



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

**Appeal No. UA-2023-000411-T  
[2024] UKUT 133 (AAC)**

**ON APPEAL from a DECISION of a TRAFFIC COMMISSIONER for the NORTH  
WEST of ENGLAND TRAFFIC AREA**

**Before:** Mr E Mitchell, Judge of the Upper Tribunal  
Mr S James, Specialist Member of the Upper Tribunal  
Dr P Mann, Specialist Member of the Upper Tribunal

**Appellant:** The lawful owner of the vehicle with registration number  
BL12 AEM

**Respondent:** Driver and Vehicle Standards Agency (DVSA)

**Commissioner's ref:** UOC2062480

**Date of decision:** 23 February 2023

**Representation:** Appellant: did not attend  
Respondent: ABR Solicitors, instructed by the DVSA

**Heard at:** Leeds Employment Tribunal, 4<sup>th</sup> Floor, City Exchange, 11  
Albion Street, Leeds, on 6 October 2023

**DECISION OF THE UPPER TRIBUNAL**

**This appeal is dismissed.**

**Subject matter:** Extension of time (impounding claims); ownership of  
vehicle

**Case law referred to:** *Excel A-Rate Business Services Ltd (2005/471)*

## **REASONS FOR DECISION**

### **Identity of Appellant**

1. We should first explain why the Appellant in this case is described as 'lawful owner of vehicle registration number BL12 AEM'. This appeal concerns detention of that vehicle on 9 February 2023 by officials of the Driver and Vehicle Standards Agency (DVSA), and its subsequent impounding. Mr Lee Rush drafted the application for return of the vehicle in his stated capacity as a director of Scaff-Co Scaffolding Company Leeds. There is no company of that name registered at Companies House, but the register of companies indicates that Mr Lee Rush is a director of companies called Scaff-Co (Scaffolding Company) Ltd and Scaff-Co Scaffolding Contractors Ltd. The correct Appellant is whichever entity or individual is the owner of the vehicle with registration number BL12 AEM. We had intended to clarify the vehicle's ownership at the hearing of this appeal but could not do so because no one attended to represent the Appellant. Whichever company is the owner of the vehicle, we are satisfied that Mr Rush is a director of that company and entitled to act on its behalf.

### **Hearing before the Upper Tribunal**

2. The hearing of this appeal was listed to begin at 10:15 a.m. The DVSA's representative was present but Mr Rush, who informed the Upper Tribunal on 29 September 2023 that he intended to attend the hearing, was not. The clerk made a telephone call to Mr Rush at 10:20 a.m. who answered and informed the clerk that he thought the hearing had been listed for 10:30 a.m. and that he would arrive in "eight minutes or so". Mr Rush had not arrived at the venue by 10:50 a.m. The clerk rang him again but, this time, the call was diverted to an answering service.

3. We invited the DVSA's representative to make representations as to whether the Upper Tribunal should proceed in the absence of Mr Rush or anyone else to act as representative for the Appellant. The DVSA representative argued that we should proceed.

4. Rule 38 of the Tribunal Procedure (Upper Tribunal) Rules 2008 provides as follows:

“If a party fails to attend a hearing, the Upper Tribunal may proceed with the hearing if the Upper Tribunal—

(a) is satisfied that the party has been notified of the hearing or that reasonable steps have been taken to notify the party of the hearing; and

(b) considers that it is in the interests of justice to proceed with the hearing.”

5. We were satisfied that the Appellant (the lawful owner of the vehicle) was duly notified of the hearing. Indeed, Mr Rush informed us on the day of the hearing that he was on his way to the venue, but he did not appear. We also considered it in the interests of justice to proceed in the absence of a representative for the Appellant. Given the information from Mr Rush conveyed to us on the day of the hearing, we found it was more likely than not that Mr Rush would again fail to attend if we adjourned the hearing. The hearing began in Mr Rush’s absence at approximately 11 a.m.

6. We note that the judge remained at the venue on the day of the hearing until approximately 4:30 p.m., by which point Mr Rush had not attended, and, since then, Mr Rush has not contacted the Upper Tribunal to request a new hearing date.

### **Traffic Commissioner’s decision**

7. On 9 January 2023, a DVSA traffic examiner observed an Iveco two-axle flatbed lorry, registration BL12 AEM (hereafter “the vehicle”), enter a roadside checkpoint. The examiner observed that the vehicle displayed no operator’s licence disc. The examiner’s subsequent written statement said:

“The Driver indicated that he was employed by Scaff-Co Ltd, Unit 17 Thorpe Hill Farm, Wakefield WF3 3BX and that the vehicle was being used by this entity and he was acting on his employers behalf.

...I noted that there was no operator licence disc displayed in the vehicle and when questioned about this [the driver] was unsure if the operator held such a licence. I made enquiries using the search application but could find no operator licence issued to Scaff Co Ltd. I informed the driver of this who telephoned his employer and spoke with a person named John Dolan. Mr Dolan stated he would send the operator licence details across.”

8. During the driver's formal interview with the examiner, he said that the vehicle's owner was 'Scaff Co'.

9. The examiner's statement went on to record that Scaff Co (Scaffolding Company) Ltd applied for a restricted operator's licence on 27 October 2021 but withdrew the application on 18 May 2022. On 24 May 2022, the DVSA had written to Scaff Co (Scaffolding Company) Ltd in the following terms:

"...I must warn you that where an authorised person (DVSA examiner) has reason to believe that a vehicle is being used on a road in contravention of Section 2 of the Goods Vehicle (Licensing of Operators) Act 1995 the examiner may detain and immobilise the vehicle and its contents indefinitely..."

10. The letter of 24 May 2022 was sent to Scaff-Co (Scaffolding Company) Ltd at Unit 17, Thorpe Hill Farm. That was the same address given by the driver to the DVSA examiner on 9 January 2023.

11. CIE records for the vehicle specified "SCAFF CO" as responsible for the vehicle.

12. On 9 January 2023, the DVSA detained and impounded the vehicle. On 10 January 2023, the DVSA wrote to Scaff Co Ltd, as owner of the vehicle, at the address provided by the driver to inform it that the vehicle had been detained. The letter also referred to a statutory notice to be published in the London Gazette that any claim for return of the vehicle had to be made to the Office of the Transport Commissioner (OTC) on or before 3 February 2023 failing which the DVSA would be entitled to dispose of the vehicle.

13. On 13 January 2013, a notice was published in the London Gazette which stated that any person having a claim to the vehicle was required to establish their claim, by writing to a specified address, on or before 3 February 2023.

14. On 10 February 2023, the OTC informed the DVSA in writing that no application had been made for return of the vehicle and that the Traffic Commissioner authorised disposal of the vehicle.

15. On 13 February 2013, a Robert Knowles contacted the DVSA claiming to be a director of Scaff Co Ltd although this was not confirmed by Companies House records. Mr Knowles said that he had not received the DVSA's notification letter and "the company are not at the address the letter was sent to". The case papers do not explain how Mr Knowles came to learn that the vehicle had been impounded. On that same date, Mr Lee Rush informed the DVSA that Mr Knowles had authority to act and provided what he said was the correct company correspondence address. The DVSA official informed Mr Knowles:

"I have copied the Office of the Traffic Commissioner in so they can advise you if you are able to submit a late appeal for return of the vehicle."

16. On 22 February 2023, Mr Knowles submitted an application for return of the vehicle. The application stated that the vehicle was owned by Scaff-Co Scaffolding Company Leeds the "director/owner" of which was Mr Lee Rush. The application requested a hearing before the Traffic Commissioner and was made on the ground that "I did not know that [the vehicle] was being, or had been, used in contravention of section 2 of the 1995 Act". The application went on:

"I was under the impression that we could move our own goods without a operator licence because it's not for hire or reward. We was not charging people for transport or a haulage contractor...I just made a genuine mistake about the transport rules..."

I am replying late through no fault off has [sic] DVSA has made a genuine mistake also and sent the letters to a company with a similar name which has been closed down has [sic] the owner passed away and the address is not our company."

17. On 23 February 2023, the Traffic Commissioner refused to grant an extension of time for applying for return of the vehicle, giving the following reasons for doing so:

"The driver of the vehicle at the time of the impounding gave the operator's name and address as Scaff-Co Ltd of Unit 17 Thorpe Hill Farm, Wakefield.

The notice to the owner required by Regulation 9 was then sent to that address.

The claimant that has subsequently been identified is “Scaff-Co Scaffolding Company Leeds”. That company has confirmed it used Unit 17 as its operating centre. The claimant company said it left that address some time ago. There is no such entity registered with Companies House but the director Lee Rush is the director of two companies named Scaff-Co (Scaffolding Company) Ltd and Scaff-Co Scaffolding Contractors Ltd.

I do not consider the initial notification can be said to have been sent to the “wrong address”.

Regulation 22 requires the notice to be sent to the “proper address” of the owner. “Proper” address is not further defined but I consider that should be the address that the DVSA understand to be the address of the owner at the time of sending. In this case that was the owner as named by the driver with the address he provided. Regulation 22 only requires service on the registered address of a company if no alternative address for service has been provided.

The entity named by the driver has subsequently transpired to be incorrect. There is no such entity on the Companies House register. There are several companies named with a variation of “ScaffCo” including the two companies named above. It would be unreasonable to have expected DVSA to have speculated which of those companies (If any) was the owner.

I consider the DVSA acted reasonably on the information it had available to it when sending the notice to the entity and address as provided by the driver. I consider that it has complied with the requirement of Regulation 9. That includes complying with the safeguard of a public notification in the Gazette.

I have also taken into account the claimant’s conduct since the impounding. The claimant confirms that it was aware of the impounding almost immediately. It expected a letter to be sent to it so no action was taken at that point.

The claimant was clearly aware of the formal position by 13 February 2023 but did not submit its claim for a further 9 days. There is no explanation for that further delay and the opportunity has not been taken to provide any supporting evidence for its claim.

I consider the claim is defective as the claimant's name is given on the GV500 as Scaff-Co Scaffolding Company Leeds. No such entity is registered at Companies House and the claimant has failed to answer the express question in the form about the type of entity. Elsewhere in the form, the claimant is named as "Scaff-Co".

As a final point, I note that most of the correspondence in this matter has been sent by a Robert Knowles who does not appear to be a statutory director. Mr Rush's involvement has been limited to signing the GV500 form.

...I have a discretion to accept applications out of time if I consider that would be fair and just.

I have also considered the approach of the Transport Tribunal in EXCEL A-RATE BUSINESS SERVICES Ltd 2005/471. The position of the claimant in that case can be distinguished from this claimant as the former was not aware of the impounding until some time after the event. The Tribunal observed:

"They had no obvious means of discovering that the trailer had been impounded unless the leasee told them or they happened to see the notice in the London Gazette. It seems to us that it is only realistic to expect an owner to search the London Gazette once he or she is aware that a vehicle has been impounded..."

In this case, the claimant was aware of the impounding almost immediately. I consider it is realistic therefore to have expected it to have searched the Gazette for notification, even if the letter had not been received.

The Transport Tribunal in Excel A-Rate suggested two questions should be asked when considering an out of time application:

- (a) the explanation for the delay? and
- (b) the merits of the application.

The Tribunal added:

“A convincing explanation for the delay could justify receipt of a late application even if the merits did not appear to be strong. Where the merits do appear to be strong that factor alone may justify receiving a late application. The general rule should be to endeavour to decide these applications on their merits and not on pure technicalities.”

I do not consider that a convincing explanation has been put forward for the delay in this case. I do not accept the explanation for not presenting the case within 21 days for the reasons given above. In any event, the claimant has not provided any explanation for the further delay in submitting the application from 13 February 2023.

I also do not consider the merits of this application to be strong. There appears to be considerable confusion as to the precise identity of the entity that was operating the vehicle. It seems the driver had not been clearly instructed on who he was working for and even Mr Rush himself appears to be unclear on the identity of the entity which is making this claim.

For those reasons, I do not consider it is disproportionate to refuse to apply my discretion to accept the application out of time.”

## **Legal framework**

18. Section 2(1) of the Goods Vehicles (Licensing of Operators) Act 1995 (“1995 Act”) provides as follows:

“(1)...no person shall 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 him,

except under a licence issued under this Act...”.

19. Regulation 3(1) of the Goods Vehicles (Enforcement Powers) Regulations 2001 (“2001 Regulations”) permits an authorised person, such as a DVSA vehicle examiner, to detain a vehicle if the person “has reason to believe that a vehicle is being, or has been, used on a road in contravention of section 2 of the 1995 Act”.

20. The grounds for return of a vehicle detained under regulation 3 include:



“although at the time the vehicle was detained it was being, or had been, used in contravention of section 2 of the 1995 Act, the owner did not know that it was being, or had been, so used” (regulation 4(3)(c)).

21. Where a vehicle has been detained in accordance with regulation 3, regulation 9(1) of the 2001 Regulations requires the authorised person, if the vehicle was detained in England or Wales, to publish a notice in the London Gazette. The required contents of the notice include the statement that, “if no-one establishes within the period specified in the notice that he is entitled to the return of the vehicle, the authorised person intends to dispose of it after the expiry of that period in accordance with regulation 15” (regulation 9(1)(a)(iii)).

22. The authorised person must also, not less than 21 days before the expiry of the period given in the published notice, serve a copy of the notice on “the owner” of the vehicle (regulation 9(1)(b)(i)). The period specified in the published notice must be a minimum of 21 days, beginning with the date of publication” or “if later, a copy of the notice is served under regulation 9(1)(b)” (regulation 9(2)).

23. “Owner” is defined by regulation 2:

““owner” means, in relation to a vehicle...which has been detained in accordance with regulation 3 –

(a) in the case of a vehicle...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);

...(c) in the case of any other vehicle...the person who can show to the satisfaction of an authorised person that he was at the time of its detention the lawful owner.”

24. Regulation 22 deals with the giving of notice for the purposes of the 2001 Regulations:

“(1) Any notice...under these Regulations may be served by post (or in such other form as is agreed between the person to be served and the person serving the notice).

(2) Subject to paragraph (1), any such document shall be regarded as having been served on that party if it is—

- (a) delivered to him;
- (b) left at his proper address;
- (c) sent by post to him at that address;
- ...

(6) If no address for service has been specified, the proper address for the purposes of these Regulations and of section 7 of the Interpretation Act 1978 shall be—

(a) in the case of an individual, his usual or last known address;

...(c) in the case of an incorporated or unincorporated body, the registered or principal office of the body.”

25. Regulation 10(1) permits the owner of a vehicle detained in accordance with regulation 3, within the period specified in regulation 9(2), to apply to a traffic commissioner for the return of the vehicle. Regulation 10(3) adds that an application under regulation 10(1) “shall be served before the expiry of the period specified in regulation 9(2)”. However, these time limits are subject to regulation 23 (regulation 10(5)).

26. Regulation 23 provides for extensions of time, as follows:

“(1) Where a traffic commissioner considers it to be necessary in order for a particular case to be dealt with fairly and justly, the traffic commissioner may extend any of the periods described in paragraph (3).

(2) A period described in paragraph (3) may only be extended for such period as the traffic commissioner considers appropriate in the circumstances of the case.

(3) The periods are those referred to in—

(a) regulation 10...”.

### **Grounds of appeal**

27. The Appellant’s notice of appeal to the Upper Tribunal was drafted by Mr Rush. It argued:

“We want to appeal because the letters and post was sent to the wrong company and wrong address. The company that the letters was sent to was a closed down company at a different address.”

## **Conclusions**

28. The notice requirements of the 2001 Regulations may be satisfied without service of the notice required by regulation 9(1)(b) on the actual lawful owner of a detained vehicle. This is due to the interaction of the 2001 Regulations’ definition of ‘owner’ and the Regulations’ notice requirements.

29. The 2001 Regulations’ definition of ‘owner’, rather than simply referring to a vehicle’s lawful owner, refers to “the person who can show to the satisfaction of an authorised person [DVSA official] that he was at the time of its detention the lawful owner”. If a person satisfies a DVSA examiner that, at the time of a vehicle’s detention, he was its lawful owner then, for the purposes of the Regulations, he is the owner. This does not mean the person is necessarily the lawful owner, in fact, because the Regulations do not declare ownership.

30. The undisputed facts of this case include:

- the driver of the vehicle informed the DVSA vehicle examiner on 9 January 2023 that it was owned by Scaff-Co Ltd of Unit 17 Thorpe Hill Farm, Wakefield;
- on 9 January 2023, the driver telephoned a representative of his employer, Mr Dolan, who promised to ‘send the operator licence details across’. No such details were received, no doubt because they were none;
- the DVSA examiner, as part of his inquiries, discovered that Scaff Co (Scaffolding Company) Ltd applied for, but then on 18 May 2022 withdrew, an application for a restricted operator’s licence. That company’s correspondence address, which it must have provided to the OTC and/or the DVSA in connection with its licence application, was exactly the same as the address given by the driver to the vehicle examiner for the owner of the vehicle.

31. All of the above events occurred before the DVSA gave the notice required by regulation 9(1)(b) of the 2001 Regulations. It seems to us quite clear that it was shown to the DVSA vehicle examiner’s satisfaction that the owner of the vehicle was Scaff Co (Scaffolding Company) Ltd. It cannot be said that the DVSA vehicle examiner acted irrationally when he determined that it had been shown to his

satisfaction that Scaff Co (Scaffolding Company) Ltd was the owner of the detained vehicle. That meant, for the purposes of the notification requirements of the 2001 Regulations, Scaff Co (Scaffolding Company) Ltd was the owner of the detained vehicle. On the information available to the DVSA, it was right to proceed on the basis that the “registered or principal office”, as referred to in the definition of ‘proper address’ in regulation 22(6)(c), of the owner was Unit 17 Thorpe Hill Farm. The DVSA examiner had been told by the driver that that was the owner’s address and it matched the address provided by Scaff Co (Scaffolding Company) Ltd on its recent application for a restricted operator’s licence. We are satisfied that, in this case, the notice requirements of regulation 9(1)(b) were properly complied with.

32. The 2001 Regulations’ definition of ‘owner’ creates the possibility that, as Mr Rush says happened here, the notice required by regulation 9(1)(b) might not be served on the actual lawful owner of a detained vehicle. The potential injustice that may result is probably one reason why regulation 23 confers power on a Traffic Commissioner to extend time for making an application for return of a detained vehicle.

33. We now turn to the key issue on this appeal, which is whether the Traffic Commissioner erred in law or fact when he refused to exercise his discretion to admit a late application for return of the detained vehicle.

34. We are satisfied that the Commissioner correctly understood the relevant facts when considering whether to exercise his discretion to admit a late claim for return of the vehicle. Indeed, it is not argued that he misunderstood the relevant facts.

35. We are also satisfied that the Commissioner’s refusal to admit the Appellant’s late application was free of any error of law. The Commissioner correctly directed himself in accordance with the Transport Tribunal’s decision in *Excel A-Rate Business Services Ltd* (2005/471). We agree with the Commissioner that the merits of the claim for return of the vehicle were weak. Mr Rush said he was “under the impression that we could move our own goods without a operator licence because it’s not for hire or reward”. In other words, he claimed not to have known that the prohibition on an unlicensed operator using a goods vehicle on a road for the carriage of goods also applied to use of a vehicle “in connection with any trade or business” (see section 2(1)(b) of the 1995 Act). Mr Rush did not argue that the vehicle had been used without his knowledge as director of the company which owned the vehicle. It is the responsibility of the owner of a goods vehicle to acquaint itself with the legislation concerning the lawful use of such a vehicle. Since a

company of which Mr Rush was a director had recently applied for a restricted operator's licence under the 1995 Act, the Traffic Commissioner was bound to approach Mr Rush's argument with some scepticism. We also agree with the Commissioner's findings that the explanation given for the delay in making a claim was not persuasive. The lawful owner of the vehicle knew it had been detained on 9 January 2023, given the driver's contact that day with his employer whom the driver also told the examiner was the vehicle's owner. Despite that, the owner did nothing until 13 February 2023 on which date its representative informed the DVSA that their regulation 9 notice had been sent to the wrong address. Even then, the owner waited more than a week before submitting a late claim for the vehicle's return. We agree with the Commissioner that the owner's explanation, such as it was, provided a weak justification for the delay.

36. Since we can identify no error of law or fact in the Commissioner's refusal to exercise his discretion to accept the late application for return of the vehicle, we must dismiss this appeal.

37. Finally, we apologise for the delay in giving this decision. Initially, due to an administrative oversight this case was not marked on the Upper Tribunal's case management system as ready for decision. And, subsequently, the judge was absent from duties while recovering from injuries sustained in an accident.

**Authorised for issue by the Upper  
Tribunal panel on 9 May 2024.**

Regulation 13(1) of the Goods  
Vehicles (Enforcement Powers)  
Regulations 2001.