



NCN : [2022] UKUT 00329 (AAC)

Appeal No. UA-2022-000582-NT

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

**ON APPEAL from the DECISION of the HEAD of the TRANSPORT REGULATION
UNIT**

Dated 16 March 2022

Before:

**Kenneth Mullan
Andrew Guest
Phebe Mann**

**Judge of the Upper Tribunal
Member of the Upper tribunal
Member of the Upper Tribunal**

Appellant:

Arkle Finance Ltd

Attendances:

For the Appellant: Ms Briggs B.L.

For the Respondent: The Respondent was not represented

Type of hearing: Oral Hearing

Date of decision: 7 December 2022

DECISION OF THE UPPER TRIBUNAL

IT IS HEREBY ORDERED that this appeal be ALLOWED IN PART.

SUBJECT MATTER:- Impounding

CASES REFERRED TO:- NT/2013/52 & 53 Fergal Hughes v DOENI & Perry
McKee Homes Ltd v DOENI [2013] UKUT 618 AAC;
Bradley Fold Travel Ltd & Peter Wright v Secretary of
State for Transport [2010] EWCA Civ. 695; Nolan
Transport v VOSA & Secretary of State for Transport
(T/2011/60)

REASONS FOR DECISION

1. This is an appeal from the decision of the Head of the Transport Regulation Unit ('TRU') to refuse an application for the return of a detained vehicle. The TRU is part of the Department for Infrastructure ('the Department').

Background

2. The factual background to this appeal appears from the documents and the Head of the TRU's decision and is as follows:-

- (i) On 16 December 2021 a tractor unit with the registration mark MC61AGX ("the vehicle"), towing trailer NI/063700/08 ("the trailer"), was stopped by Constable C of the PSNI. The driver identified himself as Mr SL using a driver card which had expired on 25 February 2022. Mr SL proceeded to Craigavon Weighbridge, as requested, where DVA Enforcement Officer T met the vehicle and undertook inspections.
- (ii) Checks showed that the vehicle, carrying peat, was not listed on a goods vehicle operator licence, but had previously been listed on operator licence ON1115324 held in the name "SL and S". That licence had been revoked by the Department on 5 February 2021.
- (iii) It was also found at inspection
 - a. The vehicle was untaxed
 - b. The driver did not have a valid drivers' CPC
 - c. A number of tachograph offences/violations were noted
 - d. The driver had stated to Constable C that he had lost his digital card approximately 3 weeks prior
 - e. The fuel within the tank of the vehicle was tested by HMRC and noted to be contaminated.
- (iv) As the vehicle was found to be carrying goods without a valid operator's licence the vehicle and trailer were detained.
- (v) Subsequent to detention, on 14 January 2022, notice was published in the Belfast Gazette inviting anyone with claims of ownership to apply to have the vehicle returned. In addition, a letter was issued to Mr SL, who had identified himself as user and owner, inviting an application. Notice required applications to be received by the Department before 4 February 2022.
- (vi) Representation was received from solicitors acting for Mr SL, on 13 January 2022, seeking return of personal artefacts from the detained vehicle. No application for return of the vehicle or the trailer was subsequently submitted by Mr SL.

- (vii) A letter was then received, dated 8 February 2022, from Shoosmiths (NI) LLP, solicitors, seeking return of vehicle MC61 AGX on behalf of their clients Arkle Finance Limited. Attached was an application form which included:
- a. That the application was for vehicle MC61 AGX & Trailer NI/063700/08.
 - b. The applicant did not require the application to be considered at a hearing
 - c. The grounds for return were specified as being (c) "I did not know that it was being, or had been used, in contravention of section 1 of the 2010 Act'.
- (viii) By way of supporting evidence the details of the application state that the user, Mr SL, had entered into a finance agreement with the applicant, that the applicant had been unaware of the detention until notified by the user's solicitors and, as the applicant was the legal owner, the vehicle should be returned to them. This was supported by provision of a copy of a signed Hire Agreement.
- (ix) On 15 February 2022 the Head of the TRU wrote to the applicant's solicitor to advise that the late application had been permitted following his consideration of the directions from the Upper Tribunal in the case T/2013/51 NP Clare Transport Ltd. This letter requested further evidence to support the application for return to include, but not be restricted to:
- a. evidence of ownership of vehicle MC61AGX
 - b. evidence of ownership of trailer NI/63700/08
 - c. confirmation of the applicant's position on the decision to detain
 - d. evidence to support lack of knowledge - a link to the Department's published practice guidance on Detentions was provided with a specific note to consider paragraphs in relation to "knowledge".
- (xi) At the request of the applicant the Head of the TRU agreed to extend the timeframe for responses to 28 February 2022.
- (xii) Correspondence dated 28 February 2002 was subsequently received from the Appellant's solicitors in which they responded to the requests made in the correspondence of 15 February 2022:

'Evidence of Ownership (HC61AGX)- Please be advised our client purchased the Scania RS00 (registration number HC61AGX) from the Supplier A & M Commercials Limited on the 24th May 2017 and we enclose copy of the supplier's invoice to evidence sale for your records. By way of background, our client entered into a Hire Agreement with Mr SL in writing numbered 21519 in respect of the Scania RS00 2011, 6x2 Rear Lift Axle Tractor Unit. The Hire Agreement was

for a period of 60 months subject to an initial lump sum payment followed by monthly instalments of £982.89 plus VAT. Mr SL breached the terms of the Agreement, specifically clause 7(b) of the Agreement (copy previously provided to you) by failing to make the contractual payments to our client on time. Our client terminated the Agreement by Notice dated 10th July 2019 and we were instructed to issue legal proceedings in respect of the outstanding balance by our client. Please kindly note this is a straightforward Hire Agreement and not Purchase Agreement and therefore Mr SL does not have any interest in the said vehicle nor does he have any option to purchase the said vehicle. Our client owns the legal ownership and title to the said vehicle mentioned above.

Evidence of Ownership (NI/63700/08) - We have taken our clients' instructions in relation to the trailer, and we can confirm that the trailer does not belong to our client. Subsequently, our client does not hold any interest or ownership in the trailer and the application in respect of same can be withdrawn.

Confirmation of the applicant's position on the decision to detain - For the avoidance of doubt and to be clear our client was *not aware* that the vehicle was being used or had been used in convention of the Act. We act for the hirer and our client did not have any knowledge that the vehicle was being used in such manner. Our client wishes to have their vehicle returned as they own the vehicle.

Evidence in support of lack of knowledge -As noted above, our client did not have any knowledge of the contravention at any time. Shoosmiths Solicitors were only advised that the vehicle was seized by Mr SL's Solicitor on the 12th of January 2022. Upon receipt of the email, we sought for more information and, on the 3rd February 2022, we were sent a copy of correspondence sent by the Driver & Vehicle Agency addressed to Mr SL on the 14th January 2022. Our client is the Hire Company and is based in England and thus would not have been aware of Mr SL's conduct.'

- (xiii) In a decision dated 16 March 2022, the head of the TRU refused the application for the return of the vehicle. He summarised his decisions as follows:

'In considering the application for the return of the trailer I find that no application is being progressed.

In considering the application for the return of the vehicle unit the onus is on the applicant to satisfy me on the balance of probabilities that it is the owner of the detained vehicle, and it has failed to do so. The application to return the detained vehicle must fail on the basis of the failure to satisfy me as to

ownership. However, I go on to make findings on the other issues raised.

The material provided by DVA, and the absence of any contradiction to that material by the applicant, allows me to be satisfied on the basis of probability that the vehicle was detained lawfully.

I find that the applicant has failed to provide evidence to sufficiently satisfy me that they did not know the vehicle was being used in contravention of the 2010 Act and I further find on the basis of probability, the applicant had, as a minimum, constructive knowledge.

The application for the return of the vehicle on the grounds that the applicant did not know the vehicle was being used in contravention of Section 1 of the 2010 Act is therefore refused and the vehicle can be disposed of.'

- (xiv) An appeal against the decision dated 16 March 2022 was received in the office of the Administrative Appeals Chamber (AAC) of the Upper Tribunal 21 April 2022.

The legal principles relevant to detention and return

3. Under the provisions of section 1(1) of the Goods Vehicles (Licensing of Operators) Act (Northern Ireland) 2010, (the 2010 Act) it is unlawful, in Northern Ireland to use a goods vehicle on a road, for the carriage of goods, either for hire or reward or for or in connection with any trade or business carried on by the user of the vehicle, without holding a licence, (known as 'an operator's licence), issued under the Act. By section 1(6) a person who uses a vehicle in contravention of this section is guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale.
4. Section 44 of the 2010 Act provides that Schedule 2 to the 2010 Act 'shall have effect'. Schedule 2 contains detailed powers to make Regulations concerning the detention etc of goods vehicles used in contravention of section 1 of the 2010 Act and, in paragraph 8(4) of Schedule 2, it sets out grounds for return which may be included in the Regulations.
5. The right to impound goods vehicles is set out in regulation 3 of the Goods Vehicles (Enforcement Powers) Regulations (Northern Ireland) 2012, (the 2012 Regulations), which came into force on 1 July 2012. Regulation 3 of the 2012 Regulations is in these terms:-

"Where an authorised 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, he may detain the vehicle and its contents".
6. Authorised person is defined in paragraph 1(1) of section 58 of the 2010 Act and means '(a) an examiner appointed by the Department under Article 74 of the 1995 Order; or (b) any person authorised in writing by the Department for the purposes of the 2010 Act'. The '1995 Order' is the Road Traffic (Northern Ireland) Order 1995.
7. By virtue of regulation 9(1) of the 2012 Regulations, the **owner** of a vehicle detained in accordance with regulation 3 may, within the period specified in

regulation 8(2), apply to the Department for the return of the vehicle. There is a definition of 'owner' in regulation 2 of the 2012 Regulations:

'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, the person who can show to the satisfaction of an authorised person that he was at the time of its detention the lawful owner (whether or not he was the person in whose name it was so 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 he was at the time of its detention the lawful owner.'

12. The regulation 8(2) time period is the period of twenty-one days from the publication of notice of detention in the Belfast Gazette.

13. In paragraph 90 of its decision in *Nolan Transport v VOSA & Secretary of State for Transport* (T/2011/60) ('*Nolan*'), the Upper Tribunal summarised the scheme for the right to impound and claim for return, under the parallel legislative scheme applicable in Great Britain, as follows:

'Three points need to be stressed at this stage. First, it is for VOSA to show that they had reason to believe that the detained vehicle was being or had been used, on a road, in contravention of s.2 of the 1995 Act. The standard of proof required is the balance of probability ... Second, once VOSA have established they had the right to detain a vehicle it is for the owner to prove ownership of the vehicle or vehicles to which the claim relates. Again, the standard of proof required is the balance of probability ... Third, it is for the owner to show, on the balance of probability, that one of the grounds set out in regulation 10(4) of the 2001 Regulations, as amended, has been established.'

10. The reference to regulation 10(4) should be 4(3) but nothing turns on that.

11. The **grounds** on which an application for the return of an impounded vehicle may be made are set out in regulation 4(3) of the 2012 Regulations, as follows:

'(3) The grounds are--

- (a) 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);
- (b) that, 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) that, 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;

- (d) that, 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.'

General principles on the operation of the Act and Regulations

14. At paragraphs 10 to 13 of the decision in NT/2013/82 Arnold Transport & Sons Ltd v DOENI, the Upper Tribunal set out the following general principles in the operation of the legislative provisions in Great Britain and Northern Ireland:

'Some General Principles

12. An operator's licence can only be granted if the applicant satisfies the Department that the relevant requirements, set out in s. 12 of the 2010 Act as amended, have been met. [The expression Department is used in the legislation but for the purposes of the decisions required to be taken under the legislation it is the Head of the TRU who takes them]. The relevant requirements are now set out in Paragraph 17(5) of the Goods Vehicles (Qualifications of Operators) Regulations (Northern Ireland) 2012, ("the Qualifications Regulations), which substitutes a new s.12 and adds ss. 12A-12E to the 2010 Act. The Qualifications Regulations also contain important provisions in relation to Good Repute, Professional Competence and Transport Managers.
13. The grant of an operator's licence does not mean that an operator can then proceed on the basis that the requirements that must be met in order to obtain a licence can thereafter be disregarded. In our view it is clear both from the terms of the 2010 Act and from Regulation 1071/2009 that these are continuing obligations, which an operator is expected to meet throughout the life of the licence. It is implicit in the terms of s. 23, which gives the Department power to revoke, suspend or curtail an operator's licence, that this can take place at any time and for any reasonable cause, including matters covered by the requirements of s. 12 as amended. It is explicit in s. 24, which provides that a standard licence shall be revoked if at any time it appears that the licence-holder is no longer (i) of good repute, (ii) of appropriate financial standing or, (iii) professionally competent. The underlining, in each case is ours. First, we wish to stress that once it appears that the licence-holder is no longer of good repute, or of appropriate financial standing or professionally competent the licence must be revoked because the Act makes it clear that there is no room for any exercise of discretion. Second, the use of the expression 'at any time' makes the continuing nature of the obligations crystal clear.
14. The Tribunal has stated on many occasions that operator's licensing is based on trust. Since it is impossible to police every operator and every vehicle at all times the Department in Northern Ireland, (and Traffic Commissioners in GB), must feel able to trust operators to comply with all relevant parts of the operator's licensing regime. In addition other operators must be able to trust their competitors to comply, otherwise they will no longer compete

on a level playing field. In our view this reflects the general public interest in ensuring that Heavy Goods Vehicles are properly maintained and safely driven. Unfair competition is against the public interest because it encourages operators to cut corners in order to remain in business. Cutting corners all too easily leads to compromising safe operation.

15. It is important that operators understand that if their actions cast doubt on whether they can be trusted to comply with the regulatory regime they are likely to be called to a Public Inquiry at which their fitness to hold an operator's licence will be called into question. It will become clear, in due course, that fitness to hold an operator's licence is an essential element of good repute. It is also important for operators to understand that the Head of the TRU is clearly alive to the old saying that: "*actions speak louder than words*", (see paragraph 2(xxix) above). We agree that this is a helpful and appropriate approach. The attitude of an operator when something goes wrong can be very instructive. Some recognise the problem at once and take immediate and effective steps to put matters right. Others only recognise the problem when it is set out in a call-up letter and begin to put matters right in the period before the Public Inquiry takes place. A third group leave it even later and come to the Public Inquiry with promises of action in the future. A fourth group bury their heads in the sand and wait to be told what to do during the Public Inquiry. It will be for the Head of the TRU to assess the position on the facts of each individual case. However it seems clear that prompt and effective action is likely to be given greater weight than untested promises to put matters right in the future.'

The proper approach on appeal to the Upper Tribunal

15. In NT/2013/52 & 53 Fergal Hughes v DOENI & Perry McKee Homes Ltd v DOENI [2013] UKUT 618 AAC, the Upper Tribunal said the following, at paragraph 8 of its decision, on the proper approach on appeal to the Upper Tribunal:

'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 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.'

At paragraph 4, the Upper Tribunal had 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.’

The initial grounds of appeal

16. In the notice of appeal, the Appellant’s solicitors set out the following grounds of appeal:

‘The Grounds of Appeal are as follows:

1. The Appellant is the owner of vehicle MC61AGX.
2. The Appellant was unaware that the vehicle was being, or had been, used in contravention of section 1 of the 2010 Act by the Hirer, Mr SL.

The Appellant requests an oral hearing.

The Appellant intends to produce additional evidence at Hearing. Notwithstanding the foregoing, the Appellant contends that on the basis of the evidence and information provided to the TRU, the TRU ought to have determined in its decision dated 16 March 2022 that, on the balance of probabilities, the Appellant was the owner of the vehicle, and that the Appellant did not have actual, imputed or constructive knowledge that the vehicle was being used in contravention of the Act.’

The revised grounds of appeal

17. Ms Briggs prepared a Skeleton Argument in which she set out the following revised grounds of appeal:

‘The Appellant seeks to Appeal the decision of the TRU that it has failed to establish ownership of the relevant vehicle being a Scania R500 6x2 Rear Lift Axle Tractor Unit, Registration MC61 AGX (“the vehicle”). The Appellant does not seek to proceed with its second ground of appeal.’

The Head of the TRU’s evidential assessment and reasoning with respect to ownership

18. In the decision of 16 March 2022, the Head of the TRU set out the following evidential assessment and reasoning:

‘Ownership of Vehicle MC61AGX

The starting point of any application is consideration of ownership, as the vehicle can only be returned to those found to be the legal owner. In this instance the issue is initially muddled by the statement of Mr SL that he was the owner and user of the vehicle. I note however that no application has been received from Mr SL and it is asserted that Mr SL's solicitor notified the applicant of the detention, although no evidence has been provided for this.

The evidence provided in support of ownership includes a Hire Agreement, signed 25 May 2017, between Arkle Finance Limited and Mr SL "the Hirer". The Hirer's Declaration on page 2 of the agreement (point 3) reads "The equipment shall remain the property of Arkle Finance Limited at all times and at no point shall title pass to you". This is repeated at point 3.1 of the Terms of Hire Agreement.

In my letter dated 15 February, I sought additional information from the applicant to support claim of ownership of the vehicle:

...

The applicant's solicitor responded on 28 February 2022 as follows:

...

In addition I was provided with a copy of the referenced invoice, dated 24 May 2017, from A&M Commercials Ltd to Arkle Finance Ltd. No further skeleton was provided. Of particular interest is the following notice which is included at the start of the final statement at the bottom of that invoice:

All goods remain the property of A&M Commercials until goods have been paid for in full.

In considering ownership I remind myself that the standard required is for me to be satisfied on the balance of probabilities that the applicant is the owner, but the burden lies with the applicant to so satisfy me. The majority of the response at paragraph 21 above misses this point and seems set in satisfying me that Mr SL is not the owner. This is not the required test.

Beyond that there is then a reliance on the hire agreement and an invoice which carries the caveat that the goods belong to the supplier (A&M Commercials) until such time as they are fully paid. I am in receipt of no evidence that the goods are fully paid for and note the single day between the invoice and the hire agreement being signed. I must question why, if the vehicle was purchased, definitive supporting material - such as bank statements, evidence of financial transactions - has not been forthcoming. The absence of this material raises doubt conflated by the introduction of other possible owners in A&M Commercials Limited.

I add here that there is a distinction between primary facts and other findings of fact. The Upper Tribunal decision T/2016/26 J Campbell t/a Vision Travel, at 41 includes the following extract from Clarke LJ in

Assicurzioni Generali SpA v. Arab Insurance Group [2002] EWCA Civ 1642, [2003] 1 WLR 577:

"16. some conclusions of fact ore ... not conclusions of primary fact. .. They involve an assessment of a number of different factors which have to be weighed against each other. This is sometimes called an evaluation of the facts and is often a matter of degree upon which different judges can legitimately differ. Such cases may be closely analogous to the exercise of a discretion and, in my opinion, appellate courts should approach them in a similar way."

The onus is on the applicant to satisfy me on the balance of probabilities that it is the owner of the detained vehicle, it has failed to do so. The application to return the detained vehicle must fail on the basis of the failure to satisfy me as to ownership. However, for completeness I also consider it fair to make findings on the additional factors considered at the hearing.'

The Appellant's submissions on ownership

19. In her Skeleton Argument, Ms Briggs set out the following submissions on ownership:

'Ownership: Facts

The Appellant purchased the vehicle from A&M Commercials Ltd ("the supplier") on 24th May 2017 for the purpose of entering into a hire Agreement with Mr SL ("the hirer").

Regarding purchase from the supplier, the purchase invoice appears at page 54 of the Hearing Bundle. The Appellant also refers to additional documentation provided to the Tribunal including its bank records illustrating proof of payment (page 162), together with a letter from the supplier dated 20th April 2022 confirming that the supplier received payment of £56,400 and that title to the vehicle thereafter passed to the Appellant (page 158).

Woodbrook Financial Services Limited were engaged as Financial Intermediary in the hiring of the vehicle (in common parlance, "the broker") (see the Hire Agreement at page 17 and, further, the additional documentation provided to the Tribunal at pages 146-148).

The Hire Agreement ("the Agreement") appears at page 17 of the Hearing Bundle. The supplier's details are noted (page 17). The Agreement is signed by the hirer, Mr SL, and on behalf of the Appellant (page 18). The Hire Agreement was divided into primary and secondary hire periods. An initial rental was payable at £6000.00 gross, followed by the primary hire period of 60 months at £1179.47 gross per month. A secondary hire period was available - in the event that there was no termination of the Agreement during the primary hire period - at £1179.47 gross per month, terminable with three months' notice. The "Hirer's Declaration" at Clause 3 confirms that "The Equipment shall remain the property of Arkle Finance Limited at all times and at no point shall title pass to you" (page 18). The Terms of Hire (page 19) further state at Clause 3.1 that "The Equipment will at all times remain our property and at no time will title to the Equipment pass to you."

Clause 2.1 requires the rentals to be paid (page 19). Clause 6.1 entitles the Appellant to terminate the hire under the Agreement if, inter alia, the hirer failed to pay any rental within 7 days of its due date (page 19). The hirer fell into arrears during the primary hire period (see the Statement of Account appearing in the additional documentation provided to the Tribunal at page 163). The Appellant then terminated the Agreement by notice dated 10th July 2019 (pages 151-152).

Regarding proof of ownership, the Appellant also refers to correspondence from the hirer's solicitor within the additional documentation provided to the Tribunal dated 3rd February 2022 (page 150) and 7th February 2022 (page 159) confirming that title to the vehicle lay with the Appellant. The Appellant also refers to the Hearing Bundle at page 9 wherein the hirer made an application for return of the vehicle's contents, rather than return of the vehicle itself.

...

It is respectfully submitted that the decision of the TRU dated 16th March 2022 regarding ownership was 'plainly wrong'. The information provided to the TRU by the Appellant's Solicitor, dated 28th February 2022, together with the Hire Agreement and supplier invoice, provided sufficient proof of ownership at the time of detention on the balance of probabilities. The following submissions are made in particular:

- i. There was no other entity or individual claiming ownership of the vehicle at the time of the decision;
- ii. The submissions on behalf of the Appellant dated 28th February 2022 were unchallenged (page 53 of the Hearing Bundle), and there was no evidence which contradicted them, save for an early assertion by the hirer that he owned the vehicle;
- iii. The hirer had made an application for return of contents only (page 8 of the Hearing Bundle);
- iv. The standard of proof to be applied was the mere balance of probabilities.

Regarding the final point above, it is respectfully submitted that the TRU requiring the Appellant's statement of (unchallenged) facts (primarily at page 53 of the Hearing Bundle and the Appeal Notice at page 10) to be further evidenced by additional documentary proof imposes a higher standard on owners than the mere balance of probabilities. See, for example, *Miller v Minister of Pensions* [1947] 2 All ER 372: "If the evidence is such that the tribunal can say 'we think it more probable than not' then the burden is discharged, but if the probabilities are equal it is not" (at 374). It is respectfully submitted that, on all of the information placed before the TRU, the decision-maker ought to have determined that it was "more probable than not" that the Appellant was the owner of the vehicle. In this regard, there simply was not any other entity or individual with a viable claim of ownership or, at the very least, a more viable claim of ownership than the Appellant.

It would appear that the decision-maker applied an erroneous test, namely that he was required to be “satisfied” as to the Appellant’s ownership, rather than merely satisfied “on the balance of probabilities” as to the Appellant’s ownership. The distinction is subtle but, it is respectfully submitted, important.

In addition, the Tribunal now benefits from additional materials provided by the Appellant, as referred to in the “Facts” section above (paragraphs 2-7). It is submitted that, on the basis of all of the evidence now before the Tribunal, and on the basis of the “Facts” section above, the Appellant has demonstrated that it is and was at all material times the owner of the vehicle. The finding that the Appellant was not the owner was ‘plainly wrong’. Applying both limbs of Hughes, it is respectfully submitted that the evidence presented to the Tribunal makes clear that the decision of the TRU was “wrong” and the Tribunal is “required to adopt a different view”.

Conclusion

The Appellant submits that it is and was the owner of the vehicle at the relevant time. It is respectfully submitted that the evidence presented to the Tribunal makes clear that the decision of the TRU was “wrong” and the Tribunal is “required to adopt a different view”.

Analysis

20. We begin by considering whether the Department had the right to detain the relevant vehicle. As noted in paragraph 7 above, the Upper Tribunal in *Nolan* decided that the first question to be answered is whether the authorised person had reason to believe that the detained vehicle was being or had been used, on a road, in contravention of section 2 of the 2010 Act. We are wholly satisfied that there was sufficient evidence available to the authorised person to allow him to have reason to believe that there was a contravention of section 2.
21. We are also wholly satisfied, on the evidence which is available to us, that the Appellant was the owner of the relevant vehicle. The evidence which has been made available to us includes certain evidence which was not available to the Head of the TRU. To the extent on which we have relied on this ‘fresh’ evidence, we are satisfied that we have acted within the scope of the relevant rules and principles – see the Appendix to the decision in T/2018/27 Allen Transport Ltd; Daniel Allen.
22. We have already noted that in NT/2013/52 & 53 Fergal Hughes v DOENI & Perry McKee Homes Ltd v DOENI [2013] UKUT 618 AAC, the Upper Tribunal had confirmed that in an appeal against a decision of the Head of the TRU the burden is on the Appellant to show that the decision was ‘plainly wrong’. We are clear that the decision of the Head of the TRU, in connection with the ownership of the detained vehicle, was plainly wrong. In this regard we accept the submissions made on behalf of the Appellant in their entirety.
23. As was noted in paragraph 17 above, in her revised grounds of appeal, Ms Briggs stated that she did not wish to proceed with the second ground of appeal which had submitted that one of the grounds for the return of the detained vehicle, as set out in regulation 4(3) of the 2012 Regulations, have been established by the Appellant. As such, we have concluded that the part of the decision of the Head of the TRU, which found that none of the grounds set out in regulation 4(3) of the

2012 Regulations have been established. Is not 'plainly wrong' and is confirmed.
To that extent, therefore, the relevant vehicle may be disposed of.

A handwritten signature in black ink on a light grey background. The signature reads "Kenneth Mullan" in a cursive, slightly slanted script.

**Kenneth Mullan, Judge of the Upper Tribunal,
7 December 2022**