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IMPOUNDING HEARING

APPLICATION BY ASHLEY RATCLIFFE

IN RESPECT OF VEHICLES YJ07HLO AND JS08REC

ON 6 NOVEMBER 2018

Background

1. On 18 September 2018 the DVSA impounded 5 vehicles that they believed were being, or had been, used on the road by Capital Driveways Ltd in contravention of section 2 of the Goods Vehicles (Licensing of Operators) Act 1995. This hearing relates to applications by Ashley Ratcliffe for the return of two vehicles- YJ07LHO and JS08REC. This hearing was originally conjoined with an impounding hearing in respect of applications by Capital Driveways Ltd for the return of the other 3 vehicles. Capital Driveways Ltd asked for, and were granted, an adjournment. Mr Ratcliffe was content for his hearing to proceed.

The Impounding Hearing

2. Mr Ashley Ratcliffe appeared on his own behalf. The DVSA were represented by Senior Traffic Examiner Alexander Davidson, accompanied by Traffic Examiner Beverley Stoner.
3. **[REDACTED]**.

The applications for return of the vehicles

4. Both applications were in similar terms. There was no dispute about the impounding being lawful. Mr Ratcliffe claimed that he was the owner of both vehicles. He stated that he was a sole trader trading as AJR Commercials.

He stated:-

- (1) "AJR Commercials buys and sells commercial vehicles. This vehicle JS08REC was sold on the 18/07/18 with payment to be made within 90 days.
No monies have to date been received therefore I wish to claim back my vehicle..."
- (2) "AJR Commercials buys and sells commercial vehicles. This vehicle YJ07LSO was sold on the 11/08/18 with payment to be made within 90 days.
No monies have to date been received therefore I wish to claim back my vehicle..."

5. Mr Ratcliffe produced copies of invoices that he relied on -pp 171-172. Both copy invoices were similar. They had an invoice number, were addressed to Capital Driveways Ltd, and set out the date of the invoice and the price of the vehicles. Each invoice had at the bottom:-

"Agreed 90 days from the above date invoice to be paid in full.
Vehicle belongs to AJR Commercials until payment in full is made."

6. The grounds for both applications were the same:-
 - (1) Ashley Ratcliffe claimed he was the owner of the vehicle,
 - (2) Ashley Ratcliffe claimed that he did not know the vehicle was being, or had been, used in contravention of section 2 of the 1995 Act.

The DVSA resisted both grounds. I have had regard to Statutory Document No. 7 – Impounding, in determining the applications.

The DVSA evidence on Ownership

7. STE Davidson explained that YJ07LHO had been impounded by the DVSA Tuesday 18 September 2018 after it had been stopped by Police Scotland in Newbattle Road, Newtongrange. It was being operated by Capital Driveways Ltd. JS08REC had been impounded on the same day from the operating centre of Capital Driveways Limited, Dalhousie Road, Newtongrange. The impounding procedure was set out in the Brief for the Impounding Hearing at pages 30-31.
8. STE Davidson explained that he had downloaded digital data from both vehicles, he had investigated the dates of acquisition from the registered keeper history and the dates on which these vehicles had been insured by Capital Driveways Ltd.

	YJ07LHO	JS08REC
Registered date of acquisition by Capital Driveways Ltd	30/06/2018	22/08/2018
Date of insurance	02/07/2018	22/08/2018
Date of driving from digital data	June: 30 July: 11, 13, 19, 23, 31 August 17, 18, 20, 21, 22, 23, 24, 27, 29, 30, 31 September 3, 4, 6, 7, 10, 11, 12, 13, 17, 18	August 22, 23, 24, 25, 27, 28, 29, 30, 31 September 6, 7, 10, 11, 12, 13, 14, 15, 17, 18
Date of invoice	11/08/2018	18/07/2018

9. STE Davidson stated that he had investigated the history of the vehicles' ownership and the driving of the vehicles on the dates of acquisition.

YJ07LHO

10. YJ07LHO had a date of acquisition of 30 June 2018. The vehicle data showed that it had been driven without a card for a period of 8 hours and 15 minutes for a distance of 663 km. His investigations had shown that it had been disposed of by a commercial dealer in the Hemel Hempstead area. The vehicle data was consistent with the vehicle having been driven from Hemel Hempstead to Capital Driveways Ltd's operating centre on 30 June 2018. STE Davidson said that the purported invoice, dated 11 August 2018, was inconsistent with the date of acquisition of YJ07LHO – 30 June 2018, the driving on 30 June 2018 of 663 km, and the date on which Capital Driveways Ltd insured the vehicle 2 July 2018. It was also inconsistent with the fact that the first time a card was used in YJ07LHO after the date of acquisition was on 19 July 2018 when Derek Nicholl's card was inserted. Mr Nicholl was a former director and current employee of Capital Driveways Ltd.

JS08REC

11. TE Stoner gave evidence that she had contacted the previous keeper of JS08REC, a Mr Geoffrey Olive based in Wickford, Essex. She had spoken to Mr Olive on the telephone. He had confirmed to her that he had sold JS08REC on 22 August 2018 to "a Scottish bloke". The digital data for JS08REC showed that it had been driven for 720 km on 22 August 2018. The digital card of Derek Nicholls, a former director of and current employee of Capital Driveways Ltd,

had been used to record the journey. The data was consistent with Mr Nicholls collecting JS08REC from Mr Olive and driving it to Capital Driveways Ltd's operating centre on 22 August 2018. This was consistent with the date of Capital Driveways Ltd's acquisition of the vehicle – 22 August 2018 which was the same day that Capital Driveways Ltd insured the vehicle. This was not consistent with Mr Ratcliffe having sold JS08REC to Capital Driveways Ltd on 18 July 2018.

12. STE Davidson stated that the digital data from the vehicle from 2 July to 22 August 2018 showed that the vehicle had covered 18 km in that period. The longest journey was 5 km. The first significant journey was 22 August 2018 720 km.

Mr Ratcliffe's evidence about ownership

13. Mr Ratcliffe stated that the dates on which Capital Driveways Ltd had become registered keepers of the vehicles might have been mixed up as he was not good with paperwork. Mr Ratcliffe said that both vehicles would have been transported by lowloader to Capital Driveways Ltd's operating centre.

JS08REC

14. Mr Ratcliffe said that he had spoken to Mr Olive recently after TE Stoner had spoken to Mr Olive. Mr Ratcliffe explained that his main yard was in Scotland and what Mr Olive had said was consistent with Mr Ratcliffe having bought JS08REC from Mr Olive. Mr Ratcliffe had spoken to Mr Olive and had paid him £8,000 for the vehicle. Mr Ratcliffe produced a copy receipt dated 2 July 2018. It showed that there had been a part-exchange. Mr Ratcliffe had been given a file of papers with JS08REC – tacographs, logbooks etc which Mr Ratcliffe had left in his pickup on the day of the hearing. Mr Ratcliffe said that he could email them in to this office. Mr Ratcliffe had only given Capital Driveways Ltd the logbook when he sold them the vehicle. He had kept the rest of the paperwork.
15. Mr Ratcliffe explained that JS08REC had been painted after he sold it to Capital Driveways Ltd which was why it had not been insured until 22 August 2018 as it had not been on the road. He thought that the journey on 22 August 2018 was consistent with the vehicle being driven by Capital Driveways Ltd from their operating centre in Scotland to Manchester to collect skips.

YJ07LHO

16. Mr Ratcliffe could not explain why Capital Driveways Ltd had insured YJ07LHO on 2 July 2018 when he had not sold it to them until 11 August 2018. He could not explain why the card belonging to Derek Nicholl, a former director and current employee of Capital Driveways Ltd had been inserted in YJ07LHO on 19 July 2018 when Mr Ratcliffe had not sold the vehicle to them until 11 August 2018.

17. Mr Ratcliffe said that he had been buying and selling vehicles since he was 15. He said that paperwork was not his best thing. He did not want anything to do with Capital Driveways Ltd. He asked why Capital Driveways Ltd were not claiming for the vehicles if they owned them and he did not?

The DVSA evidence about whether Mr Ratcliffe did not know the vehicle was being, or had been, used in contravention of section 2 of the 1995 Act

18. STE Davidson relied upon the fact that Mr Ratcliffe had been buying and selling commercial vehicles for many years and the fact that Mr Ratcliffe had been encountered by the DVSA on 3 occasions in 2005, 2010 and 2011 using vehicles in contravention of s.2 of the 1995 Act (pp174-176) as demonstrating that Mr Ratcliffe was aware of s.2 of the 1995. Mr Ratcliffe, if he had sold the vehicles on the terms as stated in the invoices, had effectively brokered finance on the vehicles for 90 days and should have checked that Capital Driveways Ltd had an operator's licence to protect his own interest. Mr Ratcliffe was not an individual with no knowledge of the operating licensing system. Mr Ratcliffe should have inquired, and should have had documents to show that he had inquired, if Capital Driveways Ltd had an operator's licence.

Mr Ratcliffe's evidence about whether Mr Ratcliffe did not know the vehicle was being, or had been, used in contravention of section 2 of the 1995 Act

19. Mr Ratcliffe accepted that he knew about the operator's licensing scheme. He did not have an operator's licence because he bought and sold commercial vehicles and only drove them when picking them up or delivering them. If someone came in and wanted to hire a commercial vehicle from Mr Ratcliffe, Mr Ratcliffe would insist on them signing a declaration that they had an operator's licence. If, however, they were buying from him it was up to them to have an operator's licence. Sometimes he would tell prospective purchasers that they would need to get an operator's licence. He had seen Capital Driveways Ltd's adverts. The adverts showed that they had commercial vehicles – lorries and grab vehicles. They were not the kind of people who he would need to advise to get an operator's licence. They knew what they were doing.
20. Mr Ratcliffe had given them 90 days credit on trust. Mr Ratcliffe had dealt with Robert Kelbie at Capital Driveways. Mr Kelbie had contacted him to ask about skips. Mr Kelbie was the boss of Capital Driveways Ltd. He had never dealt with Mr Kelbie or Capital Driveways Ltd before these two vehicles. Mr Ratcliffe had seen Capital Driveways Ltd's vehicles around Edinburgh when Mr Ratcliffe had been up in Scotland buying and selling commercial vehicles. Mr Ratcliffe had thought Capital Driveways Ltd were branching out in into concrete. Mr Ratcliffe had thought that they would be good customers in the future and there was an opportunity to make money. Mr Ratcliffe had done the deals in Capital

Driveways Ltd's yard. Mr Ratcliffe had agreed with Mr Kelbie that if the vehicles were not paid for Mr Ratcliffe could take the vehicles back (the retention of title clause). Mr Kelbie had said that he needed 90 days credit because he was just getting

started in the concrete business. Mr Ratcliffe had agreed because he hoped to sell more vehicles in the future if he could keep the relationship going. He and Mr Kelbie had shaken hands on it. He had only met Mr Kelbie once.

21. I clarified with Mr Ratcliffe when he had spoken to Mr Kelbie about 90 days credit. Mr Ratcliffe said that it had been on the phone before the meeting. Mr Ratcliffe had thought he would be able to sell more vehicles to Mr Kelbie in the future. Mr Ratcliffe said that he did not give everyone 90 days. Most people were given 28 days but would be billed at the end of the month so they would get two months credit in effect.

DVSA submissions

22. STE Davidson relied upon the arguments advanced in the Brief. So far as ownership was concerned STE Davidson said that the evidence of the dates of acquisition, the insurance of the vehicles, the digital data and the information from the previous owners of the vehicles brought into question the authenticity of Mr Ratcliffe's invoices. Turning to knowledge STE Davidson relied upon the fact that Mr Ratcliffe was a very successful dealer in commercial vehicles with years of experience to infer that Mr Ratcliffe had a good understanding of vehicle licensing. STE Davidson suggested it was telling that Mr Ratcliffe volunteered that when Mr Ratcliffe was leasing vehicles Mr Ratcliffe would get the person hiring the vehicle to complete a declaration that he had an operator's licence. STE Davidson drew attention to the fact that Mr Kelbie was being treated differently by being given 90 days credit instead of 28 days credit. If Mr Ratcliffe was to be believed he had parted with £30,000 worth of vehicles without taking any steps to check that Capital Driveways Ltd had an operator's licence, despite the fact that Mr Ratcliffe knew that if these vehicles were used without an operator's licence they could be impounded.

Mr Ratcliffe's submissions

23. Mr Ratcliffe said that there was nothing unusual about him giving Mr Kelbie 90 days credit. He normally gave people 30 days credit [sic] which worked out in practice as 60 days credit. In order to do a deal Mr Ratcliffe would do what it took to get the deal done. The invoices were genuine.

Decision

24. Mr Ratcliffe did not dispute that the DVSA had properly impounded the vehicles.

Ownership

25. The onus is on Mr Ratcliffe to prove ownership of the two vehicles. In order for Mr Ratcliffe to succeed he must provide me with sufficient evidence to satisfy me on the balance of probabilities that he is the owner of the vehicles.
26. Mr Ratcliffe relies upon the two invoices and the retention of title clauses in the invoices to establish ownership and his evidence to me. To succeed Mr Ratcliffe would need to prove (1) Mr Ratcliffe owned the vehicles before he sold them to Capital Driveways and (2) it was a term of the contracts of sale of the two vehicles that Mr Ratcliffe would retain ownership until all sums were paid. Mr Ratcliffe's case was that he did own the vehicles, that he discussed retention of title with Mr Kelbie and that this was agreed at a meeting at Capital Driveways Ltd's yard before the contracts were concluded.
27. I do not accept that Mr Ratcliffe owned the vehicles nor that the invoices are genuine invoices describing sales by him to Capital Driveways of the vehicles on the terms set out in the invoices. My reasons are as follows:-
 - (1) Mr Ratcliffe did not appear as a registered keeper of the vehicles in the DVLA records.
 - (2) Mr Ratcliffe did not produce any evidence that he had ever owned the vehicles other than a copy of a "receipt" for JS08REC which appeared to show that he had bought it as a trade in from Mr Olive on 2 July 2018.
 - (3) The dates on the two invoices and the receipt from Mr Olive are not consistent with the other records relating to the vehicles e.g. the dates of registration of ownership, the dates on which the vehicles were insured, and the dates on which the vehicles were used by Capital Driveways Ltd.
 - (4) The dates on the two invoices and the receipt from Mr Olive are not consistent with the evidence given by STE Davidson and TE Stoner about what they were told about where the vehicles had come from. Although this evidence is hearsay it is consistent with the data from the vehicles that show that each vehicle carried out a journey that was consistent with the vehicle being picked up by Capital Driveways Ltd and driven back to their operating centre on dates that are significantly different from the dates on the invoices.
 - (5) I do not accept that it is possible that the dates on the invoices were incorrect because of Mr Ratcliffe's poor paperwork and that the invoices are genuine but inaccurate in their dates. I find that these invoices have been created to support Mr Ratcliffe's claim to own the vehicles so that Mr Ratcliffe can have the vehicles returned to him.
 - (6) I did not believe Mr Ratcliffe's evidence to me about ownership. My impression of Mr Ratcliffe was that he was not telling the truth. There was a surprising lack of any evidence to support his case that he ever was the owner of the vehicles – other than the "receipt" from Mr Olive. It is up to Mr Ratcliffe to produce evidence to satisfy me that he remained the owner

of the vehicles at the date of the impounding. He did not do so. If he did sell the vehicles to Capital Driveways Ltd I did not believe that (1) he had not been paid for the vehicles- there was no other evidence to support Mr Ratcliffe's evidence to me and (2) that there was an effective retention of title clause in the contracts – there was no evidence to support Mr Ratcliffe's evidence to me.

- (7) It follows that I have found that Mr Ratcliffe has not proved on the balance of probabilities that he was the owner of the two vehicles.

Knowledge

29. In case I am wrong about ownership and Mr Ratcliffe is the owner I will set out my findings about knowledge. Mr Ratcliffe, if the owner of the vehicles, would be entitled to have the vehicles back if he did not know that they were being used, or had been used in contravention of s.2 of the 1995 Act.

In relation to YJ07LHO I find:-

- (1) Mr Ratcliffe was familiar with the requirements of the operator licensing scheme and more particularly with the requirements of s.2 of the 1995. Mr Ratcliffe knew that if vehicles were used by Capital Driveways Ltd without an operator's licence then they could be impounded. Mr Ratcliffe accepted this in his evidence.
- (2) Mr Ratcliffe would require people hiring vehicles from him to sign a declaration that they had an operator's licence.- as he said in his evidence.
- (3) Mr Ratcliffe did not ask Capital Driveways Ltd if they had an operator's licence – as he said in his evidence.
- (4) Mr Ratcliffe did not ask Capital Driveways Ltd if they had an operator's licence was because he was keen to business with Capital Driveways Ltd both in relation to the two vehicles that were impounded and in relation to future business – this is an inference that I draw from his evidence.
- (5) Mr Ratcliffe thought that if someone was buying a commercial vehicle from him it was up to them to have the necessary operator's licence unlike where he was hiring vehicles out to people – as he said in his evidence.
- (6) Mr Ratcliffe, by giving Capital Driveways Ltd 90 days within which to pay for the vehicles and retaining title until full payment, was in effect lending the vehicles to Capital Driveways Ltd for 90 days or until payment was made or until he recovered the vehicles – whichever was the longer.
- (7) Mr Ratcliffe did not make any inquiries about whether or not Capital Driveways Ltd had an operator's licence- as he said in his evidence.
- (8) It was obvious to Mr Ratcliffe that Capital Driveways Ltd would require an operator's licence in order to operate the vehicles – this can be inferred from Mr Ratcliffe's evidence about his business experience.
- (9) Mr Ratcliffe stated that the vehicles remained his property until he was paid for them and therefore he was at risk of them being impounded. This was not a sale where the vehicles were immediately transferred to the

purchaser and if they were impounded by the DVSA Mr Ratcliffe would have no further interest in them.

- (10) Mr Ratcliffe should have taken steps to protect himself from the risk of his vehicles being impounded by making inquiries about whether Capital Driveways Ltd had an operator's licence.
30. My findings for JS08REC rely on the same evidence as for YJ07LHO and are identical to those for YJ07LHO. I do not need to repeat them.
31. Turning to the five categories of knowledge set out in the Statutory Document and, in particular, the first three:-
- (i) *Actual knowledge*
There was no evidence that Mr Ratcliffe actually knew that the vehicles were being used in contravention of s.2.
- (ii) *Knowledge that Mr Ratcliffe would have acquired if he had not wilfully shut his eyes to the obvious*
I find that Mr Ratcliffe did wilfully shut his eyes to the obvious. It was obvious, or should have been obvious to Mr Ratcliffe that if Capital Driveways Ltd did not have an operator's licence then the vehicles might be impounded by DVSA. If Mr Ratcliffe is to be believed he handed over two vehicles to Capital Driveways Ltd that were to be used by Capital Driveways Ltd effectively on loan until they were paid for. That use would require an operating licence to be lawful. Mr Ratcliffe risked that his vehicles (as they remained his until they were paid for) would be operated unlawfully and could be impounded. I do not believe that Mr Ratcliffe took this risk because he made a mistake. I believe that he wilfully ignored the obvious risks because he wanted to do a deal and he believed he would get the vehicles back if they were impounded by DVSA. He did not want to know whether or not Capital Driveways Ltd had an operator's licence.
- (iii) *Knowledge that Mr Ratcliffe would have acquired if he had not wilfully and recklessly failed to make such inquiries as an honest and reasonable person would make*
If I am wrong in finding that Mr Ratcliffe wilfully shut his eyes to the obvious, then Mr Ratcliffe wilfully and recklessly failed to make such inquiries as an honest and reasonable person would make. I do not believe that an honest and reasonable dealer in commercial vehicles, who was in effect lending commercial vehicles until they were paid for, would fail to make inquiries about whether or not the purchaser had an operator's licence. I find that the failure to make such inquiries demonstrates a high degree of fault on Mr Ratcliffe's part. This was not a simple mistake. Mr Ratcliffe knew about the vehicle licensing system. Mr Ratcliffe would ask a person who was hiring a commercial vehicle from Mr Ratcliffe to sign a declaration that he had an operator's licence. It seems an obvious and reasonable precaution in these circumstances that Mr Ratcliffe should require a person to whom Mr Ratcliffe was lending a vehicle to sign a declaration that he had an operator's licence or at the very least Mr Ratcliffe should have asked if he had an operator's licence. He considered, wrongly, that it was none of his business whether or not Capital Driveways Ltd had an operator's licence. His vehicles were going

to someone who required an operator's licence in order to use them. Mr Ratcliffe knew or ought to have known that the vehicles were being bought in order to be used in circumstances when an operator's licence was required. He should have asked if his vehicles would be covered by an operator's licence.

32. For these reasons I find that Mr Ratcliffe (1) is not the owner of YJ07LHO and JS08REC and (2) Mr Ratcliffe does not satisfy the grounds set out in Regulation 4(3)(c) of the Goods Vehicle (Enforcement Powers) Regulations 2001 No. 3981 as amended. Mr Ratcliffe's applications for the return of the vehicles are refused.

Hugh J. Olson
Deputy Traffic Commissioner
19 November 2018