



Neutral Citation Number: [2026] UKUT 167 (AAC)

Appeal no. UA-2024-000674-T

**IN THE UPPER TRIBUNAL
ADMINISTRATIVE APPEALS CHAMBER**

Between:

Travel Express Ltd

Appellant

-v-

Secretary of State for Transport

Respondent

Before:

**Upper Tribunal Judge Mitchell
Upper Tribunal Member Rawsthorn
Upper Tribunal Member Roantree**

Hearing:

12 May 2025, at Birmingham Civil Justice Centre

Representation:

Appellant: Mr M Oliver, solicitor, of Smith, Bowyer Clarke Solicitors

Respondent: Mr T Johnston, of counsel, instructed by Government
Legal Department

On appeal from:

Decision maker: Traffic Commissioner for the West Midlands Traffic Area

Commissioner's ref: PD1140735

Date of decision: 3 May 2024

SUMMARY OF DECISION

100 Transport (Traffic Commissioner and DfI NI) appeals

100.2 Decisions and reasons

Judicial summary

A Vehicle Examiner's report stated that it 'could be deemed' that a PSV operator failed to comply with a licence undertaking to carry out 12 weekly roller brake tests. In

revoking the operator's licence, a Traffic Commissioner reasoned that the Examiner's report confirmed that the undertaking was not complied with. No other evidence was relied on. The Commissioner erred in law. The equivocal statement in the Examiner's report could not properly be read as providing confirmation that the undertaking was not complied with.

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

DECISION OF THE UPPER TRIBUNAL

This appeal is ALLOWED. The Traffic Commissioner's decision of 3 May 2024, in so far as the Commissioner directed revocation of operator's licence PD1140735, involved an error of law and the revocation direction is set aside.

The Upper Tribunal directs that this case is to be put before the Senior Traffic Commissioner so that he may consider whether fresh regulatory intervention may be called for.

REASONS FOR DECISION

Subject matter: *revocation of PSV operator's licence*

Case law referred to: *Priority Freight (2009/225); Bryan Haulage (no.2) 2002/217*

Introduction

Terminology

1. In these reasons:

- "PPVA" means the Public Passenger Vehicles Act 1981;
- "operator" means the Appellant;
- "TA 1985" means the Transport Act 1985;
- "TA 2000" means the Transport Act 2000.

Background

The Traffic Commissioner's decision

2. The operator company held a standard national PSV operator's licence which authorised use of 15 vehicles. Mr Kishan Chumber was the sole director of the company and he, as well as a Mr Nirmal Johal, were the operator's designated transport managers. The operator's activities included the provision of local (fare paying) bus services.

3. The operator had been called to three previous public inquiries before a Traffic Commissioner. At the last of these, held on 20 November 2019, the Commissioner "accepted undertakings offered by the operator concerning roller road brake testing [every 12 weeks] and the frequency of vehicle inspections [every five weeks]" and stated "this is really the operator's last chance to get things right. I doubt the licence could survive another public inquiry".

4. A MIVR (maintenance investigation visit report), prepared following a Vehicle Examiner's visit to the operator's premises on 21 October 2023, assessed 9 of the 13 areas examined as unsatisfactory. During that visit, an immediate prohibition was imposed in respect of an outer nearside tyre whose tread, at 0.35 mm, was below the legal minimum tread depth. The MIVR noted that an inspection report of 10 October 2023 described the tyre as 'low' but no driver defect records from shortly before the visit reported low tyre tread. The Examiner was of the opinion that the operator had an 'ineffective system' for driver walkaround checks. The MIVR also stated that, in the light of record keeping deficiencies, it 'could be deemed' that the operator was failing to fulfil the undertaking to carry out 12 weekly roller brake tests.

5. A Bus Operator Account Management (BOAM) public inquiry statement, prepared by a DVSA BOAM officer on 1 December 2023 (pages 183 to 196 of the Upper Tribunal bundle), set out the results of the officer's seventeen days of local bus service compliance monitoring carried out between 5 August and 5 October 2023. The statement described a 51% non-compliance rate for local bus services operated by the Appellant.

6. Following a public inquiry held on 10 April 2024, the Traffic Commissioner made a number of decisions on 3 May 2024:

(a) acting under section 17 of PPVA 1981, the Commissioner revoked the standard PSV operator's licence held by Travel Express Ltd;

(b) the Commissioner determined that Kishan Chumber had lost his good repute as a transport manager, and, under paragraph 7B(2) of Schedule 3 to PPVA 1981 ordered him disqualified from acting as a transport manager for four years;

(c) the Commissioner determined that Nirmal Johal had lost his good reputation as a transport manager and, under paragraph 7B(2) of Schedule 3 to PPVA 1981 ordered him disqualified from acting as a transport manager for three years;

(d) under section 155 of the TA 2000, imposed a financial penalty on the operator in the sum of £8,250.

7. The Traffic Commissioner's revocation decision was based on certain adverse findings of fact:

(a) the Commissioner accepted the evidence of Vehicle Examiner Jones, who prepared the MIVR, and found that the MIVR's conclusions were accurate (paragraph 26(b) of the Commissioner's reasons);

(b) regarding the immediate prohibition imposed during the Examiner's maintenance investigation visit, it was more likely than not that the low tyre tread in question was "a longer standing defect", rather than something that had just happened, and the prohibition meant the vehicle was not roadworthy (paragraph 26(c)(ii)). The tyre was a "serious concern" and inconsistent with Mr Chumber's oral evidence about his tyre checking practice (paragraph 26(f));

(c) as the operator accepted, the vehicle with the low tyre tread had been in service whilst unroadworthy (paragraph 26(c)(iii));

(d) driver walk around inspections for the vehicle must have been inadequate since the wear was to an outer tyre and of a 'longstanding nature' (paragraph 26(c)(iv)). The Commissioner could not "be satisfied that drivers were doing any, or any effective, walk round check of the vehicle before it went into service on a public road" (paragraph 26(f));

(e) since the November 2019 public inquiry, the operator's vehicles had undergone 62 MOTs with a failure rate of 16.13%, more than double the national average of 7.28%. This was despite the operator having an IRTEC qualified mechanic and the 2019 public inquiry's criticisms of the operator's MOT failure rate (paragraph 26(c)(vi));

(f) the undertaking given at the 2019 public inquiry for 12 weekly roller road brake testing had not been met. The Commissioner accepted the Vehicle Examiner's evidence that "it could be deemed that not all vehicles within the fleet meet the 12 week requirement" which,

according to the Commissioner, confirmed that the operator had breached the undertaking (paragraph 26(c)(vii)). The fact that this undertaking was given at a public inquiry meant it had “an even greater adverse impact upon the issues of trust and good repute” (paragraph 26(i));

(g) the SIPCAT report (safety inspection period calculator and analysis tool) attached to the MIVR showed that multiple vehicles had been presented for MOTs with “multiple failure items present”, two examples of which were described (paragraph 26(d)). The operator’s MOT performance demonstrated “a very poor standard of maintenance” (paragraph 26(e));

(h) “general undertakings on the operator’s licence that related to maintenance were [not] being fulfilled”: vehicles were not kept in a fit and serviceable condition, and drivers were neither promptly reporting defects nor recording defects in writing (paragraph 26(h));

(i) while Mr Chumber “assured” the Commissioner that he was “now thoroughly checking PMI sheets against driver defect reporting sheets”, documentation for vehicle VRM LJ56 was inconsistent with this claim. A driver defect report dated 4 December 2023 reported that a wiper blade was ‘falling apart’. However a PMI (preventative maintenance inspection) sheet of the same date reported no wiper blade faults. One of those documents had to be incorrect yet this was not spotted by Mr Chumber (paragraph 26(n)). Mr Chumber failed to give a “plausible explanation” for the inconsistent reports (paragraph 26(o)).

8. The Traffic Commissioner also made other findings that went to the operator’s credit:

(a) Vehicle Examiner Jones’ supplemental maintenance report, dated 08 April 2024, showed a significant improvement: four roadside encounters resulted in no prohibitions; “documents appeared to be filled out correctly” and “roller road brake tests had been completed on a 12 weekly basis”;

(b) the operator had employed an additional member of staff “to assist the in-house mechanics which is why the supplemental report...showed such improvements”;

(c) the operator co-operated with the enforcement investigation.

9. The findings described above concerned the operator’s compliance with general PSV regulatory requirements. The Traffic Commissioner also made adverse findings of fact about the punctuality of local bus services operated by the operator. These were the basis for the Commissioner’s decision to impose a financial penalty of £8,500 which, as we explain below, is no longer challenged. However, these punctuality findings also appear to

have been taken into account by the Commissioner when considering the appropriate regulatory response. They were included in the list of ‘negatives’ in paragraph 78 of the Commissioner’s reasons directly before the conclusion, in paragraph 79, that “this case...falls into the “Severe to Serious” entry point for consideration of regulatory action”.

10. The Traffic Commissioner adopted the punctuality findings of a DVSA BOAM report, which the Commissioner described as “shocking” (paragraph 43 of the Commissioner’s reasons). Of the 207 journeys observed, 50% were not on time (paragraph 44) and 29.4% “failed to operate at all” (paragraph 45). Of the 146 journeys that did operate, 32 (21.9%) departed early and 9 (6.16%) late (paragraph 46). The Commissioner further found:

(a) the operator “lacked any resilience to deal with periods of holiday, sickness, or people moving on to a new job elsewhere”. 11 drivers were required to meet the operator’s peak vehicle requirement and 11 were employed (paragraph 49);

(b) the operator had no reasonable excuse for 50% of its services being non-compliant. At the 2019 public inquiry, one of the operator’s then reasons for failing to run registered bus services on time was driver shortages. It would have been explained to the operator that “it could not rely on that excuse going forward” (paragraph 54, 61).

(c) it was “quite shocking” that no changes had been made to the operator’s timetables since the 2019 public inquiry which meant “no attempt has been made by this operator to meet the ever-changing traffic and road network problems along all of its registered routes” (paragraph 55). The Commissioner rejected Mr Chumber’s claim to have been unaware that the operator could have made a short notice application to vary or cancel a service (paragraph 58);

(d) the operator had failed to take disciplinary action against any of the drivers who had departed a journey early (paragraph 66). The operator’s excuse – that it had feared drivers’ resignations if disciplinary action were taken, was “totally unacceptable and a matter that goes to directly to the issues of trust and good repute” (paragraph 67);

(e) recent punctuality improvements (22.4% of services running on time) did not attract any meaningful credit: “the operator had gone from being hopelessly non-compliant to being very non-compliant” (paragraph 71).

11. Under the heading ‘Balancing Exercise’, the Traffic Commissioner’s reasons state as follows:

“78. The following positives and negatives were then identified:

Positives

- (a) Sufficient and effective changes made (tangible evidence) to ensure [maintenance] compliance – but this caveated below; and
- (b) Low prohibition rate – but I have already caveated this in my decision at paragraph 21(f) above; and
- (c) Operator co-operated with the enforcement investigation.

Negatives

- (d) Deliberate/reckless act(s) by the operator/drivers leading to road safety risk or unfair competition [the failure to undertake any, or any effective, walk round inspections leading to driver spottable defects being found at PMIs and on the prohibition dated 21 October 2023 for the worn tyre]; and
- (e) Persistent offending – previous unsatisfactory maintenance investigations or public inquiries; and
- (f) Ineffective management control [maintenance and bus punctuality] and appropriate systems and procedures; and
- (g) Ineffective driver/maintenance staff training with appropriate monitoring and discipline [maintenance and bus punctuality, particularly in relation to early departures]; and
- (h) Insufficient and/or ineffective changes made to ensure future compliance [particularly in relation to bus punctuality as shown from the up to date data];and
- (i) Road safety critical defect present on an in service vehicle when the prohibition for a worn tyre was imposed on 21 October 2023; and
- (j) Low MOT pass rate and multiple failure items at MOT.

79. Even after giving the operator as much credit as I possibly could give to it this case still falls into the “Severe to Serious” entry point for consideration of regulatory action and in my determination, given the compliance history of this operator, it is more in the “Severe” category than the “Serious” category.”

12. The Traffic Commissioner then addressed the *Priority Freight* (2009/225) question, that is ‘how likely is it that this operator will, in future, operate in compliance with the operator’s licensing regime?’. The Commissioner found that the operator had once again

“slipped back to his old slipshod methods of management, timetabling and operating”, Mr Chumber “does not have it in him to be a compliant operator” (paragraph 83), “it is more likely than not that he would, again, go back to his non-compliant manner of operating” (paragraph 84), and “I also consider the failure of Mr Johal to ensure compliance across the operator’s registered bus services there is [sic] absolutely zero trust left with this operator” (paragraph 85). The Commissioner answered ‘no’ to the *Priority Freight* question.

13. The Traffic Commissioner turned to the *Bryan Haulage (no.2) 2002/217* question, namely “is the conduct such that the operator ought to be put out of business?”. The Commissioner answered in the negative:

“87...Repeating everything I have said before I have determined that it is proportionate to answer that question in the affirmative. As a result the operator has lost its good repute and it now is a mandatory requirement that I revoke this operator’s licence which I do under section 17(1)(a) of the Act.”

14. The Traffic Commissioner duly directed revocation of the operator’s licence. The Commissioner also refused to grant a stay suspending the effect of his revocation decision pending determination of the operator’s appeal to the Upper Tribunal. The request for a stay was renewed before the Upper Tribunal, and it granted a stay.

The diminishing grounds of appeal

15. The Appellant’s notice of appeal to the Upper Tribunal challenged all four of the decisions made by the Traffic Commissioner. Grounds of appeal 7 and 8 were concerned with the principles to be applied in fixing the amount of a local bus services financial penalty and were the principal reason why the Secretary of State for Transport was invited to apply to be made Respondent to this appeal. The application was made and granted, and the parties’ written submissions were prepared on the basis that the issues on this appeal included whether the Traffic Commissioner’s decision to impose a financial penalty under section 155 involved a mistake of fact or law.

16. Before the hearing, the Appellant withdrew its challenge to the Traffic Commissioner’s disqualification orders. We record our displeasure that the Appellant then waited until the morning of the first day of the hearing to apply to withdraw Grounds 7 and 8 of the appeal. These were the grounds on which the Secretary of State’s written submissions had focussed. Clearly, civil servants at the Department of Transport and lawyers at the Government Legal Department had devoted considerable time to the preparation of the

Secretary of State's case and an agreed authorities bundle, and gone to the expense of instructing counsel to represent the Secretary of State at the hearing. Moreover, a day's court time was wasted because a two-day hearing would not have been directed had the Appellant always relied on the final iteration of its grounds of appeal, not to mention the waste of the judge's and members' preparatory time for an anticipated two-day hearing for a case where the Upper Tribunal bundle extended to nearly 1,200 pages.

17. As it was, we granted the Appellant's application to withdraw those grounds of appeal which challenged the Traffic Commissioner's financial penalty. We saw little to be gained in requiring the operator to advance arguments which it no longer wished to make. It also allowed Mr Johnston, counsel for the Secretary of State, to depart from the hearing rather than spend time observing arguments with which his client was uninterested. The fact that we granted the Appellant's application to withdraw certain grounds of appeal does not mean that we approve of the way in which it was made.

Grounds of appeal

18. The remaining grounds of appeal are as follows:

(1) The Traffic Commissioner failed to take into account positive aspects of the DVSA evidence and to perform a proper balancing exercise;

(2) The Commissioner was wrong to conclude that the operator was in breach of the undertaking imposed at the 2019 public inquiry that "vehicles will be given roller brake tests at least every 12 weeks" when the DVSA evidence pointed to the contrary;

(3) The Commissioner was wrong to conclude that "Tyres close to legal limit" on a PMI sheet was sufficient evidence to conclude that the vehicles were unroadworthy or that drivers were failing to do any, or any effective walk round checks.

(4) The Commissioner was wrong to make a finding that a failure to make any changes to tendered registrations meant that the Appellant had failed to ensure that the travelling public are placed 'front and centre' when it was clear that the Appellant had considered the travelling public when making compliance decisions;

(5) The Traffic Commissioner was wrong to reason that there were steps that an operator could take when faced with a short term driver shortage.

Legislative background

Public Passenger Vehicles Act 1981

19. Section 17(1) PPVA 1981 provides that a Traffic Commissioner “must revoke” a PSV operator’s licence if it appears to the Commissioner that the licence holder no longer satisfies the requirements of section 14ZA(2). Those requirements include that the licence holder “is of good repute (as determined in accordance with paragraph 1 of Schedule 3)”.

20. Section 17(2) PPVA 1981 provides that a Traffic Commissioner “may, on any of the grounds in specified in subsection (3)...(a) revoke a PSV operator’s licence”. The specified grounds include “that any undertaking recorded in the licence has not been fulfilled” (section 17(3)(aa)) and “that there has been a contravention of any condition attached to the licence” (section 17(3)(b)). Section 17(3)(b) is not limited to conditions attached under section 16 PPVA 1981.

21. Section 16(1) PPVA 1981 permits a Traffic Commissioner, upon granting a PSV operator’s licence, to attach conditions specifying the maximum number of vehicles which may be used under the licence. Section 16(3) permits a Commissioner, upon granting a licence or thereafter, to attach to a licence “such conditions...as he thinks fit for restricting or regulating the use of vehicles under the licence, being conditions of any prescribed description”. “Prescribed” means prescribed in regulations (see section 60(2)), and the prescribed descriptions are to be found in regulation 7 of the Public Service Vehicles (Operators’ Licences) Regulations 1995. The descriptions relate to departure and arrival times, and length of breaks, where a journey has the main purpose of carrying passengers to or from a designated sporting event (regulation 7(1)(a),(2)), and various matters relating to passenger rights but not the punctuality of local bus services (regulation 7(1)(b),(3)). Section 16(5) provides for conditions attached under section 16(3) to be altered or removed.

Transport Act 1985

22. Section 26(1A) and (1B) TA 1985 confer power on a Traffic Commissioner to attach a condition to a PSV operator’s licence prohibiting the use of vehicles under the licence to provide a local bus service. The cases in which such conditions may be attached to a licence are set out in section 26(1) and include:

(a) where the operator has failed to operate a local service registered under section 6 of the 1985 Act or operated a service in contravention of section 6 (section 26(1)(a),(b)); and

(b) “the arrangements for maintaining the vehicles used under the licence in a fit and serviceable condition are not adequate for the use of those vehicles in providing the local service or services in question” (section 26(1)(c)).

23. Section 26(5A) TA 1985 confers a separate power on a Traffic Commisisoner to attach to a PSV licence a condition “restricting the vehicles which the operator may use under the licence to vehicles specified in the condition”. The cases in which such conditions may be attached to a PSV operator’s licence include where “vehicles used under the licence...have not been maintained in a fit and serviceable condition” (section 26(5)).

Transport Act 2000

24. Section 155 TA 2000 confers power on the Traffic Commissioner to impose certain sanctions, including financial penalties, where an operator has, without reasonable excuse, done certain things such as those specified in section 155(1). These include operating a local service in contravention of section 6 TA 1985. Section 155(8) makes it clear that a Traffic Commissioner may, in response, also exercise powers under section 26 and 27 TA 1985 to attach conditions to a PSV operator’s licence.

Appellant’s Arguments

Ground 1

25. In carrying out the necessary balancing exercise, the Traffic Commissioner failed to factor in all matters that went to the operator’s credit, in particular “evidence of the improvements made”. Had these been taken into account, the “entry point for regulatory action may have been different”. The Commissioner also failed to give sufficient weight to those matters that he accepted went to the operator’s credit.

Ground 2

26. The evidence before the Traffic Commissioner did not establish that, on a balance of probabilities, the operator had failed to comply with the 12 weekly roller brake test

undertaking. The finding that the operator had failed to comply was probably the most significant consideration affecting the Commissioner's evaluation of the Appellant's good repute and regulatory trustworthiness.

27. Regarding the evidence before the Traffic Commissioner concerning roller brake testing, Mr Miller for the operator submits:

(a) DVSA's maintenance investigation report, prepared following a visit on 21 October 2023 (beginning at page 270 of the bundle), showed only 'minor issues'. The 'inspection / maintenance records' section stated, "from the records perused, there were only minor issues in their completion, mainly relating to brake test type not determined & mileage discrepancies". The report did not state that no brake tests were being carried out;

(b) the report also stated, "there are plentiful records of vehicles receiving additional roller brake tests, but their retention is a little ad hoc and it could be deemed that not all vehicles within the fleet meet the 12 week requirement" (page 279). Mr Miller notes the equivocal nature of this statement;

(c) following the 21 October 2023 visit and report, the operator submitted further brake testing evidence to a Vehicle Examiner. The Commissioner accepted that the Examiner's supplemental report of 8 April 2024 showed that "roller road brake tests had been completed on a 12 weekly basis in accordance with the specific undertaking recorded on the operator's licence" (see paragraph 21(k) of the Commissioner's reasons).

28. The Traffic Commissioner made the following finding:

"the specific undertaking relating to roller road brake testing for all vehicles every 12 weeks given to Traffic Commissioner Denton at the public inquiry in 2019 was not fulfilled with the vehicle examiner confirming "...it could be deemed that not all vehicles within the fleet meet the 12 week requirement" (paragraph 21(c)(vii) of the Commissioner's reasons).

29. That the Traffic Commissioner considered this to be a particularly serious regulatory breach is shown by his remark that, "the breach of a specific undertaking given in a public inquiry to avoid more serious regulatory action...has an even greater adverse impact upon the issues of trust and good repute" (paragraph 21(i) of the Commissioner's reasons). The supposed breach was also one of only two considerations specifically identified by the Commissioner as justifying exercise of discretionary revocation powers (paragraph 93).

30. Mr Miller submits that the Traffic Commissioner wrongly found that the 12-weekly roller brake testing undertaking was breached. The evidence, including that of the Vehicle Examiner, did not justify the Commissioner's finding. The Examiner's analysis was far too imprecisely phrased ('could be deemed') properly to support the Commissioner's finding that the undertaking was breached. The Commissioner's flawed finding in turn undermined his analysis of the *Priority Freight* question.

Ground 3

31. There was no evidence before the Traffic Commissioner that any vehicles, save for one "found in the workshop being prepared for a Preventative Maintenance inspection with Tyres available and allocated for replacement on that day" had been used on the road with tyre tread depths below the legal limit of 1mm. The evidence showed that this vehicle was identified as having "Low" tyre tread depth at a Preventative Maintenance Inspection carried out 8 weeks before, but low tread depth is not evidence that tyres are below the minimum standard. Drivers, or a responsible person, are required to complete daily visual checks before a vehicle is used. The Appellant presented clear evidence that such checks were carried out both by drivers and, in relation to tyres, personally by the operator's director. Driver defect reports and regular safety checks (PMI) are evidence of the checker's opinion of the component or system checked at that time. The Commissioner mistakenly found that these documents were evidence of a failure to undertake any, or any effective, walk round inspections.

32. The offending tyre had a tread of 0.5 mm, which the Appellant accepts was below the legal limit, and an immediate roadworthiness prohibition was issued by a Vehicle Examiner on 21 October 2023. However, about 1,000 km of use before, on 10 October 2023, the operator's maintenance inspection showed a tread depth of 3 to 4 mm. The operator was entitled to consider this a legal tyre at this point. The operator is unsure what may have happened to cause such a rapid loss of tread depth but suggests it may have been caused by a 'harsh braking event'.

33. In relation to drivers' walkaround checks, Mr Miller submits that the evidence did not support a finding that no checks were done. The Traffic Commissioner found, by accepting the Vehicle Examiner's evidence, that the operator had an ineffective system for walkaround checks. The Commissioner further found that "the failure to do any, or any effective, walk round check of vehicles by drivers, created a risk to road safety" (paragraph 21(c)(v)). Mr Miller submits that there was no evidence to support the finding that no walkaround checks were done at all. During the hearing, we indicated that, to that extent

at least, we agreed so that the issue was the validity of the Commissioner's finding that no effective workaround checks were done. We asked Mr Miller to explain the operator's case in that respect. He submitted that the Commissioner's finding was very vague and the Commissioner's underlying suggestion was that this was an operator that did not really care, which was wrong.

Ground 4

34. The Traffic Commissioner was wrong to assume that the absence of an application to vary the timetable of a local bus service demonstrated a failure to consider the needs of the travelling public. The supporting argument in the Appellant's skeleton argument read as follows:

"23. Operators of registered bus services must, when they become aware of foreseeable difficulties which will affect the timing of the services they have registered apply to the Traffic Commissioner, to vary the timetables they operate to take account of the delays or problems so as to run the services they have registered within the 95% window of tolerance.

24. Commercial bus services are operated in the areas of greatest demand where the passenger numbers are sufficient for two or more operators to compete. Tendered bus services are the services for which there is no commercial incentive to operate a regular bus service but the provision of a service is required to meet a social need.

25. There is a tension between the operation of commercial and tendered bus services with the latter being provided at public expense to provide bus transport for the very vulnerable in society. The local transport authority are in control of the frequency and timings of the service and the [Appellant's] freedom to vary that service [is] restricted."

35. A BOAM public inquiry statement, prepared by a DVSA BOAM officer on 1 December 2023 (pages 183 to 196), set out the results of the officer's seventeen days of local bus service compliance monitoring carried out between 5 August and 5 October 2023. The operator submits that he provided up to date compliance data, for February and March 2024, which was accepted by the Traffic Commissioner (pages 490 to 497). The operator's data showed improved compliance; the non-compliance rate for local bus services fell from 51% to 22.7%.

Ground 5

36. The operator was aware of the peak vehicle requirement (PVR) for the local services that they provided. It is well known that there is a national vocational driver shortage which poses challenges for operators in providing ‘registered services’. It also means that ‘drivers have the upper hand in this relationship’ and may unexpectedly leave an operator’s employment. At the date of the public inquiry, the Appellant had a contingency in place for maintaining an adequate supply of drivers.

37. Not all of the Traffic Commissioner’s suggested solutions were practical, according to the Appellant’s skeleton argument:

“32. It is here where the tension between services operated commercially and those operated for the public good comes into play. The Appellants made a conscious choice when faced with the possibility that a vulnerable member of society waiting for a tendered bus service to prioritise their needs over the needs of the passengers on a commercial service for whom there are more options.

33. This is a balancing exercise that the Traffic Commissioner ought to have taken into account.”

Analysis

Ground 1

38. Given our conclusion on Ground 2 below, there is no real merit in us addressing Ground 1. The operator’s proportionality arguments assume that the Traffic Commissioner’s finding that the operator breached its roller brake testing undertaking stands, but, as we explain below, in making that finding the Traffic Commissioner erred in law.

Ground 2

39. We remind ourselves of the Traffic Commissioner’s findings regarding the operator’s compliance with the licence undertaking to carry out roller brake tests every 12 weeks:

(a) “the specific undertaking relating to roller road brake testing...was not fulfilled with the vehicle examiner confirming “...*it could be deemed that not all vehicles within the fleet met the 12 week requirement*”...” (paragraph 21(c)(vii) of the Commissioner’s reasons);

(b) “the sole director/transport manager failed to fulfil the specific and formal promise he gave to Traffic Commissioner Denton...in 2019 that “*vehicles will be given roller brake tests at least every 12 weeks.*” This was breached as evidenced by vehicle examiner Jones in the MIVR...A breach of any undertaking is a matter that goes to the issues of trust and good repute. The breach of a specific undertaking given in a public inquiry to avoid more serious regulatory action has an even greater adverse impact upon the issues of trust and good repute.” (paragraph 21(h));

(c) “The supplemental maintenance report from vehicle examiner Jones dated 08 April 2024 showed a significant improvement compared to what he had found at the MIVR on 21 October 2023...Documents appeared to have been filled out correctly...and roller road brake tests had been completed on a 12 weekly basis in accordance with the specific undertaking recorded on the operator’s licence.” (paragraph 21(k)).

40. The only evidence referred to by the Traffic Commissioner in support of the finding that the operator failed to comply with the undertaking to carry out 12 weekly roller brake tests was the report of Vehicle Examiner Jones prepared following a maintenance investigation visit on 21 October 2023. In this report, the examiner stated:

(a) “from the records perused, there were only minor issues in their completion mainly relating to brake test type not determined & mileage discrepancies” (page 273 of the bundle);

(b) “there are plentiful records of vehicles receiving additional roller brake tests, but their retention is a little adhoc and it could be deemed that not all vehicles within the fleet meet the 12 week requirement” (page 279).

41. In our view, the Traffic Commissioner’s interpretation of Vehicle Examiner Jones’ report is untenable. The Examiner clearly did not ‘confirm’ that the operator breached its undertaking to carry out roller brake tests on each vehicle every 12 weeks. The Examiner focussed on record keeping. Of course, we accept that a failure to maintain satisfactory roller brake test records may be evidence tending to show that such tests were not in fact carried out. However, that was not how the Commissioner approached the examiner’s

report. The Commissioner read the report as if it included a definitive statement that roller brake tests on all vehicles were not being carried out every 12 weeks.

42. Having stated that there were 'minor issues' regarding completion of brake test records, Vehicle Examiner Jones went on to make the equivocal statement that it 'could be deemed' that not all vehicles met the 12 weekly roller brake testing requirement. The Examiner's report cannot reasonably be read in the way that it was read by the Traffic Commissioner, that is as providing confirmation that the operator failed to carry out roller brake testing on each vehicle every 12 weeks.

43. Examiner Jones' statement that it 'could be deemed' that not all vehicles received 12 weekly roller brake testing was equivocal but not ambiguous. The examiner was saying that, in the light of the record keeping deficiencies that he noted, the operator might be abiding by the undertaking, or it might not. Examiner Jones was uncertain. Either the Commissioner misunderstood Examiner Jones' evidence in such a way as to rob the Commissioner's finding of rationality or he failed to provide adequate reasons for his mental progression from equivocation (Examiner Jones' statement) to certainty (the Commissioner's reasons).

44. We accept Mr Miller's argument that the Traffic Commissioner gave particular weight to his finding that the operator breached its undertaking to carry out 12 weekly roller brake tests. The Commissioner (rightly) considered that the breach of an undertaking given at a previous public inquiry would be a particularly serious matter. We cannot be confident that, had the Commissioner not found the operator to be in breach of the roller brake testing undertaking, he would still have revoked the licence. Therefore, the Commissioner's flawed approach cannot be considered immaterial, and we hold that the Commissioner erred in law in finding that the undertaking had been breached. We set aside the Commissioner's direction revoking the operator's licence. We do so with some reluctance because even the Traffic Commissioner's unchallenged findings paint a picture of an operator that found it challenging to meet its regulatory obligations. Nevertheless, the question of law for us is whether we are satisfied that the Commissioner would have (not might have) revoked the operator's licence even if he had not made a finding that the roller brake test undertaking was breached. We cannot be confident that the Commissioner would have made the same decision absent that finding.

Ground 3

45. We shall not deal with the operator's Ground 3 arguments in the light of our conclusion that the Traffic Commissioner erred in law in finding that the operator breached its roller brake testing undertaking.

Grounds 4 and 5

46. Again, it is not necessary for us to deal with these grounds although we note that much of the argument seemed to be an attempt to show that the operator had a reasonable excuse for its deficient local bus service. In other words, it was as if the operator sought to show that the Traffic Commissioner did not have power to impose a financial penalty when, as explained above, the operator withdrew its challenge to the financial penalty at the start of the hearing of this appeal. We also observe that we had thought the operator might argue that a PSV operator's deficiencies in providing a local bus service was a matter to be dealt with under the TA 2000 penalty regime, rather than PPVA's regulatory framework, but that was not the argument put to us so, on that issue, we say no more.

Conclusion

47. This appeal is allowed and the Traffic Commissioner's licence revocation decision is set aside. We have considered whether to remit this case to a fresh public inquiry for reconsideration of the question whether the operator's licence should be revoked. However, we do not take that course. The issues have narrowed considerably since the last public inquiry, and our view is that it is for a Traffic Commissioner to decide whether to begin any new regulatory intervention. We do, however, consider it appropriate for this case to be placed before the Senior Traffic Commissioner to consider whether it is appropriate to initiate fresh regulatory action. This is because it is clear, from the unchallenged findings of the Traffic Commissioner, that this operator raised material regulatory concerns. It should be noted that nothing in our decision is to be read as placing any limitation on either the Traffic Commissioner's powers to initiate regulatory action or the matters that may be relied on if such action is taken.

48. Finally, we apologise for the delay in giving this decision caused by the judge's absence from duties for health reasons.

Upper Tribunal Judge Mitchell
Authorised for issue on 22 April 2026

Given under section 50(4) of the Public Passenger Vehicles Act 1981