



**IN THE UPPER TRIBUNAL
ADMINISTRATIVE APPEALS CHAMBER**

UA-2023-000014-T

On appeal from the Decision of Richard Turfitt, Traffic Commissioner for the East of England dated 15th December 2022

Georgia Kelly Ash

Appellant

and

Driver and Vehicle Standards Agency

Respondent

Before: Upper Tribunal Judge Her Honour Judge Beech
Specialist Member of the Upper Tribunal Stuart James
Specialist Member of the Upper Tribunal Gary Roantree

Hearing date: 23rd May 2023

Representation:

Appellant: The Appellant appeared in person

Respondent: Stephen Thomas, solicitor for the DVSA

DECISION

The appeal is ALLOWED

Subject Matter: Impounding; Procedural irregularity

a) **Cases referred to:** None

REASONS FOR DECISION

1. This is an appeal from the decision of the Traffic Commissioner for the East of England ("TC") dated 15th December 2022 when he refused to return impounded vehicle X4GKA, a Mercedes Actros with a gross maximum weight of 18,000kgs ("the vehicle") to the Appellant ("Ms Ash") under regulation 4(3) of the Goods Vehicles (Enforcement Powers) Regulations 2001 (as amended) ("the Regulations").
2. The background to this appeal can be taken very shortly (the full details are contained in the Impounding Report and the Appeal Bundle). On 10th September 2022, Ms Ash was driving the vehicle on the M1 towards Derbyshire. There was reason to stop Ms Ash and she was guided into Donnington Services which, despite having a Derbyshire postcode, is actually within the county of Leicestershire. The following detail is relevant:
 - The vehicle which had two seats in the cab, was found to be loaded with household furniture.
 - Ms Ash was wearing the uniform of DAC Removals and Storage Ltd as was one of her companions.
 - a third was positioned unrestrained in the sleeping compartment of the vehicle.
 - Ms Ash was not using a tachograph.
 - She did not have a driver's CPC.
 - The registered keeper of the vehicle was Harpenden Removals & Storage following its transfer from the linked company DAC Removals & Storage Ltd which had previously held an operator's licence which had been revoked.
 - The vehicle was not specified on any operator's licence.
 - Ms Ash did not have any documentation with her.

According to the evidence of Traffic Examiner Carpenter (which the TC accepted), Ms Ash gave inconsistent answers as to the purpose of the journey (business or personal) and admitted that she was driving for "*her boss*", Abbey Brown of DAC Removals and that the vehicle was owned by that company. It was noted that the first person Ms Ash contacted was Ms Brown. The vehicle was detained and the required notifications appeared to have been made under Regulation 9 of the Regulations.

3. Ms Ash applied for the return of the vehicle upon the basis that she was the owner of the vehicle and that she had been using it for personal use at the time the vehicle was stopped. The hearing took place on 15th December 2022. Apart from the written and oral evidence of Ms Ash that the vehicle belonged to her and a letter which was not in the form of a witness statement and did not include a statement of truth, in which Abbey Brown (who did not attend the hearing) averred that she had given the vehicle to Ms Ash as a gift, there was no evidence before the TC that Ms Ash owned the vehicle. Whilst the registration number of the vehicle matched the initials of Ms Ash, that was insufficient in the circumstances. It is not surprising that the TC determined

that Ms Ash had not satisfied him on the balance of probabilities that she was the owner of the vehicle and refused her application. Ms Ash appealed.

4. The hearing took place on 23rd May 2023. Ms Ash attended and represented herself and she was accompanied by Ms Brown. Whilst Ms Ash was given an opportunity to address the Tribunal, we were more concerned with whether all notices had been correctly served under Regulation 9 of the 2001 Regulations and in particular, whether the correct chief officer of police had been served as required under Regulation 9(1)(b)(iii) of the 2001 Regulations, the notice in the bundle being addressed to the Chief Constable of Derbyshire. Moreover, it did not appear that the Association of British Insurers had been notified as required under 9(1)(b)(iv) of the 2001 Regulations. As Regulation 9(1) is in mandatory terms “*an authorised person shall .. serve a copy of the notice on - ..*” we gave Mr Thomas an opportunity to take instructions. He was then able to confirm that the Association of British Insurers had been notified but that the notice under Regulation 9(1)(b)(iii) had been served on the wrong Chief Constable and that as a result, the appeal must be allowed. We agreed.
5. That does not mean that the vehicle will be returned to Ms Ash as she has not established on the balance of probabilities that she is the owner. She will have to do rather more than she has to date in order to show that the vehicle should be returned to her. Moreover, if she is successful in having the vehicle returned to her whether by the DVSA or by the person who is able to establish ownership, she now has a black mark on her regulatory history for: driving without a tachograph; driving with an unrestrained third person in the cab; driving without a driver CPC. If she intends to apply for an operator’s licence, she may have to persuade another TC that she was on a private journey rather than carrying goods for hire or reward and give explanations for the above and demonstrate that she had insured the vehicle in addition to the basic requirements set out in s.13 of the Goods Vehicles (Licensing of Operators) Act 1995.
6. The appeal is allowed.



Her Honour Judge Beech

Judge of the Upper Tribunal

30th May 2023