In this case the appellant company Otto Car Limited argues that liability for the penalty charge notice (PCN) should be transferred to the person it describes as the hirer of the vehicle in question, a Mr. Baffour, pursuant to what it describes as a hiring agreement. The case for the enforcement authority (EA) is that liability cannot be transferred because Mr. Baffour's agreement is with Otto Car Limited and not with the registered keeper (and hence presumed de facto keeper and deemed owner) of the vehicle as recorded by the DVLA, namely "Dfm C/O Otto Car Ltd 048409". The EA says these are two separate entities. In my view, on a true construction of the 'hiring agreement' and the DVLA records, respectively, neither party is correct.

I allow the appeal, however, because I find that de facto keepership has, by virtue of the particular terms of the agreement with Mr. Baffour, transferred from the appellant company to him. The parties are entitled to a reasoned decision as to why I have reached the conclusion I have.

THE REGISTERED KEEPER

This is yet another example of ambiguous and arguably defective record-keeping by the DVLA. It is absolutely essential, particularly for Police and civil road traffic enforcement, that the DVLA maintains an accurate register of precisely which person keeps a vehicle. Only one person can be the registered keeper of a given vehicle at a given time. A person can be a natural person or a legal person. Although the DVLA regulations permit a 'care of' address to be used by the registered keeper (Regulations 10(5A) and 22(7) of the Road Vehicles (Registration and Licensing) Regulations 2002), I am not sure that that is what has occurred here, despite the use of 'c/o'. There is no evidence anywhere in this case of what 'Dfm' is or the significance of the number '048409'. There is no evidence that there is some person called 'Dfm' which is the owner of the vehicle. The number is not the company number of Otto Car Limited. Rather, it seems likely to me that the letters 'Dfm' and the number '048409' have some sort of administrative meaning for Otto Car Limited. The 'hiring agreement' clearly shows that Otto Car Limited is the legal owner of the vehicle. All correspondence with the EA and with this tribunal has been from Otto Car Limited. In my view, Otto Car Limited probably sought to register the vehicle with the DVLA in its name and should be taken to be the registered keeper of the vehicle, notwithstanding the confusion caused by the unnecessary addition of the letters and numbers around its name and the use of 'c/o'. I do not find that the registered keeper is an entity called 'Dfm', care of Otto Car Limited. I therefore do not accept the EA's case that the vehicle's registered keeper and hence presumed owner is a different person to the person which contracted with Mr. Baffour.

The DVLA should not, in my view, have permitted the vehicle to be registered in the ambiguous terms in which it was registered. By doing so it has caused confusion and

a waste of time for both the EA and this tribunal.

THE 'HIRING AGREEMENT'

I have studied this document in some detail. The agreement is headed 'Rent to buy scheme - Unregulated Otto Car Sale Agreement'. The agreement refers to Mr. Baffour as the 'hirer'. He is required to pay 208 weekly rentals over four years. For that reason, the 'hiring agreement' cannot act as a hiring agreement so as to transfer liability to the hirer; only a hiring agreement of less than six months can have that effect. Albeit the agreement gives Mr. Baffour the right to possess and use the vehicle on the road, by virtue of numerous clauses throughout the contract, Otto Car Limited retains a measure of control over the vehicle during that period and Mr. Baffour does not have entirely unfettered enjoyment of the vehicle. Indeed, the agreement states, at clause 3, that Otto Car Limited retains title of ownership during the period of the agreement. However, significantly, clause 3 goes on to say: "Otto Car will transfer title of goods to the hirer and the V5 log book after all contracted rental payments have been paid in full plus the £200 admin fee...". That is consistent with the headings to the document. On any view, Mr. Baffour is the bailee of the vehicle and the intention of the parties is that, at the end of the period during which 'rental payments' are made, and upon payment of £200, title will transfer to him.

THE LAW ON OWNERSHIP/KEEPERSHIP

Section 92 of the Traffic Management Act 2004 ("TMA 2004") states that:
" "owner", in relation to a vehicle, means the person by whom the vehicle is kept, which in the case of a vehicle registered under the Vehicle Excise and Registration Act 1994 (c. 22) is presumed (unless the contrary is proved) to be the person in whose name the vehicle is registered;..."

There is therefore a rebuttable presumption that the registered keeper of the vehicle is its 'keeper', which term means 'owner' - and vice versa - for the purposes of the TMA 2004 and regulations made under it.

Given that, contrary to the appellant company's case, liability cannot be transferred to Mr. Baffour on the basis that the vehicle was hired to him pursuant to a hiring agreement, liability can only be transferred to him on the basis that keepership of the vehicle has transferred from the appellant company to him. In that regard, the appellant company must rebut the presumption that it, as the registered keeper, is the de facto keeper and hence owner.

In *R v. The Parking Adjudicator ex parte The London Borough of Wandsworth* [1998] R.T.R. 51, 1 November 1996, QBCOF 96/1153/D it was held that:
"The disposal and acquisition of the vehicle referred to in Paragraphs 2(5) and 2(6) [of The Road Traffic Act 1991, which then applied] must involve the right to keep the vehicle. Clearly a sale or gift to another would satisfy the requirement but the keeper does not necessarily have to be the owner. The concept does, however, involve both a degree of permanence and the right to use the vehicle for the purpose for which it was manufactured, namely use on the road. Thus, a friend who borrows a car even for a comparatively long period would not as a rule become the keeper, nor would a garage proprietor who takes a vehicle for repair, since he has no right to use it for his own purposes and the duration of his possession of the car is insufficient. It is possible to envisage circumstances where a vehicle repairer might become the keeper, if, for example, the cost of repair was uneconomic and the owner asked the garage to dispose of the vehicle. Special provisions relate to hired vehicles: see paragraph 2(4)(e).
In my judgment it is necessary, when considering whether there has been a sufficient disposition of the vehicle, to satisfy Paragraph 2(4)(a)(ii) to rebut the presumption of ownership required by Section 82(3) to consider whether it was the sort of disposition which would require notification within Regulation 12 of the 1971 Regulations. The whole concept of ownership for the purpose of this part of the 1991 Act is related to what is or what should be the position in the public record. One starts with what is the position because of the presumption in Section 82(3). One then considers what ought to be the position at the time of the offence if there were instantaneous registration of a material disposition or acquisition."

In *LB Hammersmith v. West Wallasey Car Hire Ltd* (case number 1960174207, 19 March 1997) Adjudicator Mr. Hickinbottom (as he then was) held (having cited the above passage):
"It seems to me that this case before me concerns a similar situation. ... For the Appellant to have disposed of ownership, the disposal must "involve a degree of permanence"... Indeed, the very nature of the hire was such that no permanence of disposal was ever contemplated or made. Following the Wandsworth case, such "a degree of permanence" of a disposal is a pre-requisite if the Appellant wishes to bring itself within the ground of paragraph 2(4)(a)(ii). Consequently, the Appellant has failed to bring itself within that ground."

The *Wandsworth* case leaves open the possibility that there might be a degree of permanence about a disposition without it being irrevocable. That situation may well arise in relation to a hire purchase agreement.

By section 29(1) of the Hire Purchase Act 1964:
"hire-purchase agreement" means an agreement, other than a conditional sale

agreement, under which
(a) goods are bailed ... in return for periodical payments by the person to whom they are bailed ..., and
(b) the property in the goods will pass to that person if the terms of the agreement are complied with and one or more of the following occurs
(i) the exercise of an option to purchase by that person,
(ii) the doing of any other specified act by any party to the agreement,
(iii) the happening of any other specified events"

In my view, by that definition the so-called 'hiring agreement' in this case is in truth a hire purchase agreement. The goods, namely a motor vehicle, were bailed to Mr. Baffour in return for periodical payments by him. Property in the vehicle will pass to him if the terms of the agreement - certainly in terms of those payments - are complied with and either he exercises his option to buy the vehicle or he does the specified act of paying the £200 admin fee.

The Hire Purchase Act 1964 does not have direct application to the interpretation of section 92 of the TMA 2004 concerning a transfer of keepership. Part III of the 1964 Act enables the 'debtor' under the hire purchase agreement to transfer good title in a motor vehicle to an innocent third party without notice of that agreement. It is of note, however, that for the purposes of the 1964 Act, also in section 29(1):
""disposition" means... any bailment ... under a hire-purchase agreement and any transfer of the property in goods in pursuance of a provision in that behalf contained in a hire-purchase agreement, and includes any transaction purporting to be a disposition (as so defined) and "dispose of" shall be construed accordingly;"

That provision is of some assistance in answering the question whether the transfer of property in the vehicle in this case from Otto Car Limited to Mr. Baffour amounts to a 'disposition' sufficient to transfer keepership, notwithstanding that the appellant company was the legal and beneficial owner of that vehicle at the relevant time. Certainly, the effect of the 1964 Act is that Mr. Baffour could give good title to the vehicle if he was to dispose of it to a purchaser in good faith without notice.

CONCLUSION

In my view, given that it was intended by the parties to the contract that title in the vehicle would pass to Mr. Baffour after four years and the payment of a relatively modest £200 fee, de facto keepership of the vehicle passed to him upon the entering of the hire purchase agreement. There was a disposal of the vehicle to him with a degree of permanence, even if the disposal was not strictly irrevocable and was subject to some restrictions on Mr. Baffour's use of the vehicle until such time as title

transferred to him. I find, on the balance of probabilities, that Mr. Baffour was the de facto keeper and deemed owner of the vehicle on the occasion of the contravention and thus liability should be transferred to him.

Otto Car Limited might therefore in future consider, if it receives a PCN for a vehicle subject to a similar hire purchase agreement, that rather than attempting to transfer liability on the basis of a hiring agreement it should instead argue that keepership has transferred. In fact, it would not receive PCNs at all if the debtors to the hire purchase agreements were named as the registered keeper with the DVLA.