



Appeal No. T/2015/37

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

**ON APPEAL from the DECISION of Simon Evans DEPUTY TRAFFIC
COMMISSIONER for London and the North West of England
Dated 10 June 2015**

Before:

Kenneth Mullan	Judge of the Upper Tribunal
Mr S. James	Member of the Upper Tribunal
Mr J. Robinson	Member of the Upper Tribunal

Appellant:

Mohammed Khan t/a A1 cars and Minibuses

Attendances:

For the Appellant: The Appellant was present and was accompanied by Mr Sharif

Heard at: Field House, 15-25 Bream's Buildings, London, EC4A 1DZ
Date of hearing: 27 November 2015
Date of decision: 10 May 2016

DECISION OF THE UPPER TRIBUNAL

IT IS HEREBY ORDERED that this appeal be DISMISSED and the Deputy Traffic Commissioner's Order will take effect at 23.59 hours on 21 June 2016.

SUBJECT MATTER:-

Restricted Public Passenger vehicle operator's licence;
failure to comply with undertakings; prohibitions; good
repute; revocation

CASES REFERRED TO:-

NT/2013/52 & 53 Fergal Hughes v DOENI & Perry
McKee Homes Ltd v DOENI; Bradley Fold Travel Ltd &
Peter Wright v Secretary of State for Transport [2010]
EWCA Civ. 695;

REASONS FOR DECISION

The decision under appeal to the Upper Tribunal

1. This is an appeal from the decision of the Deputy Traffic Commissioner for the North West of England dated 10 June 2015.
2. The factual background to this appeal appears from the documents and the Traffic Commissioner's decision and is as follows:-
 - (i) The Appellant, trading as A1 cars and Minibuses is the holder of a Restricted Public Passenger Vehicle operator's licence for two vehicles. The licence was originally granted on 8 April 2010. At the date of the decision of the Deputy Traffic Commissioner there were two vehicles in possession.
 - (ii) The licence was granted following a Public Inquiry (PI) held on 8 April 2010 when a Deputy Traffic Commissioner attached seven undertakings to the licence.
 - (iii) The undertakings were as follows:
 - a. Safety inspections will be pre-planned and never more than eight weeks apart. The PMI records will be fully and promptly completed, show rectification and be retained for at least two years.
 - b. A random audit of safety inspections will be conducted not less than 6 monthly when one vehicle will be checked by a third party. The findings will be recorded and made available to staff from VOSA or the Office of the Traffic Commissioner on request.
 - c. There will be a nil defect daily driver reporting system. Defect reports will show rectification and all reports will be retained for at least two years.
 - d. The operator will undertake a random audit of at least one driver every two weeks to ensure the drivers are undertaking their walk round checks correctly. The findings will be recorded and made available to staff from VOSA or the Office of the Traffic Commissioner on request.
 - e. All authorised vehicles will have a thorough and effective pre-MOT inspection. Records are to be kept for at least 2 years.
 - f. The operator will obtain a copy of the guide to maintaining roadworthiness for commercial goods and passenger vehicles (issued 2009) and also a copy of the latest edition of the DVD "Check It Out" for PSVs within 1 calendar month by 1st May 2010.
 - g. The operator will forward notification of change of maintenance contractor and the new contract by 15 April 2010.

N.B. It should be noted that in the event of the operator being unable to comply with any of the undertakings given above, for reasons beyond his/its control, the Operator

should contact the Office of the Traffic Commissioner WITHOUT DELAY to explain the situation.'

- (iv) Following concerns that a vehicle was simultaneously specified on the Appellant's and 2 other operators' licences, correspondence was issued to the Appellant on 29 January 2014 in which a request was made for an up-to-date vehicle list for his licence. There was no response to the correspondence of 29 January 2014 and it was re-sent on 4 April 2014. When, in turn, there was no response to the correspondence of 4 April 2014 further correspondence was forwarded to him on 11 June 2014 in which it was indicated that the Traffic Commissioner was considering making a direction to revoke the Appellant's licence.
 - (v) In correspondence dated 18 June 2014, the Appellant sought a meeting with the Traffic Commissioner and indicated that he was willing to attend a PI.
 - (vi) On 28 October 2014 correspondence was forwarded to the Appellant in which it was indicated that the Deputy Traffic Commissioner had concerns about the Appellant's compliance with regulations. The following undertaking was placed on the Appellant's licence:

'The operator to commission a full operator licence compliance audit by a recognised third party provider (for the avoidance of doubt that includes the RHA and the FTA) to be completed no later than 31 December and the full copy shall be sent by the Operator to reach the Office of the Traffic Commissioner by no later than 31 January 2015.'
 - (vii) A response was received to the correspondence dated 28 October 2014 on 30 October but no indication was given that the undertaking was agreed to.
 - (viii) On 24 November 2014 Deputy Traffic Commissioner directed that the matter be listed for PI.
3. The PI was first listed for 20 March 2015. The Appellant was present and was accompanied by a friend who was himself a CPC holder and transport manager for another operator. The Deputy Traffic Commissioner heard evidence from the Appellant with the help of his friend and adjourned the PI in order that he might hear evidence from the Appellant's wife, Mrs Rubina Bano Khan concerning her own PSV licence. The Deputy Traffic Commissioner noted that the Appellant had produced some materials including bank statements for a three month period, an up to date vehicle list and correspondence in connection with a private hire vehicle which had been listed on the licence up to 17 May 2012.
4. In his decision notice, the Deputy Traffic Commissioner noted that:
- '... I had decided to give him (the appellant) the opportunity to produce documents he had been unable to locate at the initial hearing from within the large carrier bag of papers he had brought to the hearing. I also had served formal notice that I would consider the relevance of prohibitions and breaches of undertakings in making any decision on his case; the legislation covering such matters was not included in the initial call-up.'

The documents to be produced were:

- *3 months credit card statements to support the financial standing requirement*
- *The copies of the letters and faxes held by him in response to correspondence from the Office of the Traffic Commissioner in January, March and April 2014*
- *Evidence that would support compliance with the audit and safety inspections every 6 months by a third party provider as listed in the second (undertaking to the licence). The reports for 2013/2014 would be adequate for that purpose'*

5. The PI was reconvened on 1 May 2015. The appellant attended alone, albeit forty minutes late. In paragraph 13 of his decision notice, the Deputy Traffic Commissioner noted:

'He explained that he had forgotten about the hearing and lost his wallet including money and all his cards. By chance he had spoken to Brian Derbyshire of Lancashire County Council about another matter and he had reminded him. He had not brought with him the requested documentation because he had been 'in a rush'. In these circumstances the hearing was short but despite my continuing concerns I gave Mr Khan a final opportunity to produce the requested documentation by 8th May 2015.'

6. In connection with the concerns that a vehicle X821 VAO which had been specified on the Appellant's licence had also been specified on that of his wife and another operator, the Appellant gave evidence that:

- (i) He had replied to correspondence sent to him by the Central Licensing Office concerning an up-to-date vehicle list but could not provide a copy;
- (ii) His failure to respond was due to his absence from the United Kingdom for short periods for personal and family reasons;
- (iii) He had sold the relevant vehicle to a taxi company in and around November 2014;
- (iv) The vehicle had been specified on his wife's licence by mistake when his cousin had carried out instructions inaccurately;
- (v) He had no explanation as to how the vehicle had also been specified on the licence of another operator.

7. In connection with compliance with the specific undertakings on the licence, the Appellant gave evidence that:

- (i) Preventative maintenance frequencies of eight weeks had been met;
- (ii) Random audits by a third party of safety inspections had taken place through Ciceley and City Commercials and that such could be produced.
- (iii) The required random audits of drivers' walk round checks had taken place as required but that this could not be evidenced as no record had been made as required.

In his decision notice the Deputy Traffic Commissioner noted that the evidence given in connection with (i) was confirmed following a perusal of records. The

Deputy Traffic Commissioner also noted that the Appellant had later explained that the audits mentioned at (ii) had not been commissioned.

8. In connection with the nature and operation of the business, the Appellant gave evidence that:
 - (i) He had one school contract with Lancashire County Council;
 - (ii) His PSV operator's licence was used for private hire work including trips and some airport work;
 - (iii) He had one single business bank account and the monies which came in from his PSV work and his taxi business went into the same single business bank account.
 - (iv) His main occupation was the taxi business but he was not able to produce documentary evidence demonstrating a separation of the businesses.
 - (v) The credits of substantial sums of money to his bank account from Lancashire County Council represented payments for work completed for earlier school terms but also represented payments for taxi services supplied to Lancashire County Council.
9. The Appellant gave evidence that his business was wholly separate from that of his wife.
10. The Appellant accepted that consequent on the undertaking added on 28 October 2014 no such audit had been carried out.
11. On 18 May 2015 further materials were supplied by the Appellant to the Deputy Traffic Commissioner. No explanation was provided as to the context and relevance of these materials. The materials included:
 - Periodic preventive maintenance check sheets for both vehicles;
 - Credit card statements as requested;
 - A handwritten but undated note listing what appeared to be proposed vehicle changes for his and his wife's licence;
 - E-mail correspondence which, for the most part, replicated materials which had already been included in the PI brief.
12. On 17 November 2014 the Deputy Traffic Commissioner made a decision to the following effect:

'In accordance with sections 17(3)(aa), (c), (d) and (e) of the Public Passenger Vehicles Act 1981 the ... licence is revoked with effect from 23rd July 2015.'
13. The Appellant was notified of the decision of 17 November 2014 by way of correspondence dated 18 November 2014.

The application for a stay

14. By way of correspondence dated 18 June 2015 an application was made for a stay of the decision of the Deputy Traffic Commissioner.
15. On 20 June 2015 the application for a stay was granted by the Deputy Traffic Commissioner.

The appeal to the Upper Tribunal

16. On 24 June 2015 an appeal to the Upper Tribunal was received in the office of the Upper Tribunal.
17. The appellant has set out the following Grounds of Appeal:

‘My first grounds of appealing are to clarify that there is no link between me (Mr Khan) PC 1090058, t/a A1 cars and Minibuses and that of Mrs Rubina Bano Khan (PC1050703). Both businesses are separate and not connected in any way.

Secondly my record keeping is now to a good standard and fully up to date. Also my company’s financial status is good. Audits done by third party company of safety inspections did take place as originally stated by Ciceley and City Commercials but unfortunately the companies changed name to KH Maintenance Services. Therefore confusion may have been caused regarding this.

Thirdly my company is now very well organised with all procedures in place and all records and paperwork up to date.’
18. As was noted above, the Appellant attended the oral hearing of the appeal. He was accompanied by Mr Sharif who had attended with the Appellant at the PI. Mr Sharif was proactive and helpful in assisting the Appellant with the presentation of his appeal and we are grateful for his support. Aided by Mr Sharif the Appellant made additional oral submissions to us. As will be noted below, he was polite, was very eager to impress on us his compliance with all of the requests which had been made of him, emphasised that he was rectifying errors in the administration of his businesses and was apologetic for any past failures.
19. The Appellant made submissions concerning the relationship between his own and his wife’s businesses. He was keen to emphasise that his wife held her own separate licence, that there were different bank accounts for his and her businesses and that he had nothing to do with her licence and the operation and running of her business.
20. The Appellant was anxious to emphasise that he was complying with any undertaking which attached to his licence. He gave evidence concerning inspections which he submitted had been undertaken independently. He accepted, however, that he was late in his attendance at the PI and did not have enough time to bring the necessary documentation with him. He submitted that he had not committed any offence in his life. No complaint had been made about him to the Traffic Commissioner. He was seeking a further chance.
21. Mr Sharif accepted that the Appellant’s business operations had been very disorganised. He had been approached by the Appellant before the PI. He had agreed to help out and set out the steps which the appellant needed to take. He acknowledged that he could not become involved in the Appellant’s businesses on a formal basis. He submitted that matters had improved and that the Appellant was willing to comply with the undertakings. He acknowledged that he was unaware as to whether the undertakings were being complied with. He submitted that the Appellant would be willing to attend a further PI to demonstrate that undertakings were being complied with.

The reasoning of the Deputy Traffic Commissioner

22. The reasoning of the Deputy Traffic Commissioner was set out under the headings 'Findings' and 'Reasons and Considerations' at paragraphs 20 to 27, as follows:

'20. I made the following findings:

- Negligence and lack of checking and oversight did lead to a vehicle being nominated on several licences simultaneously;
- The copy letters said to exist in response to correspondence in March and April 2014 have never been produced;
- Prohibitions have been issued in respect of vehicles operated by Mr Khan in 2011 and 2013;
- Offence prohibitions (5 in all) and a fixed penalty notice have been accrued between 2011 and 2013 each in respect of driver's hours' matters;
- There has been a failure to satisfy the undertakings embodied in the licence, which were attached to the licence at the time of its grant and since added in October 2014;
- Administrative processes are not sufficiently robust as to mean that correspondence issued is responded to in timely or effective fashion;
- Financial standing is met and I am satisfied that the main occupation criterion is met;
- Good repute has been lost

21. I am satisfied that there are grounds for taking regulatory action against the licence under sections 17(3)(aa), (c), (d) and (e) of the Act.

Reasons and consideration

22. The requirement of the case law is that in considering findings made I need to ensure that any direction that I make is proportionate, having weighed up the positives and negatives in the conduct of a balancing exercise. The leading cases require me to ask myself first whether I believe that the operator is likely to be compliant going forward, and in the light of that question, then to answer whether this is an operator who ought to be excluded from the industry.

23. In this matter I have balanced together Mr Khan's assurances and promises to me made at the hearings, the recent record which shows a slowing of the accumulation of prohibitions and offence prohibitions, the assistance which Mr Sharif has given and might be able to continue to offer, the fact that the licence of his wife has been revoked and therefore the time that he spent attending to her business frees him up.

24. I set against these matters the level of disorganisation witnessed and referred to above, the lack of attention to detail and the ignoring of undertakings placed on the licence. Welcome though the help and assistance of Mr Sharif is, this was not enough to assure me that even in the short to medium term matters would not slip back to what I evidenced. It was clear from the fact that Mr Khan would have missed the final stage of the hearing but for the intervention of a third party and that Mr Sharif was not obviously involved day to day.

25. This is a case where the opportunities for Mr Khan to get things right, to appreciate that there were issues that needed to be attended to by a

different or fresh approach, have been missed. My confidence that there will be compliant operation has been so undermined that I do not believe it is possible for him to comply. My trust in Mr Khan and therefore his reputation has been lost; whilst I can accept that he is well-intentioned there is an underlying lack of capacity and competence or readiness to seek and employ informed assistance that amounts to loss of confidence in him.

26. The range of undertakings which have been singularly ignored are too numerous to be explained by oversight, coupled to an apology, however well meant.
27. I have further factored in with care the obvious problems of understanding that Mr Khan has as someone whose first language is other than English. I have asked myself whether the issues before me come down to a perhaps explicable difficulty in knowing what to do, predominantly for that reason. That however is not my conclusion. It is my judgement from the evidence outlined about the failure to reply to correspondence over very extended periods, from the carrier bag of jumbled papers and notes which were leafed through at the hearing because there was apparently no system for their storage, from the state of the paperwork supplied that systems for ensuring there is an administration to support compliant operation are hopelessly chaotic. It seemed also that the administration issue was not exclusive to licence compliance as it clearly extended to invoicing too as evidenced by bulk payments well after the work has been completed.'

The relevant legislative background

23. Section 17(1) to (3) of the Public Passenger Vehicles Act 1981, as amended, provides:

'17.— Revocation, suspension etc. of licences.

(1) A traffic commissioner must revoke a standard licence if it appears to the commissioner at any time that—

(a) the holder no longer satisfies the requirements of section 14ZA(2),
or

(b) the transport manager designated in accordance with Article 4 of the 2009 Regulation no longer satisfies the requirements of section 14ZA(3).

(1A) Before revoking a standard licence under subsection (1), the traffic commissioner may serve on the holder a notice setting a time limit, in accordance with Article 13.1 of the 2009 Regulation, for the holder to rectify the situation.

(1B) If the holder rectifies the situation within the time limit set under subsection (1A), the traffic commissioner must not revoke the licence.

(2) Without prejudice to subsection (1) above, a traffic commissioner may, on any of the grounds specified in subsection (3) below, at any time—

(a) revoke a PSV operator's licence;

(b) suspend such a licence for such period as the he directs;

(c) [...]

(d) vary any condition attached under subsection (1) of section 16 of this Act to such a licence, or attach to such a licence (whether in addition to or in

place of any existing condition so attached to it) any such condition as is mentioned in that subsection.

(3) The grounds for action under subsection (2) above are—

(a) that the holder of the licence made or procured to be made for the purposes of his application for the licence, or for the purposes of an application for a variation of the licence, a statement of fact which (whether to his knowledge or not) was false, or a statement of expectation which has not been fulfilled;

(aa) that any undertaking recorded in the licence has not been fulfilled;

(b) that there has been a contravention of any condition attached to the licence;

(c) that a prohibition under section 69 of the Road Traffic Act 1988 has been imposed with respect to a vehicle owned or operated by the holder of the licence, or that the holder of the licence has been convicted of an offence under subsection (9) of that section;

(d) in the case of a restricted licence, that the holder no longer satisfies the requirements of section 14ZB;

(e) that there has been since the licence was granted or varied a material change in any of the circumstances of the holder of the licence which were relevant to the grant or variation of his licence.

(f) the licence is one in relation to which a direction given by a traffic commissioner under section 28(4) of the Transport Act 1985 (power when disqualifying a former licence holder to direct that certain other PSV operators' licences should be liable to be revoked, suspended, etc.) has effect.'

24. Section 14ZB provides:

'14ZB. Requirements for restricted licences

The requirement of this section is that the traffic commissioner is satisfied that the applicant —

(a) is of good repute (as determined in accordance with paragraph 1 of Schedule 3), and

(b) has appropriate financial standing (as determined in accordance with paragraph 2 of Schedule 3).'

Our analysis

25. We have no hesitation in upholding the decision of the Deputy Traffic Commissioner.

26. In NT/2013/52 & 53 Fergal Hughes v DOENI & Perry McKee Homes Ltd v DOENI, the Upper Tribunal said the following, at paragraph 8 of its decision, on the proper approach on appeal to the Upper Tribunal:

'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 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.’

27. The Upper Tribunal In NT/2013/52 & 53 Fergal Hughes v DOENI & Perry McKee Homes Ltd v DOENI was considering an appeal to the Upper Tribunal against a decision of the Head of the Traffic Regulation Unit under the Goods Vehicles (Licensing of Operators) Act (Northern Ireland) 2010. There is no doubt, however, that the principles set out by the Upper Tribunal in paragraph 8, are derived from parallel appeals, such as the one in the instant case, where the appeal is against a decision of a Traffic Commissioner under the Goods vehicles (Licensing of Operators) Act 1995 and Regulations made under that Act – see paragraph 4 of NT/2013/52 & 53 Fergal Hughes v DOENI & Perry McKee Homes Ltd v DOENI.
28. We have not been satisfied that on the basis of the submissions which have been made by and on behalf of the Appellant that it could be said that the decision of the Deputy Traffic Commissioner in the instant case was ‘plainly wrong’.
29. As was noted above, the decision of the Deputy Traffic Commissioner was to revoke the licence under sections 17(3)(aa), (c), (d) and (e) of the 1981 Act. The Deputy Traffic Commissioner concluded that the undertakings attached to the licence, both when originally granted and as supplemented in October 2014, had not been fulfilled; that prohibitions had been imposed with respect to a vehicle operated by the Appellant, as holder of the licence; that the Appellant no longer satisfied the ‘good repute’ requirement and that there had been a material change of circumstances of the holder which were relevant to the grant of the licence.
30. We are wholly satisfied that the decision of the Deputy Traffic Commissioner was based on a rigorous assessment of all of the evidence which was before him. The Deputy Traffic Commissioner made sufficient findings, relevant to his decision, all of which are wholly sustainable on the evidence, and all of which are supported by relevant evidence. None of the Deputy Traffic Commissioner’s findings are irrational, perverse or immaterial. Finally, the Deputy Traffic Commissioner’s application of the applicable legal rules and principles was wholly accurate. The Deputy Traffic Commissioner undertook the necessary ‘balancing exercise’ with care and precision.
31. The undertakings which were attached to the original grant of the licence and which were supplemented on 28 October 2014 were clear and rational. The undertakings provided the Appellant with the opportunity to operate under his licence but with the requirement to demonstrate to the supervisory authority, the Traffic Commissioner, that he was compliant with the requirements of the regulatory regime. As was noted above, the supplemental undertaking added in October 2014 was imposed as an alternative to the Deputy Traffic Commissioner exercising, at that stage, a discretion to revoke the Appellant’s

licence. Despite that there is no evidence that the Appellant has taken any steps to fulfil that undertaking.

32. As with the Deputy Traffic Commissioner the Appellant has come across to us as a well-meaning, well-intentioned individual who appears anxious to be compliant with the requirements of his operator's licence. He is apologetic for his previous failures and keen to emphasise that he is willing to put things in order. He has sought the assistance of Mr Sharif. Against that, is the true position as presented in the assessment of the evidence by the Deputy Traffic Commissioner and as reflected in his oral submissions to us? With respect to the Appellant, the picture is one of shambolic disorganisation, evidenced by the overlooking of the date of the PI and, consequently, arriving at the PI unprepared and without the required documentation. The picture is also one of a failure to recognise the complex requirements of the regulatory regime for operators' licences and a failure to respond to the help and guidance offered by the office of the Deputy Traffic Commissioner to comply with those requirements and, accordingly, to avail himself of the opportunity to stay in business. The operation of the business is unsystematic, insufficiently robust and the Appellant's responses to encounters and obligations are haphazard and vague.
33. The decision of the Deputy Traffic Commissioner could not have been more cogent and expressive in setting out the basis on which it was decided that the Appellant's licence should be revoked. The Appellant seeks to challenge that decision on appeal to the Upper Tribunal. There is, however, no substance to his grounds of appeal which are redolent of the disorganised approach which he has taken to the operation of his licence.
34. The Appellant has sought the assistance of Mr Sharif. Mr Sharif is to be lauded in responding to the Appellant's predicament. It was clear, however, from the submissions which Mr Sharif has made to us that he is unaware of the extent of the compliance by the Appellant with the undertakings attached to the licence. In addition he cannot commit to participation in the Appellant's operations on a formal basis.
35. We have also considered the submissions which were made on behalf of the Appellant by Mr Sharif that there had been improvements in practices and procedures. We are mindful of paragraphs 17(1), (2) & (3) of Schedule 4 to the Transport Act 1985, as amended. These paragraphs replace paragraph 9 of Schedule 4. The powers set out in paragraphs 9(1) & (2) are identical to those now set out in paragraphs 17(2) & (3). Paragraph 17 provides as follows:

'(1) The Upper Tribunal are to have full jurisdiction to hear and determine all matters (whether of law or of fact) for the purpose of the exercise of their functions under an enactment relating to transport.

(2) On an appeal from any determination of a traffic commissioner other than an excluded determination, the Upper Tribunal is to have power-

(a) to make such order as it thinks fit; or

(b) to remit the matter to the traffic commissioner for rehearing and determination by the commissioner in any case where the tribunal considers it appropriate.

(3) The Upper Tribunal may not on any such appeal take into consideration any circumstances which did not exist at the time of the determination which is the subject of the appeal.'

36. Accordingly, even if we were to accept, and, in our view, the available evidence is not corroborative, that there had been changes in practice and approach, we cannot take such evidence into account in line with the requirements of paragraph 17(3).
37. In our view, the Deputy Traffic Commissioner could not ignore the prohibitions and offence prohibitions which have been issued and which have accrued. That evidence alone, was sufficient to substantiate the ground in section 17(3)(c) of the 1981 Act, as amended. We have noted, however, that the decision to revoke was based on the cumulative application of a number of grounds in section 17(3) of which the imposition of prohibitions was one.
38. We are also satisfied that the Deputy Traffic Commissioner was correct to conclude that the ground in section 17(3)(d) was satisfied in that the Appellant no longer satisfied the 'good repute' ground in section 14ZB(b) of the 1981 Act, as amended. The Deputy Traffic Commissioner observed, at paragraph 25 of his decision notice:

'My confidence that there will be compliant operation has been so undermined that I do not believe it is possible for him to comply. My trust in Mr Khan and therefore his repute has been lost ...there is an underlying lack of capacity and competence or readiness to seek and employ informed assistance that amounts to a loss of confidence in him'
39. The Deputy Traffic Commissioner's conclusions are more than supported by the evidence which was before him. We have noted that he also arrived at that conclusion against a sincere acceptance that the Appellant was well-meaning.
40. In his formal grounds of appeal, the Appellant has referred to the issue of the relationship between his operator's licence and that of his wife. We have noted that while the Deputy Traffic Commissioner was concerned at the form and the extent of the association, he made no formal finding in that regard which formed part of his decision-making. He did find, however, that carelessness, failure to check and oversight did lead to a vehicle being specified or nominated on several licences simultaneously. That finding was irrefutable and the Appellant did not seek to challenge it during the course of the PI but merely sought to explain the background to its occurrence and could not, in any event, explain why the vehicle was specified on the licence of a third-party operator.
41. In his grounds of appeal the Appellant also made reference to his company having a 'good' financial status. In this regard, we have noted that the Deputy Traffic Commissioner made a formal finding that the condition relating to financial standing was met.
42. The Appellant also made reference to what he submitted was a potential confusion in the Deputy Traffic Commissioner's note that the random audits by a third party of safety inspections had not been commissioned. The Appellant submitted that the confusion may have arisen because the two companies referred to had changed their name. The Deputy Traffic Commissioner was not satisfied, on the basis of the evidence which was presented, that the relevant undertaking with respect to random audits of safety inspections had been fulfilled. We find no fault with the Deputy Traffic Commissioner's conclusions on this matter.
43. Finally, in the grounds of appeal, the Appellant submitted that his company '... is now very well organised with all procedures in place and all records and paperwork up to date.' We would refer to our comments in paragraph 35 above in respect of this ground.

44. The appeal is, accordingly, dismissed. This decision will come as a disappointment to the Appellant. We would refer him, however to the comments of the Deputy Traffic Commissioner at paragraph 29 when he observed:

‘Should there be any future intention on the part of (the Appellant) or any family member to seek to re-enter the PSV business, I should make it clear that any traffic Commissioner would be likely to require to see the most clear cut evidence that the day-to-day operation of the licence could be assured through a director, partner or owner who commands confidence, and has in place systems of management and administration that would be capable of supporting compliance.’

Disposal

45. The decision of the Deputy Traffic Commissioner dated 10 June 2015 is confirmed in all respects save as follows:

We direct that the orders of the Deputy Traffic Commissioner shall come into effect at 23.59 hours on 21 June 2016.

This period before revocation takes effect will allow for an orderly winding-up of the business.

A handwritten signature in black ink, appearing to read 'Kenneth Mullan', is displayed on a light grey rectangular background.

**Kenneth Mullan, Judge of the Upper Tribunal,
10 May 2016**