NCN: [2023] UKUT 5 (AAC)

IN THE UPPER TRIBUNAL **Appeal No. UA-2021-000566-NT**
ADMINISTRATIVE APPEALS CHAMBER
(TRAFFIC COMMISSIONER APPEALS)

ON APPEAL from the DECISION of the DEPARTMENT FOR INFRASTRUCTURE, for Northern Ireland

Before:	Ms. L.J Clough: Deputy Judge of the Upper Tribunal Miss S.J Booth: Member of the Upper Tribunal Dr. P Mann: Member of the Upper Tribunal
Appellant:	Kevin McCaul t/a McCaul Transport
Reference No:	ON1136588
Heard at:	Royal Courts of Justice, Belfast
On:	25 October 2022
Date of Decision under Appeal:	23 November 2021

DECISION OF THE UPPER TRIBUNAL

THE APPEAL IS DISMISSED.

Subject matter:

Regulatory Infringements. Loss of good repute and professional competence. Revocation of operator's licence. Disqualification from holding or applying for an operator's licence. Loss of good repute as Transport Manager. Disqualification from acting as Transport Manager on an operator's licence.

Cases referred to

Fergal Hughes v DOENI & *Perry McKee Homes Ltd v DOENI* [2013] UKUT 618 AAC NT/2013/52 & 53*; Bradley Fold Travel Ltd & Anor v Secretary of State for Transport* [2010] EWCA Civ 695. *Clarke v Edinburgh & District Tramways Co Ltd* [1919] UKHL 303; (1919) SC (HL) 35; 56 SLR 303. 2009/225 *Priority Freight Ltd & Paul Williams. Bryan Haulage (No.2)* (T2002/217). *Thomas Muir Haulage Ltd v Secretary of State* (1998 SLT 666). *VST Building & Maintenance Ltd.* [2014] 0101 (ACC). 2005/355 *Danny W Poole International Limited*. 2005/426 *Oak Hall T/A Premier Transport Services*.

REASONS FOR DECISION

1. This is an appeal to the Upper Tribunal brought by Mr Kevin McCaul t/a McCaul Transport ("the Appellant"), against a decision of the Department for Infrastructure for Northern Ireland ("the DfI"), dated 23 November 2021. The decision was to revoke the Goods Vehicle Operators Licence belonging to the Appellant, to disqualify him from holding an Operator's Licence indefinitely, and to disqualify him from acting as a Transport Manager under any Operator's Licence indefinitely.

2. The appeal was considered at an oral hearing, at the Tribunal Hearing Centre within the Royal Courts of Justice, Belfast, on 25 October 2022. Mr McCaul was in attendance and was represented by Mr. Finnegan, Barrister at Law.

Background facts

3. The Appellant is the sole proprietor of McCaul Transport which undertakes general haulage. He has a Standard International Goods Vehicle Operator's Licence (ON1136588) which was granted on 23 April 2015 and authorised the use of one vehicle. This was subsequently varied to authorise the use of two vehicles and two trailers. The Operating Centre was specified as 260 Ballygawley Road, Dungannon. The Appellant also acted as the Transport Manager for the operation.

4. On 29 June 2018, the Transport Regulation Unit ("the TRU") issued the Appellant with a Formal Warning that he had failed to adhere to the undertakings required under the Goods Vehicle (Licensing of Operators) Act (Northern Ireland) 2010. This was because a number of roadside checks by the Driver and Vehicle Agency ("the DVA") had demonstrated regulatory infringements, such as exceeding the number of vehicles permitted on his licence, lack of correct tachograph recording, and no rear number plate being displayed on a vehicle. These had amounted to "Very Serious Infringements" under the DVA guidance. He also had a low first-time annual test pass rate on his vehicles. The Appellant was advised that further episodes of non-compliance would result in the warning being taken into account if considering whether action should be taken against his operator's licence.

5. Despite this warning, the Department continued to receive notifications of further infringements relating to the Appellant's operation. These notifications, recorded between May and September 2019, included infringements in relation to insufficient daily rest breaks for drivers, exceeding the time permitted before a rest, and the tachograph not functioning properly. The DVA were also informed of a further reduction in the first-time pass rate for the Appellant's annual vehicle test inspections (dropping from 33% to 25%). As a result of the continued infringements, all of which resulted in fines being issued and most of which were noted as amounting to a "Very Serious Infringement", a Compliance Audit was arranged to take place by the DVA on 4 November 2019.

6. A pre-audit discussion took place on 29 October 2019 with Mr P Davey from the DVA, the Appellant and his newly appointed transport advisor, Mr P McElduff, all in attendance. The Appellant, as Transport Manager, was provided with copies of the "Guide to Maintaining Roadworthiness", the "Safe Operator's Guide", the "Rules on Drivers' Hours" and "Tachographs on Goods Vehicles in Northern Ireland and Europe". It was noted that there were no written contracts in place for third party maintenance providers, but ad hoc maintenance work was being carried out by two named maintenance providers. There was little evidence supporting processes for routine safety inspections, defect reporting or for the rectification of such defects. No records were kept of the 6-weekly safety checks which were to be undertaken by the operation. There were no procedures in place for daily walk-around checks or driver hours recording but instead it was noted that the Appellant simply trusted each individual driver to undertake this procedure as required by virtue of their CPC qualification and their driver knowledge. There were no systems in place for ensuring vehicle weights were correct. The establishment from which the business operated was found to be basic but sufficient, albeit there was no phone or laptop, and the Appellant, as Transport Manager, was not able to produce any of the records that are required to be kept by the operation. It was considered that the Transport Manager (the Appellant) was not engaging in his administrative and regulatory duties fully due to the lack of policies, procedures and checks in place to ensure the regulations were being complied with.

7. The audit then took place as planned on 4 November 2019. It was noted by the auditor, that the Appellant had employed the services of an industry advisor, Mr P McElduff, to assist with the co-ordination of his administrative responsibilities, and Mr McElduff was present at

the audit. The auditor recorded that the Appellant had accepted that his business was poorly organised and that he was in need of assistance and advice to ensure that his operation remained licenced. All sections of the audit report (relating to maintenance, driver's hours, weights, transport manager, establishment and "other") were returned with a rating of "unsatisfactory" and the operator, the Appellant, was deemed "non-compliant". These findings were reported to the TRU on 2 December 2019.

8. The Appellant's licence came up for renewal in early 2020. The DVA noted that the Appellant had applied for a renewal as a limited company, KMC Transport Ltd. He was asked to confirm what legal entity he was applying under, as a change of name on the licence would require a fresh application to be submitted rather than a simple renewal. The Appellant did not respond to the correspondence requesting confirmation on the name. On 2 April 2020, the DfI wrote to the Appellant advising, once again, that his operator's licence is not transferable to a new business entity and unless the new entity had a valid licence, it would be unlawful for him to operate under his current licence, as a company. He was asked once again to confirm whether he was operating as a limited company or as sole trader. There was no response, but he then deleted the "Limited" trading name in his renewal request. He was reminded once again that he could only operate under his current Operator's Licence as a sole trader, and not as a limited company.

9. Following this, further infringements continued to be notified to the DVA, including one "Most Serious Infringement". These infringements occurred after the audit had taken place, one on 29 December 2019, some six weeks after the audit. Five of the infringements were recorded on 5 February 2021. It appeared that the Appellant had also failed to notify the Department of the infringements which he was obliged to report under the conditions of his Operator's licence.

10. The DfI became concerned that the Appellant was unable to manage his operation in line with the regulations, as a result of the persistent infringements to the regulations. This was particularly so, given the small number of vehicles in his fleet (two) and the continued lower than average first-time pass rate for annual vehicle inspections. The Department also became concerned that the number and type of infringements were such that the Appellant, in his role as Transport Manager for McCaul Transport, was not ensuring continuous and effective

management of the transport operation, as the role obliges him to. In addition, the Department queried the Appellant's financial standing as there was a risk that the infringements may have occurred due to a lack of financial resources to maintain his vehicles and the operation correctly. A Public Inquiry ("PI") was arranged to take place in order to address these concerns.

11. On 16 November 2021, the Public Inquiry took place in respect of the Appellant's Operator's Licence. The Appellant did not attend the Public Inquiry ("PI"). He did not excuse his attendance and there was no explanation put forward for his absence. He had not supplied the DfI with the documentation it had requested in advance of the PI, which was necessary for consideration at the PI. He was represented by Counsel, Mr Finnegan, who requested an adjournment of the Inquiry that day. He did so on two grounds. The first was that his instructing solicitors had received the PI bundle late and while the papers had been dealt with straight away by instructing Mr Finnegan to act, his directions had not been actioned as the instructing solicitor had been called to England due to a death in the family, thus unable to deal with his work. Secondly therefore, Mr Finnegan had not had the opportunity to take instructions from the Appellant or fully prepare this case. The Appellant was not present to furnish his instructions on the day of the PI either, hence Mr Finnegan found himself in a position where he was therefore unable to deal with the case effectively on his client's behalf on that day.

12. The Deputy Presiding Officer, who was chairing the PI on behalf of the DfI, refused the adjournment and therefore proceeded with the PI in the absence of the Appellant. He later determined, by written notice, that the Appellant's operating licence was revoked, that he was disqualified from holding an operator's licence indefinitely, and he was disqualified indefinitely from acting as a Transport Manager on any operating licence.

The DfI's decision under appeal

13. The Deputy Presiding Officer, on behalf of the Department for Infrastructure, prepared a written decision in this matter, which was signed on 23 November 2021. In the first instance, he refused the application for an adjournment. He reasoned firstly that there was pressure on hearing time for the TRU matters and the last-minute nature of this application to adjourn was wasting hearing time should the application be granted. Notwithstanding this issue, the Deputy Presiding Officer also considered the adjournment application to be without merit in any event.

He reasoned that it was for the Appellant to furnish the papers on his solicitors as soon as they were received, in order to ensure his case was prepared in time for the PI some six weeks later, but he had failed to do so. He had been issued with a call up letter on 8 October 2021 but had not instructed his solicitor for a number of weeks thereafter. He had also been asked to provide documents for the PI no later than 29 October 2021, but these documents had not been provided and no explanation had been offered for that failure. Irrespective of the unfortunate circumstances that his solicitor found themselves in, which had taken them away from preparing the case, the Deputy Presiding Officer found that the Appellant had demonstrated no desire to progress matters or actively deal with his case by simply sending the papers to his solicitor and making no contact thereafter. He noted that the Appellant had not excused his attendance at the PI and stated that it was inappropriate for an operator to presume the outcome of an adjournment application by failing to attend in the manner that the Appellant had done. Taking these circumstances all together, he found this to amount to "a patent failure to cooperate with the TRU". The Deputy Presiding Officer therefore determined it to be in the interests of fairness that the hearing proceeded on the day of the PI and refused the application to adjourn.

14. In respect of the substantive issues in question for the Public Inquiry, the Deputy Presiding Officer determined that the list of "very serious infringements" and "most serious infringements" from 2017 through to 2021 called into question the repute of the Operator and Transport Manager, who in this case were one and the same person, the Appellant. These infringements included: failure to observe the regulations on drivers' hours and on keeping proper records of them; the "unsatisfactory" audit results for maintaining vehicles in a fit and serviceable condition; repeated defects in vehicles and a failure to keep proper maintenance and driver defect records; failing to notify the DVA of convictions and penalties as obliged to do so; failing to notify matters which affect good repute; and failing to notify a material change, namely the change in trading entity. These infringements, many of which called into question the issue of road safety for both drivers and other road users, brought the Deputy Presiding Officer to the conclusion that the appellant, as operator, no longer satisfied the regulatory requirement of being of good repute, and no longer satisfied the requirement of being professionally competent. There was also a concern that the licence was being utilised in the name of a separate legal entity, namely "KMC Transport Ltd", which also breaches the regulations, and the Appellant did not cooperate with the DVA when they attempted to clarify the matter in April 2020 at the time of his licence renewal. The Deputy Presiding Officer had

not been furnished with any information on the Appellant's financial standing when requested, hence he determined that the Appellant, as Operator, no longer had sufficient financial standing to hold an operator's licence.

The appeal

15. The appellant lodged an appeal against the decision of the DfI with the Upper Tribunal on an official appeal form which was signed and dated on 2 November 2021. The Appellant cited three grounds of appeal [paraphrased]:

(i) The adjournment decision was against the Appellant's right to a fair trial, was unfair in light of "compelling reasons" to adjourn, and was irrational.

(ii) The revocation of the operator's licence was not given a fair opportunity to be considered in light of the lack of adjournment and in any event, revocation was disproportionate.

(iii) The decision to disqualify the Appellant in both regards was again problematic in light of the lack of adjournment, and in any event was also disproportionate, indefinite disqualification being the most severe outcome available.

16. The appellant applied for a stay of the decision pending appeal, and this was refused by the DfI on 23 December 2021. The request for a stay was renewed to the Upper Tribunal but was again refused by Upper Tribunal Judge Hemmingway on 8 February 2022. The appeal was heard in the Tribunal Hearing Centre of the Royal Courts of Justice in Belfast on 25 October 2022.

The Approach of the Upper Tribunal

17. As to the approach which the Upper Tribunal must take on an appeal such as this, it was said, in the case of *Fergal Hughes v DOENI* & *Perry McKee Homes Ltd v DOENI* [2013] UKUT 618 AAC, NT/2013/52 & 53, at paragraph 8:

"There is a right of appeal to the Upper Tribunal against decisions by the Head of the TRU in the circumstances set out in s. 35 of the 2010 Act. Leave to appeal is not required. At the hearing of an appeal the Tribunal is entitled to hear and determine matters of both fact and law. However, it is important to remember that the appeal is not the equivalent of a Crown Court hearing or an appeal against conviction from a Magistrates Court, where the case, effectively, begins all over again. Instead, an appeal hearing will take the form of a review of the material placed before the Head of the TRU, together with a transcript of any public inquiry, which has taken place. For a detailed explanation of the role of the Tribunal when hearing this type of appeal see paragraphs 34-40 of the decision of the Court of Appeal (Civil Division) in Bradley Fold Travel Ltd & Peter Wright v Secretary of State for Transport [2010] EWCA Civ. 695. Two other points emerge from these paragraphs. First, the Appellant assumes the burden of showing that the decision under appeal is wrong. Second, in order to succeed the Appellant must show that: "the process of reasoning and the application of the relevant law require the Tribunal to adopt a different view". The Tribunal sometimes uses the expression "plainly wrong" as a shorthand description of this test.'

18. At paragraph 4, the Upper Tribunal stated:

"It is apparent that many of the provisions of the 2010 Act and the Regulations made under that Act are in identical terms to provisions found in the Goods Vehicles (Licensing of Operators) Act 1995, ("the 1995 Act"), and in the Regulations made under that Act. The 1995 Act and the Regulations made under it, govern the operation of goods vehicles in Great Britain. The provisional conclusion which we draw, (because the point has not been argued), is that this was a deliberate choice on the part of the Northern Ireland Assembly to ensure that there is a common standard for the operation of goods vehicles throughout the United Kingdom. It follows that decisions on the meaning of a section in the 1995 Act or a paragraph in the Regulations, made under that Act, are highly relevant to the interpretation of an identical provision in the Northern Ireland legislation and vice versa."

19. The task of the Upper Tribunal, therefore, when considering an appeal from a decision of the DfI in Northern Ireland, is to review the information which was before the Department

along with its decision based on that information. The Upper Tribunal will only allow an appeal if the appellant has shown that "the process of reasoning and the application of the relevant law require the tribunal to take a different view" (*Bradley Fold Travel Limited and Peter Wright* v. *Secretary of State for Transport* [2010] EWCA Civ 695, [2011] R.T.R. 13, at paragraphs 30-40). In essence therefore the approach of the Upper Tribunal is as stated by Lord Shaw of Dunfermline in *Clarke v Edinburgh & District Tramways Co Ltd* 1919 SC (HL) 35, 36-37, that an appellate court should only intervene if it is satisfied that the judge (in this case, the decision of the Deputy Presiding Officer on behalf of the DfI) was "plainly wrong".

Discussion

20. It is important to note at the outset, that the Appellant's grounds of appeal had changed by the point of service of the skeleton argument prepared by Counsel and served in advance of the appeal hearing on 25 October 2022. The focus of the appeal hearing was therefore on two matters alone: the question of whether the case should have been adjourned, and the decision to indefinitely disqualify the Appellant from holding an operator's licence and from acting as a Transport Manager. The decision of the Deputy Presiding Officer to revoke the Appellant's operator's licence was no longer in issue in the appeal before the Upper Tribunal. Our decision therefore focusses on these two matters only, these being the only contested decisions both in written, and in oral submissions on the day of the hearing.

Ground 1: The decision not to adjourn

21. The Deputy Presiding Officer, for the reasons stated above (see para 13), determined that the application to adjourn was without merit and therefore determined to proceed with the PI in the absence of the Appellant. It was submitted by the Appellant's legal team, both in writing and in oral arguments on the date of the appeal hearing, that in the first instance, this was an unfair decision as it resulted in the Appellant being unable to properly instruct his legal team and for them to fully prepare and present his case at the PI. It was submitted that the Appellant had received his call-up letter on 8 October 2021 and had left the bundle of papers for his solicitor at their office on 28 October 2021, in the knowledge that the PI was to take place on 16 November 2021. The Appellant's solicitor had instructed Mr Finnegan BL, that same day and after a few days to consider the papers, on 1 November 2021, Mr Finnegan had

sent directions to his Instructing Solicitors. On 8 November 2021, the Appellant's solicitor was called away to England due to a death in the family, and upon their return on 15 November 2021, the day before the PI hearing, it became apparent that the case had not been prepared. This resulted in a late adjournment application being made on the day of the PI itself, to allow Mr Finnegan to take full instructions from the Appellant in order to present the case fully to the PI, a case which had the potential for the Appellant to lose his livelihood.

22. Mr Finnegan submitted that the Deputy Presiding Officer's reasoning was flawed in that the pressures placed on the TRU for hearing time was an irrelevant matter in his decision on whether to adjourn the case. He quoted the Department for Infrastructure "Practice Guidance Document No. 8 (01/10/2019)", paragraph 25 which states that the question of an adjournment should have regard to the following factors: the age of the case, the conduct of the operator, whether all relevant documentation is available, the length of the requested adjournment, the consequences of the adjournment, whether the applicant is at fault and any previous adjournments. While acknowledging that the request was made very late, Mr Finnegan argued that the Appellant was not aware of the listing pressures on the TRU time and that this was not a relevant consideration to take into account in any event. Further, it is not a mentioned in the Department's Guidance document as something to be taken into account. He also submitted that the matter had a tight turnaround timeframe of 28 days from the date of the Appellant's call-up letter, it was the first request for an adjournment, and no other person could be prejudiced by the adjournment, were it to be granted. In addition, he argued that the request was purely a result of unfortunate and unavoidable circumstances of the instructing solicitor being called away on family business, and only a short adjournment period was requested to complete the preparation of this case.

23. In considering whether the decision of the Presiding Officer was correct, we conducted a balancing exercise, looking closely at the two sides of this argument, as well as giving consideration to the factors outlined in the Department's Guidance Document No. 8. It is fair to say that the issue of pressure on the TRU hearing time was indeed mentioned by the Deputy Presiding Officer and was clearly on his mind when asked to adjourn this case. It does not however appear from the rest of his written decision, that the time pressures were a determining factor. The failure of the Appellant to take effective action in respect of the imminent PI date, failure to chase his solicitors, failure to provide the documentation requested and his failure to

excuse his attendance at the PI, were the combined determinative factors in his decision not to adjourn. The Deputy Presiding Officer found all of these circumstances to demonstrate a lack of cooperation with the TRU/DfI and decided not to adjourn the matter.

24. Although this case was not aged, the conduct of the operator (the Appellant) was unsatisfactory in putting his case before the DfI, and the documentation that had been requested from him was not available for the PI, a matter entirely within his own control to address. While it is agreed that the adjournment requested was a short one, the Deputy Presiding Officer was aware of the time pressures of the TRU hearing and knew that a short adjournment was not likely to be possible. Consequently, a longer delay was more likely to be the outcome of an adjournment, which in turn, would not see a resolution to this case within a reasonable timeframe. Some fault clearly lay at the door of the Appellant in failing to take ownership of this matter and to ensure, in his own interests, that progress was being made. Weighing all these factors in line with the Guidance, it cannot be said that the decision of the Deputy Presiding Officer, in not adjourning this case, was wrong in law. He considered all the correct issues, weighed them appropriately, and came up with a legally sound determination on this issue. As an aside, the issue of the case not progressing while the Instructing Solicitor was away on personal business, is not a persuasive argument, despite the unfortunate circumstances. It is a matter of professional courtesy that any solicitor who is taken away from their work, for whatever reason, ensures that their clients are looked after in their absence, and in a firm where there is more than one solicitor, the case could well have been progressed with the assistance of Mr Finnegan, by another solicitor. Had Mr Finnegan's directions been considered and dealt with some 16 days before the PI when they were issued by him, the matter could well have been progressed on the date of the PI itself. The decision not to adjourn was not wrong in law and this aspect of the appeal is dismissed.

Ground 2: The decision to disqualify the Appellant

25. In relation to the decision to disqualify the Appellant from holding an operator's licence, and from acting as a Transport Manager under any operator's licence, Mr Finnegan raised two grounds. In the first instance, he submitted that the "indefinite" period of disqualification was disproportionate, and the aims of the operator licensing regime could have been met with a much lower disqualification period. Secondly, he submitted that the

disqualification period imposed, appeared to have been set to penalise the Appellant for not attending the PI (2005/355 *Danny W Poole International Limited* at [8]: 2005/426 *Oak Hall t/a Premier Transport Services* at [8]). He further submits that the Deputy Presiding Officer should have allowed time for submissions to have been made on the issue of disqualification.

26. Section 25 of the Goods Vehicles (Licensing of Operators) Act (Northern Ireland) 2010 ("the 2010 Act") gives the DfI the discretion to disqualify "any person who was the holder of a licence" from holding or obtaining a licence either indefinitely or for such period as the Department thinks fit. The power can only be exercised after a direction that the licence is to be revoked under s.23(1) or 24(1) of the 2010 Act. The power to disqualify should be exercised so as "to achieve the objectives of the system" depending on the seriousness of the case before them, rather than as punishment for regulatory infringements (*Thomas Muir Haulage Ltd v Secretary of State* 1998 SLT 666). It is therefore a matter of fact and degree for the Department to determine according to the facts of the case before it. The case of *Bryan Haulage (No.2)* (T2002/217) requires consideration of the question, "Is the conduct such that the operator ought to be put out of business?" A preliminary question to this arises from the case of 2009/225 *Priority Freight Ltd & Paul Williams* i.e., "How likely is it that this operator will, in the future, operate in compliance with the operator's licensing regime?" The less likely the operator is considered to be able to comply with the regulations in the future, the more likely a revocation and disqualification are to follow.

27. The Deputy Presiding Officer set out his reasons for revocation of the Appellant's operator's licence and disqualification from thereafter holding or applying for one, at paragraphs 23-25 of his decision. In making his decision, he had regard to Article 6 of Regulation (EU) 1071/2009, Regulation (EU) 2016/403 and the DfI's "Practice Guidance Documents No.9 – The Principles of Decision Making and the Concept of Proportionality", in particular Annex 4. He considered the nature and frequency of the Appellant's regulatory infringements and found them to meet the "severe to serious" category of operator conduct, as outlined by virtue of Regulation (EU) 2016/403, and as a consequence, he was obliged to consider revocation of the operator's licence and disqualification. Given the "number, gravity and repetition of MSIs" (most serious infringements) he found it to be proportionate that the Appellant should be considered to have lost his good repute as an operator.

28. The Deputy Presiding Officer addressed the "*Priority Freight* question (2009/225 *Priority Freight Ltd & Paul Williams*). Given the nature and consistency of the regulatory infringements over a considerable period, some of which followed an "unsatisfactory" audit during the infringements, coupled with the failure to cooperate with the PI process and the failure to attend the PI in order to address the DfI's concerns about his operation, the Deputy Presiding Officer determined that the Appellant was not likely to comply with the licensing regime in the future. He also asked the *Bryan Haulage (No.2)* (T2002/217) question namely, "Is the conduct such that the operator ought to be put out of business?" He determined that the answer to this was "yes", finding that the revocation of the Appellant's licence, a discretionary power available to him under s.23 and/or s.24 of the 2010 Act, was necessary to protect road safety and to provide a level playing field for compliant operators. The Appellant's lack of financial information in order to satisfy the requirement of continued financial standing, his loss of good repute and his lack of professional competence in light of the continued infringements, were further reasons for revocation of the operator's licence under s.24 of the 2010 Act. The Deputy Presiding Officer then went on to disqualify the Appellant for an indefinite period from holding an operator's licence and from applying to hold one in the future.

29. In addition, the infringements and failures (noted at paragraph 14) were found to reflect poorly on the conduct of the Transport Manager, who is also the Appellant in this case. The 2019 audit found the Appellant to be "unsatisfactory" as a Transport Manager and not fully committed to his responsibilities. The Deputy Presiding Officer found no evidence of improvement in management of the operation since that time. The Appellant's failure to cooperate with the DfI and to provide the requested documentation for the PI, records which should have been readily available to him in his role as Transport Manager, added to the reasons for finally determining him to have lost his repute as TM. Given the nature and consistency of the infringements, the Deputy Presiding Officer found that the Appellant had not secured continuous and effective management of McCaul Transport as an operation, as is required by the regulations. Having lost his good repute as Transport Manager, the Appellant was disqualified indefinitely from acting in the capacity of Transport Manager on any operator's licence thereafter under Goods Vehicle (Qualification of Operators) Regulations (NI) 2012 which provides under Regulation 15(2) that if the Department determines that a Transport Manager is no longer of good repute, it must order that person to be disqualified (either indefinitely or for such period as the Department thinks fit) from acting as a transport manager.

All orders for revocation and disqualification were set to come into effect on 31 December 2021 in order to allow for the orderly closure of the business.

30. Mr Finnegan, on behalf of the Appellant, asked that the Deputy Presiding Officer, upon refusing the application to adjourn the PI, to delay his decision for written submissions to be made on the issue of revocation and disqualification. The Deputy Presiding also refused this request. Mr Finnegan submitted that he ought to have allowed a period of "a few days" and that his failure to do so amounts to a substantially unfair decision as there was no pressing need to immediately disqualify the Appellant, and in this case, a delay to receive submissions on the issue of disqualification would have been sensible (*VST Building & Maintenance Ltd.* [2014] 0101 (ACC)). In relation to this submission, we agree that the Deputy Presiding Officer could well have allowed a matter of "a few days" to allow for submissions to be presented in writing. However, there was no suggestion that Mr Finnegan had the missing PI documentation from the Appellant, hence he was without the full bundle of papers. He was still without responses to his directions from his Instructing Solicitor, and was still without full instructions from the Appellant, who had not attended the PI when that would have been a perfect opportunity to provide such instructions. As a result, while the Deputy Presiding Officer's decision could have been delayed for "a few days" in order for submissions to be made, it is highly unlikely that the preparation and service of written submissions could actually have been achieved within the "few days" suggested by Mr Finnegan. Consequently, the Deputy Presiding Officer's decision not to await submissions is unlikely to have made any difference to the outcome of this case. While we have some sympathy for this submission, it is also bound to fail as a result of the general lack of cooperation on the part of the Appellant.

31. Overall, we cannot disagree with the conclusions of the Deputy Presiding Officer in this case. The regulatory regime under the Goods Vehicles (Licencing of Operators) Act (Northern Ireland) 2010 is a detailed one, in place to ensure safety and fair competition. The regime calls for precision and thoroughness in order to satisfy the requirements within it. The Appellant did not act with any precision to ensure the regime was complied with, and when infringements were reported, there was no obvious effort to avoid them being repeated. It was therefore difficult for the Deputy Presiding Officer to find that the Appellant would comply with the regulatory regime in the future. This was exacerbated by the lack of cooperation with the PI process, in failing to provide the requested documentation which could have assisted his

case, and by failing to attend the PI, with no reason given as to that failure. There was no evidence before the Deputy Presiding Officer to suggest that positive action had been taken and had resulted in an improvement in the operation, which might have swayed the decision in his favour (2009/225 *Priority Freight Ltd & Paul Williams*).

32. Consequently, if it is not likely the operator will comply with the licencing regime, and no evidence to suggest that positive action had been taken to ensure future compliance, there is no reason to allow an operator to retain his operator's licence and no reason to permit him to hold a licence again. Equally, having lost his repute as Transport Manager, there is no reason to allow him to retain that position or to allow him to act as Transport Manager in the future, especially given that the role of a Transport Manager is to ensure that the operation complies with the licensing regime. There was no suggestion that the Appellant received a disqualification simply because he did not attend the PI. His non-attendance was simply one of a number of circumstances which, when taken together, resulted in the findings and eventual outcome of this case.

33. Overall, we find that the decisions of the Deputy Presiding Officer, acting on behalf of the Department for Infrastructure of Northern Ireland, to proceed in the absence of the Appellant, to revoke his licence and thereafter to disqualify him indefinitely from either holding an operator's licence or from acting as Transport Manager, were not "plainly wrong". We therefore dismiss this appeal.

L J Clough
Deputy Judge of the Upper Tribunal

SJ Booth
Member of the Upper Tribunal

P Mann
Member of the Upper Tribunal

Authorised for issue on 2 January 2023