

Appeal No. T/2015/72

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

**ON APPEAL from the DECISION of Nick Jones TRAFFIC COMMISSIONER for
the West Midlands of England
Dated 19 October 2015**

Before:

Kenneth Mullan	Judge of the Upper Tribunal
Mr L. Milliken	Member of the Upper Tribunal
Mr M. Farmer	Member of the Upper Tribunal

Appellant:

Rose Transport Limited, Ms Jacqueline Walters and Mr Gilchris Walters

Attendances:

For the Appellant: Mr D. Walters

Heard at: Field House, 15-25 Bream's Buildings, London, EC4A 1DZ

Date of hearing: 2 June 2016

Date of decision: 30 August 2016

DECISION OF THE UPPER TRIBUNAL

IT IS HEREBY ORDERED that this appeal be ALLOWED to the extent that we have found below that that the written reasons for the decision of the Traffic Commissioner do not fulfil the tests for the duty to give reasons and adequacy of reasons set out in the authoritative jurisprudence in *T/2015/68 Malcolm George Millard t/a M&M Haulage*.

We substitute, however, our own decision which is to the same effect as that of the Traffic Commissioner, namely:

- (i) The Standard National Goods Vehicle Operator's licence of Rose Transport Ltd is revoked;
- (ii) Ms Jacqueline Walters is disqualified from holding or applying for any position as a Transport Manager within the EU until she passes a new Transport Manager CPC examination; and
- (iii) Mr Gilchris Walters is disqualified from holding or applying for any position as a Transport Manager within the EU until he passes a new Transport Manager CPC examination.

SUBJECT MATTER:- Revocation; good repute and professional competence; duty to provide reasons

CASES REFERRED TO:- *NT/2013/52 & 53 Fergal Hughes v DOENI & Perry McKee Homes Ltd v DOENI* [2013] UKUT 618 AAC; *Bradley Fold Travel Ltd & Peter Wright v Secretary of State for Transport* [2010] EWCA Civ. 695; *NT/2013/82 Arnold Transport & Sons Ltd v DOENI* [2014] UKUT 162 (AAC), *T/2014/77 Leedale Ltd*; *T/2015/68 Malcolm George Millard t/a M&M Haulage*; *T/2016/03 Ian Lambert t/a IKL Transport*

REASONS FOR DECISION

The decision under appeal to the Upper Tribunal

1. This is an appeal from the decision of the Traffic Commissioner for the West Midlands of England dated 19 October 2015 in relation to a conjoined Public Inquiry (PI) into Rose Transport Ltd and No 1 Skip Hire Ltd.
2. The factual background to this appeal appears from the documents and the Traffic Commissioner's decision and is as follows:-

- (i) Rose Transport Ltd was granted a Standard National licence authorising three vehicles on 17 December 1997.
- (ii) Mr Gilchris Walters was a Director of Rose Transport Ltd. Mr Gilchris Walters was also the nominated Transport Manager for No 1 Skip Hire Ltd.
- (iii) Ms Jacqueline Walters was the nominated Transport Manager for Rose Transport Ltd.
- (iv) On 10 September 2015 the Traffic Commissioner wrote to Rose Transport Ltd calling the operator to a Public Inquiry. The call-up letter identified the following issues:

'Specifically, the issues of concern to the Traffic Commissioner are that it appears:

- a) You are operating from an unauthorised operating centre;
- b) Your vehicles or drivers have been issued with prohibition notices by DVSA or the police in the past five years;
- c) You or your drivers have been issued with relevant fixed penalty notices in the past five years;
- 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 observe the rules on drivers hours and tachographs and keep proper records;
 - iii. That you would keep records for 15 months of driver defect reports, safety inspections and routine maintenance and make them available on request;
 - iv. Drivers would report promptly any defects or symptoms of defects that could prevent the safe operation of vehicles and/or trailers, and that any defects would be promptly recorded in writing;
- e) Since the licence was issued, there has been a material change in the circumstances of its holder, namely

That the company is operating from an unauthorised operating centre.

Because of the matters listed above, the Traffic Commissioner is also concerned that the company may not be of good repute, be of the appropriate financial standing or meet the

requirements of professional competence. If the company does not meet these requirements your licence is at risk.'

- (v) The call-up correspondence to Rose Transport Ltd also advised that the Traffic Commissioner also had concerns about the nominated Transport Manager, Ms Jacqueline Walters, and that she would also be called to the same PI and that separate call-up correspondence to that effect was being forwarded to her.

- (vi) Call-up correspondence was forwarded to Ms Jacqueline Walters on 10 September 2015. The Traffic Commissioner identified the following action which he would consider:

'The traffic commissioner will consider whether you fulfil the requirements in respect of your good repute and professional competence as defined under Schedule 3 of the Act. Paragraph 16(2) of Schedule 3 imposes a mandatory requirement on the traffic commissioner that if he determines that you are no longer of good repute or professionally competent, the traffic commissioner must order that you be disqualified (either indefinitely or for such a period as the commissioner thinks fit) from acting as a transport manager.

You should note that while any disqualification is in force you may not act as a transport manager for any road transport undertaking in the European Union and any certificate of professional competence issued to you ceases to be valid for the period of disqualification.

The traffic commissioner by whom a disqualification order is made under paragraph 16(2) of Schedule 3 may specify measures with which the disqualified person must comply before the order can be cancelled or varied. The traffic commissioner can stipulate any rehabilitation measures he feels appropriate to the circumstances. These rehabilitation measures can include the passing of a stipulated period of time, the requirement for a person to regain professional competence by way of examination or any other demonstration of compliance. Until the rehabilitation measure has been complied with the traffic commissioner is unlikely to consider that a person has regained his/her good repute or professional competence.

You should note that Article 2 of Regulation (EC) No 1071/2009 defines a transport manager in relation to a business as an individual who is designated by the holder of a licence by means of a contract who effectively and continuously manages the transport activities of that business.

- (vii) In the file of papers is a copy of correspondence dated 6 October 2015 from Ms Jacqueline Walters to the office of the Traffic Commissioner. In this correspondence Ms Walters stated:

'At the request of my brother Gill Walters I became transport manager of Rose Transport Limited in 2013.

The company had three drivers.

One driver retired in 2013, one driver had his licence withdrawn on medical grounds and the remaining driver continued to drive part time until Feb 2015.

Rose Transport Ltd has now ceased trading.

I have now resigned as transport manager of Rose Transport Ltd.

I shall not and will not be attending the public enquiry on 15 October 2015, reason being the statement that was procured from me at the behest of the DVSA was not made under caution at the interview that took place at Featherstone and upon reading the note book statement made by Tracy Love submitted to the enquiry the English language has been tailored to suit one's ends. I had prior knowledge that the interview I was engaged in was under caution the choice for me at that time would be to terminate the interview and seek legal advice or at the very least ask for a taped or a written statement signed by me. I feel without prior knowledge to this I had that right taken away from me.'

- (viii) In the file of papers which is before the Upper Tribunal is correspondence from Ms Jacqueline Walters to Rose Transport Ltd, dated September 2015 in which she states:
- 'Please accept this letter as notice of my resignation as Transport Manager at Rose Transport Limited.
- As detailed in my Contract of Employment I give 1 week's notice, with the last day of employment being on 11 September 2015.'
- (ix) In the file of papers is a copy of 'Form GV80A: Application to change type of licence/notification of change of transport manager' signed and dated by Mr Gilchris Walters on 11 September 2015. In the completed form, two boxes have been ticked to indicate that Ms Jacqueline Walters is to be removed as Transport Manager from the licence and that no other professional competent person is to be added to the licence as a Transport Manager.
- (x) In the file of papers is a copy of 'Form SUR1: Application to surrender a goods or public service vehicle operator's licence' signed and dated by Mr Gilchris Walters on 16 September 2015 and date-stamped as having been received by the OTC on 21 September 2015. The form is completed to indicate surrender of licence number OD 0262985 in the name of Rose Transport Ltd. The licence itself and a goods vehicle identity disc were attached to the relevant form.
- (xi) The PI took place on 15 October 2015. Amongst others present were Mr Gilchris Walters. We return to what happened at the PI below. For the moment, however, we note that at the outset of the PI, the Traffic Commissioner noted the correspondence dated 6 October 2015 from Ms Jacqueline Walters, and as set out in sub-paragraph (vii) above. The Traffic Commissioner addressed the issues which had been raised by Ms Walters and we return to his comments below. We have noted that the Traffic Commissioner asked Mr Gilchris Walters whether he was representing Ms Jacqueline Walters and that his response was that he was not as they had 'fallen out'.
- (xii) The Traffic Commissioner also addressed the issue of the purported surrender of the operator's licence in the name of Rose Transport Ltd. Mr Gilchris Walters confirmed that it was the intention of the operator to surrender the licence. The Traffic Commissioner informed Mr Walters that the request for surrender had not been accepted because of the potential for revocation and disqualification, Mr Walters confirmed that he understood that and in response to a direct question from the Traffic Commissioner stated that he was not

seeking the continuance of the licence, in any event. There was then the following exchange:

'THE TRAFFIC COMMISSIONER: So it would be revoked on the grounds of a lack of financial standing –

MR WALTERS: Yes.

THE TRAFFIC COMMISSIONER: - if nothing else –

MR WALTERS: Yes'

(xiii) We also note the following exchanges which took place towards the end of the PI:

'GILCHRIS WALTERS – CALLED
By THE TRAFFIC COMMISSIONER

...

Q. Alright. You are a director of one entity which you know is going to be revoked?

A. Yes.

Q. You know it is going to be revoked anyway?

A. Yes.

Q. You went seven years without using the right Operating Centre, which is pretty basic, and there are some other issues which have been spelt out in the reports. The licence is going to be revoked, you know that anyway –

A. Yes.

Q. - because actually if you could surrender it you would surrender it?

A. Yes.

Q. All right. I can tell you that unless you are going to persuade me to the contrary I am going to make a finding that the Operator no longer has the necessary good repute, all right –

A. Yes.

Q. - so that is the limited company, and does not have professional competence because I am going to find that your sister loses her repute as the Transport Manager and you do not have the necessary financial standing because you have not produced any, and that all the matters set out in the call-in letter are actually made out in respect of the entity where you are the Director, you understand that?

A. Yes.

Q. Do you have a problem with any of that?

A. No.

Q. I am trying to be frank with you. I am not minded to disqualify you as a Director, do you understand that –

A. Yes I do.

Q. - because technically I can do it. I accept that in large part the failings are due to your lack of management skills and your lack of knowledge. You should have had the knowledge about the Operating Centre, there are a number of failures there, but I am minded to find that you lose your reputation, you understand that –

A. Yes.

Q. – as a Director, the entity loses its reputation. Turning to your sister, I do not accept what you have said about her doing 20 hours a week. It is quite clear if she is paid less than £3 per hour I do not accept that she is doing 20 hours a week and I do not think she has been Transport Manager conducting continuous and effective management of transport and I accept what has been said to me by the Examiners relating to her being vague and so on. In fairness to you the Examiner made it clear that it was your sister rather than yourself ... and clearly what little Transport Manager role was being undertaken was by you ...

...

Q. All right, but actually the Transport Manager role has not been carried out and I am going to say that she loses her good reputation as a Transport Manager. I am going to decide what to do about that – do I disqualify her indefinitely or for a period of time or make her do something? Do you think that she is going to be a Transport Manager again? What I am minded to do is make an order that she could not be a Transport Manager until she took new CPC exams as a Transport Manager.

A. I would prefer, well, I'm speaking for her because she's not here. I'd prefer you to do that as opposed to –

Q. Exams? All right, so what I will do then is say she has got to pass new exams as a Transport Manager.

A. Yes.

...

Q. ... I have described the process where you come across as an honest person, a decent human being if you like, but one who does not have the management skills to be a Transport Manager, do you think that is fair?

A. Yes, I would, if I had the choice, I'd like to do the CPC again myself.

Q. You would?

A. Yes.

Q. Well you have a problem as I said you lose your reputation as a Transport Manager but then say that you are disqualified until you take new CPC exams?

A. No, I would not.

Q. You would not?

A. No.

Q. All right. Well that is what I am minded to do then.

A. Okay.

...

Q. ... So I actually have to say formally that you lose your good reputation as a Transport Manager but I want to make it clear on the record that I do not cast aspersions on your integrity, all right, and that is important, and I will be making an order that you be disqualified, as with your sister, until you pass new CPC examinations, you understand that?

A. Yes, I do.

...

I need to turn, I think to Rose Transport Limited and all the matters are made out in the call-in letter under Section 26(1)(a); 26(1)(c); 16(10)(f) and 26(1)(h) of the Act. I also make a formal finding that the Operator no longer has the necessary good reputation.

...

I am making a formal finding that the Transport Manager Jacqueline Walters has lost her good reputation as a Transport Manager and she is disqualified until she passes new CPC examinations.

I am also making a finding in relation to No 1 Skip hire Limited. I know it is a restricted licence but the call-in letter has gone to Gilchrist Walters and I can make that decision. I am making the formal findings that you do lose your good reputation as a Transport Manager but as I have said I will make a file note that I do not question your integrity. I have to disqualify you either until a particular act has happened or until a period of time has passed or for an indefinite period. In your particular case I believe it would be appropriate to do the same as for your sister and say the disqualification is until you pass new CPC examinations as a Transport Manager.

...

THE TRAFFIC COMMISSIONER: ... do you understand, Mr Walters, what I have done?'

MR WALTERS: Yes, I do.

THE TRAFFIC COMMISSIONER: Do you understand why I have done what I have done?

MR WALTERS: Yes, I do.

THE TRAFFIC COMMISSIONER: I think that you have accepted the inevitability of all the things I have done as, have you not?

MR WALTERS: I have, yes.

3. On 19 October 2015 correspondence was forwarded to Rose Transport Ltd from the office of the Transport Commissioner to the following effect:

'I refer to your attendance at the public inquiry held ... on 15 October 2015, before the Traffic Commissioner Mr Jones.

The inquiry was called under section 35 of the Goods Vehicles (Licensing of Operators) Act 1995. The reasons ("grounds") for the inquiry were set out in our letter of 10 September 2015.

Decision

The operator's licence is revoked herewith.

Please see enclosed a copy of the Traffic Commissioner's oral written decision.

...

What you must do now

You must return the operator's licence and vehicle disc number 473660 to me at the above address for cancellation ...'

4. On 19 October 2015 correspondence was forwarded to Ms Jacqueline Walters from the office of the Transport Commissioner to the following effect:

'I refer to your non-attendance at the public inquiry held ... on 15 October 2015, before the Traffic Commissioner Mr Jones.

The inquiry was called under section 35 of the Goods Vehicles (Licensing of Operators) Act 1995. The reasons ("grounds") for the inquiry were set out in our letter of 10 September 2015.

Decision

Jacqueline Walters no longer has the necessary good repute and professional competence to be a transport manager.

Please see enclosed a copy of the Traffic Commissioner's oral written decision.

The Traffic Commissioner specified the following measures that you must comply with before the declaration of unfitness can be removed:

That you are disqualified from holding or applying for any such position within the EU until you pass new transport manager CPC examinations.

Measures specified may be varied by the Traffic Commissioner on application from you or by the Traffic Commissioner subject to notice being given by you in accordance with Paragraph 17(4) of Schedule 3 to the Act

...'

5. In the file of papers which is before us is a copy of a document headed 'File Note of Decisions'. This document is signed by the Traffic Commissioner on 15 October 2015. Although it is nowhere expressly stated, we have formed the view that this document is the copy of the Traffic Commissioner's oral written decision sent to Rose Transport Ltd and Ms Jacqueline Walters on 19 October 2015.
6. The file-note records decisions made in respect of Rose Transport Ltd and Ms Jacqueline Walters as Transport Manager and another company (No 1 Skip Hire Ltd) and Mr Gilchris Walters as Transport Manager.
7. In respect of Rose Transport Ltd the following is recorded:

'Decisions made in respect of Rose Transport Ltd OD0262985

Adverse findings are made under sections 26(1)(a); 26(1)(c)(iii); 26(1)(ca); 26(1)(f) and 26(1)(h) of the Act.

The operator no longer satisfies the requirement to have sufficient financial standing under sections 27(1)(a) and 13A(2) of the Act.

The operator no longer satisfied the requirement to be professionally competent under sections 27(1)(a) and 13A(2) of the Act.

The operator no longer satisfies the requirement to be of good repute under sections 27(1)(a) and 13A(2) of the Act.

The operator's licence is revoked forthwith.

I do not make any order of disqualification under section 28 of the Act.'

8. In respect of Rose Transport Ltd the following is recorded:

'Decisions made in respect of transport manager Jacqueline Walters

Jacqueline Walters no longer has the necessary good repute and professional competence. She is disqualified from holding or applying for any such position within the EU until she passes a new transport manager CPC examinations.'

9. In respect of Mr Gilchris Walters the following is recorded:

'Decisions made in respect of transport manager Gilchris Walters

Gilchris Walters no longer has the necessary good repute and professional competence. He is disqualified from holding or applying for any such position within the EU until he passes a new transport manager CPC examinations.'

10. At the bottom of the file-note, there is an additional section headed '**Notes (not part of decision)**.' The relevant extracts from this section are as follows:

- I have accepted all DVSA evidence given to me.
- Rose Transport Ltd ceased trading circa February 2015. All failings identified are accepted by Gilchris Walters who is an honest individual but lacking in skills and competence.
- Gilchris Walters lost his good repute and accepted the fundamental issue that he didn't have the management skills to discipline others. His sister didn't turn up and gave a lame excuse for failing to do so – I don't accept what she said and find that she did not carry out a transport manager role as she claimed.'

The appeal to the Upper Tribunal

11. On 27 November 2015 an appeal to the Upper Tribunal was received in the office of the Upper Tribunal. The following grounds of appeal were set out in the Notice of Appeal:

'Goods Vehicle (Licensing of Operators) Act 1995 ('the Act')

I want to appeal against the decision made by the TC Mr Jones on the 15/10/15 made in respect of:

Rose Transport Ltd OD0262985

Transport Manager, Jacqueline Walters

Transport Manager Gilchris Walters

The financial standing of Rose Transport Ltd, what does he know that I don't?

He was not given any financial details or information from or by the company. So what was his decision based on?

His decision(s) made in respect of the "professional competence" and "good repute" of all 3 is based on evidence provided for by 3 DVSA examiners who in my opinion should all be called before a public inquiry to answer questions regarding their behaviour, conduct and integrity concerning "their investigation".

His decision to "revoke the licences of all 3 and at the same time make "petty" remarks concerning their characters and "exalting" the "other" 3 I found rather distasteful.

A little less personal opinion and a more objective examination of the evidence would have produced a much "fairer" decision, a warning or a suspension for a certain period. His decision is not "proportional".

...

Grounds for appeal

Poor and misleading advice by the TC.

He failed to take account of matters which should have been taken into account.

Offended the rules of natural justice in conduct of proceedings by showing bias: "I have accepted all DVSA evidence given to me" "Blame lies with the operator and "its" TM". The transport manager is a "him" not an "its".

The scenario presented to the Public Inquiry by the DVSA examiners: Neil Brown, Tracy Love and Austin Jones with regards to Rose Transport Ltd. J Walters, Mr G Walters was misleading and inaccurate. The evidence along with the information produced was "duplicitous" and the conduct of the 3 DVSA examiners towards Ms Walters and Mr Walters insulting.

This investigation allegedly was initiated because of no reply to a letter dated 23rd March 2015 sent by DVSA examiner Tracy Love. Why was a copy of this letter not produced at the public inquiry?

How from a request for tachographs and other documentation has a public inquiry into Rose Transport Ltd arisen?

Why was the public inquiry for Rose Transport Ltd conducted/held on the same day and time as No. 1 Skip Hire Ltd?

Why was it heard before No. 1 Skip's inquiry?

Rose Transport Ltd as a company has no business relationship with No. 1 Skips so why were the 2 enquiries not held separately?

Mr Walters was transport manager for No. 1 Skips, a director of Rose Transport and driver. Is he or is he not entitled to have other business interests outside and besides that of Rose Transport Ltd? If not, why not?

If yes, why has Rose Transport Ltd as a company been linked to No. 1 Skips Public Inquiry?

Neil Brown and Austin Jones turned up unannounced on the 28 March 2015 to conduct a maintenance inspection of No. 1 Skips Vehicles not Rose Transport Ltd as VE Jones tries to allege in his statement.

Palace Drive has never been an operating centre for Rose Transport Ltd.

Neil Brown “pretended” already having visited one of the so called unauthorised operating centres in ... that he didn’t know or had no idea where it was, then I tried to explain to him where ... was, thus trying to make a fool out of me.

The evidence that the TC will consider

(pg 8)

Where is Neil Brown’s report?

Why is there no Public Inquiry statement from Neil Brown?

Traffic Compliances section 2 (pg 39)

The £200 was for not producing Drivers Digital tacho card nothing to do with drivers hours and tachographs as is trying to be implied by producing this piece of evidence.

And I could go on.

These people Brown, Love and Jones have gone to a lot of trouble to misinform, mislead and misdirect the public inquiry with pages and pages of information concerning Rose Transport Ltd mainly and Ms Walters and Mr Walters in their role as transport managers and for all of those pages the Compliance and History (pg 53) not one ‘S’ endorsed pg 9 has ever been issued, ever.

Rose Transport has its own shortcomings like many other companies but not to the extent or degree of seriousness of operating dangerous vehicles due to “poor” maintenance or putting “profit” before safety as is being portrayed by these 3 DVSA examiners.

How would I describe the “investigation” carried out by these 3 DVSA people – unscrupulous.’

12. At the oral hearing of the appeal representation was provided by Mr Delroy Walters. He confirmed that he is the brother of Mr Gilchris Walters and Ms Jacqueline Walters and had prepared the Notice of Appeal. He informed us that he wished to represent them both in connection with the decision by the Traffic Commissioner that they had lost their repute. He also, at the outset of the hearing, stated that he wished to provide representation on behalf of Rose Transport Ltd. We noted with him that the evidence demonstrated that the company had ceased operations, that Mr Gilchris Walters, as Director, had sought to surrender the operator’s licence and had confirmed, during the course of the PI, that had the licence not been revoked that he would not have sought its continuance, in any event. On this basis, Mr Delroy Walters stated that he was not proceeding with representation for Rose Transport Ltd.
13. Mr Delroy Walters made cogent oral submissions which are summarised as follows:
 - (i) He questioned the validity and veracity of the evidence provided by the DVSA Traffic Examiners and challenged the reliance by the Traffic Commissioner on that evidence.

- (ii) He submitted that the three DVSA Traffic Examiners had contrived to ‘... paint a picture as ‘black’ as they can in order to have our operator’s licence revoked.’
- (iii) He submitted that the operator ‘No 1 Skip Hire Ltd’ was being used as a ‘Trojan horse’ to justify and legitimise an investigation into Rose Transport Ltd.
- (iv) He noted that an assertion had been made that there had been no reply to correspondence which had purportedly been sent to Rose Transport Ltd but a copy of the relevant correspondence was not included in the papers provided in the brief for the PI.
- (v) He queried certain of the language which had been used in connection with Ms Jacqueline Walters when she had been described as evasive and uncomfortable and her ‘excuse’ for not attending the Pi being described as ‘lame’.
- (vi) He challenged the decision to call Mr Gilchris Walters, Ms Jacqueline Walters and Rose Transport Ltd to a PI at the same time as No 1 Skip Hire Ltd.
- (vii) Mr Gilchris Walters had a non-confrontational personality which would explain why he had not challenged the comments of the Traffic Commissioner at the PI.

The proper approach on appeal to the Upper Tribunal

15. In NT/2013/52 & 53 *Fergal Hughes v DOENI & Perry McKee Homes Ltd v DOENI*, ([2013] UKUT 618 AAC) (*Fergal Hughes*), 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 (*Bradley Fold*). 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.’

At paragraph 4, the Upper Tribunal had 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.'

General principles on the operation of the Act and Regulations

16. At paragraphs 10 to 13 of the decision in NT/2013/82 *Arnold Transport & Sons Ltd v DOENI* ([2014] UKUT 162 (AAC)), the Upper Tribunal set out the following general principles in the operation of the legislative provisions in Great Britain and Northern Ireland:

'Some General Principles

- (a) An operator's licence can only be granted if the applicant satisfies the Department that the relevant requirements, set out in s. 12 of the 2010 Act as amended, have been met. [The expression Department is used in the legislation but for the purposes of the decisions required to be taken under the legislation it is the Head of the TRU who takes them]. The relevant requirements are now set out in Paragraph 17(5) of the Goods Vehicles (Qualifications of Operators) Regulations (Northern Ireland) 2012, ("the Qualifications Regulations), which substitutes a new s.12 and adds ss. 12A-12E to the 2010 Act. The Qualifications Regulations also contain important provisions in relation to Good Repute, Professional Competence and Transport Managers.
- (b) ...
- (c) The Tribunal has stated on many occasions that operator's licensing is based on trust. Since it is impossible to police every operator and every vehicle at all times the Department in Northern Ireland, (and Traffic Commissioners in GB), must feel able to trust operators to comply with all relevant parts of the operator's licensing regime. In addition other operators must be able to trust their competitors to comply, otherwise they will no longer compete on a level playing field. In our view this reflects the general public interest in ensuring that Heavy Goods Vehicles are properly maintained and safely driven. Unfair competition is against the public interest because it encourages operators to cut corners in order to remain in business. Cutting corners all too easily leads to compromising safe operation.
- (d) It is important that operators understand that if their actions cast doubt on whether they can be trusted to comply with the regulatory regime they are likely to be called to a Public Inquiry at which their fitness to hold an operator's licence will be called into question. It will become clear, in due course, that fitness to hold an operator's licence is an essential element of good repute. It is also important for operators to understand that the Head of the TRU is clearly alive to the old saying that: "*actions speak louder than words*", (see paragraph 2(xxix) above). We agree that this is a helpful and appropriate approach.

The attitude of an operator when something goes wrong can be very instructive. Some recognise the problem at once and take immediate and effective steps to put matters right. Others only recognise the problem when it is set out in a call-up letter and begin to put matters right in the period before the Public Inquiry takes place. A third group leave it even later and come to the Public Inquiry with promises of action in the future. A fourth group bury their heads in the sand and wait to be told what to do during the Public Inquiry. It will be for the Head of the TRU to assess the position on the facts of each individual case. However it seems clear that prompt and effective action is likely to be given greater weight than untested promises to put matters right in the future.'

Our analysis

19. In paragraphs 8-27 of *T/2015/68 Malcolm George Millard t/a M&M Haulage* the Upper Tribunal set out a comprehensive summary of earlier Tribunal decisions in relation to adequacy of reasoning for a TC's decision. In addition reference was made to decisions on this topic in other jurisdictions. A summary of the relevant jurisprudence was also set out in paragraphs 11-27 of the decision of the Upper Tribunal in *T/2016/03 Ian Lambert t/a IKL Transport*.
20. We do not have formal Decision Notices in respect of Rose Transport Ltd, Mr Gilchris Walters and Ms Jacqueline Walters. What we do have are the oral comments of the Traffic Commissioner delivered in the closing stages of the PI, the formal correspondence forwarded to Rose Transport Ltd and Ms Jacqueline Walters on 19 October 2015 and the 'File-Note of decisions' prepared by the Traffic Commissioner on 15 October 2015. We cannot be certain, however, that the 'File-Note of decisions' was ever forwarded to the relevant parties.
21. We do accept that the totality of the documentation which was made available to Rose Transport Ltd, Mr Gilchris Walters and Ms Jacqueline Walters is sufficient to convey to them the precise reasons why the adverse decisions had been made. We have noted, in particular, that in respect of Rose Transport Ltd, the Traffic Commissioner noted the operator no longer satisfied the requirement to have sufficient financial standing without specifying the evidential basis for such a conclusion. Further, the 'Notes' which have been added to the 'File-Note of Decisions' are specifically stated not to form part of the decisions.
22. We are not satisfied, therefore, that the written reasons for the decision of the Traffic Commissioner fulfil the tests for the duty to give reasons and adequacy of reasons set out in the authoritative jurisprudence set out in *T/2015/68 Malcolm George Millard t/a M&M Haulage*. We have concluded, therefore, that the decision of the Traffic Commissioner must be set aside.
23. We are, however, in a position to re-make the decision of the Traffic Commissioner which is to the same effect as his.
24. We begin with some of the more general submissions that have been made on the appeal by Mr Delroy Walters. The first relates to the reason why Rose Transport Ltd, as an operator and Ms Jacqueline Walters, as Transport Manager were called to a PI.

25. Legislative provision for Public Inquiries is to be found in Regulation 20 and Schedule 4 to the Goods Vehicles (Licensing of Operators) Regulations 1995 ('the 1995 Regulations') made under the 1995 Act. The procedural requirements for a Public Inquiry are set out in significant detail in Schedule 4.
26. The call up letters to the Public Inquiry in this case are dated 10 September 2015. The detail of those letters is set out in sub-paragraphs (iv), (v) and (vi) of paragraph 2 above. The parties concerned could not have been provided with more detail concerning the issues which were of concern to the office of the Traffic Commissioner.
27. We have no hesitation in agreeing that in light of that background the decision to hold a Public Inquiry in connection with Rose Transport Ltd, Ms Jacqueline Walters and Mr Gilchris Walters was wholly reasonable. Mr Delroy Walters has questioned why the PI relating to Rose Transport Ltd and his brother and sister took place at the same time as one relating to another operator – No 1 Skip hire. There are clear linkages between Rose Transport Ltd and No 1 Skip Hire Ltd in that Mr Gilchris Walters was both a Director of Rose Transport Ltd and the Transport Manager for No 1 Skip Hire Ltd (see paragraph 2(ii) above).
28. In *T/2014/77 Leedale Ltd*, the Upper Tribunal said, at paragraph 90:

'Public inquiries are hearings conducted by statutory regulators whose functions are to ensure road safety, fair competition and compliance. The hearings are by necessity inquisitorial and one of the functions of TCs is to probe and test the evidence put forward by an operator. The approach of TC's must be robust in those circumstances and they often have to deal with operators ... who are themselves robust and who object to any form of intrusive scrutiny of their operations and react accordingly. There may be other operators or witnesses who have no or little previous experience or understanding of the public inquiry process, who may feel that they are the object of robust, unfair and intrusive scrutiny when that is not the case.'
29. In our view, the proceedings at the Public Inquiry were conducted in accordance with the principles of natural justice, and the transcript is reflective of an apposite consideration of, and adherence to such principles. The Traffic Commissioner conducted the proceedings in a fair, balanced and enabling manner. The only party to attend the PI before the Traffic Commissioner, in connection with Rose Transport Ltd, Ms Jacqueline Walters and Mr Gilchris Walters, was Mr Gilchris Walters himself. In our view, he was given every opportunity to give evidence, make submissions and address issues which had been raised. His precise role and the parties whom he was representing were clarified with him at the outset of the PI.
30. At one stage in the proceedings, the Traffic Commissioner stated the following to Mr Gilchris Walters:

'More of an issue relating to you and I appreciate I am not sure whether you are going to address me again on this, but in fact as far as you position as Transport Manager I am really wanting to give you an opportunity to say something else. I have been asking you questions throughout because you are not represented and I have allowed you to actually ask questions of others in the middle of their giving evidence ...'

31. The quoted exchange is typical of a number of comments made by the Traffic Commissioner and aimed, in our view, at ensuring that Mr Gilchris Walters was given every opportunity to understand the nature of the proceedings, participate in those proceedings to the fullest possible extent, by giving his own evidence and questioning that given by others and raising the issues which were of significance to him.
32. We have noted that Mr Delroy Walters has submitted that the acceptance by Mr Gilchris Walters of many of the matters which were put to him by the Traffic Commissioner were representative of his non-confrontational personality. We have no reason to doubt that Mr Gilchris Walters has such a character. Nonetheless, we have already noted that the PI call-up letter gave detailed information to Mr Gilchris Walters about the nature of the proceedings the issues which were of concern to the office of the Traffic Commissioner and set out in some detail the issues which were of concern to the Traffic Commissioner. Mr Gilchris Walters was also informed of the Traffic Commissioner's powers which could include the revocation of the operator's licence.
33. More significantly, Mr Gilchris Walters was informed of his right to seek legal and professional assistance and of the requirement for him to adduce evidence relevant to his own position and that of the operator. Against that background, Mr Gilchris Walters chose to represent himself at the PI. The Traffic Commissioner, in recognition of that fact, spent time explaining evidence and issues to Mr Gilchris Walters and, importantly, seeking assurances that Mr Gilchris Walters understood what was being said and done. He also permitted Mr Gilchris Walters to question others who were giving evidence.
34. We have also noted the assertion by Mr Delroy Walters that the evidence on which the Traffic Commissioner had relied was flawed. In our view, the Traffic Commissioner undertook a rational assessment of all of the evidence before him. All issues raised, either expressly or apparent from the evidence, were fully examined by the Traffic Commissioner. In the 'Notes' section to the 'File Note of Decisions', the Traffic Commissioner has noted that he has accepted '... all DVSA evidence given to me.' That acceptance was noted after the PI had been conducted and during which the DVSA evidence was examined. As was noted above, Mr Gilchris Walters was given every opportunity to challenge that evidence and did not do so.
35. We have observed that in the 'Notes' section the Traffic Commissioner has recorded that he was '... an honest individual.' That statement is reflective of a series of comments made by the Traffic Commissioner during the PI in which he repeated that he did not question the integrity of Mr Gilchris Walters.
36. We turn to the individual decisions which were made by the Traffic Commissioner reminding ourselves we do so against the two-stage test set out in *Bradley Fold* i.e. the Appellant assumes the burden of showing that the decision under appeal is wrong and that it has to be shown that 'the process of reasoning and the application of the relevant law require the Tribunal to adopt a different view'. In short was the decision 'plainly wrong'?
37. We begin with Rose Transport Ltd. As was noted above, there is evidence that the company had ceased operations. Before the scheduled date of the PI, Mr Gilchris Walters, as Director, had sought to surrender the operator's licence. During the course of the PI, the Traffic Commissioner informed Mr Gilchris

Walters that the request for surrender had not been accepted because of the potential for revocation and disqualification. Mr Gilchris Walters had then confirmed that, had the licence not been revoked, he would not have sought its continuance, in any event. Mr Delroy Walters stated during the course of the oral hearing before us that he was not proceeding with representation for Rose Transport Ltd.

38. On that basis there are no substantive arguments on appeal in connection with the decision of the Traffic Commissioner to revoke the licence. We are satisfied that the decision of the Traffic Commissioner was not 'plainly wrong'. We have noted that during the later stages of the PI the Traffic Commissioner stated that matters made out in the call-up letter under sections 26(1)(a); 26(1)(c); 16(10)(f) and 26(1)(h) of the Act had been made out. We agree that the Traffic Commissioner had before him sufficient evidence to found that conclusion.
39. The Traffic Commissioner concluded that the operator no longer had the necessary good repute and professional competence. Once again, we confirm and uphold those conclusions. Finally, we have noted that the Traffic Commissioner concluded that the operator no longer satisfied the requirement for financial standing. As was noted above, we have some concerns about the evidential basis for this conclusion. We have noted that in the call-up letter, Mr Gilchris Walters was directed to provide evidence of financial standing. Although it is nowhere expressly stated, it may be the case that the Traffic Commissioner was basing his conclusion on financial standing on a failure to respond to this direction.
40. We turn to Ms Jacqueline Walters. The only submission which we have from her, in person, was the statement which she made in her correspondence of 6 October 2015 and in which she stated that she would not be attending the PI. Thereafter she had challenged the evidence of one of the DVSA Traffic Examiners. There is also evidence that she had, prior to the PI, resigned as Transport Manager for Rose Transport Ltd.
41. At the outset of the PI, the Traffic Commissioner made the following statement:

'I have also received a letter from Jacqueline Walters saying she is not coming. She has given a reason for not coming which frankly I regard as bizarre. She says that she was not cautioned and claims, she says notes were tailored to suit one's ends. If she had had prior knowledge she would have terminated the interview and sought legal advice or at least asked for a taped and written statement. Well we are not dealing with any criminal proceedings this is a civil matter. It happens separately from that, and Tracy Love is aware of this because it has actually occurred in cases some years ago where actually if, in fact, adverse findings are made which has a significant impact leading to loss of livelihood, well then although I always decide matters on the balance of probabilities, and that is the standard of proof, the more serious an issue or allegation the more cogent the evidence that is needed which is why, on occasions, there will be interviews. Sometimes the DVSA choose to interview under caution or what have you in terms of the legalities there is no obligation at all and if Jacqueline Walters wants to challenge something she needs to attend to challenge.'
42. The use of the word 'bizarre' to describe the statement made by Ms Walters, is, in our view, unnecessary. That is because the statement which Ms Walters made was not in our view related to her decision not to attend but was by way

of a direct challenge to the evidence of the DVSA Traffic Examiner. More significantly, however, the Traffic Commissioner returned to the challenge which had been made by Ms Walters during the course of the PI and when the Traffic Examiner was giving evidence and pressed her to confirm that evidence. We noted above that Mr Gilchris Walters indicated that he was not representing his sister at the PI but did make representations on the sanction which the Traffic Commissioner was proposing to make.

43. We are also of the view that the description by the Traffic Commissioner (in the 'Notes' section of the 'File Note of Decisions' of the excuse offered by Ms Jacqueline Walters for not attending the PI as 'lame' is unfortunate.
44. During the course of the oral hearing before us, Mr Delroy Walters made some general submissions on behalf of his sister. We have addressed those general submissions above.
45. We confirm and uphold the decision of the Traffic Commissioner in respect of Ms Jacqueline Walters. That decision was underpinned by an adequate evidential base and sufficient fact-finding. It was not plainly wrong. We have noted and confirm the terms of the Traffic Commissioner's decision that Ms Jacqueline Walters is only disqualified from holding or applying for any position as a Transport Manager within the EU until she passes a new Transport Manager CPC examination.
46. We turn to Mr Gilchris Walters. He did attend the PI and played an active part in it. He gave evidence in his own respect and was permitted to hear and challenge the evidence of others. The issues which were of concern to the Traffic Commissioner were addressed in significant detail during the course of the PI. Mr Gilchris Walters was asked whether he understood those issues and whether he wished to comment on them. The following exchange is typical of many which took place:

'Q. You have heard (the Vehicle Examiner) give evidence, are there any questions that you want to ask?

MR WALTERS: No.

THE [TC]: You accept what he said? Do you disagree with any of the factual things he has raised?

MR WALTERS: No.

THE [TC]: I put it to him it comes across that the paperwork is generally all right. It is not perfect but it is rank poor management. Do you agree with that?

MR WALTERS: It appears so, yes.

THE [TC]: It appears so?

MR WALTERS: Yeah.

THE [TC]: Do you accept it?

MR WALTERS: Yeah.'

47. This is representative of a number of occasions when failings or omissions, based on reliable evidence, were put to Mr Gilchris Walters and he indicated that he accepted and understood them. We have also noted that Mr Gilchris Walters had also stated to the Traffic Commissioner that he would have liked to have undertaken his 'CPC' examinations again if he had the choice. He also indicated that he understood why the Traffic Commissioner was seeking to impose a sanction against him.
48. During the course of the oral hearing before us, Mr Delroy Walters made some general submissions on behalf of his sister. We have addressed those general submissions above.
49. We confirm and uphold the decision of the Traffic Commissioner in respect of Mr Gilchris Walters. That decision was underpinned by an adequate evidential base and sufficient fact-finding. It was not plainly wrong. We have noted and confirm the terms of the Traffic Commissioner's decision that Mr Gilchris Walters is only disqualified from holding or applying for any position as a Transport Manager within the EU until he passes a new Transport Manager CPC examination. There is also, on record, a statement by the Traffic Commissioner that Mr Gilchris Walters was an honest individual and that he did not question his integrity.

Disposal

50. To the extent that we find that that the written reasons for the decision of the Traffic Commissioner do not fulfil the tests for the duty to give reasons and adequacy of reasons set out in the authoritative jurisprudence in *T/2015/68 Malcolm George Millard t/a M&M Haulage*, the appeal is allowed.
51. We substitute, however, our own decision which is to the same effect as that of the Traffic Commissioner, namely:
 - (i) The Standard National Goods Vehicle Operator's licence of Rose Transport Ltd is revoked;
 - (ii) Ms Jacqueline Walters is disqualified from holding or applying for any position as a Transport Manager within the EU until she passes a new Transport Manager CPC examination; and
 - (iii) Mr Gilchris Walters is disqualified from holding or applying for any position as a Transport Manager within the EU until he passes a new Transport Manager CPC examination.



**Kenneth Mullan, Judge of the Upper Tribunal,
30 August 2016**