



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

**Appeal No. UA-2022-000589-NT**

**ON APPEAL from the DECISION of the DEPARTMENT FOR INFRASTRUCTURE, for Northern Ireland**

**Before:** Ms. L.J Clough: Deputy Judge of the Upper Tribunal  
Mr R Fry: Member of the Upper Tribunal  
Mr M Smith, JP: Member of the Upper Tribunal

**Appellant:** Bulk Tranz Haulage Ltd, Bulgaria

**Reference No:** 15DET042

**Heard at:** Royal Courts of Justice, Belfast

**On:** 15 November 2022

**Date of Decision under Appeal:** 12 April 2022

**DECISION OF THE UPPER TRIBUNAL**

**THE APPEAL IS DISMISSED**

**Subject matter:**

Impounding of vehicle and trailer. Grounds for detention. Ownership. EU exemptions.

**Cases referred to**

*Fergal Hughes v DOENI & Perry McKee Homes Ltd v DOENI* [2013] UKUT 618 AAC NT/2013/52 & 53; *Bradley Fold Travel Ltd & Anor v Secretary of State for Transport* [2010] EWCA Civ 695. *Clarke v Edinburgh & District Tramways Co Ltd* [1919] UKHL 303; (1919) SC (HL) 35; 56 SLR 303. *Nolan Transport v VOSA & Secretary of State for Transport* (T/2011/60). *Romantiek Transport BVBA & Others v VOSA* [2008] EWCA Civ 534

## **REASONS FOR DECISION**

1. This is an appeal to the Upper Tribunal brought by Bulk Tranz Haulage Ltd (“the Appellant”), against a decision of the Presiding Officer of the Transport Regulation Unit (“the TRU”) on behalf of the Department for Infrastructure for Northern Ireland (“the DfI”). The decision, dated 12 April 2022, was to refuse an application for return of vehicle (registration B4516BM) and trailer (registration NI/062622/05), and for them to be disposed of accordingly.

2. The appeal was considered at an oral hearing, at the Tribunal Hearing Centre within the Royal Courts of Justice, Belfast, on 15 November 2022. The Appellant Company Director, Mr Mark Lyons, was in attendance with his legal representative, Mr I. Beeby, BL. The Respondent was represented by Ms A. Jones, BL.

### **Background facts**

3. A right-hand drive Scania articulated goods vehicle, registration B4516BM (“the vehicle”) together with a loaded trailer, ID number NI/062622/05 (“the trailer”) was seen by PSNI Detective Constable Quinn on Dargan Road, Belfast at approximately 1.58pm on 9 January 2022. Both the vehicle and trailer were branded with the name of “Lyons”. The vehicle and trailer were stopped and escorted to the DVA weighbridge at Garmoyle Street, Belfast for an examination to take place.

4. Driver and Vehicle Agency (“DVA”) Enforcement Officer Lee Rutherford carried out checks on the vehicle. The driver identified himself as Thomas Taggart with a Northern Ireland (NI) address. He stated that his employer was “Bulk Tranz” from Bulgaria for whom he had recently started employment. He explained that this was his first trip for “Bulk Tranz”, stating that his load had been collected from near St. Helen’s in England and was to be delivered to Portadown, NI on behalf of the load owner, Amazon. A CMR document (consignment note) was produced which confirmed these collection and delivery addresses, but the carrier was noted on the CMR, as “Derrys Ltd”. The driver was unable to produce his CPC qualification card and could only produce his tachograph charts for one day out of the previous 28 days.

5. The Enforcement Officer requested a certified copy of the operator's licence under which the Bulgarian registered vehicle was permitted to operate, in accordance with the requirements of the Goods Vehicle (Licencing of Operators) (Northern Ireland) Act 2010 ("the 2010 Act"). The driver produced what appeared to be a valid Community Authorisation Certificate from the Bulgarian authorities, showing a perforated number of 300173, in accordance with Article 4(3) of Regulation (EC) 1072/2009. Checks carried out on the Bulgarian digital database, and later through the Bulgarian Authorities, confirmed the document to be a certified true copy of a Bulgarian issued Community Licence in the name of "Bulk Tranz Haulage Ltd", authorising the right to perform international carriage of goods. The Director of Bulk Tranz Haulage Ltd was recorded as Jonathan Mark Lyons ("Mark Lyons"). The vehicle in question was not listed on the Bulgarian Community Licence. It was recorded in Bulgaria as the property of "MJL Ltd", a company with the same Director, Mark Lyons. The Enforcement Officer requested documentation confirming proof of incoming international carriage, but the driver was only able to produce documentation of a load travelling from within the UK as outlined above (the CMR/consignment note). Enquiries showed that at the time the vehicle was stopped, it had no valid motor vehicle inspection safety check in Bulgaria, no valid road worthiness certificate in NI and was not taxed in Bulgaria.

6. The vehicle was detained under the 2010 Act and the Goods Vehicle (Enforcement Powers) Regulations (NI) 2012 ("the 2012 Regulations") as the driver had failed to satisfy the Enforcement Officer as to the user of the vehicle, that the user held a valid operator's licence, and that the vehicle was being used in compliance with the legislation. In addition, there was no evidence of an incoming international load (consistent with the requirements of a lawful cabotage arrangement).

7. The following day, the Enforcement Officer spoke to Ms Keera Derry of Derrys Ltd, the company name on the CMR/consignment note. Derry's Ltd is a contractor company through whom many NI haulage firms obtain work. Ms Derry confirmed that the company had sub-contracted work to Mark Lyons, communicating via WhatsApp, and allocating the work to a company she identified as "Bulk Tranz Haulage Ltd" with an address in Sophia, Bulgaria. She stated that this was the first load that had been subcontracted to this company. She

confirmed that Derry's Ltd was a licenced operator in NI but that it did not carry out checks on the companies they sub-contracted to. She declined to assist the DVA further.

8. A detention hearing was arranged to take place virtually on 31 March 2022. Bulk Tranz Haulage Ltd applied for return of the vehicle and trailer. The Director of the applicant company, Mark Lyons, was unable to participate fully in the hearing due to connection issues, therefore the hearing was adjourned to 4 April 2022, again virtually. In attendance at both virtual hearings were: Mr Mark Lyons, Director of the applicant company; Mr I. Beeby, Counsel for the applicant company; Ms A. Jones, Counsel on behalf of the DVA; Mr M. Wills, authorised examiner and Acting Head of Enforcement from the DVA; Mr L. Rutherford, Vehicle Examiner from the DVA; and a clerk from the TRU. Considering the evidence and submissions made during the substantive hearing on 4 April 2022, the Presiding Officer allowed additional time (until 4pm on 8 April 2022), for the Applicant company to produce further evidence in support of its claims as to ownership of the vehicle and trailer.

### **The DfI's decision under appeal**

9. Following the detention hearings, Presiding Officer Jones, on behalf of the Department for Infrastructure, prepared a written decision dated 12 April 2022. The Presiding Officer determined that the Applicant, Bulk Tranz Haulage Ltd, was the owner of the vehicle (registration B4516BM) at the point of detention. In respect of the vehicle, he determined that its journey did not commence in Bulgaria, that the driver did not have a valid CPC certificate, that the vehicle was not authorised on the Bulgarian licence held by the Applicant operator, and it was not authorised on an NI/UK Operator's Licence. As a result, the application for return of the vehicle was refused as it was found to be used in contravention of section 1 of the 2010 Act.

10. The Presiding Officer was not satisfied on the balance of probabilities that the Applicant company Bulk Tranz Haulage Ltd, was the owner of the trailer (ID number NI/062622/05). As only the owner of a vehicle/trailer can secure its return, the application for return of the trailer was also refused. Both the vehicle and trailer were ordered to be disposed of.

## **The appeal**

11. The Appellant lodged an appeal against the decision of the DfI with the Upper Tribunal on an official appeal form which was signed and dated on 1 November 2022. The Appellant cited grounds of appeal as follows:

*“1. The DPO fell into error of law in respect of the enforceability of the Treaty series No8 (2021); the Trade and Cooperation Agreement between the United Kingdom of Great Britain and Northern Ireland (“the TCA”); and specifically, Article 462 of the TCA.*

*2. The DPO was plainly wrong to find, as he did, that the applicant had failed to prove ownership of the trailer, that being condition precedent to any application for its return.”*

12. Prior to the date of the appeal hearing before the Upper Tribunal, the Appellant submitted a skeleton argument which cited the same grounds of appeal. In respect of ground 1 noted above, the Appellant’s case is that Article 462 of the TCA, which was relied upon by the Presiding Officer in making his decision, has not been given effect in Northern Ireland and therefore it cannot be relied upon to continue the detention of the vehicle and trailer. In respect of ground 2 noted above, the Appellant’s case is that it was unreasonable, given the evidence in the case, for the Presiding Officer to find that the Appellant company was not the owner of the trailer.

## **The Approach of the Upper Tribunal**

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

*“There is a right of appeal to the Upper Tribunal against decisions by the Head of the TRU in the circumstances set out in s. 35 of the 2010 Act. Leave to appeal is not*

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

14. At paragraph 4, the Upper Tribunal stated:

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

15. The task of the Upper Tribunal, therefore, when considering an appeal from a decision of the DfI in Northern Ireland, is to review the information which was before the Department, along with its decision based on that information. The Upper Tribunal will only allow an appeal

if the appellant has shown that “the process of reasoning and the application of the relevant law require the tribunal to take a different view” (*Bradley Fold Travel Limited and Peter Wright v. Secretary of State for Transport* [2010] EWCA Civ 695, [2011] R.T.R. 13, at paragraphs 30-40). Therefore the approach of the Upper Tribunal is as stated by Lord Shaw of Dunfermline in *Clarke v Edinburgh & District Tramways Co Ltd* 1919 SC (HL) 35, 36-37, that an appellate court should only intervene if it is satisfied that the judge (in this case, the decision of the Presiding Officer on behalf of the DfI) was “plainly wrong”.

## **Legislation**

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

### ***“Operators’ licences***

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

*(a) for hire or reward, or*

*(b) for or in connection with any trade or business carried on by that person,*

*except under a licence issued under this Act; and in this Act such a licence is referred to as an “operator’s licence”.*

*(2) Subsection (1) does not apply to-*

*(a) the use of a small goods vehicle;*

*(b)...*

*(c) the use of a goods vehicle for international carriage by a haulier established in Great Britain and not established in Northern Ireland; or*

*(d) the use if a vehicle of any class specified in Regulations.*

*(2A) A class of vehicles that may be specified in regulations under subsection (2)(d) includes goods vehicles used for international carriage by a haulier established in a Member State.*

*(3)...*

*(4) In subsection (2)(c) and (2A), “established”, “haulier” and “international carriage” have the same meaning as in Regulation (EC) No 1072/2009 on common rules for access to the international road haulage market.*

*(5)...*

17. Schedule 2 of the 2010 Act states that Regulations will provide for the detention of vehicles used without an operator’s licence under s.1 of the 2010 Act. Regulation 3 of the Goods Vehicles (Enforcement Powers) Regulations (Northern Ireland) 2012 (the “2012 Regulations”) provides for the penalty where a vehicle is used in contravention of s.1 of the 2010 Act:

***“Detention of Property***

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

18. Regulation 9 of the 2012 Regulations, states that the “owner” of a vehicle detained under Regulation 3 may apply for the return of the vehicle, within the period specified in Regulation 8(2), namely 21 days from the publication of the notice of detention in the Belfast Gazette. Regulation 2 of the 2012 Regulations defines an “owner”:

*2. “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.”*

19. The grounds on which an “owner” may make an application for the return of a detained vehicle, are set out in Regulation 4 of the 2012 Regulations as follows:

***“Release of Detained Vehicles***

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

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

*(3) The grounds are that—*

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

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

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

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

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

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

20. In *Nolan Transport v VOSA & Secretary of State for Transport* (T/2011/60) at paragraph 90, the Upper Tribunal summarised the process for the right to detain and apply for the return of a vehicle in Great Britain, and the same scheme applies in Northern Ireland:

*“90. Three points need to be stressed at this stage. First it is for VOSA [the DVA in NI] 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 [s.1 of the 2010 Act in NI]. The standard of proof required is the balance of probability... Second, once VOSA*

*[DVA] have established they had the right to detain a vehicle it is for the owner to prove ownership of the vehicle of 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 [Regulation 4 of the 2012 Regulations in NI], as amended, has been established.*

**Ground of appeal 1 – Lawful detention and The Trade and Cooperation Agreement (“the TCA”)**

21. Ordinarily, the first issue to be determined by the Presiding Officer in a detention case such as this, is the question of whether the vehicle was being used on a road in contravention of s.1 of the 2010 Act thus authorising its detention. The burden of proof rests on the DVA to establish this on the balance of probabilities (*Nolan Transport v VOSA & Secretary of State for Transport* (T/2011/60)). The Appellant submits that the Presiding Officer fell into error of law by enforcing the provisions of the TCA in this case, and therefore detention of both vehicle and trailer was erroneous also.

22. There was much legal argument regarding the wording and interpretation of Article 462 of the TCA at the detention hearing and therefore much reliance placed upon it in the Presiding Officer’s decision of 12 April 2022. For the avoidance of doubt, Article 462 states as follows:

“ARTICLE 462

***Transport of Goods between, through and within the territories of the Parties***

1. *Provided that the conditions in paragraph 2 are fulfilled, road haulage operators of a Party may undertake:*
  - 1(a) *laden journeys with a vehicle, from the territory of the Party of establishment to the territory of the other party, and vice versa, with or without transit through the territory of a third country;*

*2(b) laden journeys with a vehicle from the territory of the Party of establishment to the territory of the same Party with transit through the territory of the other Party;*

*3(c) laden journeys with a vehicle to or from the territory of the Party of establishment with transit through the territory of the other Party;*

*4(d) unladen journeys with a vehicle in conjunction with the journeys referred to in points (a), (b) and (c).*

2. *Road haulage operators of a Party may only undertake a journey referred to in paragraph 1 if:
  - a. *They hold a valid licence issued in accordance with Article 463, except in the cases referred to in Article 464; and*
  - b. *The journey is carried out by drivers who hold a Certificate of Professional Competence in accordance with Article 465(1).**

23. The Presiding Officer determined that compliance with the TCA was mandatory. He determined that the vehicle's lack of travel from Bulgaria, the territory of purported establishment, rendered the vehicle and trailer's laden journey in breach of the provisions of Article 462, therefore the vehicle was liable to detention (paragraph 38 of the Presiding Officer's decision dated 12 April 2022). The Appellant's case on appeal, is that although the vehicle's journey was in breach of Article 462 of the TCA, as it should have commenced in Bulgaria for the TCA to apply, the TCA has not been given effect in the law of Northern Ireland, therefore the Presiding Officer was in error of law to rely upon the TCA to detain the vehicle and trailer. It is also submitted that the Appellant was not using the vehicle and trailer in contravention of the 2010 Act, which would otherwise provide authority to detain, as it was an exempted vehicle by virtue of it being used by a haulier based in an EU country (see paragraphs 17-19 of the Appellant's Skeleton Argument dated 1 November 2022).

24. In more detail, the Appellant submits that the 2010 Act does not apply to this vehicle and trailer by virtue of the Goods Vehicle (Licencing of Operators) (Exemption) Regulations (Northern Ireland) 2012 ("the Exm Regulations") which states, at Regulation 4:

***Exemption from requirement to hold an Operator's Licence***

***4. The provisions of section 1(1) of the 2010 Act shall not apply to the use of vehicles of any class as set out in the Schedule.***

25. The Schedule to the Exm Regulations sets out the vehicle use for which an operator's licence is not required. The Appellant company relies upon Paragraph 22A of the Schedule (inserted by (31.12.2020) by The Licensing of Operators and International Road Haulage (Amendment etc.) (EU Exit) Regulations 2019 (S.I. 2019/708)), which states that an operator's licence is not required for:

*“22A. A goods vehicle used for international haulage by a haulier established in a member State who holds a Community licence issued under Article 4 of Regulation (EC) No 1072/2009 of the European Parliament and of the Council of 21 October 2009 on common rules for access to the international road haulage market as it has effect in EU law as amended from time to time.”*

26. The Appellant also submits that Paragraph 23 of the Schedule to the Exm Regulations (inserted by The Licensing of Operators and International Road Haulage (Amendment etc.) (EU Exit) Regulations 2019 (S.I. 2019/708)) applies in the alternative. This provides that an operator's licence is not required for:

*23. A vehicle which is being used to carry out a cabotage operation consisting of national carriage for hire or reward on a temporary basis in the United Kingdom in accordance with the provisions of Regulation (EC) No.1072/2009 of the European Parliament and of the Council of 21 October 2009 on common rules for access to the international road haulage market.*

27. The Appellant submits that either/both Paragraphs in the Schedule to the Exm Regulations applies on the basis that the Presiding Officer found that the Appellant company is registered in Bulgaria, a Member State of the European Union. It is submitted that the application of these provisions means that the TRU does not have jurisdiction to detain either the vehicle or the trailer as they were on a journey which exempts them from the requirements of the 2010 Act.

*Discussion*

28. It is settled law, as is the position in this case, that a person must not use a goods vehicle on a road in Northern Ireland, for the carriage of goods for hire or reward, or in connection with any trade or business of that person, without an operator's licence (s.1 of the 2010 Act). As is submitted by the Appellant, the Exm Regulations apply to take several specified types/uses of vehicle out of the scope of the 2010 Act, thus no operator's licence is required in such a situation.

29. For paragraph 22A of the Schedule to the Exm Regulations to apply to exempt a vehicle from s.1 of the 2010 Act, several elements must be satisfied: the vehicle must be a goods vehicle; it must be used for international haulage; it must be used by a haulier established in a Member State; and the haulier must hold a Community Licence issued under Article 4 of Regulation (EC) No 1072/2009. It is clear that the vehicle in question is a goods vehicle and it is agreed that the haulier has a Community Licence issued in Bulgaria which is compliant with Article 4 of Regulation (EC) No 1072/2009. The remaining questions are whether the vehicle was being used for international haulage and whether it was being used by a haulier established in a Member State.

30. It is an agreed fact that the vehicle's journey involved locations within Northern Ireland, Ireland, England and Scotland. It was an agreed fact that the journey was for hire or reward, and it was also agreed that the vehicle had never been to Bulgaria. The Appellant submits that this is an international journey which meets the requirements of paragraph 22A. Arguably this is correct by virtue of the vehicle having moved through Ireland, an EU member state.

31. Regarding whether the haulier is established in a Member State of the EU, the Presiding Officer determined that the Appellant company was in fact established in Northern Ireland. This finding was on the basis that; the driver of the vehicle is resident and based in

Northern Ireland; there was no evidence of the vehicle having driven to Bulgaria, or travelling to/from, or staying in, an operating centre in Bulgaria; there was no evidence of any laden journey from Bulgaria; the vehicle is right-hand drive with lights that were configured for right-hand drive in the UK (rather than for left-hand drive on the continent); the trailer is registered in Northern Ireland; the load at the date of detention was being transported within the UK; and there was no evidence of the load taking part in an overseas international journey (see Paragraph 33 of the Presiding Officer's Decision). We note also that the Director of the company purporting to own and use the vehicle, Bulk Tranz Haulage Ltd, is also from Northern Ireland. It is indeed the case that the Presiding Officer agreed that the Appellant company was registered in Bulgaria, a member state of the EU, and that the Appellant company holds a Bulgarian Community Licence to conduct haulage operations. These limited findings of fact on their own cannot demonstrate on the balance of probabilities that the Appellant company is a haulage company which is established in a Member State. The vehicle was not listed on the Community Licence, it is not taxed or road tested in Bulgaria, and there was no other evidence linking the company or vehicle to Bulgaria.

32. Based on the facts found, which are not disputed by the Appellant, the vehicle was determined by the Presiding Officer to be used by an operator established in Northern Ireland rather than by an operator established within the EU, or more specifically, within Bulgaria. Although there existed a Bulgarian Community Licence, and it was agreed that the company named on that licence, Bulk Tranz Ltd, is a registered company in Bulgaria, there was no evidence that this was a haulage company operating legitimately from within Bulgaria. As a result, we find that Article 22A does not apply to exempt the vehicle and trailer from the regulations within the 2010 Act, as submitted by the Appellant.

33. The Appellant also relies upon the cabotage exception contained within Article 23 of the Schedule to the Exm Regulations, arguing that this provision also takes the vehicle out of the scope of the 2010 Act. Cabotage is the transport of goods for hire or reward between two locations within one country, by a company from another country. For Article 23 to apply, several elements must be satisfied; the vehicle is being used for a cabotage operation; the cabotage involves national carriage for hire or reward; its use is on a temporary basis in the UK; its use is done in accordance with the provisions of Regulation (EC) No 1072/2009.

34. According to Article 8(1) of Regulation (EC) No 1072/2009, the general principle of cabotage is that:

*“1. Any haulier for hire or reward who is a holder of a Community licence and whose driver, if he is a national of a third country, holds a driver attestation, shall be entitled, under the conditions laid down in this Chapter, to carry out cabotage operations.”*

Article 8(2) states:

*“2. Once the goods carried in the course of an incoming international carriage have been delivered, hauliers referred to in paragraph 1 shall be permitted to carry out, with the same vehicle, or, in the case of a coupled combination, the motor vehicle of that same vehicle, up to three cabotage operations following the international carriage from another Member State or from a third country to the host Member State...”*

35. These provisions permit a vehicle undertaking an incoming international laden journey, to transport goods for hire or reward within the country of arrival, up to three times, before returning to its country of origin. Such activity makes an international journey more financially viable for an international haulier, but the cabotage rules must be complied with for it to be a lawful undertaking. Referring again to the facts of this case, the Presiding Officer determined that the vehicle and trailer were being used by an operator established in Northern Ireland. The driver does not have a “driver attestation” relating to cabotage operations. It is agreed between the parties that the vehicle’s journey did not commence in Bulgaria nor has the vehicle been to Bulgaria, the location of the operator claiming to use the vehicle. It cannot therefore be said that the vehicle is being used on a temporary basis in the UK when the facts found suggest that it was being used on a regular basis within the UK.

36. The case of *Romantiek Transport BVBA & Others v VOSA* [2008] EWCA Civ 534 clarifies the position in relation to cabotage, by stating, at paragraph 17:

*“If the vehicle is not performing cabotage at all but in truth operating full time in a Member State... and not in its State of purported establishment, it cannot be intended that that activity can continue unlicensed. Paragraph 23 must therefore read as*

*requiring the cabotage to exist before the exemption applies. Any other reading would, in my view, border on the absurd.”*

On this basis and bearing in mind the undisputed facts found by the Presiding Officer, it cannot be said that the vehicle and trailer were performing cabotage under the rules within Regulation (EC) No 1072/2009. Consequently, we find that Article 23 does not apply to exempt the vehicle and trailer in this case from the requirements of the 2010 Act, as submitted by the Appellant.

37. In the alternative, the Appellant argues that the TCA, under which the Presiding Officer held the vehicle and trailer, has no direct effect in Northern Ireland. Consequently, it is submitted, even if the vehicle and trailer were being used in contravention of Article 462 of the TCA, the TRU has no jurisdiction to continue the detention of the vehicle or trailer under this provision, as the Article cannot be enforced in NI. Whether the Presiding Officer was correct to utilise the provisions of Article 462 of the TCA, or whether Article 462 does not apply, the vehicle and trailer remain entitled to be detained under the provisions of the 2010 Act, as per the reasons set out above. Consequently, this point takes the matter no further and this aspect of the appeal is also dismissed.

38. Overall, while the points dealt with on appeal were not specifically dealt with by the Presiding Officer in his decision of 12 April 2022, it is the view of the Upper Tribunal that as his factual findings are undisputed and not made in error of law, the same facts can be applied to the fresh arguments put before us on appeal. The Appellant’s submissions do not convince us that the decision of the Presiding Officer to detain the vehicle and trailer was “plainly wrong”. His decision may have been made on a different basis, but on either basis, the detention is lawful. The requirements of the 2010 Act apply to the use of this vehicle and trailer which the Presiding Officer found to be used on the date of detention by a Northern Ireland based operator. As it is agreed that neither the vehicle nor the trailer are listed on an NI Operator’s Licence, the Presiding Officer had authority to continue to detain them. We therefore dismiss this ground of appeal.



## **Ground 2: Ownership**

39. Upon establishing that the vehicle and trailer were lawfully detained, the second question to be determined by the Presiding Officer, was whether Bulk Tranz Haulage Ltd of Sofia, Bulgaria was the “owner” of the lawfully detained vehicle and trailer, as only the “owner” is entitled to have the vehicle returned to them under Regulation 9 of the 2012 Regulations. The burden is on the applicant seeking return of the vehicle/trailer, in this case Bulk Tranz Haulage Ltd, to satisfy the TRU on the balance of probabilities, that it is the owner of the vehicle. Thereafter, the owner must satisfy the TRU that one of the conditions set out in Regulation 4 of the 2012 Regulations is satisfied so as to secure the return of the vehicle/trailer.

### *The vehicle*

40. The Presiding Officer was guided by the evidence presented to him, including the oral and paper evidence presented by the Applicant Company Director, Mark Lyons, when determining ownership of the vehicle and of the trailer. In respect of the vehicle, the Presiding Officer found that the vehicle was sold to Lyons Haulage on 9 June 2021. The Bulgarian authorities stated that their records confirmed the owner as MJL Ltd, owned by Mark Lyons. During the hearing on 4 April 2022, Mark Lyons produced an invoice from Bulk Tranz Haulage Ltd of Monaghan, Ireland to Bulk Tranz Ltd of Sophia, Bulgaria in the sum of £14,500. Mr Lyons claimed that he sold the vehicle from his Ireland company to his Bulgarian company of the same name, on 3 January 2022, and produced the invoice to demonstrate proof of ownership. The Presiding Officer required more evidence so allowed additional time to demonstrate the transfer of funds between the companies, which satisfied the invoice. On 8 April 2022, the TRU was sent a copy bank statement showing the transfer of funds from the Bulgarian company to the Ireland company as claimed by Mr Lyons in evidence. Without seeking to view the original bank statements, the Presiding Officer determined that this was sufficient evidence to demonstrate, on the balance of probabilities, that the owner of the vehicle was Bulk Trans Haulage Ltd of Sophia, Bulgaria. The Appellant company took no issue with this decision in the appeal before the Upper Tribunal. As owner, he therefore seeks return of the vehicle.

41. Considering the determination that this is a Northern Ireland based haulier, the vehicle can be returned to the owner, in this case Bulk Tranz Haulage Ltd, if one of the conditions in Regulation 4(3) of the 2012 Regulations is satisfied. In short, the conditions are that: at the time of detention, the user held a valid licence; at the time of detention, the vehicle was not being used in contravention of the 2010 Act; at the time of detention, it was being used in contravention of the 2010 Act but the owner did not know; or at the time of detention, the owner knew the vehicle was being used in contravention of the 2010 Act but had taken steps to prevent that use, and has taken steps to prevent any further such use. It was an agreed fact that the vehicle was not listed on any operator's licence either within the UK or in Bulgaria. As is outlined above, the vehicle was found to be used in contravention of the 2010 Act. The Appellant makes no submission as to whether he knew or did not know this to be the case, but on the basis that he was aware of the journey the vehicle was making (the Appellant company details were on the CMR/consignment note), it cannot be said that he did not know it was being used in contravention of the 2010 Act, nor can it be said, in the absence of submissions on the point, that the user had taken steps or was taking steps to ensure the use of the vehicle did not contravene the 2010 Act. As none of the regulation 4 conditions are satisfied on the balance of probabilities, the vehicle cannot be returned to the owner, Bulk Tranz Haulage Ltd. The Presiding Officer, although determining this on a slightly different (and correct) basis, cannot be said to have been "plainly wrong" in his decision to refuse return of the vehicle. The outcome is the same regardless of the means of getting there.

*The trailer*

42. With respect to the trailer, this was previously detained in November 2020 and Bulgarian company, MJL Ltd, applied for its return. The application was refused, and the trailer was ordered to be disposed of. Mark Lyons purchased the same trailer at auction sometime later for the sum of £1,500. A sales invoice dated 24 September 2021, was produced in evidence at the detention hearing by Mr Lyons, which he claimed was evidence of the trailer being sold by Lyons Haulage of Omagh (a sole trader business run by Mark Lyons) to Bulk Tranz Haulage

Ltd of Bulgaria. Mr Lyons stated in evidence at the hearing, as Director of the Appellant company, that the bank transfer from Bulk Tranz Haulage Ltd of Bulgaria was completed on 24 September 2021. Again, the Presiding Officer allowed additional time to provide bank statement evidence to support this claim, but Mr Lyons later confirmed that the transaction was in fact completed in cash. He produced no ledger or other similar documentation to support the fact that cash left the accounts of Bulk Tranz Haulage Ltd of Sofia, Bulgaria to Lyons Haulage of Omagh, in relation to the purchase of the trailer. Consequently, the Presiding Officer could not be satisfied on the balance of probabilities that the owner of the trailer was Bulk Tranz Haulage Ltd of Bulgaria and so determined.

43. The Appellant takes issue with this decision, claiming that this determination was “perverse” (para 23 of the Appellant’s Skeleton Argument dated 1 November 2022). It was submitted that a cash transaction for such a relatively low sum is not unusual, and the Upper Tribunal is invited to consider that such a transaction might have taken place without any transfer of funds at all, but rather it being recorded in the Director’s Loan Account. In addition, both vehicle and trailer had the same branding when stopped by the DVA, which the Appellant claimed to also suggest ownership. Consequently, it was argued, that it was unreasonable for the Presiding Officer to find that the Appellant company was not the owner of the trailer. It was further submitted that the compliance history of the Appellant Company Director was a demonstration of bias in making this decision.

### *Discussion*

44. It is common for the Presiding Officer to require more than one piece of evidence to find that ownership of a vehicle/trailer is proven on the balance of probabilities. In respect of the vehicle, the Presiding Officer accepted an invoice and bank statements demonstrating that money changed hands, to satisfy himself of ownership. He did not require certified copies or the originals but instead dealt with this matter pragmatically. It was reasonable for him to have requested a similar amount of evidence to satisfy himself of ownership of the trailer, but only

the invoice was forthcoming. The Appellant Company Director stated that the invoice was satisfied by way of a bank transfer, but it was in fact a cash transaction. It is accepted that a cash transaction for the sum of £1,500 within a haulage company, dealing with larger sums of money regularly, is not unusual. However, to maintain business accounting records, this sum will have had to be recorded somewhere. The Appellant Company Director was unable to produce any record of the transaction, including a Director's Loan Account record, therefore the Appellant fell short of satisfying the burden of proving ownership on the balance of probabilities. The Appellant Company Director's compliance history was indeed referred to in the Presiding Officer's decision, but it cannot be said that this was a determinative factor in his decision making. He found in favour of the Appellant regarding the vehicle irrespective of Mr Lyons' compliance history. He did not find in the Appellant's favour in respect of the trailer, but there was less evidence in respect of the latter. The Presiding Officer's decision in respect of ownership of the trailer is not "plainly wrong" and therefore the Upper Tribunal will not interfere with it. As only an owner of the lawfully detained trailer may apply for its return, and as ownership has not been proven, any further argument regarding the trailer need go no further. The Presiding Officer's decision to detain and dispose of the trailer stands.

## **Conclusion**

45. Overall, we find that while the Presiding Officer's decision referred to different legal points than those raised in this appeal, his fact finding was not in error of law and his subsequent decisions regarding detention and ownership were not "plainly wrong". This was a Bulgarian registration vehicle stopped on a Northern Ireland road with a Northern Ireland driver undertaking a predominantly UK based journey. It was therefore entirely appropriate for the DVA to assume that this vehicle should be operating under the NI regulations within the 2010 Act. In the absence of an NI Operator's Licence, the DVA enquired as to whether the vehicle was exempted by virtue of the Exm Regulations or EU legislation, in particular the TCA. None of the exemptions applied; the Presiding Officer believed this was a vehicle being used by a Northern Ireland operation, who was potentially "flagging out" i.e., registering a vehicle in a country other than the one in which it operates, to evade the regulatory regime of the country of operation.

46. The detention of the vehicle and trailer was lawful as the facts found indicate that this was a Northern Ireland based vehicle being operated by a Northern Ireland based entity and therefore required an NI operator's licence. There was no such licence and therefore, the vehicle and trailer were being used in contravention of s.1 of the 2010 Act which provides authority to detain them. The Presiding Officer determined that the Appellant, Bulk Tranz Haulage Ltd was the owner of the vehicle but refused the application for return of the vehicle, as none of the conditions within Regulation 4 of the 2012 Regulations for return were satisfied. He ordered that the vehicle be disposed of. He was not satisfied on the balance of probabilities that the Appellant was the owner of the trailer and ordered it to be disposed of also.

47. For the reasons above, we dismiss this appeal.

**L J Clough**  
**Deputy Judge of the Upper Tribunal**

**Mr R Fry**  
**Member of the Upper Tribunal**

**Mr M Smith, JP**  
**Member of the Upper Tribunal**

**Authorised for issue on 29 March 2023**