



Neutral citation no: [2025] UKUT 217 (AAC)

Appeal no. UA-2024-001638-T

**IN THE UPPER TRIBUNAL  
ADMINISTRATIVE APPEALS CHAMBER**

**Anthony Brayley-Willmetts**

**Appellant**

**Before:**

**Judge Buckley**

Judge of the Upper Tribunal

**Mr Rawsthorn**

Specialist Member of the Upper Tribunal

**Mr James**

Specialist Member of the Upper Tribunal

**Hearing date: 17 June 2025**

**Mode of Hearing: CVP/telephone**

**Representation:**

**Appellant: In person**

*On appeal from:*

Decision maker: Traffic Commissioner for the West of England Traffic Area

Commissioner's ref: 216448

Date of decision: 14 October 2024

**SUMMARY OF DECISION**

**100 Transport (Traffic Commissioner and DoE NI) appeals**

**100.4 Repute and fitness**

## Judicial summary

The Traffic Commissioner's decision was not plainly wrong or disproportionate and did not involve any error of law or mistake of fact as per the test in **Bradley Fold Travel & Peter Wright v Secretary of State for Transport** (2010) EWCA Civ.695

*Please note the Summary of Decision is included for the convenience of readers. It does not form part of the decision. The Decision and Reasons of the Upper Tribunal panel follow.*

## DECISION

The decision of the Upper Tribunal is to **DISMISS** the appeal.

## REASONS FOR DECISION

### SUBJECT MATTER:

Loss of repute (Transport Manager)  
Disqualification (Transport Manager)

### CASES REFERRED TO:

**Bradley Fold Travel Limited and Peter Wright v. Secretary of State for Transport**  
[2010] EWCA Civ.

**T/2014/25/26 H. Sivyver (Transport) Ltd. and Simon Sivyver** [2014] UKUT 0404 (AAC).

## Introduction

1. This is an appeal against a decision of the Traffic Commissioner for the West of England Traffic Area (the Traffic Commissioner) on 14 October 2024 following a public inquiry hearing that:

The good repute of Anthony Brayley-Willmetts is lost and he is disqualified from acting as such for a period of one year and until he sits and passes again the Transport Manager certificate of professional competence.

2. The appeal was brought by notice of appeal dated 7 November 2024.

## The facts

3. At the relevant time Mr Brayley-Willmetts and Zena Gillbard were the nominated Transport Managers for Roger Gillbard and Zena Gillbard trading as Gillbard Plant (the Partnership), who held a standard national goods vehicle operators licence granted in February 2020, authorising the use of two vehicles from an operating centre in Launceston. Since February 2024 they have been authorised to use those vehicles from a second site at Dingle Brothers in Bodmin.
4. A previous public inquiry took place in April 2022 as a result of which the Partnership was issued with a formal warning arising out of the unsatisfactory outcome of a DVSA desk-based assessment. By the time of the public inquiry Mr Brayley-Willmetts had become the Transport Manager and Zena Gillbard was added as Transport Manager in November 2022.

### *Events preceding the public inquiry in 2024*

5. Following reports that the Partnership were using an unauthorised operating centre, a DVSA traffic investigation was triggered.
6. DVSA Traffic Enforcement Manager Andrew Ball visited the Partnership on 12 December 2023 and interviewed Mr Brayley-Willmetts and Ms Gillbard. Mr Ball concluded that the operator had been using two unauthorised sites, namely the National Grid in Bodmin and Liskeard. He further concluded that both Transport Managers were not fulfilling their obligations as a result of the scoring of the audit and the use of the unauthorised sites. He concluded that there was what the Traffic Commissioner describes as ‘a general lack of process formality within the business’.
7. A compliance investigation was carried out by DVSA Vehicle Examiner Adrian Williams. He carried out an announced visit on 27 February 2024. The Traffic Commissioner summarised the outcome of the investigation as follows:

Of the thirteen categories on his report, six were unsatisfactory, five were mostly satisfactory and two fully satisfactory. Mr Williams highlighted a significant number of deficiencies with respect to the completion of the

safety inspection reports. Many inspections did not have brake performance figures on the inspection sheet. There were many that had driver-reportable defects and several where the vehicle was presented with apparently dangerous defects such as loose wheel nuts. The MOT pass rate was of concern and there was no wheel security or tyre management policy in place. During the fleet check, one vehicle was issued with a prohibition for two immediate tyre defects and one delayed for an insecure exhaust system. Mr Williams also concluded that the Transport Managers were not exercising proper control.

8. On 30 March 2024 Mr Brayley-Willmetts submitted a response to the report. Zena Gillbard submitted a response on 7 April 2024.
9. Public inquiry call-up letters dated 10 July 2024 were sent to the Partnership, Zena Gillbard and Mr Brayley-Willmetts. The public inquiry was initially listed for 14 August 2024.
10. The call-up letter in relation to the Partnership identified the issues of concern as follows:
  - a) you are operating from an unauthorised operating centre;
  - b) your vehicles or drivers have been issued with prohibition notices by DVSA or the police in the past five years;
  - c) the following statements you made when applying for the licence were either false or have not been fulfilled:
    - i. that your vehicles would be inspected at the 6 week intervals you promised they would be;
  - d) you have not honoured the undertakings you signed up to when you applied for your licence, namely,
    - i. that your vehicles would be kept fit and serviceable;
    - ii. that you would observe the rules on drivers hours and tachographs and keep proper records;

iii. drivers would report promptly any defects or symptoms of defects that could prevent the safe operation of vehicles and/or trailers, and that any defects would be promptly recorded in writing;

e) since the licence was issued, there has been a material change in the circumstances of its holder, namely events have occurred that have effected the good repute, professional competence and financial standing of the licence holder.

11. The letter stated that due to the matters listed above the Traffic Commissioner was also concerned that the Partnership may not be of the appropriate financial standing to hold an operator's licence for the number of vehicles authorised and that the partnership may not meet the requirement to have a stable establishment in the United Kingdom, be of good repute, or meet the requirements for a Transport Manager.
12. The letter informed the Partnership that the Traffic Commissioner was also concerned that the nominated Transport Managers may not be exercising continuous and effective management of the transport activities of the undertaking and said that a separate letter had been sent to the Transport Managers to invite them to the public inquiry which will also consider their competence and repute.
13. The public inquiry call-up letter to Mr Brayley-Willmetts said that, having reviewed information regarding his role as Transport Manager, the Traffic Commissioner had decided to hold a public inquiry to consider whether he continued to meet the requirements to be of good repute and could accordingly exercise effective and continuous management of the transport operation.
14. The letter to Mr Brayley-Willmetts said that he *must*:

Start to collect your own evidence to allow you to set out your case at the hearing.

This should include the following documents:

- i. The regular safety inspection records for the last 3 months;
- ii. The maintenance contract(s);
- iii. The last 3 months' driver daily defect reports;
- iv. Forward planner;

- v. Evidence of your systems for ensuring compliance with the drivers' hours and tachograph legislation;
  - vi. Evidence of training or disciplinary action received by drivers and managers;
  - vii. Anything else which you think will help show you are a compliant Transport Manager or are taking steps to address the failings identified.
15. The letter provided that any written representations or evidence must be submitted before 7 August 2024.
16. On 24 July 2024 Mr Brayley-Willmetts emailed the Office of the Traffic Commissioner to confirm his and Zena and Roger Gillbard's attendance at the public inquiry listed for 14 August 2024.
17. The hearing on 14 August 2024 was adjourned. On 16 August 2024 the Office of the Traffic Commissioner wrote to the Partnership and Mr Brayley-Willmetts to inform them that the public inquiry had been relisted for 24 September 2024. Mr Brayley-Willmetts confirmed his attendance by email dated 27 August 2024.

*The public inquiry*

18. Mr Brayley-Willmetts, Zena Gillbard and Roger Gillbard attended the public inquiry. They were not legally represented.
19. We set out here those passages from the transcript of the inquiry that are relevant to our determination of this appeal. We have added the following acronyms:

TC = Traffic Commissioner  
ABW = Mr Brayley-Willmetts  
ZG = Zena Gillbard.

...

TC      So, I didn't know whether you were going to turn up today or not, because there has been response to our call up letter, nothing uploaded to the system, so I am surprised to see you really.

ABW     I do apologise sir. I uploaded all the information, or I assumed I uploaded all the information, and obviously it's not. I was discussing it with Martin there earlier on, and I don't know what happened to

it. I don't know. It's been uploaded somewhere, but obviously it's not with you, which is the main thing. And all I can do is apologise. I'm sorry.

TC I think we've been having operators and their representatives uploading documents since about February/March time. And this is the first time this has happened. So I don't know whether you uploaded to your Tesco account or what, but you haven't accessed and made the attempt. Nor have you responded and said you was attending or that you were attending.

ABW I – sorry, I did email Martin and say that we were attending.

...

TC Was that in relation to this hearing or the original date?

ZG The original date.

ABW The original date and also I did email for this one as well.

Clerk I have the one for the original date, but that was it.

TC Just the original date

Clerk [unintelligible] No, just that one.

TC So, just the one email for the original date, you have had nothing in relation to this hearing date? Now, I am quite entitled just to not look at this at all and make my findings based on the vehicle examiner's position. But I don't think I can fail the operator, although to be fair the operator should be managing their Transport Manager and making sure that things are getting done. You are not legally represented this afternoon. Have you considered legal representation?

ZG No, sir we haven't

- TC It is the second public inquiry in two years. To put that context, I do about 150 public inquiries a year and I have got 10,000 operators. So, to have two in two years is not a positive place to be. So, why haven't you invested in some legal advice, and preparing a case, and then we would have had the documents in advance and it wouldn't look like you weren't cooperating.
- ZG I think the main reason is because the first time I believe that we were called up mostly because of the association of our previous Transport Manager. And this time I didn't feel that it was appropriate because everything that we were asked to do we have covered and we have done. Unfortunately, it hasn't been uploaded to you beforehand. That's all I can say on that one I'm afraid.
- ...
- TC How is the business structured then, so you have got two vehicles but two Transport Managers? So, how do you split the responsibilities?
- ZG I am relatively new, I took my exam a couple of years ago and we kept Mr Willmetts on because I'm not somebody that has been in the industry very long, so I wasn't 100% confident. So, I felt that it was right to keep somebody, that I had somebody that I could go to ask questions. So, I deal with all the paperwork in the respect of filing everything. I have hard copies and we have electronic copies, and then we'll make sure that he oversees things in what I am doing and making sure that I am doing it correctly.
- ...
- TC And moving down that inspection and maintenance records, and page 60 there is a whole list of issues about the maintenance records. Supervisor signatures not completed, no brake test report. Why have all these not been picked up by the Transport Manager?
- ZG I don't have an answer for that. I have checked them. I have gone through them and I have, since we have had this, I have been and seen the owner of [ph Panels 00:12:06] which is where we have all of our PMI done. And I have asked him to make sure on all occasions that the forms are signed by the three people providing



that work has been done. And I've also asked for the brake test box to be filled in at the front, even though we have a brake test done with every PMI, and we have the brake test sheet as well. I've asked for that to be done, which is now being done.

...

TC The latest PMI records I have got in this bundle here, one I think is the 10th of May and then there's 15th of June. [Unintelligible 00:13:49]. Is there anything since then?

ZG Yes, sir, there is. The reason that that's all that's in the pack is because that's all the dates that we were originally asked for before the first hearing that was cancelled. So that's why it's within that bracket of time, because that's the dates that we were asked for and we haven't been asked to bring any more.

TC Right. Ok. That's not the most helpful. It would be apparent we were looking for 6 months leading up to the last hearing date, now I am missing two or three inspection reports on each of them.

ZG I apologise for that sir.

...

TC I mean the first one that strikes me on that page down there is a 56% service braking balance on the front axle. I would have thought a driver would be well aware of that. Is it the same driver and same vehicle all the time [unintelligible 00:21:10].

ZG Yes sir, yes.

...

TC Did he not give you any feedback about struggling to stop in a straight line?

ZG No, he hasn't said anything about it.

...

TC So, you are on how many licenses at the moment?

ABW Two

TC Which is the other one?

ABW Somerset Minibuses. They are based at Bridgwater, they run two 16 seaters.

TC Have you brought any evidence of your compliance systems with that operator?

ABW No sir, I wasn't asked.

TC So, you are called as a Transport Manager to consider your good repute as a Transport Manager, and you are asked to provide documents including maintenance documents, I am reading your call up letter now. Forward planner, your system showing compliance with drivers hours, evidence of training or disciplinary action, anything else you think will help. And you haven't uploaded anything, you haven't brought anything.

ABW I did explain earlier on sir, I did attempt to upload everything, but obviously not because it hasn't turned up. But it was the first time I was using that system, I talked it through with Mr Martin and explained what I did. He said, that should have been – should have worked. But for whatever reason, if I pressed the wrong button or whatever, it didn't work. And all I can do for that sir is apologise. I did bring, as you have got there, a hard copy with me as a backup.

TC But that is only for this operator?

ABW Yes. I have not been asked to bring it for any other operators.

TC I have to say some things that might sound rude at times because if I don't put it to you, you can't respond. But you seem to be being extremely difficult this afternoon, and you have been difficult throughout the process. I have not come across anyone else yet that has failed to upload documents to this, who hasn't picked the phone up and spoken to the office, and in the worst case where they had no email address, get in the car, and drive up to Bristol with it.

ABW Well, I am sorry if you think I am being awkward sir, but I did attempt to upload it. I'm sorry.

TC But you could quite easily log into the case and see what is there, the same as what I am doing here. You can confirm it is there.

ABW Well, all I can do sir is apologise. I didn't do it wilfully.

TC You have put us in a very difficult position now.

ABW Well, I am very sorry. What more can I say sir, I am sorry. I thought that I had uploaded everything. And obviously I didn't because it hasn't tuned up with you guys. What more can I say, I am sorry.

...

TC What is happening here? Why are we getting the vehicles not signed off as roadworthy? No supervisor Signature. No brake test section completed. What were you doing in that period as a Transport Manager?

ABW Right, in this period, Mrs Gillbard had took her test, she with the [unintelligible 00:33:03] eventually I would step right away, and she would take over. When this all come up and I saw them I said, 'right, we need to get on to the service provider, maintenance provider and find out what is going on.' We had a meeting with them and said to them, 'look, you have got to up your game on this. We want our tyre ages, tyre pressures. And we want the form where the spaces are on the PMI sheet to be filled out with the brake figures,

even though you were suppling us with a sheet.' Now, that has got better but it is still not where it should be. And we have now got another, we will now be planning another meeting with them, we have got another list of things we want to go through with them, one of them you already brought up about the qualifications of their people, to see if – well basically, to see if we need to change out maintenance provider. We have got a lot of records, as you can see here. And we have addressed some of them, they are getting better, but they are still not where they should be. Unfortunately, a typical example with them is a brake test, where they see on the bottom, as you can see with one of them there, that it is has passed, but there is a brake imbalance. Now, they start to argue with us and say, 'well, the axle has locked. It would have passed an MOT.' And my question to them is, 'well, I am not interested in that bit. What it is showing me is there is an imbalance on that axle that should be investigated, why is it not being investigated?

TC So, this is RX08 GNV on the 10th of May. And that was why I asked whether there were any more recent PMI sheets, because I haven't seen a brake test of it since to see whether that defect has been repaired.

...

TC It has got a parking brake issue on axle two. All the others are locked on every wheel, so you can't – all that is telling you about imbalance is imbalance between the grit on the roller. It is not telling you anything at all about your vehicle. This one has got a defect on axle two, parking brake. 19% imbalance and the lowest one didn't lock, so it was clearly an issue. So, why has that not been followed up, if you have seen it?

ABW Yeah. This is what I said we brought up with them, it is getting better but it is still not where it should be. And this is why we are having another meeting with them, and bring up some more of these faults, put some procedures in place with them on what we want done when it gets inspected.

TC But this isn't about having a meeting with them sometime in the future, this about when you get this back, before the vehicle goes back into service, you look at it and say, that's not right. And you can go back and see them there and say, do another brake test on it if it is not any better, fix it.

ABW Yeah

TC This is stuff that happens in the hour, not in a month or week. I mean this is the 10th of May. This is 4 and a half months ago.

ABW Yeah, we can certainly do that. We can put that in place. That's not –

TC But that should have been happening. That's my problem, I am looking now at the what the DVSA call their SIPCAT, I can take you to that page. Blow it up so everyone can see it. It is a sea of red, red and amber. The most positive thing is brake testing. But we have got five of them there that have got driver reportable defects on them, with no corresponding driver defect report. We have got a dangerous defect, loose wheel nuts. This should have been nipped in the bud years ago, this goes back to 2022. There was no evidence on here of an active Transport Manager managing this maintenance of this fleet, that I can see there is no evidence of it at all.

ABW Then I must bow to your experience sir and say, you know, like I said I checked over stuff. I have gone to the maintenance provider and we have had situations with them where they start quoting us regulations and stuff like that. But it is not an ideal situation.

TC But you are the customer, and you are paying them...

...

TC ...to do a job you don't want them to do. I don't get that at all. And as Transport Managers this should have been stopped.

ABW Yes.

TC So, why haven't you?

...

ABW We have made attempts with the service provider. And our next move is to write a set of policies out that we want them to follow when they are inspecting our vehicles. And not just follow the sheet that they get from RHA or whoever.

TC There is one positive for you, Mr Martin has found that you did respond to the relist letter.

ABW Thank you

TC That was on the 27<sup>th</sup> of August, you said that you will be in attendance, you haven't mentioned the operator.

...

### **Traffic Commissioner's reasons for the decision**

20. The Traffic Commissioner's decision was:

The operator is issued with a clear and strong warning of the need to ensure full compliance in the future and to take action immediately to resolve the shortcomings within its maintenance provider, or to change providers.

The good repute of Anthony Brayley-Willmetts is lost and he is disqualified from acting as such for a period of one year and until he sits and passes again the Transport Manager certificate of professional competence.

The good repute of Zena Gillbard as Transport Manager is marked as tarnished.

21. The Traffic Commissioner's findings of fact were as follows:

19. Finances are satisfactory.

20. It was accepted that vehicles had been parking at an unauthorised site. From the DVSA and the operator's evidence, it is clear that the

unauthorised site was a normal place for the vehicles to be kept so I find that Section 26(1)(a) is made out. There are mitigating features in that the location was itself an operating centre and not unsuitable, and the operator still had its main site. A prompt application was made once prompted by Mr Ball.

21. One prohibition has been issued to a vehicle for three items. I discount one of them as the exhaust was planned to be repaired the same day and the item was marked as delayed. Mr Brayley-Willmetts told me that the tyre defects could have been fresh and would have been found by a driver before the vehicle went out the following day. The tyre defects are described as follows:

- Tyre bulging caused by failure of its structure
- Tyre wall severely scuffed and cords are exposed

22. Vehicle Examiner Williams says *“the tyre prohibition defects would likely have been present at the last driver walkaround check and possibly longer from the condition of the tyre”*. Whilst it may just be possible that two tyre defects occurred the previous day, more likely than not, and having regard to the Vehicle Examiner’s comments, at least one, probably both, were of longstanding. Section 26(1)(c)(iii) is made out.

23. The SIPCAT identifies that 6% of safety inspections were late, meaning that 94% were on time. It is one out of seventeen inspections and it is late by precisely 6 weeks. It seems more likely than not that the record is missing. I do not find Section 26(1)(e) made out.

24. Vehicles have not been kept fit and serviceable as can be seen from the serious defects found during safety inspections. Defects such as loose wheel nuts indicate a failed driver defect process. Section 26(1)(f) is made out.

25. I find that the more serious of these adverse findings are as a result of poor transport management rather than a direct failing of the operator, notwithstanding that every operator is expected to maintain oversight over their Transport Manager. I do not find that the shortcomings require me to interfere with the business. There is no margin and there are written and

binding contractual commitments to the point that a suspension order is likely to cause the business to fail.

26. There are two Transport Managers. Zena Gillbard is recently qualified and has no technical background. The partnership decided to retain the services of a second, technically-qualified, Transport Manager to act as a mentor and that would, on the face of it, seem a sensible and cautious approach. Ms Gillbard's focus is on those elements of compliance associated with a Traffic Examiner role such as driver licensing and working time compliance. The compliance documents in this area presented at the hearing showed significant improvement. The operation operates under domestic hours but tachographs are used and there is minimal missing mileage. Emergency work is recorded although it does not appear that the limited derogations associated with that have been used. Ms Gillbard provided an explanation for the events leading to the unauthorised parking. It was clear that she had deferred to Mr Brayley-Willmetts in relation to technical matters. On balance, whilst she may benefit from attending a more practical operator licence awareness course, I find her good reputation is tarnished by the parking matter but otherwise remains intact.

27. I referred in the hearing to the DVSA SIPCAT as being a sea of red and amber. Mr Brayley-Willmetts told me of his background in DVSA (VOSA or Vehicle Inspectorate I believe at the time), as fleet engineer for Somerset Council and of running a transport consultancy. The issues identified by the Vehicle Examiner are basic and fundamental. A DVSA inspection should not be finding them on a 2-vehicle licence where he had been Transport Manager since February 2022.

28. The operator trusted Mr Brayley-Willmetts to upload their compliance documentation. He failed to do so. Checks by the clerk on the day using the audit function showed no attempt to upload was made. If Mr Brayley-Willmetts thought he had done so, why did he not check that the documents were there? He had the same access to the case as I did.

29. At no time did he seek to provide any evidence of the compliance systems on the other licence for which he is Transport Manager although, in fairness, I note that the call-up did not mention Somerset Minibuses. It



refers simply to “anything else which you think will show you are a compliant Transport Manager or are taking steps to address the failings identified”.

30.Mr Brayley-Willmetts told me that he only became aware of the deficiencies in the safety inspection reports when they were identified by DVSA. The Examiner visited on 27 February 2024 and his report completed on 21 March. Assurances were provided by Mr Brayley-Willmetts on 7 April and referred to a meeting with the maintenance provider on 5 April. The Vehicle Examiner was promised a “more robust approach”.

31.Inspection of the compliance documents brought to the inquiry showed minimal improvement. Five inspection reports were provided, three for GN14RXC and two for RX08GNV. None recorded tyre pressures. All three roller brake tests for GN14 recorded “insufficient load on axle 2 & 3”. Whilst tyre ages are recorded for RX08, the same is not true for GN14 where they are full recorded on one inspection, not at all on another and, curiously and very obviously, on only one side on the third inspection. There are several obvious driver defects being lights damaged, wrong colour or not working and some issue with a side-guard although the description is not such that I can know whether a driver would be aware or not. No driver defect reports were provided so I cannot cross-refer. On GN14, a tyre grows 1mm of tread between 4 May and 15 June. I asked about the technicians’ qualifications but neither Transport Manager had sought that information from the supplier. From a quick review of the records, if I were to use Pannell Commercials for inspections, I would request the work be carried out by G A Wills who seems far more likely to do more of the inspection, if still not to record all of it.

32.These are all simple shortcomings that should be identified by the Transport Manager at the time of the inspection and resolved prior to the vehicle reentering service. I was promised that they would be raised in another meeting to be had at some time in the future. Also in the compliance documents are two receipts for tyre changes. Attached to them is the retorque card.

[image]

33. So it seems the wheel was not re-torqued as it is required to be. Again, a straightforward Transport Manager control that has not been exercised.

34. I have found in this operation that the traffic matters have been the responsibility of Ms Gillbard and the roadworthiness matters the responsibility of Mr Brayley-Willmetts. The roadworthiness matters are far from where they should be. Mr Brayley-Willmetts has not exercised the most basic of control, seeking instead to rely on DVSA to identify shortcomings that he will then discuss with the maintenance provider, when he gets round to it some weeks or months in the future. That is not what is expected of a Transport Manager and it is not good enough. Mr Brayley-Willmetts has forfeit his good reputation as Transport Manager.

### **The legal framework**

22. Paragraph 17(1) of Schedule 4 to the Transport Act 1985 provides:

“The Upper Tribunal are to have full jurisdiction to hear and determine on all matters (whether of law or of fact) for the purpose of the exercise of any of their functions under an enactment related to transport”.

23. Paragraph 17(3) of that Schedule provides that the Upper Tribunal may not take into consideration any circumstances that did not exist at the time of the determination which is the subject of the appeal.

24. The Goods Vehicle (Licensing of Operators) Act 1995 (as amended) governs applications and grants of goods vehicle operators' licences and related matters. Transport Managers, as that term is used in the legislation, are required to be of good reputation.

25. Under paragraphs 16(1) and (2) of Schedule 3 to the 1995 Act:

6.(1) In proceedings under this Act or the 2009 Regulation for determining whether a person who is a transport manager is of good reputation or professionally competent, a traffic commissioner must in accordance with paragraph 5(2) (if applicable), consider whether a finding that the person was no longer of good reputation or (as the case may be) professionally competent would constitute a disproportionate response.

(2) If the commissioner determines that the person is no longer of good repute or (as the case may be) professionally competent, the commissioner must order the person to be disqualified (either indefinitely or for such period as the commissioner thinks fit) from acting as a transport manager.

26. The Court of Appeal in **Bradley Fold Travel Ltd and Another v Secretary of State for Transport** [2010] EWCA Civ 695 stated that the Upper Tribunal has the duty, on an appeal to it, to determine matters of fact and law on the basis of the material which had been before the Traffic Commissioner but without the benefit of seeing and hearing from witnesses. The Court of Appeal said that the burden lies on an appellant to show that the process of reasoning and the application of the relevant law requires the Upper Tribunal to take a different view to that taken by the Traffic Commissioner.

27. In **T/2014/25/26 H. Sivyer (Transport) Ltd. and Simon Sivyer** [2014] UKUT 0404 (AAC), the Upper Tribunal said that where a Transport Manager has substantially failed in his or her duty to maintain continuous and effective control of an operator's fleet of vehicles the remedy is to consider and, where appropriate, find loss of good repute as a Transport Manager. Once good repute has been lost, disqualification from acting as a Transport Manager is a mandatory consequence (see paragraph 16(2) of Schedule 3 to the 1995 Act). There is no opportunity, after a finding of loss of good repute, to consider whether or not disqualification is a proportionate response. Instead, proportionality is to be considered when deciding whether or not to make a finding of loss of repute. To justify a finding of loss of repute the matters proved must be such that disqualification represents a proportionate response.

### **Grounds of appeal and arguments**

28. The grounds of appeal state:

Having attended numerous public inquiries both as a DVSA officer and a transport consultant, I believe that the penalty imposed in this case is excessively severe.

29. Mr Brayley-Willmetts also makes the following arguments in the grounds of appeal:

- a. In relation to paragraph 4 of the Traffic Commissioner's decision, 'Mr Williams highlighted a significant number of deficiencies with respect to the completion of the safety inspection reports. Many inspections did not have brake performance figures on the inspection sheet':
  - i. Mr Brayley-Willmetts says that all inspection reports were accompanied by printouts of the roller brake test, so describing this as a deficiency misrepresents the Partnership as not having conducted roller brake tests, which is inaccurate.
  - ii. The Traffic Commissioner says that the report found that the MOT pass rate was of concern and there was no wheel security or tyre management policy in place. Mr Brayley-Willmetts states that policies for wheel security and tyre management were in place at the time of the report. He says that the Traffic Commissioner had copies of those policies but did not acknowledge them.
- b. In relation to paragraph 7 of the Traffic Commissioner's decision Mr Brayley-Willmetts notes that Mr Martin acknowledged later in the inquiry that an email confirming attendance had been sent on 27 August 2024. Mr Brayley-Willmetts suggests that the uploaded documents might be found in the same location that the email was found in. He asserts that the statement made in paragraph 7 is not correct given that the email acknowledging attendance had been sent.
- c. In relation to paragraph 11 Mr Brayley-Willmetts says that the vehicle was taken for a roller brake test where the imbalance was identified and says that it was immediately rectified, retested and passed the roller brake test. He states that he is unclear what more could have been done and says that the second test is not mentioned in the report.
- d. In relation to paragraph 22 Mr Brayley-Willmetts highlights the use of the words 'likely' and 'probable' and suggests that any doubt should have been resolved in his favour.
- e. In relation to paragraph 28 Mr Brayley-Willmetts refers back to his point on paragraph 7 and suggests there are questions in relation to the process used to confirm the receipt/upload of compliance documentation.

- f. In relation to paragraph 29, Mr Brayley-Willmetts says that the criticism of him for not submitting documentation in relation to another company where he serves as external Transport Manager is unwarranted, because the call-up letter did not mention the other company.

30. At the hearing, Mr Brayley-Willmetts addressed us on the above and made the following points:

- a. He was unhappy with the attitude of the Traffic Commissioner who had accused him of not uploading the paperwork and then coming back at the end of the hearing and saying that the clerk had found an email from him. Mr Brayley-Willmetts suggested that the documents he had uploaded might be found in the place they had found the email.
- b. He had great difficulty in obtaining a recording/transcript from the Office of the Traffic Commissioner.

### **Analysis and conclusion**

*The Traffic Commissioner's approach to Mr Brayley-Willmett's failure to upload documents – paragraphs 7, 28 and 29.*

31. Paragraph 7 is an explanation of what happened at the start of the hearing and sets out what the Traffic Commissioner said to the attendees and their responses. Having read the transcript we find that it is an accurate summary of the start of the hearing.

32. It is true that there was a later discussion of whether Mr Brayley-Willmetts had confirmed attendance. That shows that the Traffic Commissioner originally told Mr Brayley-Willmetts that the clerk had not received an email confirming attendance in relation to the relisted hearing and then later confirmed that the clerk had found the email in question. In our view, it may have been preferable to include in the decision a summary of this later part of the hearing as well. However, the failure to do so is not material, because it is clear from the findings of fact and the operative part of the decision, that a failure to confirm attendance did not form part of the reasons for the Traffic Commissioner's decision.

33. The Traffic Commissioner found as follows:

28. The operator trusted Mr Brayley-Willmetts to upload their compliance documentation. He failed to do so. Checks by the clerk on the day using the audit function showed no attempt to upload was made. If Mr Brayley-Willmetts thought he had done so, why did he not check that the documents were there? He had the same access to the case as I did.
34. The Traffic Commissioner took account of the failure to upload compliance documentation, but he did not take account of any failure to confirm attendance and it does not form part of his decision. Whether or not Mr Brayley-Willmetts confirmed that he was attending the hearing is irrelevant to the Traffic Commissioner's conclusions in paragraph 28 in relation to uploading documents.
35. Mr Brayley-Willmetts suggested in his grounds of appeal that given the clerk had later found his email confirming the attendance, the documents he had attempted to upload might be found in the same location. That was not raised with the Traffic Commissioner. In any event, Mr Brayley-Willmetts said he had tried to upload the documents, not that he had tried to email them to the Office of the Traffic Commissioner. In those circumstances, there was no prospect of the documents being 'found' in the clerk's email inbox and the audit function showed that no attempt to upload had been made.
36. We find that the Traffic Commissioner was entitled to reach the conclusions he reached in relation to the uploading of documents on the basis of the evidence before him.
37. In paragraph 29 the Traffic Commissioner states:
- At no time did he seek to provide any evidence of the compliance systems on the other licence for which he is Transport Manager although, in fairness, I note that the call-up did not mention Somerset Minibuses. It refers simply to "anything else which you think will show you are a compliant Transport Manager or are taking steps to address the failings identified".
38. We find that the Traffic Commissioner's reasons could have been clearer on this point. The Traffic Commissioner sets out that Mr Brayley-Willmetts did not seek to provide evidence of the compliance systems on the other licence for which he is Transport Manager but then states 'in fairness' that the call-up did not mention that operator. It is not clear what the Traffic Commissioner's conclusion was on

Mr Brayley-Willmetts's culpability on this point, nor what weight it carried, if any, in his decision.

39. Overall, we find that the reasons are adequate, and that any error in not providing clearer reasoning on this particular finding is not material, because (i) whatever the Traffic Commissioner's conclusions, it is clear that in reaching those conclusions he did take into account the fact that the call-up had not mentioned the other operator and (ii) as set out below, we find that the Traffic Commissioner was entitled to reach the decision he reached on the basis of the other matters set out in the findings of fact.

*Paragraph 4 of the Traffic Commissioner's decision*

40. Paragraph 4 forms part of the 'background' section of the Traffic Commissioner's decision. It is not part of the 'findings of fact', nor is it part of the 'decision' section. It is a summary of what the DVSA Vehicle Examiner Adrian Williams found in his report in February 2024. Mr Williams' report concluded that 'Wheel & Tyre Management' was unsatisfactory and recorded that no wheel security or system or tyre management policy or system had been seen. We find that paragraph 4 of the Traffic Commissioner's decision is a reasonable summary of the findings of that report.
41. Although the relevant policies were not in place at the time of Mr Williams' visit, it is right that in response to that report the Partnership developed an operating policies booklet and sent a copy to the DVSA on 7 April 2024. Although the Traffic Commissioner records at paragraph 5 that the Transport Managers responded to the report in April, he does not include the fact that they included the new operating policies booklet.
42. The Traffic Commissioner does not have to set out every aspect of the background in his decision. The failure to have these policies did not form part of the Traffic Commissioner's findings of fact and does not form part of the reasons for his decision.
43. For those reasons we do not accept that this demonstrates any error of fact or law in the Traffic Commissioner's decision.

*Paragraph 11 of the Commissioner's decision.*

44. Paragraph 11 forms part of the section of the decision headed 'The public inquiry'. It is a summary of the content of that part of the hearing. The relevant part of the transcript reads:

11. ... I referred to the 56% service brake imbalance on a front axle commented upon by the Examiner. The driver had made no mention of it.  
...

45. Having read the transcript we find that paragraph 11 is an accurate summary of what happened in that part of the public inquiry. The matters raised by Mr Brayley-Willmetts were not discussed in the public inquiry and therefore would not be expected to be included in paragraph 11, which is summary of what happened and what was said in the public inquiry.

46. The DVSA report records:

Safety inspection report 07/10/23, Brake test 06/10/23 Fail due to 56% imbalance on 1st axle. Brake test pass 07/10/23, no brake test on previous safety inspection. it is unknown how long the brake imbalance was present. Supervisor signature section not completed and brake test section not completed. No brake test on previous safety inspection.

47. It is apparent from the transcript that the Traffic Commissioner's questions and thus his concern related to why the brake imbalance had not been picked up before the brake test and not in relation to any failure to take action once the imbalance had been identified. There is no error of fact or law in not including reference to the matters raised by Mr Brayley-Willmetts in the decision.

*Paragraph 22 of the Traffic Commissioner's decision*

48. Paragraph 22 forms part of the Traffic Commissioner's findings of fact. It reads:

Vehicle Examiner Williams says "the tyre prohibition defects would likely have been present at the last driver walkaround check and possibly longer from the condition of the tyre". Whilst it may just be possible that two tyre defects occurred the previous day, more likely than not, and having regard to the



Vehicle Examiner's comments, at least one, probably both, were of longstanding. Section 26(1)(c)(iii) is made out.

49. Mr Brayley-Willmetts highlights the use of the words 'likely', 'possible' and 'probable' and suggests that any doubt should have been resolved in his favour.

50. The Traffic Commissioner makes his findings of fact using the standard 'the balance of probabilities'. He is entitled to make findings on the basis of what is 'likely' and 'probable' and to reject an alternative which is 'possible'. There is no error of law or fact in the Traffic Commissioner's approach.

*Delay in providing a transcript/recording*

51. Any delay in providing a transcript/recording postdates the relevant decision and cannot amount to an error or procedural unfairness in relation to the decision under appeal. We were satisfied we could proceed fairly now that Mr Brayley-Willmetts had been provided with the transcript and has had the opportunity to make any points he wished on the basis of that transcript.

*The findings made by the Traffic Commissioner*

52. We find that the Traffic Commissioner was entitled, on the basis of the information before him, to make the findings that he did.

53. The Traffic Commissioner was entitled, on the evidence before him, to make the adverse findings of fact that he made, in particular at paragraphs 21, 22 and 25. He was entitled, on the evidence before him, to make the findings at paragraphs 25-26 that, as a matter of fact, Mr Brayley-Willmetts was responsible for the more technical matters. He was entitled to reach the conclusion in paragraph 27 that:

The issues identified by the Vehicle Examiner are basic and fundamental. A DVSA inspection should not be finding them on a 2-vehicle licence where he had been Transport Manager since February 2022.

54. We have already considered paragraph 28 above.

55. As we set out above, the Traffic Commissioner's findings in paragraph 29 are not entirely clear, and it not clear what weight, if any, the Traffic Commissioner placed

on those particular findings. However, given the other findings that the Traffic Commissioner made, it is clear to us that the Traffic Commissioner was entitled to reach the conclusions that he reached even if no weight is placed on the matters set out in paragraph 29. On that basis we find that any failure to provide clearer reasons in relation to paragraph 29 is not material.

56. The Traffic Commissioner considered the compliance documents brought to the inquiry and concluded at paragraph 31 that there had been ‘minimal improvement’. On the basis of the detail provided in that paragraph, that was a conclusion that he was entitled to reach.

57. In the light of the information before the Traffic Commissioner, he was entitled to reach the conclusion in paragraph 34 that, as a matter of fact, the roadworthiness matters were the responsibility of Mr Brayley-Willmetts. He has explained, to an adequate standard, why he took a different approach to Mr Brayley-Willmetts than he took to Zena Gillbard.

58. Taking all that into account, the Traffic Commissioner was entitled to reach the conclusion that the roadworthiness matters were ‘far from where they should be’ and that Mr Brayley-Willmetts had ‘not exercised the most basic of control, seeking instead to rely on DVSA to identify shortcomings that he will then discuss with the maintenance provider, when he gets round to it some weeks or months in the future’.

59. Given those findings, we are not persuaded that the Traffic Commissioner’s finding of a loss of repute, and the consequent disqualification for a year, was a disproportionate response. We are not persuaded that the decision was plainly wrong.

60. On that basis we dismiss the appeal.

**Sophie Buckley  
Judge of the Upper Tribunal**

Authorised by the panel for issue on 25 June 2025

*This decision is given under paragraph 16(4) of Schedule 3 to the Goods Vehicles (Licensing of Operators) Act 1995.*