



Bell Transport, Robert Bell
[2024] UKUT 44 (AAC)

**Appeal Nos. UA-2021-000275-NT
& UA-2023-000508-NT**

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

**ON APPEAL from the DECISIONS of the HEAD of the TRANSPORT REGULATION
UNIT**

Dated 6 September 2021 & 29 September 2021

Before:

**Kenneth Mullan
Mr Richard Fry
Mr Martin Smith**

**Judge of the Upper Tribunal
Member of the Upper Tribunal
Member of the Upper Tribunal**

Appellants:

**Bell Transport
Robert Bell**

Attendances:

For the Appellants: Mr Finnegan BL instructed by MacAuley Ritchie Solicitors

For the Respondent:

Heard at: Tribunal Hearing Centre, Royal Courts of Justice, Belfast.
Date of hearing: 17 October 2023
Date of decision: 8 February 2024

DECISION OF THE UPPER TRIBUNAL

IT IS HEREBY ORDERED that the appeal referenced UA-2021-000275-NT is ALLOWED and the appeal referenced UA-2023-000508-NT is ALLOWED in part

SUBJECT MATTER:- Repute; burden of proof

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CASES REFERRED TO:- NT/2013/52 & 53 Fergal Hughes v DOENI & Perry
McKee Homes Ltd v DOENI; Bradley Fold Travel Ltd &
Peter Wright v Secretary of State for Transport [2010]
EWCA Civ. 695; *Muckit* ((2005) EWCA Civ 1124).
*Crompton (T/a David Crompton Haulage) v. Department
of Transport North Western Area* [2003] EWCA Civ 64;

REASONS FOR DECISION

Initial background

1. This is an appeal from decisions of the Head of the Transport Regulation Unit, ("Head of the TRU") to revoke both Appellants' goods vehicles operator's licences.
2. The factual background to the appeals, which is somewhat complex, appears from the documents and the Head of the TRU's decisions and is as follows:-
 - (i) Robert Leslie Bell & Peter Erwin Bell, t/a Bell Transport (Upper Tribunal reference UA-2021-000275-NT), are the holders of Standard International goods vehicle operator's licence ON2002503 which authorises the use of 10 vehicles and 50 trailers from an operating centre notified to the Department as ... Antrim Both partners are also listed as transport managers on the licence. The operator has held this licence since 20 June 2017.
 - (ii) Robert Leslie Bell, operating as a sole trader, (Upper Tribunal reference UA-2023-000508) also held Standard International goods vehicle operator's licence ON1114203 which authorised the use of 5 vehicles and 5 trailers from an operating centre of the same address. That licence was held since 01 February 2010 and revoked from 03 September 2021.
 - (iii) On 24 June 2021 the Department wrote to Robert Leslie Bell, sole trader, requesting surrender of that licence due to a change of entity, and a declaration being made on the partnership application form that the sole trader licence would be surrendered upon grant of that new application. No such request to surrender the licence was received and, as at the time of the June 2021 letter, no vehicle had been specified on the licence since 3 September 2019.
 - (iv) A response was received from the sole trader on 1 July 2021 stating that he did not wish to surrender the licence and planned to add a vehicle once repairs were made. On 8 July 2021 the Department inquired why the sole trader licence was required when there had been a change of legal entity, but no response was received to that request for information.
 - (v) This led to the Department writing to the sole trader on 12 August 2021, proposing to revoke that licence on the following grounds:
 1. Section 23(1)(d) that the licence-holder made, or procured to be made, a statement of fact that, whether to the licence-holder's knowledge or not, was false, or a statement of expectation that has not been fulfilled; namely that you declared your licence would be surrendered on grant of the new partnership's licence.
 2. Section 23(1)(g) 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 or variation of the licence; namely that there was a change in entity to a partnership.

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3. Section 24(1)(a) as the licence holder no longer appears to satisfy the requirement to have an effective and stable establishment under the provisions of section 12A(2)(a) (as determined in accordance with regulations and Article 5 of the 2009 Regulation) in view of there being no vehicle specified on the licence and no details about access to a vehicle since removal of the last vehicle in 2019.
 4. Section 24(1)(a) as the licence holder no longer appears to satisfy the requirement to be of good repute under the provisions of section 12A(2)(b) (as determined in accordance with regulations and Article 6 of the 2009 Regulation) in view of an apparent failure to respond to correspondence with the Department and the apparent false statement made on the partnership's application for a licence.
- (vi) The August 2021 letter went on to further state, in bold text, "**You should note that revocation of the licence would render unlawful the operation of vehicles for which an operator's licence is required. Any such revocation may affect any other current licences or future applications involving anyone named on the licence record.**" The operator was also offered the opportunity to request a public inquiry to offer evidence as to why the licence should not be revoked.
- (vii) As no response was received to the August 2021 letter the Department wrote to the sole trader on 06 September 2021 notifying him that the licence was being revoked with immediate effect. This letter was also emailed to the operator on 7 September 2021. It is noted that an application to surrender the licence, signed by the operator on 7 September 2021, after the revocation, was subsequently received by the Department.
- (viii) No request was received for the Department to review its decision, nor was an appeal submitted (within the prescribed time limits for making an appeal) against the decision to revoke the sole trader's licence or against the grounds for that revocation.
- (ix) Following the revocation of the sole trader licence, and in accordance with section 26(1) of the 2010 Act, the Department wrote to the partnership on 06 September 2021 to serve notice that it was proposing to revoke that licence under the following grounds:
- Section 24(1)(a) as the licence holder no longer appears to satisfy the requirement to be of good repute under the provisions of section 12A(2)(b) (as determined in accordance with regulations and Article 6 of the 2009 Regulation)
- (x) The Partnership was offered the opportunity to request a public inquiry and given until 27 September 2021 to provide written representations for

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the Department's consideration. A response was received by the Department on 08 September 2021 which included two points as follows:

Robert Bell did not respond when asked to surrender his licence as he thought it would be revoked if no response was made. He was not aware of the implications this would cause regarding the partnership operator's licence (ON2002503).

Robert Bell has now surrendered his operator's licence and included any paperwork requested (please find enclosed).

- (xi) Upon review of this response the Head of Transport Regulation Unit concluded on 28 September 2021:

Notice has been served, and the operator was invited to make representations and/or request a PI. Whilst a response was provided it doesn't address the issue raised and offers no mitigation. Instead, it confirms that Mr Bell purposefully sought to ignore/not respond.

The starting point here is that repute has been lost. The burden then lies with the operator to satisfy the Department that loss of that licence would be disproportionate. It is also material to note that those who enter a regulated environment are expected to understand and be familiar with the rules of that environment.

Rather than providing a detailed response, understanding the possible impact of the PTR, the operator has provided what I consider to be a response that justifies the original finding (in that Mr Bell sought to ignore the PTR) and continues to bury the head in the sand as to the issues.

Section 24(1)(a) of the 2010 Act states that the Department **shall** direct that a standard licence is revoked if at any time it appears to the Department that the licence holder no longer satisfies the requirements of section 12A(2), which includes the requirement to be of good repute. The emphasis above is my own.

- (xii) The Department wrote to the partnership on 29 September 2021 notifying the operator that the licence would be revoked from 27 October 2021. An appeal against this decision was then received on 21 October 2021. The appeal was given the Upper Tribunal reference UA-2021-000275-NT.
- (xiii) Included with the Notice of Appeal was an application for a stay of the decision of the Head of the TRU. On 25 October 2021 the application for a stay was granted by the Head of the TRU.

Proceedings before the Upper Tribunal

3. This appeal in UA-2021-00075-NT was listed for oral hearing on 30 March 2023.
4. The Appellant had engaged Counsel, and a written Skeleton Argument was received from him. In this Counsel had submitted that:

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‘An application has been made to the Upper Tribunal requesting the decision of the TRU - viz Robert Bell’s repute- also be appealed. Subject to a decision of the Upper Tribunal, this skeleton argument will proceed on the basis that the application has been granted and there are two Appellants – Robert Bell and Bell Transport (as the partnership). Ground of appeal one will deal with Robert Bell’s repute. Grounds two and three relate to Bell Transport.’

5. Given the definitive nature of Counsel’s statement that ‘an application has been made to the Upper Tribunal requesting the decision of the TRU - viz Robert Bell’s repute- also be appealed’, I made enquiries on 24 March 2023 to the administrative office of the Administrative Appeals Chamber (AAC) of the Upper Tribunal and asked whether an application or appeal had been made to the Upper Tribunal in respect of the decision to revoke the operator’s licence of Mr Robert Bell.
6. The initial response was that there was no such application or appeal and that the only registered appeal was that in relation to Robert Leslie Bell and Peter Erwin Bell T/A Bell Transport with reference UA-2021-000275-NT.
7. On 27 March 2023, I was informed that a notice of appeal in respect of Mr Robert Bell had been located in the office of the AAC. As a consequence, I made the following observations:
 - (i) I note that there is no date of receipt on the appeal notice;
 - (ii) I am assuming that this appeal has not been registered on the system as, otherwise, it would have been picked up by the administrative support staff;
 - (iii) The appeal is late and interlocutory action will have to be taken to determine whether it can be admitted;
 - (iv) If admitted, rule 23(6) of the Tribunal Procedure (Upper Tribunal) Rules 2008 (‘the 2008 Rules’) provides that it must then be sent to the Respondent;
 - (v) Paragraph 3 of Schedule 1 to the 2008 Rules states that on receipt of a copy of a notice of appeal under rule 23(6)(b), the decision maker must send to the Upper Tribunal a copy (and, on request, further copies) of (a) a written record of the decision appealed against and reasons for the decision; (b) all documents produced to the decision maker in connection with the decision;
 - (vi) The decision maker may wish to add as a party to the proceedings; and
 - (vii) All of the documentation would then have to be sent to the members of the tribunal.
8. I discussed the matter with the Members of the Tribunal and we determined that the only appropriate form of action was to postpone the appeal with reference UA-2021-000275-NT and make appropriate directions.
9. I made the following DIRECTIONS:
 - (i) The appeal in connection with Mr Robert Bell alone is to be processed in the usual manner in the office of the UT (AAC);

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- (ii) As noted above, the appeal is late and interlocutory action will have to be taken to determine whether it can be admitted;
 - (iii) If admitted then the steps set out in paragraph 8(v) and (vi) are to be carried out;
 - (iv) If admitted the appeal in connection with Mr Robert Bell alone should be listed for oral hearing together with the appeal with reference UA-2021-000275-NT;
 - (v) The appeal with reference UA-2021-000275-NT, and, if admitted, the appeal in respect of Mr Robert Bell alone, should be re-listed before the Upper Tribunal Judge and Members who were due to sit on 31 March 2023.
10. The appeal in respect of Mr Robert Bell was received by email in the office of the Administrative Appeals Chamber (AAC) of the Upper Tribunal on 14 March 2023. It was given the Upper Tribunal reference UA-2023-000508-NT.
11. The Appellant applied for permission from the Upper Tribunal to appeal out of time – the deadline for appealing being one month after the date on which notice of the decision was sent to the appellant by virtue of Rule 23(2)(b) of the Tribunal Procedure (Upper Tribunal) Rules 2008. As was noted above, the appeal was notified on 14 March 2023 (some 18 months after the decision was notified on 6 September 2021). In respect of the appeal out of time, the Appellant's representative set out the following submissions:
- ‘The appeal of this specific decision is, by quite some margin, out of time.
- However, there are three reasons why the Appellant respectfully requests that time is extended to permit its consideration.
- First, on the appeal papers which the Upper Tribunal has sight of in relation to UA-2021-000275-NT, the issues which are raised in relation to Robert Bell's repute, are already substantially addressed. The question of Robert Bell's repute is inseparably bound up in the decision currently under appeal in relation to the partnership operator's licence (ON2002503). On this reading, it is arguably not a question of making an application to extend time, but a request for further documents from the TRU.
- Secondly, and similar to the above, the Upper Tribunal is already substantively seized of the question of Robert Bell's repute. To formally include its consideration, the Upper Tribunal will not be burdened with considerable documentation at short notice. Instead, there are three letters which the Upper Tribunal will need to have sight of before making such a determination.
- Thirdly, the formal inclusion of Robert Bell's repute is necessary for the Upper Tribunal to adequately and fully dispose of the appeal of UA-2021-00275-NT.’
12. The Appellant did not seek any stay of the TRU's decision pending appeal.

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13. After reviewing the principles on extending time and admitting a late appeal, and the relevant submissions, I determined that it was just and fair (in accordance with the overriding objective) to extend time and admit this appeal.

14. I made the following conclusion and directions:

For the reasons I set out above, I exercise my discretion in the Appellant's favour. I extend time and grant permission to admit the Appellant's appeal.

I make the following directions:

- (i) Rule 23(6) of the Tribunal Procedure (Upper Tribunal) Rules 2008 ('the 2008 Rules') provides that the notice of appeal must be sent to the Respondent, as the decision maker;
- (ii) Paragraph 3 of Schedule 1 to the 2008 Rules states that on receipt of a copy of a notice of appeal under rule 23(6)(b), the decision maker must send to the Upper Tribunal a copy (and, on request, further copies) of (a) a written record of the decision appealed against and reasons for the decision; (b) all documents produced to the decision maker in connection with the decision;
- (iii) The Respondent may wish to be added as a party to the proceedings; and
- (iv) This appeal should be re-listed together with the appeal in decision which is under appeal to the Upper Tribunal with reference UA-2021-000275-NT and before the Upper Tribunal Judge and Members who were due to sit on 31 March 2023.

15. The appeal in respect of Mr Robert Bell was received by email in the office of the Administrative Appeals Chamber (AAC) of the Upper Tribunal on 14 March 2023. It was given the Upper Tribunal reference UA-2023-000508-NT.

Relevant legislative provisions

16. Sections 2, 12, 12A, 12B, 12C, 12D, 12E, 17, and 24(1) of the Goods Vehicles (Licensing of Operators) Act (Northern Ireland) 2010 ('the 2010 Act') provide:

2. "Standard" and "restricted" licences

- (1) An operator's licence may be either a standard licence or a restricted licence.
- (2) A standard licence is an operator's licence under which a goods vehicle may be used on a road for the carriage of goods—
 - (a) for hire or reward, or
 - (b) for or in connection with any trade or business carried on by the holder of the licence.
- (3) A restricted licence is an operator's licence under which a goods vehicle may be used on a road for the carriage of goods for or in connection with any trade or business carried on by the holder of the licence, other than that of carrying goods for hire or reward.
- (4) Notwithstanding subsections (2) and (3), a company may use a goods vehicle on a road for the carriage of goods for hire or reward under a restricted licence instead of a standard licence if (but only if) the goods concerned are the property of a company which is—

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- (a) a subsidiary of the first company,
- (b) a holding company for the first company, or
- (c) a subsidiary of a company which is a holding company both for that subsidiary and for the first company.

(d) if the Department thinks fit, whether the requirement of section 12D is satisfied.

(5) A standard licence may authorise a goods vehicle to be used for the carriage of goods by road—

- (a) on both national and international transport operations; or
- (b) on national transport operations only.

(6) Except as provided in subsection (4) and subject to sections 2A and 3, a person who uses a goods vehicle under a restricted licence for carrying goods for hire or reward is guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(7) A person who uses a goods vehicle for carrying goods by road for hire or reward on international transport operations under a standard licence which covers the carriage of goods on national transport operations only is guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

12. Determination of applications for operators' licences

(1) On an application for a restricted licence the Department must consider—

- whether the requirements of sections 12A and 12C are satisfied; and
- if the Department thinks fit, whether the requirement of section 12D is satisfied.

(2) On an application for a restricted licence the Department must consider—

- (a) whether the requirements of sections 12B and 12C are satisfied; and
- (b) if the Department thinks fit, whether the requirement of section 12D is satisfied.

(3) Subsections (1) and (2) are subject to section 10 (publication of application), if applicable, and 47(2) (payment of application fee).

(4) In considering whether any of the requirements of sections 12A to 12D are satisfied, the Department must have regard to any objection duly made under section 11(1)(a) in respect of the application.

(5) If the Department determines that any of the requirements that it has taken into consideration in accordance with subsection (1) or (2) are not satisfied, it must refuse the application.

(6) In any other case the Department must grant the application, unless either of the following provisions applies—

- (a) section 13(2) (power to refuse application on environmental grounds);
- (b) section 47(2) (power to refuse to proceed until fee is paid).]

Determination of applications

Requirements for standard licences

12A.(1) The requirements of this section are set out in subsections (2) and (3).

(2) The first requirement is that the Department is satisfied that the applicant—

- (a) has an effective and stable establishment in Northern Ireland (as determined in such manner as may be prescribed);
- (b) is of good repute (as determined in such manner as may be prescribed)

and

- (c) has appropriate financial standing (as determined in such manner as may be prescribed);

(3) The second requirement is that the Department is satisfied that the applicant

...

- (a) is an individual who—
 - (i) is professionally competent (as determined in such manner as may be prescribed) and
 - (ii) has designated a suitable number of individuals (which may include the applicant) who satisfy such requirements as may be prescribed, or

- (b) if the applicant is not an individual, or is an individual who is not professionally competent, has designated a suitable number of individuals who satisfy such other requirements as may be prescribed.

- (c)

(4) For the purposes of subsection (3), a number of designated individuals is suitable if the Department is satisfied it is proportionate to the maximum numbers of motor vehicles and trailers that may be used by the applicant in accordance with section 5 if the standard licence is issued.

(5) In this Act, “transport manager” means an individual designated under subsection (3)(a)(ii) or (b).

12B Requirements for restricted licences

12B. The requirement of this section is that the applicant is not unfit to hold an operator’s licence by reason of—

- (a) any matter of which particulars are required to be given under section 7; or
- (b) any event required to be notified in accordance with section 8(1).

12C Requirements for standard and restricted licences

(1) The requirements of this section are that it must be possible (taking into account the Department's powers under section 14(3) to issue a licence in terms that differ from those applied for) to issue a licence in relation to which-

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- (a) in the case of a light goods vehicle licence, subsections (2) to (4) will apply, or
 - (b) in the case of a heavy goods vehicle licence, subsections (2) to (6) will apply.
- (2) There must be satisfactory arrangements for securing that the following are complied with in the case of vehicles used under the licence—
- (a) Article 56 of the Road Traffic (Northern Ireland) Order 1981 (drivers' hours); and
 - (b) the applicable Community rules, within the meaning of Article 2 of that Order.
- (3) There must be satisfactory arrangements for securing that vehicles used under the licence are not overloaded.
- (4) There must be satisfactory facilities and arrangements for maintaining the vehicles used under the licence in a fit and serviceable condition.
- (5) A heavy goods vehicle licence must specify at least one place in Northern Ireland as an operating centre of the licence-holder, and each place so specified must be available and suitable for use as an operating centre of the licence-holder (disregarding any respect in which it may be unsuitable on environmental grounds).
- (6) The capacity of the place specified as an operating centre (if there is only one) or both or all of the places so specified taken together (if there is more than one) must be sufficient to provide an operating centre for all the heavy goods vehicles used under the licence.
- (7) In considering whether the requirements of subsections (2) to (6) are satisfied, the Department may take into account any undertakings given by the applicant (or procured by the applicant to be given) for the purposes of the application, and may assume that those undertakings will be fulfilled.
- (8) In considering whether subsection (5) will apply in relation to a licence, the Department may take into account any conditions that could be attached to the licence under section 20(1)(a) (conditions of licences) and may assume that any conditions so attached will not be contravened.
- (9) In considering whether subsection (5) or (6) will apply in relation to a licence, the Department may take into account whether any proposed operating centre of the applicant would be used—
- (a) as an operating centre of the holders of other heavy goods vehicle licences as well as an operating centre of the applicant; or
 - (b) by the applicant or by other persons for purposes other than keeping heavy goods vehicles used under the licence.

12D. Further requirement for standard and restricted licences

The requirement of this section is that the provision of the facilities and arrangements for maintaining the vehicles in a fit and serviceable condition is not prejudiced by reason of the applicant's having insufficient financial resources for that purpose.

12E Professional competence for restricted licence holders

12E. As from such date as may be prescribed, section 12B shall have effect as if—

- (a) the existing text of section 12B were renumbered subsection (1),
- (b) in section 12B(1), in the words before paragraph (a), before “requirement of” there were inserted “first”, and
- (c) after section 12B(1) there were inserted—

“(2) The second requirement of this section is that the applicant—

- (a) if an individual, is professionally competent (as determined in such manner as may be set out in regulations made for the purposes of section 12A(3)(a)(i)), or
- (b) if not an individual, or an individual who is not professionally competent, complies with section 12A(3)(b) as if the applicant were an applicant for a standard licence who is not an individual or is an individual who is not professionally competent.”

23.— Revocation, suspension and curtailment of operators' licences

(1) Subject to the following provisions of this section and the provisions of section 26, the Department may direct that an operator's licence be revoked, suspended or curtailed (within the meaning given in subsection (9)) for any reasonable cause including any of the following—

- (a) in the case of a heavy goods vehicle licence, that a place has, at a time when it was not specified in the licence as an operating centre of the licence-holder, been used as an operating centre for heavy goods vehicles authorised to be used under the licence;
- (b) that the licence-holder has contravened any condition attached to the licence;
- (c) that during the 5 years ending with the date on which the direction is given there has occurred a prescribed event affecting information required to be given to the Department under section 7 or 8;
- (d) that the licence-holder made, or procured to be made, for the purposes of—
 - (i) the licence-holder's application for the licence,
 - (ii) an application for the variation of the licence, or
 - (iii) a request for a direction under paragraph 1 or 3 of Schedule 1, a statement of fact that, whether to the licence-holder's knowledge or not, was false, or a statement of expectation that has not been fulfilled;
- (e) that any undertaking recorded in the licence has not been fulfilled;
- (f) that the licence-holder, being an individual, has been adjudged bankrupt or has become the subject of a bankruptcy restrictions order or a debt relief order has been made in respect of him or he has become the subject of a debt relief restrictions order or, being a company, has gone into liquidation, other than voluntary liquidation for the purposes of reconstruction;

- (g) 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 or variation of the licence;
- (h) that the licence is liable to revocation, suspension or curtailment by virtue of a direction under section 25(3).

24.— Revocation of standard licences

(1) The Department shall direct that a standard licence be revoked if at any time it appears to the Department that

- (a) the licence-holder no longer satisfies one or more of the requirements of section 12A, or
- (b) a transport manager for the licence-holder ceases to satisfy such requirements as may be set out in regulations made for the purposes of section 12A(3)(a)(ii) or (b).

17. Regulations 5 to 7 of the Goods Vehicles (Qualifications of Operators) Regulations (Northern Ireland) 2012, as amended, provide:

‘Determination of good repute

5.—(1) In determining whether an individual is of good repute under section 12A(2)(b) of the 2010 Act or regulation 13A(1)(b), the Department may have regard to any matter but shall, in particular, have regard to—

- (a) any convictions or penalties incurred by the individual or any other relevant person; and
- (b) any other information in its possession which appears to the Department to relate to the individual's fitness to hold a licence.

(2) In determining whether a company is of good repute under section 12A(2)(b) of the 2010 Act, the Department shall have regard to all the material evidence including, in particular—

- (a) any convictions or penalties incurred by the company, company employees or any other relevant person; and
- (b) any other information in its possession as to the previous conduct of the company or any other relevant person if that conduct appears to the Department to relate to the company's fitness to hold a licence.

(3) For the purposes of these Regulations, any convictions or penalties incurred by any person include —

- (a) any conviction or penalty incurred by that person of an offence under the law of any part of the United Kingdom or any corresponding offence under the law of any country or territory outside the United Kingdom;
- (b) any conviction of that person of a serious offence within the meaning given in regulation 7; and
- (c) any conviction of that person of a road transport offence within the meaning given in regulation 8.

Determination that an individual is not of good repute

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6. Without prejudice to the generality of the Department's power under regulation 5 to determine that a person is not of good repute, the Department shall determine that an individual is not of good repute if that individual has—
- (a) been convicted of a serious offence; or
 - (b) been convicted of road transport offences.

Serious Offences

- 7.—(1) A person has a conviction of a “serious offence” if—
- (a) that person has been convicted of any offence under the law of any part of the United Kingdom or under the law of a country or territory outside the United Kingdom; and
 - (b) on such conviction there was imposed on that person for that offence a punishment falling within paragraph (2).
- (2) The punishments are—
- (a) a sentence of imprisonment for a term exceeding three months;
 - (b) a fine exceeding level 4 on the standard scale;
 - (c) a community service order or community payback order requiring a person to perform work for more than 60 hours; and
 - (d) in the case of an offence committed under the law of a country or territory outside the United Kingdom, any punishment corresponding to those mentioned in subparagraphs (a) to (c).
- (3) In paragraph (2) —
- (a) the reference to a sentence of imprisonment includes a reference to any form of custodial sentence or order, other than one imposed under the enactments relating to mental health;
 - (b) “community service order” means an order under Article 13 of the Criminal Justice (Northern Ireland) Order 1996 M1; and
 - (c) “community payback order” means an order under section 227A of the Criminal Procedure (Scotland) Act 1995

Road Transport offences

8. “Road transport offence” means—
- (a) an offence under the law of any part of the United Kingdom relating to road transport including, in particular—
 - (i) an offence relating to drivers' hours of work or rest periods, the weights or dimensions of commercial vehicles, road

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or vehicle safety or the protection of the environment; and

(ii) any other offence concerning professional liability;

(b) any corresponding offence under the law of a country or territory outside the United Kingdom.

Further provisions for the purposes of regulations 5 to 8

9.— For the purposes of regulations 5 to 8—

(a) convictions which are spent for the purposes of the Rehabilitation of Offenders (Northern Ireland) Order 1978 shall be disregarded; and

(b) the Department may also disregard an offence—

(i) if such time as the Department thinks appropriate has elapsed since the date of the conviction; or

(ii) if the Department, having considered the number of offences committed by a person, determines that due to specific circumstances a negative determination of good repute for the person would constitute a disproportionate response.

(2) In determining the good repute of a transport manager under regulation 13A(1)(b) regulations 5 to 9 shall apply as they apply to an individual with the omission of the words “or any other relevant person”.

General principles on the operation of the Act and Regulations

18. At paragraphs 10 to 13 of the decision in NT/2013/82 Arnold Transport & Sons Ltd v DOENI, the Upper Tribunal set out the following general principles in the operation of the legislative provisions in Great Britain and Northern Ireland:

‘Some General Principles

10. An operator’s licence can only be granted if the applicant satisfies the Department that the relevant requirements, set out in s. 12 of the 2010 Act as amended, have been met. [The expression Department is used in the legislation but for the purposes of the decisions required to be taken under the legislation it is the Head of the TRU who takes them]. The relevant requirements are now set out in Paragraph 17(5) of the Goods Vehicles (Qualifications of Operators) Regulations (Northern Ireland) 2012, (“the Qualifications Regulations), which substitutes a new s.12 and adds ss. 12A-12E to the 2010 Act. The Qualifications Regulations also contain important provisions in relation to Good Repute, Professional Competence and Transport Managers.

11. The grant of an operator’s licence does not mean that an operator can then proceed on the basis that the requirements that must be met in order to obtain a licence can thereafter be disregarded. In our view it is clear both from the terms of the 2010 Act and from Regulation 1071/2009 that these are continuing obligations, which an operator is expected to meet throughout the life of the licence. It is implicit in the terms of s. 23, which gives the Department power

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to revoke, suspend or curtail an operator's licence, that this can take place at any time and for any reasonable cause, including matters covered by the requirements of s. 12 as amended. It is explicit in s. 24, which provides that a standard licence shall be revoked if at any time it appears that the licence-holder is no longer (i) of good repute, (ii) of appropriate financial standing or, (iii) professionally competent. The underlining, in each case is ours. First, we wish to stress that once it appears that the licence-holder is no longer of good repute, or of appropriate financial standing or professionally competent the licence must be revoked because the Act makes it clear that there is no room for any exercise of discretion. Second, the use of the expression 'at any time' makes the continuing nature of the obligations crystal clear.

12. The Tribunal has stated on many occasions that operator's licensing is based on trust. Since it is impossible to police every operator and every vehicle at all times the Department in Northern Ireland, (and Traffic Commissioners in GB), must feel able to trust operators to comply with all relevant parts of the operator's licensing regime. In addition other operators must be able to trust their competitors to comply, otherwise they will no longer compete on a level playing field. In our view this reflects the general public interest in ensuring that Heavy Goods Vehicles are properly maintained and safely driven. Unfair competition is against the public interest because it encourages operators to cut corners in order to remain in business. Cutting corners all too easily leads to compromising safe operation.
13. It is important that operators understand that if their actions cast doubt on whether they can be trusted to comply with the regulatory regime they are likely to be called to a Public Inquiry at which their fitness to hold an operator's licence will be called into question. It will become clear, in due course, that fitness to hold an operator's licence is an essential element of good repute. It is also important for operators to understand that the Head of the TRU is clearly alive to the old saying that: "*actions speak louder than words*", (see paragraph 2(xxix) above). We agree that this is a helpful and appropriate approach. The attitude of an operator when something goes wrong can be very instructive. Some recognise the problem at once and take immediate and effective steps to put matters right. Others only recognise the problem when it is set out in a call-up letter and begin to put matters right in the period before the Public Inquiry takes place. A third group leave it even later and come to the Public Inquiry with promises of action in the future. A fourth group bury their heads in the sand and wait to be told what to do during the Public Inquiry. It will be for the Head of the TRU to assess the position on the facts of each individual case. However it seems clear that prompt and effective action is likely to be given greater weight than untested promises to put matters right in the future.'

The proper approach on appeal to the Upper Tribunal

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

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

At paragraph 4, the Upper Tribunal had stated:

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

The submissions on behalf of the Appellants

20. In his Skeleton Argument, Mr Finnegan set out three grounds of appeal, as follows:

Ground One: The decision of the TRU to find that Robert Bell is without repute was disproportionate.

Ground Two: The decision of the TRU not to hold a public inquiry to consider the revocation of Bell Transport’s operator’s licence was wrong in law.

Ground Three: The decision of the TRU to revoke the operator’s licence of Bell Transport was disproportionate.

21. Mr Finnegan expanded on grounds one and three as follows:

‘Ground of Appeal One: The decision of the TRU to find that Robert Bell is without repute was disproportionate.

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9. The TRU found that Robert Bell was without repute due to “an apparent failure to respond to correspondence... and the apparent false statement made on the partnership’s application for a licence”.
10. Although the TRU had offered Robert Bell a public inquiry in relation to the revocation and loss of repute considerations, a request for such was not received by the TRU. As such, the sole trader operator’s licence was revoked on 06/09/21 along with a finding that Robert Bell is without repute.
11. It is submitted that this decision was disproportionate. Neither Robert Bell nor his sole trader licence have had any criminal or regulatory history. The reasons given by the TRU for why Robert Bell is without repute is his lack of response to TRU correspondence and his failure to surrender his sole trader licence.

These will be addressed in turn:

- a. ‘False statements’ – the TRU has misdirected itself in finding that false statements have apparently been made by Robert Bell. The fact that a statement had been made on the application for a new operator’s licence stating that the sole trader licence will be surrendered, was not a false statement at the time it was written. Taking the TRU’s point at its height, however, it can only be said that Robert Bell failed to observe an undertaking of the licence. A failure to adhere to an undertaking cannot automatically lead to a conclusion that an applicant has lied to the TRU.
 - b. ‘Failure to respond’ – although some regulatory action is warranted for Robert Bell’s failure to respond, it cannot be held against Robert Bell to the extent which the TRU has. It is important to note that the Proposal To Revoke [PTR] letter to Robert Bell on 12/08/21, clearly stated that a lack of response from the operator would result in the licence being revoked. Robert Bell reasonably concluded that not responding to the TRU was indeed an option and in doing so would allow the TRU to take the course which he ultimately was content with, save for the decision on his repute.
12. It is, however, apparent from the TRU letters to Robert Bell in relation to the surrender of the sole trader licence that they did not make it clear that Robert Bell could lose his good repute. The main thrust of the letters speak to the revocation of the operator’s licence. For example, the PTR letter² sets out the factors which indicate that the licence may be revoked (on discretionary grounds) or is to be revoked (on mandatory grounds). The issue of repute is found at the bottom of this list of factors. The appearance of not being of good repute is subordinate to a consideration of revocation. It is submitted that this ought to have been made much clearer and dealt with separately from (but also in addition to) the revocation factors.
 13. Further, the TRU has gone beyond what is strictly necessary to ensure compliance with the statutory and regulatory regime. That the sole trader licence ought to have been revoked under **Article 5(b) of**

Regulation 1071/2009 is beyond doubt. However, **Regulation 5 of The Goods Vehicles (Qualifications of Operators) Regulations (Northern Ireland) 2012** states that the Department may have regard to any matter, but shall have regard to any information in its possession which goes to fitness. It appears that the TRU has not considered that Robert Bell:

- a. had an unblemished regulatory record under the partnership licence;
 - b. had never been accused of issues going to road safety;
 - c. had never been accused of issues relating to fair competition;
 - and
 - d. had no convictions whatsoever.
14. Although there has been a *prima facie* failure to adhere to a declaration, the TRU ought to have asked itself what mischief was being addressed by removing Robert Bell's repute in addition to the revocation. As mentioned, the licence had remained dormant with no vehicles specified on it. The TRU considered that the simultaneous existence of the two operator's licences raised issues relating to operating in the wrong entity. The opposite, however, is true. The commercial reality was that in 2017, the entity began operating as a partnership. The application for a partnership operator's licence reflected this change. No longer was Robert Bell operating as a sole trader. The vehicles specified on the respective licences reflected this. That the sole trader licence was inactive rendered it being in a state of all-but surrendered. It is also important to note that perhaps the main reason for the revocation was under Article 5(b), a provision which deals exclusively with dormant operator licences.
15. It is axiomatic that each case turns on its own facts. However, the practice of the TRU and the OTC in dealing with instances of dormant operator's licences has been to revoke the operator's licence only, and not to find that the holder of that licence is without repute. The comparatively robust approach of the TRU in the instant case indicates that the decision was disproportionate – the failings here cannot be considered an undermining of the industry or conduct which is patently unacceptable.

...

Ground of Appeal Three: The decision of the TRU to revoke the operator's licence of Bell Transport was disproportionate

29. Although the TRU had not applied its own Practice Guidance Documents in deciding on the instant case, it is submitted that the alleged misconduct of Bell Transport calls for the matter to be considered as Moderate to Low according to Annex four.
30. The TRU has not considered the unblemished regulatory history of Bell Transport. It has also failed to consider the fact that the other partner in the business had not lost his repute either an operator or as a Transport

Manager. As such, only one of two partners had lost their repute. The legislative and regulatory aims could easily have been satisfied by a request that Peter Bell applies for a sole trader licence, and, for example, Robert Bell removes himself as Transport Manager.'

Analysis

22. We begin with the appeal referenced **UA-2023-000508 Robert Bell**. The background to this appeal is set out in some detail above.
23. In summary:
- The Appellant was requested to surrender his sole trader goods vehicle operator's licence on the basis that he had not specified a vehicle on the licence for almost two years
 - He asked why he had to do so
 - He, in turn, was asked why the sole trader licence was still required when there had been a change of legal entity
 - When there was no further reply by the date specified in the correspondence to him, the Respondent sent a 'Proposal to Revoke ('PTR') letter to the Appellant, itself dated 12 August 2021. The suggested basis for the proposed revocation was:
 - The Appellant had made or procured to be made a false statement of fact when he declared that his sole trader licence would be surrendered on the subsequent grant of an goods vehicle operator's licence to a partnership which involved him as a partner
 - There had been a material change of circumstances since the licence had been issued, namely that there was a change in entity to a partnership
 - The Appellant no longer appeared to satisfy the requirement to have an effective and stable establishment as no vehicle had been specified on the licence for a period of close to two years
 - The Appellant no longer appeared to satisfy the requirement to be of good repute in view of the failure to respond to correspondence with the Department and the apparent false statement made on the partnership's application for a licence
 - There was no reply to the PTR letter of 12 August 2021
 - In correspondence dated 6 September 2021, the Respondent revoked the Appellant's sole trader licence. The grounds for revocation were parallel to those set out in the PTR letter of 12 August 2021
 - On 12 September 2021 an application to surrender the Appellant's sole trader licence was received in the Department. By that stage a PTR had been sent to the partnership.
24. In his Skeleton Argument, Mr Finnegan argues that the 'false statement' ground for revocation in general and for loss of repute in particular should be ignored on the basis that a statement on the application for a new operator's licence that the sole trader licence would be surrendered was not a false statement when it was written. Further, at its height, the omission on the part of the Appellant to surrender the licence could only amount to a failure to observe an undertaking on the licence.

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25. We have noted that the Respondent has not provided any evidence to us to corroborate the submission that the Appellant had made or procured to be made a false statement of fact when he declared that his sole trader licence would be surrendered on the subsequent grant of a goods vehicle operator's licence to a partnership which involved him as a partner. There is a robust basis to allow this aspect of the appeal to the extent that the Respondent argues that the failure to surrender the sole trader licence, after the making of a statement to that effect, renders the initial statement false, and goes to the conclusion that the Appellant no longer satisfies the requirement to be of good repute. If there is no evidence to support this aspect of loss of repute then the 'false statement' aspect of that ground should fall away. We have not forgotten that the burden of proof is on the Respondent – see paragraphs 52, 60 and 67-71 of the decision of the Court of Appeal for England and Wales in *Muckit* ((2005) EWCA Civ 1124).
26. If we did not know what was said about the surrender of the sole trader licence at the time of the making of the application for the licence for the partnership, we do know about what was said and done about the surrender of the sole trader licence in the period immediately prior to that.
27. We know that the Respondent made a formal request to the Appellant surrender the sole trader and, in response, the Appellant asked why he was required to do so. When he was asked, in response, why the sole trader licence was still required, given the change in the business entity, the Appellant did not reply within the specified date. This led to the issue of the PTR letter to which the Appellant, once again, did not reply.
28. The revocation letter was then issued. No request was received for the Department to review its decision, nor was an appeal submitted (within the prescribed time limits for making an appeal) against the decision to revoke the sole trader's licence or against the grounds for that revocation. The appearance was that the Appellant had abandoned the sole trader licence.
29. An application to surrender the sole trader licence was received in the Department. We have no doubt that this action was prompted by the fact that, by that stage, the partnership had received a PTR letter.
30. In his Skeleton Argument, Mr Finnegan has submitted that the Appellant '... reasonably concluded that not responding to the TRU was indeed an option and in doing so would allow the TRU to take the course which he ultimately was content with, save for the decision on his repute.'
31. We are of the view that the Appellant's attitude towards the regulatory requirements relevant to his holding a goods vehicle operator's licence is redolent of ambivalence and indifference. It is clear that he could and should have taken advice from his partner about what he was being asked to do, its context and what might be an appropriate response. His failure to engage with the Respondent after being warned of the consequences of an omission to engage, merited a strong response. In paragraph 13 of his Skeleton Argument, Mr Finnegan has conceded that 'That the sole trader licence ought to have been revoked ... is beyond doubt.' We agree with that concession.

32. It is the case, however, that revocation was not the end of the matter. The Respondent also decided that the Appellant could no longer satisfy the requirement to be of good repute. There were two evidential aspects to this conclusion. The first was the ‘false statement’ aspect. We have dealt with that above.

33. The second, and the only remaining aspect, was the failure to respond to correspondence with the Department. Did that merit a finding that the Appellant had lost his repute in addition to losing his licence? In paragraph 13 of his Skeleton Argument, Mr Finnegan notes that the Appellant:

- Had an unblemished regulatory record under the partnership
- Had never been a used of issues relating to road safety
- Had never been accused of issues relating to unfair competition
- Had no convictions whatsoever

34. In paragraph 14, Mr Finnegan observed that the sole trader licence had remained dormant with no vehicles specified on it. The change of business entity meant that the Appellant was no longer operating a a sole trader and the inactive status of the licence meant that ready for surrender.

35. In *Crompton (T/a David Crompton Haulage) v. Department of Transport North Western Area* [2003] EWCA Civ 64 (31 January 2003), the Court of Appeal for England and Wales said the following at paragraph 19(5):

“That brings us back to the 1995 Act, which also contains no definition of good repute, but it is noticeable that in schedule 3 the opening words of paragraph 1(2) dealing with a company are more restrictive than the opening words of paragraph 1(1) dealing with an individual. When a traffic commissioner is considering if an individual is of good repute he can have regard to “any matter”, but if he is considering a company he must confine himself to “all the material evidence”. The difference in wording is a little surprising but Parliament cannot have intended a traffic commissioner ever to have regard to immaterial evidence, so the conclusion must surely be that the schedule requires the traffic commissioner when considering alleged loss of repute to focus on matters relevant to the individual’s fitness to hold a licence, bearing in mind –

“(a) that an existing licence is a possession safeguarded by Article 1 of the First Protocol, and –

“(b) that if loss of repute is found the inevitable sanction is revocation, possibly followed by an application for a fresh licence which may or not be granted.”

“There must therefore be a relationship of proportionality between the finding and the sanction, and that relationship has a direct bearing on the approach to be adopted in any set of circumstances to the question of whether or not the individual has lost his repute.

“All of that seems to me to be in the end non-contentious.’

36. He added, at paragraphs 24 and 25:

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'Reading the decision of the Traffic Commissioner as a whole I cannot escape the conclusion that although she did initially ask herself whether the operators behaviour related to his fitness to hold a licence she then became more concerned with the unacceptability of the behaviour, and failed to give mature consideration to the question of whether that behaviour really did demonstrate for the purposes of section 27(1) a loss of good repute, bearing in mind the inevitable consequences of such a finding, and the need for proportionality. In saying that I am not suggesting that there was any need for the Traffic Commissioner expressly to refer to proportionality, or to anything other than the domestic legislation which was directly relevant, but the inappropriateness of her approach does seem to me to be most clearly demonstrated by her refusal to accept that by writing as he did to Miss Farr, and by apologising to the Traffic Commissioner herself, the operator had done enough to demonstrate that at any rate by 26th November 2001 he was once again a person of good repute.

The Transport Tribunal, having set out the facts and summarised the submissions made on behalf of the appellant, said that his solicitor "repeatedly referred to the loss of the appellant's good repute as too high a penalty or sanction, although he accepted the use of such terminology in the context of the jurisdiction and powers of Traffic Commissioners was inappropriate." The terminology may have been inappropriate, but no doubt it was used because of the approach adopted by the Traffic Commissioner, whose decision in part is reminiscent of a judgment in proceedings for contempt of court. I recognise, as did the Tribunal, that the Traffic Commissioner had the benefit of seeing the operator, but to my mind little now turns on that because the Traffic Commissioner made her conclusions clear. The Tribunal recognised that "her decision may be viewed as harsh" but does not seem to have asked itself why it should be viewed in that way. In my judgment the reason was that the approach adopted by the Traffic Commissioner faltered in the way that I have described. That was an error of law.'

37. We are of the view that the Head of the TRU's approach to the question of repute in the instant case is equally flawed. No consideration was given to the positive aspects of the case, as was noted by Mr Finnegan. More significantly, no consideration was given to the proportionality of the sanction. To repeat what was said above, the Appellant adopted a careless and somewhat dismissive attitude to the regulatory requirements and the obligation to respond to the Department's correspondence. In our view, the appropriate response to those omissions was to revoke the Appellant's goods vehicle operator's licence, a sanction which the Appellant, through his representative, now accepts.
38. In our view, the decision to find that the Appellant no longer satisfied the requirement to be of good repute was wholly disproportionate and sufficiently so to render this aspect of the decision of the Head of the TRU to be 'plainly wrong'.
39. We confirm that the substantive decision of the Head of the TRU to revoke the Appellant's licence was correct and is upheld. We determine however, that there was no evidential basis to support the following ground:

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‘Section 23(1)(d) that the licence-holder made, or procured to be made, a statement of fact that, whether to the licence-holder’s knowledge or not, was false, or a statement of expectation that has not been fulfilled; namely that you declared on the application for the partnership’s licence that your licence would be surrendered.’

40. Further, and more significantly, confirm that we have no hesitation in concluding that the decision of the Head of the TRU to decide that the Appellant no longer satisfied the requirement to be of good repute was plainly wrong.

41. We turn to the appeal referenced **UA-2021-000275 Bell Transport**.

42. We can deal with this appeal in short order. The basis for the revocation of the licence in this case was as follows:

‘Section 24(1)(a) as the licence holder no longer satisfies the requirement to be of good repute under the provisions of section 12A(2)(b) (as determined in accordance with regulations and Article 6 of the 2009 Regulation)’

43. The evidential basis for this ground was the determination by the Head of the TRU in the appeal referenced **UA-2023-000508 Robert Bell** that Mr Robert Bell, a partner in Bell Transport, no longer satisfied the requirement to be of good repute. Having found that the decision of the Head of the TRU to decide that the Robert Bell no longer satisfied the requirement to be of good repute was plainly wrong, then the basis for the revocation of the licence of Bell Transport falls away. Accordingly, the appeal is allowed.

44. We add that we took evidence from Mr Peter Bell about the nature and conduct of the Bell Transport business. Based on that evidence, we are wholly satisfied that there are no additional grounds on which revocation could be considered. That accords with the conclusion of the then Head of the TRU, in paragraph 19 of his determination staying the effect of the revocation decision, that:

‘Importantly, I have no specific concerns in relation of road safety or fair competition which would prevent my granting of a stay.’



**Kenneth Mullan, Judge of the Upper Tribunal
8 February 2024**