



**IN THE UPPER TRIBUNAL
ADMINISTRATIVE APPEALS CHAMBER**

**NCN: [2022] UKUT 00284 (AAC)
Appeal No. UA-2022-000599-T**

Appellants:

**JASBIR SINGH
R&J TRANSPORT PVT LIMITED**

DECISION OF THE UPPER TRIBUNAL

**Her Honour Judge Beech, Judge of the Upper Tribunal
Richard Fry, Specialist Member
Gary Roantree, Specialist Member**

Decision date: 28th October 2022

ON APPEAL FROM:

**Tribunal: Sarah Bell, Traffic Commissioner for the South East &
Metropolitan Traffic Area**
Licence No: OF2019075
Tribunal Venue: Field House, 15-25 Bream's Buildings, London, EC4A 1DZ
Date: 11th October 2022

This front sheet is for the convenience of the parties and does not form part of the decision



**IN THE UPPER TRIBUNAL
ADMINISTRATIVE APPEALS CHAMBER**

Appeal No. UA-2022-000599-T

On appeal from the Decision of Sarah Bell, Traffic Commissioner for the South East & Metropolitan Traffic Area dated 11th March 2022

**Jasbir Singh
R&J Transport PVT Limited**

Appellants

**Before: Her Honour Judge Beech Upper Tribunal Judge
Specialist Member of the Upper Tribunal Richard Fry
Specialist Member of the Upper Tribunal Gary Roantree**

Hearing date: 11th October 2022

Representation:

Appellants: Mark Davies of Counsel instructed by CE Transport Law on behalf of both Appellants

DECISION

The appeals are DISMISSED

Subject Matter: Proportionality of the Orders of revocation and disqualification

1. **Cases referred to:** 2019/054 Bridgestep Limited; (2009/041 Waterstone Motors t/a the Green Bus Service); 2010/29 David Finch Haulage; 2009/011 Katherine Oliver and H W Swan T Partners; Catch22Bus Limited & Philip Higgs v The Secretary of State for Transport (2019) EWCA Civ 1022)2012/071; 2014/4-41 C G Cargo Limited and Sandhu; Bradley Fold Travel & Peter Wright v Secretary of State for Transport (2010) EWCA Civ.695.

REASONS FOR DECISION

2. This is an appeal from the decision of the Traffic Commissioner for the South East and Metropolitan Traffic Area ("TC") dated 11th March 2022 when she

revoked the operator's licence of the Second Appellant ("R&J") under s.26 of the Goods Vehicles (Licensing of Operators) Act 1995 (the 1995 Act") and disqualified both Appellants under s.28 of the 1995 Act for a period of seven years with effect from 23.45 on 4th July 2022. Darren Coot, the Second Appellant's transport manager was issued with a strong written warning. That decision is not (and cannot) be the subject of an appeal.

Background

3. The background to this appeal can be found in the appeal bundle and the written decisions of Deputy Traffic Commissioner Davies ("DTC") dated 19th October 2020 and the TC's decision dated 11th March 2022 and is as follows. The First Appellant ("Mr Singh") has been involved in commercial road transport for a number of years. He was a director of SSP Haulage between 14th June 2016 and 15th October 2018. He was the sole director of Maximus Haulage between 2nd April 2017 and 22nd October 2019 when his cousin Kulwinder Singh Sandhu took over the business. On 5th August 2018, Mr Singh took over the business of R&J from the then sole director of the company Jagit Paul Singh, although there was some overlap in directorships until 15th October 2018.
4. R&J had been granted a standard national operator's licence on 14th August 2015 for six vehicles and six trailers. On 11th June 2018, a DVSA maintenance investigation was carried out and was marked as "unsatisfactory" resulting in a "propose to revoke" letter being sent on 19th September 2018. Mr Singh later denied that he had any knowledge of the DVSA investigation although after he had purchased the company and had become the sole director, the company requested a public inquiry in response to the "propose to revoke" letter. Then on 10th October 2018, the transport manager was removed from the licence prompting a further "propose to revoke" letter being sent which was not responded to and as a result, the licence was revoked on 12th November 2018.
5. R&J applied for a new licence on 29th November 2018; Mr Singh was the nominated transport manager. The application was called to a public inquiry and was considered on 12th March 2019. The decision letter can be summarised as follows:
 - An interim licence was granted with undertakings. It was understood by Mr Singh that full compliance with the undertakings was an integral aspect of the DTC's reasons for granting the licence
 - The application was not aided by the confusion over the history and names of key individuals involved in the company prior to Mr Singh purchasing the company. The previous owner (Jagjit Paul Singh) failed to manage the licence satisfactorily with respect to digital driver cards. The full details of the abuse of driver cards and general misuse had been detailed in the Traffic Examiner's report
 - Tachograph analysis was to be undertaken by Harry Singh Kapoor, Transport Consultant
 - The applicant intended to look for the best transport manager he could find and reorganise the company on that basis

- Despite having a CPC qualification, Mr Singh had never taken any refresher training nor had he acted as a transport manager
 - He did not seem to understand the significance of signed infringement reports without having the driver addressing the failure and without having them signed in a timely fashion rather than all on the same date some months or weeks after the infringement occurred
 - He was unable to identify the key requirements in relation to brake testing and preventative maintenance inspections (“PMI’s”) i.e. that every PMI was to include a rolling road brake test. The PMI sheets were returned to him (from Maximus) for review but the DTC was left unconvinced that Mr Singh understood what he should be looking for as he failed to recognise that a rolling road brake test was not being done at every PMI and not every 3 months (we note at this stage that the references to Maximus are unclear as the maintenance provider was Welch’s)
 - The forms that have been used by Welch’s were the old forms. Mr Singh found that out at the hearing. Maximus had been operating for 2 years (we note that this may be relevant because Mr Singh had been the operator of Maximus)
 - The DTC was satisfied that Mr Singh had nothing to do with R&J during its previous interaction with the DVSA in 2018
 - He wanted to get things right but the DTC was concerned that he had failed to understand and appreciate his responsibility to achieve the standards to be complied with and to have the required skill and knowledge to not only manage the licence but the transport manager as well
 - The interim licence was to take effect after and upon receipt of a certificate of attendance by Mr Singh on a two day CPC approved training course by the end of May 2019 and after a second experienced CPC nominated transport manager had been added to the licence (by the end of May 2019)
 - A full systems audit was to be conducted by an independent provider, to be completed by the end of August 2019. If the audit showed any areas needing improvements or having deficiencies, the interim licence would be immediately revoked without a public inquiry and for the avoidance of doubt, the licence would not be granted.
 - Mr Singh stated that he understood fully and Mr Mason (who represented him) confirmed he would reinforce and explain in full what was required.
6. Upon receipt of a certificate showing that Mr Singh had attended an appropriate CPC refresher course and following the nomination of Navdeep Singh Sandhu as a second transport manager, the interim licence authorising four vehicles was granted on 11th June 2019.
7. On 28th August 2019, Harry Kapoor completed a transport audit. It recorded inter alia that:

- Drivers were instructed to prevent overloading but a copy of those instructions were not attached to the report
- Whilst four vehicles were said to be in possession (including AY66TMV), only one vehicle registration document was produced and only one plating certificate was produced
- A recommendation was made that VED, tachograph calibration and insurance expiry dates should be entered onto the wall planner (the inference being that this information was missing from the planner)
- It was noted that roller brake testing was recorded on inspection sheets although the DTC was surprised that details of frequency were not given in the audit
- The audit answered “Yes” to the question concerning adequacy of maintenance resources and facilities including undercover accommodation, adequate under vehicle inspection facilities of either ramps, a pit or a hoist etc. In fact, maintenance inspections were taking place outside at the operating centre by Ace Fleet Maintenance, a mobile service without under vehicle inspection facilities
- In answer to the question concerning regular audits being carried out by a suitability qualified person to ensure that all maintenance procedures were followed etc, the answer recorded was “*director themselves keep a trail of documents*” without stating what the audit process was

The conclusion of the DTC was that the audit report was very brief and lacked detailed answers from Mr Singh to evidence recommendations raised and addressed and significantly missed out key areas of concern.

8. On 14th November 2019, a joint traffic examiner and vehicle examiner investigation was carried out. When they arrived at Midland Quarry Products (“MQP”), one of the two operating centres recorded on R&J’s licence, vehicle registration AY66TMV, which was specified on the licence, was present with its driver. When asked, the driver stated that he was working for “Maximus” which prompted a check of the licence disc. The driver then declared that the vehicle previously belonged to R&J but that it now belonged to Maximus. The driver was told the purpose of the visit and his response was that his “boss” was en-route. Enquiries were made via MQP’s control room and a delivery note was produced which showed that the vehicle was being operated by R&J and that the driver was in fact Mr Singh. The vehicle was displaying a disc for Maximus Haulage, although behind it were two further in date discs, one for the revoked R&J licence and another for Leicester Haulage Ltd. It then transpired that R&J did not in fact have permission to use MQP as an operating centre.
9. On 21st November 2019, vehicle KY12LZK was stopped. The driver stated initially that he was working for R&J although the vehicle was displaying a disc issued to Maximus Haulage. The driver then stated that he was working for Maximus and that both R&J and Maximus were the same operation and being run by the same person. The driver told the DVSA that he had been interviewed and inducted by Mr Singh who gave him his day to day instructions. It then became apparent that the vehicle had been removed from

the Maximus licence on 10th October 2019 and that on 22nd October 2019, the day that Mr Singh ceased to be a director of Maximus, the vehicle was specified on the licence of SSP Haulage. No one could be contacted at SSP Haulage although a telephone call to Maximus elicited the response that the vehicle was being operated by SSP Haulage although the driver worked for Maximus.

10. There then followed follow-up visits to R&J on 25th and 29th November 2019 and the outcome of the investigation was marked as “unsatisfactory”:
- PMI sheets lacked details of rectification and were not always signed to confirm that the vehicles were in a roadworthy condition
 - The brake performance sections were not completed on the sheets
 - On 29th August 2019, GK61 SVT was presented for a voluntary roller brake test which was recorded as a fail for excessive brake imbalance (60%). There was no evidence of repair until 5th September 2019 although the vehicle had covered 274kms on 2nd September 2019
 - The drivers used a carbonated defect reporting book to record their daily walk-round checks. Both copies of the reports were sometimes retained in the books until all had been completed, making it impossible for the operator to monitor driver defects daily
 - GK61 SVT was presented for MOT on 6th September 2019 and failed on a suspension component exceeding the prescribed limit. The defect had been identified during the previous PMI on 27th August 2019 and not repaired
 - Mr Singh led the officers to believe that the maintenance contractor (Ace Fleet Maintenance) had undercover facilities. However, further investigations revealed that Ace was a mobile repair company which operated from vans and that all PMIs were undertaken outside R&J’s operating centre
 - There had been one delayed roadworthiness prohibition and one weight prohibition since the grant of the interim licence in June 2019
 - Mr Singh told Vehicle Examiner (“VE”) Smith that he did not assign any time to his transport manager activities although Mr Sandhu stated that he assigned about 8 hours a week. Neither were able to demonstrate any continuous professional development. The VE recorded *“It is clear that Mr Jasbir Singh is heavily involved with Maximus Haulage Limited as well as R&J Transport PVT Limited although it remains unclear exactly what the arrangement is between the two operators, if any”*
 - VE Dolby concluded that R&J’s maintenance systems were concerning due to the catalogue of failings in all areas, the prohibition history, MOT failure rate, unsatisfactory maintenance facilities and poorly completed maintenance sheets with absent recorded brake deficiencies
 - There were deficiencies in tachograph analysis and issues with drivers’ hours.

11. Mr Navdeep Singh Sandhu resigned as the second transport manager with effect from 10th February 2020. Mr Coot was then nominated as an external transport manager. He was also the transport manager for Maximus Haulage.
12. A second public inquiry was held on 27th August 2020 and concluded on 9th October 2020. DTC Davies heard from the vehicle examiners, Mr Singh, Mr Coot and Amrit P Singh, who was CPC qualified and Mr Singh's cousin who assisted in communication because of Mr Singh's difficulties in communicating in English. In her written decision dated 19th October 2020, the DTC found that Mr Singh and Mr Sandhu as transport managers were "*most detrimental to the proper management of this licence. Neither knew what the full rigours of compliance entailed. Neither were skilled enough, and neither knew just how incompetent they were. .. they did not have a clear understanding of their roles and responsibilities ... Whilst they may have been trying to do their best, I have concluded that it was their incompetent best ..*" The DTC was impressed with Mr Singh's actions having received the call up letter. He appointed Mr Coot as transport manager and had relied upon his cousin to put systems in place which relied less on linguistic skills. However, Mr Singh's management of R&J had been "*most ineffective and troubling .. I remain to be satisfied that he can oversee this licence to the requisite degree required*". The DTC was concerned about the maintenance failings and that despite the passing of seven months between the first public inquiry and the DVSA investigation, systems and procedures had not significantly improved despite a second transport manager being appointed, Mr Singh having attended a refresher course, a systems audit having taken place which was not acted upon, the audit representing a warning that urgent prompt action was needed by Mr Singh to improve systems and management of the licence generally. It was unacceptable that drivers were not completing walk round checks properly and that tachograph errors were occurring. It was even more unacceptable these problems were not identified. There had been unlawful use of an operating centre. The level of default by Mr Singh was "*very significant*". As a result, action had to be taken against the interim licence. The positives were the changes made, there were no road safety critical defects and no recent prohibitions and Mr Singh did not gain any commercial advantage. Mr Singh had accepted that he could not drive and manage his licence and that he should not act as transport manager. However, it was for him to supervise and manage the licence and the transport manager. In the circumstances, the DTC was prepared to grant a full licence to R&J with effect from 2nd November 2000 and in doing so, allowed Mr Singh one last chance to prove that the company could be operated compliantly. The reputations of the company and Mr Singh were tarnished. The DTC found breaches of ss.26(1)(b); (1)(c); (1)(ca); (1)(e); (1)(f) and (1)(h) and suspended the licence for seven days with effect from 24th December 2020. The DTC accepted an undertaking to ensure all maintenance providers were added to the licencing system of the Central Licensing Office and she recorded a statement of intent made by Mr Singh that he would not undertake any driving responsibilities on this or any other licence whilst managing this licence. Mr Singh was reminded that this was his last opportunity to ensure that the licence was managed "*to a standard of near perfection*". Anything less would result in a further public inquiry where his reputation would be very much in question.

13. On 16th November 2020, an application was lodged to increase the company's vehicle authorisation from six vehicles and six trailers to eleven vehicles and eight trailers. The supporting bank statements did not show financial standing for the increased authorisation applied for and appeared to barely cover the existing authorisation. Updated bank statements were requested and whilst they demonstrated financial standing for the proposed increase, there were large financial transactions, including with Maximus Haulage which may have indicated more than arms-length trading. Moreover, some of the evidence heard in public inquiries before the TC concerning the licence of a company called Chief Haulage Limited and the licence application of L2L Haulage Limited pointed to them having been "fronts" for Mr Singh to operate more vehicles while R&J's application for a full licence was ongoing. R&J, Mr Singh and Mr Coot were called to a public inquiry.
14. The public inquiry commenced on 12th July 2021. Mr Singh was represented by Mr Mason, solicitor, and a Punjabi interpreter attended to assist Mr Singh. The TC described the hearing in this way: "*Mr Singh gave evidence on his own behalf and through Mr Mason for nearly 2 hours on the financial records, invoicing, operating links with Maximus Haulage, driver agencies and Bluestar Haulage Limited. At the end of the session the evidence was at best confusing, with an overriding impression of reticence to answer direct questions ..*". The hearing was adjourned with Case Management Directions to be complied with prior to the reconvened hearing listed for 23rd August 2021. The directions included the requirement for witness statements to deal with the specific areas of concern arising out of Mr Singh's evidence along with documentary evidence and missing financial standing bank statements.
15. Some documentary evidence was produced prior to the hearing but Mr Mason had been unable to finalise Mr Singh's witness statement. On 20th August 2021, Mr Mason informed the Office of the Traffic Commissioner ("OTC") that Mr Singh had told him that he was suffering from COVID symptoms. Mr Mason had advised Mr Singh to book a PCR test. Mr Singh did not provide a test result and as a result, a short adjournment was granted to 6th September 2021. On 6th September 2021, Mr Coot and Mr Mason attended the hearing. Mr Singh did not attend but told Mr Mason that he was not well enough even to attend the hearing remotely. A COVID test result was eventually provided dated 7th September 2021. The TC suspended R&J's licence with effect from 23.45 on 7th September 2021 until the reconvened hearing or such earlier date as the TC agreed in writing once the required documentation set out in the TC's directions of 12th July 2021 had been lodged. She made it clear that the vehicles specified on the licence must not be used or specified on any other licence. Upon receipt of the documentation, the suspension was lifted on 23rd September 2021 and a direction was made that no later than seven days prior to the reconvened hearing, Mr Singh was to lodge evidence that the vehicles had not been moved during the period of suspension.
16. On 27th September 2021, Mr Coot notified the OTC that without his knowledge or consent (he had been on holiday), the vehicles had been operated during the period of suspension (a total of sixteen days). He had discovered this having printed out a Clockwatcher summary report on 23rd September 2021. He spoke to Mr Singh and told him that there had been a breach of trust which required explanation. As a result of Mr Coot's communication, a further

direction was made that all digital data for the suspension period was to be sent to the DVSA by email “*by return*”. That direction was not complied with by Mr Singh and Mr Coot was unable to do so as in the meantime, Mr Singh had cancelled Mr Coot’s access to the Clockwatcher system. Mr Coot did however, forward the summary report that he had printed off on 23rd September 2021.

17. The hearing was concluded on 5th November 2021. It was accepted that financial standing could not be demonstrated even for the existing authorisation (although if this had been the sole issue, the TC would have granted a short period of grace). It was further accepted that Mr Singh had operated his vehicles during the suspension period and both Mr Singh and Mr Coot acknowledged that there remained deficiencies in the systems to ensure compliance with the rules regarding maintenance and drivers’ hours, tachographs and the Working Time Directive. Many issues remained to be determined.
18. In her written decision dated 11th March 2022, the TC recorded that she did not find Mr Singh to be a credible or compelling witness and described his demeanour as guarded. He became unsettled when the TC asked for corroboration and/or details to support his evidence. She preferred the evidence of Mr Coot, who she considered to be an open and straightforward witness. Where there was a conflict between Mr Singh’s evidence and the documentation, the TC gave more weight to the documents.
19. The undisputed findings of fact made by the TC are as follows:
 - a) As a result of the public inquiry before DTC Davies in 2020, Mr Singh knew that all future arrangements with Maximus Haulage and his cousin Kulwinder Singh Sandhu had to be transparent, arms-length and beyond question. The evidence he relied upon before the TC to demonstrate a straightforward sub-contracting arrangement with Maximus Haulage was anything other than straightforward. Bank statement entries did not tally with R&J invoices addressed to Maximus Haulage which were themselves unsatisfactory. Moreover, there were large payments in and out of the R&J bank account to and from Maximus Haulage which were not adequately explained. In all likelihood, they were payments made by Maximus Haulage to R&J to bolster the company’s financial standing in support of the variation application.
 - b) Mr Singh’s evidence, written and oral upon the relationship between Maximus Haulage and R&J lacked detail and clarity to a significant degree.
 - c) Mr Singh told the TC that neither Maximus Haulage nor R&J knew whether it was a Maximus or R&J vehicle/driver doing each job for Maximus clients on any given day as control of the vehicles and drivers came from Maximus’ clients. In paragraphs 31 and 32 of her decision, the TC catalogued the deficiencies with the paperwork provided by Mr Singh and the deficiencies and contradictions in his oral and written evidence on this issue. The overall impression remained that Maximus and R&J were operated as connected companies in a fluid manner rather than separate legal entities, as required to meet licensing obligations. This demonstrated that the assurances Mr Singh gave to the DTC in October 2020 were “*founded on sand*”. Whilst Mr Singh told the TC that all sub-contracting

with Maximus had ceased at the end of 2020, she was unable to take him at his word in view of her overall assessment of Mr Singh's evidence across two hearings.

- d) The TC considered the evidence of the use of vehicle KY12LZK and whether it was sufficient to determine that Mr Singh used more vehicles than authorised and whether he had used the Maximus licence and/or that of Chief Haulage Limited as a "front" and/or whether L2L application was an attempted "front" (she did not consider the evidence that the vehicle was specified on the licence of SSP Haulage Limited when stopped, a company with connections to Mr Singh). She found that the formal records did not tie in with the oral evidence she had heard leaving an opaque picture. She had refused the licence application of L2L because she had found Amardeep Singh (director and proposed transport manager of L2L and transport manager for Chief Haulage Limited) to be "*completely untrustworthy*". The TC accepted that there was no direct evidence that R&J had been lent the vehicle and as a result, she stepped back from making an adverse finding on the point. However, it remained an example of how Mr Singh's evidence and arrangements remained less than straightforward and transparent. This led to his links with Bluestar Haulage Limited.
- e) Bluestar Haulage was incorporated in May 2019 with Kulwinder Singh Sandhu (cousin of Mr Singh and sole director of Maximus Haulage) appointed as director and Mr Singh being the sole shareholder. It was Mr Singh's case that whilst this company was incorporated to provide a parcel delivery service, it had not traded. It was unclear why in the circumstances, Mr Singh then became a director in 2020. Mr Singh maintained that in early 2021 Lloyds Bank unilaterally closed the R&J bank account and then reopened it. There was no evidence produced to support this assertion. Mr Singh maintained that as a result of this difficulty, the fuel cards that had been obtained for Bluestar Haulage were used by R&J and R&J drivers were also paid by Bluestar Haulage. There were invoices which related to fuel and driver services but no detail was recorded on them. R&J bank statements showed R&J paid for some Bluestar Haulage liabilities direct to the suppliers. Other entries record matters such as R&J paying £10,205 to Bluestar Haulage for "*driver service*", the payment being returned the same day marked "*borrow returned*". On the same day R&J paid the driver agency £5,676 direct. The TC considered that this was evidence of Mr Singh entering into another joint enterprise with his cousin.
- f) R&J drivers were treated as self-employed agency drivers although there was no audit trail to determine whether drivers were truly self-employed as Mr Singh maintained and free to work elsewhere or whether they should have been treated as employees. This was despite a direction that such evidence was to be produced. The case of 2019/054 Bridgestep Limited was referred to. There was no evidence of monitoring the position or a system of checking whether a driver had sufficient hours to drive. Mr Singh maintained that he used "*trusted*" drivers' agencies. There was no good reason for this trust. One agency used, Overseas Distribution Limited, was operated by Jagjit Paul Singh who sold Mr Singh R&J without informing

him of the DVSA investigation in 2018 (and who had allowed significant drivers' hours and records failures and we note, was also the transport manager for SSP Haulage). There had been a breach of the undertakings relating to the law relating to driving and operation of vehicles and the rules on drivers' hours and tachographs.

- g) The TC made adverse findings as a result of Mr Singh's failure to cooperate and engage positively with the TC and gave six examples of his failures in this regard.
 - h) The TC considered the maintenance records produced at the public inquiry. She set out examples of deficiencies in the records and concluded that the records indicated significant basic failings in the maintenance systems including the failure to undertake proper brake testing, the absence of an effective driver defect reporting system, the absence of torqueing and retorquing procedures following wheel changes. A formal adverse finding was made in relation to keeping vehicles and trailers fit and serviceable with the TC noting that it was fortunate that no accident had occurred.
 - i) As for the operation of vehicles during the period of suspension, Mr Singh's explanation that his business would have collapsed overnight if he had abided by the suspension, raised more questions than it answered. He produced a standard contract for Tarmac which did not confirm that R&J had a contract with Tarmac. As for his failure to provide the DVSA with the raw data for the suspension period, his explanation that he thought that the summary report forwarded by Mr Coot was all that was required was rejected. The TC further rejected Mr Singh's assertion that he had not locked Mr Coot out of the Clockwatcher system, accepting as she did, the evidence of Mr Coot that he had been told by Clockwatcher staff that Mr Singh had cancelled his log-in details and because Mr Singh's cousin gave the impression to Mr Coot that he was fully aware that Mr Coot had been locked out of the system. Any remorse for illegal operation was tainted by Mr Singh's failure to cooperate thereafter.
 - j) The failure to provide the raw data to the DVSA for the suspension period meant that the TC was denied the opportunity of obtaining an independent assessment of the full extent of the unlawful operation.
20. The TC concluded that Mr Singh's default position was that anything that made him look non-compliant or untrustworthy was down to communication challenges and innocent mistakes. This was despite the assistance of an experienced Punjabi interpreter and during one hearing, assistance from his cousin. His evidence had been shown to change depending on the topic, particularly when the veracity of his evidence was tested. There were few positives. The fundamentals of drivers' hours management were in place although blotted by the lack of control of agency drivers; prohibitions issued in April 2021 were followed up with a disciplinary meeting and a letter to drivers; laden roller brake tests and gate checks were being undertaken although the TC was unable to assess their effectiveness because of lack of documentation. Likewise, the retorque register was not produced. Mr Singh had demonstrated over a sustained period that he acts at will, not through any lack of communication skill, but out of his own self-interest. He had continued

to put commercial efficacy first, regardless of any direction from a TC, a DTC, the OTC, the DVSA or the Transport Manager. The TC gave significant weight to:

- The ongoing breach of the undertaking relating to roadworthiness
- failing to co-operate across numerous areas
- the ongoing lack of transparency or evidence of arms-length arrangements with Kulwinder Singh Sandu or Maximus or Bluestar
- the ongoing use of agency drivers without robust management systems around fatigue and control

21. The aggravating features were:

- The delay in complying with the directions made on 12th July 2021 which were designed to bring order and clarity after the equivocating evidence earlier in the day
- Operating through the period of suspension – six vehicles and 17,646kms whilst fully understanding the terms of the suspension and the potential consequences for the operator’s licence
- Failing to seek to vary the suspension order even if could not be lifted and complying with the order in the meantime
- Taking steps to prevent data disclosure to DVSA

22. Mr Singh’s failure to heed the very stark warning from DTC Davies in October 2020 and to continue to conduct his businesses giving priority to commercial need over safety along with an absence of compliance and transparency made this a “*terrible case*”. The chronology was such that the starting point was “*Severe*” in terms of the Senior Traffic Commissioner’s Statutory Document 10 Annex 4. The few positives did not downgrade that category or dent the TC’s overriding disquiet about the “*mendacious Mr Singh*”. Mr Mason himself suggested a starting point of “*Serious to Severe*” and acknowledged that trust remained challenged. The TC did not trust Mr Singh to show due regard for the law or those who uphold it. The suggestion of stepping back from revocation, invoking instead an extended period of suspension followed by a significant and indefinite curtailment with a full-time transport manager in post was not persuasive. Mr Singh, “*through his acts, omissions, equivocating and inconsistent evidence and illegal operation demonstrated to me that he is untrustworthy to the core. The evidence is overwhelming that the only thing Mr Singh can be trusted to do is to do as he pleases when it pleases him. This was R&J’s and Mr Singh’s third public inquiry. They were given the benefit of the doubt in 2019 and – just – in 2020 but no more. It would undermine the integrity of the operator licensing system if this licence continued after the 2021 hearings. The operator deserves to be put out of business to protect the hardworking legitimate industry. Loss of good repute and revocation are appropriate and proportionate where, as here, there is an “absence of any objective justification and excuse, there having been long term, sustained, repetitive deficiencies (2009/041 Waterstone Motors t/a the Green Bus Service).*”

23. As for disqualification, the TC considered the case law (2010/29 David Finch Haulage; 2009/011 Katherine Oliver and H W Swan T Partners; Catch22Bus Limited & Philip Higgs v The Secretary of State for Transport (2019) EWCA Civ 1022). The case law indicated that an order of disqualification was justified and required in cases where the operator could not be trusted to comply with the regulatory regime and when it was an appropriate order to uphold the objectives of the system and to ensure the protection of the public and fairness to other operators. Even if Mr Singh had not operated the R&J vehicles during the suspension period, the facts of the case (the previous revocation and the number of public inquiries) merited disqualification for a period of between two and three years. A message was necessary to protect road safety and fair competition and to make clear that operators could not make promises at a public inquiry and then revert to “*previous errant ways*”. The aggravating features had been set out. If operators become tempted to do the same as Mr Singh in the hope of not being found out, the regime would collapse with catastrophic consequences. The case required a significant period of disqualification. In 2014/4-41 C G Cargo Limited and Sandhu the Upper Tribunal drew attention to the suggested range of 5 to 10 years for conduct meriting the description “*severe*”. The aggravating features placed the case firmly in this category and 7 years was justified. The TC further determined that Mr Singh may seek to persuade family members or long-term contacts to help him evade the impact of this decision and accordingly, she determined to make an Order under s28(4) of the 1995 Act.

The Appeal

24. By a Notice of Appeal dated 8th April 2022, both Appellants appealed. Whilst there were three grounds of appeal set out in the Notice, only one ground was advanced at the hearing of the appeal:

“The decisions of the Traffic Commissioner are, in all of the circumstances of the case, disproportionate”.

In advance of the hearing, Mr Davies filed a helpful skeleton argument for which we were grateful.

25. At the hearing of this appeal, Mr Singh attended without an interpreter. Mr Davies’ first point was that the TC’s decisions that both Appellants had lost their good repute and that R&J’s operator’s licence should be revoked were disproportionate in all of the circumstances. Mr Davies accepted that the TC had not found Mr Singh to be credible or compelling as a witness and that adverse findings had been made with regard to breaches of undertakings to keep vehicles and trailers in a fit and serviceable condition, to ensure that there was an effective driver defect reporting system and that the laws relating to driving, drivers’ hours and tachographs were observed and proper records kept and made available. Mr Davies further accepted that the TC had found that Mr Singh had committed a gross breach of trust by his ongoing course of conduct between 7th September 4th November 2021. Be that as it may, the TC had stepped back from a finding that Mr Singh/R&J had been involved in “*fronting*”. Such a finding would have made revocation and loss of good repute inevitable. In the absence of such a finding, the TC’s remaining adverse findings did not. An extended period of suspension could and should have been imposed in the alternative (which Mr Davies considered had

already been served in the absence of a stay) along with a significant indefinite curtailment with a full-time Punjabi speaking transport manager in place.

26. Mr Davies' second point was that if the Tribunal were to find that the TC's findings of loss of repute and the order of revocation were proportionate, the period of disqualification for both Appellants was disproportionate. Mr Davies referred to paragraphs 93 and 105 of the Senior Traffic Commissioner's Statutory Document No.10 "The Principles of Decision Making & The Concept of Proportionality". He accepted that it was not unreasonable to place this case into the "Severe" category as set out in Annex 4 of Statutory Document No.10 but submitted that in moving up from the starting point of 5 years disqualification, the TC failed to give any weight to the positive features of the case (which were admitted to be scant). When pressed on where the Tribunal might find the positive features (over and above those identified by the TC and set out in paragraph 20 above), Mr Davies accepted that apart from the absence of a finding of "fronting", there were none. Nevertheless, Mr Davies urged the Tribunal to conclude that the TC's decision to move away from the starting point of 5 years was disproportionate and plainly wrong.

Discussion

27. The Tribunal has detailed much of the history of this case so that any reader of this decision could be no doubt that this was a very serious case which justified the TC's conclusion that R&J and Mr Singh had lost their good repute and that they could not be trusted to operate compliantly in the future. A finding that R&J deserved to be put out of business was plainly right. Moreover, in view of the many compliance failings and Mr Singh's conduct as found by DTC Davies during the currency of the interim licence, it is surprising to say the least, that a full licence was granted at all in October 2020. It was clear and obvious that at that stage, Mr Singh and it follows, R&J, could not be trusted. Mr Singh had been given his first chance to demonstrate compliance and trustworthiness in March 2019 and had then been given a second chance when a full licence was granted in October 2020 with regulatory actions taken. He chose not to take advantage of the opportunities he was given to operate compliantly.
28. As accepted by Mr Davies (and Mr Mason before the TC) there were few positive features which could have been weighed into the balance when considering good repute and revocation. All of the TC's findings with regard to Mr Singh as an operator and an individual were well supported by the evidence. This was an overwhelming case justifying loss of repute, revocation and disqualification. We do not accept that the TC's decision to step back from a finding of "fronting" amounted to a positive feature. Her decision simply meant that there was one less seriously aggravating feature to take into account. Those aggravating features that were considered, clearly justified a finding that a disqualification period of seven years was a proportionate order to make in the circumstances.

Conclusion

29. There is no merit in these appeals and in all the circumstances we are not satisfied that the TC's decision was either plainly wrong or disproportionate and neither the facts nor the law applicable in this case should impel the

Tribunal to allow this appeal as per the test in Bradley Fold Travel & Peter Wright v Secretary of State for Transport (2010) EWCA Civ.695. These appeals are dismissed.

Jagpreet Beech,

**Her Honour Judge Beech
Judge of the Upper Tribunal
28th October 2022**