

Neutral Citation Number: [2017] UKUT 0350 (AAC)

**Appeal No.** T/2017/15

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

**IN AN APPEAL FROM THE DECISION OF  
Simon Evans, Deputy Traffic Commissioner for the  
NORTH WEST OF ENGLAND TRAFFIC AREA dated 14 January 2017**

**Before:**

**Her Hon. Judge J Beech, Judge of the Upper Tribunal  
Michael Farmer, Specialist Member of the Upper Tribunal  
Andrew Guest, Specialist Member of the Upper Tribunal**

**Appellant:**

**LIVE EVENTS at NETWORKS3D LIMITED**

**Attendances:**

For the Appellant: None

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

**Date of hearing:** 22 August 2017

**Date of decision:** 29 August 2017

**DECISION OF THE UPPER TRIBUNAL**

IT IS HEREBY ORDERED that the appeal be DISMISSED

**SUBJECT MATTER:-** The fitness of the company to hold a restricted operator's licence

**CASES REFERRED TO:-** Bradley Fold Travel Ltd & Peter Wright v Secretary of State for Transport (2010) EWCA Civ. 695; 2004/426 EA Scaffolding and Systems Ltd v Secretary of State for Transport; Aspey Trucks (2010/49); T2013/07 Redsky Wholesales Limited.

## REASONS FOR DECISION

1. This is an appeal from the decision of Deputy Traffic Commissioner Evans for the North West of England Traffic Area ("the DTC") made on 14 January 2017 when he refused to grant the Appellant company a restricted operator's licence pursuant to s.13B of the Goods Vehicles (Licensing of Operators) Act 1995 ("the Act").

### Background

2. The background to the appeal can be found within the papers and the DTC's written decision and is as follows: Mr Richard Mosley is the sole director of the Appellant company although he and Mrs Katrina Mosley, his wife, are joint shareholders (50-50). They have been in business together for a number of years as international museum, events and exhibition contractors.
3. On 25 March 1997, Network Global Limited (also referred to as Networks Global Limited in documentation.) was granted a restricted operator's licence authorising 4 vehicles and 9 trailers. Mr Mosley was the sole director of the company; Mrs Mosley was the Company Secretary and together they were joint shareholders (50-50). On 27 November 2008, Her Majesty's Revenue and Customs ("HMRC") applied for the company to be wound up. On 3 December 2008, the company went into administration followed by a creditors voluntary liquidation. The Statement of Administrator's Proposals filed with Companies House on 22 January 2009, showed that the company's estimated liability to Her Majesty's Revenue and Customs ("HMRC") was "*around £200,000*". See paragraph 8 below for the more definitive position.
4. The goodwill and assets of the failed company were sold by the Administrator to Netmel Limited ("Netmel") for £40,000 with the whole of the sale consideration being the subject of a personal guarantee from Mr Mosley. Mr Mosley was the sole director of Netmel; Mrs Mosley was the Company Secretary and together they were joint shareholders (50-50).
5. Network Global Limited was called to a public inquiry on 9 June 2010 and its operator's licence was revoked under s.26(1)(h) of the Act as a result of the company having been placed into liquidation. Mr Mosley maintained during the course of the hearing that he had informed the OTC about the company's financial position by way of a telephone call at the time the company went into administration and that he was told that he did not need to take any action. Ultimately, Senior Traffic Commissioner Bell did not make any findings about whether she accepted that to be the case. Time was given to enable Netmel to make an application for a licence.
6. Netmel trading as Networks made an application later that month. It offered the surrender of the licence of Network Global Limited in the event that the Netmel application was granted although that licence had already been revoked. An interim licence was granted with attached conditions as to finance and operator training. The full licence was granted with effect from 19 August 2010 following a public

inquiry. On 10 January 2011 (so five months after the grant of the operator's licence), Netmel entered into a Creditors Voluntary Liquidation. The Statement of Affairs listed the Inland Revenue as a creditor (£301,177) and Customs and Excise (£183,005.61). Netmel's licence was eventually revoked following the public inquiry convened to consider the next application made by a Mosley related company. See paragraph 7.

7. On a date which is unclear from the papers, Networks3D Limited made an application for a restricted licence authorising 3 vehicles and 6 trailers. Mrs Mosley was the sole Director; Mr and Mrs Mosley were the joint shareholders (50-50). The application was granted following a public inquiry which took place on 9 May 2011. A formal warning was given with regard to maintenance inspections. It is of note that in her written decision, Senior Traffic Commissioner Bell noted that whilst Mrs Mosley was the sole director of Networks3D Ltd, it was clear that she was "*still assisted by her husband, Richard Mosley who has extensive involvement with the previous entities, Netmel Ltd and Network Global Ltd*". It is of further note that STC Bell recorded an undertaking from both Mr and Mrs Mosley that they would both attend the Traffic Commissioner's operator licence compliance seminar on 11 May 2011, which they both did. An interim licence was granted for six months followed by a full licence.
8. On 28 July 2011, Mr Mosley gave a director's disqualification undertaking for a period of three years following an application made by the Secretary of State for Business, Innovation and Skills. In giving the undertaking, Mr Mosley accepted that:
  - a) Network Global Limited went into administration with a total debt of £502,082;
  - b) As a director of the company, he had caused Network Global Ltd to neglect its tax affairs and to trade to the detriment of HMRC, principally in respect of VAT;
  - c) The company had a history of late filing of returns and defaulting on payment of VAT as early as the quarter ending February 2002 resulting in surcharges of £65,130;
  - d) By 3 December 2008, the company's VAT liability totalled £265,679 excluding surcharges of £41,791;
  - e) Time to pay agreements in respect of VAT and PAYE/NIC were defaulted upon "immediately" and numerous threats to issue winding up proceedings were made;
  - f) At the date of administration, the outstanding PAYE/NIC liability was £55,340 (in addition to the figures set out in d) above).

The terms of the undertaking were that Mr Mosley would not be a director of a company, act as receiver of a company's property or in any way, whether directly or indirectly, be concerned or take part in the promotion, formation or management of a company unless (in each case) he had leave of the court. The Office of the Traffic Commissioner ("OTC") was not notified of this disqualification undertaking.

9. A petition to wind up Networks3D Limited was presented on 15 July 2016 with a meeting of its creditors on 30 August 2016. Liquidators were appointed on 6 September 2016 and on 15 September 2016, Mrs Mosley signed the company's

Statement of Affairs. The estimated total of monies owed by the company was £239,900 of which the sum of £74,174 was owed to HMRC for PAYE and £120,072 was owed in VAT.

10. In the interim, an application for a restricted licence dated 21 July 2016 was received by the OTC on 8 August 2016 from Live Events at Networks3D Limited (the Appellant company). The sole director of the company was Mr Mosely; Mrs Mosley was the Company Secretary and Mr and Mrs Mosley were the joint shareholders (50-50). Whilst the application was for an authorisation of 3 vehicles and 6 trailers, only 1 vehicle and 2 trailers were listed on the application and they were already specified on the licence of Networks3D Limited. Financial standing was demonstrated by relying upon the bank statements of Networks3D Limited. The application stated that the licence of Networks3D Limited would be surrendered if the application was granted. A Companies House search undertaken by the OTC revealed that the company accounts for Networks3D Ltd were overdue and as a result, the OTC wrote to Mr Mosley enquiring whether that company was likely to enter into administration. Mr Mosley responded stating that the accounts of Networks3D Ltd were awaiting final submission for the accountants and were *“delayed only by illness”*. It then came to the attention of the OTC that the winding up petition had already been issued and as a result, “propose to revoke” letters were issued by the OTC to Networks3D Limited under ss.26(1)(g) and (h) of the Act and a decision made that the application from the Appellant company should be further scrutinised.
11. Returning to the application made by the Appellant Company, it is accepted by Mr Mosley that a number of the answers within it were false:
  - a) Q13(b)(ii) – the answer “no” to the question *“has any person named in this application .. ever been involved with a company, or business, that has gone into (or is going into) receivership”*;
  - b) Q13(b)(iv) – the answer “no” to the question *“have you, or have any of your partners, directors, majority shareholders .. ever been involved with a company or business, that has gone into (or is going into) administration or company voluntary arrangement”*;
  - c) Q13(b)(v) – the answer “no” to the question *“have you, or have any of your partners, directors ... ever been disqualified from acting as a director of a company or from taking part in the management of a company under the Company Directors Disqualification Act 1986”*;
  - d) Q14a) – the answer “yes” to the question *“does any person named in this application .. currently hold an .. operator’s licence ..”* (false upon the basis that Mr Mosley denies acting as a director for Networks3D Ltd);
  - e) Q14b) – the answer “no” to the question *“has any person named in this application .. previously held or applied for an ... operator’s licence in any traffic area”*;
  - f) Q14d) – the answer “no” to the question *“has any person named in this application .. ever had an .. operator’s licence revoked ...”*;
  - g) Q14g) – the answer “no” to the question *“within the last twelve months, have you, your company .. purchased the assets or shareholding of any company that, to your knowledge currently holds or has previously held an operator’s licence ..”*, as the Appellant Company had purchased the tractor unit (and in

all likelihood, the trailers) to be specified on its licence from Networks3D Limited.

In addition we note that the answer “no” to Q14e) *“has any person named in this application ... ever attended a public inquiry before a traffic commissioner”* was also false.

12. On 30 August 2016, the OTC wrote to Mr Mosley requesting an explanation for some of the above answers which appeared to be false. He responded by email stating: *“I went on holiday and (the form) was completed in my absence by a member of staff who was supposed to then email to me for approval before sending it to yourself. Unfortunately this didn’t happen and the form was sent incorrectly to you.”* There is no evidence in the documentation that Mr Mosley offered, at any stage, to withdraw the application and submit a new one containing answers which were true.
13. On 15 September 2016, the OTC wrote to Mr Mosley informing him that the Traffic Commissioner was proposing to refuse his application under s.13B of the Act as there were concerns regarding his fitness to hold a licence. He was offered an opportunity to ask for a public inquiry. Mr Mosley responded by email requesting a public inquiry. He added that *“16 people are potentially dependent on the outcome of the hearing”* and stated that he had attended VOSA training courses and that maintenance and repair of the vehicles were not an issue and the vehicles had not been involved in any traffic incidents. He sought clarification of the reasons for invoking s.13B to which the OTC responded *“Section 13B .. in this instance relates to the failure of the applicant to declare their previous licence history and the status of Networks 3D Limited”* to which Mr Mosley responded *“As I was neither the licence holder or director of Networks3D, only a part time consultant, it was not in my remit to declare anything other, and or its status”*. In a further email, Mr Mosley reminded the OTC that his wife was the sole director of Networks3d Ltd and averred that he had not been a director since July 2011 and avowed never to be one again. He further averred (despite a warning letter issued to Network Global Limited in relation to maintenance; a further warning in June 2010 in relation to maintenance records and a further warning in 2012 about shortcomings in the maintenance of the vehicles) that he did not have a past adverse record in relation to vehicle maintenance or of encouraging acts which may endanger other road users. He repeated that he had attended VOSA courses. He wished to have an early hearing as neither the use of smaller vehicles or hired vehicles over 7.5 tonnes were economically viable options. As a public inquiry date was unlikely to be available before December 2016, Mr Mosley requested that he be granted an interim licence. That application was refused on 3 October 2016 but Mr Mosley was given an opportunity to make an oral application on 10 October 2016.
14. DTC Harrington heard Mr Mosley’s oral application. With regard to the false application form, Mr Mosley told the DTC that he had been travelling to Germany for two or two and a half weeks at the time when the newspaper advertisement notifying the public of the Appellant company’s intention to apply for a licence had already been submitted for publication. He arranged for two ladies in his office to complete the form in pencil and then send it to him in Germany for approval. He had already signed the form. His instructions were not followed and the application was sent to the OTC without giving him an opportunity to check its accuracy. He was unable to

say why he did not complete the form and then return it to the UK to meet the submission deadline.

15. DTC Harrington then went through the history of insolvent companies associated with Mr and Mrs Mosley and concluded that the loss to the public purse by reason of those companies failing was in excess of £1 million, although Mr Mosley took issue with the figures she relied upon. He was asked why he had not been appointed as a director for Networks3D Limited and it was at that stage, for the first time, that Mr Mosley disclosed that he had been disqualified from acting as a director for a period of three years although he could not provide any details of the disqualification.
16. In refusing Mr Mosley's application, DTC Harrington identified three issues which should be considered at the forthcoming public inquiry:
  - a) The signing of a blank application form, particularly given the declaration of truth attached to that signature, the various pieces of information "missing" from the form and the credibility of Mr Mosley's explanation in relation to the submission of that form;
  - b) The incomplete/misleading response given by Mr Mosley to the OTC concerning the solvency of Networks3D Limited generally, irrespective of whether or not he was a named director of that company;
  - c) The undisclosed disqualification as well as the circumstances and detail of that order.
17. The public inquiry was convened on 12 January 2017 before DTC Evans. Mr Mosley gave evidence about the difficulties in operating in the world of staging events and exhibitions without an operator's licence. He sought to attribute the history of failing companies upon small margins and late paying, large clients, causing cash flow difficulties along with significant bad debts. He now operated on strictly enforced terms of business and worked only with small to medium clients. He again took issue with the figures in the documents setting out the loss to the public purse as a result of his previous companies failing.
18. As for his disqualification, Mr Mosley insisted that it had not resulted from any wrongdoing on his part but was the result of the amount of money Network Global Limited owed although he disputed the overall amount. As Mr Mosley had failed to produce the disqualification order for the DTC to consider, he was required to produce it prior to the DTC coming to his final determination on the application.
19. Turning to the application form, Mr Mosley repeated the account he had given to DTC Harrington of how it came to be submitted when it contained material and significant falsehoods. He maintained that he was not aware of the false information contained in the form as his staff had not kept a copy of it and that he was only alerted to the problem with the form when the OTC raised the issue. He maintained that the staff had used the original application of Network Global Limited as a template to complete the form and once he was aware of the position, he had not hidden anything from the OTC. He was unable to provide an explanation for why it came to be that his disqualification had not been mentioned prior to the hearing before DTC Harrington.

20. The DTC then turned to the apparently misleading response given by Mr Mosley to the enquiries about the solvency of Networks3D Limited. Mr Mosley stated that he was not a director of that company, even though he had offered to surrender its licence if his application was granted and relied upon the bank statements of that company to demonstrate financial standing.
21. In concluding his application, Mr Mosley accepted that with hindsight, he ought to have acted differently but maintained that he was an honest man, doing his best to provide employment for others. There were no issues in relation to the operation of the vehicles when operated by the previous trading entities.

#### The DTC's decision dated 14 January 2017

22. The DTC made the following findings of fact:
  - a) Mr Mosley submitted a false application form, which he had declared in signing the application to be truthful and in doing so, he had committed a "grossly reckless act";
  - b) His failure to seek the return of the application or at the very least, a copy of it to check the accuracy of the document amounted to a wilful failure on his part to take steps that an honest applicant would be expected to take in the circumstances;
  - c) Mr Mosley had been associated with companies which had been dissolved owing "very large" amounts of money to HMRC. Whilst Mr Mosley disputed the sums involved, even when taking his evidence at its highest, the sums outstanding were substantial;
  - d) Contrary to the evidence that Mr Mosley gave at the public inquiry, he had accepted a director disqualification undertaking for three years as a result of his unfitness to be a director because of his neglect of tax affairs and malpractice in trading to the detriment of the HMRC whilst a director of Network Global Limited;
  - e) The failure to disclose that disqualification until he was questioned about his involvement with Networks3D Limited demonstrated a failure on his part to make full disclosure;
  - f) Mr Mosley's denial of having any understanding of the true circumstances of his disqualification and the nature of any personal wrongdoing on his part was "entirely lacking in honesty, candour and openness" when he was in possession of the full details of the undertaking he had given;
  - g) His failure to accurately answer the enquiry about the financial standing of Networks3D limited was deliberate and disingenuous;
  - h) Whilst the DTC accepted Mr Mosley's evidence that he was not a director of Networks3D Limited and that he may not have worked in that business "substantially", the operation of vehicles by that company is not of significant concern in terms of maintenance and prohibitions.
23. The DTC went on to consider the decision of Aspey Trucks Ltd (2010/49) and reminded himself that Traffic Commissioners are the gatekeepers to the haulage industry when considering new applications. Those who apply must satisfy the Traffic Commissioner of their good repute and fitness and the Traffic Commissioner must be "*awake to what the public, other operators, and customers and competitors alike would expect of those permitted to join the industry that they will not blemish or*

*undermine its good name, or abuse the privileges it bestows*". The DTC's determination of the Appellant company's fitness to hold a licence was closely concerned with the DTC's view of the honesty, integrity and trustworthiness of Mr Mosley and the confidence which he could have in him as the guiding mind behind proposed operations, as well as his competence and understanding of the expectations of him as a licence holder. The DTC concluded that his confidence in Mr Mosley was significantly undermined, especially in the process of his licence application, such that Mr Mosley had not demonstrated on the balance of probabilities that he was not unfit to hold a licence.

24. The DTC proceeded to undertake the requisite balancing exercise. In Mr Mosley's favour was his evidence that he had learnt from the process and from the failure of his previous companies and that he demonstrated a desire to maintain employment for his staff; there was no particular concern about vehicle maintenance when considering the record of Networks3D Ltd; there was no evidence that in the immediate period leading up to the public inquiry, that there had been any breaches of the rules of large goods vehicle operation. In the negative was Mr Mosely's failure to meet expectations as a director leading to a period of disqualification; he had not learned from the disqualification as he did not admit the nature of his wrongdoing, such that the DTC was unable to conclude that there was little or no risk of repetition; the inaccurately completed form demonstrated "*an abject failure .. to evidence .. compliance*" and that this "*seriously undermined the applicant's position and therefore the confidence that I might have in him*"; the honesty and integrity of Mr Mosley had been brought into question and his conduct had been unbecoming of a director of a company holding an operator's licence. The DTC concluded that negatives significantly outweighed the positives. The DTC referred to the Statutory Guidance Documents, the fiduciary responsibilities of directors and the principles of fair competition in the industry in determining that that Appellant company should not be permitted access to the industry at the present time and that such a determination was proportionate. The application was therefore refused.

### The Appeal

25. In his Notice of Appeal, Mr Mosley stated as follows:

*"The whole of the decision of the DTC relies on his "personal opinion" about the honesty of Richard Mosley. ..*

*Surely a decision has to rely on facts not whether someone likes you or not.*

*Less than 5% of the decision notice and indeed the hearing relates to "traffic", number of vehicles, past maintenance records, finance etc.*

*A number of the statements made within the decision are categorically untrue and some manipulated to suit Mr Evans statement.*

*The whole hearing became a witch hunt against myself. Yes I was disqualified as a director for 3 years. And yes I effectively served my time. Mr Evans could not see beyond this.*

*Had I been a convict, might as well not turned up. .."*

Under Grounds of Appeal:

1. *"Maintenance of vehicles; Number of vehicles; funding robust systems. Not even considered.*



2. *Conflicting information from two different traffic commissioners. Harrington:- no such thing as a margin; Evans:- how much margin you applying for.*
  3. *Fair competition! We cannot now get goods from warehouse to workshop. Use of hauliers has doubled costs above. Use of hauliers has doubled external costs of getting equipment to site. Use of hired vans has doubled operating costs and carbon emissions. These costs have and are forcing redundancies which is unfair.*
  4. *The public enquiry (sic) proceedings were not fair and free from unjustified bias.*
  5. *It is not the role of the deputy traffic commissioner to make judgment on affairs outside their jurisdiction.”*
26. As a result of the allegation of bias made by Mr Mosley, Case Management Directions were issued by the Upper Tribunal, invoking the settled procedure set out in 2004/426 EA Scaffolding and Systems Ltd v Secretary of State for Transport. Mr Mosley was required to provide an affidavit setting out full particulars of all allegations of bias and misconduct relied upon by him. In response, Mr Mosley provided a statement headed “affidavit” in which he repeated the background to the appeal, complained about the conduct and findings of DTC Harrington, complains about the decision of DTC Evans but did not repeat the allegation of bias. In the circumstances, the Upper Tribunal determined not to proceed to take the next step in the EA Scaffolding procedure and invite DTC Evans to respond to Mr Mosley’s affidavit.
27. The hearing of Mr Mosley’s appeal was listed for 10.30 on 22 August 2017. By letters dated 22 June 2017 and 28 June 2017, the Upper Tribunal notified Mr Mosley of the date and time of the appeal. Mr Mosley failed to attend the hearing. The Clerk to the Tribunal spoke to him by telephone at about 10.40 that morning. Mr Mosley maintained that there had been a “*mix up with the dates*” and that he thought the hearing was listed for 24 August 2017. He was asked whether he wished to apply for an adjournment. His response was that he “*did not mind; that it was up to the Tribunal as to whether the hearing should be adjourned and that in any event, he thought that he knew what the outcome of the appeal would be*”. Having considered the position, the Tribunal determined that Mr Mosley had been given adequate notice of the hearing date and that it would neither be proportionate or in the interests of justice to adjourn the hearing.

### The Upper Tribunal’s Determination

28. This appeal concerns the requirement in s.13B of the Act, that a holder of a restricted operator’s licence must not be unfit to hold such a licence. This Tribunal has previously determined that the test of fitness is not a significantly lower hurdle than that of good repute required for standard licences (T/2013/07 Redsky Wholesalers Limited). The requirement necessarily involves Traffic Commissioners undertaking an assessment of conduct of a company and/or its officers which may be relevant to the test of fitness. The question of fitness in this case arose firstly from Mr Mosley’s conduct in his capacity as a director for other failed companies which had held restricted licences and which were linked to the Appellant company and secondly, from his conduct as director of the Appellant company in relation to the submitted application form for a restricted licence. It was inevitable that the DTC would scrutinise Mr Mosley’s conduct in those two regards and make findings upon

the evidence he accepted and/or rejected. Whilst Mr Mosley's first complaint in his Notice of Appeal is that the DTC's decision was "*personal opinion*" rather than "*facts*", we are satisfied that the DTC properly conducted the required assessment and made appropriate findings of fact based upon that assessment. In the result, we reject Mr Mosley's complaint about how the DTC arrived at the decision he did.

29. Mr Mosley's second complaint is that in his decision, the DTC made little reference to the maintenance and operator licence record of the vehicles he proposed to operate under the licence. We are satisfied that there is nothing in this point as there were no concerns raised by the DTC about whether the vehicles would be maintained to the correct standard or operated in a manner which would be considered to be safe. Indeed, the absence of any concerns about vehicle operation under the proposed licence was a positive feature of the application which the DTC weighed in the balance against the negative features. It follows, that whilst the DTC made little reference to vehicle operation, he did not need to do so.
30. Turning to Mr Mosley's third complaint that the public inquiry became a witch hunt as a result of his disclosure that he had accepted a director disqualification undertaking in 2011, which had run its course, we consider it important to put this complaint in context. Mr Mosely had failed to inform the OTC of his disqualification (and in particular, failed to do so in the licence application form) until he had no option but to disclose the undertaking when he appeared before DTC Harrington and then, when he did disclose the disqualification to her, he was not straightforward about how that disqualification came to be. He was not straightforward when he was asked about it by DTC Evans and his assessment of Mr Mosely in this regard is beyond criticism. We are satisfied that it would have been open to the DTC to go further in his findings in relation to the disqualification as the irresistible conclusion when looking at the history of the Mosleys' business operations, is that the reason why Mrs Mosely became the sole director of Networks3D Limited was that it was anticipated that her husband would be made the subject of a director disqualification order or that he would accept an undertaking. Whilst the DTC did not make any findings about Mr Mosley's role in that company it would have been open to him to find that despite Mrs Mosley being named as the sole director, Mr Mosley in all likelihood also acted as a director, if not in name, of Networks3D Limited once he had been disqualified. The evidence upon which such a determination could have been founded was firstly, the STC Bell's findings in her reasons for granting the licence application of that company, that Mr Mosely was assisting Mrs Mosley in the operation of the licence and that he had extensive involvement in Netmel and Network Global Limited; that he attended an operator training course knowing that he was to be disqualified; that he relied upon that company's bank statements when making the Appellant company's application and indicated that its licence would be surrendered if his application was granted. If he were not acting as a director for that company, then he would not have any right to use the bank statements or to offer the licence for surrender. Be that as it may, the DTC appeared to be prepared to give Mr Mosley the benefit of the doubt about his involvement with Networks3D Limited but his adverse findings about Mr Mosley's non-disclosure of the disqualification, however old it was and his lack of candour about the circumstances and content of the disqualification undertaking are beyond criticism. The public inquiry was not a "witch hunt" but a paradigm example of an inquisitorial process taking its natural course.

31. Mr Mosley also complained that DTC Harrington and DTC Evans made conflicting comments upon the issue of “a margin” on the proposed licence. The comments were just that and were irrelevant to the issues in this appeal. This complaint is rejected.
32. The next issue raised by Mr Mosley is fair competition. He complained that the DTC’s decision had meant that he could not transport the company’s equipment from the warehouse, three miles away from the operating centre and that the cost of external hauliers for this along with transport to venues including the hire costs of vans were forcing redundancies. With respect to Mr Mosley, he had misunderstood the principle that DTC Evans was applying when referring to fair competition. To allow hauliers to operate to the detriment of HMRC strikes at the heart of fair competition between hauliers (whether holding restricted licences or otherwise). To grant a licence to a company such as the Appellant company with the history of failed operations in the past and when the new company is simply carrying on the business of those which had failed (often referred to as phoenix operations) and where, as a result of that history there is a risk of further default on HMRC liabilities, would be grossly unfair to operators who are scrupulous in ensuring that their financial affairs are in order and that their liabilities to HMRC are paid promptly and fully. That is what is meant by fair competition in this case. The DTC’s decision in relation to this issue was plainly right.
33. Mr Mosley also complained that the DTC had made a number of statements in his decision which were untrue although Mr Mosley does not indicate which statements he was referring to. If he was referring to the DTC’s findings about Mr Mosley, then we are satisfied that his findings were ones he was more than justified to make in the circumstances of this case. Mr Mosley also complained that the DTC should not make judgments on affairs outside of his jurisdiction but again, he has not indicated which judgments he is referring to. For the avoidance of doubt, we are satisfied that the DTC’s decision is beyond criticism.
34. Mr Mosley makes little reference in his grounds of appeal and “affidavit” to the DTC’s findings in relation to the false answers contained in the application form. For the sake of completeness, we are satisfied that the DTC’s conclusions on this issue were plainly correct and it was certainly open to him to have serious reservations about Mr Mosley’s explanation for how the form came to be submitted in the first place and to be dissatisfied by his lack of plausible explanation for failing to check the form upon his return from Germany and/or obtain a copy of it. We repeat that there is no evidence in the bundle that Mr Mosley asked for the return of the form or sought to correct the false information contained in it until he appeared before DTC Harrington. When he was asked a specific question about the financial position of Networks3D Limited, he gave an answer which was untruthful.
35. To conclude, we are satisfied that neither the law nor the facts impel us to interfere with the DTC’s decision as per the decision in *Bradley Fold Travel Ltd & Peter Wright v Secretary of State for Transport (2010) EWCA Civ. 695* and the appeal is dismissed.

Judge Beech

**Her Honour Judge Beech  
29 August 2017**