



Appeal No. UA-2021-000523-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 1 December 2021

Before:

Kenneth Mullan	Judge of the Upper Tribunal
Mr David Rawsthorn	Member of the Upper tribunal
Ms Kerry Pepperell	Member of the Upper Tribunal

Appellant:

NI Truck Rentals Ltd

Attendances:

For the Appellant: Mr McNamee

For the Respondent: The Respondent was not represented

Type of hearing: Oral Hearing
Date of hearing: 29 November 2022
Date of decision: 7 March 2023

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) NI Truck Rentals Limited ('the Appellant') was the holder of a standard international licence granted on the 30 September 2015 authorising four vehicles and four trailers. The sole director of the company was recorded at Companies House is Cathal John Hughes.

- (ii) In a decision dated 23 June 2021, the Appellant's licence was revoked. The decision followed a Public Inquiry held on 23 June 2021.

- (iii) In summary, the revocation decision of 23 June 2021 was in the following terms:

- 'Breach of Section 23(1)(a), (b) and (e) of the Goods Vehicles (Licensing of Operators) Act (Northern Ireland) 2010 found.
- Order for revocation of licence pursuant to Sections 23 and 24 of the Act made with immediate effect.
- Operator NI Truck Rentals Limited disqualified for a period of five years from holding or obtaining an operator's licence.
- Director Cathal John Hughes disqualified for a period of five years from holding or obtaining an operator's licence.
- Direction made under Section 25(3) of the Goods Vehicles (Licensing of Operators) Act (Northern Ireland) 2010 that if during that time Cathal John Hughes is a director of, or holds a controlling Interest in, a company which holds an operator's licence or is in partnership with a person who holds a licence that licence shall be subject to revocation, suspension, or curtailment.

- (iv) The Appellant was informed of the revocation decision in correspondence dated 24 June 2021. That correspondence contained the following:

'What you must do now

In compliance with the provisions of Regulation 26(3) of the Goods Vehicles (Licensing of Operators) Regulations (Northern Ireland) 2012, you are required to return the company's goods vehicle operator's licence and ALL of the vehicle identity discs in issue.

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Failure to comply will be deemed a contravention of the legislation and render you liable on summary conviction to a fine not exceeding level three on the standard scale.

The documents must be returned by **5th July 2021**

...

There is a right of appeal against the Department's decision. To appeal you may apply to:

Upper Tribunal (Administrative Appeals Chamber)

Tribunal Hearing Centre

2nd Floor, Royal Courts of Justice

Belfast

BT1 3JF

no later than one month from the date of this letter.'

- (v) On 14 August 2021 a tractor unit with the registration mark Y613BWN ("the vehicle"), towing trailer AN702 ("the trailer"), was stopped at Dargan Estate, Belfast and subsequently detained by a DVA officer. The driver of the vehicle was Cathal John Hughes.
- (vi) On 28 August 2021, before a notice was published in the Belfast Gazette, the Department received an application for return of the vehicle from the Appellant. The Department directed that the application for the return of the vehicle should be considered at a hearing. The hearing took place on 23 November 2021.
- (vii) In a decision dated 1 December 2021, the Head of the TRU refused the application for the return of the vehicle. He summarised his decision as follows:

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

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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.'

- (xii) A notice of appeal against the decision dated 1 December 2021 was subsequently received in the office of the Administrative Appeals Chamber (AAC).
- (xiii) The notice of appeal included an application for a stay of the effect of the decision dated 1 December 2021. By way of a determination dated 10 December 2021 the application for a stay was granted by the Head of the TRU.

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

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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.'
14. The reference to regulation 10(4) should be 4(3) but nothing turns on that.
15. 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

16. 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

10. 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.
11. 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.
12. 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.

13. 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

17. 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 decision of the Head of the TRU

18. In his decision of 1 December 2021, the Head of the TRU said the following about ownership, at paragraph 26:

'As I have no jurisdiction to return the vehicle to anyone other than the legal owner there is a requirement for the applicant to satisfy me that they were the legal owner of this vehicle at the time of its detention. In this instance, whilst I may be satisfied that the registered keeper of the vehicle is NI Truck Rentals Ltd, and the user of the vehicle is NI Trucks Rentals Ltd, there is a complete absence of material evidence to satisfy me that the applicant is the legal owner of the vehicle. Considering the purchase was relatively recently, and the evidence is apparently so freely available, I'm at a loss as to why sufficient evidence was not produced for the hearing. The absence of this material raises a real doubt conflated by the introduction of other possible owners including Mr Hughes himself, being a separate legal entity to the limited company. All I have before me is mere assertions with no supporting evidence.'

19. The Head of the TRU said the following about the legal basis to detain, at paragraphs 41 to 44 and 47 to 48:

'I am not convinced by the letter of appeal for a number of reasons. Firstly I am suspicious that it was produced so late in proceedings and that it refers incorrectly to a detention hearing rather than the public inquiry. Even if genuine it was out of time. Fundamentally, however, it was never received by the Upper Tribunal despite being issued to the correct address and never followed up by the applicant. I am therefore not convinced that a genuine attempt was made to appeal the decision from the public inquiry.'

The previous revocation of the licence held in the name of NI Truck Rentals Ltd is relevant to my considerations. Material in the bundle shows that due to persistent failure to engage with the DVA and Transport Regulation Unit, and failure to attend the public inquiry, the applicant's licence was revoked for a period of five years. The Director, Mr Cathal Hughes, was disqualified for a period of five years and the transport manager, Ms M, lost her good reputation and was disqualified indefinitely from acting in that capacity. No findings were made against Mr M because he was not transport manager on the licence. Mr Hughes referred to him during the detention hearing as transport manager, but later admitted that he did not employ him or pay him in that capacity.

Throughout the detention hearing Mr Hughes laid blame with his transport managers, referencing Mr M in the main, and stating that he could never make contact with Ms M. This is relevant because in his evidence he references Mr M as being the source of information (on the right to continue operating) that ought not to be challenged nor in need of verification. It is also very relevant to note that at the detention hearing Mr M did not attend to give evidence supporting or corroborating Mr Hughes' version of what it was claimed he told him.

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NI Truck Rentals Ltd held an operator's licence between September 2015 and June 2021. I have regard to the well-known principle that everyone is taken to know the law, and that those entering a regulated environment are considered to be familiar and aware of the law in respect of that regulated environment. Certainly the bundle provides evidence that the licence, when valid, was being administered as vehicles were being added to and removed from his licence. Whether that was being done by Mr Hughes as director, or by someone authorised by the company, knowledge sits with the applicant – being NI Truck Rentals Ltd, and not Mr Hughes alone.

...

I am not satisfied that the applicant has demonstrated such a lack of knowledge. The submission that Mr Hughes was open about the user being NI Truck Rentals Ltd is instead a continuation of the blasé attitude towards the compliance and licencing regime which appears to have been demonstrated consistently through the lifetime of the licence leading to its revocation. Beyond that the applicant company claimed to have engaged two professionally competent people – and the knowledge of the applicant here is the company, not Mr Hughes alone. Even if I was to accept the view that Mr Hughes was right to ask Mr M, and Mr M alone, I fail to understand how this satisfied him when he was so critical of his transport managers during the hearing. Mr M was not in attendance to comment on Mr Hughes' version of events. I conclude that if Mr Hughes did indeed seek out such advice from Mr M, he accepted the first answer that suited his endeavour to continue operating.

A reasonable and honest person would have sought legal advice, or sought guidance from the DVA or Transport Regulation Unit. As a bare minimum a reasonable and honest person would have followed up with the Upper Tribunal to seek an update on the progress of their appeal. The applicant did not do any of these things. I am minded that this applicant was previously the holder of a licence for a number of years and claims to have employed a Transport Manager (Ms M). In respect of the claim that the applicant did not know the vehicle was being used illegally I find, as a bare minimum, that that the applicant company had "constructive knowledge" (as demonstrated in paragraphs 41-46) of circumstances that would indicate the facts to an honest and reasonable person, or would put such a person on inquiry. I also find that he had motive (as outlined at paragraph 47).'

The grounds of appeal

20. In the notice of appeal, Mr McNamee set out the following grounds of appeal:

'The decision of the presiding officer to the effect that he was not satisfied that the Applicant was the owner of the vehicle is one which no objective rational or reasonable decision maker could make.

The finding that NI Truck Rentals Ltd had not satisfied on the balance of probabilities the test for ownership is a decision which was not open to any rational decision maker on the facts and evidence presented at the hearing and constitutes not only a misfinding of fact but an error of law.

At the hearing of this matter evidence was given on a number of matters;

1. The Applicant was the registered keeper of the vehicle
2. The Applicant had received a refund in relation to the tax of the vehicle

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3. The Applicant had the vehicle insured in the Applicants name
4. The Applicant had following an accident received payment on foot of his insurance policy in relation to damage to the vehicle
5. The Applicant had the vehicle notified on the Operator's licence and the period which the vehicle was removed from the operator's licence coincided with the period in which the vehicle had been damaged in the accident and the period of its repair
6. The Applicant through its sole director and shareholder Mr Hughes in evidence gave the ownership history of the vehicle in minute detail and accounted for the manner in which the vehicle had been purchased some considerable time prior to its detention.
7. The evidence that the detention of the vehicle had been publicised with no other person other than the Applicant claiming ownership of the vehicle.
8. Evidence that Mr Hughes, the sole director and shareholder of the company, had his personal belongings in the vehicle at the time of detention and was driving the vehicle at the time of detention.
9. Further, the evidence that no other party has sought to claim ownership of the vehicle.
10. Evidence under cross examination from the DVA witness, that the witness had checked that the vehicle was registered to the Applicant and insured by the Applicant as part of his preliminary road side check.

The attempt in the decision of the presiding officer to differentiate between Mr Hughes and the company which he is the sole director and shareholder of is clearly an artificial attempt to justify the unjustifiable. The legal position is that the sole shareholder of the company owns the company totally and any reference made by the sole shareholder of the company in relation to ownership of an asset of the company should be viewed in that light. The Applicant suspects that the real motivation behind this clearly absurd refusal to accept the company's ownership of the vehicle is to avoid the effect of Section 17 of the Goods Vehicles (Enforcement Powers) Regulations (NI) 2012, in so far as it denies the Applicant the proceeds of sale if the grounds for refusing return were upheld by the presiding officer.

In relation to establishing the ground for return of the vehicle, it is submitted that the presiding officer clearly misapplied the law in this regard as set out in the cases of *Nolan Transport* and *F&M Refrigerated Transport Ltd*. In this regard the evidence of the DVA officer in chief and under cross examination was that this was the first encounter with the Operator after the Operator's licence had been revoked and in the currency of what the Operator believed to be a stay pending the appeal of the revocation. It was a random detention with no prior notice having been given to the operator and no previous history of the operator having used this vehicle without an Operator's licence. The DVA officer confirming that this Operator was stopped during the course of a random inspection.

The misapprehension of the Operator was that his appeal and request for a stay had been received by the Department. This was not a mistake of law, it was a mistake as regards the fact that his correspondence appealing the revocation had been received by the appropriate appellate body. In the circumstances of the totality of the evidence given it is clear that the Operator

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fully believed that he was entitled to operate this vehicle, it being confirmed by the DVA officer that he immediately stated that the vehicle was being operated by NI Truck Rentals Ltd without his having any apprehension that the Applicant was not entitled to operate the vehicle.

Further, as regards the proceedings it is to be noted that the deciding officer ignores the fact that the DVA officer failed to inform the hearing that there had been a formal (cautioned) interview of Mr Hughes as regards the operation of this vehicle, the recording and notes of this formal interview have not been provided by the department nor indeed was their existence, we would submit the existence of same was deliberately hidden from those involved in the hearing. It is submitted on behalf of the Appellant that this omission evidences the upmost bad faith on behalf of the department, the presiding officer ignores this obvious omission in his deliberations and whilst he refers to the reasonable and honest person in order to criticise Mr Hughes, makes no such criticism of what the Appellant would submit is the clear dishonesty on behalf of the DVA witness.

The issue of proportionality in hearings of this type has been dealt with in the case of *Nolan Transport*, as regards this particular case the decision of the presiding officer in one ignoring the clearest possible evidence of ownership provided during the course of the hearing and refusing the statutory ground for return of the vehicle causes the operator a loss of £44,000 (according to the evidence), such a penalty upon this Operator who even on the DVA's case has only once breached the Goods Vehicles (Licensing of Operators) Act (NI) 2010, exceeds massively the statutory penalty which would or could be imposed under the regulations in court for such an offence and is in this case entirely disproportionate and excessive. None of these matters were considered by the presiding officer and his failure to properly factor these matters into his decision is a breach of the Applicants Article 1 First Protocol rights.'

The oral hearing of the appeal

21. Before the oral hearing of the appeal, Mr McNamee provided additional documentation.
22. At the oral hearing of the appeal, Mr McNamee made submissions which were parallel to those which he had set out in the notice of appeal.
23. Mr Cathal Hughes gave oral evidence in response to questions from the members of the Tribunal.
24. We referred Mr Hughes to the document which was at page 43 of the bundle. This was a downloaded extract from the Register at Companies House. Mr Hughes confirmed that he had become the Sole Director of NI Truck Rentals Ltd on 1 September 2018. He also confirmed that the previous Sole Director (Mr RC) resigned on 1 September 2018. Mr Hughes stated that he had done some work for Mr RC. Mr RC had another business which had grown to the extent that he could no longer look after NI Truck Rentals Ltd. They had agreed that Mr Hughes would take over the company. No money changed hands and it was agreed that the acquisition would be financed through money which was owed to Mr Hughes.
25. Mr Hughes acquired two trucks and a trailer as part of the deal. He paid Mr RC for these over the next year or two. He also acquired a rented yard but,

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eventually, this was not needed as the trucks and were constantly on the road. Maintenance, including six-month checks, was carried out by an external company. Mr Hughes did a lot of driving himself.

26. Mr Hughes testified that he had bought the detained vehicle off a company called Lowe Transport Ltd in and around 2020. He had a good relationship with the seller. It was bought as a replacement for one of the two trucks which he had bought with the company, but which had to be scrapped. The agreed price was 44000 Euros. He paid £15000 at the time of the purchase, there was additional money which was owed to him by the seller and it was agreed that the remainder of the purchase price would be paid off 'contra' to work undertaken by him. As of the date of the oral hearing, he still owed 4000 Euros to the seller. There was no other finance on the vehicle.
27. NI Truck Rentals Ltd did make regular returns to Companies House but there had not been any such returns for the period since the detention of the vehicle. Mr Hughes stated that he had thought that if the truck was returned to him that he might recommence the business by hiring it out, but he was not sure. He later clarified that he wanted to clear the debts of his business and return to driving.
28. The address for NI Truck Rentals Ltd registered with Companies House was the address of the rented yard which he had acquired when also purchasing the company. He retained a post box there and visited it regularly as it was not far from his home and on a regular transit route. His home address was also registered with Companies House. NI Truck Rentals Ltd still had the second lorry but this was in a state of disrepair and not fit for use. Mr Hughes stated that if he was paid any money by cheque for work which he undertook, the cheque would be made out to NI Truck Rentals Ltd and paid into a bank account in this name. The account remained active but was currently in debit to the sum of £25-30000 representing monies owing for shipping bills and diesel. He would occasionally take a wage from the business account. He also had his own personal account. He did not know whether the detained vehicle was included in the assets set out in the company accounts.
29. Mr Hughes indicated that after he was stopped, and the vehicle was detained he had been given advice that he was entitled to drive pending an appeal. He conceded that he could have checked the position with DVSA.

Analysis

30. We begin by considering whether the Department had the **right to detain** the relevant vehicle. As noted in paragraph 13 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.
31. We turn to the question of **ownership**. As was noted in paragraph 18 above, the Head of the TRU stated the following in his decision:

'There is a complete absence of material evidence to satisfy me that the applicant is the legal owner of the vehicle. Considering the purchase was relatively recently, and the evidence is apparently so freely available, I'm at a

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loss as to why sufficient evidence was not produced for the hearing. The absence of this material raises a real doubt conflated by the introduction of other possible owners including Mr Hughes himself, being a separate legal entity to the limited company. All I have before me is mere assertions with no supporting evidence ...'

32. We have a transcript of the hearing which took place on 23 November 2021. From that we have observed that Mr Hughes was asked certain questions about the ownership of the detained vehicle. The first question which Mr Hughes was asked was 'Who owns the (detained) vehicle?' His reply was 'I own the vehicle' and without being asked a further question stated 'NI Truck Rentals'. He is then asked whether he was the sole director and shareholder of NI Truck Rentals Ltd and he replies that he was. There then followed questions about the acquisition of the vehicle and other matters relating to the vehicle. There was some cross-examination of Mr Hughes by Counsel for the Department. There were no interventions on the issue by the Head of the TRU.
33. In our view, and with respect to Mr McNamee, the questioning by him was disjointed, and the questions were not set in a necessary context namely the relationship between Mr Hughes and NI Truck Rentals Ltd. As is noted above, we undertook our own questioning of Mr Hughes and accept the evidence which he gave to us in respect of his relationship with NI Truck Rentals Ltd as honest and credible and adopt it as factual.
34. The Head of the TRU was concerned that there was no 'material' evidence to satisfy him that 'the applicant is the legal owner of the vehicle'. What is apparent to us is that what the Head of the TRU is looking for, and not finding, is documentary evidence to corroborate Mr Hughes' own oral evidence. Mr Hughes' oral evidence is material evidence which, once assessed, can be accepted, and does not require corroboration. Substantiation is useful but not necessary.
35. The Head of the TRU might counter that it was not for him to intervene in the process of adducing evidence and might ask why the Upper Tribunal does, particularly when the Appellant was represented. In paragraph 24 of his decision, he describes the decision-making process as adversarial. That is not the case in proceedings before the Upper Tribunal. One of the key characteristics of tribunal proceedings is its inquisitorial role. The inquisitorial role is different from the adversarial role adopted by many of the courts. It means that the tribunal can explore issues not raised by the appeal or by the parties or evidential issues relevant to the issues where it has formed the view that these evidential issues have not been explored in sufficient detail.
36. We are also wholly satisfied, on the evidence which is available to us, and which now includes the further oral evidence given by Mr Hughes that the Appellant was the owner of the relevant vehicle. 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. To that limited extent, therefore, that part of the appeal is allowed.

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37. We turn to the issue of detention of the vehicle and whether any of the **grounds** on which an application for the **return** of an impounded vehicle as set out in regulation 4(3) of the 2012 Regulations are made out. In summary, we find that they are not.
38. We begin by returning to the revocation decision of 23 June 2021. We do so because the evidential ground on which Mr McNamee submitted that regulation 4(3)(c) of the 2012 Regulations was satisfied, was that Mr Hughes had submitted an appeal against the revocation decision of 23 June 2021 and was advised that he was, accordingly, entitled to continue to operate under the licence for a period of 30 days.
39. In paragraph 2(iv) above, we noted that in the correspondence dated 24 June 2021 which accompanied the revocation decision, Mr Hughes was advised that he was required to return the company's goods vehicle operator's licence and all of the vehicle identity disks by 5 July 2021 and was given a warning about the consequences of a failure to do this. In our view, the starkness of this advice and warning should have alerted Mr Hughes to the significance of the revocation decision for future operating.
40. Further, he was informed of his right to exercise his right of appeal to the Upper Tribunal and was given details of the address in Belfast to send any appeal and was told that the time limit for the making any appeal was one month from 24 June 2021.
41. In paragraphs 35 and 36 of the decision of 23 November 2021, the Head of the TRU made the following observations about the purported right of appeal:

'Dealing with that second point first; the applicant claims that a letter of appeal had been sent to the Upper Tribunal. The day before the hearing a copy of such a letter, dated 02 August 2021, was provided to Transport Regulation Unit in evidence. The hearing clerk helpfully contacted the Clerk of the Upper Tribunal prior to the hearing and it was confirmed in writing that the appeal had not been received. Mr McNamee submitted that the failure, then, was that the applicant had sent the appeal to the incorrect address – being the Tribunal Hearing Centre at the Royal Courts of Justice in Belfast. Had it been sent to London, then the applicant would have been operating lawfully upon the processing of that request to appeal.

There are a number of flaws in this submission. The date of the appeal letter shows that it was out of time and therefore was open to refusal, there is no evidence presented to show it was posted (Post Office tracking reference for example). On the contrary, evidence confirmed it was not received and the Belfast address is the correct address for submitting an appeal. Most importantly, however, is that there is no request for a stay on that letter nor was a separate request for a stay submitted to the Transport Regulation Unit. Beyond all that it requires a decision to grant a stay or a decision to allow an appeal for the operation to continue lawfully. This case is absent of both. I therefore do not accept the suggestion that the issue was down to a failure in submitting an appeal a correct address.'

42. At the oral hearing before the Upper Tribunal, Mr McNamee submitted that the Appellant had made a mistake in writing a letter of appeal against the revocation decision rather than submitting a formal notice of appeal. We do not accept that this would have made any difference. All correspondence which is

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received in the Tribunals Hearing Centre, in whatever state or format, is carefully scrutinised to determine its contents and to what it might relate. If Mr Hughes had indicated any intention to appeal and signalled that it was in relation to a transport matter, then this would have been picked by the administrative staff and properly processed. Further, the correct address for the service of a notice of appeal to the Upper Tribunal in Northern Ireland is to the address in Belfast set out in the correspondence of 24 June 2021.

43. The Head of the TRU was sceptical about the 'letter of appeal' and, in our view, that distrust was justified.
44. Mr McNamee submitted that Mr Hughes was given advice, albeit incorrect advice that he was entitled to continue to operate pending an appeal. Accordingly, this founded the satisfaction of regulation 4(3)(c) of the 2012 Regulations. The Head of the TRU addressed this matter in paragraphs 47 and 48 of his decision, as set out above. In our view, those aspects of his decision are not plainly wrong.
45. 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.



**Kenneth Mullan, Judge of the Upper Tribunal,
7 March 2023**