



## ROAD TRANSPORT FORUM

### Importance of documentary evidence of vehicle ownership

It behoves any owner of a valuable asset as a large goods vehicle to obtain and retain appropriate probative documentation in order to show by whom, how and when ownership of the vehicle was acquired.

This was the view expressed by the Upper Tribunal when they dismissed an appeal against the refusal of the Western Deputy Traffic Commissioner Fiona Harrington to return an impounded vehicle.

The Tribunal said that he need to establish ownership in impounding cases goes beyond the establishment of jurisdiction, or the identification of the person (or entity) to whom the vehicle might be returned. Two of the grounds for return of the vehicle to the owner, as set out in Regulation 4(3) of the Goods Vehicles (Enforcement Powers) Regulations 2001, as amended by the Goods Vehicles (Enforcement Powers) (Amendment) Regulations 2009, relate to the knowledge of the owner at the time when the vehicle was being used, or to steps taken by the owner prior to it being used. Thus, in relation to these grounds, if the owner is a partnership rather than a sole individual, the collective knowledge of the partnership (rather than of one individual member of the partnership), or any steps taken by or on behalf of the partnership as a whole, will be the relevant considerations.

People or trading entities that purchase, acquire, sell or lease goods vehicles will be well aware of the operator licensing regime, and of the powers of the DVSA in relation to certain goods vehicles that are used on the roads in circumstances requiring the authority of an operator's licence. In the event that such a vehicle is impounded, establishing lawful ownership is a basic 'condition precedent' before any person or entity can make an application to the Traffic Commissioner for its return.

The only person entitled to apply (under Regulation 10 of the Regulations) for the return of an impounded HGV is the owner. If there is any doubt as to whether or not the person applying for the return of the vehicle is in fact the owner of the vehicle the issue must be resolved first because the Traffic Commissioner has no jurisdiction to order the return of the vehicle to anyone else.

In the present case there is no documentary evidence to show what happened to the vehicle after it was purchased by Boyes Transport Ltd in 2004. If the vehicle was of significant value, any unpaid creditors of the limited company, and HM Revenue and Customs, would have a legitimate interest in knowing how the asset was disposed of, to whom, and for what consideration. Business disposals have a number of accounting and tax implications, as do substantial gifts to individuals. We see no reason why, in these circumstances, the Deputy Traffic Commissioner should have accepted that, just because Sarah Boyes had been a director of the limited company when the vehicle was bought by the company, she became the lawful owner of its assets after it was wound up, especially as the winding-up occurred some months after Mrs Boyes had resigned as a director. Such automatic acquisition of corporate assets is not a process known to law, and does not follow from the known facts and available evidence.

In the circumstances of the present case, "owner" means in relation to the detained vehicle, the person who can show to the satisfaction of an authorised person that he or she was, at the time of its detention, the lawful owner (whether or not he or she was the person in whose name it was registered).

## Environmental conditions in relation to the O-licence



Operators who are applying for, or are the holders of O-licences, may have to face objections from local authorities and representations from local residents who are concerned about the environmental impact of their proposed or existing operations. The result can often be the imposition of restrictive conditions designed to ameliorate the adverse environmental impact of the goods vehicle operation.

Potential cause of complaint include parking vehicles too close to nearby houses so that vehicles that have to start in the early morning or late at night are particularly disruptive; employees revving engines, shouting or playing loud music; headlights shining into the windows of nearby residential property at night and in the early morning; uncontrolled noise from maintenance, loading, unloading and washing down; and indifference to the routes followed into and out of the operating centre.

Broadly, Traffic Commissioners have the power, where such objections or representation have been made, to either refuse a licence application in respect of a place to be used as an operating centre on the grounds, firstly, that the parking of vehicles used under the licence at or in the vicinity of the place in question could cause adverse effects on environmental conditions in the vicinity of that place; or, secondly, that the place in question would be unsuitable for use as an operating centre by the holder of the licence on other environmental grounds; or to impose restrictive conditions on operations from the site to ameliorate any adverse impact on the environment.

Local authorities and the police are entitled to object to any licence application on the ground that the operating centre is unsuitable on environmental grounds. In addition, any person who is the owner or occupier of land in the vicinity of a proposed operating centre may make representations against the grant of the application on the ground that the operating centre is unsuitable on environmental grounds.

Generally speaking representors are held to be in the vicinity of an operating centre if they are within "sight, sound or smell," though people living on or near approach roads to an operating centre may also be "in the vicinity", even though they are not near enough to hear, see or feel any environmental effects.

Representors can complain only about the effects on their own property and not about the effects on the highway or the environment generally. It is only adverse environmental effects arising from the activities connected directly with the operation of the authorised vehicles that can be taken into account.

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