



Neutral Citation Number: [2026] UKUT 65 (AAC)
Appeal No. UA-2025-001464-T

**IN THE UPPER TRIBUNAL
ADMINISTRATIVE APPEALS CHAMBER**

Terrain Construction Group Limited

Appellant

- v -

Driver and Vehicle Standards Agency

Respondent

Before: Upper Tribunal Judge Citron and Members James and Barker

Hearing date: 5 February 2026
Hearing venue: Birmingham Civil and Family Justice Centre

Representation:

Appellant: by Mr Wayne Butterfield (a manager in the Appellant)
Respondent: by Mr Christian Jowett of counsel

On appeal from:

Decision maker: Traffic Commissioner Mr Dorrington
Vehicle reg: KX67 RZB
Date of hearing: 28 August 2025
Date of decision: 8 September 2025

SUMMARY OF DECISION

100 Transport – Traffic Commissioner Appeals
100.18 Impounding

The Traffic Commissioner refused the Appellant's application for release of a detained vehicle for three alternative reasons, each of which would justify refusal on its own. The Upper Tribunal considered that two of these reasons were not plainly wrong: these were that, on the evidence before him, the Traffic Commissioner was not satisfied either that the Appellant was the lawful owner of the vehicle when it was detained, or that the Appellant did not know that the vehicle was being used without an operator's licence (when it should have had one). The Upper Tribunal found that the Traffic Commissioner had neither erred in law, nor was plainly wrong, in making these factual

findings on the evidence before him. The Upper Tribunal noted that, as the Appellant had chosen not to send a representative to the hearing before the Traffic Commissioner, the Appellant had not been able to give oral evidence, or explain its case, in ways that might perhaps have persuaded the Traffic Commissioner to make different findings on these factual matters; but it was not fair or just to allow the Appellant to do these things at the Upper Tribunal stage. The appeal was dismissed.

Please note the Summary of Decision is included for the convenience of readers. It does not form part of the decision. The Decision and Reasons of the Upper Tribunal follow.

DECISION

The decision of the Upper Tribunal is to **dismiss** the appeal.

Subject matter

Impounding

Appellant choosing not to attend hearing before Traffic Commissioner

Cases referred to

Bradley Fold Travel Ltd & anor v Secretary of State for Transport [2010] EWCA Civ 695

Bolle Materieel BV v DVSA [2016] UKUT 0398 (AAC)

REASONS FOR DECISION

1. In what follows (unless the context otherwise indicates), references to
 - a. “regulations” are to the Goods Vehicles (Enforcement Powers) Regulations 2001 as amended;
 - b. numbers in square brackets are to the numbered paragraphs of the determination of the Traffic Commissioner (“TC”) referred to above.

The determination appealed against

2. This was an appeal to the Upper Tribunal (under regulation 13) against the determination of the TC referred to above, which refused the appellant’s application (under regulation 10) for the return of vehicle KX67 RZB. The vehicle had been detained under regulation 3.
3. The TC refused the appellant’s application, following a hearing, for three (alternative) reasons, any one of which would justify refusal on its own:

- a. the TC had no “jurisdiction”, as the application for the return of the vehicle, in the name of the appellant, was invalid, as it was not signed by a director of the appellant; or, in the alternative
- b. the appellant did not satisfy the TC that it was the lawful owner of the vehicle at the time the vehicle was detained (12 June 2025) (as was required by regulation 10, read with the definition of ‘owner’ in regulation 2); or, in the alternative
- c. the appellant did not satisfy the TC that the regulation 4(3) ground (for return of the detained vehicle) specified in its application, was satisfied; the specified regulation 4(3) ground was (c): that, although at the time the vehicle was detained it was being, or had been, used in contravention of section 2 (*Obligation to hold operator’s licence*) of the Goods Vehicles (Licensing of Operators) Act 1995, the appellant did not know that it was being, or had been, so used.

This appeal to the Upper Tribunal

4. The Upper Tribunal has jurisdiction to hear and determine all matters whether of fact or law for the purpose of the exercise of its functions under an enactment relating to transport. It has the power to make such order as it thinks fit or, in a case where it considers it appropriate, to remit the matter to a TC for rehearing and determination.
5. The Upper Tribunal may not take into consideration any circumstances which did not exist at the time of the determination which is the subject of the appeal.
6. The task for the Upper Tribunal on an appeal is to conclude whether or not, on objective grounds, a different view from that taken by the TC is the right one or (meaning the same thing) whether reason and the law impel the Upper Tribunal to take a different view (*Bradley Fold Travel and anor v Secretary of State for Transport* [2010] EWCA Civ 695 at [40]).
7. On an appeal, like this one, under the regulations, the Upper Tribunal considers the TC’s determination in the light of the rules set out in the regulations; the Upper Tribunal does not, however, have any further, or residual, powers to set aside a decision of the TC by reason of unfairness or disproportionality, as it has been held that the impounding regime set out in the regulations is, itself, a proportionate one (see, for example, the discussion in *Bolle Materieel BV v DVSA* [2016] UKUT 0398 (AAC) at paragraphs 38-39).

The appellant's representation in the Upper Tribunal proceedings

8. This appeal to the Upper Tribunal came by email from Mr Wayne Butterfield using an email address that combined his name with that of the appellant. It contained a document headed *Notice of appeal – regulation 13* which named Terrain Construction Group Ltd as the appellant and Mr Butterfield as the representative. It was signed by Mr Butterfield “for and on behalf of” the appellant. Although in case management directions, the Upper Tribunal had described Mr Butterfield as the appellant, it seems clear that, actually, the appellant is Terrain Construction Group Ltd.
9. Whilst Mr Butterfield was not a director of the appellant at the time of the proceedings, the application to the Upper Tribunal, as well as the earlier correspondence in the bundle, gives the distinct impression that he had authority to act on the appellant's behalf. At the hearing, Mr Butterfield said that the appellant was a small company with one director, and that he was the manager, reporting to the director. In the circumstances, it seemed to us fair and just to regard Mr Butterfield as representing the appellant for the purposes of the Upper Tribunal proceedings.

Discussion of whether the TC's refusal of the appellant's application was wrong

10. To succeed in this appeal, the appellant needed to show that all three of the TC's “alternative” reasons for refusing the appellant's application, were flawed by material legal error or otherwise plainly wrong.
11. We start with the second and third of the TC's reasons (in brief: the appellant was not the lawful owner of the vehicle when it was detained on 12 June 2025; and the appellant knew the vehicle was being used without an operator's licence, when it should have had one). Both of these are essentially findings of fact based on the evidence before the TC. In that regard, it is important to note that no one represented the appellant at the hearing before the TC – and the TC determined that it was fair and just to proceed in the appellant's absence, as the appellant had had notice of the hearing, and had not asked for a postponement. The appellant, in this appeal, did not seek to challenge that decision on the part of the TC (nor do we see any error in it).
12. In other words, this was an appeal to the Upper Tribunal against factual findings by the TC (in the second and third of the TC's “alternative” reasons for deciding matters against the appellant), where the appellant

- a. Had provided written evidence and arguments to the TC, prior to the hearing; but
- b. chose to decline the opportunity, fairly given to it, to send a representative to the oral hearing before the TC to explain the appellant's point of view, give oral evidence on its behalf – and answer questions put
 - i. by the Respondent on the appellant's evidence, and
 - ii. fairly and inquisitorially, by the TC on the appellant's case.

13. Turning now to the TC's detailed reasoning:

- a. as to lawful ownership of the vehicle on 12 June 2025:
 - i. the TC recorded that the written evidence before him was a TruckEast Ltd invoice from November 2022 showing the purchase price outstanding; the TC was not persuaded on this evidence that the price had been paid, and so that the appellant ever became the lawful owner of the vehicle;
 - ii. this reasoning does not seem to us legally flawed, or otherwise plainly wrong;
 - iii. we note that, as part of the Upper Tribunal proceedings, the appellant sent an undated letter from TruckEast Ltd stating that the vehicle was purchased and paid for in full on 15 November 2022; in the circumstances, it does not seem to us fair and just, to admit this new evidence: Mr Butterfield, at the hearing before us, said he had not realised this additional evidence was needed; but by choosing not to attend the hearing before the TC, the appellant was in effect refusing to expose its evidence and arguments to questioning and clarification by the TC; in other words, if the appellant had sent a representative to the TC's hearing, the TC there would have put his concerns about the appellant's evidence, to the representative for its response (and if the TC did not do that, that may have amounted to procedural error); but where a party has chosen not to attend the hearing to explain and, so to speak, "defend", its written evidence and case, it is not, in our view, fair and just for that party, after the decision is given, to introduce the evidence that, if the party had attended the TC's hearing, the party may have realised *was* relevant;

- b. as to knowledge that the vehicle was being used without an operator's licence (when it should have had one):
 - i. it seems to us that the TC engaged carefully with the written evidence provided by the appellant, to the effect that it had left the vehicle with a commercial vehicle trader to sell or return if unsold; per this evidence, the appellant's understanding was that, throughout this arrangement, the vehicle would remain off-road. The TC's reasoning, in essence, was that this evidence raised so many obvious and unexplained questions – who was this commercial trader, how was it that the appellant could leave the situation unresolved for a three-year period – that he was unable, without answers to these questions, to put any significant weight on the appellant's written evidence: see [43];
 - ii. that reasoning was not, in our view, legally flawed or otherwise plainly wrong: by choosing not to attend the TC's hearing, the appellant opted out of having its written evidence tested by the TC (and by the respondent). Having decided that there was no persuasive evidence before him to show that the appellant probably did not know that the vehicle was being used without an operator's licence (when it should have had one), the TC was following the case law (cited at [38]) in deciding that the ground in regulation 4(3)(c) for return of the vehicle could not be made out;
 - iii. we acknowledge that some pieces of further evidence were mentioned by Mr Butterfield at the Upper Tribunal hearing, including that he may not have been in good health for part of the period following (on the appellant's account) its purchasing the vehicle and giving it to a commercial trader to sell or return, back in 2022. To the extent it is relevant, this, like the evidence discussed at a.iii above, is "new" evidence that was not provided to the TC, largely because the appellant chose not to attend the TC's oral hearing – we repeat our observations, above, as to why it would not, in our view, be fair and just to admit such evidence in these proceedings.
14. Having decided that two of the TC's three alternative reasons for refusing the appellant's application show no legal flaw or are otherwise plainly wrong, it is unnecessary for us to consider the third one (application invalid because not signed by a director); suffice it to say that we found this line of the TC's reasoning more difficult.

Conclusion

15. It follows that this appeal falls to be dismissed.

Zachary Citron
Judge of the Upper Tribunal

Stuart James
Craig Barker
Members of the Upper Tribunal

Authorised by the Judge for issue on 9 February 2026