



NCN: [2022] UKUT 00272 (AAC)

**IN THE UPPER TRIBUNAL
ADMINISTRATIVE APPEALS CHAMBER
(TRAFFIC COMMISSIONER APPEALS)**

Appeal No. UA-2022-000004-NT

**ON APPEAL from the DECISION of the HEAD OF THE TRANSPORT REGULATION
UNIT on behalf of the Department For Infrastructure, Northern Ireland**

Before: Ms. L J Clough: Deputy Judge of the Upper Tribunal
Dr. P Mann: Member of the Upper Tribunal
Mr. A Guest: Member of the Upper Tribunal

Appellant: Andrew Murphy Transport Ltd

Reference No: 21DET006 SV57EZO

Heard at: Royal Courts of Justice, Belfast

On: 22 September 2022

Date of Decision: 11 October 2022

DECISION OF THE UPPER TRIBUNAL

THE APPEAL IS DISMISSED.

Subject matter:

Use of vehicle when not on operator's licence; Impounding of vehicle; Grounds for Detention; Grounds for release of detained vehicles; ownership of vehicle; user of vehicle; knowledge of use

Cases referred to

Fergal Hughes v DOENI & Perry McKee Homes Ltd v DOENI [2013] UKUT 618 AAC NT/2013/52 & 53; *Bradley Fold Travel Ltd & Anor v Secretary of State for Transport* [2010] EWCA Civ 695. *Clarke v Edinburgh & District Tramways Co Ltd* [1919] UKHL 303; (1919) SC (HL) 35; 56 SLR 303. *Clayton Car Sales Ltd* 2012/053; T/2014/03 *Sarah Boyes*

REASONS FOR DECISION

1. This is an appeal to the Upper Tribunal brought by Mr Andrew Murphy t/a Andrew Murphy Transport Ltd (“the Appellant”), against a decision of the Head of the Transport Regulation Unit (“the TRU”) within the Department for Infrastructure for Northern Ireland (“the DfI”), dated 7 December 2021. The decision was to refuse an application for the return of a vehicle (registration SV57 EZO) and trailer (ID number NI/043661/04) detained under Regulation 3 of the Goods Vehicles (Enforcement Powers) Regulations (Northern Ireland) 2012 (“the Enforcement Regulations 2012”).

2. The appeal was considered at a hearing, at the Tribunal Hearing Centre within the Royal Courts of Justice, Belfast, on 22 September 2022. Mr Andrew Murphy attended and was represented by Ms J. Price, Barrister at Law. The Respondent was also in attendance and was represented by Ms A. Jones, Barrister at Law.

3. At the outset of the hearing, Ms Price applied to amend the appellant in the proceedings from the sole director of the company, Mr Andrew Murphy, who had completed all the appeal and related documents in a personal capacity, to that of his company, Andrew Murphy Transport Ltd. This was agreed by the Tribunal and therefore the Appellant is noted and recorded hereinafter to be “Andrew Murphy Transport Ltd”.

The facts

4. At 0205hrs on 16th September 2021, a Scania tractor unit registration SV57 EZO (“the vehicle”), along with a Muldoon trailer ID number NI/043661/04 (“the trailer”) was observed by Vehicle Examiner Toman at Redlands Road, Larne. Checks on the vehicle found that it was not authorised on any Northern Ireland Operator’s Licence hence his colleagues stopped the vehicle to make further enquiries. The driver of the vehicle identified himself as Mr Caolan Gormley, who stated that the vehicle was owned by Mr Andrew Murphy, and he was in the process of transporting goods from Manchester, England to Drogheda, Republic of Ireland. Mr Gormley produced documentation relating to the load being transported by the vehicle and trailer. He indicated that he was employed by Mr Murphy to drive the vehicle. He produced no Operator’s Licence either relating to himself or to the vehicle, nor did he produce any

documentation confirming his employment status. Investigations confirmed that the vehicle fell under the regulatory regime of the Goods Vehicle (Licencing of Operators) Act (Northern Ireland) 2010 (“the 2010 Act”), it being a heavy goods vehicle over 3,500kg and carrying goods for hire or reward. The driver of the vehicle, Mr Gormley, was found to be the director of CDG Transport Ltd. Neither Mr Gormley, nor his company, CDG Transport Ltd, hold a valid Operator’s Licence in NI. As the driver of the vehicle had failed to produce a valid Operator’s Licence to confirm the lawful use of the vehicle and had failed to satisfy Vehicle Examiner Toman as to the “user” of the vehicle, it was detained under the powers contained within s.1 of the 2010 Act and Regulation 3 of the Enforcement Regulations 2012.

5. In accordance with Regulation 8 of the Enforcement Regulations 2012, the Driver and Vehicle Agency (“the DVA”) published a notice in the Belfast Gazette on 8 October 2021, to report the detention of the vehicle and request that any person seeking claim to the vehicle and/or trailer should do so in writing, on the online claim form outlined within the notice, before 29 October 2021. Mr Andrew Murphy completed the online claim form (dated 21 October 2021) stating that he was the owner of the vehicle which was both “roadworthy” and “fully insured” (page 7 of the appeal bundle). He stated that there was space on his Operator’s Licence ON2000119 for the vehicle but due to his Transport Manager being unwell, the vehicle had not been recorded on it. However, as soon as he became aware that the vehicle was not on his licence, by virtue of the fact of its detention, he had immediately put it on his Operator’s Licence through the online portal.

6. Mr Murphy confirmed that he did not wish for his application for return of the vehicle to be considered at a hearing therefore the Head of the TRU, Mr D Mullan, requested skeleton arguments from the legal representatives of both sides in order to determine the matter on the papers. A decision was made by Mr Mullan on 7 December 2021 that the application for return of the vehicle was refused. No application had been received in respect of the trailer therefore his decision was that both vehicle and trailer should be disposed of accordingly.

The appeal

7. The appellant lodged an appeal against the decision of the Head of the TRU with the Upper Tribunal on an official appeal form signed and dated 6 January 2022. The grounds of appeal were stated as follows (page 133):

- “1. The Appellant in the application for return of the tractor unit has clearly demonstrated ownership of the tractor unit.*
- 2. The appellant holds a valid operator’s licence.*
- 3. The appellant did not know the tractor unit was being used in contravention of the regulations.*
- 4. The detention of the tractor unit has caused hardship to the appellant.*
- 5. The decision refusing the return of the tractor unit is wrong in law.”*

8. The appellant applied for a stay of the decision pending appeal, and this was granted by the Head of the TRU on 17 January 2022. The appeal was heard in the Royal Courts of Justice in Belfast on 22 September 2022.

The Approach of the Upper Tribunal

9. As to the approach which the Upper Tribunal must take on an appeal such as this, it was said, in the case of *Fergal Hughes v DOENI & Perry McKee Homes Ltd v DOENI* [2013] UKUT 618 AAC, NT/2013/52 & 53, at paragraph 8:

“There is a right of appeal to the Upper Tribunal against decisions by the Head of the TRU in the circumstances set out in s. 35 of the 2010 Act. Leave to appeal is not required. At the hearing of an appeal the Tribunal is entitled to hear and determine matters of both fact and law. However, it is important to remember that the appeal is not the equivalent of a Crown Court hearing or an appeal against conviction from a Magistrates Court, where the case, effectively, begins all over again. Instead, an appeal hearing will take the form of a review of the material placed before the Head of the TRU, together with a transcript of any public inquiry, which has taken place. For a detailed explanation of the role of the Tribunal when hearing this type of appeal see paragraphs 34-40 of the decision of the Court of Appeal (Civil Division) in Bradley Fold Travel Ltd & Peter Wright v Secretary of State for Transport [2010] EWCA Civ. 695. Two other points emerge from these paragraphs. First, the Appellant assumes the burden of showing that the decision under appeal is wrong. Second, in order to succeed the Appellant must show that: “the process of reasoning and the application of the

relevant law require the Tribunal to adopt a different view”. The Tribunal sometimes uses the expression “plainly wrong” as a shorthand description of this test.’

10. At paragraph 4, the Upper Tribunal stated:

“It is apparent that many of the provisions of the 2010 Act and the Regulations made under that Act are in identical terms to provisions found in the Goods Vehicles (Licensing of Operators) Act 1995, (“the 1995 Act”), and in the Regulations made under that Act. The 1995 Act and the Regulations made under it, govern the operation of goods vehicles in Great Britain. The provisional conclusion which we draw, (because the point has not been argued), is that this was a deliberate choice on the part of the Northern Ireland Assembly to ensure that there is a common standard for the operation of goods vehicles throughout the United Kingdom. It follows that decisions on the meaning of a section in the 1995 Act or a paragraph in the Regulations, made under that Act, are highly relevant to the interpretation of an identical provision in the Northern Ireland legislation and vice versa.”

11. The task of the Upper Tribunal, therefore, when considering an appeal from a decision of the Head of the TRU in Northern Ireland, is to review the material which was before them. The Upper Tribunal will only allow an appeal if the appellant has shown that “the process of reasoning and the application of the relevant law require the tribunal to take a different view” (*Bradley Fold Travel Limited and Peter Wright v. Secretary of State for Transport* [2010] EWCA Civ 695, [2011] R.T.R. 13, at paragraphs 30-40). In essence therefore the approach of the Upper Tribunal is as stated by Lord Shaw of Dunfermline in *Clarke v Edinburgh & District Tramways Co Ltd* 1919 SC (HL) 35, 36-37, that an appellate court should only intervene if it is satisfied that the judge (in this case, the decision of the Head of the Transport Regulations Unit) was “plainly wrong”.

The Law

12. With regards to the legislation relating to this appeal, the starting point is s.1 of the Goods vehicles (Licencing of Operators) Act (Northern Ireland) 2010 Act (“the 2010 Act”) which states as follows:

“Operators' licences

1(1) Subject to subsection (2) and sections 2A and 3, a person shall not use a goods vehicle on a road for the carriage of goods—

(a) for hire or reward, or

(b) for or in connection with any trade or business carried on by that person, except under a licence issued under this Act; and in this Act such a licence is referred to as an “operator's licence”.

13. Schedule 2 of the 2010 Act states that Regulations will provide for the detention of vehicles used without an operator’s licence under s.1 of the 2010 Act. Regulation 3 of the Enforcement Regulations 2012 provides for the penalty where a vehicle is used in contravention of s.1:

“Detention of Property

3. Where a person has reason to believe that a vehicle is being, or has been, used on a road in contravention of section 1 of the 2010 Act, the authorised person may detain the vehicle and its contents.”

14. Regulation 4 of the Enforcement Regulations 2012 outlines the remedy where a vehicle is so detained:

Release of Detained Vehicles

4.(1) In the circumstances described in paragraph (2), a vehicle detained by virtue of regulation 3 shall be returned to the owner, without the need for an application under regulation 9.

(2) The circumstances are that the authorised person is satisfied that one or more of the grounds specified in paragraph (3) is made out.

(3) The grounds are that—

(a) at the time the vehicle was detained, the person using the vehicle held a valid licence (whether or not authorising the use of the vehicle);

(b) at the time the vehicle was detained, the vehicle was not being, and had not been, used in contravention of section 1 of the 2010 Act;

(c) although at the time the vehicle was detained it was being, or had been, used in contravention of section 1 of the 2010 Act, the owner did not know that it was being, or had been, so used; or

(d) although knowing at the time the vehicle was detained that it was being, or had been, used in contravention of section 1 of the 2010 Act, the owner—

(i) had taken steps with a view to preventing that use; and

(ii) has taken steps with a view to preventing any further such use.

15. The Head of the TRU had three issues to determine in making his decision. The first was the identity of the lawful owner of the vehicle as only that person/entity was entitled to have the vehicle returned to them under Regulation 4 of the Enforcement Regulations 2012. Thereafter, he had to consider whether any of the grounds under Regulation 4 were satisfied to permit the return of the detained vehicle. The role of the Upper Tribunal in this appeal was to determine whether the Head of the TRU had made a decision which was “plainly wrong” and if so, to allow the appeal.

Ownership of the Vehicle

16. At the appeal hearing, the appellant repeated the argument he made to the Head of the TRU, that he/his company was the owner of the vehicle and therefore had authority in law to secure its return. In presenting this argument, the invoice purportedly indicating that the vehicle had been purchased by “Andrew Murphy” for £6,822 from Brian McKeever Transport, was highlighted (page 18). The invoice was undated, but Mr Murphy confirmed at the hearing that the vehicle had been purchased in January 2021 with the money having been exchanged by bank transfer on the day of purchase. He also highlighted the V5C document which stated that the registered keeper of the vehicle was “Andrew Murphy Transport” (page 12 of the appeal bundle) and it was covered under a fleet insurance policy issued on 5 February 2021 (page 22/23 of the appeal bundle). He had provided in evidence, an email from himself to the DVA dated 15 September 2021, seeking an MOT test date for the vehicle (page 20 of the appeal bundle) and confirmed orally that he knew there was no valid MOT on the vehicle on the date

it was detained (16 September 2021). All of these documents and points, he argued, was evidence of his company's ownership of the vehicle, which in turn gave him authority to have it returned to him under Regulation 4 of the Enforcement Regulations 2012.

17. The Respondent argued that the burden of proving ownership rests on the appellant, which was agreed. It was also agreed that the application was for return of the vehicle only and not for return of the trailer. It was submitted on behalf of the Respondent that there was no proof that the bank transfer had taken place, no proof of the Appellant's accountants having recorded the spend on the vehicle, and that an undated invoice was not sufficient to evidence ownership.

18. The term "owner" is defined in Regulation 2 as follows:

"2. Interpretation

"owner" means, in relation to a vehicle or trailer which has been detained in accordance with regulation 3—

(a) in the case of a vehicle which at the time of its detention was not hired from a vehicle-hire firm under a hiring agreement but was registered under the Vehicle Excise and Registration Act 1994(3), the person who can show to the satisfaction of an authorised person that at the time of its detention that person was the lawful owner (whether or not that person was the person in whose name the vehicle was registered);

(b) in the case of a vehicle or trailer which at the time of its detention was hired from a vehicle-hire firm under a hiring agreement, the vehicle-hire firm; or

(c) in the case of any other vehicle or trailer, the person who can show to the satisfaction of an authorised person that at the time of its detention that person was the lawful owner;

19. In *Clayton Car Sales Ltd 2012/053* it was confirmed that only an owner can apply for return of a detained vehicle. Since this is the case, the Head of the TRU is entitled to determine the issue of ownership first, and to clarify any ambiguity over who is claiming to be the owner. Such clarity is important to ensure that the vehicle is returned to the correct person/entity and therefore the owner of a goods vehicle will be well advised to obtain and retain detailed and precise documentary evidence to demonstrate how, when and by whom ownership was acquired (*T/2014/03 Sarah Boyes*, paragraphs 6-11). In this case, the question for the Head of the TRU

was to determine whether the owner was Andrew Murphy as a personal entity or Andrew Murphy Transport Ltd as a company. The Department for Infrastructure's Practice Guidance Document No 5 which is not legally binding, but which provides useful guidance, deals with the importance of establishing the relevant legal entity. Paragraphs 3-5 of the Guidance state:

“Legal entities

3. It is important that the Department is satisfied as to the legal status of an applicant or operator. By way of example, the Upper Tribunal has stressed that in the eyes of the law a sole trader and a limited company are quite different legal people or legal entities. It is the legal entity which operates the vehicles which must hold an operator's licence [2012/008 Brian Richards t/a B Richards]. A company or other corporate body has a distinct legal personality from its members (shareholders), officers or directors. In other cases, it may be necessary to determine the individual(s) responsible for the undertaking, for example the partners in a partnership, where restrictions might apply² Regulation 27 of The Goods Vehicle (Licensing of Operators) Regulations (Northern Ireland) 2012 states that a 'firm' (partnership) shall be treated as separate to an individual partner or the relationship with another corporate body³ Regulation 28 of The Goods Vehicle (Licensing of Operators) Regulations (Northern Ireland) 2012. Regulation 4 of the Goods Vehicles (Qualifications of Operators) Regulations (Northern Ireland) 2012 makes it a condition of a standard licence for operators to inform the Department within 28 days of any change in the name or legal form of the undertaking and the address of establishment.

Individuals - Sole Traders

4. This, as the name suggests, is an individual trading on their own account. Whilst the individual may use a trading name, for legal purposes the correct entity is the individual.

Companies

5. A company has a legal personality distinct as from its members (shareholders), owners, directors or officers. The company can therefore hold an operator's licence in its own name. The licensing legislation refers to a company. In the Companies Act 2006 the term company is usually defined as a body under that legislation but it can, in limited

circumstances, include other bodies and overseas companies. Further guidance is available via Companies House.

20. The Head of the TRU determined that the applicant was Mr Andrew Murphy as an individual, but the arguments were presented in the name of the company, Andrew Murphy Transport Ltd. He was mindful of the fact that a sole director often does not distinguish him or herself from their company bearing the same name, but concluded that the applicant, Mr Andrew Murphy was not the owner of the vehicle.

21. The Upper Tribunal agrees with this conclusion. Notably, while the V5C document is not evidence of ownership per se, it is evidence of the entity that pays to keep it and maintain it, but that entity was documented as “Andrew Murphy Transport” which is different from either “Andrew Murphy” or “Andrew Murphy Transport Ltd”. Equally, the invoice is in the name of “Andrew Murphy” but the lack of date on the invoice undermines its credibility as an authentic invoice received at the date of sale of the vehicle. Although evidence of a fleet insurance policy was produced to the Head of the TRU, the vehicle does not feature on it and the Schedule which provides for the list of vehicles covered under the policy, was omitted from evidence. The vehicle was being driven by someone entirely separate from the company, with no documentation to demonstrate that he was driving it on behalf of another person, such as the owner. We agree with the Head of the TRU that the vehicle is, on the balance of probabilities, *registered* to an entity within Mr Murphy’s control but there are too many questions arising from the imprecise and inconsistent paperwork presented on behalf of Mr Murphy. We find therefore that the decision of the Head of the TRU is not “plainly wrong”; we are in agreement with his conclusion that the then applicant for return of the vehicle had not satisfied him on the balance of probabilities that either he or his company was the lawful “owner” of the vehicle.

Ground 1: Regulation 4(3)(a) of the Enforcement Regulations 2012

22. The Appellant argued that Regulation 4(3)(a) of the Enforcement Regulations 2012 applied i.e., that “*at the time the vehicle was detained, the person using the vehicle held a valid licence (whether or not authorising the use of the vehicle)*”. The question for the Head of the TRU was therefore: who was the user of the vehicle?

23. The Appellant argued that the user of the vehicle was the appellant company, Andrew Murphy Transport Ltd, who held a valid licence ON2000119 (page 34-35 of the appeal bundle). They argued that the driver of the vehicle, Mr Gormley, was the agent of the company, employed to undertake the role of driving the vehicle to transport the goods under the delivery contract. Although the vehicle was not on the licence at the time of detention, it was submitted that the licence was still valid hence this ground was made out.

24. The Respondent referred the Tribunal to the evidence unveiled in the DVA's investigations, arguing that Mr Gormley was the user of the vehicle. A statement from Ms Derry of Derry's Ltd Freight Forwarder (page 57 of the appeal bundle), suggested that they had been given the details of the job to transport the goods from Manchester to Ireland, they had put the job on an online portal, and Mr Caolan Gormley had accepted the job. The vehicle had been booked on the P&O Freight route on 15 September 2021 under the account of CDG Transport Ltd (page 84 of the appeal bundle), a company under the control of Mr Gormley. The Respondent reminded the Tribunal that it was for the Appellant to prove that it was the user of the vehicle. It was submitted that in the absence of evidence of repayment to Mr Gormley for making the ferry booking, evidence to confirm that the contract for shipment of goods was in the name of the Appellant, evidence of the employment/agency arrangement between Mr Gormley and Mr Murphy, then the user was more likely to be the driver, Mr Gormley, and therefore this ground for return of the vehicle was not made out.

25. The Head of the TRU, Mr Mullan concluded "*on the basis of probability, that the user of the vehicle in question, at the point of detention, was Caolan Gormley or CDG Transport Ltd, and not Andrew Murphy Transport Ltd. Neither Caolan Gormley nor CDG Transport Ltd held a valid licence at the time of detention and as such the application for return on the grounds that the user had a valid operator's licence is refused*" (para 30, page 128). He based this decision on the fact that he had seen "*no material evidence from the applicant [Andrew Murphy] to support their assertion that Mr Gormley was an employed relief driver... [He is] therefore not satisfied that he was, and [he] wouldn't expect a relief driver to source work, engage with the freight forwarder or make the ferry bookings in the name of his own company*" (para 29, page 128). With these conclusions we entirely agree. All the accepted evidence points to the fact that Mr Gormley accepted the work personally and arranged the travel so that he would be personally reimbursed for the job. It is our view that the Head of the TRU was not

“plainly wrong” to conclude as he did in respect of ground 1 hence the appeal in respect of this ground is dismissed.

Ground 2: Regulation 4(3)(c) of the Enforcement Regulations 2012

26. The Appellant also relied upon Regulation 4(3)(c) of the Enforcement Regulations 2012 in which a detained vehicle shall be returned to the owner where, *“although at the time the vehicle was detained it was being, or had been, used in contravention of section 1 of the 2010 Act, the owner did not know that it was being, or had been, so used.”* The Appellant argued that he had instructed the Transport Manager to put the vehicle on his Operator’s Licence but due to ill health during the COVID-19 pandemic, this had not been done and Mr Murphy was not aware of this until the vehicle had been impounded. He reminded the Tribunal that as soon as he became aware that the vehicle was not on his Operator’s Licence, by virtue of the fact it had been stopped and detained, he had immediately put it on the licence through use of the online portal.

27. The Respondent submitted that Mr Murphy must have “known” that it was being used in contravention of the 2010 Act, i.e., that it was not on a valid Operator’s Licence. It was highlighted that the vehicle was, by Mr Murphy’s oral account unused, in need of work, and it did not have a valid MOT at the date of detention. Therefore, there is a strong possibility that it was not on the Operator’s Licence at that point. The Respondent pointed to the five heads of knowledge as outlined in paragraphs 34-46 of the Department for Infrastructure Guidance Document 6.

28. Referring to this guidance, to assist with the question of whether the Head of the TRU was “plainly wrong” in this case, the Upper Tribunal considered paragraphs 40-42 of the Guidance, which again is not legally binding but which should be taken into account:

“40. Every claim for the return of a vehicle based on a lack of knowledge raises a deceptively simple question, which the Department must answer. The question is this: “Has the claimant satisfied me that they probably did not know that the vehicle was being or had been used in contravention of the Act?”. The Department should avoid two temptations: first to take short cuts and second to suggest that an applicant should

have done something where no such legal obligation exists. The Upper Tribunal has therefore suggested adopting a structure or route for reaching a final decision, based on the decided cases.

41. The starting point is to ask, “Is there any evidence before me on the basis of which I could be satisfied that the claimant probably did not know that the vehicle was being or had been used in contravention of the Act?” If there is no such evidence the Department should say so, indicate that the burden of proof is on the applicant and that, in the absence of any evidence capable of showing lack of knowledge of use the ground has not been made out. There is no need for the Department to go further or to embark on the process.

42. The Upper Tribunal has provided a useful reminder of the five categories of knowledge:

i. Actual knowledge ...

ii. Knowledge that the person would have acquired if they had not wilfully shut their eyes to the obvious

iii. Knowledge that the person would have acquired if they had not wilfully and recklessly failed to make such inquiries as an honest and reasonable person would make ...

iv. Knowledge of circumstances that would indicate the facts to an honest and reasonable person

v. Knowledge of circumstances that would put an honest and reasonable person on inquiry”

29. Ultimately, if Mr Murphy, as the sole director of Andrew Murphy Transport Ltd and as the holder of an Operator’s Licence (personally or as a company), purchased the vehicle for the use of his transport company, then the responsibility lies with him to ensure that the regulations are complied with. This was a new vehicle to the fleet and therefore it had to be put on the Operator’s licence. The fact that the Transport Manager was not at work should have alerted Mr Murphy to the possibility that the vehicle had not made it to the licence. It is not beyond the realms of possibility that if he knew it was being used by Mr Gormley, as he purports, when no valid MOT certificate was in place for its use, then he also knew it was not

on his Operator's licence. This situation potentially falls under head (iii) of the heads of knowledge listed above. For these reasons, the finding of the Head of the TRU in stating that he was not satisfied that Regulation 4(3)(c) was satisfied, is not "plainly wrong" and the appeal in respect of ground 2 is also dismissed.

32. Overall, the regulatory regime under the Goods vehicles (Licencing of Operators) Act (Northern Ireland) 2010 is a detailed one, in place for the valid reasons of ensuring safety and fair competition, and one which calls for precision in order to satisfy the requirements within it. Neither the Appellant nor his company acted with any precision or accuracy and thus it was difficult for the Head of the TRU to find in his favour. On all three points, we find that the decision of Mr Mullan acting in his capacity as Head of the TRU for the Department for Infrastructure of Northern Ireland, was not "plainly wrong". He balanced the evidence before him fairly and proportionately. We therefore dismiss this appeal.

L J Clough
Deputy Judge of the Upper Tribunal

P Mann
Member of the Upper Tribunal

A Guest
Member of the Upper Tribunal

Authorised for issue on 11 October 2022