignored the vehicle should be seized when next detected in irregular use by a State resident, or proceedings instituted if the vehicle is not so detected, or a satisfactory explanation of its disposal is not forthcoming. Cases involving aggravated circumstances, including serious delays in registration or second offences, should be dealt with by way of seizure and/or legal proceedings."*

Customs and Excise Enforcement Procedures Manual

There is provision in the Customs and Excise Enforcement Procedures Manual for the issuing of warnings for first and minor offences in cases where a State resident is found with a TE vehicle on loan. Section 4.3 of the Manual contains a list of Offences in relation to VRT, and Section 5.1 of the same Manual describes the "Typical Proofs Required to Support a Case". Two of these offences (i.e. Offences Nos. 1 and 4) appear to be relevant to this complaint. Offence No. [1] deals with situations where a State resident is found in possession of an unregistered vehicle or where a vehicle is brought in on Temporary Exemption but subsequently found in the possession of a State resident. Offence No. [4] relates to breaches of the Temporary Exemption Regulations by the holder of the exemption. The descriptions of these two offences suggest that Offence No. [1] would be applicable to Ms Greene as the State resident who was found in possession of the car and Offence No. [4] would be applicable to Mr Caprani as the holder of the

temporary exemption. A reading of the "notes" in relation to Offence No. [4] suggests that because Ms Greene (a State resident) was in possession of the vehicle Mr Caprani and Ms Greene should be dealt with under Offence No. [1] rather than Offence No. [4]. This is borne out by Revenue's focus at the time of detention and seizure on Ms Greene as being the person who committed an offence. In any event, both of these offences provide for warnings in the case of first/minor offences or simple breaches of the Temporary Exemption Regulations.

The description of Offence No. [1] says that a "*vehicle which was brought in on Temporary Exemption but is subsequently found in the possession of a State resident should also be dealt with under this heading. A first and minor offence in such situations (e.g. where a State resident is found with a TE vehicle on loan) should be dealt with by way of warning." (my emphasis)*

Mr Caprani was the passenger in his own car which was being driven by Ms Greene, a State resident, therefore I formed the view that this would seem to be a case of a simple breach of the TE regulations or a "first and minor offence" and that Revenue could have used their discretion to issue a warning rather than proceeding directly to detention and seizure of the vehicle in question.

The Section 5 Vehicle Registration Tax Manual (Enforcement)

Revenue referred to Section 5.4.2. of the Section 5 Manual as meaning that a verbal warning should only be given where a TE vehicle is being driven by a State resident for the "first time only". In reports to my Office, Revenue said that "*The provision in the Enforcement Manual which provides for an Irish resident getting a "warning" for driving a foreign registered vehicle refers to instances where Irish residents claim that they don't know the rules relating to foreign registered vehicles and the relevant Customs Officers are satisfied that the Irish resident is genuine e.g. visitors from abroad get Irish resident to drive them somewhere.*" This qualification refers to foreign registered vehicles owned by visitors from abroad rather than foreign registered vehicles which are subject to a temporary exemption and such a qualification is not contained in either of the Manuals.

Indeed, a file note of 3 February 2009 from a member of staff in Revenue's VRT Seizures and Prosecutions Unit, referred to paragraph 5.4.2 of the VRT Instruction Manual and said that "*a verbal warning should be issued in circumstances where the vehicle is legally imported on a temporary basis by a qualified person but is being driven by a State resident for the first time only.*" However, Section 5.4.2 of this Manual deals with the issuing of VRT Demand Notices (Form VRT31) in

cases where an *"officer has reason to believe that the driver/owner of an unregistered vehicle, who claims entitlement to temporary exemption, may in fact be a State resident."* Ms Greene (the driver) did not claim entitlement to temporary exemption and Mr Caprani (the owner) was not considered to be a State resident for the purposes of the TE regulations as his personal ties were in Italy, therefore it was my view that the Section of this Manual dealing with Form VRT31 could not be deemed relevant to this complaint. In fact, this Section goes on to say that the VRT31 is *"not to be used where the officer is satisfied that the vehicle in question was legally imported on a temporary basis by a qualified person but is being driven by a State resident for the first time only. In that event, a verbal warning should be issued."*

Did Revenue have evidence that Ms Greene had driven the vehicle on more than one occasion?

The Section 5 Vehicle Registration Tax Manual (Enforcement) is supposed to be read in conjunction with the Customs and Excise Enforcement Procedures Manual, however the Section 5 Manual appears to be more restrictive in that it mentions the issuing of a warning where the State resident is driving the car for the *"first time only"*. It is unclear if Ms Greene was driving the car for the first time only and there is no evidence or proof in any documents in Revenue's files that any attempt was ever made to establish if this was the case.

A file note dated 3 February 2009 from a member of staff in Revenue's VRT Seizures and Prosecutions Unit refers to paragraph 5.4.2 of the VRT Instruction Manual and says that *"a verbal warning should be issued in circumstances where the vehicle is legally imported on a temporary basis by a qualified person but is being driven by a State resident for the first time only. The vehicle was in the State for approximately 3 months at this stage. Mr Caprani's entitlement to TE would be impossible to disprove at this stage as his application papers have been mislaid and the authorising officer is no longer in meaningful employment with Revenue. We don't know if this was the first time that Ms Greene had possession of the vehicle in the State. All reports are silent on this information."* **(my emphasis)**

This file note also examines two possibilities:

"1. If this was her first use of the vehicle in the State then a verbal warning should have been issued. The vehicle should not have been seized.

2. If there was evidence that Ms Greene was using the vehicle on more than one occasion in the State then it was correctly seized. If such a case came before this office on appeal then we would uphold the seizure but would look favourably on a reduction of the 10% penalty. It would be seen as a breach of the TE Regulations as opposed to the normal VRT seizure, where a State resident had both ownership and possession of the vehicle. In the former it is most likely that the vehicle would be removed from the State when the legal owner left the State. In the latter there would be intent to retain the vehicle in the State. The latter holds the greater risk to VRT." **(my emphasis)**

Several days after the detention of the car, Mr Caprani attended an interview with Customs. The car was formally seized following this interview. There is no reference to any "evidence" in the minutes of this interview which were drawn up by Customs that it was not Ms Greene's first time to drive the car. I have established from Mr Caprani that Revenue did not mention during the interview that they had any evidence that it was not Ms Greene's first time to drive the car in the State.

Section 5.4.1. of the Vehicle Registration Tax Manual (Enforcement) says that "*enforcement staff should not engage in random challenges of lone, unregistered vehicles. Instead such vehicles should be targeted primarily on the basis of profiling, local observation, information/complaints received etc. but should also take account of the time of year, the location, the activity in which the driver is engaged etc. before they are challenged.*" A file note (dated 9 September 2005) written by the Customs Officer who detained the vehicle refers to the vehicle having been detained by the Customs Officer "*while on patrol in Baggot Street*". This suggested to me that it was a random challenge with no prior profiling, observation, complaints etc. therefore it appeared to me that, at the time of detention, Revenue had no evidence that Ms Greene had driven the vehicle on more than that one occasion and that this issue was not raised at any point during the detention or at the subsequent interview prior to seizure.

3.3 Procedural Issues relating to the detention and seizure

Did Revenue follow the correct detention procedure?

Section 140 of the Finance Act 2001 provides that where a Customs Officer reasonably suspects that an excisable vehicle may be liable to forfeiture, the vehicle may be detained by the officer for the purposes of carrying out such examination, enquiries or investigations as are deemed necessary to determine the

status of the vehicle. Mr Caprani said that the two Customs Officers were not wearing uniforms, he was given only a business card when the car was taken and he was not given a "Notice of Detention" until he went to the New Custom House three days later and asked for one. He said that his work colleague was in attendance and can verify this. Revenue disputed this and said that the "Notice of Detention" was given to Ms Greene on the evening that the car was detained. I was unable to verify when the "Notice of Detention" was actually issued as it was undated and unstamped.

While there is no indication in the legislation or guidance that the notice of detention/seizure should be date stamped, it is my opinion that it would be good administrative practice to do so. If the notice had been dated or date stamped I would have been able to establish if the notice was given at the time of detention (according to Revenue) or three days later (according to the complainants).

Alleged Behaviour of Customs Officer

Section 5.4.1. of the Vehicle Registration Tax Manual (Enforcement) says that *"enforcement staff should not engage in random challenges of lone, unregistered vehicles. Instead such vehicles should be targeted primarily on the basis of profiling, local observation, information/complaints received etc. but should also take account of the time of year, the location, the activity in which the driver is engaged etc. before they are challenged."*

The complainants were detained after they had pulled up outside a shop on Baggot Street in August 2005 which would generally be expected to be holiday season and a time when Italian tourists might reasonably be on holidays in Ireland. The complainants appear to have been challenged randomly on a Friday evening by two men, without uniforms, who held up ID cards to identify themselves as Customs Officers. The complainants said that they were not given the opportunity to examine these ID cards to see if they were genuine. Ms Greene was allegedly ordered out of the car by the Customs Officers, one of whom allegedly shouted at Ms Greene. The car was detained and driven off by the two men, and the complainants said that they were given only a business card as proof that the car had actually been taken by Customs. The complainants alleged that the notice of detention was only given to Mr Caprani three days later (Monday 22 August) with no stamp and date and he received it only because Mr Caprani went to the office to ask for this document.

The complainants also said that the staff in the New Custom House had dealt with their calls in a courteous manner. However, they did complain about what they perceived to be inappropriate and aggressive behaviour on the part of one of the Customs Officers during the seizure of the car and at a follow up meeting. I note that, for its part, Revenue has indicated that this aspect of the matter was examined in 2005 by Revenue (see Section 3 above) and it was concluded at the time that the Customs Officers had acted properly. Unfortunately, in the absence of independent witnesses, I was not in a position to independently assess these allegations and as such I was unable to reconcile the conflicting accounts of what had happened.

Quality of Records held by Revenue

In carrying out my preliminary examination, I requested all of Revenue's files and documentation on the matter. I noted that the Revenue files contained very limited information. It was also apparent from emails on file that, in many cases, the "attachments" to the emails were not printed and filed. There also seemed to be documents missing (e.g. correspondence from Revenue to Mr Caprani).

I also examined Revenue's Customs and Excise Enforcement Procedures Manual to see if Customs staff is provided with guidance in relation to record keeping. Section 2.4 of this Manual specifically requires that each Customs Officer keeps details of their actions and interviews in "Revenue Notebook C & E 1110" and also that contemporaneous notes should be taken during interviews and these must be signed by the complainants or, if the complainants decline to sign them, a note to that effect should be recorded on them - "*An interviewee should at all times be asked to sign the notes taken during an interview. If s/he declines to sign the notes, the officer should also record the fact.*" Mr Caprani confirmed to my Office that he was never asked to countersign any interview notes.

Section 2.4 of this Manual says that it is "*essential to good practice that a professional, consistent standard is established in relation to note taking, particularly where notes or written observations may be required to be used later in legal proceedings..... The following details, together with the points required to prove an offence, should always be noted:*

Date and Time

Names of all those present & times of arrival/departure

Location

Identity and address of alleged offender or other interviewee

Details of cautions, arrest and charge

Details of questions asked and responses

Time interview begins and ends, including timing of breaks

Specific details and description of goods connected with the offence

Details of the laws under which the officer operated

Details of evidence produced/uncovered

I examined the Revenue documentation but there were no minutes of the detention of 19 August 2005. The minutes of the interview/meeting of 29 August 2005 (re seizure) between Customs and the complainants consisted of just one small page of a notebook with fairly limited information which did not address the required details listed above. The records did not contain any evidence in relation to Ms Greene's usage of the car. More detailed accounts of the detention and seizure were only drawn up several weeks after they occurred and only when it was apparent that the complainants were taking the matter further.

Chapter 4 My Preliminary View and my Decision to Investigate

4.1 My Preliminary View

Following my detailed examination of this complaint, I came to the view that there was evidence to suggest that Mr Caprani had suffered significant adverse effect as a result of the actions of Revenue in seizing his car. In light of the facts made available to me during the course of my preliminary examination, I formed the preliminary view that the actions of Revenue in this case may have amounted to maladministration because:

- (1) It appeared that Mr Caprani was entitled to TE by virtue of his personal circumstances;
- (2) It appeared that, in the absence of evidence that this was not Ms Greene's first time to drive the vehicle, Revenue's decision to seize the vehicle was disproportionate because the Customs and Excise Enforcement Procedures Manual provides that a first and minor offence in such situations (e.g. where a State resident is found with a TE vehicle on loan) should be dealt with by way of verbal warning rather than detention/seizure;
- (3) It appeared that Revenue staff did not carry out the detention and seizure in accordance with the terms of their Customs and Excise Enforcement Procedures Manual. I also felt that there had been deficiencies in the creation and safekeeping of records relating to both Mr. Caprani's TE application and the detention and seizure of his vehicle.

Having reached this preliminary view, and noting the Revenue's position that the penalty was properly due and correctly imposed on Ms Greene, I then decided to commence a formal investigation of the complaint.

Chapter 5 Notification of Investigation and Revenue's Response

5.1 Notification of Investigation to Revenue

Having carried out a detailed preliminary examination of this complaint and noting Revenue's position regarding the imposition of the penalty, I was satisfied that there were grounds to proceed to a formal investigation of the matter. On 1 June 2010, I notified the Chairman of the Revenue Commissioners of my intention to carry out an investigation of the complaint under Section 4 of the Ombudsman Act, 1980. The Statement of Complaint which issued to Revenue at that time consisted of my preliminary views which were based on an analysis of the relevant legislation and documentation as already described in sections 1, 3, 4 and 5 of this report.

5.2 Revenue's Response to my Preliminary View

The Revenue Chairman, Ms Josephine Feehily, responded to my Statement of Complaint on 2 July 2010 (see Appendix 1) setting out Revenue's views following a review of the case and also providing a more detailed response to my preliminary views on the complaint. She clarified that Revenue has two distinct roles in relation to vehicles viz. responsibility for ensuring that vehicles in the State are registered (for Garda identification, local authority etc. purposes) and for collecting the appropriate vehicle registration tax. She pointed out that it is in this context that the decision to detain a vehicle is one that Revenue takes very seriously. The legislation provides the power of detention when an unregistered vehicle is being driven by an Irish citizen. The process of enforcement involves engagements between Revenue officers and persons who are driving unregistered vehicles in order to establish their liability or otherwise to register the vehicle and/or for Vehicle Registration Tax. She said that Revenue's guidelines set out a framework in which such engagements can take place - but in many instances, officers in operational circumstances are required to make judgement calls having regard to information obtained from persons and the underpinning legislative provisions. In the immediate aftermath of the detention and seizure of the vehicle, Revenue records showed that there were extensive contacts between Revenue officials and Mr Caprani/Ms Greene and their representatives. The penalty levied was a compromise penalty agreed at the time with Ms Greene following the intervention of the two officers on Baggot Street and the subsequent meeting on 29 August 2005.

Ms Feehily's response also indicated, *inter alia*, that while there was no recorded evidence that this was not Ms Greene's first time driving the vehicle, neither was there evidence recorded that it was the first occasion. In this regard, Ms Feehily accepted that, in this particular case, the level of detail in Revenue records was unsatisfactory and insufficient to allow Revenue to reach a conclusion at this remove. That being said, there were some records that indicated that the officers conducted a process of questions with the parties concerned on the day, and again at the meeting on 29 August 2005. Furthermore, Ms Feehily viewed it as reasonable to assume that, had the meeting with Ms Greene's Solicitors, as proposed by Revenue, taken place such matters could have been clarified. For example, if it was established that Ms Greene was not an insured driver, this may have resulted in further discretion being applied by the District Manager at the time.

Ms Feehily indicated that Revenue would not be opposed to a refund of the seizure fee as a full and final conclusion on a "without prejudice" basis due to the specific circumstances of the case.

In addition, it was indicated that Revenue accepted that the record keeping in this case was not to the standards that Revenue would normally expect, and which is provided for in the Customs & Excise Enforcement Procedures Manual.

In relation to the allegations regarding one of the Customs Officers, Ms Feehily said that Revenue had not been able to substantiate the complaints of poor treatment by the officers, but that it was accepted that perceptions after an event of this nature can be different for the respective parties.

Ms Feehily also supplied my Office with the following information regarding (a) proposed changes to VRT administration following recent legislative changes and (b) illustrative statistics in relation to VRT enforcement activity for 2009.

“(a) Proposed changes to VRT Administration

Although it has no bearing on the current case, we would like to advise the Ombudsman that the area of Vehicle Registration Tax is the subject of major changes. For information, a VRT project board was set up in 2007 to oversee a number of important changes to VRT administration, including the new policy on CO₂ emissions and arrangements for a range of registration functions to be conducted on Revenue's behalf by the company that carries out the National Vehicle Testing for the Road Safety Authority. Because of ongoing difficulties with enforcement of VRT, a number of ancillary

changes are under consideration, such as obliging vehicles that are temporarily brought into the State for a period in excess of 42 days to be registered without payment of registration tax, (Section 64 of Finance No. 2 Act 2008 refers). In addition, Revenue set up a separate Enforcement Workgroup in July 2009 to review all aspects of Revenue's enforcement policy. It is expected that this group will propose specific and immediate amendments to the current enforcement policy arising from the above-mentioned VRT legislative changes and will include a review of operational instructions relating to detention and seizure of vehicles.”

(b) VRT Statistics for 2009:

22,511 vehicles were challenged in relation to VRT, of which 21% were found to be non-compliant.
2,763 written warnings were issued.
50 cases were reported for prosecution.
1,952 vehicles were seized for VRT offences.
18 VRT cases were successfully prosecuted in the courts.

Chapter 6 Conclusion of my Investigation and Findings

6.1 Investigation Overview

I reviewed all of the evidence which emerged during my investigation before I arrived at my findings. In carrying out the review, I had regard to the terms of the Ombudsman Act, 1980 and the Ombudsman's Guide to Standards of Best Practice for Public Servants (see Appendix 2). Specifically, of particular relevance to this case are Sections 4(b)(iv) and 4(b)(vii) of the Ombudsman Act, 1980 which refer to administrative actions which are based on erroneous or incomplete information and contrary to fair or sound administration.

Furthermore, the Ombudsman's Guide to Standards of Best Practice for Public Servants states, *inter alia*, that:

Dealing "fairly" with people means -

- * accepting that rules and regulations, while important in ensuring fairness, should not be applied so rigidly or inflexibly as to create inequity;
- * avoiding penalties which are out of proportion to what is necessary to ensure compliance with the rules

6.2 Findings of my Investigation

I find that:

- 1. In its dealings with the complainants Revenue did not properly follow its own procedures in relation to proper record keeping;**
- 2. In deciding to detain and seize Mr. Caprani's car Revenue did not properly follow its own procedures;**
- 3. The actions of detention and seizure were contrary to fair or sound administration;**

4. The complainants suffered adverse affect arising from the imposition of a financial penalty;

5. The complainants suffered adverse affect as a result of the time and trouble taken arising from the events described in this investigation.

6.3 Conclusion of my Investigation

I conveyed the findings of my investigation to the Revenue as part of my Draft Investigation Report. Revenue gave further consideration to the specific circumstances of this case and the difficulties which I had highlighted in relation to the evidence relied upon to seize Mr Caprani's car. Having considered the matter further, Revenue wrote to my Office on 4 February 2011 and offered to reimburse the complainants the sum of €5,300 in relation to the seizure of the vehicle. Taking into account all aspects of this case, I took the view that this was a very reasonable offer by Revenue and that it was fair to all parties. The complainants were subsequently paid the amount in question.

In the circumstances, I did not deem it necessary to make a formal recommendation to Revenue regarding the provision of any further redress in the Recommendations Section (see Chapter 7) of this Investigation Report. The recommendations therefore relate to certain administrative procedures which were found to be wanting in this case.

In its response to my findings Revenue again acknowledged that the note taking and record keeping in this case fell short of the standards that Revenue requires. It expressed the view that matters were not helped by the passage of time since the seizure and staffing changes in the meantime. It also pointed out that a process was underway to modernise the VRT administration system.

Chapter 7

Recommendations

7.1 Consistency in Customs Manuals

Revenue policy in relation to the enforcement of VRT legislation is set down in the "Section 5 Vehicle Registration Tax Manual (Enforcement)" and the "Customs and Excise Enforcement Procedures Manual". It is intended that these Manuals be read in conjunction with each other, however there are some apparent inconsistencies between them which can cause confusion in cases such as this. An example of inconsistency between the Manuals can be found in the way that the offences and penalties are described in the two Manuals - see Chapter 3, section 3.2 above. I feel it would be beneficial if Revenue were to re-examine these two Manuals to ensure that they are consistent with each other and that Customs Officers are familiar with their contents.

7.2 Adherence to procedures set down in Customs Manuals

I noted during my investigation of this case that the two Customs Manuals contained quite detailed instructions in relation to the procedures to be followed when detaining or seizing vehicles. However, in this particular case the Customs Officers did not follow these procedures as they were required to do so. For example, the vehicle appears to have been detained as the result of a random challenge rather than as a result of prior profiling, the notice of detention was not date stamped, proper interview notes were not taken and records were badly kept. In order to prevent such a situation arising again, I recommend that:

- Customs Officers should be reminded on a regular basis of the necessity to follow the procedures set down in their Customs manuals.
- Notices of detention and seizure should be date stamped in all cases.
- Procedures in the Customs Manuals in relation to note taking and interviewing should be strictly adhered to.
- Customs Officers should be provided with a checklist of relevant facts which should be established at the seizure interview.

- Complete records should be kept available for inspection at a later date should any dispute arise.
- Persons from whom goods/vehicles have been seized should be informed verbally and also in writing of their right to appeal.

7.3 Review of the Temporary Exemption procedure

The Temporary Exemption from Registration of Vehicles Regulations 1993 set out the circumstances in which a foreign registered vehicle may be brought into the State on a temporary basis. Given that the expansion of the European Union in recent years has led to increased migration, it is timely that Revenue is now conducting a review of the VRT administration system. I feel that perhaps if persons claiming temporary exemption had to register that exemption with Customs within a short time period of entering the country (e.g. three working days) and that this exemption was held on an electronic file which would be available for consultation by outdoor Customs Officers prior to any challenges being made we could avoid the scenario which arose in this particular case.

7.4 Revenue response to Recommendations

The full text of Revenue's response, accepting the Recommendations and outlining their proposed implementation, is set out at Appendix 3. In relation to the review of the Temporary Exemption procedure, Revenue clarified that any revised arrangement will have to take account of European Union legislation.

Appendix 1

Revenue's Response to the Statement of Complaint - 2 July 2010

Mr Pat Whelan,
Director General,
Office of the Ombudsman,
18, Lower Leeson Street,
Dublin 2.

2 July 2010

Re: Mr. Caprani and Ms. Greene

Dear Mr. Whelan,

I refer to your notification of 1 June 2010 regarding the Ombudsman's decision to conduct a formal investigation of this complaint. Revenue welcomes the opportunity to respond to the Ombudsman and has reviewed the case taking all matters into consideration.

Review of the case by Revenue

In reviewing the case in light of the content of the drafted Statement of Claim, Revenue agrees with the substantive point made that the records and minutes relating to the detention and seizure of the vehicle fall short of the standards that Revenue expects, and which are provided for in the Customs & Excise Enforcement Procedures Manual. Also, given that two of the officers originally involved at two separate stages of the case are no longer working in Revenue, our ability to complete the file after this lapse of time is severely curtailed.

If having considered Revenue's response and the information presented by the complainants, the Ombudsman forms the view that the penalty of €3,699 should be refunded, Revenue would not be opposed to such a course of action. Revenue would intend that any settlement of the matter should be on a 'without prejudice' basis, with full regard to the very specific circumstances of this case, and that it would bring the matter to a full and final conclusion.

Should an investigation be the way forward in this case, Revenue proposes that a meeting between senior officials of our respective offices may be appropriate to advance this complaint. While a formal investigation may well clarify some aspects of the case in relation to the liability for VRT and/or penalties, Revenue is of the view that a mechanism such as suggested above could be found to facilitate conclusion of this matter in a way that is both fair and reasonable to all concerned.

Response to the Ombudsman's specific preliminary views

The following information is supplied in response to the Ombudsman's specific preliminary views and comments made in the statement of complaint:

Revenue has two distinct roles in relation to vehicles viz. responsibility for ensuring that vehicles in the State are registered (for Garda identification, local authority etc. purposes) and for collecting the appropriate vehicle registration tax.

In this context, the decision to detain a vehicle is one that Revenue takes very seriously. The legislation provides the power of detention when an unregistered vehicle is being driven by an Irish citizen. The process of enforcement involves engagements between Revenue officers and persons who are driving unregistered vehicles in order to establish their liability or otherwise to register the vehicle and/or for Vehicle Registration Tax. Our guidelines set out a framework in which such engagements can take place - but in many instances, officers in operational circumstances are required to make judgement calls having regard to information obtained from persons and the underpinning legislative provisions.

In the immediate aftermath of the detention and seizure of the vehicle, records show that there were extensive contacts between Revenue officials and Mr. Caprani/Ms. Greene and their representatives. These contacts included:

- a meeting between Mr. Caprani and Ms. Greene and two Revenue officials on 29 August 2005

- a sequence of telephone conversations between officials and Ms. Greene's brother, Mr. Greene and
- correspondence with Philip O'Sullivan and Company Solicitors, of 21 Denny St, Tralee, Co Kerry.

In addition, it is clear from the records that the former District Manager/Principal Officer of the Dublin Port District

- made extensive personal efforts to ensure that the parties were fully informed of the legal basis for the detention and seizure of the vehicle
- endeavoured to fully explore the best options available to them in this regard;
- had proposed a meeting with the Solicitors at a location of their convenience in order to ensure that these options were explored as comprehensively as possible. In the event the Solicitors did not take up this offer.

Furthermore, on receipt of correspondence from Mr. Caprani on 18 August 2008, some three years after the above events, and representations on his behalf from Deputy John Cregan, (11 July 2008) the current District Manager again made efforts to meet with the parties, but this offer was not availed of. The Complaints Manager based in the Dublin Regional Office also made efforts to contact Ms. Greene in October 2008. However, no responses were received to all these efforts.

The penalty imposed

Revenue wishes to clarify that the penalty levied was a compromise penalty agreed at the time with Ms. Greene following the intervention of the two officers on Baggot Street and the subsequent meeting on 29 August 2005. This point may not have been sufficiently clear in Revenue's reports to date.

Whether detention/seizure of the vehicle was a proportionate penalty or would a formal warning have been appropriate

In response to this question Revenue has previously emphasised the legal basis for the detention and the seizure of the vehicle and the fact that the penalty was an

agreed compromise. Having considered this issue further in the light of the Ombudsman's Statement of Complaint Revenue wishes to clarify the following:

While there is no recorded evidence that this was not Ms. Greene's first time driving the vehicle, neither is there evidence recorded that it was the first occasion. In this regard, Revenue accepts that, in this particular case, the level of detail in our records is unsatisfactory and insufficient to allow us to reach a conclusion at this remove.

That being said, there are some records that indicate that the officers conducted a process of questions with the parties concerned on the day, and again at the meeting on 29 August 2005. Furthermore, it is reasonable to assume that, had the meeting with the Solicitors as proposed by Revenue taken place such matters could have been clarified. For example, if it was established that Ms. Greene was not an insured driver, this may have resulted in further discretion being applied by the District Manager at the time.

Alleged behaviour of Customs Officer

In relation to Ms. Greene's alleged treatment by the officers dealing with this matter the following is an extract from the reply to your office of 19 December 2008: *"This was also examined in 2005 by a senior Revenue manager, on receipt of the correspondence from her solicitor. This manager's conclusion was that the officers acted properly in their dealings with Ms. Greene. The officer's notes of the original encounter with Ms Greene and Mr. Caprani on 19 August 2005 record that during the course of the encounter, Ms Greene requested that a Garda be called. The Officers agreed to this, and were about to hail two Gardaí who were on foot patrol nearby when Ms. Greene asked them not to do so."* Mr. Caprani and Ms. Greene do not appear to have disputed that the officers were prepared to call the Gardaí.

Revenue reiterates that we have not been able to substantiate the complaints of poor treatment by the officers, but accepts that perceptions after an event of this nature can be different for the respective parties.

The Ombudsman's query re Revenue records

As already stated, the record keeping in this case was not to the standards Revenue would normally expect. However, we can confirm in relation to emails on the paper file, certain attachments were not printed in situations where these were

copies of original documents already on file.

Please find attached for information Appendix A, which sets out proposed changes to VRT administration following recent legislative changes and illustrative statistics in relation to VRT enforcement activity for 2009.

Yours sincerely,

Josephine Feehily
Chairman

Appendix A

Proposed changes to VRT Administration

Although it has no bearing on the current case, we would like to advise the Ombudsman that the area of Vehicle Registration Tax is the subject of major changes. For information, a VRT project board was set up in 2007 to oversee a number of important changes to VRT administration, including the new policy on CO2 emissions and arrangements for a range of registration functions to be conducted on Revenue's behalf by the company that carries out the National Vehicle Testing for the Road Safety Authority. Because of ongoing difficulties with enforcement of VRT, a number of ancillary changes are under consideration, such as obliging vehicles that are temporarily brought into the State for a period in excess of 42 days to be registered without payment of registration tax, (Section 64 of Finance No. 2 Act 2008 refers). In addition Revenue set up a separate Enforcement Workgroup in July 2009 to review all aspects of Revenue's enforcement policy. It is expected that this group will propose specific and immediate amendments to the current enforcement policy arising from the above-mentioned VRT legislative changes and will include a review of operational instructions relating to detention and seizure of vehicles.

VRT Statistics for 2009:

22,511 vehicles were challenged in relation to VRT, of which 21 % were found to be non-compliant.

2,763 written warnings were issued.

50 cases were reported for prosecution.

1,952 vehicles were seized for VRT offences.

18 VRT cases were successfully prosecuted in the courts.

Appendix 2

Public Bodies and the Citizen - The Ombudsman's Guide to Standards of Best Practice

Public bodies should strive for the highest standards of administration in their dealings with people. And public servants should ensure that people are dealt with properly, fairly, openly and impartially. The following checklist, although not exhaustive, is a guide to standards of best practice for public servants. I hope that public bodies will find it useful in their efforts to provide a better service to their clients.

Dealing "properly" with people means dealing with them -

- *promptly, without undue delay and in accordance with published time limits;
- *correctly, in accordance with the law or other rules governing their entitlements and published quality standards;
- * sensitively and by giving reasonable assistance, having regard to their age, to their capacity to understand often complex rules, to any disability they may have and to their feelings, privacy and convenience;
- * helpfully, by simplifying procedures, forms and information on entitlements and services, maintaining proper records, and providing clear and precise details on time limits or conditions which might result in disqualification;
- *carefully, where more than one public body is concerned, by ensuring proper communications between the bodies to prevent a person's needs being overlooked;

*courteously, including communicating in Irish (both written and oral) where it is clear a person wishes to do so;

* responsibly, by not adopting an adversarial approach as a matter of course where there may be a fear of litigation and by being prepared to explain why an adverse decision has been given.

Dealing "fairly" with people means -

* treating people in similar circumstances in like manner;

* accepting that rules and regulations, while important in ensuring fairness, should not be applied so rigidly or inflexibly as to create inequity;

* avoiding penalties which are out of proportion to what is necessary to ensure compliance with the rules;

* being prepared to review rules and procedures and change them if necessary;

* giving adequate notice before changing rules in a way which adversely affects a person's entitlements;

* having an internal review system so that adverse decisions can be looked at again and reviewed by someone not involved in the first decision;

* informing people of how they can appeal, cooperating fully in any such appeal and being open to proposals for redress including apologies, explanations and payment of appropriate compensation;

* making appropriate redress which puts the person back into the position he/she would have been in if the public body had acted properly in the first place;

* adopting a policy for dealing with the small number of people who act in a vexatious manner or in bad faith, which strikes a balance between the interests of the public body, its staff and the person concerned.

Dealing "openly" with people means -

- * putting people in contact with the officials of the public body with responsibility for dealing with them and, if appropriate, referring them to alternative sources of assistance;
- * making available and keeping up to date, comprehensive information on the rules and practices which govern public schemes and programmes;
- * giving people full information on the reasons for a decision which adversely affects them including details of any findings of fact made in the course of the decision;
- * ensuring people know what information is available, where to get it and know of their right to access it in accordance with the Freedom of Information legislation and otherwise;
- * assisting people, where necessary, to prepare their requests for access to information;
- * providing accessible public offices and using information and communications technologies to ensure maximum access and choice in service delivery.

Finally, dealing "impartially" with people means -

- * making decisions based on what is relevant in the rules and law and ignoring what is irrelevant;
- * avoiding bias because of a person's gender, marital status, family status, sexual orientation, religious belief, age, disability, race, membership of the Travelling Community, language, attitude or reputation or because of who they are or who they know;

- * ensuring, where a service is based on a scheme of priorities, that the scheme is open and transparent;
- * being careful that one's prejudices are not factors in a decision;
- * declining any involvement with a decision where one has a conflict of interests, a potential conflict of interests, or where there may be a perceived conflict of interests.

Appendix 3

Ms Emily O'Reilly
Ombudsman
18 Lower Leeson Street
Dublin 2
2 March 2012

Dear Ms O'Reilly

I refer to your letter of 18 January 2012 together with your Investigation Report and recommendations on completion of your investigation into the detention and seizure of a car from Mr. - and Ms - by Revenue.

At the outset, it is important to say that since the matter which is the subject of the investigation occurred, the legislation and administration of Vehicle Registration Tax has changed very significantly. In my letter of 2 July 2010 I described briefly the changes, including the new policy on CO 2 emissions and arrangements for a range of registration functions to be conducted on Revenue's behalf by the company that carries out the National Vehicle Testing for the Road Safety Authority. Because of ongoing difficulties with enforcement of VRT, a number of ancillary changes are under consideration, such as obliging vehicles that are temporarily brought into the State for a period in excess of 42 days to be registered without payment of registration tax, (Section 64 of Finance No.2 Act 2008 refers). This latter legislative change has a direct bearing on the implementation of one of your recommendations.

That said, we have considered your report and accepted the recommendations, which will be implemented as outlined below.

7.1 Consistency in Manuals:

Revenue will review its *Enforcement Procedures* and *Vehicle Registration Tax* manuals to ensure clarity and consistency. It is expected that the manuals will be updated by 30 June 2012.

7.2 Adherence to procedures set down in Manuals:

There are six specific points made in your letter under this heading involving both administrative and procedural issues as well as monitoring by management of the enforcement of VRT legislation. Following the review and revision of the Enforcement Procedures and Vehicle Registration Tax manuals, Revenue will re-visit the enforcement training programmes and Operational Instructions to ensure that practices are updated where necessary. Revenue strives to adhere to the highest standards of enforcement policies promoted in its operational instructions.

7.3 Review of the Temporary Exemption procedure:

As referred to above, and outlined in Appendix A of my letter of 2 July 2010, Section 64 of Finance No. 2 Act 2008 introduced the enabling legislation to provide for the registration of vehicles that are temporarily brought into the State for a period in excess of 42 days. This provision has not been commenced and will require prior consultation with other agencies, including the Department of Transport, Tourism and Sport, the Department of the Environment, Community and Local Government, and An Garda Síochána. The implementation of this provision will also bring changes in our operating procedures and IT systems.

Any revised arrangements will have to take account of European Union legislation on the movement of persons and specifically European Court of Justice case law concerning temporary registration requirements in Member States. In developing Section 64, it became clear that any requirement that a person arriving in the State from another Member State must register a temporary exemption in respect of a motor vehicle within a short period of time (such as three days) of arrival is incompatible with EU law.

Yours sincerely

Josephine Feehily

Chairman