Appeal No. NT/2017/27

IN THE UPPER TRIBUNAL
ADMINISTRATIVE APPEALS CHAMBER (Transport)
TRAFFIC COMMISSIONER APPEALS

ON APPEAL from the DECISION of the DEPUTY HEAD of the TRANSPORT REGULATION UNIT
Dated 7 April 2017

Before:

Kenneth Mullan	**Judge of the Upper Tribunal**
Mr Stuart James	**Member of the Upper Tribunal**
Mr John Robinson	**Member of the Upper Tribunal**

Appellant:

Easy Go Transport Limited

Attendances:

For the Appellant:	Mr Steven Carlin, Director Easy Go Transport Limited and Mrs Ashlene Carlin
For the Respondent:	Ms Fee, BL, instructed by the Departmental Solicitor's Office

Heard at:	Tribunal Hearing Centre, Royal Courts of Justice, Belfast.
Date of hearing:	10 August 2017
Date of decision:	26 October 2017

DECISION OF THE UPPER TRIBUNAL

IT IS HEREBY ORDERED that this appeal be ALLOWED and the matter be remitted to the Head of the Transport Regulation Unit for rehearing and determination.

SUBJECT MATTER:- Duty to give reasons; adequacy of reasons; evidential assessment; practice and procedure in TRU

CASES REFERRED TO:- NT/2013/52 & 53 Fergal Hughes v DOENI & Perry McKee Homes Ltd v DOENI; Bradley Fold Travel Ltd & Peter Wright v Secretary of State for Transport [2010] EWCA Civ. 695; T/2015/68 Malcolm George Millard t/a

M&M Haulage; T/2016/03 Ian Lambert t/a IKL Transport; T/2015/72 Rose Transport Ltd, Jacqueline Walters and Gilchrist Walters; 2004/439 Surrey CC v Ripley; NT/2016/2 365 NI Group Limited; NT/2016/33 Anthony Joseph Baxter t/a Baxter's Transport; 34/2000 Solent Travel Ltd and 2009/030 Pilkingtons Accrington Ltd t/a King Travel

REASONS FOR DECISION

Background

1. This is an appeal from the decision of the Deputy Head of the Transport Regulation Unit, ("Deputy Head of the TRU") to refuse the Appellant's application for a goods vehicles operator's licence.

2. The factual background to this appeal appears from the documents and the Deputy Head of the TRU's decision and is as follows:-

   (i) An application for a goods vehicle operator's licence was received in the Respondent's office on 28 February 2017.

   (ii) Following an exchange of correspondence and internal checking of details of the application, correspondence dated 7 April 2017 was forwarded to the Appellant. The correspondence was stated to be in the name of a Caseworker in the 'Dfl Central Licensing Office' but was, in fact, signed on behalf of that Caseworker by another individual. The content of the correspondence dated 7 April 2017 and its context will be examined in more detail below. In short, however, the Appellant was informed that the application for a goods vehicle operator's licence had been refused.

The appeal to the Upper Tribunal

3. On 21 April 2017 correspondence was received in the office of the Administrative Appeals Chamber (AAC) of the Upper Tribunal from Mr Steven Carlin, Director of the Appellant company. In this correspondence he stated:

> 'I am appealing against this decision made on my application for an operator's licence. I attended a public inquiry with the company Sperrin Building Services Ltd. In that meeting I spoke for the company as their mechanic. In that meeting while talking to the Traffic Commissioner I stressed to her that I needed a licence to be able to run and keep myself in work. She replied to me that there was no reason why I couldn't have my own licence. If you read back on the notes that day you will see that this conversation took place. This is why I have applied for my own licence.
>
> I have no links to the company Sperrin Building Services Ltd. I did not realise that I had to disclose that Ashlene Carlin was a director.
>
> If I was to get an appeal on this decision I would be in a [position] to get another maintenance contract in place and also another Transport Manager.'

4. On 4 May 2017 a notice of appeal was received in the office of the Administrative Appeals Chamber of the Upper Tribunal. The following grounds of appeal were set out:

> 'I am appealing my decision as I have applied for a new licence and I was refused. I think the decision is unfair as it all relates to the company Sperrin Building services Ltd. I attend[ed] a public inquiry with this company as their mechanic but I have not worked for this company for a few years and my application has nothing to do with Sperrin Building Services Ltd. In the public inquiry I spoke directly to the Traffic Commissioner. I explained to her that I needed a licence to run and to be able to provide for my family. She said to me there is no

> reason why I couldn't have my own licence this is why I did apply. I strongly believe that the Department is linking me with Sperrin Building Services Ltd and I can provide proof that I am not working with them. It also has been refused for Ashlene [being] my Transport Manager but if I was to be granted a licence I would be able to get another Transport Manager in place. I also can provide a new maintenance package if I get my licence granted. I would like the transport department to give me the chance to show I can run a licence and build up good repute.'

The oral hearing of the appeal

5. The oral hearing of the appeal was listed for 10 August 2017. In advance of the oral hearing a written 'Legal Argument' was provided by Ms Fee on behalf of the Respondent. Ms Fee made the following submissions:

> '**Respondent's Submissions:**
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> **Grounds of Appeal:**
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> As per the **Court of Appeal in Bradley Fold Travel Limited & Peter Wright v Secretary of State for Transport** (2010) EWCA the question for the Tribunal is whether the appellate tribunal concludes "on objective grounds that that a different view from that taken by the Adjudicator was the right one, or (and we mean it to be the same thing) whether reason and the law impelled them to take a different view."
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> The Respondent submits that the decision of DfI was not plainly wrong. Per His Honour Broderick, the usual test which the Tribunal applies when considering appeals from Traffic Commissioners, is to ask whether the decision was 'plainly wrong.' The Respondent submits that the Tribunal should only disturb the decision of DfI, if it is satisfied by the Appellant, that it was 'plainly wrong.'
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> **(a) Good Repute & Transport Manager to be of Good Repute:**
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> DfI found the company, Easy Go Transport Limited, could not satisfy Section 12A(2)(b) to be of good repute. The company failed to disclose that Ashlene Carlin, wife of Steven Carlin, was a director of Sperrin Building Services Limited. The Appellant transport manager is also disqualified from holding or obtaining an operator's licence for 3 years.
>
> The company could not satisfy the requirement to designate a transport manager of good repute, in accordance with Section 12A(3)(A). The application appeared to be a front for Sperrin Building Services Limited and/or its director, Ashlene Carlin, who was disqualified from holding or obtaining an operator's licence.
>
> There was sufficient justification for and evidence to support a finding that the Applicant and its transport manager lacked repute.
>
> There was sufficient evidence that the company was a front for Ashlene Carlin and/or Sperrin Building Services Limited.
>
> **(b) Professional Competence & Maintenance Arrangements:**
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> DfI had sufficient information to support a finding that the company did not satisfy the requirement to show professional competence – see Paragraph (a) Good Repute, above. The nominated transport manager was disqualified from holding an operator's licence for 3 years in April 2017. DfI was also aware that Steven Carlin was involved with the maintenance of vehicles on the licence held by Sperrin Building Services Limited, which was

unsatisfactory [with a 0% first pass rate] and therefore DfI was not satisfied that there were adequate arrangements in place for maintenance of vehicles and trailers in a fit and serviceable condition.

5. Respondent's submissions on the Appellant's Grounds of Appeal:-

a) The application by Steven Carlin can reasonably be considered to be a front for Ashlene Carlin and/or Sperrin Building Services Limited, who were both disqualified from holding an Operator's Licence with effect from May 2017;

b) The refusal is proportionate to the finding that the Appellant as director of the company, could not satisfy *inter alia* the requirement to be of good repute, professionally competent and to demonstrate satisfactory facilities for maintenance;

c) In relation to the submission that the Appellant should be given the opportunity to put another transport manager in place and arrange a new maintenance package – the Respondent submits that the Appellant had an opportunity to demonstrate both criteria in its original application and failed, however, it is open to the Appellant to make a new application designating a different transport manager or one who is of good repute and evidence of alternative maintenance arrangements;

The findings justified a conclusion that the Applicant was a front for either Ashlene Carlin and/or Sperrin Building Services Limited and the application appears to fall within the definition of 'fronting' by His Honour Broderick in *Silvertree Transport Limited* [2013] UKUT 0117 (AAC) at Paragraph 3, citing 2011/34 Utopia Traction Ltd at paragraphs 8 & 9:

> *"We consider that Traffic Commissioners, (and the Tribunal), should, at some stage and preferably on the first occasion, explain what they mean when using shorthand expressions such as 'front' or 'fronting'. There are two reasons why this is necessary. First, while most people in the industry will know what the shorthand expression means, others, and those not in the industry, who may still have an interest in the case, may not know. Second, it is only by explaining what the expression is understood to mean that it is possible to assess whether the findings of fact which have been made support the conclusion that the use of the shorthand expression is justified."*
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> *"In the context of vehicle operator's licensing 'fronting' means that a person, partnership or company, which does not have an operator's licence, uses the operator's licence held by another entity to conceal the fact that they are behaving in a way which requires them to have an* operator's licence of their own. In other words it deprives the Traffic *Commissioner of the right to control an 'operator,' when Parliament has said that such an entity should be within his or her jurisdiction"*.
>
> *or* "when appearances suggest that a vehicle (or fleet) is being operated by the holder of an operator's licence when the reality is that it is being operated by an entity (i.e. an individual, partnership or company) which does not hold an operator's licence and the manner in which the vehicle is being operated requires, if the operation is to be lawful, that the real operator holds an operator's licence."

d) The adjudicator is entitled to take a serious view of such conduct and such a finding puts the good repute of those involved in jeopardy.

e) In T/2014/59 **Randolf Transport Ltd & Catherine Tottenham**, paragraph 12, the Tribunal said: "*Although repute must be considered as at the date of the decision, that does not mean that the past becomes irrelevant. In many cases, the present is simply the culmination of past events."* The adjudicator was entitled to consider that the Applicant lacked repute and professional competence, given Steven Carlin's involvement with Sperrin Building Services Limited as mechanic and as Ashlene Carlin was designated as transport manager for Easy Go Transport Ltd;

5. General:

The Respondent submits that the decision was not "plainly wrong."

The Respondent submits that the Appellant has failed to put forward any reasonable or meritorious grounds of appeal.

In relation to the ground of appeal stating that the decision is "unfair," the Respondent submits that each application is considered on its own facts and the Appellant has failed to provide any particular evidence of the unfairness alleged. The Department is entitled to consider evidence of fronting and had sufficient evidence to justify a finding that the Applicant had failed to satisfy the statutory requirements.

It is submitted that the instant appeal ought to be dismissed. The Appellant's Notice of Appeal discloses no grounds upon which the Tribunal is required to adopt a different view. The Respondent respectfully reserves the right to adduce further submissions at the hearing of this appeal.'

6. At the oral hearing, Ms Fee expanded on the submissions which she had made in her written 'Legal Argument'. At our request she obtained clarification as to the decision under appeal and how and by whom the decision was made. She also made submissions on the question as to whether the Appellant was provided with reasons which were adequate to explain the decision to refuse his application for a goods vehicle operator's licence. Further, she made additional submissions on the rationality of the reasons provided in the decision notification letter.

7. The Appellant attended together with his wife, Mrs Ashlene Carlin. His wife was also in attendance in connection with a further appeal to the Upper Tribunal in her own right. The Appellant provided some factual background as to how he had made the application for a goods vehicle operator's licence and the manner in which the application form was completed. He made some general submissions on the reasons why he had sought a licence in his own name. The Appellant's wife gave some evidence in connection with her role in the licence application.

The proper approach on appeal to the Upper Tribunal

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

> 'There is a right of appeal to the Upper Tribunal against decisions by the Head of the TRU in the circumstances set out in s. 35 of the 2010 Act. Leave to appeal is not required. At the hearing of an appeal the Tribunal is entitled to hear and determine matters of both fact and law. However it is

> important to remember that the appeal is not the equivalent of a Crown Court hearing an appeal against conviction from a Magistrates Court, where the case, effectively, begins all over again. Instead an appeal hearing will take the form of a review of the material placed before the Head of the TRU, together with a transcript of any public inquiry, which has taken place. For a detailed explanation of the role of the Tribunal when hearing this type of appeal see paragraphs 34-40 of the decision of the Court of Appeal (Civil Division) in Bradley Fold Travel Ltd & Peter Wright v Secretary of State for Transport [2010] EWCA Civ. 695. Two other points emerge from these paragraphs. First, the Appellant assumes the burden of showing that the decision under appeal is wrong. Second, in order to succeed the Appellant must show that: *"the process of reasoning and the application of the relevant law require the Tribunal to adopt a different view"*. The Tribunal sometimes uses the expression *"plainly wrong"* as a shorthand description of this test.'

9. 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.'

The decision-making process in the Transport Regulation Unit

10. The application for a goods vehicle operator's licence was received in the office of the Respondent on 28 February 2017. The application was made in the name of 'Easygo Transport Limited' which was stated to be a limited company. The only director of the company declared on the application for was Mr Steven Carlin. The application was for a Standard International licence for three vehicles and five trailers. Details were provided for two vehicles. The address for the proposed operating centre was stated to be an address in Cookstown. The nominated Transport Manager was Mr Carlin's wife, Mrs Ashlene Carlin. Attached to the application was a Certificate of Professional Competence in Road Haulage ('CPC') which had been awarded to Mrs Ashlene Carlin on 19 January 2017.

11. It is important to note that Mrs Ashlene Carlin was a director of a company 'Sperrin Building Services Limited' which was the holder of a Standard International goods vehicle operator's licence. A Public Inquiry was held in connection with that licence on 5 January 2017. Mr Steven Carlin and Mrs Ashlene Carlin were in attendance at the Public Inquiry. On 29 March 2017 the Head of the Transport Regulation Unit made a decision which, *inter alia*, revoked the licence held by Sperrin Building Services Ltd and disqualified Mrs Ashlene Carlin from holding or obtaining an operator's licence for a period of 3 years. The decision dated 29 March 2017 was notified to the relevant parties, including Mrs Ashlene Carlin on 6 April 2017.

12. As was noted above, following an exchange of correspondence and internal checking of details of the application in the instant case, correspondence was forwarded to the Appellant on 7 April 2017. At the oral hearing before us, Ms Fee confirmed that there was no formal decision and that the correspondence dated 7 April 2017 was the fulfilment of the Respondent's duty under regulation 20(1)(a) of the Goods Vehicles (Licensing of Operators) Regulations (Northern Ireland) 2012 to provide a statement of reasons to the Appellant (as the applicant) for the refusal of the application.

13. The correspondence dated 7 April 2017 was stated, in the letterhead, to be in the name of a Caseworker in the 'Dfl Central Licensing Office' but was, in fact, signed on behalf of that Caseworker by another individual. After taking instructions, Ms Fee informed us that the refusal decision had been made by the Deputy Head of the TRU in conjunction with a Senior Caseworker.

14. It is important to note that within the bundle of documents which is before us are extracts from what appear to be the internal case management records within the TRU. The extracts are headed:

> 'This is an OFFICIAL document and it not for disclosure to any third parties without the specific consent of the Department.'

15. Thereafter the extracts begin by noting the details of the application. There is then a section headed 'Linked licences' which is as follows:

> 'A search on Companies House records revealed that the proposed transport manager, Ashlene Carlin, was a director of Sperrin Building Services Ltd, which hold an operator's licence … Ashlene's surname on that record is stated to be 'Loughran'. I spoke to Steven Carlin and he confirmed that this was Ashlene's maiden name. It appears as though Mrs Carlin has failed to notify the Department of a change to her surname with respect to Sperrin Building Services Ltd.
>
> Sperrin Building Services recently attended a public inquiry and the decision was to revoke the licence and to disqualify the directors.
>
> …
>
> The company failed to declare at question 14a of the GV(NI)79 Mrs Carlin's involvement with another operator's licence.'

16. In another section headed 'Transport managers' the following is recorded:

> 'The response to our letter of 8 March 2017 is from the transport manager, she refers to 'my business address' and the number of community licences 'I require'. This implies that she will be involved in the running of the business in more than just a transport manager role.'

17. We observe here that the correspondence dated 8 March 2017 is a standard letter sent to an applicant for an operator's licence acknowledging receipt of the application and requesting certain additional information.

18. In a further section of the extracts from the case management records headed 'Submission actions', the following is recorded:

> '**Recommendation: Refuse Application**
>
> The application is complete and the opposition periods have expired with no opposition having been received.
>
> The two offences were not declared but would not ordinarily affect grant of the application. However the application appears to be a front for Sperrin Building Supplies Ltd, a licence that is to be revoked with effect from 25 April 2017 and Mrs Carlin has been disqualified from holding or obtaining a licence for a period of 3 years. I cannot find reference in the written decision to Mrs Carlin having lost her repute but the disqualification would suggest that the issues considered are serious enough to affect her repute. In particular, the comment that *Mrs Carlin [and others] have, by their actions and/or inaction, variously misled the licensing, regulatory and enforcement bodies of the Department for infrastructure.*'
>
> The company failed to declare Mrs Carlin's involvement as a director of Sperrin Building Supplies Ltd and correspondence received from Mrs Carlin in response to a letter to the company implies that she is more involved in the running of the business that just as its transport manager.
>
> There is reference in the written decision for Sperrin Building Supplies Ltd to maintenance being carried out by Stephen Carlin. It is assumed that this is the same person specified as a director on this application with a misspelling of his first name. That being the case the decision states that *'there was a non-compliance rate of 75% reducing to 67% after the 2010 Act came into force. The recent vehicle first time pass rate was 0%.'* Mr Carlin is stated as being the person responsible for carrying out safety inspections on the company's vehicles therefore given the apparent poor maintenance history there are concerns regarding the company's ability to maintain its vehicles and trailers in a fit and serviceable condition.
>
> Whist Mrs Carlin is now CPC qualified, this application appears to be a front and her recent disqualification suggests that the Department views the issues considered with respect to her involvement as a director of Sperrin supplies Ltd as very serious. In view of the above issues I recommend that the application is refused.'

19. It is clear that all of these sections from the case management records were prepared by the 'Senior Caseworker'. One of the final sections from the case management review records the following:

> 'I have reviewed the submission and recommendations set out above and agree the licence should be refused for the reasons set out under the vires below.'

20. This section is signed by Deputy Head of the TRU and is dated 6 April 2017. This was, coincidentally, the date on which Mrs Carlin was informed that she was disqualified from holding or obtaining an operator's licence for a period of 3 years.

21. The extracts from the case management records conclude with reference to sections 12(5) and 12C(4) of the Goods Vehicles (Licensing of Operators) Act (Northern Ireland) 2010, as amended.

22. It is clear, however, that nothing which was contained within the internal case management records in the TRU relating to his application was ever disclosed to the Appellant. Ms Fee has confirmed that all that he was told about his application was contained in the correspondence dated 7 April 2017 (which would have been received by him just after his wife had received her own disqualification letter). What did the correspondence of 7 April 2017 say? The letter began as follows:

> 'I refer to your company's application for an operator's licence.
>
> Having reviewed the application the Department has determined the company does not satisfy the requirements of the 2010 Act under Sections:
>
> - 12A(2)(b) – is of good repute,
> - 12A(2)(d) – is professionally competent,
> - 12A(3)(A) – with respect to its transport manager being of good repute, and
> - 12C(4) – there must be satisfactory facilities and arrangements for maintaining the vehicles used under the licence in a fit and serviceable condition.
>
> and has therefore decided to refuse the application under the provisions of Section 12(5) of the 2010 Act.
>
> The decision was made in view of the company's failure to disclose that the proposed transport manager, Ashlene Carlin, was a director of another company that held an operator's licence (Sperrin Building Services Ltd) which is to be revoked with effect from 5 May 2017 with Ms Carlin being disqualified from holding or obtaining an operator's licence for a period of three years. This application appeared to be a front for that company and the matters serious enough for the Department to determine on this application that Ms Carlin is not of good repute. The Department is also aware that Mr Carlin was involved with the maintenance of vehicles on the licence held by Sperrin Building Services Ltd, which was unsatisfactory and, as a result, it is not satisfied there are adequate arrangements in place for vehicles and trailers to be maintained in a fit and serviceable condition.
>
> Further details of the matters considered and the decision made with respect to Sperrin Services Ltd have been sent to Ms Carlin as a director of that company.'

23. The remainder of the correspondence dated 7 April 2017 is concerned with the provision to the Appellant of information relating to the right to appeal to the Upper Tribunal and a warning that the company would be in breach of the law if it sought to operate goods vehicles.

24. As was noted by Mr Carlin during the oral hearing of the appeal before us, what was contained in the correspondence dated 7 April 2017 was the only explanation which was given to him as to why the application for a goods vehicle operator's licence by the company of which he was a director was

refused. He did not, of course, receive the extracts from the internal case management records which are noted above. He accepted, with candour, that he had been in attendance at the Public Inquiry, held on 5 January 2017 in connection with the licence held by Sperrin Building Services Ltd in which company his wife was a director. He submitted, however, that during the course of the Public Inquiry, he had been given the impression by the Head of the Transport Regulation Unit that it would not be inappropriate for him to make an application for a goods vehicle operator's licence in his own name, although conceding that it was made equally clear that there was no guarantee that such an application would be successful. He stated that the application which he did make was prompted by what he took from the exchanges during the Public Inquiry.

Analysis

25. We begin by acknowledging that we understand why the Transport Regulation Unit might have concerns about the application for a goods vehicle operator's licence made by the Appellant company. In the responses made on the application there was a failure to declare a history, albeit a limited history, of motoring convictions, by two individuals named in the application. Further, there was an omission to disclose that the proposed Transport Manager, Mrs Ashlene Carlin, was a director of a company holding a goods vehicle operator's licence which was the subject of ongoing regulatory proceedings. By the date of the receipt of the application, those regulatory proceedings had included a Public Inquiry which had been attended by the sole director of the new applicant company. Finally the Transport Regulation Unit had received information from a source which had asserted that the application for a goods vehicle operator's licence was a 'front' for, presumably, the continuation of the operation of the licence which had been held by Sperrin Building Services Ltd.

26. In our view, it is wholly understandable why the Transport Regulation Unit would wish to make further enquiries before making a determination in connection with the application by the Appellant company. Nonetheless, there are several aspects of the subsequent decision-making process which are of concern to us.

27. We begin by addressing the adequacy of the reasons which have been provided to the Appellant for the decision to refuse the application for a goods vehicle operator's licence. In a number of recent decisions, and after reviewing the existing jurisprudence on the issue, the Upper Tribunal has emphasised the requirement for rigorous evidential assessment, sufficient fact-finding and judicious decision-making and the requirement that the reasons which are adequate to explain why a decision-maker, such as the TRU, has arrived at a decision in a regulatory matter – see paragraphs 8-27 of T/2015/68 Malcolm George Millard t/a M&M Haulage, paragraphs 11-27 of T/2016/03 Ian Lambert t/a IKL Transport and paragraphs 19-49 of T/2015/72 Rose Transport Ltd, Jacqueline Walters and Gilchrist Walters.

28. 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 or applicant affected by the decision but also for the appellate

authorities which may be required to review the validity of that decision in due course.

29. We have already noted there was no formal decision made on the application. Ms Fee, after taking further instruction, informed us that the 'decision' was contained in the correspondence of 7 April 2017. Therein the decision by the Deputy Head of the TRU to refuse the licence application was stated to be on the basis that several requirements for the issue of a licence had not been met. The reasoning of the Deputy Head of the TRU, underpinning the failure to meet the statutory requirements, is then set out in a single paragraph. We return to the substance of that reasoning below.

30. Although not advanced by Ms Fee, it might be argued that the single paragraph of reasoning is supplemented by two further sources of reasoning. The first are the internal case management records which, undoubtedly, provide some assistance as to what the Senior Caseworker in the TRU was thinking. Although the extracts from the internal case management records were not provided to the Appellant in advance of the submission of the appeal, they were provided as part of the appeal bundle. It is arguable, therefore, that by the time of the appeal the Appellant had been provided with supplementary reasoning. The second is the reference in the correspondence of 7 April 2017 to the 'further details' of the 'matters' considered in the decision made with respect to Sperrin Building Services Ltd which, it was submitted had been sent to Mrs Carlin. As Mrs Carlin was part of the household of the sole director of the Appellant company then it is arguable that the receipt of the reasoning in the Sperrin Services Ltd case would assist in the understanding as to why the application by the Appellant company had been refused.

31. In respect of the approach to decision-making in the TRU, we are reminded of what was said by the Upper Tribunal in paragraphs 44 to 50 of the decision in NT/2016/2 365 NI Group Limited and paragraphs 28 to 31 of the decision in NT/2016/33 Anthony Joseph Baxter t/a Baxter's Transport. In 365 NI Group Limited, the Upper Tribunal reviewed the decision of the then Transport Tribunal in 34/2000 Solent Travel Ltd and 2009/030 Pilkingtons Accrington Ltd t/a King Travel which, in turn, had set out the principles with respect to the relevance of the recording of the outcome of decision-making in internal documentation and the disclosure of same to the affected operator. In both decisions the Upper Tribunal had emphasised that the operator was entitled to know the basis on which the application had been refused, whether the correct legislative tests had been applied and to receive a fully reasoned decision.

32. In both 365 NI Group Limited and Anthony Joseph Baxter the Upper Tribunal had exhorted the Head and Deputy Head of the TRU '… to give consideration to the requirements for rigorous decision-making as set out in the jurisprudence of the Transport and Upper Tribunals and implement the relevant principles into practice.' We repeat that counsel here. It is our view that this was a case where a formal decision was required and the reduction of the decision, the evidential and legislative basis for that decision and the reasoning sustaining it in the notification letter was insufficient.

33. It is the case, moreover, that had the Appellant not sought to appeal against the decision of the Deputy Head of the TRU then he would never have had access to the internal case management records and would have been unaware of how the reasoning and analysis therein fed into the decision to refuse the application for the licence. Further, Mr Carlin might have felt entitled

to argue that the decision in the case of Sperrin Building Services Ltd had nothing to do with the application of the Appellant company made in its own right.

34. We turn to our second area of concern with the 'decision' of 7 April 2017 which relates to the evidential assessment which underpinned it. The single paragraph of reasoning in the 'decision' letter of 7 April 2017 contains a statement that the application by the Appellant company 'appeared to be a front' for another company, Sperrin Building Services Ltd. By 7 April 2017, Sperrin Building Services Ltd had been the subject of completed regulatory proceedings resulting in the revocation of its goods vehicle operator's and the disqualification of one of its directors, who also happened to be the wife of the of the sole director of the Appellant company and the person nominated as the Transport Manager in the application. It has not gone unnoticed by ourselves that the decision which, *inter alia*, revoked the licence held by Sperrin Building Services Ltd and disqualified Mrs Ashlene Carlin from holding or obtaining an operator's licence for a period of 3 years, while made on 29 March 2017 was notified to the relevant parties on 6 April 2017. According to the internal case management records, the decision in the instant case was made on the same date and notified to the Appellant company on the following day.

35. The sole evidence to support the conclusion that the present application was a 'front' was nothing more than an assertion to that effect. The Appellant company, on receipt of the correspondence dated 7 April 2017, would have been wholly entitled to query what was the evidential basis of the 'fronting' conclusion. We have noted that in the internal case management records there is a reference to a named individual having contacted the local regulatory authorities and stating that the application by the Appellant company was a 'front'. It is clear that the substantive basis for the refusal of the application with which we are concerned was the concern that it was a 'front' for another company which had lost its licence. In these circumstances the Appellant company was entitled to know the evidential basis for the 'fronting' allegation. There has been no rigorous assessment of any evidence supporting 'fronting' and the 'decision' letter of 7 April 2017 is deficient in that regards.

36. The 'decision' letter of 7 April 2017 is equally inadequate in the evidential assessment to support the conclusion that the Deputy Head of the TRU was not satisfied that the application demonstrated that it satisfied the requirement to have in place adequate arrangements for vehicles and trailers to be maintained in a fit and serviceable condition. The solitary supporting piece of evidence noted is that the sole director of the Appellant company was involved with the maintenance of vehicles on the licence held by Sperrin Building Services Ltd 'which was unsatisfactory'. When asked about this issue by us at the oral hearing of the appeal, Ms Fee submitted that the nominated Transport Manager, Mrs Ashlene Carlin, had lost her repute as a result of the regulatory proceedings relating to Sperrin Building Services Ltd and that this would go to supporting the conclusion on the adequacy of facilities for maintenance and service.

37. We have noted that the Appellant company had completed the relevant section of the application form concerning the Operating Centre, the facilities and arrangements for safety and maintenance inspections and, of course, the name of and evidence of competence of the nominated Transport Manager. That latter evidence was in the form of a Certificate of Professional Competence awarded to Mrs Ashlene Carlin on 18 January 2017. We have also noted that

the sole director of the Appellant company attended the Public Inquiry as part of the regulatory proceedings against Sperrin Building Services Ltd. The transcript of the Public Inquiry has been made available to us in connection with the discrete appeal made by Mrs Ashlene Carlin in her own right. From that there is nothing to suggest that the evidence given by Mr Carlin was anything other than candid and straightforward. In addition, and as he noted in the oral hearing before us, there were discussions at the Public Inquiry about the possibility of Mr Carlin making an application for a goods vehicle operator's licence in his own right and it was this 'encouragement' which eventually prompted the application with which we are dealing.

38. Against that background, we are of the view that the Appellant company, on receipt of the 'decision' letter of 7 April 2017 might have queried the evidential basis of a conclusion that the Deputy Head of the TRU was not satisfied that the application demonstrated that it satisfied the requirement to have in place adequate arrangements for vehicles and trailers to be maintained in a fit and serviceable condition. Mr Carlin would have been entitled, in our view, to question why the separate facilities and arrangements for safety and maintenance inspections which he had specified in his application were not the subject of inspection or further assessment if there were concerns about their adequacy.

39. We are also somewhat concerned about the adequacy of the reasoning in the 'decision' letter of 7 April 2017. We repeat that it is obvious that the reasoning for the refusal of the application is underpinned by the concern that the application being made in the name of the Appellant company was a 'front' to revive the operator's licence for Sperrin Building Services Ltd. There is significant jurisprudence on the principles relevant to the issue of 'fronting' in the decisions of the former Transport Tribunal and the present Upper Tribunal and comprehensive guidance has been provided on the application of those principles in individual cases. At the oral hearing before us Ms Fee submitted that there had been an apposite application of the legal principles in the present case. With respect to her, we are not at all convinced about that but even if those principles were considered there is no adequate explanation of that consideration. If the application was refused on the basis of 'fronting' then the Appellant company was entitled to know the reasoning underpinning that conclusion.

40. We are also somewhat troubled by the rationality of the decision-making as set out in the 'decision' letter of 7 April 2017. At the risk of repeating ourselves, that rationality was tainted by the concern about 'fronting'. The conclusions on the Appellant company's good repute, professional competence and the repute of the Transport Manager, do not, in our view, stand up to proper scrutiny.

41. We do echo here that we can understand why the Transport Regulation Unit might have had concerns about the application for a goods vehicle operator's licence made by the Appellant company. What was required, and what is absent here, is a rigorous investigation of those apprehensions, a consequent meticulous fact-finding exercise to which the relevant legal principles could be applied and a thorough decision-making exercise supported by adequate reasoning. We are of the view that this was an application which, given the underlying issues which it raised, was crying out for a Public Inquiry.

42. On this basis, we are of the view that the decision of the Deputy Head of the TRU should not be confirmed. The appeal is, accordingly, allowed and the

matter is remitted to the Head of the Transport Regulation Unit for rehearing and determination. It is our view that a Public Inquiry is mandated.

Kenneth Mullan, Judge of the Upper Tribunal,
26 October 2017