



Neutral Citation Number: [2026] UKUT 396 (AAC)

Appeal No. UA-2024-001286-T

**IN THE UPPER TRIBUNAL
ADMINISTRATIVE APPEALS CHAMBER**

Appellant:

Rhys Hand

Before:

**Upper Tribunal Judge Mitchell
Upper Tribunal Member Pepperell
Upper Tribunal Member Smith**

Hearing:

7 April 2025, at Cardiff Civil Justice Centre (with
subsequent written submissions considered in chambers)

Representation:

Appellant: in person

On appeal from:

Decision maker: Traffic Commissioner in the Western Traffic Area

Commissioner's ref: PH1089686

Date of decision: 14 August 2024

SUMMARY OF DECISION

100 Transport (Traffic Commissioner and DfI NI) appeals

100.4 Disqualification

A Traffic Commissioner has jurisdiction to make a disqualification order under section 28(1) and (5) of the Transport Act 1985 in respect of a director of a corporate PSV operator who had resigned as a director by the date of the order.

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 panel follow.

DECISION OF THE UPPER TRIBUNAL

This appeal is **ALLOWED**. The Traffic Commissioner's decision of 14 August 2024 to make a disqualification order under section 28(1) and 28(5) of the Transport Act 1985 involved an error on a point of law. The Commissioner's decision is **SET ASIDE**.

In the exercise of powers conferred by paragraph 17(2)(a) of Schedule 4 to the Transport Act 1985, the Traffic Commissioner's decision is replaced by the following decision.

In the exercise of powers under section 28(1) and (5) of the Transport Act 1985, the Upper Tribunal **ORDERS** that the Appellant Rhys Hand is disqualified from holding or obtaining a PSV operator's licence. This **ORDER** has effect until 14 August 2027.

In the exercise of powers under section 28(4) of the Transport Act 1985, the Upper Tribunal **DIRECTS** that if the Appellant Rhys Hand:

(a) is a director of, or holds a controlling interest in—

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

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

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

the powers under section 17(2) of the 1981 Act (revocation, suspension, etc, of PSV operators' licences) shall be exercisable in relation to that licence by Traffic Commissioner.

This **DIRECTION** has effect until 14 August 2027.

This decision does not affect a Traffic Commissioner's power under section 28(6A) of the Transport Act 1985 to cancel or vary a disqualification order or direction.

REASONS FOR DECISION

Subject matter: Disqualification orders

Case law referred to: *Sunderland and Warburton* (Appeal No 2009/498); *Bradley and Bradley* [2014] UKUT 0253 (AAC); *Pritchard and Smith* (Appeals 2008/688 and 2008/745); *Rex Haulage Limited et al* (2007/351 & 2007/356); *CMA v Michael Christopher Martin* [2020] EWHC 1751 (Ch); *Re M (a minor) (care order: threshold conditions)* [1994] 3 All ER; *Salomon v A Salomon & Co Ltd* [1897] AC 22, HL.

Introduction

Terminology

1. In these reasons:

- “1985 Act” means the Transport Act 1985;
- “PPVA” means the Public Passenger Vehicles Act 1981;
- “operator” means Altonian Coaches Ltd (t/a Transporabus);
- “OTC” means Office of the Traffic Commissioner.

Secretary of State for Transport’s involvement in these proceedings

2. The Tribunal Procedure (Upper Tribunal) Rules 2008 do not provide for a Respondent to an appeal against a decision of a Traffic Commissioner. The definition of “respondent” in rule 1(3) states that “[in] any other appeal except a road transport case, the person who made the decision that has been challenged”. The definition of “road transport case” in rule 1(3) includes virtually all appeals against decisions of Traffic Commissioners, including the present appeal. The absence of a Respondent means that, in a road transport case, the Upper Tribunal does not normally hear any arguments other than those advanced by an Appellant/s.

3. In most cases, the absence of a Respondent in a road transport case is of no practical concern to the Upper Tribunal. It does not of course mean that every such appeal is bound to succeed since the Upper Tribunal’s jurisdiction is inquisitorial and

it interrogates the merits of an Appellant's case on its own initiative. However, it is potentially problematic where an appeal raises a legal issue that might have implications beyond the case under consideration. In such cases, the Upper Tribunal's decision-making is likely to be enhanced if it has the benefit of additional argument.

4. The 2008 Rules allow the Upper Tribunal to obtain submissions from a person other than the Appellant/s in a road transport case. One option is to give a direction under rule 9(1) adding a party as respondent to an appeal and, now and then, a direction makes the Secretary of State for Transport respondent to an appeal. In this case, a different approach was taken. Rule 5(3)(d) permits the Upper Tribunal to direct a party "or another person" to provide submissions to the Upper Tribunal. Having first sought the Secretary of State's views, the Upper Tribunal directed her, as the central governmental entity with national policy responsibility for transport, to provide submissions on a discrete legal issue with potentially wider implications.

5. We wish to record our gratitude to the Secretary of State for Transport, and her legal advisers, for their assistance in this case. The Secretary of State's written submissions were very helpful, being both ministerial in nature (non-partisan) and skilfully drafted.

Background

The operator, its owners and directors

6. In October 2022, the Appellant became both a director and shareholder of the operator company. The other director was Mr Phillip Higgs, who was also a shareholder.

7. The operator held a standard international PSV operator's licence which authorised the use of fifteen vehicles. At the date of the Traffic Commissioner's decision, the operator had three operating centres in and around Bristol but had previously also had operating centres in other places including Poole docks.

2019 public inquiry and financial penalty

8. On 5 July 2019, a Traffic Commissioner revoked the operator's licence held by Snowdonia Travel Ltd, a separate company of which the Appellant was a director. As we understand it, this company had no connection with Altonian Coaches Ltd. The 2019 Commissioner's reasons included:

“Various complaints were received which led to checks as to timetable compliance by Bus Users Cymru, initially this revealed a decent levels of timetable compliance that varied between 92% and 100% adherence to registered timetable. Following later complaints it emerged that the operator ceased running registered services without providing the necessary formal notice. This led to the public inquiry before me.”

9. As well as revoking Snowdonia Travel Ltd.’s operator’s licence, the Commissioner imposed a £300 financial penalty, under section 155(1A) of the Transport Act 2000, required to be paid by the operator to the Welsh Government.

10. On 5 December 2023, OTC wrote to the Appellant:

“It has come to the Traffic Commissioner's attention that the financial penalty issued against Snowdonia Travel Ltd licence PG1143169 at the Public Inquiry on 05/07/2019 has not been paid. Please could you provide an explanation as to why the outstanding £300 penalty has not been paid.

A response is required within 14 days of the date of this letter.”

11. The above letter was sent to an address in Bristol. On 2 January 2024, an identical letter was sent to an address in Hampshire. On 21 March 2024, the Appellant responded to OTC’s letter about the unpaid financial penalty:

“I have just received a copy of your letter dated 2nd January concerning Snowdonia Travel Ltd. As with your previous correspondence this seems to have gone astray somewhere...

Altonian Coaches Ltd and Snowdonia Coaches Ltd are not connected companies and Snowdonia closed in April 2022 so Altonian is unable to take a position on an alleged debt held in a different company...

On a personal level, I can advise you that Snowdonia closed in April 2022 with no known remaining assets or liabilities and I no longer have access to its books and records, so I am unable to validate your assertion that the penalty remains unpaid but assuming this is so, it would be an oversight.

Ordinarily, the nature of a limited liability company is that such a debt belongs to the company and would therefore not survive the closure of the company.

However, as an act of good faith and to demonstrate my commitment to the integrity of the licensing system, I am happy to pay this penalty from my personal funds, if you are able to advise how I might go about doing this I can get that arranged.”

Events preceding the Altonian Coaches Ltd. (t/a Transporabus) public inquiry

12. On 3 June 2023, DVSA encountered a double decker bus being used by the operator despite its vehicle excise tax having expired in February, and “ANPR evidence showed the vehicle in use throughout May”. When the tax was subsequently paid, DVSA reported that this was only from 1 June 2023 and the back-duty was unpaid.

13. On 15 July 2023, a DVSA Traffic Examiner (TE) was conducting checks in Bristol City Centre. According to a witness statement given by the TE on 24 June 2024:

(a) the TE encountered a minibus (HK22 RJU), displaying the operator’s license disc. It contained one passenger but no driver. The TE was approached by a Andrew Murphy, who had the minibus keys. Mr Murphy informed the TE that he was acting as an unpaid local manager for the operator, as a personal favour for the Appellant. Mr Murphy’s driving licence was produced, but it had expired in April 2022, and had D1 entitlement with a restriction code of 101 (not for hire or reward). He did not hold a driver CPC and told the TE that he was a ‘feeder driver’ who did not drive passengers. The apparent passenger in the minibus was being allowed to shelter from the rain until a scheduled driver arrived;

(b) tachograph data downloads showed “numerous periods where vehicle used but no driver’s tachograph card inserted”;

(c) the Appellant arrived on the scene at around 23.00, informing the TE that the vehicle was not used to carry passengers but “was unable to explain why it was displaying an Operator’s Licence, if not used in the business and he was unaware that the vehicle had been used for commute and feed in journeys”;

(d) the Appellant agreed to “provide a written report of the usage of vehicle HK22RJU” but, despite the TE’s emailed reminders on 17th July and 18th August, no report was submitted. On 18 August 2023, the Appellant informed the TE by email that a draft report in respect of vehicle HK22 RJU, was “ready for sign off” and would be supplied without delay following the transport manager’s return from leave “next week”. No report materialised.

14. On 9 September 2023, a DVSA examiner observed fourteen vehicles at the operator’s Poole Docks operating centre when its licence authorised only ten.

15. Local newspaper articles in 2023 reported poor punctuality for a local bus service operated by the operator. An article of 12 November 2023 reported a driver quitting her job mid-service, abandoning a bus and its passengers.

16. On 4 July 2024 at 20:30, a police officer reported an apparently abandoned and unlit double decker bus, partially obstructing a single carriageway A-road. The bus was specified on the operator’s licence. Emergency traffic management measures were deployed, and the bus removed to a pound.

17. On 19 July 2024, a Transport Operations Manager at Gloucester County Council’s Integrated Transport Unit emailed OTC:

“Altonian t/a Transpora have been operating a Gloucestershire County Council supported service 60 since the spring this year. They had won the work via a competitive tender process...

On Wednesday 10 July 2024 we were made aware of social media comments that Altonian had ceased trading...our team attempted contact with Rhys Hand at Altonian who responded to advise that he had resigned from the business but that it was still trading.

On Friday 12 July 2024 I received...emails from Rhys Hand and Philip Higgs confirming that the business was still trading.

On the evening of Saturday 13 July I was made aware of a social media post that Transpora had ceased trading...

We have now made arrangements with another operator to cover the service, but our concern is that Transpora failed to communicate the situation. We have heard contradictory information that the company has been declared bankrupt but also that the remaining director had chosen to cease operation. If it were the latter this raises serious concerns over the method and timescales by which they ceased operation.”

18. On 19 July 2024, the West of England Combined Authority, with whom a number of services operated by the operator were registered, informed OTC that “they had taken the decision simply to cancel the registrations as the services were clearly no longer operational” and “they had received no notice and no request to cancel”;

Why a public inquiry was called

19. A public inquiry was convened to consider matters including revocation of the operator’s licence, imposition of a financial penalty for failings in providing registered bus services and disqualification orders in respect of Mr Higgs and the Appellant. In this latter respect, the call-up letter, which was addressed to “the Directors” of Altonian Ltd., stated:

“If the Traffic Commissioner revokes a licence, they may also disqualify the company or any of its directors for a specific period or indefinitely from holding another operator’s licence, and from being a director of any company which holds such a licence. For this reason it is important that you attend the Inquiry.”

Written submissions for the public inquiry

20. The Appellant and Mr Higgs provided joint written submissions in response to the public inquiry call-up letter / ‘brief’ issued by OTC. These submissions were dated 13 June 2024 and included the following statement:

“[Philip Higgs] expertise and experience is largely in the operation of local bus services in the north west of England (most recently in the guise of Coastliner Buses Ltd...

[Rhys Hand’s] expertise and experience is largely (though not confined to) the south west of England and is a Bristol resident. Therefore, they decided that the immediate strategic priorities for Transpora should reflect their expertise and experience, as follows:

- Rebrand existing Coastliner Buses operations using the Transpora name
- Creation of a new bus operating subsidiary in the South West of England...”.

21. Despite the submissions having linked one director with one area of operations and the other director with another, no distinction was made between the two directors when the submission recounted their responsibilities and actions taken to deal with compliance concerns (‘we’ was used throughout). So, at that time, both directors made common cause in their attempt to avoid regulatory action. However, that united front did not persist.

22. Mr Higgs provided an undated witness statement in which he wrote that he discovered on 12 July 2024 that the Appellant had ‘emptied’ the *Transpora* bank account, which held the operator’s funds. He added that the Appellant had removed Mr Higgs as a director of Transpora Ltd which left the Appellant as the sole individual with access to the bank account. Mr Higgs therefore had ‘little option but to suspend operations’. A solicitor retained by the operator made similar claims in an email sent to OTC on 25 July 2024: “owing to unauthorised removal of funds from the business by Mr Rhys Hand, it became necessary for the other remaining director, Mr Philip Higgs, to step in [and] he found it was necessary to suspend the operation of all vehicles on the licence”. The solicitor added:

“...The circumstances around the departure of [transport manager] are linked closely with a now departed director Mr Rhys Hand, who was in day-to-day control of the operator licence when the events occurred that have led to the Public Inquiry. Owing to unauthorised removal of funds from the business by Mr Rhys Hand, it became necessary for the other remaining director, Mr Philip Higgs, to step in. As a result of the circumstances he found it was necessary to suspend the operation of all vehicles on the licence.

The company director Philip Higgs is taking control of matters in the intervening period. It is hoped and intended that the licence can remain in force and Mr. Higgs is currently working hard to try and sort out the problems that have been discovered. At this stage the company does not have an estimate of when the recommencement of operation of the vehicles will be possible but would certainly hope to have a better assessment by the date of the Public Inquiry...”

23. The Appellant sent an email to OTC on 5 August 2024 (although the body of the email was dated 10 July 2024). The email included the following:

(a) “I do not expect to attend [the public inquiry hearing] as I am no longer an officer of the company, but having been a director until 8th July I would like to take this opportunity to make you aware of some observations that I hope you will find relevant and useful”;

(b) the Appellant expressed pride in the way in which the business had been carried on until “the unexpected developments of early July 2024”;

(c) the personal relationship between the Appellant and Mr Higgs became strained for reasons that were often “compliance related” and, by week commencing 1 July 2024, “on a personal level I could not go forward as a co-director with Mr Higgs”;

(d) around 3 July, the Appellant informed Mr Higgs that he wished to ‘step away’ from the business but Mr Higgs failed to engage with his attempts to discuss departure;

(e) on 8 July, at which point the company remained in a “strong and healthy position”, Mr Higgs unilaterally terminated the Appellant’s appointment as a director of the operator company and “rescinded my shareholding”. Mr Higgs continued to ignore the Appellant and “in the meantime, over a period of a week, poor performance and lost mileage due to a lack of leadership meant that both Lidl and Coop withdrew contracts and found alternative operators”;

(f) on 11 July, Mr Higgs finally contacted the Appellant. It became apparent that Mr Higgs had not arranged for drivers to be paid on 12 July. The Appellant told Mr Higgs that he would make payment arrangements and was therefore ‘dumbfounded’ to learn on 12 July that Mr Higgs had instructed that all buses were to be withdrawn from service;

(g) there was a suggestion that insurance cover might be withdrawn and so the Appellant took it upon himself to attend the depot to put in place robust arrangements, including replacement insurance cover, that would have allowed the business to remain operational. However, Mr Higgs “chose to decline all such offers”. The Appellant therefore focussed on working with other operators “to continue as many of the services as possible without interruption to the general public” and was “able to help ensure continuity of service on almost all of the company’s public bus services”;

(h) none of the “bizarre sequence of events post-3rd July...were in any way envisaged or planned at the time of my departure”;

(i) the email ended with the words, “should you consider it helpful, I would be happy to meet with you at any time to assure you of my good faith”.

24. On 5 August 2024, OTC emailed the Appellant in response to his email:

“The Traffic Commissioner has responded as follows:

“...One of the matters potentially for decision by the inquiry is whether or not a disqualification order is made against the operator or any of its officers during the period of concern. If Mr Hand intends to stay within the industry, he may wish to reconsider his decision on attendance...”.

The public inquiry

25. Mr Higgs attended the public inquiry hearing and was represented by a solicitor. The Appellant did not attend. The Appellant’s written submissions were read out at the inquiry hearing. Mr Higgs’ solicitor asked the Commissioner to take into account that the Appellant, unlike Mr Higgs, had chosen not to attend the hearing when deciding whose evidence to prefer.

26. Mr Higgs gave oral evidence at the inquiry hearing. In summary, he said:

- the Transpora brand had operations in northern England, as well as South West England, and he “was hands on with the northern operations but less so in the South” which was the focus of the Appellant’s work;
- the South Coast operation had difficulties ‘early on’ especially with its maintenance contractors and reliability. Ultimately, Mr Higgs himself arranged a maintenance provider;
- when Mr Higgs first visited the Poole operating centre in February 2024 it ‘looked like a scrap yard’ and ‘he was appalled’. The South Coast operation was not viable, Mr Higgs gave notice on its contracts and withdrew;

- overall, Mr Higgs' role in the business was like that of a chairman although he was in regular contact with the Appellant. There many issues in the public inquiry brief / DVSA report that were 'news to him';
- Mr Higgs became aware of the 'Bristol city centre encounter' (15 July 2023) from the public inquiry brief following which he became more involved in operations;
- Mr Higgs disagreed with the Appellant's view the business remained viable in July 2024 but was content to carry on until September before 'taking stock';
- in June 2024, the Appellant went on holiday for a fortnight and, during that period, Mr Higgs formed the view that the business was too 'management-heavy' and needed a good operations manager. A manager was recruited and began work on 1 July, which 'rattled' the Appellant;
- the Appellant made no attempt to contact Mr Higgs following the termination of the Appellant's directorship, but a large withdrawal was made from the bank account to an 'individual' and the account was frozen. This led the insurance company to inform Mr Higgs that the terms of the business insurance were breached, and it was this which caused Mr Higgs to 'halt the services' to avoid being guilty of trading while insolvent. Mr Higgs also discovered that private hire work had been undertaken but the location of the revenue for that work was uncertain;
- during the last week of operations, Mr Higgs terminated the Appellant's appointment as company director.

27. Mr Higgs did not resist revocation of the operator's licence, but argued that he had discharged his responsibilities as a director of the operator company having been largely kept in the dark about the 'bad bits' of the operation. In the circumstances, he had been justified in suspending services. He attended the inquiry hearing, and argued that his oral evidence should be given more weight than the Appellant's written representations.

Commissioner's findings and analysis

28. According to the Traffic Commissioner's reasons for his decisions, the Appellant and Mr Higgs had an "extensive licensing history". That of Mr Higgs "has been considered elsewhere and I do not need to repeat it here" but, in the Appellant's case:

“3...Mr Hand was sole director of Snowdonia Travel Limited which was called to public inquiry in 2019 as a result of ceasing to operate registered services without notice. A direction to pay a financial penalty of a nominal £300 to the Welsh Government was made. Despite chasing, no payment was forthcoming. The company was dissolved in 2022. Mr Hand failed to attend the inquiry but it seems he provided ten pages of written submissions.”

29. It was ‘unclear’, according to paragraph 4 of the Commissioner’s reasons, why the outstanding Snowdonia Travel Limited penalty was not “identified when Mr Hand’s appointment as a director on [the operator’s] licence was notified by the operator...in October 2022”. The matter came to light when a complaint was made about the reliability of a bus service provided by the operator for a school in Dorset.

30. The Commissioner accepted all of the DVSA evidence and other evidence unfavourable to the operator (as recounted above). Revocation of the operator’s licence was inevitable given the absence of evidence as to financial standing and the lack of any transport manager. The Commissioner went on to make certain findings of fact which influenced his subsequent decision to make a disqualification order in respect of the Appellant:

(a) there was no evidence to counter media reports of the poor service provided for a Dorset School, and the Commissioner found that services were not operated according to timetable and that was due, at least in part, to poor vehicle reliability;

(b) several registered services ceased on or around 12 July 2024 without notice leaving members of the public, effectively overnight, without transport services. This was caused by poor management and called for the maximum financial penalty under section 155 of the Transport Act 2000;

(c) the Commissioner accepted Mr Higgs’ evidence that his role in operations had been largely that of an investor until 12 July 2024 at which point he had “few options in respect of continuing operations” especially following withdrawal of money from the operation’s bank account (bank statements were said to have supported Mr Higgs’ oral evidence). Nevertheless, Mr Higgs did attempt to ‘cover’ at least some of the registered services as confirmed by evidence from Gloucester City Council;

(d) unlike the Appellant, Mr Higgs attended the inquiry hearing, and the Commissioner made no adverse findings in respect of his good repute;

(e) the Appellant, however, “once again, failed to attend a public inquiry”. The Appellant had said that he was happy to attend an appointment with the Commissioner at any time, but the inquiry hearing was effectively such an appointment which the Appellant declined to attend;

(f) the Appellant had much to answer for including a bus abandoned on an unlit A-road, and a minibus found in the charge of driver without the correct licence endorsement. The latter incident was a “major concern”. The Appellant made “spurious comments” to DVSA officials that the minibus was not in service and failed to abide by his commitment to explain to DVSA what had happened. The Appellant “lied to DVSA officers that evening” and “such conduct goes strongly against the good repute needed to hold a public service operator’s licence” and “the failure to respond to DVSA thereafter is a deeply aggravating feature”. The Commissioner accepted as true what was reportedly said by the driver and it follows that the vehicle’s insurance was likely to have been nullified;

(g) “telling the truth appears to be a lifestyle choice for Mr Hand”. The Appellant eventually responded to OTC’s queries about Snowdonia Travel in March 2024 but his assertion that the business closed in 2019 was incorrect. The company was struck off the companies register and dissolved in April 2022. He and the company had three years to pay the £300 penalty owed to the Welsh Government, and “how can a regulator trust an individual who fails to comply with such a simple, and trivial, order made at a public inquiry and who then goes on to seek to hid behind the company having closed when it had not;

(h) the Appellant failed to deliver on his promise to explain how a vehicle was used when untaxed and, when excise duty was paid, back duty was not;

(i) the circumstances of two prohibitions were a cause for concern. In one case, a warning light indicating an open emergency exit door was not working, a particular worry for a vehicle whose passengers were children, and the vehicle’s faulty wiring was a short circuit risk. The other involved a vehicle with a door that could not be retained in the closed position, as well as an excessive oil leak and leaking exhaust;

(j) there were certain positive features going to the Appellant’s credit. When the vehicle to which the first prohibition notice related was subsequently inspected, it was free of defects. The Appellant displayed ‘enthusiasm and innovation’ in running the business

and “he did make attempts to get at least some of the services covered following their cessation”.

31. The Commissioner’s overall analysis of the Appellant’s conduct was as follows:

“48. The positives are clearly trivial when contrasted with the negatives. I have no hesitation in finding that his good reputation is lost. The seriousness of events and their sheer number, in such a short period of time, and the previous adverse history, mean that a period of reflection away from the PSV industry is appropriate. This is Mr Hand’s second public inquiry. He failed to comply with the order made at his first and he has again failed to attend. For that reason, having regard to the Senior Traffic Commissioner’s statutory guidance, a period of five years is appropriate.”

32. Having imposed a financial penalty on the operator of £8,250 and revoked its operator’s licence, the Commissioner went on to find that the Appellant had lost his good reputation and disqualified him from applying for or holding an operator’s licence in any traffic area for five years (until 14 August 2029).

Legal framework

Transport Act 1985

33. Section 28(1) of the 1985 Act empowers a Traffic Commissioner, where the Commissioner revokes a PSV operator’s licence, to order the former licence holder to be disqualified, indefinitely or for such period as the Commissioner thinks fit, from holding or obtaining a PSV operator’s licence. This provision does not apply, in the case of a corporate licence holder, to company directors.

34. Section 28(4) of the 1985 Act provides that, where a Traffic Commissioner makes a disqualification order under section 28(1), the Commissioner may also:

“direct that if that person, at any time during such period as he may specify—

(a) is a director of, or holds a controlling interest in—

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

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

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

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

35. Those provisions do not, on their own, apply to a director of an operator whose PSV operator’s licence has been revoked. Instead, those provisions are applied for this purpose by section 28(5), which provides as follows:

“(5) The powers conferred by this section 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 officer of that company...”.

36. Section 28(6) provides that a Traffic Commissioner may not make a disqualification order “without first holding an inquiry if any person affected by the proposed order or direction requests him to do so”.

37. Regulation 9 of the Public Service Vehicles (Operators’ Licences) Regulations 1995 provides as follows in relation to disqualification orders under section 28 of the 1985 Act:

“(1) Before—

...(d) an order is made under section 28(1) of the 1985 Act in respect of a licence,

a traffic commissioner shall give notice to the holder or former holder.

(2) The notice shall state –

(a) that one or more of such actions is under consideration;

(b) the grounds on which that consideration is based;

(c) that within 14 days of such notice the holder or former holder may make representations to him with respect to the action or actions being considered;

(d) that those representations shall be written; and

(e) either-

- (i) that it is proposed to hold an inquiry in relation to the action or actions being considered and the date (being a date not less than 14 days from the notice) on which that inquiry will be held, or
- (ii) that it is not proposed to hold an inquiry in relation to that action or those actions unless the holder or former holder, within 14 days of the notice, in writing requests that an inquiry be held.”

Senior Traffic Commissioner’s Statutory Document 10

38. The Senior Traffic Commissioner has issued *Statutory Document 10: the Principles of Decision Making & the Concept of Proportionality*. The Document includes the following:

- ...Disqualification
- ...108...when considering disqualification, traffic commissioners should take account of the general legal principle that each case must be looked at on its merits. A tariff system is not appropriate, however, traffic commissioners should use the following as starting points:
- for a transport manager, a minimum period of one year;

• for an operator’s first public inquiry, consideration of a disqualification period of between 1 and 3 years;

• serious cases where, for example, there are persistent operator licence failures with inadequate response or previous public inquiry history, this may merit disqualification of between 5 to 10 years;

• severe cases where, for example, the operator deliberately puts life at risk and/or knowingly operates unsafe vehicles or allows drivers to falsify records, may merit disqualification for an indefinite period.

STARTING POINTS FOR REGULATORY ACTION

CONDUCT	REGULATORY STARTING POINT
Deliberate or reckless act(s) that compromised road safety and/or gave the operator a clear commercial advantage and/or operator caused or permitted driver offending and/or any	SEVERE

attempt by the operator to conceal offences or failings	
Persistent operator licence failures with inadequate response or previous public inquiry history	SEVERE to SERIOUS
Two or more negative features not already detailed under "Conduct" above and some positive features	SERIOUS to MODERATE
Limited negative feature(s) not already detailed under "Conduct" above and several positive features	MODERATE to LOW

SEVERE	●Revocation with detailed consideration of disqualification ●Revocation ●Suspension for an extended time period that materially affects the transport operation ●Significant indefinite curtailment that materially affects the transport operation
SERIOUS	●Revocation with consideration of disqualification ●Suspension for up to 28 days ●Significant time limited curtailment that may materially affect the transport operation
MODERATE	●Suspension for up to 14 days

	●Indefinite or time limited curtailment that does not materially affect the transport operation e.g. removal of the margin
LOW	●Formal warning that attendance at a further public inquiry will be likely to lead to regulatory action being taken against the licence

Grounds of appeal

Ground 1

39. The Traffic Commissioner's findings about the respective responsibilities of the Appellant and Mr Higgs were plainly wrong, and rendered the disqualification order disproportionate especially in the light of the Commissioner's failure to make any adverse findings, or take any action, against Mr Higgs.

Ground 2

40. The Commissioner's findings about the extent of the Appellant's responsibilities were further flawed by the Commissioner having assigned to the Appellant responsibility for matters that were the responsibility of a transport manager.

Ground 3

41. The Commissioner misdirected himself in (company) law when he held the Appellant responsible for Snowdonia Travel Ltd's failure to pay a financial penalty imposed on that company.

Ground 4

42. The Appellant was not 'correctly called' to the public inquiry and, in consequence, the Commissioner was biased in favour of Mr Higgs' evidence.

Ground 5

43. The final ground is whether, as a matter of law, a Traffic Commissioner has power to make a disqualification order, as provided for by section 28(5) of the 1985 Act, in respect of a person who has ceased to be a director of an operator company. This ground was formally introduced by the Upper Tribunal after the hearing of this appeal because it was an issue that was relevant to other grounds of appeal and it was

considered to be a legal issue of potentially wider implications. Given the potential implications, and the Upper Tribunal's consequent reluctance to rule on the issue without hearing submissions in addition to those of the Appellant, gave directions for the Secretary of State for Transport to provide written submissions. The Secretary of State was not asked to express any view on the other grounds of appeal.

Arguments

Ground 1

44. The Appellant relies on the Senior Traffic Commissioner's *Statutory Document 5 Legal Entities*:

"13. Directors have collective responsibility for the company which they manage In the United Kingdom directors have the same legal duties, responsibilities and potential liabilities regardless of whether they are full-time or non-executive directors."

45. Therefore, the Commissioner's starting point should have been that the respective duties and responsibilities of Mr Higgs and the Appellant were the same. The Statutory Document acknowledges that the starting point may shift, since it goes on to say that "a director may be able to demonstrate to the contrary by, for example, reference to minutes of Board meetings". However, no such documentation was provided to the Commissioner in this case who simply took Mr Higgs at his word that he was merely an "investor" while the Appellant was the "operational hands-on".

46. Simply taking Mr Higgs at his word was surely an insufficient test of the reliability of Mr Higgs' evidence, argues the Appellant, especially given Mr Higgs' own history, "which includes multiple revocations and personal disqualifications". In reality, Mr Higgs was as involved as the Appellant in the management of the business and the Commissioner should have so found. Even Mr Higgs' own evidence contradicted his assertion that his role was merely that of chairman. The Commissioner's reasons refer to Mr Higgs' evidence that the two of them, "messed each other most days and talked every other day" which were not the actions of a hands-off "investor". Mr Higgs' assertions were further undermined by his own evidence of detailed involvement in South coast operations, especially maintenance arrangements.

Ground 2

47. The Appellant relies on Statutory Document 10's description of a director's duties such as duties to promote a company's success, to exercise independent judgement and to exercise reasonable care, skill and diligence. He contrasts this with Statutory

Document No.3's description of the transport manager role – to exercise "continuous and effective management of the vehicles on a daily basis".

48. Regarding the incident in which a police officer encountered an unmanned bus, the failings which led to this were clearly matters which fell within a transport manager's area of responsibility. A local manager is responsible for arranging recovery of a broken down vehicle, overseen by the transport manager. In relation to vehicle excise tax, this, again, is something that it falls to a local manager to arrange under the oversight of the transport manager who is to report any discovered non-compliance to a director. The same responsibility structure applies in the case of ensuring appropriately licensed drivers.

49. The operator's transport managers were the individuals who should have been required to answer for the above actions, as part of their responsibility for ensuring continuous and effective management of operations. However, neither was called to the inquiry an action that was not precluded by their having resigned by the date of the public inquiry hearing.

50. The Appellant's responsibility, as a director, was, having become aware of events such as those described above, to take appropriate remedial action. And that is what he did in. The Appellant dismissed the individuals involved, initiated staff training and 'strengthened safeguards'. His written submissions say that "all these measures are detailed in the information provided as part of the original bundle of evidence following the call to Public Inquiry" but "sadly I no longer have access to this document as I am no longer an employee of the company".

51. The Appellant accepts that the incidents described above were unacceptable. However, he dealt with them by taking urgent remedial action and, in so doing, did all that a reasonable director could be expected to do.

Ground 3

52. The Traffic Commissioner overlooked a fundamental principle of company law that a limited company's debts are debts owed by the company and not by any other person. The Appellant's disputes the Commissioner's findings about the liquidation timeline of Snowdonia Travel Ltd. but argues that this was irrelevant. It does not matter when the company went into liquidation because that could not change the basic company law principle that no one other than a company is responsible for discharging its debts. Furthermore, OTC took no steps to facilitate the Appellant's offer to pay Snowdonia Travel Ltd's £300 financial penalty.

53. The Commissioner's flawed finding that the Appellant sought to evade paying a financial penalty, imposed for failings in providing a local bus service, informed the Commissioner's unjustifiable finding that 'telling the truth appears to be a lifestyle choice for Mr Hand'. The Appellant submits that this finding "is unprofessional and unbecoming of someone holding the office of Traffic Commissioner" and "clearly demonstrates that the Traffic Commissioner had allowed emotion to cloud his objective view of the facts".

Ground 4

54. In preferring Mr Higgs' evidence to the Appellant's, the Traffic Commissioner clearly relied on the Appellant's failure to attend the public inquiry hearing. However, following the Appellant's departure from the business "it was not clear to me that I was expected or required to attend". He assisted in preparation of the operator's public inquiry submissions, and did so in the exercise of his responsibilities as director. After 8 July 2024, however, the Appellant's status was "no more than a private individual who had previously been a director of Altonian Coaches Ltd".

55. Following termination of the Appellant's appointment as a director of the operator company, on 8 July 2024 the operator's solicitor informed the Appellant that the solicitor could no longer act for him. This demonstrated that the Appellant was now a "separate Party to the matters under investigation". As such, had the Commissioner expected the Appellant to attend the inquiry, he "would have been expected to have been called to attend" but was not.

56. The Traffic Commissioner "makes much of events after 8th July" but the Appellant is unaware of "any documentation" that a private individual may be held to account for things done when no longer a director. On his own initiative, the Appellant wrote to the Commissioner on 5 August 2024 "setting out my position on matters following the closure of the company" but did so "purely to assist the Traffic Commissioner by providing context for some of the events". OTC's prompt response, on 5 August 2024, informed the Appellant that it might be in his interests to attend because the Commissioner would be considering whether he might impose a ban from the industry. However, OTC's communication of 5 August 2024 was not a proper call-up to a Public Inquiry, but, even if it were, unfairly gave the Appellant only 72 hours to prepare his case and to do so without access to company records.

57. The Appellant submits that Mr Higgs' evidence at the inquiry hearing contained numerous lies, but the only example given concerned the alleged unauthorised withdrawal of funds from the business. Had the Appellant received a proper call-up letter, he would have been able to prepare a case to meet Mr Higgs' allegations. In

responding, after the hearing, to the Secretary of State's written submissions the Appellant also argued that much of Mr Higgs' oral evidence at the inquiry hearing directly contradicted their joint submission of June 2024. The Appellant additionally argued that, given his and Mr Higgs' joint responsibilities, it was "fundamentally perverse" of the Commissioner to have only disqualified him.

Ground 5

58. As explained above, this ground was introduced by the Upper Tribunal following a hearing of this appeal.

Secretary of State for Transport

59. The Secretary of State submits that the PSV disqualification provisions should be read as a whole. The relevant legislative context includes:

(a) the power to make a disqualification order in respect of an operator under section 28(1) of the 1985 Act arises where a Traffic Commissioner has revoked a PSV operator's licence. Section 28(2) provides that any other licence held by the operator is suspended and no further operator's licence may be granted to the operator. In other words, the Parliamentary intention is to ensure that the disqualified operator ceases trading, even under a separate licence that has not been revoked;

(b) section 28(2A) provides that any licence obtained by a disqualified operator is void, which further underscores Parliament's intention entirely to exclude a disqualified operator from the PSV industry;

(c) where a section 28(1) disqualification order has been made, section 28(4) provides that a Commissioner may direct (amongst other things) that, if a disqualified person becomes a director of a company which holds a PSV operator's licence or operates public service vehicles in partnership with a person who holds such a licence, powers under section 17(2) of PPVA (for instance, revocation) shall be exercisable in relation to that licence. The Parliamentary intention is to provide a means by which a disqualified person may be prevented from running a PSV business by other means.

60. The overall legislative intention of the above provisions is to ensure that powers of revocation and disqualification will not be circumvented by a licensed person continuing to trade in some manner other than under the revoked licence on which the disqualification order was based.

61. Now, we come to the provision under analysis in this case the Appellant, section 28(5) of the 1985 Act. There does not to be any direct authority on the question whether section 28(5) powers are exercisable in relation to a person who, at the date at which

disqualification is under consideration, was no longer a director of the company whose operator's licence is revoked. However, the Upper Tribunal has dealt with appeals against section 28(5) disqualification orders brought by former directors without there being any suggestion that there was no power to make an order against a former director (for example, *Sunderland and Warburton* (Appeal No 2009/498)).

62. There is further Upper Tribunal case law which, while not directly on point, may nevertheless be relevant:

(a) *Bradley and Bradley* [2014] UKUT 0253 (AAC) concerned the previous iteration of section 28(5) which provided for powers of disqualification to be exercised against "any director" (now, the provision refers to "any officer") of a company whose licence is revoked. The issue was whether 'any director' included *de facto* and shadow directors. The Upper Tribunal said, at [15], that, "in our view the purpose of a disqualification order under s. 28 of the 1995 Act is to give Traffic Commissioners the power to prevent a person holding or obtaining an operator's licence when they are unfit to do so... we can see no justification for restricting the scope of s. 28 to directors *de jure*" and, at [22], "what matters is not the title that a person holds but what they are proved to have done". *Bradley and Bradley* is instructive in the light of the Upper Tribunal's emphasis on the underlying purpose of the disqualification power, which suggests that a broad approach should be taken to the words "any officer" in section 28(5);

(b) *Pritchard and Smith* (Appeals 2008/688 and 2008/745) concerned an individual subject to a disqualification direction under section 28(4). He appealed to the Upper Tribunal, arguing that his involvement with the relevant company was limited: he was only a director for two months and, by the time the company's operator's licence was granted, was no longer a director. The Upper Tribunal referred to the Transport Tribunal's decision in *Rex Haulage Limited et al* (2007/351 & 2007/356) (the Upper Tribunal's Administrative Appeals Chamber now exercises the jurisdiction that was previously conferred on the Transport Tribunal). In *Rex*, an issue arose as to whether the Traffic Commissioners' jurisdiction over directors extended to past directors. While there was no ruling on the point, it appears that the Tribunal accepted the submission that the jurisdiction was not limited to present directors, and said it was "entirely appropriate" for the Traffic Commissioner to have considered Mr Pritchard's involvement with the company.

63. The Secretary of State's representative also draws the Upper Tribunal's attention to Senior Traffic Commissioner's Statutory Document 10, which cites *Pritchard and Smith* as authority for the following proposition:

“31...The traffic commissioner is not limited to taking action against those directors (or partners) in place at the date of the public inquiry but can take action against those persons who were in post as directors at the relevant time.”

64. As requested by the Upper Tribunal, the Secretary of State’s representative addresses the implications, if any, for the present case of the Company Directors Disqualification Act 1986. In setting out grounds for disqualification from acting as a company director, that Act makes express provision for individuals who once were, but are no longer, company directors. For instance, where a court is satisfied that (emphasis added):

(a) “the person is or *has been* a director of a company which has at any time become insolvent (whether while the person was a director or subsequently)” (section 6(1));

(b) “the person *has been* a director of a company which has at any time been dissolved without becoming insolvent (whether while the person was a director or subsequently)...(section 6(1))”.

65. The wider context, submits the Secretary of State, shows that section 6 of the 1986 Act did not make express provision for disqualification of individuals who had been a director for fear that, without such provision, only individuals with a current appointment as a director could be disqualified. Where a corporate entity no longer exists, through dissolution for instance, no one can hold an appointment as director of the non-existent company. That is why it was necessary for the section 6 of the 1986 Act to make express provision for individuals who had been a director of a company.

66. The Secretary of State submits that her argument is supported by case law relating to competition disqualification orders under section 9A of the 1986 Act. The criteria for such orders include that “the undertaking which is a company of which he is a director commits a breach of competition law”.

67. *CMA v Michael Christopher Martin* [2020] EWHC 1751 (Ch) was a case in which a section 9A competition disqualification order was sought against an individual who had been a director of a company involved in some kind of price fixing, but who had apparently resigned by the date of the disqualification hearing. The High Court proceeded on the basis that the section 9A power may be exercised in relation to both current and former directors.

68. The Secretary of State submits that three principles of statutory interpretation are of potential relevance in construing section 28(5) of the Transport Act 1985:

(a) legislation should be construed in such a manner as to prevent its circumvention or evasion. In the words of *Bennion, Bailey and Norbury on Statutory Interpretation* (8th edn.), 12.10, p. 458 “The courts have frequently held that a construction is to be preferred that prevents evasion of the intention evinced by the legislature to provide an effective remedy for the mischief against which the enactment is directed.”;

(b) the presumption that Parliament did not legislate for an absurd outcome (*Bennion*, 8th edn. p.485);

(c) the principle against doubtful penalisation including the principle of legal policy that a person should not be penalised except under clear law. The principle’s rationale is that the legislature’s presumed intention is that any person in respect of whom any hardship will be inflicted should have been given fair warning. It is well established that the principle is capable of being outweighed by other interpretative factors (for instance, see the judgment of Sales J in *Bogdanic v Secretary of State for the Home Department* [2014] EWHC 2872 at [48]).

69. In conclusion, the Secretary of State submits that the better view is that section 28(5) of the 1985 Act permits a disqualification order to be made against an individual who is no longer a director of a corporate operator whose licence is revoked, but who was a director at the relevant time. By ‘relevant time’, the Secretary of State means the period during which the events which gave rise to the revocation decision took place. The Secretary of State argues that [his] construction is supported by the following:

(a) the overarching logic of section 28 is to secure that – after revocation of an operator’s licence – relevant persons (natural or legal) can be prevented from continuing to trade and thereby circumvent revocation. Revocation occurs in response to significant regulatory failings and only in serious cases. The disqualification powers further the purpose of revocation by inhibiting circumvention of the intended consequences of revocation. Section 28(5) deals with the case of a licence-holder that was a company, and Parliament’s intention must have been to ensure that disqualification powers were available in relation to the natural individuals who were responsible for the corporate failings that led to revocation of the operator’s licence. To avoid revocation becoming ineffective, the relevant individuals should be liable to disqualification even if their appointments as directors, or other officers of the company, are terminated. Otherwise, such individuals will be free to continue to operate in the PSV sector;

(b) Upper Tribunal authorities, while not directly on the point, are more consistent with the Secretary of State’s preferred construction than a construction which restricts

section 28(5) to individuals who are still company directors when a Traffic Commissioner decides whether to disqualify;

(c) the Secretary of State's construction is consistent with the principle that legislation should be construed so as to avoid its circumvention or evasion. If the Appellant is right, a recalcitrant company director could avoid disqualification by resigning at any point before a Commissioner makes a disqualification decision.

70. The Secretary of State concedes that the issue is not entirely clear-cut, given the absence from section 28(5) of the 1985 Act of provision such as that made in section 6 of the Company Directors Disqualification Act 1986. It might be argued that the absence of an express reference to a person who 'has been' a director indicates, given the presence of such a provision in other director disqualification legislation, a Parliamentary intention that section 28(5) disqualification is reserved for those who remain company directors. It might also be argued that the Appellant's construction finds support in the principle against doubtful penalisation on the basis that, absent clear and unequivocal words, Parliament did not intend to provide for a penalty that the reader of legislation could not and would not have understood that it might apply to them.

71. While the Appellant's preferred construction might appear persuasive at first glance, on analysis it is not:

(a) the express reference to a person who has been a director in section 6 of the Company Directors Disqualification Act 1986 is explained by that Act's context. Unlike the Transport Act 1985, it is dealing with a situation where the corporate entity may have ceased to exist. If it ceases to exist, so do the appointments of its directors and it is not therefore surprising that Parliament considered it necessary to make express provision for persons who are no longer directors;

(b) in dealing with disqualification in connection with fair competition, in section 9A of the 1986 Act, Parliament did not make express reference to persons who had been directors yet section 9A has been applied to individuals who, at the disqualification date, were no longer directors of the company in question;

(c) this is not a case in which the principle against doubtful penalisation outweighs other interpretative considerations. A director in the Appellant's position could not have reasonably read section 28(5) of the 1985 Act as if it gave him the ability to evade the consequences of his company's regulatory failings by simply resigning before the Traffic Commissioner had had time to address disqualification.

Appellant

72. The Appellant argues that *Pritchard* appears to have been an unusual case where a person resigned as a director before an operator's licence had even been granted, and that director appears to have been trying to avoid accountability. The Appellant argues that his resignation had nothing to do with avoiding accountability and disputes that his circumstances are comparable to those in *Pritchard*. He also asks the Upper Tribunal to note that in *Pritchard* the Upper Tribunal itself acknowledged that it was not ruling on the legal question whether a former director could be disqualified under section 28(5) of the Transport Act 1985. *Pritchard* establishes no relevant legal principle.

73. The Appellant also argues that, whatever the merits of the Secretary of State's arguments, a disqualification order may only be made following a public inquiry. The Appellant was not able to put forward a case against disqualification at a public inquiry since the call-up letter was addressed to the directors of Altonian Ltd. By the time of the public inquiry, the Appellant was not a director the fact of which he gave proper notice to OTC.

Analysis

Ground 5

74. We begin with the final ground because, if its is made out, the other grounds will be redundant.

75. We accept the Secretary of State's arguments as to the construction of section 28(5) of the 1985 Act. If the literal meaning of section 28(5) is that it refers to a current director of a company, it is a case where Parliament's intention cannot have been for the present tense to be taken literally. An example of a similar case, albeit in a very different context, is *Re M (a minor) (care order: threshold conditions)* [1994] 3 All ER which the 4th edition of Bennion, p.923, cites as authority for the proposition that "where the present tense is used this may indicate that the relevant time is not the time when the court is considering the matter but when the relevant action was *initiated*" (emphasis in original). We agree with the Secretary of State that section 28(5)'s scope is not limited to officers, including directors, in post at the date on which a Traffic Commissioner determines a disqualification measure. We decide that a Traffic Commissioner has jurisdiction to make a disqualification order against a person who was a director of an operator company at the date on which the operator was informed that regulatory action against the operator was under consideration by a Traffic Commissioner. We do need to address the question whether there is jurisdiction to make an order against a director who had resigned before that date.

76. If section 28(5) of the 1985 Act is of no application to a director who resigns before a disqualification measure is determined, the purpose of the disqualification provisions would be subverted. A director could evade disqualification by simply resigning at any point before a Commissioner determined whether to disqualify. That would include a case where it is clear from proceedings at a public inquiry that a Commissioner is likely, a few days after the inquiry hearing, to make a disqualification order. We accept that did not happen in this case, but it is a stark example of how the Appellant's construction would enable an unscrupulous director to evade the consequences of his or her actions and remain active in the PSV industry. A further consequence would be an unjustified difference of treatment between different classes of operator. A sole director of a corporate operator could avoid disqualification through resigning as a director. But a sole trader who wished to avoid disqualification by relinquishing an operator's licence could be prevented from doing so by virtue of a Commissioner's power under section 15(4) PPVA to refuse a request for termination of an operator's licence where regulatory action is being considered. The former would run no risk of disqualification if the operator's licence were subsequently revoked, but the latter would.

77. We also accept the Secretary of State's argument that section 6 of the Company Directors Disqualification Act 1986 is not an indication of a general Parliamentary intention that disqualification measures are unavailable in the case of former directors unless an enactment uses the past or present perfect tense to describe a director's appointment. As the Secretary of State submits, the express reference to a person who "has been" a director in section 6 is explained by the fact that, in that context, disqualification will often be under consideration where the company in question has ceased to exist so that there would be no one who 'is' a director.

78. We therefore decide that the Traffic Commissioner did have power by virtue of section 28(5) of the 1985 Act to make a disqualification order in respect of this Appellant despite the fact that, at the date of the order, he was no longer a director of the company whose PSV operator's licence was revoked. We must therefore consider the remaining grounds of appeal.

Ground 1

79. We begin by noting that the Appellant decided not to attend the public inquiry hearing. Of course, that was his right, but it does have consequences for this appeal. The Upper Tribunal hears appeals against decisions of the Traffic Commissioners, and such decisions are evaluated by reference to the material (including evidence) that was before a Commissioner. An appeal does not provide an Appellant with a second chance to run a case that could have been run before a Commissioner. That applies

with even more force in the case of an Appellant who declined the opportunity to attend an inquiry hearing.

80. Minutes of board meetings are not the only evidence that directors of a company do not, in practice, have equivalent responsibilities. One such form of alternative evidence is oral evidence given by a director of a company and, in this case, the Commissioner clearly relied on such evidence.

81. As we have said, it is not open to the Appellant to challenge the Commissioner's decision by reference to evidence that was not before the Commissioner but could have been put before the Commissioner. This means that the arguments under this ground can only succeed if the Appellant could not reasonably have expected the Commissioner to make findings about the respective responsibilities of the Appellant and Mr Higgs. If the Appellant could reasonably have expected such findings to be made, it follows that he must be taken to have accepted the risk that flowed from his decision not to attend the public inquiry namely that the Commissioner would accept everything that Mr Higgs said about their respective directorial responsibilities.

82. Much of the Appellant's email to OTC of 5 August 2024 contained allegations about the conduct of Mr Higgs. The Appellant must therefore have thought it likely that the Commissioner would address the respective responsibilities, or blameworthiness, of the Appellant and Mr Higgs. Otherwise, there would have been no point in the Appellant making allegations against Mr Higgs.

83. Mr Higgs attended the public inquiry and gave extensive oral evidence. The Appellant did not, which meant that his written allegations against Mr Higgs were untested and the Traffic Commissioner was fully entitled to accept Mr Higgs' evidence and, where it conflicted with the Appellant's evidence, to prefer Mr Higgs' evidence. This ground of appeal is not made out.

Ground 2

84. In the case of a corporate operator, ultimate responsibility for ensuring that the operator is regulatorily compliant does not rest with the operator's transport manager. The responsibility is that of the company and a company's activities are controlled by its directors. And so, a director cannot avoid being held to account for an operator's failings simply because a transport manager's responsibilities include effective and continuous management of transport operations. This is reflected in Statutory Document No.3 itself, where it says, drawing on Upper Tribunal case law:

“persons who control an entity which operates heavy goods or public service vehicles must have sufficient knowledge to exercise proper oversight...The

ultimate responsibility for supervising maintenance compliance rests on the operator.”

85. It follows from what we have just said that the Appellant cannot make good on this ground simply by asserting that the operator’s failings were of a type normally dealt with by a local manager or an operator’s transport manager. In fact, this ground contains a more significant flaw, which is that it relies on evidence, largely in the form of the Appellant’s recollections, that was not before the Traffic Commissioner. This evidence relates to incidents recounted in the public inquiry brief and so the Appellant could have put before the Commissioner the case now relied on before the Upper Tribunal. As we have said, an appeal to the Upper Tribunal does not provide a second chance to run a case that could and should have been run before the Commissioner. This ground is not made out. For the same reason, the argument that the Commissioner unfairly failed to make a disqualification order against Mr Higgs cannot succeed.

Ground 3

86. We agree that the Traffic Commissioner’s reasons betray a legal misdirection. Snowdonia Travel Ltd was a registered company. The Appellant was a shareholder (and director) but there is a well-established legal principle that members of a company are not responsible for its debts (see the leading case of *Salomon v A Salomon & Co Ltd* [1897] AC 22, HL). In certain limited circumstances, a member / shareholder may be liable for the debts of a company, but the Commissioner’s reasons say nothing about this in the case of Snowdonia Travel Ltd and the Appellant. We therefore conclude that the Traffic Commissioner mistakenly held the Appellant responsible for a debt owed by Snowdonia Travel Ltd. In the absence of some explanation as to why this was a case in which a shareholder was liable for a company’s debt, this should have been left out of account as an irrelevant consideration.

Ground 4

87. This ground has no merit. The public inquiry call-up letter informed the directors of Altonian Coaches Ltd that a disqualification order was under consideration, and explained why. The requirements of Regulation 9 of the Public Service Vehicles (Operators’ Licences) Regulations 1995 were complied with.

Conclusion and disposal of proceedings

88. The Traffic Commissioner erred in law. He misdirected himself in law by assuming that the Appellant was responsible for a debt, in the form of a financial penalty, owed

by the separate legal entity Snowdonia Travel Ltd. The Commissioner's decision is set aside.

89. We are nevertheless satisfied that, had the Snowdonia Travel Ltd debt been ignored, the Traffic Commissioner would still have made a disqualification order. While the supposed debt did play a material part in the Commissioner's reasoning, the remaining adverse findings against the Appellant clearly satisfied at least the 'severe to serious' starting point category set out in the Senior Traffic Commissioner's Statutory Document 10 and in our judgment, taking into account the guidance in that documents in the interests of consistency, a proportionate period of disqualification is three years. Rather than remit this matter to a Traffic Commissioner for reconsideration, we replace the Commissioner's five-year disqualification order with a three-year disqualification order, with time running as from the date of the Commissioner's decision.

90. Finally, we apologise for the delay in giving this decision. The Upper Tribunal panel had to be reconvened after the hearing in order to consider the post-hearing written submissions and this took far longer to arrange than normal given the panel's other commitments.

Upper Tribunal Judge Mitchell

Authorised for issue on 12 August 2026

Given under section 50(5) of the Public Passenger Vehicles Act 1981