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IN HIS MAJESTY'S COURT OF APPEAL IN NORTHERN IRELAND

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ON APPEAL BY CASE STATED FROM NEWTOWNARDS MAGISTRATES' COURT

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BETWEEN:

MOAT LODGE FILLING STATION LIMITED

Appellant:

-and-

HIS MAJESTY'S REVENUE AND CUSTOMS

Respondent:

_____

Before the Right Honourable Lord Justice McCloskey and the Honourable Mr Justice Scoffield

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Representation

Appellant:	**Mr Michael Chambers, of counsel, instructed by McNamee McDonnell solicitors**
Respondent:	**Mr David Reid of counsel, instructed by the Crown Solicitor's Office**
District Judge:	**Ms Neasa Fee of counsel, instructed by the Departmental Solicitors Office**

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McCloskey LJ (*delivering the judgment of the court*)

Introduction

[1] His Majesty's Revenue and Customs ("*HMRC*"), having seized and subsequently analysed quantities of fuel from the retail premises of Moat Lodge Filling Station Limited (the "*appellant*"), made two applications to Belfast Magistrates' Court for orders forfeiting the fuel seized ("*the fuel*") on the basis that this was contaminated with laundered fuel. Evidentially, the applications hinged on the results of the laboratory analysis of the two samples seized (the "*scientific*

evidence"). The results demonstrated contamination to the extent of 100% and 80% respectively.

[2] It was agreed between the parties that if this scientific evidence were admissible the forfeiture orders pursued would follow inevitably. On the basis of an agreed factual matrix the Magistrates' Court was invited to rule on this issue of admissibility. The District Judge determined that the evidence was admissible and made forfeiture orders accordingly. Acceding to the ensuing requisition on behalf of the appellant, the District Judge has stated the following question of law for determination by this court:

> "Was I correct to determine that the results of the analysis of part of a fuel sample were admissible in evidence in the subject proceedings?"

Statutory Framework

[3] The statutory provisions bearing on the seizure – or "*detention*" in the statutory language – are contained in the Customs and Excise Management Act 1979 ("CEMA").

Section 51

> "(1) If goods of any class or description chargeable with duty [by reference to their importation] from the Republic of Ireland are found in the possession or control of any person... in Northern Ireland, any officer or any person having by law in Northern Ireland the powers of an officer may require that person to furnish proof that the goods have not been imported from the Republic of Ireland or that the duty chargeable [by reference to their importation] has been paid.
>
> (2) If proof of any matter is required to be furnished in relation to any goods under subsection (1) above but is not furnished to the satisfaction of the Commissioners, the goods shall, for the purposes of proceedings under the customs and excise Acts, be deemed to have been unlawfully imported from the Republic of Ireland without payment of duty, unless the contrary is proved."

Section 139

> "(1) Any thing liable to forfeiture under the customs and excise Acts may be seized or detained by any officer

or constable or any member of Her Majesty's armed forces or coastguard.

[(1A) A person mentioned in subsection (1) who reasonably suspects that anything may be liable to forfeiture under the customs and excise Acts may detain that thing.

(1B) References in this section and Schedule 2A to a thing detained as liable to forfeiture under the customs and excise Acts include a thing detained under subsection (1A).]

(2) Where any thing is seized or detained as liable to forfeiture under the customs and excise Acts by a person other than an officer, that person shall, subject to subsection (3) below, [deliver that thing to an officer].

(3) Where the person seizing or detaining any thing as liable to forfeiture under the customs and excise Acts is a constable and that thing is or may be required for use in connection with any proceedings to be brought otherwise than under those Acts it may, subject to subsection (4) below, be retained in the custody of the police until either those proceedings are completed or it is decided that no such proceedings shall be brought.

(4) The following provisions apply in relation to things retained in the custody of the police by virtue of subsection (3) above, that is to say—

(a) notice in writing of the seizure or detention and of the intention to retain the thing in question in the custody of the police, together with full particulars as to that thing, shall be given to [an officer];

(b) any officer shall be permitted to examine that thing and take account thereof at any time while it remains in the custody of the police;

(c) nothing in the Police (Property) Act 1897 [section 31 of the Police (Northern Ireland) Act 1998] shall apply in relation to that thing.

(5) Subject to subsections (3) and (4) above and to [Schedules 2A and 3] to this Act, any thing seized or

> detained under the customs and excise Acts shall, pending the determination as to its forfeiture or disposal, be dealt with, and, if condemned or deemed to have been condemned or forfeited, shall be disposed of in such manner as the Commissioners may direct.
>
> [(5A) Schedule 2A contains supplementary provisions relating to the detention of things as liable to forfeiture under the customs and excise Acts.]
>
> (6) Schedule 3 to this Act shall have effect for the purpose of forfeitures, and of proceedings for the condemnation of anything as being forfeited, under the customs and excise Acts.
>
> (7) If any person, not being an officer, by whom anything is seized or detained or who has custody thereof after its seizure or detention, fails to comply with any requirement of this section or with any direction of the Commissioners given thereunder, he shall be liable on summary conviction to a penalty of [level 2 on the standard scale].
>
> (8) Subsections (2) to (7) above shall apply in relation to any dutiable goods seized or detained by any person other than an officer notwithstanding that they were not so seized as liable to forfeiture under the customs and excise Acts."

[4] Schedule 3 to the 1979 Act is entitled "Provisions relating to Forfeiture." In summary, the scheme of this discrete regime is the following: HMRC must give notice to the owner of the seizure of anything liable to forfeiture and the grounds thereof; this requirement does not apply if the owner was present at the time of seizure; the owner may, within one month, give notice contending that anything seized is not liable to forfeiture; in the absence of such notice, deemed "*condemnation as forfeited*" is triggered upon the expiry of one month from the date of seizure; and the forfeiture is deemed to have taken effect from the date when liability to forfeiture arose (per paragraphs 1 – 4.) Paragraph 6 of Schedule 3 provides:

> "Where notice of claim in respect of anything is duly given in accordance with paragraphs 3 and 4 above, the Commissioners shall take proceedings for the condemnation of that thing by the court and if the court finds that the thing was at the time of seizure liable to forfeiture, the court shall condemn it as forfeited."

The term "liable to forfeiture" and associated terms are not defined (although see *R (Eastenders Cash & Carry plc) v Commissioners for HMRC* [2014] UKSC 34 at [22-23]).

[5] Paras 8ff of Schedule 3 to the 1979 Act regulate condemnation proceedings in a Magistrates' Court. Paragraph 13 is one of the "Provisions as to proof." It provides:

> "In any proceedings arising out of the seizure of anything the fact, form and manner of the seizure shall be taken to have been as set forth in the process without any further evidence thereof, unless the contrary is proved."

Hydrocarbon Oil Duties Act 1979 ("HODA")

[6] **Section 24(5)**

> "Schedule 5 to this Act shall have effect with respect to any sample of hydrocarbon oil, biodiesel or bio blend taken in pursuance of regulations made under this section."

Schedule 5, paragraph 1

> "The person taking a sample –
>
> (a) If he takes it from a vehicle or vessel shall if practicable do so in the presence of a person appearing to him to be the owner or person for the time being in charge of the vehicle or the vessel;
>
> (b) If he takes the sample on any premises but not from a vehicle or a vessel shall if practicable take it in the presence of a person appearing to him to be the occupier of the premises or for the time being in charge of the part of the premises from which it is taken."

[7] Paragraphs 2 and 3 of Schedule 5 lie at the heart of this case stated:

Paragraph 2

> "(1) The result of an analysis of a sample shall not be admissible—
>
> (a) in criminal proceedings under the Customs and Excise Acts 1979;

or

(b) on behalf of the Commissioners in any civil proceedings under those Acts,

unless the analysis was made by an authorised analyst and the requirements of paragraph 1 above (where applicable) and of the following provisions of this paragraph have been complied with.

(2) The person taking a sample must at the time have divided it into three parts (including the part to be analysed), marked and sealed or fastened up each part, and—

(a) delivered one part to the person in whose presence the sample was taken in accordance with paragraph 1 above, if he requires it; and

(b) retained one part for future comparison.

(3) Where it was not practicable to comply with the relevant requirements of paragraph 1 above, the person taking the sample must have served notice on the owner or person in charge of the vehicle [or the vessel] or, as the case may be, the occupier of the premises informing him that the sample has been taken and that one part of it is available for delivery to him, if he requires it, at such time and place as may be specified in the notice."

Paragraph 3

"(1) Subject to sub-paragraph (2) below, in any such proceedings as are mentioned in paragraph 2(1) above a certificate purporting to be signed by an authorised analyst and certifying the presence of any substance in any such sample ... as may be specified in the certificate shall be evidence, and in Scotland sufficient evidence, of the facts stated in it.

(3) Without prejudice to the admissibility of the evidence of the analyst (which shall be sufficient in Scotland as well as in England), such a certificate shall not be admissible as evidence—

(a) unless a copy of it has, not less than 7 days before the hearing, been served by the prosecutor or, in the case of civil proceedings, the Commissioners on all other parties to the proceedings; or

(b) if any of those other parties, not less than 3 days before the hearing or within such further time as the court may in special circumstances allow, serves notice on the prosecutor or, as the case may be, the Commissioners requiring the attendance at the hearing of the person by whom the analysis was made."

Paragraph 4 specifies a series of prescriptions relating to any notice required or authorised to be given under Schedule 5.

Factual Matrix

[8] The schedule of agreed facts upon which the Magistrates' Court made the two impugned forfeiture orders is the following (with some cosmetic editing by this court):

Seizure following the inspection of 13th September 2018

(a) On or about 13th September 2018, HMRC officers attended the premises of Moat Lodge Filling Station Limited, 58 Comber Road, Dundonald, Belfast, BT16 2AB to examine records and test fuel.

(b) On arrival, at about 3:38pm, the said station was attended by Jonathan Wales, an employee of Moat Lodge Filling Station Limited. At about 3:47pm, HMRC Officer Fearon spoke to this attendant and explained the purpose of the visit.

(c) Officer Scott was instructed to sample and test the fuel on site. Following preliminary sampling and field testing, at approximately 4:02pm, Officer Scott took a formal sample of fuel from Diesel Pump 3. In accordance with the requirements of Schedule 5 of the Hydrocarbon Oil Duties Act 1979 ("HODA"), he split it into three parts, labelled with label number 243090. The seals were placed separately on each sample with seal numbers 2PY37331, 2PY37332 and 2PY37333.

(d) Likewise, following preliminary sampling and field testing, at approximately 4:25pm, Officer Scott took a formal sample of fuel from Diesel Pump 7. Again, in accordance with the requirements of Schedule 5 HODA, he split it into three parts, labelled with label number 243091. The seals were placed separately on each sample with seal numbers 2PY37335, 2PY37336 and 2PY37337.

(e) A Notice of Sampling form was left with the attendant Jonathan Wales and signed for at about 4:39pm. The samples were transported back to HMRC premises, Carne House, Belfast for testing and were placed in secure storage.

(f) A decision was subsequently taken to seize the fuel. 5,700 litres of diesel from tank 3, 300 litres of diesel from tank 1 and 500 litres of diesel from tank 2 (a total of 6,500 litres of diesel) were seized by HMRC under section 139 of CEMA.

(g) The formal samples were received by Eurofins on 24th September 2018 with a report following on 12th October 2018. At the time of this analysis, Eurofins' accreditation as an authorised analyst had lapsed as of 1st June 2018.

(h) Subsequently, on 28th September 2020, Eurofins was reauthorised as an authorised analyst to carry out this work.

(i) HMRC had retained parts of the formal samples 243090 and 243091. Those parts were further divided to create subsamples, one of which was provided to Eurofins for analysis in May 2021, the other retained by HMRC. The sub-sample from 243090 (Derv Pump 3) was labelled 254144 and given the seal 2KB049192. Eurofins gave it the reference 243090D. The sub-sample from 243091 (Derv Pump 7) was labelled 254145 and given the seal 2KB049194. Eurofins gave it the reference 243091D.

(j) The Eurofins analysis of those samples revealed that the samples *"consist entirely of laundered fuel"* per its report of 9th September 2021.

Seizure following the inspection of 20th August 2019

(a) On or about 20th August 2019, HMRC officers attended the premises of Moat Lodge Filling Station Limited, 58 Comber Road, Dundonald, Belfast, BT16 2AB to examine records and test fuel.

(b) On arrival, at about 11:50am, the said station was attended by Kevin Murdock, an employee of Moat Lodge Filling Station Limited. Officer Fearon spoke to this attendant and explained the purpose of the visit.

(c) Officer Davies was instructed to sample and test the fuel on site. Following preliminary sampling and field testing, at approximately 12:01pm he took a formal sample of fuel from Diesel Pump 1. In accordance with the requirements of Schedule 5 to the Hydrocarbon Oil Duties Act 1979, he split it into three parts, labelled with label number 247105. The seals were placed separately on each sample with seal numbers 2KB049313, 2KB049314 and 2KB049315.

(d) Likewise, following preliminary sampling and field testing, at approximately 12:16pm, Officer Scott took a formal sample of fuel from Diesel Pump 7. Again, in accordance with the requirements of Schedule 5 to the Hydrocarbon Oil Duties Act 1979, he split it into three parts, labelled with label number 247106. The seals were placed separately on each sample with seal numbers 2KB049317, 2KB049318 and 2KB049319.

(e) The samples were conveyed to HMRC premises, Carne House, Belfast for testing and were placed in secure storage.

(f) Subsequently 5,300 litres of diesel were seized by HMRC under section 139 of CEMA.

(g) The formal samples were received by Eurofins on 23rd August 2019 and a report followed on 17th September 2019. At the time of this analysis, Eurofins' accreditation as an authorised analyst had lapsed as of 1st June 2018.

(h) Subsequently, on 28th September 2020, Eurofins' authorisation was renewed.

(i) HMRC had retained parts of the formal samples 247105 and 247106. Those parts were further divided to create subsamples, one of which was provided to Eurofins for analysis in August 2021, the other retained by HMRC. The sub-sample from 247105 (Diesel Pump 1) was labelled 254148 and given the seal 2KB049200. Eurofins gave it the reference 247105D. The sub-sample from 247106 (Diesel Pump 7) was labelled 254149 and given the seal 2KB049202. Eurofins gave it the reference 247106D.

(j) The Eurofins analysis of those samples revealed that the samples "contain approx. 80% laundered fuel" per its report of 8th September 2021.

[9] The key facts are that the relevant fuel samples were initially analysed on behalf of HMRC by an entity which was not an authorised analyst and, upon discovery of this defect, were re-analysed subsequently by the same entity following renewal of its authorisation, yielding the same results. The question of law which this raises is whether the results of the second scientific analysis of the samples were admissible in evidence in the confiscation proceedings against the appellant.

[10] In response to this court's request for amplification and clarification of certain aspects of the factual matrix, we received (with the agreement of both parties) a further schedule. This was not confined to factual issues. It did, however, illuminate the general background in certain helpful passages, as follows:

> "Diesel Engine Road Vehicle (DERV) fuel has a higher rate of excise duty charged upon it than fuels intended for use in non-road vehicles such as farm tractors (eg 'red

> diesel') or industrial and domestic heating systems (eg kerosene). ……
>
> [The court's summary: DERV excise duty is some five times higher than that applicable to these other fuels] …….
>
> Given the differences in excise duty between DERV and rebated fuels, attempts are made by criminals to evade duty and thereby make a profit. It is estimated that 4% of the diesel market in Northern Ireland involves illicit diesel, at a total loss of £30 million (2019/20 figures) of tax revenue to the Exchequer …
>
> As well as loss of tax revenue, fuel laundering and other fuel revenue fraud pose a range of further risks to the public. Road users, when purchasing DERV are entitled to receive the pure product. Some of the bi-products of laundered fuel can be harmful to the engine and it is also likely that fuel will be less efficient and have more emissions than standard low-sulphur diesel. Criminals experimenting with the process to defeat new statutory chemical markers can create a high risk of explosion, fire and potential risk to life. Laundering plants also produce toxic or hazardous waste which causes environmental damage … at a [clearance] cost of thousands of pounds to the tax payer. Illicit fuel is often transported in vehicles that are unfit for purpose and unsafe. As with any form of fraud, it can be linked to organised crime, serious organised crime and the financing of paramilitary activity …"

[11] This further schedule also provides the following elaboration. The HMRC Officer concerned takes a sample from either fuel pumps or fuel tanks on the relevant premises and divides this into three parts, each allocated to a 250ml container. Each of these is sealed with clear plastic adhesive tape and marked with a unique serial number. One is provided to the person in whose presence the sample was taken, the second is forwarded to an authorised analyst and the third is retained by HMRC. The authorised analyst may choose from one of several recognised analytical processes.

[12] The further schedule also elaborates on the circumstances in which Eurofins came to lose its authorised analyst accreditation. Prior to 31 May 2018 Eurofins was acting under the direction of the "Government Chemist" and was, as such, an "authorised analyst" in accordance with paragraph 5(1) of Schedule 5 to HODA. Following the appointment of a new person to the post of Government Chemist on

1 June 2018 Eurofins, mistakenly believing that this step was necessary, began carrying out its analyses under the direction of an appointed Public Analyst. This arrangement was not in accordance with paragraph 5 of Schedule 5, with the result that from 01 June 2018 until 27 September 2020 Eurofins was not an "authorised analyst" under the scheme of the legislation. HMRC was unaware of this. Following discovery of this aberration in English condemnation proceedings, the matter was rectified with the result that from 28 September 2020 Eurofins' status as "a person acting under [the] direction … [of the Government Chemist]", per paragraph 5(a) of Schedule 5, was restored.

[13] At this juncture the court would highlight two further facts of some importance. First, the second set of reports made by Eurofins in September 2021 was based upon that part of the sample taken by the HMRC Officer at the appellant's premises, which was later subdivided by HMRC into two sub-samples, one remaining retained by it and the other being provided to Eurofins. Second, the scientific evidence which HMRC was proposing to adduce in the condemnation proceedings against the appellant was confined to the Eurofins' reports generated by their second analysis, as explained above. We shall elaborate upon the importance of this *infra*.

At First Instance

[14] At first instance, it being conceded by HMRC that the initial Eurofins' reports had not been compiled by an authorised analyst, the parties proposed – and the District Judge agreed – that a so-called "*preliminary point*" should be the subject of adjudication. This court probed the terms of the "*preliminary point*" thereby submitted to the District Judge for determination. One of the main reasons for this was that the distinction between the first Eurofins' analysis reports and their second reports is not clearly expressed in the case stated. This observation takes into account that the District Judge did not have the benefit of the more expansive schedule of uncontested facts laid before this court. At this remove it is clear to this court that the preliminary issue to be determined by the District Judge should have been formulated along the following lines:

> "Whether, on the basis of the facts agreed between the parties and having regard to the provisions of paragraph 2 of Schedule 5 to the Hydrocarbon Oil Duties Act 1979 the results of the analysis by Eurofins of that part of the separate samples of DERV fuel taken by HMRC at the premises of Moat Lodge Filling Station on 13 September 2018 and 20 August 2019 and retained by HMRC were admissible in evidence in the forfeiture proceedings brought by HMRC against the appellant ?"

[15] While the District Judge was seized of two other condemnation applications by HMRC against this appellant and adopted the same course in respect thereof, this

court is concerned only with the condemnation proceedings arising out of the events on 13 September 2018 and 20 August 2019. The preliminary issue course adopted by the District Judge in respect of the HMRC condemnation applications arising out of these particular events was based upon the parties' agreement that if the contentious evidence were ruled admissible a condemnation order would follow as a matter of course. Thus, there was no other issue to be determined by the court. The District Judge having ruled in favour of HMRC in both cases, two condemnation orders followed.

[16] This court has been informed that the quantities of DERV seized by HMRC on the two dates under scrutiny were 6500 litres and 5300 litres respectively. HMRC, in the exercise of its powers under paragraphs 16 and 17 of Schedule 3 to CEMA, destroyed the seized fuel subsequently. If the court were to resolve the case stated in favour of the appellant, the two condemnation orders would be unsustainable in law. This would trigger paragraph 17 of Schedule 3, whereby the appellant would thereupon become entitled to recover from HMRC "an amount equal to the market value of the thing at the time of its seizure." This court was further informed that, in practice, this entails payment of the amount specified in the relevant purchase invoice/receipt.

Consideration and Conclusions

[17] The Magistrates' Court was satisfied that admission in evidence of the results of the second scientific analysis was not precluded by paragraph 2(1) of Schedule 5 to HODA 1979. The question for this court is whether the Magistrates' Court erred in law in this assessment.

[18] The determination of this question hinges on the correct construction of paragraph 2 of Schedule 5 to HODA 1979, considered in its full statutory context and by reference to the intention of the legislature. The key part of paragraph 2 is the opening sentence in subparagraph (1), namely the result of an analysis of any sample seized by HMRC "**shall not be admissible**" in proceedings unless (a) the analysis was made by an authorised analyst and (b) the requirements of paragraphs 1 and 2 have been observed.

[19] As to (a), there is no controversy about compliance with the requirements of paragraph 1. Nor is there any controversy that the "*analysis result*" evidence was compiled by an authorised analyst. Furthermore, there is no dispute that the "three part division" and the "delivery" requirements specified in paragraph 2(2) were all observed.

[20] It is at this point of the analysis that the key element of the agreed factual matrix emerges. That part of the sample which was analysed by the authorised analyst, giving rise to the evidence on which the HMRC forfeiture applications against the appellant was critically founded, was the third of the three parts noted in para 8(c) above. It was, in the language of paragraph 2(2)(b) of Schedule 5, the part

"retained … for future comparison." The question of law is whether evidence of the analysis of this part of the sample seized could be adduced in the HMRC proceedings against the appellant resulting in the forfeiture orders.

[21] This is a pure question of statutory construction. This court considers that the correct answer is yielded by the following textual analysis of paragraph 2(1) and (2) of Schedule 5 to HODA 1979:

(i) There is but one sample seized.

(ii) Paragraph 2(1) requires that this sample be analysed.

(iii) The division of this single sample into three parts ensures fundamentally that the procedure applied, in tandem with any subsequent proceedings, is fair to the owner as they will thereby have the opportunity to have the sample analysed.

(iv) This mechanism ensures another aspect of fairness to the owner in that they will be able to compare their scientific analysis of the sample seized with any sample seized by HMRC in the future.

(v) This mechanism also enhances the transparency of the process.

(vi) The division mechanism sounds mainly on procedural mechanics and matters of process rather than any matter of substance.

(vii) The statutory language does not expressly provide that for the purposes of forfeiture proceedings HMRC is confined to adducing evidence of analysis of that part described by- the statute as "*to be analysed*" only.

(viii) The statutory language does not expressly specify that for the purposes of forfeiture proceedings HMRC is precluded from adducing evidence of analysis of that part of the sample "*retained … for future comparison*." Indeed, in any case where that part of the sample is analysed, for example where the parties' analyses of the other two parts of the sample yield competing outcomes; it is plain that the product of that analysis would be admissible in court proceedings subject of course to the rules of evidence.

(ix) Schedule 5, paragraph 2 is couched in very specific, narrow terms: it declares inadmissible the results of an analysis of a seized sample not made by an authorised analyst. It is the only provision of its kind in the statutory regime.

(x) Neither Schedule 5, paragraph 2 nor any other provision of the legislation under scrutiny expressly declares inadmissible the test results of that part of the sample described in the statutory language as *"retained …. for future comparison"* made by an authorised analyst.

(xi) The language employed in Schedule 5, paragraph 2 is that of "a sample" and "the sample", while in para 3 the language is "any such sample": the legislation does not address the question of the breakdown of the single sample and makes no differentiation among the three constituent parts of such breakdown.

(xii) The language of the statute in paragraph 2(b) of Schedule 5, namely *"retained ... for future comparison"*, contains no qualifying word such as "only" or "exclusively." Nor is it defined

(xiii) Linked to (xii), the statute, while addressing directly the question of admissibility in evidence, does not provide that a "future comparison" part of any relevant sample shall not be admissible in evidence in subsequent proceedings. It is silent on this issue.

(xiv) The result for which the appellant contends in this case could have been made clear on the face of the statute with relative ease.

[22] The foregoing exercise in textual analysis favours a construction of the relevant statutory provisions to the effect that evidence of analysis of that part of the sample retained "for future comparison" is in principle admissible in forfeiture proceedings brought by HMRC against the owner under Schedule 3 to the 1979 Act. The "in principle" qualification accommodates inexhaustively - cases in which there are disputes about admissibility based on for example compliance by HMRC with one or more of the express procedural requirements specified in the statute or incompatibility with some rule of evidence or any abuse of process issues.

[23] If any fortification of this construction of the relevant statutory provisions is required, it is found by resort to familiar canons of statutory construction. First since all three parts of the sample seized are separate elements of a single whole, it would make no sense and serve no purpose to exclude the "future comparison" part from forming the basis of evidence in subsequent proceedings in the kind of circumstances which materialised in the present case-, subject to the already noted qualification. Such exclusion would further no ascertainable purpose. A veritable absurdity would result otherwise.

[24] Second, to construe the statutory language in this way gives rise to no unfairness to the commercial operator concerned or this appellant.

[25] Third, to construe the statute in the manner for which the appellant contends would frustrate the clear statutory purpose that contaminated fuel of this kind should be forfeited in furtherance of two of the overarching legislative aims, namely the protection of public health and the protection of the public purse. We consider that Parliament cannot have intended that the owner of contaminated fuel should benefit from the windfall of initial examination thereof by an expert agency other

than an authorised analyst where the same fuel is analysed subsequently by an authorised analyst giving rise to uncontested results. By analogy, it could not be sensibly argued that if the evidence adduced by HMRC resulted from analysis of that part of the sample which should have been delivered to the appellant – a simple mix up or oversight having occurred - this would be inadmissible.

[26] Furthermore, the construction favoured by the court is compatible with the appellant's fair hearing rights. All of the events under scrutiny bore the indelible stamp of due process. The appellant can point to no material impropriety or irregularity in the compilation of the evidence on which the confiscation proceedings were based.

[27] Viewed through another lens, we consider that paragraph 2 of Schedule 5 is primarily designed to ensure a fair and transparent process. We have already adverted to fairness to the owner. The process also entails elements of traceability and continuity. Paragraph 2 is clearly directed to this also. The construction espoused by this court is harmonious with these purposes.

[28] We would add that rules regulating the admissibility of evidence are designed to provide appropriate procedural (or due process) protections for the person concerned and ensure the integrity of the legal process howsoever the latter be categorised (civil, criminal etc). As the rules in play in this instance are embedded in statute, these become implied statutory purposes. We consider the construction favoured by the court to be compatible with these purposes. In this context, Lord Steyn's memorable "triangulation of interests" statement resonates:

> "The purpose of the criminal law is to permit everyone to go about their daily lives without fear of harm to person or property. And it is in the interests of everyone that serious crime should be effectively investigated and prosecuted. There must be fairness to all sides. In a criminal case this requires the court to consider a triangulation of interests. It involves taking into account the position of the accused, the victim and his or her family, and the public. In my view the austere interpretation which the Court of Appeal adopted is not only in conflict with the plain words of the statute but also produces results which are contrary to good sense. A consideration of the public interest reinforces the interpretation which I have adopted."

(*Attorney General's Reference No 3 of 1999* [2001] 2 AC 91, at 118e)

This statement was of course made in the context of criminal proceedings. However, this does not *per se* preclude its export to another comparable context. Moreover, the

underlying proceedings in the present case, while being proceedings *in rem,* were of a quasi-penal nature.

[29] Summarising, those elements of the agreed factual matrix which stand out are that the evidence which HMRC sought to adduce in the Magistrates' Court condemnation proceedings was generated by analysis by an authorised analyst of the samples seized from the appellant's premises on the two relevant dates and was not compromised or contaminated in an way, in circumstances where (a) the appellant was able at its option to arrange for scientific analysis of that part of the samples provided to it at the initial seizure stage and (b) there is no suggestion that the "third" part of the single sample (x 2) upon which the Eurofins second analysis was based differs in any way from the other two parts .

Conclusion and Order

[30] This court concludes that the Magistrates' Court did not err in law in admitting the scientific evidence and making the ensuing forfeiture orders. The question of law for determination by this court requires to be reformulated, as follows:

> 'Was I correct in law in deciding, on the basis of the facts agreed between the parties and having regard to the provisions of paragraph 2 of Schedule 5 to the Hydrocarbon Oil Duties Act 1979 that the results of the analysis by Eurofins of that part of the separate samples of DERV fuel taken by HMRC at the premises of Moat Lodge Filling Station on 13 September 2018 and 20 August 2019 and retained by HMRC were admissible in evidence in the forfeiture proceedings brought by HMRC against the appellant?'
>
> For the reasons given, the answer is "Yes."