Neutral Citation Number: [2025] UKUT 397 (AAC)
Appeal No. UA-2024-001207-T

IN THE UPPER TRIBUNAL
ADMINISTRATIVE APPEALS CHAMBER

IN AN APPEAL FROM THE DECISION OF:
THE TRAFFIC COMMISSIONER FOR THE WESTERN TRAFFIC AREA
DATED 12th AUGUST 2024

(1) PRO DRAINAGE LIMITED
(2) MARK VICTOR GRUNDY
(3) KELLY GRUNDY

Appellants

Before: **Upper Tribunal Judge Ovey**
Mr. David Rawsthorn (specialist member)
Mr. Ian Luckett (specialist member)

Hearing date: **23rd September 2025**
Mode of hearing: **In person**

Representation:
Appellants: **Mr. Simon Clarke (counsel)**

SUMMARY OF DECISION

This appeal is DISMISSED.

Transport: Other (100.20)

The appellant company's operator's licence was revoked on the grounds of loss of good repute and serious breach of undertakings relating to drivers' hours. All the appellants were disqualified for three years. The appellants contended that their representative at the public inquiry had been incompetent to such an extent as to render the inquiry unfair and the matter ought to be remitted for further consideration. The Upper Tribunal decided that in an appropriate case a decision might be set aside on such a basis and that there had been some failings on the part of the appellants' representative, but concluded that those failings had not had the effect of rendering the inquiry unfair.

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

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

REASONS FOR DECISION

Introduction

1. This is an appeal by Pro Drainage Limited ("the Company") and its directors, Mr. Mark Grundy and Mrs. Kelly Grundy, against the decision of the Traffic Commissioner for the Western Traffic Area ("the TC") dated 12th August 2024 and communicated to the appellants by a letter dated 13th August 2024. By that decision the TC, so far as material:

    a. Revoked the Company's operator's licence no. OH2031101 on the grounds of loss of good repute and a serious breach of undertakings relating to drivers' hours with effect from 23.59 on 7th September 2024;

    b. Disqualified the Company, Mr. Grundy and Mrs. Grundy from applying for or holding an operator's licence in any traffic area for a period of three years from 7th September 2024.

2. In the same decision the TC also imposed disqualifications on Mr. Richard Gibbons and Mr. Benjamin Oxley, both of whom were former transport managers of the Company. They have not appealed against their disqualifications, but their involvement has some factual relevance to the present appeal, as explained below.

3. The appellants applied to the TC for a stay of his decision and he stayed it until 21st September 2024 to allow the application to be considered by a judge of the Upper Tribunal, but no further. The application was duly considered by Judge Mitchell on 12th September 2024 but was refused. On 16th September 2024 he refused a request for a further extension of the effective date of the TC's decision. The licence has therefore been revoked since 21st September 2024 and the disqualifications took effect from the same date.

The facts

4. The Company was incorporated on 4th August 2015 and Mr. Grundy has been its secretary and a director since that date. Mrs. Grundy joined him as a director on 26th April 2018. The Company applied for an operator's licence by an application form signed on 19th February 2020 and the licence started on 15th April 2020. It contained the usual undertakings, including an undertaking to observe the rules on drivers' hours and tachographs and to keep proper records. The operating centre was at Blue Roof Farm, Bournemouth and the authorisation was for three vehicles, which were then in possession, and no trailers. The original transport manager was Mr. Gibbons, who stated in his TM1 form signed on 13th March 2020 that he would be working eight hours a week as an internal transport manager.

5. It appears from the unchallenged evidence at the public inquiry held on 31st July 2024 that Mr. Gibbons is Mr. Grundy's uncle and at the time of incorporation of the Company had substantial experience in the transport industry, which Mr. and Mrs. Grundy did not. At the outset the business was a drain unblocking company with two vans, one of which was driven by Mr. Grundy. In 2017 the Company acquired a 7.5 tonne truck, marking the beginning of "the tanker section", which undertook "domestic work" and sometimes emptied septic tanks. Mr. Gibbons drove the truck. Mr. Gibbons' understanding was that no licence was required because the material removed by the truck became the property of the Company on removal. The licence was applied for when the Company acquired three larger vehicles and its business began to expand.

6. Unhappily, Mr. Gibbons fell out with Mr. and Mrs. Grundy in connection with the licence and by the time of the inquiry had admittedly not been involved in the operation for more than two years, although he told the TC that he still went down to the yard and kept in contact with the garage where the maintenance was carried out. He was removed from the licence on 24th May 2024.

7. Mr. Oxley joined the Company as an external transport manager in November 2022. In his TM1 form signed on 29th November 2022 he stated that he would be working 15 hours a week. He told the TC that he had continued with the systems and processes established by Mr. Gibbons and assumed they were acceptable. He left the Company on 5th June 2024. The TC put to him that he had not fulfilled the role of transport manager and the person in control was a Mr. Noel Streamer, a former driver who had become the transport co-ordinator. Mr. Oxley's response was that Mr. Streamer worked under his direction. It appears that the intention was that Mr. Streamer should obtain a Certificate of Professional Competence and take over from Mr. Gibbons as the internal transport manager, but he had been unsuccessful in obtaining the certificate.

8. Miss Erica Williams was appointed as an internal transport manager on 20th May 2024 and was approved on 24th May 2024. In her TM1 form signed on 16th May 2024 she stated that she would be working 32 hours a week. As explained further below, she carried out substantial work on the maintenance side, but left after a

few weeks. She told the TC that she did so because she did not trust Mr. Streamer, who did not realise the seriousness of matters.

9. By the time of the public inquiry, the Company's business had expanded very considerably. The licence authorised 16 vehicles, of which 15 were in possession, and two trailers. Mr. Grundy's evidence was that the Company operated 12 vans and 14 trucks and employed 35 to 40 people. He also said that he had focused on the drainage side of the business and had not done enough on the trucks. The nature of the truck business was described (p.116 of our bundle) as "the provision of a rapid response tanker service for emergency call out service" to Southern Water, Thames Water, Wessex Water, the NHS and "other blue chip companies". The emergencies often involved raw sewage or flooding and so attendance was required within 4 hours. In addition about 10% of the Company's work was the provision of drainage services. At the inquiry Mr. Grundy referred in particular to work done through a sub-contractor for Southern Water.

10. On 17th April 2024 Vehicle Examiner Timothy Collins from the Driver and Vehicle Standards Agency ("the DVSA") conducted a maintenance investigation and Traffic Examiner Allen Cox carried out an investigation into traffic management matters. Mr. Collins found shortcomings in the areas of inspection and maintenance records, driver defect reporting, inspection facilities and maintenance arrangements, vehicle emissions, wheel and tyre management, load security and transport management. Mr. Cox found shortcomings in driver licensing and training, drivers' hours and record keeping and compliance with the Working Time Directive.

11. Mr. Cox provided the Company with a report dated 24th April 2024 as a result of his visit. The report described tachograph records as "not applicable", saying that the Company was "on domestic hours", but noted that the information of what the driver were doing was very vague and drivers were currently working excessive hours. The Company had produced signed documents of drivers opting out of the Working Time Directive because they were doing emergency work, but Mr. Cox referred to evidence of drivers working 18 hour days and at times working up to 19 days before having a 24 hour rest period. Mr. Cox stated that the duty of care needed to be considered and although the arrangements might be in compliance with legislation, there was a risk to road safety as drivers were only getting 6 hours daily rest from duty. Mr. Cox also recorded that the driving staff was split between those who were employed and those who were self-employed, many of whom were working "under a limited company" while others were sole traders. A contract was in place with the self-employed drivers, who invoiced the Company and were responsible for their own tax and national insurance contributions. The overall assessment stated:

> "There is a concern for the welfare of the drivers with the length and the amounts of shifts that are undertaken. Drivers on emergency work are often working 18 hour days and work up to 18 days before having a freely disposable rest period of 24 hours. The operator explained that due to the nature of their work the drivers may do nothing for several hours and

> that the amount of driving is minimal. They also explained that they are often off work but on call during this period. This is still a concern as the drivers are still working and not freely able to dispose of their time. There is a concern that drivers are only getting 6 hours daily rest on a regular basis.
>
> A better system needs to be put into place and managed to ensure that drivers are getting adequate rest.
>
> …
>
> A contract or declaration needs to be put into place to ensure that agency/self-employed drivers are not working elsewhere prior to starting a shift. …"

The report showed a total score of 16 points, leading to the conclusion that the case must be referred to the TC.

12. Mr. Collins similarly provided the Company with a report dated 24th April 2024. It concluded that, as set out in paragraph 10 above, six out of the 12 areas considered were unsatisfactory, as was the transport manager assessment, and recommended that the case be reported to the Office of the Traffic Commissioners ("the OTC"). As respects the transport manager, Mr. Collins recorded that he had met Mr. Oxley but Mr. Gibbons was on holiday at the time of his visit. Both had demonstrated relevant continual professional development. Mr. Grundy had told Mr. Collins that the role of transport manager was divided between the two of them on a part-time arrangement. Mr. Streamer was responsible for the day-to-day operation of the business and within that the control of the vehicles, including ensuring that all driver reported defects were addressed and preventative maintenance inspections carried out at the right time. There were no quality management processes in place and the management of vehicle records was "non-existent". Mr. Collins concluded that there was ineffective control of the operation.

13. Mr. Grundy responded to the two reports by email on 8th May 2024. The response to Mr. Cox included the statements that a spreadsheet had been prepared to ensure careful monitoring of drivers' working days and that the Company was implementing a policy of a maximum of 10-12 days working and then a mandatory 24-48 hours rest. Specifically in response to welfare concerns expressed by Mr. Cox, the policy just mentioned was referred to, the 48 hours rest being described as "away from the vehicle to be able to freely dispose of their time". It was also stated that owing to the nature of the work, drivers might have "down time and minimal driving in the working day". The response further stated that the current transport managers were Mr. Oxley and Mr. Gibbons, the latter of whom was waiting to retire, and that an application for a Mr. Matthew Webster to become the second transport manager was under consideration. The covering email stated that both transport managers had been involved in the preparation of the response. That assurance was supported by a letter dated 7th May 2024 from Mr. Oxley and a letter dated 2nd May 2024 from Mr. Gibbons mentioning his

unfortunate absence on holiday when the site visit took place and stating that all matters requiring improvement would be dealt with without delay.

14. The response to Mr. Collins contained a number of acknowledgments of failings and included statements about new policies to be adopted and actions to be taken. There was also an assertion that both current transport managers were aware of all matters that required remedial attention and would be responsible for effectively managing the vehicle fleet and had given their commitment to carrying out their duties to the necessary standard. It was again mentioned that Mr. Gibbons wished to retire and Mr. Webster would be employed.

15. It is not surprising that in the light of the results of those investigations the TC decided to hold a public inquiry. The call-up letter to the Company and Mr. and Mrs. Grundy is dated 11th June 2024 and, so far as material for present purposes, identified as areas of concern to the TC allegations that:

    a. The Company had not honoured the undertakings given when the licence was applied for, specifically that it would observe the rules on drivers' hours and tachographs and would keep proper records;

    b. There had been a material change in the circumstances of the Company as respects good repute and professional competence.

16. The letter pointed out that if the Company did not meet the requirements to be of good repute and to have a transport manager the licence was at risk and recommended that Miss Williams should attend the inquiry. It was explained that Mr. Gibbons and Mr. Oxley had also been called to attend.

17. The Company responded to the call-up letter by a form dated 28th June 2024 stating that the Company, Mr. Grundy and Mrs. Grundy would attend, together with Miss Williams, and would be represented by Patterson Law, solicitors. The OTC was authorised to disclose information to Mr. Kris Nickels of that firm. By a letter dated 15th July 2024 bearing the logo "PattersonLaw The Driver Defence Service" the firm informed the OTC that the advocate who would be present at the inquiry was Mr. Damian Hayes and that evidence from the Company would be served shortly. Substantial evidence, running from p.247 to p.1035 (exclusive of the financial material) in our bundle, was indeed served, although the exact date of service is not clear. Much of the material relates to maintenance and there is clear evidence of Miss Williams' work and its fruits in that connection.

18. The material includes a statement of truth from Mr. Grundy signed on 16th July 2024 which gives a little further background. Mr. Grundy explained that the Company grew very fast, that he was overseeing the drainage division and Mrs. Grundy was doing the booking and administrative work for the tanker section and Mr. Gibbons was overseeing the trucks' maintenance and safety. In 2022, owing to Mr. Gibbons' ill health and mobility difficulties, the Company decided to get another transport manager and Mr. Gibbons took a back seat. This was apparently the cause of the falling out between Mr. Gibbons and Mr. and Mrs. Grundy. Mr. Grundy said that it was not until the DVSA visit that he was aware

of the compliance issues and that although he realised that was naïve of him, he believed that the fleet was being run efficiently. He promised to put the situation right and referred to the appointment of Miss Williams as a full-time internal transport manager.

19. On 14th July 2024 the TC received a witness statement from P.C. Strothard. In his statement P.C. Strothard said that on 23rd April 2024 he stopped a Mr. Richard Embling who was driving a vehicle in the Company's livery. Mr. Embling explained that he was not using the tachograph unit because the transport managers had told the drivers they were "out of scope" as a result of the nature of their work, but was recording hours in a log book. P.C. Strothard was concerned that the duty times seemed excessive and tried to refer the matter to the DVSA, although he received no response. On 28th May 2024 he stopped another Company vehicle and was again concerned by the recorded duty times. On 6th June 2024 he stopped Mr. Embling again. Mr. Embling was driving a different vehicle and on this occasion the log book was more detailed. Between 13th May and 5th June 2024 there were 11 duty days in excess of 11 hours and in the most serious case the driver had a rest period of only 5¾ hours before being on duty again. The statement attached supporting documentation.

20. The Company itself provided evidence of disciplinary action taken on 18th July 2024 in relation to an incident involving Mr. Embling on 23rd May 2024 when he "went over the 18 hours by 15 minutes". Mr. Embling's explanation was that he had gone to work as part of a three man team and for the majority of the time he was sitting onsite in his cab while other members of the team were doing other work. He forgot to put the tachograph on rest during this period. The 15 minutes over the 18 hours was solely because he was caught in traffic. On the same date disciplinary action was taken in relation to Mr. Norberto Nunes, who had apparently been in breach of working hours legislation on 9 occasions in the 4 weeks beginning 3rd June 2024. The explanation given was that he had not filled in his log book correctly to include his rest periods.

21. In preparation for the public inquiry the Company was required by a direction from the TC to send additional information to Mr. Cox, who then produced a follow-up report apparently about a week before the inquiry. He noted various improvements but concluded that drivers were still working excessive hours. The most recent log sheet referred to by Mr. Cox is for the week 24th to 30th June 2024 and relates to Mr. Nunes.

The public inquiry

22. In view of the grounds of appeal, as explained below, it is necessary to look with some care at how the public inquiry proceeded. It was as follows.

23. At the outset the TC established that Mr. Hayes represented the Company and Mr. and Mrs. Grundy but not Mr. Gibbons or Mr. Oxley. Mr. Cox attended the inquiry and gave evidence at an early stage. The TC gave Mr. Hayes an early opportunity to ask questions of Mr. Cox, but in the absence of any questions went

on to ask his own. In particular he asked what advice he had given Mr. Grundy and Mr. Oxley in relation to the drivers' hours position. Mr. Cox said:

> "The advice I've given them, sir, is that the drivers need to be taking adequate break[s]. It was noted that they were doing 18 hour days with six hours rest. So, my main advice was to sort of run under the domestic hours for the work they were doing, which would have been 10 hours of working."

The TC asked Mr. Cox whether, on his review of the more recent documents, the position had improved overall, to which Mr. Cox replied that it had not. He also asked about the use of tachographs and got the answer that the Company had made arrangements with TruScan and had one vehicle calibrated but there was no evidence they were actually using tachographs. Mr. Hayes had a further opportunity to ask questions but did not do so.

24. The TC next heard from Mr. Gibbons, who said that basically he had been pushed out and ended up not speaking to or having contact with Mr. and Mrs. Grundy. He told the TC that Mr. and Mrs. Grundy had told him that they would still pay him a retainer for the use of his qualification and as he needed the money he stayed on the licence although he realised he ought not to have done so. Mr. Gibbons also said that when the tanker business began he made inquiries about the exemption arising from the fact that the work was emergency work. His stance was that an exemption means exactly what it says; you are not exempt sometimes and not exempt others. He also pointed out that the nature of emergency work means that you may be "on the job" for several hours but not needed for most of the time and when you are needed for emergency work you cannot just stop after 9 hours. The TC pointed out that there are two relevant sets of rules: the EU rules, from which it seemed to be accepted that there was an exemption, and the domestic rules which apply to any goods vehicle. He asked whether Mr. Gibbons thought that the Company needed to comply with the domestic rules and was told that on the government website it says that the vehicles are exempt. He thought at the outset that it would be sensible to use tachographs but without applying the drivers' hours rules, but was told that if tachographs were used the Company had to abide by the rules. He also said he had rung up the DVSA quite a few times and no one could really point him in the right direction.

25. Mr. Hayes then asked Mr. Gibbons a number of questions about his belief as to the exemption. He established that Mr. Gibbons' research on the point took the form of searching on Google and speaking to the DVSA. Mr. Gibbons thought he had also spoken at a Zoom meeting to "the Southwestern traffic commissioner at the time, who was a female", but the TC pointed out that he had been the relevant TC since 2016. He expressed the view that Mr. Gibbons had attended a DVSA new operator seminar and had spoken to a DVSA traffic examiner. Mr. Gibbons appeared to accept the point, but maintained that "nobody seemed to want to lay it down as such of how we can get over this situation with the tachograph and the drivers' hours". He could not give details of any individual he spoke to but accepted that the information he passed back to Mr. and Mrs. Grundy in his

capacity as transport manager was that they were exempt from the rules relating to drivers' hours.

26. The TC then heard from Mr. Oxley. Mr. Oxley explained that he came into contact with the Company because he knew Mr. Streamer, the transport co-ordinator. He used to liaise with Mr. Streamer a lot by phone and would routinely go to the business, not every week, but would go down and sign off logbooks. He accepted that Mr. Collins had had difficulty finding inspection reports and other material because they were attached to emails and had not been printed off and filed. He recognised it was a mistake to deal with it verbally and without printing out. He told the TC that he had asked about drivers' hours and was under the impression that Mr. Gibbons had spoken to the TC and they were tachograph exempt. The TC asked what Mr. Oxley knew about domestic drivers' hours rules and received the reply that you do the 11 hours on and that's it. When the TC asked why drivers were doing 18 hours, Mr. Oxley replied that a lot of the time the drivers could be sitting there doing nothing. He accepted that they were on duty for 18 hours but said the emergency work exemption covered the situation. He could not point to any research he had done into the exemption. The TC put to him that looking at the time sheets when a driver was working 18 hours, it seemed that he might be driving for 4 to 5 hours and at the end of the day, after 17 hours on duty, he had an hour's drive home. He asked whether Mr. Oxley had ever considered how the Health and Safety at Work Act might apply in terms of the duty of care to employees or subcontractors. The response was, "Not really, to be fair."

27. The TC then turned briefly to a point about a vehicle based in the Isle of Wight which had been maintained by a different contractor and whether there was an operating centre on the Isle of Wight (which there was not). Mr. Hayes then asked some questions, from which he established that Mr. Oxley had no real handover from Mr. Gibbons and that he did not see Mr. Gibbons at the business. His understanding of the exemption came from what Mr. Gibbons had put in place. He had not taken any steps to verify it. The TC asked some further questions about Mr. Oxley's knowledge of the drivers and, as mentioned in paragraph 7 above, expressed the view that Mr. Streamer rather than Mr. Oxley had been the transport manager. Mr. Oxley replied that Mr. Streamer was acting under his guidance.

28. The next step for the TC was of course to hear the witnesses for the Company. The TC invited Mr. Hayes to proceed and there was a discussion about who the TC should hear from first. It having been established that Mr. Hayes proposed to call Miss Williams first, Mr. Hayes asked if the TC wished him to take her through her evidence and, having received an affirmative answer, commented, "I'm not familiar with the procedures."

29. In summary, Miss Williams explained that when she discovered the severity of the situation which followed from the site visits on 17th April 2024 it was agreed that she should concentrate on the maintenance side. The TC commented that the maintenance records were completely different from those found by Mr. Collins and it was all in good order. Miss Williams said that she was shocked at the hours the drivers were doing, which was not acceptable to her, but she had

not been part of the planning operation to make any difference to that side of things. In answer to the TC, she said she was leaving at the end of the week because she did not think Mr. Streamer realised the seriousness of the situation in her eyes and she felt she had done everything she possibly could do. The hours would have been the best thing, but "I felt I was swimming uphill with that because the phrase they kept saying to me was, it's emergency work".

30. The TC then turned again to Mr. Hayes and asked him what the position was in his eyes of the exemptions and the emergency exemption. Mr. Hayes' initial response was to refer to the nature of the Company's business, which meant that a lot of what it did would be treated as an emergency. Unfortunately the recording was unintelligible for a short time and the transcript continues with the TC saying:

> "Okay, so I think we can have that discussion. There is some case law about what emergency is. I was expecting you maybe to take me to the driver's hours regulations for domestic, which is the 1986 Transport Act, section 96 …"

The TC then summarised the relevant legislation to the effect that there was exemption from some requirements in cases of emergency but the working day should not exceed 11 hours, there should be 11 hours between shifts and there was still a maximum of 60 hours in the working week with a 24 hour break once a week. He drew attention to the working hours of Mr. Nunes in the week beginning 6th May 2024, which appeared to show three breaks of only 6 hours and one of 9 hours, with a total of 95 hours and 40 minutes over six days. He asked "So what benefit is that exemption to the extent of drivers' hours abuse created by this company?" He asked Mr. Hayes to deal with that point and why the Company had done nothing since they were advised otherwise on 24th April 2024 by Mr. Cox.

31. Mr. Hayes then went through the history of the business with Mr. Grundy. Mr. Grundy said that he was confident in his uncle and had allowed himself to be guided by him on matters such as tachographs and exemptions. He did not doubt that what Mr. Gibbons was saying was true. Mr. Hayes asked what steps he was taking to oversee the entirety of the business and Mr. Grundy replied that he was really focusing on the drainage side, which was where his experience was. He authorised expensive purchases for the trucks and that was really it. The inspection on 17th April 2024 was not expected and he did not know that "the transport in some respects was failing". As respects drivers' hours he said, "I think that the main contractor does an 18 and 6 break and I don't think the drivers in all honesty are writing other breaks down … we're looking into that as a company, and to make sure it's not going to happen again, it's completely out of order. And, you know, I mean, it's an embarrassment, really." When it was pointed out that the TC was concerned that excessive hours had been worked since Mr. Grundy was made aware of the problem, he said that they had had new logbook sheets made, apparently to give more room to write down other breaks, and he was not sure whether the records were a true representation of the driver's hours and duty hours. He was asked what steps he had taken to change and said he had not done anything. He was asked what steps he was going to take

and said that they were currently not doing that sort of work until they could bring the hours down and guarantee they were not overworking any of the drivers. They were doing the domestic rules but were still an emergency based company. He said he understood that the rules did apply and said he thought Mr. Streamer and Ms. Williams had had two or three conversations with Mr. Cox about what they could do in an emergency situation. He accepted that Mr. Cox had raised a case of someone working 19 days consecutively and said he should have been aware of it and done something about it. He did not at the time understand how the rules worked but now did and had done training. The misunderstanding had come from the transport managers.

32. The TC then asked some questions of his own. The first questions related to the vehicle on the Isle of Wight. Mr. Grundy knew that a garage over there was dealing with work needed and inspections but did not know the Company needed an operating centre there. He was then asked about why he retained Mr. Gibbons on the licence as transport manager and accepted that he knew Mr. Gibbons was not coming into the office and checking the paperwork. He acknowledged he ought to have removed Mr. Gibbons. The TC moved to the issue of drivers employed by limited companies and pointed out that the companies themselves needed an operator's licence, because the licence had to be held by the driver or the person giving directions to the driver, namely, the relevant company. He put to Mr. Grundy that the Company had been "lending its licence authority to an illegal operator". Mr. Grundy explained that he did not know the employing company required a licence if it did not own the vehicle and that the reason for using such drivers was the seasonal nature of the business.

33. As respects drivers' hours, the TC referred Mr. Grundy specifically to Mr. Nunez' work sheet for the week ending 30th June 2024, showing four 18 hour shifts in a row, with no break at all between one shift and another on some days. He asked why he was seeing that two or three months after the Company had had a visit from a traffic examiner saying stop, this is dangerous. Mr. Grundy replied:

> "Like I said, I believe they're not filling out their rest breaks and times on their sheet. But I haven't got anything to confirm that right now, but if they're driving for only five hours, I can only but imagine that they are on break because they sit around a lot and don't do a lot so they're obviously not writing their breaks in. They just writing their … the contract that we do that's what they give us, 18 and 6 minimum But they can do 12 hour and a 12 hour break. They can do a 14 hour break and a 10 hour shift. They're not writing it on the sheets, I don't think."

The TC pointed out that the evidence was the Company's evidence and continued:

> "And how are they getting an 11 hour break between the end of one shift and the start of another? They're not, are they? Six hours to get back home, get washed, go to bed, get up, get something to eat and get started at work again ...

> So you think it's reasonable to put a guy on four consecutive 18 hour shifts with only six hour break between the shifts? You think that's a safe thing? A safe system of work?
>
> …
>
> It's not the odd one here and there, is it? It's constant. They're all doing it. And it was brought to your attention in April. So why didn't you respond in April and get some expert advice?"

Understandably, Mr. Grundy did not argue that it was reasonable or safe, but still said he was not sure that the drivers were writing the hours down correctly and that the DVSA advice was why they had got their internal transport manager. When asked why the Company did not seek legal advice, he said they did try to get some clarity from Mr. Cox.

34. The TC then asked Mr. Hayes if he wished to call Mrs. Grundy. Unfortunately the end of Mr. Hayes's response is recorded as unintelligible, but the TC clarified with Mrs. Grundy that the vehicle he was concerned about had been on the Isle of Wight for about six months and that she was not aware of the need to make an application for an operating centre.

35. Mr. Hayes was then invited to make closing submissions. Again some words or sentences are recorded as unintelligible, but the gist of his submissions seems to have been:

    a. The principal concern was the excessive hours worked by the drivers;

    b. The Company had grown rapidly and Mr. Grundy's speciality was as a drainage engineer. He, Mr. Grundy, would have to accept that he had not paid the attention to legislative requirements that he ought to have done;

    c. The inspection on 17th April 2024 was a massive wake-up call and led to the bringing in of Miss Williams, who had done a sterling job in correcting a lot of the issues;

    d. He appreciated that it was not satisfactory that Mr. Grundy was saying that the time sheets were not being filled in correctly, but there were a lot of new systems coming in and so there were bound to be initial problems;

    e. Further time should be allowed to the Company to bring its house into order. The business employed 35 to 40 people.

36. The TC then asked Mr. Grundy about the consequences of potential courses of action. In reply Mr. Grundy said that if the licence were to be curtailed to eight vehicles, they would make it work; if the licence were to be suspended for a month it would be difficult because they would not be able to service their daily customers; if the licence were revoked, they would have to do drainage only,

which was not a viable business on its own, because the Company had modelled the business as an integrated one although there were two separate divisions; and if he were to be disqualified he would have to go back to the drainage to a certain degree but was not quite sure what he would do.

The TC's decision

37. In his decision the TC set out the background to the case and summarised the evidence and submissions he had heard, in somewhat more detail than is set out above. He made the comment that Mr. Hayes did not appear to be close to the legislation and could not really assist him on it. He then set out the relevant parts of the applicable EU requirements and concluded that the Company's business was outside the EU drivers' hours rules and there was no requirement for a tachograph. That was the exemption referred to by Mr. Gibbons, but it did not mean that a tachograph could not be fitted and used to monitor compliance with domestic regulations.

38. The TC proceeded to set out in detail the relevant domestic legislation, which does provide some relaxation of the basic rules in the case of emergency work, and to state his understanding of what constitutes an emergency for these purposes. Mr. Clarke does not challenge what the TC said and it is not necessary for us to go through it in detail at this point. The TC continued:

> "50. In case I am wrong on that, I will go on to set out what flexibilities the exemption actually provides. Mr Gibbons was entirely in error when he said, many times, "*exempt means exempt"*. Exempt means exempt from particular provisions and, in fact, only two of them. The driver may drive in excess of 10 hours and may be on duty more than 11 hours. Even then, the exemption only applies where the events *"necessitate the taking of immediate action*", and sitting around on-call is not taking immediate action. In addition, the driver must still:
>
> - Have an interval for rest between two consecutive working days of not less than 11 hours
> - Not be on duty in any working week for a period in excess of 60 hours, and
> - Have a period of 24 hours break in each week
>
> 51. This operator was put on notice of serious breaches on 17 April 2024. Those breaches included a driver driving for **nineteen** consecutive days. There were multiple occasions of drivers being on duty for **eighteen** hours. Drivers were getting only six hours between shifts on a regular basis. The operator was again put on notice of its dangerous practices by the three police encounters on 23 April, 28 May and 5 June. It was therefore a great surprise to find the following in the pre-public inquiry evidence:

Driver Nunes	
w/c	Hours worked
24 June	69 (in 4 days)
17 June	56.75
10 June	64
3 June	105
27 May	40 (in 3 days)
20 May	48 (in 4 days)
13 May	79
6 May	95.5
28 April	77

52. From 7 to 17 May, driver Nunes worked eleven consecutive days and was on duty for 174 hours. That is astonishingly dangerous. He is referred to in the company documentation as a "*valued member of our extended subcontractor team*" and is employed through NAN Driving Services Ltd. He is the worst example in the sample provided but other drivers still regularly exceed 11 hours on shift. There has been no improvement arising from either the DVSA or police interventions. I find that the rules on drivers hours and tachographs have not been observed, Section 26(1)(f) is made out and I attach significant weight."

39. As respects Mr. Gibbons, the TC found that he had "set up dangerous and illegal working practices", withdrew from the operation two years earlier but allowed the Company to continue to benefit from his qualification through payment of a retainer, which was a dishonest act. His good repute was lost and he was disqualified indefinitely.

40. As respects Mr. Oxley, the findings of Mr. Collins were highly relevant since he was the transport manager in post at the time of the site visit. He had made no inquiries about the drivers' hours position but had simply accepted what he was told. Having been told in April 2024 of the need to ensure that drivers had proper rest, the situation persisted up to the time of the inquiry. It was his job to ensure compliance, which had to start with knowing the rules. His good repute was also lost, but he was disqualified for the period of 12 months only.

41. As respects the Company's good repute, the TC said:

"60. *"Mr Grundy explained that he was unaware of…".* That is a phrase found more than once in the Vehicle Examiner's report. He claims to have been naïve, he blames his transport managers' advice. He blames everyone but himself. At the inquiry, Mr Grundy still failed to see the danger his practices were creating. Instead, he told me it left him *"embarrassed*".

61. In the legal context, knowledge goes wider than actual knowledge. Mr Grundy failed to ask the most obvious question – why does the

law allow me to use drivers who must be dangerously fatigued just in case a pipe bursts? In not asking that obvious question, Mr Grundy has exhibited a high degree of fault, turning a blind eye to the blindingly obvious. In that context, it is unsurprising that Mr Grundy told me that he had undertaken no training nor learning in relation to his statutory duties as a director and the relevance of Sections 2 and 3 of the Health & Safety at Work Act 1974. I therefore find that he did have imputed knowledge of the company's widespread regulatory failings.

62. Mr Grundy knew that Mr Gibbons had ceased to act as transport manager two years ago. He told me that Mr Gibbons was free to attend the operating centre to check on things if he wanted but accepted that he knew he had not done so. When the Vehicle Examiner enquired about Mr Gibbons, he was told that he was on holiday. He failed to explain that there had been a falling-out and Mr Gibbons had permanently left the business. Honesty is clearly not Mr Grundy's strong point.

63. … What has happened here is that vehicles have been driven by drivers working for companies that are illegal operators. This operator has lent its licence authority to those limited companies, all for commercial and financial gain on the part of all those involved. Traffic Examiner Cox noted the unusual employment arrangements in April but the operator does not appear to have understood the seriousness of the point and has done none of its own research. That is a strong negative point.

64. In conducting a balancing exercise, I must look for positives. Aside from the short-lived engagement of Ms Williams, they are hard to find, but I do give the company credit for the condition of the maintenance systems provided at the inquiry. It really is night and day compared to April. The prohibition performance is good but that can only be given limited weight given that the sample is three vehicles presented for a pre-arranged examination. Given the nature of the load carried, it is probably not a surprise that none have been targeted for roadside mechanical inspection. TE Cox noted in his pre-inquiry update that logbooks were now more detailed, training and toolbox talks have been introduced. A loading policy has been drafted and there is evidence of a disciplinary system (although the sub-contractor limited company is the subject of the disciplinary action, which is unusual and may not stand up if tested in law). This is the first public inquiry.

65. Those positives can do little to offset the negatives. Three and a half months after the advice from the Traffic Examiner, vehicles had still not had tachographs calibrated and they are not being used to monitor driving time. Mr Grundy complained that drivers were not keeping a full record of their breaks whilst on site. Whose

responsibility is that if not his, as the "principal director", as Mr Hayes describes him?

66. It is very rare that I come across an operation as blatantly dangerous as this one. I remind myself of the table at paragraph 51 above and that a driver booked 174 hours of work over 11 consecutive days – that coming two months after the strong advice issued by Traffic Examiner Cox.

67. I ask myself, as I am required to do, whether this is a company that can be trusted to be compliant in the future. …

68. It is clear here that this operator has made no attempt whatsoever to regularise the duty periods of its drivers. I wasn't even promised action at the inquiry although Mr Hayes did submit that the company should be given time. It has had time and the danger persists – what might more time achieve? I do not trust it to be compliant in the future. So does the operator deserve to be put out of business? That is the second question I must answer, and I answer it overwhelmingly in the positive. This is a dangerous operation whose danger has not materially diminished since clear advice was given to get its house in order. It must be brought to an end for the safety of itself and other road users. The operator's good repute is lost."

42. Finally, the TC dealt with the disqualification of the Company and its directors as follows:

"69. The danger posed by the blatant and extreme breaches of the drivers hours rules along with the apparent lack of insight in to that danger mean that, unusually for a first public inquiry, I do find that the operator and constituent directors need a period of learning and reflection before they consider operating large goods vehicles again. That is essential to achieving the objectives of the operator licensing regime. In line with the Senior Traffic Commissioner's Statutory Guidance, for a first public inquiry with a very dangerous operation, I find that the appropriate period is 3 years."

43. The licence was revoked both pursuant to the finding of the loss of good repute (which, as explained in paragraph 48 below, is a mandatory ground for revocation) and pursuant to a finding of a serious breach of undertakings, the failure to abide by the rules on drivers' hours.

The grounds of appeal

44. The notice of appeal specified six grounds of appeal, but very properly included a note to the effect that the appellants' representatives would amend, add to or abandon grounds upon consideration of a transcript of the public inquiry. In the event, the only ground which was maintained in the appellants' skeleton

argument dated 15th September 2025 and at the hearing was based on the alleged inadequate and incompetent representation of Mr. Hayes. Amended grounds of appeal were filed on 17th February 2025 which read:

> "The Solicitor representing the Applicants provided inadequate and incompetent representation such that the Applicants' cases were not advanced before the Traffic Commissioner properly or at all, in that he:
>
> i Had no or no sufficient knowledge of the areas of law under consideration;
>
> ii Was unable to assist the Traffic Commissioner with his understanding of the law;
>
> iii Failed in advance of the inquiry to properly consider with the Applicants evidence relied upon by the Traffic Commissioner;
>
> iv Failed to identify the absence of evidence referred to in documents and relied upon by the Traffic Commissioner;
>
> v Failed to identify or otherwise advise on material in the hands of, or otherwise available to, the Applicants and which supported the Applicants' cases so that it might have been adduced at the Public Inquiry;
>
> vi Failed to call, challenge, or otherwise examine witnesses properly or at all;
>
> vii Failed to advance any or any proper argument on behalf of the Appellants to the Traffic Commissioner on the issue of regulatory action and the effects thereof;
>
> viii AND by such failings failed to properly, competently or adequately represent the Applicants and advance their cases before and during the Public Inquiry, that failing being so serious as to have amounted to a breach of the right to a fair hearing as guaranteed by Article 6 of the European Convention on Human Rights."

The legal framework

45. We now turn to the legal framework which applies in this case. We begin by setting out, for convenience, the relevant provisions as to drivers' hours, about which there is no dispute. The basic provisions are to be found in the Transport Act 1968 and as currently in force are as follows:

> "95.(1) This Part of this Act shall have effect with a view to securing the observance of proper hours or periods of work by persons engaged in the carriage of passengers or goods by road and thereby protecting the

public against the risks which arise in cases where the drivers of motor vehicles are suffering from fatigue.

…

96.(1) Subject to the provisions of this section, a driver shall not on any working day drive a vehicle or vehicles to which this Part of this Act applies for periods amounting in the aggregate to more than ten hours.

(2) Subject to the provisions of this section, if on any working day a driver has been on duty for a period of, or for periods amounting in the aggregate to, five and a half hours and –

(a) there has not been during that period, or during or between any of those periods, an interval of not less than half an hour in which he was able to obtain rest and refreshment; and

(b) the end of that period, or of the last of those periods, does not mark the end of that working day,

there shall at the end of that period, or of the last of those periods, be such an interval as aforesaid.

(3) Subject to the provision of this section, the working day of a driver -

(a) except where paragraph (b) or (c) of this subsection applies, shall not exceed eleven hours;

(b) if during that day he is off duty for a period which is, or periods which taken together are, not less than the time by which his working day exceeds eleven hours, shall not exceed twelve and a half hours;

…

(4) Subject to the provisions of this section, there shall be, between any two successive working days of a driver, an interval for rest which -

(a) subject to paragraph (b) of this subsection, shall not be of less than eleven hours;

…

and for the purposes of this Part of this Act a period of time shall not be treated, in the case of an employee-driver, as not being an interval for rest by reason only that he may be called upon to report for duty if required.

> (5) Subject to the provisions of this section a driver shall not be on duty in any working week for periods amounting in the aggregate to more than sixty hours.
>
> (6) Subject to the provisions of this section, there shall be, in the case of each working week of a driver, a period of not less than twenty-four hours for which he is off duty, being a period either falling wholly in that week or beginning in that week and ending in the next week …
>
> (10) For the purpose of enabling drivers to deal with cases of emergency or otherwise to meet a special need, the Minister may by regulations –
>
> > (a) create exemptions from all or any of the requirements of subsections (1) to (6) of this section in such cases and subject to such conditions as may be specified in the regulations …
>
> 103(4) In this Part of this Act references to a driver being on duty are references –
>
> > (a) in the case of an employee-driver, to his being on duty (whether for the purpose of driving a vehicle to which this Part of this Act applies or for other purposes) in the employment by virtue of which he is an employee-driver, or in any other employment under the person who is his employer in the first-mentioned employment …"

46. The exemptions envisaged by section 96(10) are to be found in the Drivers' Hours (Goods Vehicles) (Exemptions) Regulations 1986, S.I. 1986 No. 1492, reg. 2, which reads:

> "2.(1) A driver who during any working day spends all or the greater part of the time when he is driving vehicles to which Part VI of the Transport Act 1968 applies in driving goods vehicles and who spends time on duty during that working day to deal with any of the cases of emergency specified in paragraph (2) below is exempted from the requirements of sections 96(1) and (3)(a) of that Act in respect of that working day subject to the condition that he does not spend time on such duty (otherwise than to deal with the emergency) for a period or periods amounting in the aggregate to more than 11 hours.
>
> (2) The cases of emergency referred to in paragraph (1) above are –
>
> > (a) events which cause or are likely to cause such –
> >
> > > (i) danger to life or health of one or more individuals or animals, or
> >
> > > (ii) a serious interruption in the maintenance of public services for the supply of water, gas, electricity or

drainage or of electronic communications or postal services, or

(iii) a serious interruption in the use of roads, railways, ports or airports,

as to necessitate the taking of immediate action to prevent the occurrence or continuance of such danger or interruption and

(b) events which are likely to cause such serious damage to property as to necessitate the taking of immediate action to prevent the occurrence of such damage."

47. As can clearly be seen, there is no exemption from the requirements of section 96(2), relating to rest periods during the working day, section 96(4), relating to the interval of rest between successive working days, section 96(5), relating to the length of the working week, and section 96(6), relating to the rest period during the course of the working week.

48. Under the Goods Vehicles (Licensing of Operators) Act 1995 as currently in force:

"13A.(1) The requirements of this section are set out in subsections (2) and (3).

(2) The first requirement is that the traffic commissioner is satisfied that the applicant –

(b) is of good repute …

26.(1) Subject to the following provisions of this section and the provisions of section 29, a traffic commissioner may direct that an operator's licence be revoked, suspended or curtailed … on any of the following grounds -

…

(f) that any undertaking recorded in the licence has not been fulfilled;

…

27.(1) A traffic commissioner shall direct that a standard licence be revoked if at any time it appears to him that -

(a) the licence-holder no longer satisfies one or more of the requirements of section 13A …

> 28.(1) Where, under section 26(1) or 27(1), a traffic commissioner directs that an operator's licence be revoked, the commissioner may order the person who was the holder of the licence to be disqualified (either indefinitely or for such period as the commissioner thinks fit) from holding or obtaining an operator's licence; …
>
> …
>
> (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 …"

49. Section 37 of the 1995 Act gives a right of appeal to the Upper Tribunal against, inter alia, any direction under section 26(1) or section 27(1) and any order under section 28(1) and (5).

50. The powers of the Upper Tribunal on an appeal are set out in paragraph 17 of Schedule 4 to the Transport Act 1985, which reads as follows, so far as material:

> "17.(1) The First-tier Tribunal and the Upper Tribunal are to have full jurisdiction to hear and determine all matters (whether of law or of fact) for the purpose of the exercise of any of their functions under an enactment relating to transport. In the case of the Upper Tribunal, this is subject to sub-paragraph (3).
>
> (2) On an appeal from any determination of a traffic commissioner …, the Upper Tribunal is to have power –
>
> (a) to make such order as it thinks fit; or
>
> (b) to remit the matter to –
>
> (i) the traffic commissioner who made the decision against which the appeal is brought; or
>
> (ii) as the case may be, such other traffic commissioner as may be required by the senior traffic commissioner to deal with the appeal,
>
> for rehearing and determination by the commissioner in any case where the tribunal considers it appropriate;
>
> and any such order is binding on the commissioner.
>
> (3) The Upper Tribunal may not on any such appeal take into consideration any circumstances which did not exist at the time of the determination which is the subject of the appeal."

.

51. It is well established that when considering mandatory revocation of a standard operator's licence the questions a traffic commissioner will need to consider will include how likely the operator is to operate in compliance with the licensing regime in future and whether the conduct which has taken place is such that the operator should be put out of business. The first of those questions was identified in *Priority Freight Limited and Williams* 2009/225 and is commonly referred to as "the *Priority Freight* question" and the second was identified in *Bryan Haulage Limited (No. 2)* 217/2002 and is commonly referred to as "the *Bryan Haulage* question". It is clear from the decision in *Bryan Haulage* that the question was framed in the light of the need for a relationship of proportionality between the conduct found to have occurred and the sanction necessarily to be imposed. If a positive answer is to be given to the question, it is because revocation is a proportionate response to the relevant conduct. The *Priority Freight* question is regarded as a preliminary question, to be asked before the *Bryan Haulage* question is asked, because, as explained in *Priority Freight*, if the evidence demonstrates that the operator is very likely to be compliant in future, that may indicate that the case is not one in which the operator should be put out of business.

52. The general rule is also well established that the task of the Upper Tribunal when considering an appeal from a decision of a traffic commissioner is to review the material before the traffic commissioner, and the Upper Tribunal will only allow an appeal if the appellant has shown that "*the process of reasoning and the application of the relevant law require the tribunal to take a different view*", as explained in *Bradley Fold Travel Limited and Peter Wright* v. *Secretary of State for Transport* [2010] EWCA Civ 695, [2011] R.T.R. 13, at paragraphs 30-40. This is sometimes summarised as requiring the Upper Tribunal to conclude that the traffic commissioner was plainly wrong.

53. The present case is rather different, since Mr. Clarke made clear in his submissions that he did not contend that the TC was plainly wrong, but indeed made no criticisms of him. His argument is rather that the TC's decision was given on a basis which was unfair because of the lack of competent representation. We therefore now turn to the way in which the case was put.

The appellants' submissions

54. We begin by expressing our thanks to Mr. Clarke for his skeleton argument and oral submissions. In compliance with the case management directions given by Judge Mitchell on 16th November 2024, the skeleton argument was brief. Having set out the sole ground on which the appeal was brought (omitting the sub-paragraphs) as set out in paragraph 44 above, Mr. Clarke identified the legal basis for allowing the appeal as breach of Article 6 of the European Convention on Human Rights or a violation of "the common law principle of fairness". He submitted that the test of whether an instructed representative was competent was the standard of a reasonably competent practitioner as established in *Bolam v. Friern Hospital Management Committee* [1957] 1 W.L.R. 582 and drew attention to the decision of the House of Lords in *Saif Ali v. Sydney Mitchell & Co.*

[1980] A.C. 198 which examined the scope of the immunity from suit of solicitors and barristers in respect of the conduct and management of a cause in court.

55. Turning to the application of those principles, Mr. Clarke set out a number of references to passages in the transcript of the inquiry which he contended demonstrated that Mr. Hayes "knew little, if anything, of the principles of road transport regulatory law and procedure". He concluded:

> "15. Thus, the sole question here is this: had the representative (a) had some knowledge of the jurisdiction; and (b) taken full instructions prior to the Public Inquiry, and (c) advised as to remedial action *before* the day of the Public Inquiry, might the outcome of the Public Inquiry have been different?
>
> 16. It is submitted that the answer to that question is 'Yes': a properly instructed and informed representative would have advised on the need for remedial action prior to the Public Inquiry so that the position on the day may well have been very different [from] that presented."

56. Those arguments were fleshed out in Mr. Clarke's oral submissions at the hearing. He told us that it was quite difficult to track down Mr. Hayes and there is certainly nothing before us to shed light on why Patterson Law instructed him to act as the appellants' representative. The points made by Mr. Clarke were in many ways foreshadowed by the grounds of appeal and we summarise them as follows:

    a. Mr. Hayes was admittedly unfamiliar with the procedure at a public inquiry and expressed himself as uncertain whether he should call Mrs. Grundy;

    b. Mr. Hayes was demonstrably unable to address the detailed legislation on drivers' hours or to offer a definition of "emergency" for the purposes of the 1986 Regulations, which potentially affected the TC's identification of the facts he needed to find;

    c. Mr. Hayes was also clearly unfamiliar with the law relating to the unauthorised use of an operating centre, the difference between standard and restricted licences and the use of self-employed drivers. A competent representative would have obtained the necessary facts from the appellants before the hearing and been able to address the TC on those points;

    d. Mr. Hayes ought to have met the appellants sufficiently far in advance of the hearing to be able to advise them on the remedial action they should take and to be in a position to present a programme for such action at the hearing;

    e. A competent representative would have made closing submissions which identified far more persuasively the positive elements of the case and the

reasons why the *Priority Freight* question should be answered in favour of the appellants.

Analysis

57. We begin by considering the legal basis on which Mr. Clarke submitted the appeal should be allowed. Reliance on *Bolam* and *Saif Ali* can only take the appellants a limited way. Those are cases which deal with the standard of the duty of care and the circumstances in which a claim for professional negligence consisting of breach of that duty can be brought. We accept that *Bolam* is a long-standing authority as to the standard of the duty of care and that *Saif Ali* established that a claim for negligence can be brought in respect of the conduct and management of litigation where the allegedly negligent acts take place outside the hearing itself, although we note that the immunity from suit extends to a preliminary decision affecting the way the case is to be conducted when it comes to a hearing. We are not, however, directly concerned with the question whether the appellants would have a claim for professional negligence against Mr. Hayes or Patterson Law. What we have to consider is whether Mr. Hayes' lack of competence was such that there was a breach of Article 6 or the hearing was not fair for the purposes of the common law principle.

58. The relevant part of Article 6 reads:

> "6.1 In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law."

The Article goes on to make specific provision in criminal cases for, inter alia, adequate time and facilities for the preparation of the defence, legal assistance if the person so chooses, to be given free when the interests of justice so require, and the examination of witnesses. Subject to the caveat of whether Mr. Hayes' assistance was competent, these features, although not required by Article 6 for a civil case, were in fact present and it is of course obvious that the hearing was public, held within a reasonable time, by an independent and impartial tribunal established by law. What remains is the issue whether the hearing was "fair" in view of the level of competence displayed by Mr. Hayes.

59. Mr. Clarke did not draw our attention to any particular authority on what constitutes fairness for the purposes of Article 6 or for the purposes of the common law principle. We note in the criminal context the decision of the Court of Appeal (Criminal Division) in *R. v. Day (Mark Darren)* [2003 EWCA Crim 1060 that incompetent representation cannot in itself form a ground of appeal or a reason why a conviction should be found unsafe. It is necessary to show that:

> "the incompetence led to identifiable errors or irregularities in the trial, which themselves rendered the process unfair or unsafe."

This passage has frequently been cited subsequently and is recently to be found cited in *Brooker v. R.* [2024] EWCA Crim 103, accompanied by the statement that a successful appeal on such a ground is "exceptionally rare". The passage was also cited and applied in *R. (Aston) v Nursing and Midwifery Council* [2004] EWHC 2368 (Admin.), in which the question for the court was whether, as set out in Part 52 rule 11 of the Civil Procedure Rules, the decision of the lower court was unjust because of a serious procedural or other irregularity in the proceedings in the lower court. The test, agreed by the parties and adopted by the court, was that the advocate must have acted in a way in which no reasonable advocate might reasonably have been expected to act and that the wholly inadequate conduct did affect the fairness of the process. The effect is to require a degree of incompetence going beyond what would be sufficient to constitute professional negligence, but on the other hand to afford a remedy where no professional negligence claim could be brought because of the principle of immunity from suit.

60. Bearing this guidance in mind, we accept as a matter of law that, assuming for this purpose that Mr. Hayes acted incompetently, the TC's decision could be set aside if the consequence was that the TC proceeded on a basis which was sufficiently unfair to the appellants in identifiable respects to require such an outcome. In our view the criminal cases do not appear to go as far as the *Aston* case in terms of the degree of negligence required and we do not apply such a stringent test ourselves, but it is plain that there must be a causative link between the negligence and the unfairness of the process and practically speaking the effect is likely to be that the incompetence in question will be substantial.

61. We therefore turn to the question of Mr. Hayes' competence. We note initially that the call-up letter was dated 11th June 2024 and the public inquiry was held on 31st July 2024. By 28th June 2024 the appellants had obtained the services of Patterson Law, a firm which held itself out on its notepaper as having a degree of expertise in traffic matters By 15th July 2024 that firm had selected Mr. Hayes as the advocate and was able shortly thereafter to provide a very considerable body of evidence. Its ability to do so suggests that it did indeed have relevant expertise and was capable of advising on remedial steps without relying on Mr. Hayes for that purpose. We do not know on what basis the firm selected Mr. Hayes and there was no formal evidence before us either on that question or as to what further steps were taken by either Patterson Law or Mr. Hayes in advance of the public inquiry. Mr. Clarke said in his skeleton argument, having tracked Mr. Hayes down as far as he was able, that he:

> "is a solicitor of over 20 years practice. He advertises himself as engaging and taking instructions in Estate Planning, Wills & probate, and Commercial contract, dispute settlement, property and corporate work."

Putting to one side the question how far we can properly have regard to that information, given its evidential nature, we accept that what Mr. Clarke says suggests that Mr. Hayes did not have relevant expertise. It may be that the appellants therefore have a claim for professional negligence against Patterson Law for instructing an apparently unsuitable advocate, but that does not of itself demonstrate that Mr. Hayes acted incompetently.

62. Mr. Clarke also placed considerable emphasis on Mr. Hayes's failure, as he argued, to give proper advice to the appellants sufficiently far in advance of the inquiry to enable the appellants to take the steps which would be necessary to put them in a position to present a more persuasive case to the TC. He told us that Mr. Hayes only met the appellants the day before the hearing. Again Mr. Clarke had some technical difficulties here, since there was no waiver of privilege by the appellants and we do not know the scope of the instructions given to Mr. Hayes or what advice Mr. Hayes in fact gave and whether or not any advice was acted on. His instructions may or may not have included instructions to advise on remedial steps and any such advice may or may not have been taken. It is not self-evident that Mr. Hayes was retained to do more than act as the advocate, with Patterson Law accepting the responsibility for general advice as well as for assembling the evidence for the purposes of the inquiry. If there was indeed an absence of advice as to remedial steps which could and should be taken, and if those steps would in fact have been taken, then again the appellants may have a claim for professional negligence against either Patterson Law or Mr. Hayes or both. We, however, do not have the necessary factual foundation for finding that either Patterson Law or Mr. Hayes was incompetent in this respect.

63. In this context, we note also that there is a significant difference between the contention that a representative should meet the client sufficiently in advance of the hearing to be able to take the instructions necessary to argue the case as it stands and the contention that a representative should meet the client sufficiently in advance of the hearing to be able to give advice which, if followed, would, or would potentially, alter the facts of the case. The first contention plainly relates to what is required to be done to be able to conduct the hearing competently. The second contention does not. Advice of the kind which it contemplates is of course entirely proper and if followed may make the task of the advocate easier, but when the issue is whether the hearing was fair what has to be considered is the duties of the representative as advocate, not any wider duties which may arise if the instructions cover a wider area than that of representation alone. In the present case, the appellants' fundamental problem was that they had disregarded the law on drivers' hours in reliance on Mr. Gibbons' assertion that there was a relevant exemption and had continued to do so for months after Mr. Cox's advice. They needed advice as to what the law was, but to the extent that the purpose of that advice was to enable them to decide on how to comply with the law in the future, with additional advice if necessary, it was a preliminary to assisting their representative to make persuasive submissions. In his capacity as representative at the hearing, Mr. Hayes needed instructions as to the steps which it had been decided were going to be taken by way of future compliance. We do not accept that in order to perform the role of representative at a public inquiry competently it is necessary for the representative to have done what was required to be able at a prior stage to advise on any remedial action which might assist the case at the inquiry. The proposed representative might be an obvious source of such advice, but in giving it would not be discharging the functions of a representative.

64. In case we are wrong in the view expressed in the preceding paragraph and for the avoidance of doubt, we make clear that we accept that if Mr. Clarke had been advising the appellants, he would have been well able, if so instructed by 15th July 2024 (when the OTC was notified that Mr. Hayes would act as representative), to identify appropriate remedial action and to impress forcefully on his clients the need for taking such action. We did, however, put to Mr. Clarke that on the material before us it appeared that in order to comply with the drivers' hours requirements the drivers would have to do about half the work they had been accustomed to doing and he accepted that that was so. We are not persuaded that even with Mr. Clarke's assistance, assuming that his advice was accepted, the appellants would have been able to demonstrate to the TC on 31st July 2024 a revised pattern of working which was already functioning and was capable of being maintained. The likelihood is, in our view, that at best the TC would have been presented with a properly formulated plan and assurances that the plan would be put into effect. The TC would still have had to decide whether to accept those assurances. As matters transpired, he had to do so without having seen such a plan.

65. We come, then, to the inquiry itself. We are conscious that neither Mr. Hayes nor Patterson Law, so far as material, has had the opportunity to respond to the criticisms raised and that if they had had such an opportunity there might be matters which they would have wished to draw to our attention. Nevertheless we must proceed as best we can on the material before us. We conclude that:

    a. Mr. Hayes was indeed admittedly unfamiliar with the procedures at a heavy goods vehicle operator public inquiry before a traffic commissioner. He seems to have made this admission, however, in the context of ascertaining whether the TC wanted to hear what in a civil litigation context would be evidence in chief or whether, as in practice had happened with Mr. Gibbons and Mr. Oxley, the TC wanted to proceed straight to asking the questions which he himself had in mind. We note that Mr. Hayes did pursue with both those witnesses a line of questioning which seemed intended to show that the responsibility for many of the unsatisfactory aspects of the Company's operation, and in particular the failures as respects drivers' hours, lay with the two transport managers, who had consistently proceeded on the ill-founded and inadequately investigated basis that there was a complete exemption. He also elicited pertinent evidence in chief from Miss Williams and Mr. and Mrs. Grundy. We accept that he expressed uncertainty about whether to call Mrs. Grundy (transcript 01:29:30), but a part of what he was saying in that connection was unintelligible and since the TC asked her very few questions indeed it is at least possible that Mr. Hayes' uncertainty related, quite reasonably, to whether she could add anything to Mr. Grundy's evidence rather than arising from a lack of competence. Mr. Hayes had already, and again quite reasonably, referred to Mr. Grundy as the principal director.

    b. Mr. Hayes was also demonstrably unable to address the TC in the detail that the TC had expected on the drivers' hours rules and the scope of the

emergency exemption. This is an area of the regulatory system which we would have expected Mr. Hayes to have familiarised himself with for the purposes of this inquiry and, as far as appears from the transcript, he had not done so. He showed a lack of competence in that respect. We return below to the question whether that led to any irregularities which made the inquiry unfair.

c. Similarly, Mr. Hayes was not, as far as appears from the transcript, familiar with the relevant law relating to operating centres, self-employed drivers and standard and restricted licences. Again we return below to the question whether that led to any irregularities which made the inquiry unfair. We comment at this stage that these were matters which were not specifically raised in the call-up letter and so a lack of preparation might be less surprising, although we have in mind that Mr. Cox's report did refer to the arrangements for the employment of drivers. Even so, we would expect all three topics, but in particular the law relating to operating centres, to be broadly familiar to a representative claiming expertise in this area.

d. In his closing submissions Mr. Hayes correctly identified the TC's principal concern as the breaches of the drivers' hours rules and made an attempt to address that concern. He referred to the rapid growth of the business, pointed out that Mr. Grundy's speciality was as a drainage engineer, acknowledged that Mr. Grundy had not paid the heed to the legislative requirements that he ought to have done and accepted that it was not satisfactory that records were not being completed correctly, but drew attention to the "sterling job" done by Miss Williams in correcting a lot of maintenance issues and asked for further time. What he did not do, as far as we can see, is to attempt to address the TC on the *Priority Freight* and *Bryan Haulage* questions. As we have said, those cases are well-established authorities and we would expect that any representative familiar with the relevant law would have referred to *Priority Freight* at least and would have identified expressly the factors which it was submitted showed that the appellants could be trusted to operate in compliance with the licensing regime in future. The TC's task was to conduct a balancing exercise, weighing the positive features of the case against the negative ones. We note that some parts of Mr. Hayes's submissions appear on the transcript as "unintelligible", but overall those parts are a relatively limited part of the closing submissions. We accept Mr. Clarke's submission to us that Mr. Hayes did not clearly address the balancing exercise, particularly such positive features as there might be, and in that respect also there was a lack of competence. Again, however, there remains the question whether it led to any irregularities which made the inquiry unfair.

66. In the light of what we have said in paragraphs 61 to 65 above, we conclude that there is sufficient material showing incompetence on the part of Mr. Hayes at the inquiry itself to require us to proceed to consider the question of unfairness, but we do so on the basis that, for the reasons given in paragraph 62, it is not shown

that a competent representative would have been able to put before the TC a fully worked out and practicable plan for remedying the issues which had arisen in relation to drivers' hours. Still less, for the reasons given in paragraph 64, is it shown that a competent representative would have been able to refer the TC to a plan which was in the process of implementation. The TC would still have had to proceed on the basis he had no more than promises of future compliance.

67. Approaching the matter on that footing, we find that there was no irregularity which made the inquiry unfair. As respects Mr. Hayes' inability to address the TC on the emergency exemption and the law relating to drivers' hours more generally, the TC explained his understanding at some length at the inquiry itself and it is set out in detail in the decision. A representative who was thoroughly familiar with that area of the law could not have challenged what the TC was saying about drivers' hours. Such a representative could have made some submissions about the meaning of the word "emergency", but the approach taken by the TC in his decision at paras. 49 and 50 was that (i) successive shifts on the same job are not emergencies, given that a second driver should have been planned, (ii) the job is not an emergency when it is pre-planned and (iii) an emergency requires immediate action and "sitting around on-call is not taking immediate action". In our view that was a reasonable approach to defining an emergency for the purpose of the legislation and Mr. Clarke understandably did not identify any alternative submissions as to the nature of an emergency which might have led the TC to a different conclusion on the facts of the case. Further, the TC went on to consider how much flexibility the emergency exemption provided and noted, as set out in the passage from his decision quoted in paragraph 38 above, that compliance was still required as respects rest between two working days, the limit on hours worked in a week and the 24 hour break each week. It is clear from the decision that it was the failure to observe those requirements which greatly concerned the TC. Mr. Clarke very rightly does not suggest that the failure did not occur to the very substantial extent to which the TC drew attention or that the TC was wrong to be concerned.

68. As to the failure to address the TC in relation to the operating centre on the Isle of Wight, this does not feature in the TC's reasons for his decision in relation to the appellants, although it is mentioned in connection with his decision in relation to Mr. Oxley. There is plainly no unfairness in that. Similarly, the point as to the possible illegal operation of the Company before the licence was obtained, which is where the difference between a standard and a restricted licence comes into play, was mentioned by the TC only in relation to Mr. Gibbons and then "for context only", because, as the TC acknowledged, it was not raised in the call-up letter. Again there is no unfairness in that.

69. The issue of the self-employed drivers stands on a different footing. Mr. Grundy in his evidence justified the business model by reference to the need for seasonal flexibility, but as the TC pointed out, under section 58(2) of the 1995 Act it is the driver of the vehicle, if he owns it or possesses it under a hire, hire-purchase or loan agreement, who is taken to be the user of the vehicle and must hold a licence, and if he does not own it or so possess it, it is the employer who must be the licence-holder. In the Company's operation, the licence relied on was the

Company's licence, although it was not the employer of the drivers working for the sub-contracting companies. This was noted by Mr. Cox, who recorded an assessment score of 2 in relation to self-employed drivers,[1] but the TC proceeded on the footing that the Company "does not appear to have understood the seriousness of the point and has done none of its own research". He therefore found in paragraph 63 of the decision, again quoted in paragraph 38 above, that it was a strong negative point.

70. It is to be recognised that there is more than one legal issue at play here. First, there is the question whether the allegedly self-employed drivers were indeed self-employed, so that the Company was not obliged to pay their salaries, deducting tax and national insurance contributions, but could simply make a payment for their services, leaving it to them or their employer company to deal with the tax and national insurance aspects. There are detailed off-payroll working rules, known as the IR35 rules, which govern questions such as who determines whether or not a person is genuinely self-employed and the basis for such determinations and which are intended to stop contractors working as so-called "disguised employees" and obtaining tax advantages accordingly. It appears from the transcript at 00.55.00 that Miss Williams had some doubts about the self-employed status of the Company's sub-contractors, on the basis that "a self-employed driver, in my experience, is a driver with an operator's licence and a truck". She had not, however, been involved with that side of the business. Mr. Grundy's evidence about the seasonal nature of the work seems to have been intended to address any suggestion that he was using sub-contracting companies rather than employing additional drivers directly for tax reasons.

71. The second legal issue is the question who should be the licence-holder in such a sub-contracting arrangement. The arrangement described by Miss Williams satisfies not only the IR35 rules but also the requirements of the 1995 Act, since the licence is held by a driver who owns the vehicle. The TC's concern was that, whatever the merits of the arrangement for the purposes of IR35, it did not comply with the 1995 Act. The decision proceeds on the footing that the sub-contracting arrangement were genuine, but they involved a failure to comply with the requirements of the 1995 Act since the licence holder was neither the driver nor the driver's employer.

72. Mr. Clarke's submission in this connection is that Mr. Hayes ought to have established the relevant facts in advance and to have been able to address the TC on this aspect. In fact he did not deal with it at all in his closing submissions. Mr. Clarke did not, however, suggest any facts which ought to have been explored and were not. Mr. Grundy was clear in his evidence that he simply did not know that each company (or, potentially, driver) would need its own operator's licence. It was something he said he would look into. In those circumstances, we do not see any unfairness resulting from Mr. Hayes' failure to address this point. We also note that since 40% to 50% of the drivers were apparently employed in this way, the loss of their services while the situation was put right

[1] A score which the report states means "Mandatory requirement not met/no system/procedure in place or, if in place, clearly not working."

would itself have caused further difficulties in implementing a reduced working hours policy.

73. There remains Mr. Hayes' failure to address the *Priority Freight* question and to identify and emphasise the positive factors for the purpose of the required balancing exercise. Traffic commissioners generally are well accustomed to considering the *Priority Freight* and *Bryan Haulage* questions, both when parties are represented and when parties are unrepresented or the representative is unable effectively to address those questions. The TC in the present case has long experience and demonstrably in paragraphs 60 to 68 of his decision, which are largely quoted in paragraph 38 above, addressed the relevant matters. He also reminded himself of the guidance in *Arnold Transport & Sons Limited v. Department of Environment Northern Ireland* NT/2013/82, [2014] UKUT 0162 (AAC) as to the relevance of the attitude of an operator when something goes wrong, which concludes:

> "… it seems clear that prompt and effective action is likely to be given greater weight than untested promises to put matters right in the future."

74. In paragraph 64 of the decision, the TC said that positives were hard to find but identified the following:

    a. The engagement of Miss Williams and the condition of the maintenance systems at the date of the inquiry.

    b. The prohibition performance.

    c. The more detailed logbooks, training and toolbox talks that Mr. Cox noted had been introduced.

    d. The existence of a loading policy.

    e. The evidence of a disciplinary system.

    f. The fact that it was a first public inquiry.

75. Against the positives the TC took into account:

    a. Mr. Grundy's failure to see the danger his practices were creating.

    b. His imputed knowledge of the Company's regulatory failings, turning a blind eye to the obvious risks, when he had done no training or learning in relation to his duties as a director.

    c. His dishonest explanation to Mr. Collins and Mr. Cox that Mr. Gibbons was on holiday at the time of the inspection.

    d. The use of sub-contractors which were limited companies.

e. The failure, three and a half months after Mr. Cox's advice about drivers' hours, to have tachographs calibrated and to ensure that records were properly maintained by drivers.

f. The continuing breaches of the drivers' hours requirements, meaning that the operation was "blatantly dangerous" to a degree he rarely encountered.

76. Paragraphs 67 and 68 make clear that it was against that background that the TC rightly asked himself the *Priority Freight* question and concluded that he could not trust the operator to be compliant in future. The Company had made no attempt to regularise the duty periods of its drivers. It had had time to take action, but the danger persisted. He answered the *Bryan Haulage* question that the Company deserved to be put out of business "overwhelmingly in the positive" on the ground that it was a dangerous operation which had to be brought to an end for the safety of itself and other road users.

77. It follows that the TC asked himself all the right questions even if his attention was not drawn to them by Mr. Hayes' submissions. We agree that Mr. Hayes could have done more to draw attention to the positives, such as they were, but Mr. Clarke did not suggest that there were any positives in the material before the TC which the TC himself failed to identify. His principal point here, as foreshadowed in his skeleton argument, was that if Mr. Hayes had acted competently at an earlier stage, he would have been able to draw attention to significant remedial steps, although we take the view that, for the reasons we have given, any such steps would have been proposed rather than actual. We also take the view, again for the reasons given, that such relevant failures as there may have been by Mr. Hayes in that respect went no further than to prevent him from relying on a somewhat more concrete promise of future action than Mr. Grundy conveyed by the following exchange with Mr. Hayes:

> "Q. And what steps have you taken to change?
>
> A. I haven't done anything. I haven't.
>
> Q. What steps are you going to take?
>
> A. Yeah, we're redoing the hours. We're currently, you know, not doing that sort of work at the minute until we can bring the hours down and guarantee that we are not overworking any of our drivers and bringing it back into – I believe that, you know, we're doing the domestic rules. We are still an emergency based company. We need to try and work within the guidelines and the domestic rules, basically.
>
> Q. So, do you now understand that notwithstanding the emergency nature of your business that the rules do apply to you?
>
> A. Yes. And we've had a couple of three conversations. I haven't personally, I think Noel and [Miss Williams] has with [Mr. Cox] about

> what we can do in an emergency situation. And we've been explained that, you know, when you're coming up to your duty time, there is, you know, there is an emergency that you cannot leave. Then you can print out the tacho sheet. And if you go over your hours, you can write down the hours of what the emergency took you into. If there's another couple of hours, you can write down on the back, take a picture of why you were there. And that should be acceptable."

78. It appears to us that the appellants' case ultimately resolves itself into the question whether, as a result of Mr. Hayes' failures, there was any unfairness in the TC's assessment of the likelihood of future compliance by the Company. In our view there was not. We note the following:

    a. This is not a case in which the operator recognised a need for change and made some attempt to respond to Mr. Cox's advice, even if not a wholly successful one. Mr. Grundy's admission at the inquiry that the Company had made no changes in the light of Mr. Cox's advice was consistent with Mr. Cox's own evidence following consideration of work sheets down to the end of June 2024.

    b. The Company had taken effective steps to deal with most of the matters raised by Mr. Collins, so it was capable of taking action if it chose to do so. Nevertheless it had done nothing to address the drivers' hours issue, which seems to have been fundamental to its method of operation. This was not a question of minor (by comparison) infringements of the rules through overstepping the time limits or failure to keep proper records. It raised major safety concerns which Mr. Grundy appeared completely to fail to understand.

    c. In response to the inspection the Company had given assurances that all matters raised by Mr. Collins and Mr. Cox would be dealt with and a proposed new policy on drivers' hours had been put forward. It seems to us that even if it had been implemented it would not have been sufficient to satisfy the requirements, but in any event it was not implemented.

    d. There was evidence from Miss Williams, although limited evidence, that she had raised the issue of drivers' hours, but had always been stone-walled by reference to the emergency exemption. The Company had made virtually no attempt to establish the scope of any exemption there might be. To the extent that there had been discussions with Mr. Cox, Mr. Cox's advice, as recounted to the TC, was to run under the domestic hours, which would have been 10 hours of working. Mr. Cox was concerned by the 18 hour days with 6 hours rest.

    e. Encounters with the police had not caused the Company to change its approach.

f. Even at the inquiry, Mr. Grundy seemed to think that the combination of the available emergency exemption and better recording of breaks would solve the perceived problem. That appears from the passage quoted above and his response to the TC's query about putting a driver on four consecutive 18 hour shifts with only a six hour break, quoted in paragraph 33 above. There was nothing to give the TC confidence that the Company understood the scale and significance of its breaches and would immediately correct the position.

g. Mr. and Mrs. Grundy, the directors of a company employing a significant number of people and with a sizeable fleet of vehicles, appeared largely oblivious of their wider responsibilities, including health and safety responsibilities, to their staff, other road users and members of the public generally.

h. Mr. Grundy remained focused on the drainage work where his expertise lay and appeared to have little understanding of the regulatory structure which applied to a large part of the Company's business. The problem with the self-employed drivers is an example of this, as is his reliance on his uncle's assertion about the alleged exemption.

i. The Company admittedly retained Mr. Gibbons as its internal transport manager for some two years while knowing he was not fulfilling his legal responsibilities. That was apparently a matter of convenience for the Company when Mr. Streamer failed to obtain the necessary qualifications. The TC's suggestion that Mr. Streamer was effectively acting as an internal transport manager seems to be correct.

j. At the time of the inspection Mr. Grundy misled Mr. Collins and Mr. Cox by telling them that Mr. Gibbons was on holiday and compounded the deception by asserting that both transport managers were committed to making the necessary improvements, although Mr. Gibbons was seeking to retire. He was also clearly aware of Mr. Gibbons' own dishonest letter in this connection, since it was an attachment to his covering email of 8th May 2024.

79. To summarise: the Company's method of operation involved major safety concerns which had been brought to the Company's attention by both the DVSA and the police. Within about a fortnight of receiving Mr. Cox's advice, the Company had given assurances that it would take steps to comply in all respects. Those assurances involved an element of deception as to Mr. Gibbons' position. As respects drivers' hours they were not acted on in any respect. The appellants had nearly seven weeks' notice of the public inquiry and were informed that drivers' hours were one of the matters for consideration but again took no action. Even at the public inquiry it appeared that the appellants still failed to appreciate either the degree of the safety concerns or the scope of the changes in working practices which would be required. In those circumstances, not only do we see no unfairness in the TC's answer to the *Priority Freight* question, but we conclude that the TC could and would have answered the question in the same way quite

properly if he had had somewhat more concrete assurances of remedy at the inquiry than those he received. He saw a blatantly dangerous operation which had been continued without change for more than three months since Mr. Cox's advice. As he put it, "[The Company] has had time and the danger persists – what might more time achieve?"

Conclusion

80. We appreciate the fact that Mr. and Mrs. Grundy may have found themselves rather swept off their feet by the rapid expansion of the Company's business and may therefore have relied more than was wise on Mr. Gibbons. Nevertheless, their responsibility as directors was to have oversight of the whole of the Company's business and to ensure as far as they could that it was carried on lawfully. From late April 2024 they knew that that was not happening, but took no steps to address a major safety issue. The inquiry was carefully conducted by the TC, who was obviously alert to some possible shortcomings in Mr. Hayes' competence as a representative. We have identified what we see as the relevant shortcomings, whether or not known to the TC, but have concluded that those shortcomings did not have the effect that there were procedural irregularities in the inquiry or that it was unfair.

81. For those reasons we dismiss the appeal.

E. Ovey
Judge of the Upper Tribunal
David Rawsthorn, Specialist Member
Ian Luckett, Specialist Member

Authorised by the Judge for issue on 26th November 2025