Appeal No. T/2015/68

IN THE UPPER TRIBUNAL
ADMINISTRATIVE APPEALS CHAMBER
TRAFFIC COMMISSIONER APPEALS

ON APPEAL from the DECISION of Tim Hayden DEPUTY TRAFFIC COMMISSIONER for the West of England
Dated 22 September 2015

Before:

Kenneth Mullan	**Judge of the Upper Tribunal**
Mr L. Milliken	**Member of the Upper Tribunal**
Mr D. Rawsthorn	**Member of the Upper Tribunal**

Appellant:

Malcolm George Millard and t/a M&M Haulage

Attendances:
For the Appellant: The Appellant was not in attendance

Heard at: Field House, 15-25 Bream's Buildings, London, EC4A 1DZ
Date of hearing: 11 March 2016
Date of decision: 27 June 2016

DECISION OF THE UPPER TRIBUNAL

IT IS HEREBY ORDERED that this appeal be ALLOWED. The case is remitted for a fresh public inquiry before a different Traffic Commissioner.

SUBJECT MATTER:- Duty to provide reasons

CASES REFERRED TO:- *Graham William Smith t/a Smiths Coaches* ([2014] UKUT 0120 (AAC)), *2007/459 KDL European¸2008/130 Lorna Eddie*, *2004/439 Surrey CC v Ripley*, *2005/466 Nijar Dairies*, *2006/147 Castleton Turf*, *2009/008 Severn Valley Transport*, *2009/030 Pilkingtons Accrington*, *Shaun Andrew Taylor (Operator) and Mark Taylor (Transport Manager)* ([2010] UKUT 397 (AAC)), *Eurofast (Europe) Ltd* ([2011] UKUT 46 (AAC)) *Re Poyser and Mills' Arbitration* ([1964] 2 Q.B. 467), *R(A) 1/72* and *R. (Asha Foundation) v Millennium Commission* ([2003] EWCA Civ 66)

REASONS FOR DECISION

The decision under appeal to the Upper Tribunal

1. This is an appeal from the decisions of the Deputy Traffic Commissioner for the West of England dated 22 September 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 M&M Haulage, is the holder of a Standard International goods vehicle operator's licence authorising the use of three motor vehicles and four trailers. The licence was originally granted on 13 September 2001 and an application for an increase in authorisation was granted on 23 July 2012.

   (ii) The Appellant is also the nominated Transport Manager for M&M Haulage.

   (iii) On 31 July 2015 the Appellant, trading as M&M Haulage and in his capacity as the nominated Transport Manager was called to a Public Inquiry. The call-up letter specified the following issues:

   > 'Specifically, the issues of concern to the Traffic Commissioner are that it appears:
   >
   > a) you have breached the conditions on your licence, namely: failure to notify of a change in maintenance arrangements;
   >
   > b) your vehicles or drivers have been issued with prohibition notices by DVSA or the police in the last five years
   >
   > c) the following statements you made when applying for the licence were either false or have not been fulfilled:
   >
   > i. that your vehicles would be inspected at the 4 week intervals you promised they would be;
   >
   > ii. that you/your staff usually carry out your own repairs;
   >
   > d) you have not honoured the undertakings you signed up to when you applied for your licence, namely:
   >
   > i. that your vehicles [and trailers] would be kept fit and serviceable;
   >
   > ii. that you would keep records for 15 months of driver defect reports, safety inspections and routine maintenance and make them available on request;
   >
   > e) since the licence was issued, there has been a material change in the circumstances of its holder, namely: change in maintenance arrangements.
   >
   > Because of the matters listed above, the Traffic Commissioner is also concerned that you may not be of good repute, be of appropriate financial standing or meet the requirements of professional competence. If you do not meet these requirement(s) your licence is at risk.

In addition, the Traffic Commissioner is also concerned that in your role as the nominated Transport Manager on the licence may not be exercising continuous and effective management of the transport activities of the undertaking, as you must do. If you do not have a Transport Manager who is professionally competent and of good repute, your licence is at risk. I enclose a separate letter inviting you in your role as Transport Manager to the public inquiry, which will also consider your competence and repute.'

(iv) The 'separate letter' was also dated 31 July 2015. It informed the appellant that he was being called up to the Public Inquiry as the proposed nominated Transport Manager on a licence application by another operator and as the nominated Transport Manager on the licence held by another operator. The Appellant was informed that the Traffic Commissioner would consider whether he fulfilled the requirements in respect of good repute and professional competence.

(v) The Public Inquiry was held on 15 September 2015. The Appellant was present and was represented by Mr Marsh.

(vi) Two linked cases were also heard at the Public Inquiry relating to the two operators mentioned above.

(vii) At the outset of the inquiry there was a discussion as to whether the Appellant was giving up his roles as a Transport Manager. In the transcript of the Inquiry the following exchange was noted:

'The Deputy Traffic Commissioner: Right. So it is not a matter on which I need to make a decision?

Mr Marsh: No, As I say, sir, there is another Transport Manager is willing to take over from Mr Millard.

The Deputy Traffic Commissioner: Right. So what I propose to do then is deal with the evidence in relation to Mr Millard's Operator's Licence.'

(viii) The following is recorded in the transcript of the Inquiry toward the end of the proceedings. The title of the Deputy Traffic Commissioner has been annotated to 'DTC'.

'DTC: … In relation to Mr Millard's Operator's Licence I make two formal findings having listened to the evidence in this Inquiry. One is that the operator has breached his undertaking to keep his vehicles and trailers fit and serviceable and the second is that there is a finding that as a Transport Manager Mr Millard has failed to effectively and continuously manage the transport activities of this business. That means effectively that the Operator – I know that the Operator and Transport Manager are the same – but in legal terms it means that the Operator of the Licence lacks professional competence and that is addressed by the following steps. Firstly, the Operator's Licence is curtailed, the authority is curtailed from three vehicles to two and that is forthwith. Secondly, the Operator must appoint a replacement Transport Manager within a period of two months and, thirdly, the Operator has given and I

accept an undertaking that all PMI's will be carried out by outside contractors at a period of six weeks and a contract to be provided again with 28 days.

So that is relation to the Operator's Licence. So it still exists, Mr Millard but on a reduced size and with a different Transport Manager.

Mr Millard: Down to two vehicles now, sir, is that right?

DTC: Two vehicles.

Mr Millard: Yeah. Thank you.

DTC: And the reason I am taking those steps is because, although you have said that fault lies elsewhere, it is your Operator's Licence and your responsibility to ensure those undertakings are complied with and therefore if the vehicles are not fit and serviceable and the history shows that they have not been – then that is your responsibility.

…

… but this a road safety issue and the object is that the Operator should ensure that the vehicles are safe. I am not being theatrical but it is no good telling somebody harmed by a lorry that is in inadequate condition that it was somebody else's fault but yours. So that is why I take action on that Licence but I have not revoked it so you are, as it were, still trading.

…

Now there is a separate file on which I make a separate finding in relation to you as an individual and on that I make the same finding, namely that you have failed to effectively and continuously manage transport activities of your business … but I also take this position I am not going to take any formal steps to disqualify you from being Transport Manager and I do that really because you have a long history in the industry …

And I do not think it is appropriate that one, albeit significant, failure should result in your disqualification. I do make this direction, though, that any application that you might make in the future to be appointed as a Transport Manager must be referred to a Traffic Commissioner to ensure that at that time you have the relevant and comprehensive knowledge of all areas required for such an appointment.

3. As was noted above, on 22 September 2015 two items of correspondence were forwarded to the Appellant. The substantive aspects of that correspondence were as follows:

Decision

The Traffic Commissioner reached the following decision:

On a finding that the Operator has breached his undertaking to keep his vehicles & trailers fit & serviceable and on a finding that as Transport

Manager, (the Appellant) has failed to effectively and continuously manage the transport activities of this business

1) The operator's licence is curtailed to 2 vehicles forthwith.

2) The operator must appoint a replacement Transport Manager within 2 months (by 15th November 2015).

3) The operator undertakes that all PMI's will be carried out by outside contractors at a period of six weeks (contract to be provided) with 28 days.

Decision

On a finding that (the Appellant) has failed to effectively and continuously manage the transport activities of his own business under Operator's licence …

No formal steps taken to disqualify (the Appellant) save that any application in future from him to be appointed as a Transport Manager must be referred to a Traffic Commissioner to ensure that he (at that time) has relevant and comprehensive knowledge of all of the areas required for such an appointment.'

The appeal to the Upper Tribunal

4. On 15 October 2015 an appeal to the Upper Tribunal was received in the office of the Upper Tribunal.

5. The Appellant set out grounds of appeal which challenged certain of the evidence which had been provided for the Public Inquiry.

6. There has been no application for a stay of the decision of the Traffic Commissioner.

7. The appeal was listed for oral hearing. On the day of the hearing the clerk to the Upper Tribunal was alerted to the fact that the Appellant was on his way to the hearing venue but was held up in traffic and was unable to extricate his vehicle in order to park and come to the venue on foot. The clerk was advised to inform the Appellant by a telephone call that the Upper Tribunal had considered certain issues arising in the appeal and was minded to allow the appeal in his absence.

The relevant jurisprudence

8. In *Graham William Smith t/a Smiths Coaches* ([2014] UKUT 0120 (AAC)), the Upper Tribunal noted that during the course of the public inquiry the Traffic Commissioner had an exchange with the Appellant's representative to the following effect:

> '… either we will reach some form of agreement or I will do a full written decision and everything will remain on the cards.'

9. Following a short adjournment the Appellant's representative had stated:

> 'We would certainly not put you to the trouble of a full written decision.'

10. An oral decision was given by the Traffic Commissioner and, on the same date, a letter was sent from her office confirming the substance of the decision. No reasons for the decision were given in the letter.

11. At paragraphs 16 to 18 of its decision the Upper Tribunal stated the following in connection with the practice of the delivery of an *ex tempore* decision by a

Traffic Commissioner and the subsequent requirement to provide reasons for that decision:

> '16. We accept that the interactive nature of a public inquiry, and the Traffic Commissioner's duty to engage with an operator in order to test the evidence and to encourage adherence to high standards and the regulatory regime, may mean that some cases can best be dealt with either informally or robustly, depending upon the circumstances. Many operators leave the public inquiry room chastened and resolving never to return, having been given the clearest of reasons for the Traffic Commissioner's concerns but also, at the end of the day, having been given a chance to improve or to offer undertakings, and keep trading. These cases do not always require a written decision. Indeed, we believe that Traffic Commissioners should be, and generally are, well able to exercise judgement and adapt their approach according to the gravity of the case and the likely outcomes.
>
> 17. However, where revocation, substantial reduction in vehicles authorised, or significant suspension are likely outcomes, or some form of disqualification is likely, the jurisprudence requires a demonstrably structured and judicious approach, which it can be very difficult to achieve without reflection and the discipline of preparing a written decision.
>
> 18. In any event, whether or not a Traffic Commissioner is adept at giving a thorough and accurate *ex tempore* judgment, sufficient reasons to satisfy the law and any appellate body should always be given, albeit in a manner proportionate to the circumstances.'

12. The Upper Tribunal then reviewed the relevant jurisprudence on assessment of evidence, consequent findings of fact, a properly conducted balancing exercise, proportionality and adequacy of reasoning, in paragraphs 19 to 22 of its decision, as follows:

> 19. In 2002/1 Bryan Haulage Ltd (No1) the Tribunal stated:
>
> " In order to take action under s.26 or to make a finding of loss of good repute under s.27 or to make an order of disqualification of directors under s.28 of the Act, the Traffic Commissioner was obliged to make an assessment of the nature, number and gravity of the breaches of regulations revealed by Mr Prime's investigations and whether there was any evidence of instruction, encouragement or acquiescence on the part of the Appellant. That assessment and the Traffic Commissioner's findings of fact based upon that assessment should be clearly set out in his decision. They are not. In relation to the Appellant's systems and the steps taken by the Appellant to prevent breaches of the regulations, the Traffic Commissioner was further obliged to make an assessment of the evidence and make appropriate findings of fact, indicating the weight, if any, to be given to that evidence. It is not apparent from the Traffic Commissioner's decision that such an assessment was made or that he made the appropriate findings of fact. It is a further requirement that the Traffic Commissioner consider the weight, if any, to be attached to the Appellant's general record, performance, reputation and enforcement history. Again, such an assessment is not evident from the substance of the decision. In the absence of any adequate reasoning, it is impossible to assess what matters were taken into account by the Traffic Commissioner, the weight he placed upon those matters and

whether he made the appropriate balancing exercise when considering the extent to which he should exercise his enforcement powers. In the circumstances we are satisfied that the appeal must succeed."

20. In 2007/104 Steven Lloyd t/a London Skips the Tribunal re-affirmed that there are three main ingredients in a properly conducted balancing exercise. First, all the relevant factors should be identified. Second, each relevant factor should be assessed. And third, the analysis must indicate the weight or significance that has been attached to the relevant factors and reasons for the various judgments made should be given. Thus, if one factor or group of factors outweighs another or others, some explanation should be disclosed in order to provide a rational justification for the conclusion reached. The Tribunal stressed the need for a Traffic Commissioner to make it clear that he had in mind all the factors, both favourable and unfavourable, which were capable of influencing the decision in question.

21. In Shaun Andrew Taylor and Mark Taylor [2010] UKUT 397 (AAC) the Tribunal said:

> "Not only is the operator entitled to see what the Traffic Commissioner had in mind when reaching a decision, it is also important for the Upper Tribunal to be able to do so, if the decision is appealed. There is, clearly, no need to set out those trivial factors that could have no influence on the decision either on their own or in combination with other matters. And, as the Tribunal has repeatedly recognised, a Traffic Commissioner cannot be expected to balance one factor against another with the precision of a set of scales. But the Traffic Commissioner should set out the basis on which the decision has been reached with sufficient clarity and detail to enable others to see the rationale and justification for the decision. In short, reasons have to be adequate and intelligible."

22. Where revocation follows loss of repute the Traffic Commissioner must consider proportionality and whether the operator deserves to be put out of business. Moreover, in considering this question, an assessment of the likelihood of future compliance is required – see 2002/217 Bryan Haulage (No 2) and 2009/225 Priority Freight.'

13. Applying those principles to the circumstances of the case which was before them, the Upper Tribunal concluded in paragraphs 26 and 27:

> '26. There are two principal reasons why the right to adequate and intelligible reasons in a case like this is non-negotiable and cannot be dispensed with, even by apparent agreement. First, an appellant is entitled as a matter of law to know why an adverse decision has been reached, and the decision-maker is obliged to demonstrate that they have conducted the appropriate balancing exercise and reached a decision based only on relevant matters, and that they have asked themselves the correct legally required questions. The nature of a public inquiry makes it unfair to expect an operator or Transport Manager to make a decision that potentially deprives them of the right to adequate and intelligible reasons – especially where, as here, there is an impression that the Traffic Commissioner was suggesting that there would be no disqualification as an operator, and a reasonably swift return to trading, if a decision without adequate and intelligible reasons was accepted there and then. This impression of

inappropriate negotiation is reinforced by the Traffic Commissioner's request that Mr Carless "have a discussion" with Mr Smith so that: "either we will reach some form of agreement, or I will do a full written decision and everything will remain on the cards".

27. Second, even if - in the heat of the moment - an appellant foolishly agrees to wave the absolute right to sufficiency of reasons, the Upper Tribunal most certainly has not entered into such an agreement and is also entitled to a clear demonstration as to the Traffic Commissioner's approach and thinking. **Without an adequate and intelligible statement of reasons, whether delivered in writing or *ex tempore*, the Tribunal cannot discharge its duty.**'

18. The emphasis in this final sentence is our own. The principles set out by the Upper Tribunal in *Smiths Coaches* are reflective of other decisions of the former Transport Tribunal and the present Upper Tribunal. In *2007/459 KDL European*, the Transport Tribunal was referred to the passage from *2002/1 Bryan Haulage Ltd (No1)*, cited in *Smiths Coaches*. In addition, the Tribunal was referred to *2000/57 Yorkshire Rider Ltd & 2002/62 First Bristol Buses*. At paragraph 30, the Tribunal had stated:

> 'We have to say that the Traffic Commissioner does not give any analysis of his reasoning at all. He sets out what has occurred at the public inquiry and says that he has taken everything into account. But he then goes directly into his conclusions. What weight did he attach to the monitors' evidence? To what extent did he accept their conclusions? What did he make of Mr Buchanan's warnings about the unreliability of the sampling? What about traffic conditions in Bristol itself? There was overwhelming evidence to the effect that traffic congestion in the city is particularly bad: did he accept that it was a special case? We recognise the difficulties that the Traffic Commissioner faced but think that some analysis was necessary in the light of the evidence which was presented to him. In reality, all these matters were left in the air. We think that the details mentioned needed to be considered by him and that if they had been they would have driven him inexorably to the conclusion that a case for finding a failure to operate a local service was unsustainable, and outside the ambit of reasonableness. The effect of this is that the finding itself, the attachment of the condition and the determination under s.111 of the Act must all be set aside.'

19. In paragraph 9 of *2008/130 Lorna Eddie*, the Tribunal had stated:

> '9. It is usual for operators to appeal the decisions of Traffic Commissioners either wholly or partly upon the basis that their reasons were inadequate with reliance being placed upon the Transport Tribunal's decision 2002/1 Bryan Haulage (No.1). The importance of that decision should not be overstated. Traffic Commissioner's do not need to rehearse in their decisions, the entirety of the evidence that has been put before them, neither do they have to repeat and determine every point that has been raised, only those which go the principal issues in the case. An appeal based on inadequacy of reasoning will not succeed unless it can be shown that the operator has been genuinely and substantially prejudiced by the failure to provide an adequately reasoned decision.'

20. In paragraph 7 of *2004/439 Surrey CC v Ripley*, the Tribunal had concluded:

'7. Dealing first with the inadequacy of the reasons given in the Traffic Commissioner's decision concerning the safety and environmental issues arising out of the use of the Access by two large vehicles, we are satisfied that the SCC's case is made out. Whilst we are sure that the Traffic Commissioner had those issues at the forefront of his mind when he imposed the conditions and sought the undertaking that he did (which were willingly accepted by the Respondents'), his reasoning is not set out in his decision. **As a matter of natural justice, all parties need to know where they stand in relation to the case they sought to make out.** Unfortunately, the Traffic Commissioner's decision does not place the objecting parties in that position. As a result, his decision cannot stand.'

21. Once again, the emphasis in the quotation is our own. Similar statements were made in paragraph 6 of *2005/466 Nijar Dairies* and paragraph 4 of *2006/147 Castleton Turf*. In *2009/008 Severn Valley Transport*, the Tribunal noted, in paragraph 5:

'5. The one criticism we have of the decision is that it was given at the end of the public inquiry without a written decision being produced subsequently. This Tribunal has previously stated that when an operator's licence is to be revoked, a written decision should accompany or follow any oral determination. It is only after the full documentation has been thoroughly read, that there can be any understanding of why the Traffic Commissioner reached his decision in this case. Decisions should contain sufficient detail to allow a person with experience of the haulage industry to understand the basis upon which the decision was arrived at.'

22. In *2009/030 Pilkingtons Accrington*, the only record of the decision was in an internal minute. The Tribunal concluded, in paragraph 5:

'5. The Traffic Commissioner clearly felt that the Minute dated 16 January 2008, (see paragraph 2(iii) above), ought not to have been disclosed to Mr. Cunningham. In the absence of any other document from which the reason (or lack of reason) for the refusal of the application to cancel the services at short notice can be determined we disagree with that view. In our view the Appellants were entitled to know the basis on which the application was refused and they were entitled to know whether or not the correct test had been applied. In the absence of a reasoned decision or a fully reasoned letter giving the grounds for refusal, (neither of which was provided), it seems to us that disclosure of the underlying documentation was essential. How else could the correctness of the decision be challenged? How else could the Tribunal give reasons for saying either that the decision was wrong or that it was correct?'

23. In *Shaun Andrew Taylor (Operator) and Mark Taylor (Transport Manager)* ([2010] UKUT 397 (AAC)), the Upper Tribunal reviewed much of the jurisprudence noted above and concluded, in paragraph 10:

'10. Not only is the operator entitled to see what the Traffic Commissioner had in mind when reaching a decision, it is also important for the Upper Tribunal to be able to do so, if the decision is appealed. There is, clearly, no need to set out those trivial factors that could have no influence on the decision either on their own or in combination with other matters. And, as the Tribunal has repeatedly recognised, a Traffic Commissioner cannot be expected to balance one factor

against another with the precision of a set of scales. But the Traffic Commissioner should set out the basis on which the decision has been reached with sufficient clarity and detail to enable others to see the rationale and justification for the decision. In short, reasons have to be adequate and intelligible.'

24. In *Eurofast (Europe) Ltd* ([2011] UKUT 46 (AAC)) the Upper Tribunal noted, in paragraph 4:

> 'Traffic Commissioners already appear to feel constrained to include standard paragraphs and phrases in their decisions despite the principle that an appellate Tribunal will generally assume that a first-instance decision-maker correctly understands the legal framework unless something was done or said that indicates to the contrary. In our view, the routine recitation of standard phrases adds little to the substance of a decision – what matters most is what the Traffic Commissioner thinks, and why he thinks it.'

25. We would also add the following derived from a more general discussion in the appellate courts on the question of adequacy of reasoning. In *Re Poyser and Mills' Arbitration* [1964] 2 Q.B. 467, 478, Megaw J. said:

> "Parliament provided that reasons shall be given, and in my view that must be read as meaning that proper, adequate reasons must be given. The reasons that are set out must be reasons that will not only be intelligible, but which deal with the substantial points that have been raised."

26. In *R(A) 1/72*, the Chief Commissioner, considering an appeal from a delegated medical practitioner acting on behalf of the Attendance Allowance Board, said:

> "The obligation to give reasons for the decision in [a case involving a conflict of evidence] imports a requirement to do more than only to state the conclusion, and for the determining authority to state that on the evidence the authority is not satisfied that the statutory conditions are met, does no more than this. It affords no guide to the selective process by which the evidence has been accepted, rejected, weighed or considered, or the reasons for any of these things. It is not, of course, obligatory thus to deal with every piece of evidence or to over elaborate, but in an administrative quasi-judicial decision the minimum requirement must at least be that the claimant, looking at the decision should be able to discern on the face of it the reasons why the evidence has failed to satisfy the authority. For the purpose of the regulation which requires the reasons for the review decision to be set out, a decision based, and only based, on a conclusion that the total effect of the evidence fails to satisfy, without reasons given for reaching that conclusion, will in many cases be no adequate decision at all."

27. In *R. (Asha Foundation) v Millennium Commission* [2003] EWCA Civ 66 (*The Times*, January 24, 2003), the Court of Appeal considered the approach Sedley J. had taken in *R. v Higher Education Funding Council Ex p. Institute of Dental Surgery* [1994] 1 W.L.R. 242 to the question of whether there was a duty to give any reasons at all and held that, where there is a duty to give reasons, the same approach should be taken to the question whether reasons were adequate. Sedley J.'s approach required the balancing of a number of considerations, which might vary from case to case. He said:

> "The giving of reasons may among other things concentrate the decision-maker's mind on the right questions; demonstrate to the recipient that this is so; show that the issues have been conscientiously addressed and how the result has been reached or alternatively alert the recipient to a justiciable flaw

in the process. On the other side of the argument, it may place an undue burden on decision makers; demand an appearance of unanimity where there is diversity; call for the articulation of sometimes inexpressible value judgments; and offer an invitation to the captious to comb the reasons for previously unsuspected grounds of challenge."

Our analysis

28. We return to what was said in *Smiths Coaches*. Where the eventual decision of the Traffic Commissioner is to mandate substantial reduction in vehicles authorised, or some form of disqualification is likely, '… the jurisprudence requires a demonstrably structured and judicious approach, which it can be very difficult to achieve without reflection and the discipline of preparing a written decision.'

29. It is our view that what the Deputy Traffic Commissioner has stated in his *ex tempore* decision and followed up in the correspondence dated 22 September 2015 fails to adequately and plainly explicate why the Deputy Traffic Commissioner has arrived at the conclusions which he did.

30. The *ex tempore* decision contains what the Deputy Traffic Commissioner has described as two formal findings. These are that the operator had breached an undertaking to keep his vehicles and trailers fit and serviceable and that as a Transport Manager the Appellant had failed to effectively and continuously manage the transport activities of his business. The Deputy Traffic Commissioner undertakes no effective analysis of the evidence which was before him. He provides no reasons for the formal findings on breach of undertaking or failure to manage transport activities. There is nothing in the narrative of the Deputy Traffic Commissioner's *ex tempore* decision to indicate that any such exercise was conducted or, if it was, the outcome of that exercise. He does not specify why he had concluded that the curtailment was an appropriate sanction or that the Appellant could no longer serve as Transport Manager and that a replacement was required. We are reminded of the requirements for *ex tempore* decisions set out in *Smiths Coaches*, and reinforced in the further jurisprudence set out above, that '…sufficient reasons to satisfy the law and any appellate body should always be given.' No such sufficient reasons have been provided in the instant case. To paraphrase what was said in *Eurofast (Europe) Ltd*, we know what the Deputy Traffic Commissioner thought but we do not know why he thought it.

31. It might be argued that as a result of what was said and described at the Public Inquiry the Appellant, by the end of it, must have known 'what was coming' in the sense of an inevitable outcome decision. We are of the view, however, that although there is nothing to prevent a Deputy Traffic Commissioner from providing a short *ex tempore* decision, the relevant jurisprudence mandates that such a decision is reasoned. Further, where the outcome decision is to curtail an operation and/or penalise the operator in terms of involvement in future transport management then full and sufficient reasons for such an outcome must be provided, if not immediately, then, probably more appropriately, in a written decision.

32. As was noted in *2004/439 Surrey CC v Ripley*, the provision of adequate reasons is a matter of natural justice. It is also important to remember that the jurisprudence set out above specifies that evidential assessment, fact-finding, the balancing exercise, and sufficient reasons are not necessary just for the

operator affected by the decision but for the appellate authorities which may be required to review the validity of that decision in due course.

33. We are not satisfied, therefore, that the written reasons for the decision of Deputy Traffic Commissioner satisfy the tests for the duty to give reasons and adequacy of reasons set out in the authoritative jurisprudence set out above.

34. In our judgment, this is not a case in which we can substitute our own decision. The only appropriate course is to remit the application for a complete re-hearing. That hearing should take place before a different Traffic Commissioner who will be in a better position to stand back and to take a fresh view of the case.

35. We are conscious that we have not given consideration to the Appellant's grounds of appeal. We are of the view that these are matters which may be raised by the Appellant at the further public inquiry.

Disposal

36. The appeal is allowed. The case is remitted for a fresh public inquiry before a different Traffic Commissioner.

Kenneth Mullan, Judge of the Upper Tribunal,
27 June 2016