



**Neutral citation No: [2025] UKUT 328 (AAC)**  
**Appeal No. UA-2025-000137-T**

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

**Before:** **E Mitchell, Judge of the Upper Tribunal**  
**D Rawsthorn, Specialist Member of the Upper Tribunal**  
**M Smith, Specialist Member of the Upper Tribunal**

**Appellants:** (1) K & B Haulage Ltd; (2) Kyle Gettings

**Hearing:** Cardiff Civil Justice Centre on 11 August 2025

**Representation:** Neither party attended the hearing

*On appeal from:*

Decision maker: Traffic Commissioner in the Western Traffic Area  
Commissioner's ref: OH2040441  
Date of decision: 13 January 2025

## **SUMMARY OF DECISION**

### **100 Transport (Traffic Commissioner and DfI NI) appeals**

#### **100.12 Revocation, suspension and curtailment**

#### **100.13 Disqualification**

##### **Judicial summary**

The Traffic Commissioner properly considered whether revocation of an operator's licence and disqualification orders were a proportionate regulatory response. In fact, the Commissioner's careful questioning of the operator at a public inquiry about the likely consequences of different degrees of regulatory intervention, may, in the Upper Tribunal's view, properly be considered a model of informed proportionality enquiry.

*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 judge follow.*

## **DECISION OF THE UPPER TRIBUNAL**

**This appeal is DISMISSED.** The Traffic Commissioner's decision of 13 January 2025 directing revocation of the First Appellant's operator's licence (no. OH2040441), under section 26(1) of the Goods Vehicles (Licensing of Operators) Act 1995, was not made in error of law or fact. The Commissioner's decisions of 13 January 2025 to make two-year disqualification orders in respect of both Appellants, under section 28(1) and (5) of the 1995 Act, were not made in error of law or fact. The Commissioner's decisions stand.

## REASONS FOR DECISION

### Introduction

1. In these reasons:

- “1995 Act” means the Goods Vehicles (Licensing of Operators) Act 1995;
- “operator” means the 1<sup>st</sup> Appellant;
- “OTC” means Office of the Traffic Commissioner;
- unless otherwise indicated, references to pages are to pages of the OTC case file.

### Factual background

#### The operator’s licence

2. The operator’s application for a licence under the 1995 Act, dated 5 January 2021 (page 31), stated that the maximum time between safety inspections for vehicles and trailers would be six weeks, and that safety inspections would be carried out by an external contractor (Caldicot Fleet Maintenance Recovery). The application, which was made on behalf of the operator by its director Kyle Gettings, also stated as follows:

#### **“15. Undertakings**

I understand that by signing this application I am accepting the undertakings below; that they will be recorded on the licence; that failure to comply with the conditions or undertakings recorded on the licence may result in the licence being revoked, suspended or curtailed; and that failure to comply with these conditions is a criminal offence.

- ...
- Vehicles and trailers, including hired vehicles and trailers, are kept in a fit and serviceable condition;
  - Drivers report promptly any defects or symptoms of defects that could prevent the safe operation of vehicles and/or trailers, and that any defects are recorded in writing;
  - Records are kept (for at least 15 months) of all driver reports that record defects, and all safety inspection, routine maintenance and vehicle repair reports, and that these are made available on request...

**I declare that the statements made in this application are true and that all supporting evidence supplied with regard to my application is correct. I understand that it is an offence to make a false declaration.”**

3. The licence granted in response to that application was a standard international goods vehicle operator’s licence authorising the use of ten vehicles and ten trailers. Subsequently, it was effectively converted into / replaced with a restricted licence. The operator’s application to vary its licence by converting / replacing it with a restricted licence (page 51), included undertakings that were materially the same as those given on the application for a standard licence. The application was undated, but it appears that a restricted licence was effective from October or November 2024.

4. On 31 July 2024, the operator’s designated transport manager informed the OTC that he had resigned his position with immediate effect (page 199).

#### DVSA Vehicle Examiner involvement with operator

5. On 4 October 2024, a PACE (Police and Criminal Evidence Act 1984) interview under caution was conducted, attended by Kyle Gettings and DVSA Vehicle Examiner Dominic Smith. The transcript of the interview (page 159) includes the following:

“...Can you explain why the vehicle [RE09 AVO) was being operated on 20th August 2024 without periodic mot and without vehicle excise licence?

**Reply that lorry was being maintained from looking at it, I believe it was having a wheel bearing done, so we didn't have possession of the vehicle.**

Who did have possession of the vehicle?

**Reply Steve Avery**

Do you have any documentation to support the work that was done on the vehicle at Steve Avery?

**Reply He won't give us any of the PMI's and maintenance records, but we have the invoices**

Paperwork being the maintenance records?

**Reply Yes, the PMI's, we may have invoices which we can look out for it and send them too you**

During the 1st visit we requested to inspect YK16XYA and requested for the vehicle to return back to base but due to the distance it wasn't possible.

...

Vehicle YK16XYC we have verbally requested to inspect several times on 23rd and 27th August 2024. Where was the vehicle on these dates?

**Reply I don't remember those dates but I can look into it**

On 27th August 2024 you informed both myself and Vehicle Examiner Smith that the vehicle was in for maintenance work at Wall's Trucks, is that correct?

**Reply again I'm unsure with the dates, but it was in at Walls trucks for maintenance work, I don't agree with the several times, I believe it was once or twice**

Why was vehicle YK16XYC in the workshop?

**Reply Clutch repair**

When were you told that it was fixed and ready for collection?

**Reply I'm not sure, I can't remember**

...

When XYZ left the maintenance provider, where did it go to?

**Reply I assuming that it came straight to the yard**

On 27th August 2024 both myself and VE Smith repeatedly asked you where XYZ was where you continued to state that the vehicle was having maintenance undertaken.

...

Throughout the investigation the black bulk trailer hasn't been produced. On 27th August 2024 where was the Black Bulk trailer?

**Reply at K & D, at maintenance provider**

...

On 23rd August 2024 we requested to inspect maintenance records where we were informed that there wasn't a key for the cabinet.

What maintenance records were available in the office VE Smith seized for inspection, and issued a receipt for those records.

On 27th August 2024 you indicated that the keys still hadn't been found and you forcibly accessed the cabinet where the maintenance files were located.

When inspection of the maintenance files took place, the receipt that was issued on 23rd August 24 was located in the vehicle files.

So if no one had the keys to the cabinet, how did the receipt that was issued on 23rd August be found inside of the files on the 27th August?

**Reply I gave the receipt to Dom [presumably Vehicle Examiner Dominic Smith] and we put it in the vehicle folder on the Tuesday and a new receipt was issued for the files**

During the inspection of vehicle records for XYA it has been noted on the PMI record that K & B Haulage LTD is the operator, however the vehicle has been specified on the operators licence for RS Transport at the time of the inspection. Can you explain why the PMI's are in your name but the vehicle is not specified on your operators licence?

**Reply Richard [possibly a reference to the operator's designated transport manager] was here everyday, Steve Avery would come and grab the lorries and do the PMI's, I'm assuming that because the lorries was here that Steve thought that it was ours**

...

**Reply There has been mistakes being made, I accept these to a point and I need to do better, I'm now a lot more involved with the running of the business and lorries, I did have a transport manager to do this, but I've taken this on myself and ensuring that everything is done correctly. This includes the paperwork side and ensured that we have an electronic systems in place for reminders for tax, insurance, tachograph calibrations, PMI's, literally everything. Our electronic system scheduled for 2 years in advance so we don't miss tachograph calibrations and PMI's etc**

The matters will also be referred to the Traffic Commissioner for consideration, is there anything else you wish to add or say?

**Reply Moving forward I can demonstrate a planner for 2 years in advance, before we would have to pay, before the paperwork for the maintenance / PMI's, now we don't pay until we get the maintenance paperwork, which has proved to be very difficult with the maintenance providers. As a result we have changed maintenance provider again, which will provide**

**paperwork on the same day of testing. We are constantly trying to improve, and we accept any information and guidance and punishment that maybe coming my way. I'm hopeful to keep the operators licence and prove we will do better. Unfortunately, I can't change the past and the past failings but I can make sure that it doesn't happen again. I would be happy to evident this every two to three months if required.**

This concludes the interview. I will now ask you to read the notes of interview and sign them as a true record, or to indicate in which respects you consider any part of them to be incorrect.

I confirm that this is a true record of the interview.”

6. On 23 October 2024, the operator emailed Dominic Smith, DVSA Vehicle Examiner (page 138):

“Please see below reply in regards to the maintenance investigation [dated 5 October 2024, page 147].

We firstly would like to hold our hands up and accept that things have not been done correctly previously, this was an oversight of the Director who had employed a transport manager and assumed he was completing all that was needed, when on discovery it was clear he had not.

Kyle has now taken responsibility over this and we have made a lot of changes since your visit to show our commitment for changes going forward.

...

We now have a new service provider, work is completed on time, in a timely manner and inspection records received at time of vehicle collection or earlier, inspection sheets are supplied via the pendigo system and all relevant sections are completed, any errors/issues are raised immediately and fixed imminently. Every inspection includes a roller brake test.

...

We have now started using Davis Commercials in Newport, we have sent a maintenance contract to them, awaiting signing, and I will be updating the operators license to show them as our only maintenance provider when I receive signed documentation.

... ”

### The public inquiry

7. On 14 November 2024, the OTC wrote to the operator (page 17):

“I refer to your heavy goods vehicle operator’s licence and the DVSA visit dated 23/08/2024 and the shortcomings identified.

The Traffic Commissioner has reviewed your licence and has decided to hold a **public inquiry**...

...

### The Traffic Commissioner’s powers

...

If the Traffic Commissioner revokes a licence, they may also disqualify the company or [you/any of the partners/any of the directors] for a specific period or indefinitely from holding another operator’s licence, and from being involved with any company which holds such a licence...

You should consider making contingency arrangements for any outcome from the inquiry, **WHICH MAY INCLUDE THE LOSS OF YOUR LICENCE.**

### The issues

The issues of concern to the Traffic Commissioner are allegations that:

a) you have breached the conditions on your licence, namely

- i) Fail to notify of change in maintenance arrangements...
- b) your vehicles or drivers have been issued with prohibition notices by DVSA or the police in the past 5 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 and trailers would be kept fit and serviceable;
- ...iii. that you would keep records for 15 months of driver defect reports, safety inspections and routine maintenance and make them available on request;
- iv. 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
- ...You should...attend the hearing prepared to answer some of the following points where they may not meet the required standards (not an exhaustive list):
- driver detectable defects appearing at preventative maintenance inspections instead of being picked up by your drivers as part of their daily walkaround checks;
  - vehicle brake performance not being measured sufficiently, for example, vehicles are not undergoing a roller brake test in a laden condition or where wheels lock out;
  - gaps in your records which indicate that vehicles have not been inspected at the stated frequency;
  - drivers not identifying defects prior to the issue of a prohibition notice;
  - actions the directors take to maintain oversight of the auditing and review of maintenance documents;
  - an explanation of why the suggested starting points in the DVSA Guide to Maintaining Roadworthiness were not adopted..."

8. The public inquiry hearing was held on 18 December 2024. One issue before the Traffic Commissioner was the good repute of the operator's designated transport manager (who resigned on 31 July 2024), but the manager did not attend the hearing. The operator had informed the OTC that it would be represented by a solicitor at the hearing (page 381a), but in the event no representative attended. We now set out those parts of the transcript of the hearing (beginning at page 292) that are of most relevance to the operator's grounds of appeal to the Upper Tribunal:

"TC (Traffic Commissioner): ...you're not represented...so what happened there?

KG (Kyle Gettings): [solicitor] was exceptionally busy, and for her to take it on she needed more time. And to be fair, sir, I, there's not much to defend me. I can see my failings and, you know, with the greatest respect, I don't want to waste your time and you know, all we can do is show you how we failed and how we, you now, progressed now, so it's very limited what she can defend me for.

...

KG:...so every time a lorry went in it was like 4,000 or 5,000 pounds every time it was going in for an inspection...so Steve Avey...was our contract manager, he would just turn up, just grab the lorries, take them up because we was next door. He would then do the work. He would then invoice us. Then when he was coming to MOTs, it was like 4, £5,000 or £6,000, which we was like, hang on, how is it so much when you're supposed to be keeping on top of these? However, they would then go into the MOTs and then fail. So, we're like, right, we're paying all this money, why is it now failing every time it goes to MOT? We can't do that. That goes against us. So that's when we looked around. So, we found a company called...EMH and we started using EMH and they said, right, OK, we want our money up front. I said, I'll tell you what, we'll pay you 50% up front because we were paying them and then weren't getting the paperwork for several weeks later. I didn't see it as an issue because [transport manager] was dealing with of all this, and he never sort of relayed it back to me. I assumed everything was fine and this is only now that I've gone deeper into all of this is how I've seen the huge failings.

...

TC: So, what facilities – EMH...what facilities have they got?

KG: Well, this is it. So, they were coming to us, and they were doing it and doing a brake test at [unintelligible] which then when we spoke to Dom [DVSA Vehicle Examiner], he said he can't do that. I said, how can he do it? And I was like, I don't know, he's told me he's DVSA approved. Which you sort of believe you have to go with someone who says they are, especially when they use the words DVSA. However, when Dom told us, we changed immediately, and that's when we go to Davis, which you'll see all the document with Davis now... they're very, very good. They're very thorough. They won't let the lorry go unless it's right. And the paperwork is instantly before they send the invoice. We pay the invoice and it's done. You know, we have no worries anymore of paperwork not turning up, the right things on there because when Dom actually took the time to go through it, we could see that they weren't doing tyre ages or, you know, things like that, very small things, or the date, not the date, sorry, the unit number was wrong, whereas all these, they're perfect...

...

TC: OK. I'm going to turn now to the vehicle examiner's statement...page 70... it says, 'The number of trailers in possession has not been recorded due to the operator not confirming what trailers are in their possession', and throughout this there's reference to a black bulker, I think, and a blue bulker, and you didn't make them available for inspection.

KG: That, I'm sorry, that is incorrect. So, the trailers, which we actually showed on the evidence, it was scrapped because they were no good. So, we had someone come down and they had a look, and they were scrapped. The one trailer we were using was a friend of ours from TM Waste, which I explained that to them, and then the other trailer was with KND... so they could never inspect that at that time.

TC:...page 155...it says, 'On 27th of August 2024, director Kyle Gettings drove the vehicle XYZ and handed over the vehicle to Driver [Sergei] (ph)...At the time of handing over the vehicle it doesn't appear there was a trailer attached, but later in the journey, Driver Sergei collected a black bulk trailer local to the operating centre.'... you were interviewed about this... If I put it to you, you seemed to be very evasive in that interview. You'd been asked questions and you're not answering them straight, being quite difficult, and there appears to be evidence that actually, you'd driven that vehicle.

...

TC: So, you're saying, then later you say you didn't know that the lorry had been collected.

KG: Yes, I did, yes.

TC: But it was your tachograph card that was in the head –

KG: I lied to them, yes, I did.

TC: You lied?

KG: Yes.

TC: Why did you do that?

KG: Honestly, I don't know. I believe, I think I was being smart is the honest answer, trying not to answer them and going around it.

TC: Let's move on to something else, and this is an unusual one. The maintenance records, they were in a cabinet that you didn't have keys for.

KG: That's correct.

TC: How did you not have keys for it?

KG: Because [transport manager] had them. So, [transport manager] comes up every week, and I can show you a message, every week he was coming up and doing 8 hours every Friday. So, he had them, I had no real need to go into it until making aware of it, being made aware of it.

TC: So, he resigned on the 31st of July, and this is the 23rd of August.

KG: He still came up 8 hours a week. And I could show, he was still coming out because I told him I still need him to do that. So, he actually resigned, and he left because he was there full time.

...

TC: Now it appears throughout this that you've been blaming your transport manager for most of the shortcomings.

KG: At first, yes, because I believe if I'm paying someone to do the job, then they should be doing that job. But looking over it all now, then no, it's not, he's not entirely at fault. I am at fault. I should have made sure he was doing his job... That's my biggest failure. I didn't manage him. Naively, I thought by paying all this money for him, then I didn't have to worry about it, but in actual fact, if someone's doing the job then I need to be a lot more involved to make sure they're doing the job...

KG:...I have text messages, but they're not going to be of no relevance to you, but asking Steve for the paperwork, he wasn't prepared to give us the paperwork until we paid him because we owe him like £4000. I'm like, well, we're not going to pay you until you've given us the paperwork. And this is why the maintenance records are missing. This is why, you know, we've printed off all the invoices so you could see he's actually charged us for them. And, sorry, apologies, I just want to add at the time as well, no one wanted to accept blame right away until they actually go away and think about it rather than sitting there and saying nothing, it's probably the wrong course of action I took, but you know, reflecting on it and being in front of yourself now, I've got to be honest with myself and, again, honest with you.

...

TC:... how come your vehicles are all out of tax, and one was out of MOT?

KG: There is no answer, that's just damn right stupidity. It is damn right stupidity. When they said about it was - yeah. I can't blame anyone. There's no one to blame but myself. However, we have put a system in place now...we have alerts when anything's even close, so this doesn't ever happen again.

TC:...I've also had a look this morning at PMI for YK16 XYA.

KG: Yes.

TC: It was inspected on the 9th of December, so only a week ago.

KG: Yeah.

TC: And this is done obviously at Davis Commercials, and they found rear tyres below legal limit and in poor condition, and the action to be taken was to rectify it. So, then I have a look, so that's the 9th of December. And we've got some driver defect reports in here. It also records an air malfunction which the driver had been recording, but... so the latest one I had before the inspection appears to be the 6<sup>th</sup> of December where Sergei reports an air system malfunction, which he's been reporting for, to be fair to him, for months.

KG: Yes.

TC: But he didn't mention anything about the tyres being a bit low at the back. So how do I go from that, which I've got, it's taken out an odometer reading of 787,053 and a PMI that's 787,201, so 150 kilometres later, which records that the rear axle tyres are below the legal limit.

KG: I don't know. I haven't looked over that file yet, so.

TC: I mean actually recording them, the tread depths, he's actually recorded 3 out of 4 tyres at 0 millimetres tread depth.

KG: Who has?

TC: Davis Commercials.

...

TC: There are some questions I have to ask you, which you would think are blindingly obvious, but I have to ask you. Let's start with the ones that are maybe slightly less obvious. So, one thing I could do is curtail the licence from 10 vehicles to 10 trailers, and you're operating 2 at the moment?

KG: Yes, that's all we're doing, yes.

TC: So, if I was to curtail it to 2 or to 3?

KG: Three would be fantastic.

TC: If I was to suspend the licence, say for a period of 1 month or 3 months, how would you cope?

KG: Sir, whatever your decision is, I'll respect it. So, if it's 1 month, I'll learn to cope, 3 months I'll learn to cope, you know, it will be a detrimental factor against the company, but you're going to do what's best for everyone. So, one month, I'll be honest, one month would be a struggle, but I would heed my warning, and I'd understand, and I would get by. 3 months, that would be a lot...

...

TC: Right. As I say, some of these questions might be a bit obvious but I have to ask them, if I was to revoke the licence entirely, what would that do to your business?

KG: It would completely collapse. And obviously I'd have to get rid of drivers - the only driver we have, obviously - and potentially sell my lorries.

...

TC: And then if I revoke the licence, I can also disqualify you for a period, maybe 3 years, from holding a licence again. So, what would you do in terms of your career and employment?

KG: I don't know. It's, like I say, it's been a financial strain all year, and to try and start something else now would be very difficult I believe. Especially as now we're making good out of a very bad situation.

...”

## **The Traffic Commissioner's decision**

### Findings of fact

9. The principal concern of the Appellants' grounds of appeal to the Upper Tribunal relates to the Traffic Commissioner's maintenance findings, which were as follows:

“21...

- Safety inspections are declared to be at six-weekly intervals. In total, only seven vehicle and two trailer safety inspection reports were made available for four vehicles and an unknown number of trailers over a fifteen-month period. There is a suggestion that they were carried out, but the maintenance provider would not provide the documentation. That has not been evidenced. In any case, equipment should not re-enter service until the transport manager or responsible person has had sight of the declaration of roadworthiness. Section 26(1)(e) [of the 1995 Act] is made out. Given the paucity of inspections evidenced and the resultant poor state of the fleet, I attach considerable weight.

- There is evidence that drivers are not recording defects as they are required to do. Forty-four percent of safety inspections included driver reportable defects. As recently as October 2024, a vehicle was presented for a safety inspection with three tyres measured at 0mm tread depth. Only 14 driver defect reports were made available by the operator for four vehicles over a 15-month period.

- The MOT failure rate is extremely poor. Of seventeen tests, eight have failed at first presentation, a failure rate of 47% against a national average of 8.48%. Vehicles have clearly not been kept fit and serviceable.

- Two prohibitions have been issued to authorised vehicles. Section 26(1)(c)(iii) is made out...

22. There are many other major shortcomings identified in the maintenance report such as inspection reports incorrectly completed. The shortest gap between safety inspections is 102 days, meaning it was 60 days late. There was no load security policy or training, no effective wheel and tyre management, no management of emissions systems. I would set them out in detail, but normally serious matters seem quite insignificant against the findings I have already made.”

10. The Traffic Commissioner also found in paragraph 21 of his reasons that:

(a) vehicle excise tax for four vehicles expired on 31 January 2024. Thereafter all four vehicles were in “regular use” yet the tax remained due at the date of DVSA’s visit to the operator on 23 August 2024;

(b) one vehicle’s MOT expired on 30 June 2024. Thereafter, the vehicle remained in “regular use” yet the vehicle had still not had its MOT examination at the date of DVSA’s visit to the operator on 23 August 2024;

(c) Kyle Gettings lied to DVSA Examiners “about not having driven YK16XYC on the morning of 27 August 2024”;

(d) Kyle Gettings failed to cooperate with the DVSA by failing to make available for inspection a trailer that was specified on the operator’s licence despite reasonable requests to do so, and “went further in that he facilitated the removal of the trailer from the vicinity of the operating centre”;

(e) three of four authorised vehicles had not had tachograph data downloaded head units downloaded within the required 90-day period, which was exceeded by between 115 and 237 days. The fourth vehicle’s tachograph data could not be downloaded by

DVSA and “more likely than not, it had not been downloaded for some considerable time too”;

(f) the operator sub-contracted work to a limited company that did not hold a goods vehicle operator’s licence;

(g) “there was no management of compliance with the working time directive”.

### The Traffic Commissioner’s analysis

11. The Traffic Commissioner accepted certain positive considerations in the operator’s favour: co-operation with public inquiry process; operator’s office manager had “made inroads into tachograph systems”; recent maintenance records were an improvement (paragraph 25 of the Commissioner’s reasons). However, “any improvement since the DVSA intervention is significantly tempered by the driving of a vehicle from Newport to Coleford, some 30 miles, having been told that it is unroadworthy with three bald tyres” which “speaks to an underlying culture of non-compliance” (paragraph 25).

12. The operator’s compliance record led the Traffic Commissioner to conclude “that this is not a business I can have any confidence will be compliant in the future”, “the operation has been so dangerous that it must come to an end” and “this is an operation that must come to an end for the benefit of public safety – I find it is no longer fit to be the holder of a goods vehicle operator’s licence” (paragraph 26 of the reasons).

13. In the view of the Traffic Commissioner, this was a ‘severe’ case according to the classification in the Senior Traffic Commissioner’s Statutory Guidance Document No 10 (*Principles of Decision Making and the Concept of Proportionality*). This was a reckless operator whose operation involved compromised road safety, unfair competition, persistent maintenance shortcomings over a 15-month period, and persistent failure to pay vehicle excise tax. The severity of the operator’s regulatory shortcomings “points clearly at revocation and disqualification” (paragraph 27 of the reasons).

14. Regarding disqualification, the Traffic Commissioner reminded himself that a disqualification order is not inevitable upon the revocation of an operator’s licence.

Here, however, there were “two very serious additional features” namely the lies told by Kyle Gettings in an interview under caution and the “failure to cooperate by making a trailer available for inspection”. These fortified the Commissioner’s lack of confidence in future compliance “until there has been a reasonable period of reflection”. A disqualification period of two, rather than three years, was justified given that this was effectively the operator’s first public inquiry and “the apparent lack of any input from the transport manager”.

15. The Traffic Commissioner revoked the operator’s licence and made two-year disqualification orders in respect of the operator (section 28(1), (4) of the 1995 Act) and Kyle Gettings (section 28(5)). The Commissioner also found that the transport manager had lost his good repute and disqualified him from acting as a transport manager for two years but, as we have said, that disqualification order is not challenged in these proceedings.

16. The Traffic Commissioner ordered that his decisions were to take effect from 23.59 on 15 February 2025. The Appellants applied to the Commissioner for his decisions to be stayed (suspended) pending determination of these appeal proceedings before the Upper Tribunal. The Commissioner refused to grant a stay. The stay application was not renewed before the Upper Tribunal.

## **Legal framework**

### Goods Vehicles (Licensing of Operator’s) Act 1995

17. Section 26(1) of the 1995 Act confers power on a Traffic Commissioner to direct that a restricted operator’s licence be revoked on certain grounds, which include:

(a) “that during the five years ending with the date on which the direction is given there has been—

...(iii) a prohibition under section 69 or 70 of the Road Traffic Act 1988 (power to prohibit driving of unfit or overloaded vehicles) of the driving of a vehicle of which the licence-holder was the owner when the prohibition was imposed” (section 26(1)(c)(iii);

(b) “that the licence-holder made...for the purposes of—

(i) his application for the licence,

(ii) an application for the variation of the licence...

a statement of fact that, whether to his knowledge or not, was false, or a statement of expectation that has not been fulfilled” (section 26(1)(e);

(c) “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” (section 26(1)(h)).

18. Where a Traffic Commissioner directs revocation of an operator’s licence under section 26(1) of the 1995 Act, the Commissioner may also, under section 28(1), order that the former licence holder be disqualified from holding or obtaining an operator’s licence “either indefinitely or for such period as the commissioner thinks fit”.

19. Section 28(5) of the 1995 Act provides as follows:

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

(a) where that person was a company, in relation to any director of that company...”.

## **Grounds of appeal**

20. The Appellants’ written notice of appeal argues:

(1) safety inspections were in fact carried out. The “issue was a dispute with a former maintenance provider that resulted in the documentation not being provided at the time of the inquiry” and “due to a disagreement between us and the inspector regarding payment, the paperwork was not available at the time of the inquiry”;

(2) substantial compliance improvements have been made since the public inquiry hearing;

(3) the financial and related consequences of revocation would be dire;

(4) revocation and disqualification were excessive, and a more measured / proportionate sanction should be considered such as “a temporary suspension or operational monitoring period”.

## **Conclusions**

### Why the appeal was heard in the absence of the Appellants

21. On 19 June 2025, the Appellants were given notice that their appeals would be heard at 2 p.m. at Cardiff Civil Justice Centre on 11 August 2025. The notice required the Appellants to confirm by 3 July 2025 that they would attend, or be represented at, the hearing. No confirmation having been received, a reminder letter was sent to the Appellants on 10 July 2025 requesting confirmation of attendance “by return”.

22. On 6 August 2025 (three working days before the hearing), Kyle Gettings spoke to a member of Upper Tribunal staff on the telephone. Kyle Gettings said that he would attend the hearing and be represented by HPJV Solicitors. Rule 11(2) of the Tribunal Procedure (Upper Tribunal) Rules 2008 (2008 Rules) provides that, if a party appoints a legal representative, the representative must send or deliver to the Upper Tribunal written notice of the representative’s name and address. The Upper Tribunal has not received written notice from HPJV Solicitors (or, for that matter, any other communication) that they have been appointed as the parties’ legal representative.

23. Neither Kyle Gettings nor any representative were in attendance at Cardiff Civil Justice Centre at 2 p.m. on 11 August 2025. At 2.15 p.m. the court clerk telephoned Kyle Gettings who informed the clerk that he had sent an email requesting an adjournment because his solicitor was on holiday and would not be able to attend the hearing. The Upper Tribunal had no record of having received such an email but Kyle Gettings informed the clerk that he would “immediately” forward a copy of the email to the clerk’s email address. By 2.30 p.m. no email from Kyle Gettings had been received by the clerk. The judge checked the entries on the Upper Tribunal’s electronic case management system. There was no record of any email as described by Kyle Gettings having been received.

24. Rule 38 of the 2008 Rules provides as follows:

“If a party fails to attend a hearing, the Upper Tribunal may proceed with the hearing if the Upper Tribunal—

(a) is satisfied that the party has been notified of the hearing or that reasonable steps have been taken to notify the party of the hearing; and

(b) considers that it is in the interests of justice to proceed with the hearing.”

25. The Upper Tribunal refused the Appellants’ request for an adjournment which it considered consistent with the overriding objective of the 2008 Rules of dealing with cases fairly and justly. The Upper Tribunal relied on the following considerations in refusing to adjourn. The Appellants have had nearly two months to prepare their cases for hearing. If they wanted to be legally represented, they should not have waited until three working days before the hearing before contacting a solicitor. No written notice of acting has been received from the legal representative, as required by the 2008 Rules. This email requesting an adjournment, which was supposed to have been forwarded “immediately” on the afternoon of 11 August 2025 was not received. These latter two considerations lead us to doubt whether arrangements have in fact been made for a solicitor to represent the Appellants at a hearing. The claim is also difficult to reconcile with Kyle Gettings’ statement on 6 August 2025 that he had made arrangements to be legally represented at the hearing on 11 August. Finally, the Upper Tribunal took into account the apparent merits of the appeals, which it considered to be low, and which militated against granting an adjournment. In the circumstances, the time and public funds that would be expended by adjourning were not justified.

26. For the purposes of rule 38 of the 2008 Rules, the Upper Tribunal was satisfied that the parties had been notified of the hearing (Kyle Gettings’ would not have had a conversation with Upper Tribunal staff on 6 August 2025 about the hearing unless he knew that it was listed for 11 August). The Upper Tribunal was also satisfied that it was in the interests of justice to proceed with the hearing, relying here on the same considerations as were taken into account in refusing to adjourn. The hearing proceeded in the absence of the Appellants.

Why this appeal is dismissed

27. We deal first with the grounds of appeal that are clearly devoid of merit. Ground (2) cannot succeed. Asserted recent, that is after the Traffic Commissioner made his decisions, improvements in compliance cannot cast doubt on the legality of the Commissioner's decision, nor the reliability of his findings of fact. Ground (3) also says nothing about the legal or factual correctness of the Commissioner's decisions.

28. Before considering Ground (1), we note that maintenance shortcomings were but one of numerous adverse compliance findings made by the Traffic Commissioner. None of the other findings are challenged and there is a respectable argument that, even if the maintenance findings are ignored, the Commissioner's decisions have a sound legal and factual basis. In any event, Ground (1) has no merit. The Appellants identify no flaw in the Commissioner's reasons, nor do they argue that the Commissioner overlooked relevant evidence. The argument is simply that the Appellants could not provide evidence of six-weekly maintenance inspections because the operator thought it was being over-charged by a one-time maintenance provider. If that is what happened, it is of no consequence so far as the validity of the Commissioner's decisions are concerned. The operator undertook to retain records of safety inspections for 15 months. That was an unqualified undertaking undiluted by any considerations of cost. The Commissioner was quite right to find that the operator failed to adhere to the promises that it made when it applied for an operator's licence.

29. We note that Ground (4) is unsupported by any analysis of the legal concept of proportionality nor is it particularised. However, out of fairness to the Appellants, we shall assume it is argued that (a) the Traffic Commissioner failed to consider proportionality and (b) the decisions taken were disproportionate.

30. It cannot be said that the Traffic Commissioner failed to have regard to the need for proportionality in making regulatory decisions. Indeed, the Commissioner's careful questioning about the likely consequences of different degrees of regulatory intervention, towards the end of the public inquiry hearing, may, in our view, properly be considered a model of informed proportionality enquiry.

31. We are also satisfied that the Traffic Commissioner's decisions were a proportionate regulatory response to the facts as he found them to be. On those facts,

this was clearly a serious case involving deceit (lying to DVSA Examiners and deliberate frustration of DVSA's legitimate attempts to discharge their regulatory obligations), rank incompetence (failing to ensure that four vehicles were properly taxed for some eight months, and operating a vehicle without a valid MOT), significant ignorance of an operator's legal obligations (inability to provide evidence of safety inspections, outsourcing work to an unlicensed haulier), cavalier approach to tachograph obligations and what was, on any reasonable view in the light of the MOT failure rate, a very poorly maintained fleet of vehicles being vehicles with the potential to cause catastrophic damage to other road users. The Commissioner's categorisation of this as a severe case, for the purposes of Senior Traffic Commissioner Statutory Document No.10, was fully justified and his regulatory response to this severe case was, in our view, proportionate.

32. For the above reasons, these appeals are dismissed.

**Authorised for issue by the Upper Tribunal panel on 25 September 2025.**

Given under section 37(2) and (4) of the Goods Vehicles (Licensing of Operators) Act 1995.