



Neutral Citation No: [2025] UKUT 364 (AAC)
Appeal No UA-2025-000379-T

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

Appellant: Fraser Devlin (t/a Silver Swan Travel)

Before:

Marion Caldwell KC	Judge of the Upper Tribunal
Stuart James	Member of the Upper Tribunal
Gary Roantree	Member of the Upper Tribunal

Representation:

Appellant: Fraser Devlin

On appeal from:

Decision maker:	Deputy Traffic Commissioner for Scotland
Commissioner's ref:	PM2051089 & PM2075368
Date of decision:	4 March 2025

Hearing date: 20 October 2025

Heard at: Employment Appeal Tribunal Building, 52 Melville Street,
Edinburgh EH3 7HF

SUMMARY OF DECISION

**100 Transport (Traffic Commissioner and DfI NI) appeals
100.13 Disqualification**

Judicial summary

The Deputy Traffic Commissioner's decision to disqualify the Appellant indefinitely did not involve an error of law.

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

The decision of the Upper Tribunal is that the appeal is dismissed.

The Traffic Commissioner's decision to disqualify the Appellant for an indefinite period involved neither error of law nor mistake of fact as per the test in *Bradley Fold Travel & Peter Wright v Secretary of State for Transport (2010) EWCA Civ.695*.

REASONS FOR DECISION

Subject Matter

Period of disqualification; indefinite disqualification.

Cases referred to:

Bradley Fold Travel Ltd & Peter Wright –v- Secretary of State for Transport [2010] EWCA Civ 695.

Bryan Haulage No 2 (2002/217).

NT/2013/52 & 53 Fergal Hughes v DOENI & Perry McKee Homes Ltd v DOENI, Priority Freight T/2009/225.

T/2014/59 Randolph Transport Ltd and Catherine Tottenham

Introduction

1. This is an appeal from the decision of the Deputy Traffic Commissioner ("DTC") for the Scottish Traffic Area revoking the operator's licence PM2051089; disqualifying the Appellant from holding a Public Service Vehicle ("PSV") operator's licence for an indefinite period; giving a direction that rendered liable to revocation any operator's licence held by certain entities

should the appellant be involved in that entity as described in section 28 of the Transport Act 1985 for an indefinite period; and refusing the appellant's application for a standard PSV operator's licence (PM2075368). These decisions were given so as to come into effect at 23:59 on 30 May 2025. The Appellant was informed of the decisions by letter dated 4 March 2025 (page 561). (Unless stated otherwise, all page references are to the electronic bundle page numbers.)

2. The Appellant applied to the DTC for a stay of the decisions but this was refused. The Appellant then applied to the Upper Tribunal for a stay. The Upper Tribunal refused the application.
3. At the outset of the appeal hearing before the Upper Tribunal, the Appellant, who was not legally represented, advised the tribunal that the only matter he wished to appeal was the part of the decision making the disqualification indefinite.

Background

4. The factual background to this appeal appears from the documents and the decision of the DTC. The Appellant applied for a standard licence but subsequently changed his application and applied for a restricted operator's licence. On 17 February 2022 he was granted a Public Service Vehicle Restricted Operator's Licence (PM2051089) authorising the operation of one minibus for carrying passengers for hire or reward. The Appellant was issued with one disc. At that time, he was in employment. During the application process, on 18 January 2022, the Appellant accepted an undertaking that should the income from the minibus operation exceed that from all other sources for two consecutive months, he would apply for a standard national licence¹. This was a condition he also acknowledged in an email of the same date².
5. The Appellant's main occupation was terminated in or about April 2022.

¹ Page 209.

² Page 212.

6. The Appellant operated one 16 seat minibus in 2022 and 2023, trading as Silver Swan Travel. He increased his fleet to two vehicles in May 2024 and to three vehicles in August 2024.
7. On 8 July 2024, he applied for a Public Service Vehicle Standard National Operator's Licence, PM2075368, seeking authority to operate 3 vehicles. The Appellant intended to surrender the Restricted Licence when the Standard National Licence was granted. On 22 August 2024 as part of the application process for the Standard National Licence the OTC asked the Appellant about bank statements that he had provided which suggested that he did not meet the "main occupation" requirement for his current PSV Restricted Licence. He replied later the same day explaining that he did not have a "main occupation" other than the Silver Swan business which was why he had applied for a Standard National Licence.
8. DVSA carried out a Desk Based Assessment ("DBA") of the Appellant's operation which had begun in June 2024. The result of the DBA was "unsatisfactory". The DBA identified weaknesses in the Appellant's knowledge of drivers' hours and the Working Time Directive and recommended a further DBA or a visit. The case was passed to Traffic Examiner Joan Leslie for further investigation. TE Leslie carried out a visit on 25 October 2024 and completed a Traffic Examiner Visit Report on 19 November 2024. A copy of the report was sent to the Appellant on 19 November 2024. Mr Devlin responded to the report on 4 December 2024.
9. The Appellant underwent training as a Transport Manager ("TM") in November 2023 and obtained his Transport Manager Certificate of Professional Competence in May 2024.

Legal Framework

10. Section 12 of the Public Passenger Vehicles Act 1981 ("the 1981 Act") provides that a public service vehicle shall not be used on a road for carrying passengers for hire or reward except under a PSV operator's licence granted in accordance with the Act.

11. A licence may be either a standard licence or a restricted licence. Section 13 of the 1981 Act provides:-

13.— Classification of licences.

(1) A PSV operator's licence may be either a standard licence or a restricted licence.

(2) A standard licence authorises the use of any description of public service vehicle and may authorise use either—

(a) on both national and international operations; or

(b) on national operations only.

(3) A restricted licence authorises the use (whether on national or international operations) of—

(a) public service vehicles not adapted to carry more than eight passengers; and

(b) public service vehicles not adapted to carry more than sixteen passengers when used—

(i) otherwise than in the course of a business of carrying passengers; or

(ii) by a person whose main occupation is not the operation of public service vehicles adapted to carry more than eight passengers.”

12. On an application for a restricted licence, the Traffic Commissioner (“TC”) must consider and be satisfied that the applicant is, among other things, of good repute (sections 14 and 14ZB) as determined in accordance with paragraph 1 of schedule 3

13. Further, as regards revocation of a licence, the 1981 Act provides:

Section 17(2) a Traffic Commissioner may, on any of the grounds specified in subsection (3) below, at any time –

(a) revoke a PSV operator's licence

(3) the grounds for action under subsection (2) above are –

(b) that there has been a contravention of any condition attached to the licence;

(d) In the case of a restricted licence, that the holder no longer satisfies the requirements of section 14ZB

14. Section 14ZB(a) is the requirement of good repute (as determined in accordance with paragraph 1 of schedule 3).
15. Sections 14, 14ZA and 14ZC set out the requirements for the grant of a standard PSV operator licence. In this case the relevant requirements are s.14ZA(2)(b) - that the applicant is of good repute, and s.14ZA(3)(a) that the applicant has designated a transport manager who is of good repute.
16. Section 28 of the Transport Act 1985 provides as follows:

(1) Where the traffic commissioner for any traffic area revokes a PSV operator's licence, he may order the former holder to be disqualified, indefinitely or for such period as he thinks fit, from holding or obtaining a PSV operator's licence.

(4) where a traffic commissioner makes an order under subsection (1) above with respect to any person, he may direct that if that person, at any time during such period as he may specify –

(a) Is a director of, or holds a controlling interest in –

(i) a company which holds a licence of the kind to which the order applies; or

(ii) a company of which a company which holds such a licence is a subsidiary; or

(b) operates any public service vehicle in partnership with a person who holds such a licence;

the powers under section 17(2) of the 1981 Act (revocation, suspension, etc., of PSV operators' licences) shall be exercisable in relation to that licence by the traffic commissioner by whom it was granted.

The Public Inquiry and the decision of the DTC

17. By letters dated 5 November 2024, the Restricted Licence and the application for a Standard National Licence were called to a conjoined Public Inquiry³ ("PI").

18. The call up letter for the Restricted Licence stated that the issues to be considered at the Public Inquiry included:-

a) the following statements you made when applying for the licence were either false or have not been fulfilled.

- i. that the main occupation of the licence holder was not the operation of vehicles able to carry nine or more passengers [s.17(3)(a) of the Public Passenger Vehicles Act 1981];*
- ii. that you would abide by any conditions which may be imposed on the licence*

b) you have not honoured the undertakings you signed up to, namely

- i. that you would observe the rules on drivers' hours and tachographs and keep proper records [s.17(3(aa))]*

c) you have breached the conditions on your licence to notify changes in operation and which affect financial standing within the required 28-day timescale.

d) Since the licence was issued, there has been a material change in the circumstances of its holder.

In addition to the grounds listed above the Traffic Commissioner is entitled to consider whether you still meet the requirements to hold a restricted PSV operator's licence. Namely, that if you operate vehicles of between nine and sixteen passenger seats that it is not the main occupation of the entity doing so...

19. The call up letter for the application for the Standard Licence stated that the issues to be considered included whether the Appellant was of good repute in terms of s.14ZA(2)(b) and Schedule 3 of the 1981 Act, and whether he, as the designated Transport Manager, was of good repute in terms of Article 4 of EC Regulation 1071/2009 and s.14ZA(3)(a) of the 1981 Act.

³ Pages 59 and 337.

20. The conjoined Public Inquiry was heard on 14 January 2025. The Appellant attended and was legally represented. TE Leslie gave evidence as did the Appellant.
21. On 4 March 2025, the DTC revoked the Restricted Licence, refused the Appellant's application for a Standard National PSV Operator Licence and made the other decisions narrated in paragraph 1 above⁴.
22. The DTC made the following findings:-

Breaches of the legislation

53. Mr Devlin accepted that he had never operated lawfully within the terms of his Restricted PSV Operator Licence. Mr Devlin had lost his "main occupation" in April 2022 and he started operating in June 2022 without applying for a Standard National PSV Operator Licence. This was a contravention of s.17(3)(a) of the Public Passenger Vehicles Act 1981 as the statement that Mr Devlin had made in his application, that he would apply for a Standard National PSV Licence if he lost his "main occupation", was not fulfilled. It was a breach of his undertaking to make proper arrangements so that the laws relating to the driving and operation of vehicles used under the Restricted PSV Operator Licence were observed [p.15]— a breach of s.17(3)(aa). It was a material change in his circumstances – a breach of s.17(3)(e).

54. Mr Devlin accepted that between July 2024 and September 2024 he had operated 2 Public Service Vehicles at the same time on 40 occasions, and 3 Public Service Vehicles at the same time on an additional 16 occasions. This was a breach of s.17(3)(b) as it was a condition of his licence that the maximum number of Public Service Vehicles authorised was 1 vehicle.

55. Mr Devlin also accepted that he had not complied with the undertaking to make proper arrangements so that the rules on drivers' hours and tachographs were observed and proper records kept – a breach of s.17(3)(aa) [p.15].

23. The DTC then went on to consider whether if there was a breach of s.17(3)(d)
 - the operator no longer satisfies the requirement to be of good repute (s.14ZB(a)), having reminded himself that he was required to have regard to

⁴ Page 28ff.

“all relevant evidence” and that this may include previous conduct (paragraph 58). He made the following findings:-

61. *The first step in considering good repute is, therefore, to identify conduct that is relevant to Mr Devlin’s fitness to hold an operator licence.*
62. *Mr Devlin applied for a Restricted PSV Operator Licence in the knowledge that if he lost his “main occupation” he would need to apply for a Standard National PSV Operator Licence. The Restricted PSV Operator Licence was granted on 17 February 2022. Within a couple of months Mr Devlin had lost his “main occupation”. Mr Devlin did not apply for a Standard National PSV Operator Licence at that time. Mr Devlin’s evidence was that when he lost his job in April 2022 it never crossed his mind that he should notify the OTC. Mr Devlin said that he did not realise that he could not operate with a Restricted PSV Operator Licence until he attended a Transport Manager course in November 2023. Mr Devlin did not apply for a Standard National PSV Operator Licence, despite, according to him, knowing that he was operating unlawfully, until July 2024. The reason Mr Devlin did not apply earlier was he knew that any application would not be granted until he had his TM CPC and until he had an operating centre that was suitable for an increased number of PSV vehicles.*
63. *I do not believe Mr Devlin’s evidence that from April 2022 until November 2023 he did not know that if he lost his main occupation he could not operate with a Restricted PSV Operator Licence and he would have to apply for a Standard National PSV Operator Licence. Mr Devlin had corresponded with the OTC about the main occupation requirement for a restricted licence as recently as 18 January 2022. I do not accept that the circumstances of Mr Devlin losing his job and the associated stress caused Mr Devlin to forget about the requirement to have a “main occupation.”*
64. *I find it significant that Mr Devlin knew in May 2024 that he needed to apply for a second disc. Mr Devlin decided not to apply for another disc because he thought it would be refused because of problems with finding a suitable operating centre. Mr Devlin accepted that he faced a choice – he could either let down the authorities (the OTC) or cancel the hires for the second PSV and let down his customers. Mr Devlin chose to let down the OTC. Mr Devlin chose to put his own interests first.*
65. *I also find it significant that Mr Devlin was prepared to mislead TE Leslie in the interview on 2 December 2024 by telling her that he was authorised to operate two vehicles. That was clearly untrue, and Mr Devlin knew it to be untrue.*

66. *Mr Devlin's choice in May 2024 to put his own interests first and his attempt to mislead TE Leslie led me to conclude that from the moment that Mr Devlin lost his "main occupation" in April 2022, he knew that he could not operate under his Restricted PSV Operator Licence, and that he ought to apply for a Standard Licence PSV Operator Licence.*

67. *In addition, Mr Devlin has shown that he cannot be trusted to comply with the basic requirements of operating PSVs. He made no arrangements to ensure that the rules on drivers' hours and tachographs were observed and proper records kept until March 2024. The arrangements that he introduced in March 2024 were inadequate. Proper arrangements were not put in place until after TE Leslie's visit on 25 October 2024.*

68. *Mr Devlin's conduct is relevant to his fitness to hold an operator licence. I consider that Mr Devlin's conduct is serious enough it might lead to a finding of loss of repute which could result in revocation.*

24. The DTC then moved on to consider the preliminary question, "How likely it is that the Appellant would, in the future, operate in compliance with the operator's licensing regime?"⁵ and whether the conduct was so serious that the Appellant ought to be put out of business⁶. Having regard to his findings, the DTC concluded that it was unlikely that the Appellant would operate in compliance with the licensing regime in the future. Weighing the positive and negative factors in the case (paragraphs 74-76) he concluded that the balance came down in favour of revocation. Looking at the Appellant's conduct as a whole, which was a serious failure to comply with the regulatory regime, he considered that revocation was inevitable (paragraphs 77-85).

25. Taking the Appellant's conduct as a whole, the DTC concluded that it fell within the category of "severe" in Annex 4 of Stat. Doc. 10. Annex 3 suggests that this might result in revocation, suspension for an extended time period or indefinite curtailment.

26. The DTC then considered the issue of disqualification and stated:

⁵ *Priority Freight T/2009/225*

⁶ *Bryan Haulage (No 2) T/2002/217*

88. I consider that the reasoning above that led to the revocation of the licence is applicable to the question of disqualification. Mr Devlin failed to comply with a fundamental requirement of operating PSVs- the rules and regulations relating to drivers' hours and tachographs. In addition, Mr Devlin has shown that he cannot be trusted because he operated PSVs illegally. It is appropriate that Mr Devlin should be excluded from operating PSVs by being disqualified from holding a PSV operator licence.

27. As this was a case falling into the “severe” category, paragraph 108 of Statutory Document 10, suggested such cases may merit disqualification for an indefinite period. Given his findings, the DTC considered that disqualification for an indefinite period was appropriate; this would protect the public interest in promoting road safety, fair competition and ensuring that operators comply with all the obligations of the regulatory regime by deterring others.
28. We have set out the background and the DTC’s decision at length to put the issue under appeal into context.

The hearing before the Upper Tribunal

29. Extensive grounds of appeal had been lodged on behalf of the Appellant appealing all of the decisions made by the DTC. At the hearing, the Appellant explained that the only matter under appeal that he wished to insist upon was the indefinite nature of the disqualification. He stated that he accepted that the revocation of his restricted licence and the refusal of the application for a standard national licence were justified. He also accepted that a period of disqualification was justified however, he submitted that the indefinite nature of the disqualification was too harsh for a first offence.
30. The Appellant took issue with the DTC’s finding at paragraphs 62-63 in which he did not accept that the Appellant had forgotten that he could not operate under a restricted operator’s licence when he lost his main occupation. Essentially, the Appellant repeated to this Tribunal the evidence he had given at the PI. He said he was a professional person and had worked in the financial sector for more than 30 years. He had come into the transport

industry with no knowledge of it. Shortly after the restricted licence was granted, his main occupation was changing because his company was being acquired by another company. He had had to engage employment lawyers and eventually they negotiated an exit agreement for the Appellant to leave the company. He left in April 2022. The Appellant stated that he was under considerable stress at this time. It did not occur to him that because he had lost his main occupation he could not operate under the restricted licence; he could not see any connection between the two. He stated that he did not know he was operating unlawfully under his restricted licence when he lost his main job.

31. He said that it had always been his intention to be a compliant operator. He undertook a TM course in November 2023 with a view to obtaining a standard licence and he was lining up other arrangements such as a new operating centre for when he had a standard licence and more vehicles. He hoped to have everything in place for a standard licence application by the end of January 2024. However, it had not worked out because he had failed his TM CPC examination and was unable to re-sit it until April 2024, when he passed.
32. The Appellant stated that he knew that once he got a second vehicle he would need to get a standard licence. He said he made a stupid decision to fulfil bookings that had been made for May 2024 onwards, before he had applied for and been granted a Standard Licence. He operated two vehicles then three vehicles. He stated that that was why he accepted that the disqualification is justified, but indefinite disqualification was not. He said he had been doing everything he could to apply for and get a standard licence.
33. The Appellant also took issue with the DTC's finding that he had been prepared to mislead TE Leslie when he was interviewed under caution on 2 December 2024 by telling her he was authorised for two vehicles⁷. The Appellant stated that he had thought he was being asked about his knowledge of what a restricted licence entitles the holder to have. He said he knew the

⁷ Paragraph 65.

maximum limit was 2 and he answered in that way. When he was asked how many discs he had, he told the truth and said 1.

Discussion and decision

34. The following principles (extracted from the Digest of Traffic Commissioner Appeals) as to the proper approach to an appeal in the Upper Tribunal can be found in the decision of the Court of Appeal in the case of *Bradley Fold Travel Ltd & Peter Wright –v- Secretary of State for Transport* [2010] EWCA Civ. 695:

“(1) The Tribunal is not required to rehear all the evidence by conducting what would, in effect, be a new first instance hearing. Instead it has the duty to hear and determine matters of both fact and law on the basis of the material before the Traffic Commissioner but without having the benefit of seeing and hearing the witnesses.

(2) The Appellant ‘assumes the burden’ of showing that the decision appealed from is wrong.

(3) In order to succeed the Appellant must show not merely that there are grounds for preferring a different view but that there are objective grounds upon which the Tribunal ought to conclude that the different view is the right one. Put another way it is not enough that the Tribunal might prefer a different view; the Appellant must show that the process of reasoning and the application of the relevant law require the Tribunal to adopt a different view.”

35. The Tribunal sometimes uses the phrase “plainly wrong” as a shorthand description of this test. (*NT/2013/52 & 53 Fergal Hughes v DOENI & Perry McKee Homes Ltd v DOENI*, paragraph 8).

36. In his decision, the DTC made unfavourable findings about the Appellant’s credibility. In effect, the Appellant is asking the Tribunal to overturn those findings and to accept that he was telling the truth when he said he had forgotten that he required to have a main occupation in order to operate

compliantly under a Restricted Licence and that he had misunderstood what he was being asked by TE Leslie at the interview under caution.

37. Courts have long recognised that the judge who saw and heard the witness give evidence is probably best placed to assess the credibility of that witness. The view of a judge at first instance, or in this case the DTC, as to where credibility lies, is entitled to great weight⁸. The judge at first instance has had the benefit of seeing and hearing the witness.

Courts have recognised the benefit of seeing and hearing a witness giving evidence. This is in the context of limiting the extent to which an appellate court will interfere, even in an appeal on the facts, with a conclusion reached by a judge who took the oral evidence. The significance of these factors reflects the fact that a bare transcript of the evidence and the judge's judgment setting out the findings of fact cannot convey every nuance of the evidence as given in court. (Jacobs, Tribunal Practice and Procedure, 5th ed, page 467.)

38. That applies equally to the DTC's opinion in this case. The DTC has explained in some detail in paragraphs 62-63 why he reached the conclusion that the Appellant was not telling the truth when he said he had forgotten about the requirement under a restricted licence to have a "main occupation". We have no reason to disturb or disagree with that finding.
39. Turning to the DTC's finding that the Appellant tried to mislead TE Leslie, the exchange that took place between TE Leslie and the Appellant is reproduced at paragraph 32 of the DTC's decision:-

Mr Devlin's interview on 2 December 2024

TE Leslie interviewed Mr Devlin under caution on 2 December 2024 (p34o-34x). TE Leslie asked Mr Devlin about the number of vehicles he was authorised to operate:-

"Q: How many vehicles are you authorised for on your licence?

A: I am authorised for two

⁸ *Thomas v Thomas* 1947 SC[HL] 45, *per* Lord Simon at page 46.

Q: How many vehicles are you authorised to operate at any one time?

A: I would assume two

Q: How many operator licence discs do you have?

A: One

Q: A check of the vehicle operator licence system shows that you are only authorised to operate one vehicle. Do you wish to comment?

A: I thought a restricted licence gave you authorisation for 2”.

40. At the PI, the Appellant’s solicitor asked him⁹ if he was under the belief he could run two vehicles on his licence. He replied that he knew the maximum number of vehicles you could have on a restricted licence was two. He continued:

“So, I knew that was the case. It is fair to say that I knew that both vehicles needed to have an operator’s disc, and I should therefore have notified the traffic commissioner’s office that I wanted to put a second vehicle on my restricted licence and I didn’t do that.”

41. The argument the Appellant presented to this Tribunal does not square with the transcript of the interview with TE Leslie. In the interview it is quite clear that he is being asked about the number of vehicles he was authorised for on his licence (our emphasis). It is also at odds with his own evidence reproduced in paragraph 40 above where he stated he knew a second vehicle would need another disc. We therefore consider that, on the evidence, the DTC was entitled to find that the Appellant was prepared to mislead TE Leslie.
42. In addition, the Appellant submits that although he knowingly operated three vehicles without authority, that the DTC’s imposition of an indefinite disqualification was “too harsh for a first offence”. The main purpose of regulatory action such as revocation and disqualification is to secure the objectives of the regulatory regime, namely road safety and fair competition. The Tribunal stated in *Michael James Fenlon t/a County Skips 2006/277*:-

⁹ At page 633.

“17...It has been said on many occasions that trust is one of the foundation stones of operator licensing. Traffic Commissioners must be able to trust operators to comply with all the relevant laws, rules and regulations because it would be a physical and financial impossibility to police every aspect of the licensing system all day and every day. In addition operators must be able to trust other operators to observe the relevant laws, rules and regulations. If trust between operators breaks down and some operators believe that others are obtaining an unfair commercial advantage by ignoring laws, rules or regulations then standards will inevitably slip and the public will suffer.”

43. The Appellant’s evidence was that he started Silver Swan Travel with zero knowledge of the industry with the intention to learn on the job. However, he did little or nothing to inform himself about the industry or about how he could fulfil his obligations under his licence until he attended a TM course in November 2023.
44. When considering revocation, the DTC summarised the negative factors in the Appellant’s case as follows (paragraph 74):-

- (1) Mr Devlin deliberately operated PSVs under a Restricted PSV Operator Licence when he did not have a “main occupation”.*
- (2) Mr Devlin expanded his business and increased the number of PSVs he was operating, knowing that he was operating unlawfully.*
- (3) Mr Devlin concealed his unlawful operating from the OTC when he knew that he should have notified the OTC that he had lost his “main occupation” and he should have applied for a Standard National PSV Operator Licence.*
- (4) When faced with a choice between complying with the operator licensing regime and his own interests, Mr Devlin chose to further his own interests.*
- (5) Mr Devlin attempted to mislead TE Leslie by telling her that the maximum number of PSVs that was authorised by the Restricted PSV Operator Licence was two when he knew it was one.*
- (6) The steps that Mr Devlin took to improve compliance, – e.g. attending a Transport Manager course in November 2023, applying for a Standard National PSV Operator Licence in July 2024 were taken after a significant period of non-compliance, and they did not result in a compliant operation.*
- (7) Mr Devlin has obtained a commercial benefit as a result of his unlawful operating since June 2022.*

(8) *There were a number of infringements of the rules and regulations relating to drivers' hours and tachographs in the period June to September 2024*

45. Obviously, these findings are also relevant to the question of disqualification and the length of such. By reference to the Senior Traffic Commissioner's Guidance Statutory Document 10, the Appellant's conduct fell into the "severe" category in Annex 4, that is deliberate or reckless conduct that compromised road safety and/or gave the operator a clear commercial advantage and/or the operator caused or permitted driver offending and/or any attempt by the operator to conceal offences or failings. The Appellant's operation was not compliant from the outset, as he knew. Even with that knowledge, not only did he continue to operate, he expanded his operation. His illegal operation secured him commercial advantage. In addition, there were breaches of drivers' hours and tachograph requirements¹⁰. We therefore cannot say that the DTC's categorisation of the Appellant's conduct was "plainly wrong".
46. The DTC had regard to paragraph 108 of the Senior Traffic Commissioner's Guidance Statutory Document 10 which suggests that in severe cases an indefinite period of disqualification may be appropriate. Document 10 is "guidance" and not mandatory; the length of the disqualification is a matter for the discretion of the traffic commissioner. The DTC concluded that, in the Appellant's case the disqualification should be for an indefinite period. He explained his reasoning as follows (paragraph 89):-

..... In Mr Devlin's case I am satisfied that his illegal operation of PSVs mean that an indefinite disqualification is appropriate. It will protect the public interest in promoting road safety, fair competition between operators and ensuring that operators comply with all the obligations of the regulatory regime by deterring others. Mr Devlin's breach of trust is so serious that he should not be permitted to return to the industry until he is in a position to demonstrate that the public interest no longer requires Mr Devlin to be kept out of the industry.

¹⁰ Paragraphs 53 and 54.

47. Taking that together with the DTC's other adverse findings about the Appellant's conduct, we find no fault in his reasoning or the period of disqualification imposed. The DTC has cogently explained in his decision why indefinite disqualification was required.
48. Further, as the DTC highlighted by reference to the decision in T/2014/59 *Randolph Transport Ltd and Catherine Tottenham* (paragraph 21), the Appellant can apply to re-enter the industry. He will require to satisfy the traffic commissioner that it is appropriate to lift his disqualification:-

Finally, in relation to indefinite disqualifications generally, the degree to which such disqualifications should continue to be regarded as draconian is tempered by the right of any disqualified individual or former operator to apply to have the disqualification brought to an end. The test in such cases will be whether or not the public interest requires that disqualification should be maintained; the onus of establishing that the public interest does not so require will be on the applicant; and the starting point in nearly every case will be the original circumstances of, and reasons for, the disqualification – together with any evidentially established relevant events or developments occurring or arising subsequently, and the effect (if any) of the passage of time.

49. Far from finding that the DTC's decision on the issue of disqualification for an indefinite period was "plainly wrong", we find his approach to have been meticulous and his decision unimpeachable.

Decision

50. The decision of the DTC dated 4 March 2025 disqualifying the Appellant indefinitely is confirmed. The appeal is dismissed.

**Authorised for issue
On 23 October 2025**

**Marion Caldwell KC
Judge of the Upper Tribunal**