

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

**ON APPEAL from the DECISION of the Traffic Commissioner  
for the Scottish Traffic Area (Ms J Aitken)**

**Dated: 8 August 2017**

**Before:**

**Marion Caldwell QC,** Judge of the Upper Tribunal  
**Mr. David Rawsthorn,** Member of the Upper Tribunal  
**Mr. Andrew Guest,** Member of the Upper Tribunal

**Appellants:**

**Skene Transport Ltd and Judith Paterson**

**Attendance:**

For the Appellants:

Mr. K. Nesbitt, Counsel, instructed by Fielden, Marshall, Glover, Strutt, Solicitors

**Heard at:** George House, 126 George Street, Edinburgh Postcode EH2 4HH  
**Date of Hearing:** 6 December 2017  
**Date of Decision:** 30 March 2018

**DECISION OF THE UPPER TRIBUNAL**

The appeal is dismissed.

**SUBJECT MATTER**

Goods Vehicles (Licensing of Operators) Act 1995; Variation Application; material change of circumstances; good repute; revocation; disqualification.

**CASES REFERRED TO:**

**Aspey Trucks Ltd T2010/49**  
**Bradley Fold Travel Ltd & Peter Wright –v- Secretary of State for Transport [2010]**  
**EWCA Civ. 695**  
**David Pritchard T2011/29**  
**Easy Go Transport Ltd. [2017] UKUT 0425**  
**Fergal Hughes v DOENI & Perry McKee Homes Ltd v DOENI, NT/2013/52 & 53**  
**George R. Cran Transport Ltd [2017] UKUT 0188**  
**Priority Freight T2009/225**

## REASONS FOR DECISION

### Introduction

1. This is an appeal from the decision of the Traffic Commissioner for the Scottish Traffic Area, made on 8 August 2017. In summary, the Traffic Commissioner revoked Skene Transport Ltd's operator's licence on the grounds of loss of repute and material change of circumstances; disqualified Skene Transport Ltd and its sole director Judith Paterson indefinitely from applying for or holding an operator's licence in any traffic area and made an Order in terms of section 28(4) of the Goods Vehicles (Licensing of Operators) Act 1995.

2. The 1995 Act provides that no one shall use a goods vehicle on a road for the carriage of goods for hire or reward in connection with his trade or business except under a licence issued under the Act (an "operator's licence"). On an application for a standard licence the Traffic Commissioner must consider and be satisfied that the applicant is, among other things, of good repute, has appropriate financial standing and is professionally competent (section 13A). "Good repute" must be determined in accordance with paragraphs 1 to 5 of Schedule 3 to the 1995 Act. Paragraphs 1 and 2 of that Schedule provide as follows:-

*1(1) In determining whether an individual is of good repute, a traffic commissioner may have regard to any matter but shall, in particular, have regard to—*

- (a) any relevant convictions of the individual or of his servants or agents; and*
- (b) any other information in his possession which appears to him to relate to the individual's fitness to hold a licence.*

*(2) In determining whether a company is of good repute, a traffic commissioner shall have regard to all the material evidence including, in particular—*

- (a) any relevant convictions of the company or of any of its officers, servants or agents; and*
- (b) any other information in his possession as to the previous conduct of—*
  - (i) any of the company's officers, servants or agents, or*
  - (ii) any of its directors, in whatever capacity,*

*if that conduct appears to him to relate to the company's fitness to hold a licence.*

3. Section 26 of the 1995 Act sets out grounds on which the Traffic Commissioner may direct that an operator's licence may be revoked. One of such grounds is that since the licence was issued or varied there has been a material change in any of the circumstances of the licence holder that were relevant to the issue of variation of the licence (section 26(1)(h)). Section 27 provides that the Traffic

Commissioner must direct that a standard licence shall be revoked if at any time it appears to him that the licence holder no longer satisfies the requirements of section 13A(2).

4. Section 28 of the 1995 Act provides that where the Traffic Commissioner directs that an operator's licence be revoked he may order that the person who was the holder of the licence be disqualified either indefinitely or for a limited period, from holding or obtaining an operator's licence so long as the disqualification is in force (section 28(1)). Section 28(4) provides as follows:-

*(4) Where the traffic commissioner makes an order under subsection (1) in respect of any person, the commissioner may direct that if that person, at any time or during such period as the commissioner may specify—*

*(a) is a director of, or holds a controlling interest in—*

*(i) a company which holds a licence of the kind to which the order in question applies, or*

*(ii) a company of which such a company is a subsidiary, or*

*(b) operates any goods vehicles in partnership with a person who holds such a licence,*

*that licence of that company or, as the case may be, of that person, shall be liable to revocation, suspension or curtailment under section 26.*

*(5) The powers conferred by subsections (1) and (4) in relation to the person who was the holder of a licence shall be exercisable also—*

*(a) where that person was a company, in relation to any director of that company, and*

*(b) where that person operated vehicles under the licence in partnership with other persons, in relation to any of those other persons;*

*and any reference in this section or in section 26 or 29 to subsection (1) or (4) above includes a reference to that subsection as it applies by virtue of this subsection.*

## **Background**

5. The background to this appeal can be found within the papers and the Traffic Commissioner's written decision. The appellants are a limited company and the sole director of the company is Judith Lesley Paterson (born 21 January 1963). Judith Paterson is the only shareholder of the company. Judith Paterson's domestic partner is John Dunnett Hendry ("Ian Hendry") who was born on 8 April 1955. They have been domestic partners since about 2009 and business associates since about 2006.

6. Ian Hendry has been involved in the business of haulage since the 1990s. He was disqualified indefinitely from holding or obtaining an operator's licence

on or about 29 October 1999. At some point, his disqualification was removed and he became involved with a company called East Coast Roadways. On 21 November 2001 a company called Oakmist Ltd was incorporated, the directors being Ian Hendry's son David Hendry, Charles Hutchison and George Cran. In or about 2006 Judith Paterson went to work for Oakmist and Ian Hendry as administrator of the company. On 1 December 2007 she became the company secretary and remained such until the company's dissolution in May 2011. Oakmist had been granted an operator's licence on 29 October 2002. At the same time, Judith Paterson worked as the office administrator of Norwood Transport Ltd whose directors were David Hendry and Ian Hendry, the latter also being the owner and manager. Ian Hendry and Norwood Transport had applied for an operator's licence which was refused by the Traffic Commissioner on 30 October 2003.

7. On 27 July 2007 Oakmist was called to public inquiry. The public inquiry was adjourned and reconvened on 6 November 2007 and on 16 January 2008. On 28 April 2008 the Deputy Traffic Commissioner held that Oakmist was a front for Ian Hendry and revoked the licence and disqualified the company and the traffic manager and former director, George Cran. The company and George Cran appealed to the Transport Tribunal. On 3 October 2008 the Tribunal dismissed the appeal. The Tribunal noted Judith Paterson's evidence, as administrator of both Norwood and Oakmist, that Mr Hendry had signed cheques for Oakmist even although he was neither an employee nor director of the company; that as administrator for both companies she would invoice Oakmist for expenditure made on its behalf by Norwood and then in her capacity as administrator for Oakmist she would write out the cheques in favour of Norwood. When this arrangement was queried by the Deputy Traffic Commissioner, Mrs Paterson could not provide an adequate explanation save that Oakmist's credit worthiness was not sufficient. (See pages 157-158.) The Tribunal commented:-

*“As at the date of the public inquiry, changes had been made to the administration and personnel of the company which gave Oakmist some appearance of autonomy, although it should be noted that the role of Mrs Paterson was highly unusual, being the administrator for both companies and being responsible for the invoicing from Norwood to Oakmist and the payment of those invoices from Oakmist to Norwood, giving the impression of a paper exercise rather than the operation of 2 separate companies.”*  
(Paragraph 7, page 161.)

8. On 23 January 2009 E. Watson and Sons (Haulage and Plant) Ltd was incorporated. The directors were Judith Paterson and Brian Watson. That company applied for an operator's licence. A public Inquiry was held on 8 August 2011 to consider allegations that the company had been operating vehicles without authorisation and had connections to Ian Hendry. The licence application was refused.
9. On or about 22 December 2009 Aberdeen Transport and Services Ltd was incorporated. The directors were Judith Paterson, Ian Hendry and David Hendry. Judith Paterson held one share in the company the other 99 being held by Ian Hendry. She served as a director from 22 December 2009 until 31 May 2010 and again from 5 July 2010 to 30 April 2013. She was the administrator of the company. The registered office of the company was Newton Garage, Newton Croft, Howes Road, Bucksburn, Aberdeen. Aberdeen Transport and Services applied for an operator's licence. Originally, Ian Hendry's name appeared on the application however, as a disqualified person he should not have been party to this. The Deputy Traffic Commissioner allowed his name to be removed from the application. The Deputy Traffic Commissioner allowed the removal of Ian Hendry's indefinite

disqualification and granted Aberdeen Transport and Services an operator's licence. The operating centre was Howes Road, Bucksburn, Aberdeen.

10. On 12 February 2013 Hendry Aberdeen Ltd was incorporated. The directors were Ian Hendry and David Hendry. The registered office was Altdubh Place, Aberdeen. Judith Paterson was the administrator of the company. On 19 June 2013 Hendry Aberdeen Ltd applied for a standard international goods vehicles operator's licence to operate 5 vehicles and 5 trailers from Bucksburn Garage, Howes Road, Aberdeen. The proposed transport manager was Ian Hendry. Hendry Aberdeen Ltd began trading in about March 2013, that is before it had an operator's licence.
11. On 9 October 2013 call up letters were sent to Aberdeen Transport and Services Ltd and to Hendry Aberdeen Ltd to consider 3 variation applications made by Aberdeen Transport and Services Ltd and the application for an operator's licence by Hendry Aberdeen Ltd. The public inquiry commenced on 13 November 2013. On that date, Judith Paterson attended the public inquiry along with Ian Hendry. On 30 April 2013 Judith Paterson and David Hendry had resigned as directors of Aberdeen Transport and Services. Nevertheless, Judith Paterson continued to be involved in the administration of Aberdeen Transport and Services. She was also involved in the administration of Hendry Aberdeen Ltd and had made a loan to that company (page 304). At the public inquiry, the Deputy Traffic Commissioner found that Aberdeen Transport and Services had got into financial difficulties and had ceased trading as a haulier in about March 2013. He made adverse findings in relation to vehicle roadworthiness covering the period 20 December 2011 to 7 November 2013.
12. Deputy Traffic Commissioner McFarlane refers at paragraph 17 of his 21 November 2013 decision to the August 2011 Inquiry at which he was persuaded to grant the licence. [See page 174 of this Inquiry brief.] He wrote *"In granting the Licence I made it quite clear that I expected the two of them, as directors, of the Operator to be open and transparent with all their dealings and to ensure that the undertakings given at the time the Licence was applied for were fulfilled at all times. I granted the licence for 1 vehicle and 2 trailers – a modest return to operator licensing – a starting point for Mr Ian Hendry to get back into operator licensing, to orientate himself within that regime and to demonstrate that he was now a rehabilitated and responsible operator. At the conclusion of that public inquiry we parted company with, I believe, an understanding namely that it was entirely a matter for them [ i.e. Ian Hendry and Judith Paterson] as to how they conducted the (haulage) business of the Operator and that I would not be far away should concerns begin to arise with regard to its operation"*. Deputy Traffic Commissioner McFarlane narrated that he soon after had concerns. However, he stated that at the Public Inquiry held on 13 November 2013 *"I am in no doubt that Mr Ian Hendry and Mrs Paterson were open and honest with me. I accept their evidence as being credible and reliable"*.
13. He did record at paragraphs 23, 24 et seq. that Judith Paterson had been sent an email from Highland Council advising that there was no permission given to Ian Hendry for an operating centre yet Ian Hendry signed the forms some days later. Paragraphs 29 and 32 record further evidence about financial matters from Judith Paterson. Issues arose in the Public Inquiry about the operation by the new applicant company Hendry Aberdeen Ltd. However, the Deputy Traffic Commissioner did not revoke the licence on financial standing grounds which he could have done (paragraph 43) but postponed for a reconvened Public Inquiry, with additional call up letter. [See page 178 of this Inquiry brief.]

14. In his decision, the Traffic Commissioner recorded that Judith Paterson had explained that the operator's vehicles continue to be insured by the operator and if not subject to finance agreements they continued to be registered to the operator. He noted that she had been at pains to point out that it was the operator that paid the finance agreements but noted that an examination of the bank statements of Hendry Aberdeen Ltd disclosed payments to the finance company and there did not appear to be any credit entry from the operator in respect of such payments (page 177 paragraph 32).
15. The Deputy Traffic Commissioner found that Hendry Aberdeen Ltd had been operating vehicles without a licence since about March of 2013. When this was put to Ian Hendry he had accepted that was the case (page 177, paragraph 33). He found that Hendry Aberdeen Ltd had been displaying vehicle identity discs issued to Aberdeen Transport and Services, in other words that Aberdeen Transport and Services through its directors had "loaned" discs to Hendry Aberdeen Ltd such conduct, he stated, raised significant issues to do with the good repute of the operator (Aberdeen Transport and Services), the applicant (Hendry Aberdeen Ltd), all of the directors and the transport manager and proposed transport manager (page 177 paragraphs 34 and 35). Nevertheless, he did not revoke the licence or refuse the Hendry Aberdeen licence application at that stage.
16. On 14 February 2014, the Deputy Traffic Commissioner presided over yet another Public Inquiry and revoked Aberdeen Transport and Services' licence on financial standing grounds. Further, he granted an interim licence to Hendry Aberdeen Ltd for 3 vehicles and 3 trailers. On 22 June 2016, Deputy Traffic Commissioner McFarlane suspended the interim licence granted to Hendry Aberdeen Ltd. All had not gone well and Hendry Aberdeen Ltd was recalled to a Public Inquiry with hearings on a range of dates until ultimately Deputy Traffic Commissioner McFarlane issued a written decision, dated 3 May 2017, in which he refused the application by Hendry Aberdeen Ltd for a licence; he revoked the interim licence; he disqualified the applicant company Hendry Aberdeen Ltd indefinitely. He disqualified Ian Hendry from holding an operator's licence indefinitely. He found that Ian Hendry was no longer of good repute as a transport manager and he disqualified him indefinitely. He disqualified director David Hendry for 5 years.
17. In respect of Judith Paterson, he wrote at paragraph 195 of his decision *"Mrs Judith Paterson is also in an invidious position. She has never been a director of Hendry Haulage Ltd. She has however been actively involved in the day-to-day running of the business. She was one of the original directors of Hendry Haulage Aberdeen Ltd until she resigned. I have thought long and hard as to whether she has been acting as a 'shadow director' but she too has been directed by Mr Ian Hendry. I refrain from making any adverse determination so far as she is concerned"*. The reference to Hendry Haulage Ltd should, perhaps, properly be Hendry Aberdeen Ltd and that to Hendry Haulage Aberdeen Ltd to Aberdeen Transport and Services.
18. Companies House records show that Judith Paterson was a director of Hendry Haulage Aberdeen Ltd SC496462, a company incorporated on 2 February 2015. From date of incorporation to 31 March 2016 Ian Hendry was the only other director from date of incorporation to 1 October 2016. The Companies House position is that there is no company Hendry Haulage Ltd. There is Hendry Haulage Aberdeen Ltd (SC496062) of which Mrs Paterson and Mr Hendry were directors and Hendry Aberdeen (SC442625), which had Ian Hendry and son David Hendry as directors. The registered office of Hendry Haulage Aberdeen Ltd was Newton Garage, Howes Road, Bucksburn, Aberdeen.

19. The Deputy Traffic Commissioner found that a vehicle registration number SO60 ORU and registered to Hendry Haulage Aberdeen was being driven on 28 April 2016, presumably on work for Hendry Aberdeen Ltd, at a time when it was not specified on the interim licence granted to Hendry Aberdeen Ltd.
20. On 3 October 2016 vehicle FX58 DTO and registered to Hendry Haulage Aberdeen Ltd was being operated without displaying a disc. An analysis of the driver's card and digital tachograph showed that the vehicle had been driven on a regular basis since 9 August 2016. The vehicle was impounded.
21. The Deputy Traffic Commissioner found that between 26<sup>th</sup> and 30<sup>th</sup> September 2016 that 6 vehicles all registered to Hendry Aberdeen Ltd but not specified on the interim licence were involved in a total of 17 journeys transporting materials to and from sites associated with the construction of the Aberdeen bypass (page 190, paragraph (xl)).
22. Following the refusal of Hendry Aberdeen Ltd's licence application, revocation of its interim licence and the disqualification of that company, Ian Hendry and David Hendry, on 1 June 2017 Judith Paterson became a director of Skene Transport Ltd. Skene Transport Ltd was incorporated on 27 February 2003. At the date of incorporation the company officers were David McGregor, company secretary (27 February 2003 to 31 May 2017) and Margaret McGregor, director (27 February 2003 to 31 May 2017). Albert Cormack McGregor was a director from 1 February 2005 to 31 May 2017. The registered office was 1 Jubilee Cottage, Kirkton of Skene, Westhill, Aberdeenshire.
23. Skene Transport Ltd was granted a standard national operator's licence on 15 August 2003. The authorisation was for 2 vehicles and 4 trailers from an authorised operating centre at Cottown Garage, Kintore, Inverurie. The transport manager was Albert Cormack McGregor. The main business of Skene Transport Ltd was local and long distance with 44 tonne articulated vehicles.
24. From 19 March 2014 no vehicles were specified on the licence and Skene Transport Ltd was no longer trading and had no employees. However, they did not relinquish their licence.
25. Some time in 2016 Judith Paterson approached Albert McGregor about buying his company. At that time he was not interested in selling. However, in 2017 he did agree to sell Skene Transport Ltd to Judith Paterson for £8,000. Other than the company name and the operator's licence, no assets were transferred for the sale price.
26. On 24 May 2017 the Leeds Central Licensing Office received notification of Albert McGregor's resignation as transport manager for Skene Transport Ltd. On 25 May 2017 Judith Paterson submitted an online variation application to the Skene Transport licence to change the directors, the transport manager, the correspondence address to Newton Garage, Howes Road, Bucksburn, Aberdeen and to change the operating centre to Howes Road, as aforesaid.
27. On 5 June 2017 an application was made to specify and receive a disc for vehicle SY02 TWZ, a 32 tonne vehicle. DVLA showed the registered keeper of that vehicle to be Skene Transport Ltd on 25 May 2017. The immediately previous registered keeper being Hendry Aberdeen Ltd of the same address, the acquisition date being 15 September 2016.

28. Judith Paterson provided the following additional information on the variation form (page 30):-

*"I worked for John Hendry in Oakmist, and Hendry Aberdeen I also was for a while a director of Aberdeen Transport while it ran a garage and resigned when it got involved in transport. In these cases (I) was not a director apart from Aberdeen Transport Ltd but when transport came into it I ended up as shadow director therefore resigning. This venture is on my own with no other involvement from anyone else."*

29. The Leeds Central Licensing Office began to process the application however, the application came to the attention of the Traffic Commissioner's Office in Edinburgh and on 19 June 2017 a letter (page 104) was sent to Judith Paterson stating:-

*"I refer to the licence held by Skene Transport Ltd OM1021596. The Traffic Commissioner is aware that you, Judith Paterson, have been in contact with the Central Licensing Office and are seeking to operate using the existent licence. It is noted that you applied by online variation application to alter the licence adding yourself as sole director, amending the operating centre to Howes Road, Bucksburn, Aberdeen, AB21 9PD and nominating a Kenneth Reid as Transport Manager.*

*As you currently have no authorised operating centre, have not demonstrated evidence of financial standing and the repute of the director and nominee transport manager are yet to be considered, the Traffic Commissioner remains to be satisfied that the company meet the requirements to hold a licence and has directed that the licence cannot currently authorise the operation of vehicles.*

*In order to assist in assessing whether you can operate the Traffic Commissioner has instructed that your application be considered at a Public Inquiry at the earliest opportunity. The Traffic Commissioner has therefore scheduled a Public Inquiry to be held on 24/07/2017, in the Office of the Traffic Commissioner, The Stamp Office, 10 Waterloo Place, Edinburgh commencing at 11am to consider the issues.*

*Formal notification and the brief of papers for the Public Inquiry will follow shortly.*

*Please note that you are not authorised to operate goods vehicles until your variation application is granted or you have an interim licence in force".*

30. On 26 June 2017, a formal call up letter was issued setting out the issues for the Public Inquiry and including Judith Paterson's apparent links to other companies and to companies or operations by Ian Hendry (page 15).

31. In response to the call up letter, Judith Paterson withdrew the nomination of Kenneth Reid as transport manager and nominated the former owner, director and transport manager, Albert McGregor as an external transport manager. It was declared that he would work for 3 hours each Saturday and Sunday. She produced financial documentation in the form of bank statements for an account in Skene Transport Ltd's name opened on 26 June 2017 and personal bank loan documentation to show source of funds. A maintenance agreement for six-weekly inspections was also produced.



32. Judith Paterson provided a statement dated 6 July 2017 setting out how she wished to run the company (page 272-274). In addition the following documents were provided:-

Axa Insurance Motor Cover Note for the month of June 2017 (page 261)

Invoice dated 1 June 2017 from Hendry Aberdeen Ltd to Judith Paterson for cash sale of tipper registration number SY02 TWZ for £2400 (page 262)

Annual Test Certificate dated 20 March 2017 for SY02 TWZ (page 263)

DVLA V5 for SY02 TWZ (page 264-267)

Email of 3 July 2017 from Judith Paterson to Leeds Central Licensing Office and a statement dated 11 July 2017 (page 268)

Statement by Albert McGregor on how he would perform as transport manager (page 276)

TM1 form for Albert McGregor and copy of his CPC

Table of costings for the scheme transport operation (page 275)

DVLA leaflet on HGV driver basics (page 277-278)

Proforma DDR book (page 279)

### **The Public Inquiry**

33. The public inquiry took place at Edinburgh on 24 July 2017. Those present were Judith Paterson, represented by Mr. D. Glover, solicitor and the nominated transport manager, Albert McGregor. Both Judith Paterson and Albert McGregor gave evidence.

34. Judith Paterson gave evidence that she lived with Ian Hendry and was also his carer as his health was not good. She had worked with Ian Hendry for over 10 years starting as bookkeeper with Oakmist. She had worked in transport for that time and realised what was expected but had never been given the chance to do it the way it should be done. Some things, she said, had been done against her wishes. She realised that the Deputy Traffic Commissioner would be putting Ian Hendry out of business. She said that it was a coincidence that she approached Albert McGregor in the summer of 2016. She said that she had been thinking about setting up on her own for a long time. She had known Albert McGregor for about 12 years. She knew that his company was not trading. Initially he did not want to sell as he said he was holding on to the company for his son. She also had discussions about buying Adam Middler Transport and began discussions with them in about April 2017. When she thought she was buying Adam Middler Transport she wrote to the Central Licensing Office in Leeds to ask if she would be allowed to run a transport company however, no one responded to her. She spoke to Albert McGregor again in about March/April 2016 as she knew his circumstances had changed and he agreed to sell. It took his accountant a while to tie things up before the transfer. She decided that as she had not had an answer from the CLO about running a company it was better to buy the cheaper company, namely Skene Transport Ltd.

35. In the past, Judith Paterson had sat and failed the transport manager CPC. It was her intention to re-sit the examination. Meanwhile, she needed a transport manager for Skene Transport. She nominated Kenneth Reid. She was aware that he had lost his reputation some years ago. She gave him a copy of the letter she had been sent from the office of the Traffic Commissioner. She had not heard from him since despite calling at his house, emailing and texting. She had nominated him because he was someone of whom she knew. She then asked Albert McGregor if he would act as transport manager until she got her CPC. She said that he needed to be reassured that Ian Hendry would not be behind the licence. She had meetings with the McGregors and told them that Ian Hendry would not be in her office, that he would take no decisions and that he would be out of it. Albert McGregor agreed to be nominated as transport manager. The TM1 form proposed that he would work 3 hours on Saturdays and 3 hours on Sundays. She said that he could drop in at any time and that she could phone him. She said that the McGregors did not live far from her.
36. She changed the registered office address and also the operating centre. She said that it was she who held the lease on the site at Howes Road, Bucksburn. She said her signature was on the lease. She said she signed it but could not remember if it was originally in her name as tenant or if it was in the name of Aberdeen Transport because it was originally Aberdeen Transport that took on the lease. There were still 4 years left on the lease and she wished to make money out of that. She now rents out caravans in the yard to workmen; this was something that she had been doing before she bought Skene Transport. She also has a tenant for the garage. The rent for that is paid into the Skene Transport account and she then transfers it to her personal account. She pays her rent for the yard from her personal bank account.
37. She said that she wanted to make this work and to prove that she was capable of doing it on her own. When asked about control of the business and safeguards, she said she controlled the bank account, the office and the passwords on the computer. Her name was on everything. Ian Hendry was not a cheque signatory to the bank account and he did not have the ability to make purchases. She said she had told everyone that she had taken over Skene Transport and it was nothing to do with Ian Hendry. Ian Hendry had not put finance into the business nor was he a signatory.
38. She had prepared costings for Skene Transport. No lorries came with the purchase of Skene Transport Ltd. She said that Ian Hendry had owed her money and so she took SY02 TWZ in place of money due. She said the vehicle was parked up at the Howes Road yard. She said that it was an older vehicle and so would receive 4 weekly checks; she said she was well aware of the checks needed to keep the licence in line. Tachographs would be analysed and infringements left for Albert McGregor to look over. She said that she needed to prove herself. People were already saying that Skene Transport Ltd was Ian Hendry back in business again. She said that she had put cash into Hendry Aberdeen and so the vehicle was taken out against the loans that she had given Hendry Aberdeen in the past.
39. It was put to her by her solicitor that she had been the company secretary of Oakmist whose licence was revoked and the company disqualified; she had been a director of E Watson and Son Haulage and Plant whose application was refused following public inquiry; she had been a director of Aberdeen Transport and Services Ltd whose licence was revoked in February 2014; she had been an employee of Hendry Aberdeen Ltd and a director of Hendry Haulage Aberdeen Ltd. It was put to her that none of them had had a successful ending in terms of compliance and she

agreed with that. She was asked how she would ensure compliance for Skene Transport Ltd to which she replied she would put in every minute of time that she could herself; that she had to do the work herself; overlook the work herself and make the decisions herself. She said she had never agreed with the fact that Ian Hendry had run before he could walk. Her idea was to take her time. She intended to work with one vehicle until she had excess work and then she would buy another vehicle or lease one. She would like to replace the older vehicle and have 2 newer vehicles and she was not sure if she would lease or buy. She would like eventually to have a licence for 4 vehicles. She had seen what had gone wrong in the past and that she had learned from that. She had studied for the CPC but did not pass. It was her intention, at the same time, to study for the CPC.

40. Regarding Ian Hendry. She said that in the first 3 years that she worked for him he did everything by the book and that the things that had happened to cause the public inquiry were from before she'd started working with him. She said she had had a lot of respect for him and he never asked her to do anything he would not do himself. She was therefore willing to help him and could not see anything he was doing wrong from where she stood. She said that when she first started working for Ian Hendry she did not know the ins and outs of an awful lot at all. She was asked to go to the public inquiry as proof of the financial side of who had paid whom.
41. She said the involvement with E Watson and Son (Haulage and Plant) Ltd had been a disaster. Mr Watson took cash and used the money when VAT needed paying. Thereafter, she thought she could run Aberdeen Transport and Services Ltd as a garage and they applied for a licence which took 2 years. They lost money through the garage side of the business. This had not gone as she planned. She then thought that Ian Hendry could start afresh with Hendry Aberdeen Ltd. She said he was doing a lot of things right but VOSA was petty. When Ian Hendry put vehicles out to work without a licence she tried to make him see sense. She said she had chosen not to be a director and it was out of her hands. She continued to do the invoicing, downloading tachographs, dealing with drivers but she had no final say.
42. She said that she had been calling round to obtain work for Skene Transport Ltd. She had the same contacts as before and as Ian Hendry. Some of her contacts, with a couple of exceptions, had said they would give her work. The Traffic Commissioner asked her about the association between Ian Hendry and Adam Middler. She said that Ian Hendry had told her that he had been talking to Adam Middler and he would possibly sell his company to her. This was something that she and Ian Hendry had discussed, that is, her taking over a company. Ian Hendry had known that in the past she had spoken to Albert McGregor about it. If she had bought the Adam Middler business she would have been doing that along with Paul Harford a former driver with Hendry Aberdeen.
43. When questioned about her costings by the Traffic Commissioner Judith Paterson admitted that her costings were incomplete and crude.
44. When asked why she had simply not set up her own company in her own name or by using another name, she stated that she thought as Skene Transport already had a licence it would be simpler and would speed up the process. She said that when she had contacted Leeds she did not mention her involvement with Ian Hendry but did say she had been involved with Oakmist. In her variation application she stated that she had worked for Ian Hendry in Oakmist, Hendry Aberdeen, that for a while she was a director of Aberdeen Transport while it ran a garage and resigned when it got involved in transport. (See page 30)

45. Albert McGregor gave evidence that Judith Paterson initially approached him in 2016 about buying Skene Transport Ltd but at that time he did not want to sell the company. Thereafter, his son told him that he was not able to take on the company and so when Judith Paterson approached him again in 2017 he agreed to sell the company. He said he made it plain to Judith Paterson that he would not sell the company if Ian Hendry had anything to do with it. He sold the company with the operator's licence, which still had a year to go, for £8,000. No assets were transferred. He handed over 2 discs plus 4 licences that went with the company. Judith Paterson was going into an entirely different line of work from what he had done which was with 44 tonne articulated lorries doing local and long distance. He said that when he was first approached about the sale he did not know anything about Ian Hendry's suspensions.
46. In his role as transport manager he said he would work 3 hours on a Saturday and 3 hours on a Sunday. Although he would not be there during the week he had access to a phone. He said he would know every company that the vehicle was working for and he knew Ian Hendry's contacts. He said he did not like Ian Hendry that he knew the sort of things that he'd done, he knew about the public inquiry, that he treated Judith Paterson like dirt, that he uses people, that he's owed people money all over the place, that he promises to go on the straight and narrow but takes on too much work and his vehicles break down.
47. When it was put to him by the Traffic Commissioner that he would not be able to tell whether or not Ian Hendry was involved he said he had to admit that that was true. Nevertheless, he was satisfied that the arrangement which was being proposed by Judith Paterson had nothing to do with Ian Hendry. If he found that was not the case he would resign as transport manager and contact VOSA.

### **The decision of the Traffic Commissioner**

48. The Traffic Commissioner made the following findings in fact:-
- “56. Skene Transport Ltd under directorship and ownership of Mr and Mrs McGregor ceased business operations in March 2014 when the last vehicle was specified. Mrs McGregor does not keep good health. Apart from some casual driving work, Mr McGregor had otherwise retired.*
- 57. The nature of Skene Transport Ltd.'s work was 44 tonne arctic and trailer work. It was not quarry or tipper work.*
- 58. As from at least March 2014 Skene Transport had no employees and no vehicles.*
- 59. Mrs Judith Paterson is the domestic partner of Mr John Dunnett Hendry (known as Ian Hendry) and participant in his businesses since at least 2007 in various capacities ranging from employed book-keeper to sole and co-director of companies and company secretary.*
- 60. From summer 2016 Mrs Judith Paterson attempted to buy a company holding an operator's licence. She approached Skene Transport's Mr McGregor and Adam Middler. They were chosen because their companies respectively held an operator's licence and not to secure assets. I find that these approaches were made with the knowledge of Ian Hendry and as a means whereby Ian Hendry and Judith Paterson could continue to operate*

*goods vehicles commercially including vehicles owned by companies under their control.*

*61. From her time as an administrator, book-keeper and company secretary of Oakmist, Mrs Judith Paterson has been involved at the centre of the financial administration including invoicing for the various entities in which she, Ian Hendry and David Hendry have operated goods vehicles whether licensed or not.*

*62. I find that Mrs Judith Paterson was used by herself and Mr Ian Hendry as the person who would buy a company with an operator licence. There was no attempt to buy vehicles, take on a workforce or an operating centre. The sole purpose of company purchase was to obtain an operator licence without making an originating application for such with attendant publication and scrutiny.*

*63. Mrs Paterson paid Mr and Mrs McGregor £6,000 for the transfer of their shareholding in Skene Transport. That was the price paid for the operator licence and for no other asset other than the company number and name at Companies House.*

*64. The motivation for the purchase of a company with an operator licence was the suspension of the interim operator licence held by Hendry Aberdeen Ltd on 23 June 2016 and the possibility of refusal of a licence. Ian Hendry and Judith Paterson needed an operator licence for operation did not stop on June 23 2016 but continued until at least 28 March 2017 when 2 vehicles were stopped and found to be operating under the instructions of Ian Hendry.*

*65. Judith Paterson knew of the unlawful operation. She was party to it.*

*66. On 3 May 2017 the application for a licence by Hendry Aberdeen Ltd was refused and the company and directors Ian and David Hendry were disqualified. That decision left Judith Paterson as the only one of the three, who as of then, was not disqualified.*

*67. From at least 2007 Judith Paterson has made her living as part of Ian Hendry's operations and businesses based at Hawes Road, Bucksburn."*

49. In making these findings in fact, the Traffic Commissioner had in mind the long history of non-compliance by Ian Hendry, and the various business entities with which he has been involved, against the road safety and fair competition regulatory regime which requires an operator licence. She considered that since 2007 Judith Paterson had been at the core of these businesses, was aware of the material non-compliance and worked with the ingathering of invoiced funds for unlawful operating. She relied on the serial unlawful operating set out in Deputy Traffic Commissioner McFarlane's very detailed decision of 3 May 2017 and her own impounding decision of 28 May 2017 (pages 348 and 349, paragraphs 68 and 69).

50. The Traffic Commissioner noted that Ian Hendry had been involved in non-compliant operating for a long time up until very recently. Following the suspension of the licence for Hendry Aberdeen Ltd Ian Hendry had obtained two vehicles through the agency of Rennie and Nicol Commercials Ltd and put those vehicles to work without a licence. This had continued until the last impounding date of 28 March 2017.

51. In response to Mr Glover's submission that Judith Paterson had been "transparent", the Traffic Commissioner observed that in her contact with the Leeds Central Licensing Office, Judith Paterson did not advise the CLO of the potential takeover of Adam Middler or proactively disclose her relationship with disqualified persons.
52. The Traffic Commissioner posed the questions: was Judith Paterson a front for Ian Hendry and, if not, does she have the necessary repute for an operator's licence; could she be distinguished as an individual from her history with other companies and persons engaged in operator licensing and could she be free of the influence of Ian Hendry? (Page 349, paragraph 71.)
53. In her assessment of Judith Paterson, the Traffic Commissioner found her costings to be simplistic, despite the fact that she was a bookkeeper; she had been unsure of her legal status regarding the tenancy of the yard at Howes Road. She found that Judith Paterson and Ian Hendry had operated as a team and she had not been able to stand up to him in the past. In the circumstances, the Traffic Commissioner was unable to accept Judith Paterson's assertions that she would control Skene Transport Ltd without the involvement of Ian Hendry.
54. Likewise, she was unable to accept Judith Paterson's assertion, and Mr Glover's submission, that the suspension of the Hendry Aberdeen licence on 22 June 2016 (and revocation and disqualifications in May 2017) and Judith Paterson's approach to Skene Transport Ltd in the summer of 2016 then to Skene Transport Ltd and Adam Middler Ltd in March/April 2017 were purely coincidental.
55. The Traffic Commissioner then considered the questions of repute, whether the operator could be trusted for the future and whether she was required to put the operator out of business. On the positive side she noted that since receipt of the letter of 19 June 2017 from the Office of the Traffic Commissioner, there was no evidence that Skene Transport Ltd had operated without a disc.
56. On the negative side, she did not accept that the transport manager would truly know what was going on in the business when he was not there Mondays to Fridays. An interpretation of events was that with the suspension of the Hendry Aberdeen licence from 22 June 2016 and the likelihood that it would be revoked, the likelihood that of Ian Hendry, David Hendry and Judith Paterson, Judith Paterson would be the only one of the three not disqualified, that she began to look for a suitable company to buy to continue operating; that she "bought a licence" by acquiring a company which had a licence; no tangible assets or goodwill were transferred for the purchase price; a Hendry Aberdeen Ltd vehicle was transferred to Skene Transport Ltd; the changes were made at Companies House and the variation application lodged with a view to resuming operating shortly after the revocation of the Hendry Aberdeen licence and the disqualifications of Ian Hendry and David Hendry. The Traffic Commissioner inferred that this was another example of Ian Hendry manipulating the system and others for his own ends; as he had been found to do in the past, including the recent past. Since 2007, she found that Judith Paterson had been aware of the illegal operations and had not stopped it or distanced herself from it.
57. Given Judith Paterson's involvement in past non-compliance, the Traffic Commissioner was unable to accept her assertions that she wanted to be her own person and prove herself. She still lived with Ian Hendry and remained within his sphere of influence and there would be common commercial benefit in the use of the yard and getting work.

58. The Traffic Commissioner noted that there was a recurrent pattern across the years of Ian Hendry, David Hendry and Judith Paterson going on and off companies at Companies House and on licences. She inferred that this behaviour was designed to elide responsibilities under company law and operator licensing. She found that Judith Paterson was party to this. She found that Ian Hendry and Judith Paterson had offended against fair competition which was essential to operator licensing. She had to consider the impact on the regulatory regime and fair competition when assessing the variation application made by Judith Paterson for Skene Transport and the companies and her repute as director. She had regard to the decision in **Aspey Trucks Ltd [2010] UKUT 367 (AAC)** and the meaning of “repute”.
59. As regards the question of whether it was proportionate that the Traffic Commissioner put Skene Transport out of business, she noted that Skene Transport had not operated vehicles since 2014; there were no discs in issue; the persons who were directors and owners at the time of the grant of the licence were no longer owners; there were no employees and that there were scant economic factors to put in play when assessing whether loss of the licence would be disproportionate or draconian.
60. As to whether Skene Transport and Judith Paterson could be trusted in the future she found that there was no prospect of Judith Paterson being trustworthy. She found that nothing that had been said to her or on her behalf about Judith Paterson was in any way reassuring. She therefore found that Skene Transport Ltd had lost its repute through material change and revoked the Skene Transport licence on the grounds of loss of repute and material change since the grant of the licence. She found that the sole director of Skene Transport, Judith Paterson, was not of repute.
61. She was then required to consider the question of disqualification. The Traffic Commissioner found that the operator licence applied for was to be used to circumvent the revocation and disqualification of Ian Hendry and Hendry Aberdeen Ltd. As she found there was no distance or separation between herself and Ian Hendry, the Traffic Commissioner disqualified Skene Transport Ltd and Judith Paterson indefinitely to reflect the disqualification of Ian Hendry and Hendry Aberdeen Ltd.

### **The Appeal to the Upper Tribunal**

62. The following principles (extracted from the Digest of Traffic Commissioner appeals) as to the proper approach to an appeal in the upper tribunal can be found in the decision of the Court of Appeal in the case of **Bradley Fold Travel Ltd and Peter Wright v The Secretary of State for Transport [2010] EWCA Civ 695**:
- (1) *The Tribunal is not required to rehear all the evidence by conducting what would, in effect, be a new first instance hearing. Instead it has the duty to hear and determine matters of both fact and law on the basis of the material before the Traffic Commissioner but without having the benefit of seeing and hearing the witnesses.*
- (2) *The Appellant ‘assumes the burden’ of showing that the decision appealed from is wrong.*

- (3) *In order to succeed the Appellant must show not merely that there are grounds for preferring a different view but that there are objective grounds upon which the Tribunal ought to conclude that the different view is the right one. Put another way it is not enough that the Tribunal might prefer a different view; 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 phrase “plainly wrong” as a shorthand description of this test. (**Fergal Hughes v DOENI & Perry McKee Homes Ltd v DOENI, NT/2013/52 & 53** paragraph 8).

63. The grounds of appeal are at pages 363 to 365 of the bundle. At the hearing of this appeal, the appellants were represented by Mr Nesbitt, of Counsel, who provided a skeleton argument and chronology for which we were grateful. Broadly, it was argued for the appellants that a number of serious factual findings made against Judith Paterson by the Traffic Commissioner were unsupported by the evidence and that the findings were arrived at in a way which involved inadequate forensic analysis of the evidence that was before the Commissioner. Since those findings formed the foundation of the Traffic Commissioner’s decisions in relation to repute, revocation and disqualification, it was argued that those decisions were unsafe. While it was recognised that the Tribunal will only interfere with decisions of Traffic Commissioners where they are found to be “plainly wrong” (**Bradley Fold Travel**) and that the Tribunal will accord some respect to the fact that the assessment of evidence is for the Traffic Commissioner, who has the advantage over the tribunal of having seen witnesses give evidence, nevertheless the tribunal has also emphasised the importance of decisions being adequately and rigorously reasoned (**Easy Go Transport Ltd [2017] UKUT0425, David Pritchard T2011/29** and **George R. Cran Transport Ltd [2017] UKUT 0188**).
64. It was submitted that the Traffic Commissioner had made a finding that Judith Paterson had not been transparent in her application about her links with Ian Hendry and in doing so had simply misjudged the evidence.
65. What the Traffic Commissioner said about Judith Paterson’s dealings with the Central Licensing Office in Leeds has to be put into context. At the public inquiry, Mr Glover, Judith Paterson’s solicitor, made a submission that she had been transparent in her desire to take on a new challenge and to take on the ownership of a limited company that holds a goods vehicle operator licence. He said that from the outset Mrs Paterson wrote and declared a desire to be involved in goods vehicle operator licensing and to be involved or to take over, to buy shares in a company which already held a goods vehicle operator licence. She made a declaration of interest in terms of Skene Transport Ltd and an application was forwarded to the Central Licensing Unit in Leeds; she thought that was the right way to go about things and, Mr Glover submitted, it showed a level of transparency and willingness to engage with the Office of the Traffic Commissioner. (See page 327.)
66. What the Traffic Commissioner said about this submission was as follows:-
- The Leeds caseworkers dealt with Mrs Paterson on a face value basis initially. As the variation application became known within the wider knowledge of my Office, the application was immediately earmarked for a Public Inquiry and consideration of repute and material change. I can find no evidence that Mrs Paterson pro-actively alerted Leeds to the named potential*



*take over of Adam Middler nor to any pro-active disclosure of her relationship with disqualified persons. She could not avoid contact with Leeds and may have hoped that in a large organisation she had the chance of slipping under the radar if sufficiently friendly. It can happen. I make these observations for the central plank of Mr Glover's submission was the transparency of Mrs Paterson. The moment her involvement with the Skene Plant licence was identified by the team in Edinburgh, who knew of the "Hendry" background, she could only be visible. I also wonder just what "transparent" means – does it mean "truthful"? Does it mean "trustworthy"? I am not sure how far asserting "transparency" takes either her or me in this case.*

67. An examination of the brief for the public inquiry does not reveal any evidence that Judith Paterson specifically advised the Leeds Office that she was potentially going to take over a business called "Adam Middler" nor did she say in her evidence to the public inquiry that she had so advised the Leeds office. As the Traffic Commissioner correctly points out, as soon as the variation application involving Judith Paterson became known to the team in Edinburgh she became highly visible. It is not strictly correct to say that the Traffic Commissioner made a finding in fact that Judith Paterson had not been transparent in her application about her links with Mr Hendry. However, Judith Paterson made less than full disclosure in the variation application (pages 26-32). Under financial history she answered yes to the question, "has anyone you've named in this application (including partners, directors and transport managers) ever been involved with a company or business that has gone (or is going into) liquidation, owing money?" She gave some further information under "Additional Information" (see paragraph 30 above).
68. However, Judith Paterson did not disclose that she was company secretary of Oakmist from 1 December 2007 until its dissolution; that she had been office administrator for Norwood Transport; that she had been a director of E. Watson and Son (Haulage and Plant) Ltd; that she had been a director of Aberdeen Transport and Services Ltd; that she had been a director of Hendry Haulage Aberdeen Ltd; and that she had been administrator of and loaned money to Hendry Aberdeen Ltd.
69. While we do not agree that the Traffic Commissioner's observations in paragraph 70 of her decision amount to a finding that Judith Paterson was not transparent with the CLO, she did not make full disclosure. What the Traffic Commissioner did find was that she wanted to avoid making a new application for a licence. Based on the evidence and the findings in fact, we consider that that was an entirely reasonable inference to draw. She considered her assertion that she was going it alone and gave reasons based on her interpretation of the evidence why she could not accept that. This is discussed in more detail below.
70. On behalf of the appellants, complaint was made about "the finding that applications/Mrs Paterson herself were being used as cynical devices by Mr Hendry to get around the loss of the Hendry Aberdeen Ltd licence/Mr Hendry's disqualification".
71. Mr Nesbitt acknowledged that the factual context of the case was such that any Traffic Commissioner was bound to wonder and consider whether Judith Paterson's application was a front for Ian Hendry to get around his regulatory difficulties. However, he submitted that Judith Paterson presented an innocent explanation for her application: this was a venture she was pursuing on her own without Ian Hendry's involvement. That evidence, he stated, was supported by a third party namely Albert McGregor. Added to that was the fact that Judith Paterson had proved herself to be competent and capable to organise transport operations in the recent

past. Mr Nesbit submitted that the Traffic Commissioner had leapt to a conclusion without considering Judith Paterson's "innocent explanation" and without embarking upon any process of reasoning at all.

72. What the Traffic Commissioner had to do was to consider and weigh all the evidence available to her which was relevant to the issues which she had to decide. There was a considerable amount of historic factual information and more recent evidence available to the Traffic Commissioner; it is simply not possible or necessary for her to record every aspect of the evidence that she considered and what she made of it.
73. Hendry Aberdeen Ltd's interim licence was suspended on 22 June 2016. Judith Paterson gave evidence that about that time she discussed purchasing Skene Transport Ltd from the McGregors. The final day of the public inquiry into Hendry Aberdeen Ltd's application was on 30 January 2017 and the decision refusing Hendry Aberdeen Ltd a licence and disqualifying Ian Hendry and David Hendry was issued on 3 May 2017. Judith Paterson gave evidence that in March or April 2017, she had further discussions with Albert McGregor and with another company, Adam Middler. She gave evidence that Ian Hendry and she had been discussing Judith Paterson's buying a transport company and Ian Hendry told her that he had been talking to Adam Middler and he would possibly sell his company. The timing of the loss of the licence and disqualification of Ian and David Hendry with the purchase of a company with a licence is suggestive that the one causing the other and it would have been remiss of the Traffic Commissioner not to weight this in the balance.
74. The Traffic Commissioner considered Judith Paterson's company operating costings to be crude, something which Judith Paterson accepted. Judith Paterson proposed to use the same yard for her operating centre as had previously been used by Hendry Aberdeen, Aberdeen Transport and Services and Hendry Haulage Aberdeen. However, she was uncertain as to her capacity as signatory on the lease for the proposed operating centre. Who the real tenant was was never established at the public inquiry; a surprising area of confusion for an operator about her proposed operating centre. Given the knowledge Judith Paterson had of the ease with which a new company could be incorporated, the fact that she had paid £8,000, which she borrowed at 26% APR (see pages 331-333), for an existing company with a licence but no assets, does beg the question why she did that. Judith Paterson said that she thought it would speed up the process. There was also the immediate transfer of SY02 TWZ from Hendry Aberdeen Ltd to Skene Transport Ltd on in May 2017. Judith Paterson gave evidence that her contacts were the same as Ian Hendry's contacts and she would use them to secure business. The Traffic Commissioner had to decide if this was conduct designed to enable Judith Paterson and Ian Hendry to continue to operate together despite his disqualification. She had to consider whether, against the whole background, Judith Paterson's explanation was or was not convincing.
75. Judith Paterson was the director of Hendry Haulage Aberdeen Ltd from 22 May 2015 to 31 March 2016. Her stated occupation was bookkeeper. She was involved in the operation of that company. Ian Hendry was the other director and also transport manager. Hendry Haulage Aberdeen was a company which the Deputy Traffic Commissioner had found had operated vehicles registered to it without displaying a disc (see paragraphs 21 and 22 above). Judith Paterson was the administrator of Hendry Aberdeen Ltd a company which the Deputy Traffic Commissioner found had operated vehicles not specified on a licence (see paragraph 23 above). Judith Paterson was a director and administrator of Aberdeen Transport and Services Ltd. The Deputy Traffic Commissioner found that this company allowed

Hendry Aberdeen to operate under cover of its licence; this occurred at a time when Judith Paterson was a director of Aberdeen Transport and Services Ltd (paragraph 33, page 177). Judith Paterson was a director of E. Watson and Son (Haulage and Plant) Ltd. That company applied for a standard national operator licence but the application was refused at a public inquiry held on 8 August 2011 following allegations that the company had been operating vehicles without authorisation and connections to Ian Hendry. Judith Paterson had been company secretary of Oakmist and administrator of both Oakmist and Norwood. The unusual invoicing arrangement for which Judith Paterson was responsible between these two companies was commented upon by the Upper Tribunal (see paragraph 7 above). It would have been artificial for the Traffic Commissioner not to have regard to Judith Paterson's involvement with these various entities and their significant non-compliance with the regulatory system.

76. There was some mention made of Ian Hendry suffering ill health. However, there was very little evidence about this other than some evidence from him at a previous public inquiry that he had trouble with his legs and his hands (page 215, paragraph 19). There was no evidence of mental decline. Until recently, he had been operating, albeit unlawfully, and driving which suggested he was neither physically nor mentally incapable.
77. The above is only a brief summary of all of the evidence which was before the Traffic Commissioner. It can be seen from the Traffic Commissioner's decision that she did not rush to a conclusion that Judith Paterson was simply a front for Ian Hendry. She asked herself whether Judith Paterson really believed what she was saying that she could be free of Ian Hendry's influence. She also asked herself whether Judith Paterson's history with other companies and persons engaged in operator licensing could be distinguished from her as an individual? (See page 349, paragraph 71.) Looking at the background, the Traffic Commissioner made reference to the earlier decisions which she found indicated that Judith Paterson had been involved in unlawful operating and that she was not in any way at the margins of what was going on (see page 349, paragraph 6. She considered that Ian Hendry would want to be involved in the business of a licence if a licence were granted and Judith Paterson would not resist him; she had not been able to stand up to him in the past and that they were a team. Given Ian Hendry's long history in transport and the picture that emerges of him having a strong personality, a long history of non-compliance and evidence from Judith Paterson that she had not been able to prevent Ian Hendry in the past from operating unlawfully there was evidence entitling the Traffic Commissioner to form that view.
78. Regarding the evidence of Albert McGregor that he had been informed by Judith Paterson that Ian Hendry would have no role in Skene Transport Ltd the Traffic Commissioner found this to be unimpressive and he failed to persuade her that he would truly know what was going on Mondays to Fridays as he would not be present. This was not an unreasonable inference to draw. Indeed, Albert McGregor agreed he would not know (page 313).
79. We consider that the Traffic Commissioner has looked at the evidence in the round and given reasons, based on the evidence which was before her, as to why she was unable to accept as genuine Judith Paterson's assertions that she was setting up on her own and she would control and direct Skene Transport on her own with no involvement from Ian Hendry. That was an assessment only she could make having had an opportunity to see and hear the witnesses. In examining the evidence, in our judgment, she has complied with the recommendations in **Easy Go Transport** and **David Pritchard**.

80. In summary, given the timing of the purchase of another transport company; Ian Hendry's involvement in that; the purchase of a company with an existing licence rather than setting up a new company and that company making an application for a licence; Judith Paterson's history of central involvement with entities which had not complied with the regulatory regime and her close personal and business association with Ian Hendry, the Traffic Commissioner had good grounds for inferring from all of that that Judith Paterson was the instrument who would obtain a licence to enable her business with Ian Hendry to continue. It cannot be said that, in this respect, the Traffic Commissioner was "plainly wrong".
81. The appellants complained about the finding that Judith Paterson "could not be trusted and/or lacked repute as a consequence of her involvement in Mr Hendry's previous businesses/non-compliance".
82. It was submitted that the Traffic Commissioner should have tried to identify what Judith Paterson's role had been in the various businesses and to weigh in the balance positive matters including positive comments about her in the past. Judith Paterson had never been a CPC holder or transport manager and in the most recent business, Hendry Aberdeen Ltd, was not a director. The breaches committed, she said in her evidence, had been against her wishes. It was submitted that the Traffic Commissioner had failed to carry out that exercise.
83. As mentioned above, the Traffic Commissioner specifically asked herself whether Judith Paterson, as an individual, could be distinguished from the companies and other persons she'd worked with. She considered Ian Hendry's history of non-compliance and Judith Paterson's close relationship with him on a personal/domestic level and in business. This has already been summarised in this decision. It is clear that the Traffic Commissioner had read and had regard to all of the previous public inquiries and decisions. However she was entitled to form her own view and make her own assessment of Judith Paterson. She had formed the view from the evidence that Ian Hendry and Judith Paterson were a team, that Judith Paterson was aware of unlawful activity, did not stop it or detach herself from it and, indeed, assisted in the administration of it by the invoicing and ingathering of funds. These were conclusions which, on the evidence, she was entitled to reach and which were not unreasonable.
84. The Traffic Commissioner had to decide whether Judith Paterson and Skene Transport had the requisite good repute. As narrated above the Traffic Commissioner considered the question of repute along with the question of trust and whether she should put Skene Transport Ltd out of business. She referred to and followed the guidance in the cases of **Bryan Haulage (No. 2) T2002/217, Priority Freight 2009/225** and **Aspey Trucks Ltd**. Given her findings in fact and the legitimate inferences she drew from these, it was inevitable that she would find that Judith Paterson was not of good repute and thus, neither was Skene Transport. We can find no fault in her treatment of the evidence or the conclusions that she reached. We cannot find that she was "plainly wrong" on any of these matters which she had to decide. She was therefore bound to revoke Skene Transport's licence (section 27 and 13A(2) of the 1995 Act).
85. The Traffic Commissioner then had to consider the question of disqualification. The fact that, earlier, the Deputy Traffic Commissioner did not disqualify Judith Paterson does not prevent the Traffic Commissioner from taking a different view. It is unrealistic to separate out Judith Paterson's actions as a director and as an administrator. The Traffic Commissioner is bound to have regard to any relevant matter (paragraph 1(1) of Schedule 3 to the 1995 Act) and was therefore

entitled to consider Judith Paterson's conduct in both capacities as that was relevant to the assessment of culpability, repute and trust.

86. Given the Traffic Commissioner's findings that the licence was to be used by Judith Paterson and Ian Hendry, indefinite disqualification of Judith Paterson and Skene Transport Ltd was appropriate and proportionate. The Traffic Commissioner correctly had in mind that over many years Judith Paterson had been involved in unlawful operation that struck at the essential trust between the operator and the Office of the Traffic Commissioner and undermined the regulatory regime. In addition, it potentially compromised road safety and gave her and the entities with which she was associated an unfair commercial advantage. We consider that an indefinite disqualification was entirely appropriate for both Judith Paterson and the company which was intended to be the vehicle for the continued operation of business by her and Ian Hendry.

### **Decision**

87. We have had in mind the guidance of the Court of Appeal in **Bradley Fold**. We have considered whether the Traffic Commissioner's approach to the witnesses and to the evidence, her process of reasoning and the application of the relevant law requires us to adopt a different view from her. For the reasons that we have given the answer to those questions is in the negative. We find no flaw in her analysis and nothing disproportionate in her conclusions. Accordingly, the appeal is dismissed.

(Signed)  
MARION CALDWELL QC  
Judge of the Upper Tribunal  
Date: 30 March 2018