



Neutral Citation Number: [2026] UKUT 387 (AAC)
Appeal No. UA-2025-000020-NT

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

Between:

**(1) Joe Coyle Transport Ltd
&
(2) Joseph Matthew Coyle**

Appellants

- v -

Driver and Vehicle Agency (Northern Ireland)

Respondent

Before: Ms L. Joanne Smith: Judge of the Upper Tribunal
Mr D. Rawsthorn: Member of the Upper Tribunal
Mr M. Smith: Member of the Upper Tribunal

Hearing date: 5 March 2026
Heard at: Tribunals Hearing Centre, Royal Courts of Justice, Belfast

Representation:
Appellant: Mr D McNamee, Solicitor
Respondent: Ms A Jones, BL

On appeal from: The decision of the Presiding Officer on behalf of the
Department for Infrastructure, Northern Ireland

Reference No: ON2015053
Decision under appeal: 6 January 2025

Date of Decision: 29 September 2026

KEYWORDS: Loss of repute (100.4), revocation of licence (100.12), disqualification (100.13), proportionality (100.19), fresh evidence.

Cases referred to: *Fergal Hughes v DOENI & Perry McKee Homes Ltd v DOENI* [2013] UKUT 618 AAC NT/2013/52 & 53; *Bradley Fold Travel Ltd & Anor v Secretary of State for Transport* [2010] EWCA Civ 695. *Clarke v Edinburgh & District Tramways Co Ltd* [1919] UKHL 303; (1919) SC (HL) 35; 56 SLR 303. *Ladd v Marshall* [1954] EWCA Civ 1. *Allen Transport Ltd (1) and Daniel Allen (2)* [2019] UKUT 0074 (AAC). *Ana Cartland and Juan Carlos Rivera t/a London Magical Tours* [2023] UKUT 227 (AAC). *Cavendish Green Ltd v HMRC* [2018] UKUT 66 (TCC). *Shawe-Lincoln v Dr Arul Chezhan Neelakandan* [2012] EWHC 1150. *BKG Transport Limited & Oers* [2018] UKUT 0443 (AAC). *Norbert Dentressangle* 2001/49. *T/2014/59 Randolph Transport Ltd & Catherine Tottenham*. 2009/225 *Priority Freight Ltd & Paul Williams*. *T/2015/39 Firstline International Ltd & William Lambie v Secretary of State for Transport*. *Thomas Muir (Haulage) Limited* [1999] SC 86, [1998] Scot CS 13. *Bryan Haulage (No.2)* (T2002/217). 2016/046 *R & M Vehicles Ltd, Graham Holgate and Michael Holgate*.

SUMMARY OF DECISION

This was an appeal against a decision of the Presiding Officer dated 6 January 2025 revoking the operator's licence, disqualifying the Appellants from holding or obtaining an operator's licence for three years, and disqualifying Mr Coyle from acting as a transport manager for three years. The Upper Tribunal dismissed the appeal, finding that the Presiding Officer's decision was not "plainly wrong". The Tribunal, having refused to admit fresh evidence, upheld the findings that the operator had lost its good repute and that revocation, together with the associated disqualifications, was a proportionate and lawful regulatory response.

Please note the Summary of Decision and table of contents is included for the convenience of readers. It does not form part of the decision.

DECISION

The decision of the Upper Tribunal is to DISMISS the appeal.

The Presiding Officer's decision dated 6 January 2025 does not involve a material error of law, and is not "plainly wrong". The directions made within the decision take effect from 2359hrs on 24 November 2026. The stay decision dated 30 January 2025 ceases to apply with immediate effect.

REASONS FOR DECISION

Introduction

1. This is an appeal to the Upper Tribunal brought by Joe Coyle Transport Ltd ("the Appellant") and Joseph Matthew Coyle ("Mr Coyle"), against a decision of the Presiding Officer ("PO") on behalf of the Department for Infrastructure for Northern Ireland ("the DfI"), dated 6 January 2025. The PO refused an

application for a stay of his decision pending the outcome of the appeal, by decision dated 18 January 2025. The application was renewed directly to the Upper Tribunal, and a stay was granted by Upper Tribunal Judge Mitchell on 30 January 2025.

2. The Upper Tribunal granted an application by the Driver and Vehicle Agency Northern Ireland (“DVA”), to be made Respondent to the appeal. The appeal was heard at an oral hearing, at the Tribunal Hearing Centre within the Royal Courts of Justice, Belfast, on 5 March 2026. Mr Coyle was in attendance on behalf of the Appellant and was represented by Mr D. McNamee, solicitor. He was supported by Mr Dolan, as an observer to the appeal hearing. The Respondent was represented by Ms A. Jones, BL. Two representatives from the DfI, Mr Devine and Mr McVeigh, were present as observers to the appeal hearing. Upper Tribunal Judge E. Fitzpatrick was also observing the hearing. She played no role in the decision-making process. No party took any objection to the presence of any of the observing parties.
3. Within this decision, numbers contained in square brackets “[]” refer to the electronic page numbers within the Upper Tribunal electronic bundle of papers in relation to this appeal.

Factual background

4. The Appellant company holds a standard international operator’s licence authorising thirteen vehicles and fourteen trailers [81]. The licence was granted on 14 December 2018. Mr Coyle is the sole director and transport manager (“TM”) of the company.
5. In 2021, following a check by the DVA, it was noted that twelve vehicles were specified on the Appellant’s operator’s licence between 10 April 2021 and 30 November 2021. Of these, two were registered to Mr Coyle and only one was presented by him for annual testing. An analysis of the vehicles authorised under the licence identified occasions when, at the relevant time, other individuals and companies were the registered keepers of those vehicles, and on some occasions, those individuals or companies had their operator’s licences revoked or refused. A detailed analysis of the licenced vehicles is set out at [67–80]. Some 41 vehicles, which were not registered to the Appellant, had been authorised on the Appellant’s operator’s licence in the three years between November 2021 and November 2024.
6. On 24 November 2021, the operator was convicted at Ballymena Magistrates’ Court for using more vehicles than authorised on the operator’s licence and a fine of £300 was imposed.

7. On 3 February 2022, vehicle RXO8 EEO was stopped by the Driver and Vehicle Standards Agency (“DVSA”) at the Glenluce check site on the A75 in Scotland, and the driver stated he was working for the Appellant. The vehicle was authorised under an operator’s licence issued to Callan Renewables Limited. Subsequent enquires revealed that the driver had been manipulating his tachograph records by the use of two cards and a magnet. Five instances of making a false record and taking insufficient daily rest were identified between 7 January 2022 and 2 February 2022. A prohibition was issued as a result of the false tachograph entries, insufficient daily rest having been taken and fitting an unauthorised tachograph device [128-130].
8. On 9 July 2023, vehicle S700 JCT was stopped by the DVA carrying plant machinery. As a result of this stop, the Appellant was convicted at Belfast Magistrates’ Court on 7 May 2024 for three offences relating to maintenance and drivers’ hours, for which a fine of £800 was imposed. The conviction was not appealed. During DfI correspondence in relation to this stop, an issue arose in relation to the requirement for the Appellant to keep EU tachograph records. It claimed an exemption to this requirement on the basis that the nature of the business was delivering milk. During the investigation, a company representative and legal representative were invited to attend an interview but neither attended the arranged appointment.
9. In addition to the specific instances detailed above, and since the licence was granted, the Appellant incurred a number of infringements. On 18 January 2022, the DVA referred the operator to the Transport Regulation Unit (“TRU”) within the DfI for three Most Serious Infringements (“MSIs”) identified on three separate vehicles on 10 April 2021. These included excessive movement in the steering joint, damage to the suspension unit and a non-operational service brake [86-90]. The Appellant responded to this referral by letter (undated) explaining the reasons for the infringements and stated that it was an oversight that they were not reported to the DfI [91].
10. On 11 February 2022, the DfI requested copies of roadworthiness certificates for the 13 vehicles specified on the licence and the operator obliged [92-127]. On 19 May 2023, the DfI sought further maintenance information, including evidence of financial standing, and warned that it was considering holding a public inquiry (“PI”) [157]. A PI on 15 November 2023 was adjourned due to the PO taking the view that there was insufficient information within the PI Brief. The operator was requested to supply further information for analysis by the DVA. This analysis identified failings in relation to maintenance and driver’s hours compliance. Additionally, the wall planner produced by the operator only gave details of the three vehicles identified in the request from the TRU. During 2023 there were a total of 23

vehicles authorised on the operator's licence but none of these appeared in the wall planner produced [297-304]. Additional explanatory evidence was requested, together with financial information, and this was not produced despite a reminder being sent. The financial information that had been produced by that point showed a shortfall in financial standing against the amount required for the number of vehicles on the licence.

11. A second PI was arranged for 17 October 2024 but an adjournment was agreed as Mr Coyle was on a pre-booked holiday. The PI eventually took place on 10 December 2024. The concerns that were to be discussed with the Appellant were set out in Annex 4 of the letter accompanying the PI brief [45].

The Public Inquiry

12. Mr Coyle attended the PI on behalf of the Appellant, in his position as Director and Transport Manager. He was represented by Mr McNamee, solicitor, and was accompanied by Mr Robert Sweeney, Transport Consultant.
13. Mr Coyle gave evidence at the PI. He explained the reason that 41 vehicles specified on the operator's licence between November 2021 and November 2024 were not registered to the Appellant, was because he had hired all the vehicles and drivers from the registered keepers of those vehicles (save for Roland Preka Limited), at a cost of £500 per day. The arrangement was that he kept the earnings from the use of the vehicles and paid the hire fee to the registered keeper. The registered keeper remained responsible for the vehicle inspections and maintenance and paid the driver. The arrangements were made by way of "gentleman's agreement" hence they were not put in writing. He said that he paid for the hire by cheque however he was unable to identify any evidence of cheque payments made within the bank statements for the Appellant between the example period of August 2023 and November 2023. He had been asked to produce proof of ownership in relation to seven vehicles in March 2024 and had replied that hire agreements would follow in relation to five of those vehicles. He did not provide the agreements. He said he had hoped to have hire agreements to send to the DfI but they didn't materialise.
14. Mr Coyle stated that the arrangement with Roland Preka Limited was different as he was a director and shareholder of that company. Consequently, no hire payment was made for the use of those vehicles and Roland Preka Limited kept the proceeds from the use of the vehicle. Mr Coyle was a director of that company from 3 February 2023 until 20 March 2023.

15. In relation to the stop of vehicle RX08 EEO on 3 February 2022, Mr Coyle stated that he had no knowledge of the driver manipulating the tachograph records by using two tachograph cards and a magnet. He stated that the driver was not employed by him and the vehicle was authorised to another operator. He was unable to explain why the driver stated that he was working for “Joe Coyle”.
16. In relation to the stop on 9 July 2023 involving vehicle S700 JCT, and which resulted in convictions at Belfast Magistrates’ Court, Mr Coyle stated that the driver of the vehicle, Mr Richard Magee, was the father of a former employee, Mr Aaron Finlay. Mr Finlay had retained the vehicle for three weeks after being dismissed and had allowed his father to use it. Mr Coyle believed that Mr Magee had fraudulently arranged work with the company whose goods were being carried (Barford Equipment Limited), instead saying that he was acting on behalf of the Appellant “Joe Coyle Transport Ltd”.
17. Mr Coyle recalled a telephone conversation with DVA Examiner Todd on 2 August 2023, when the offences were discussed. He could not explain why he had not told Examiner Todd that the vehicle was being used without his consent. He recalls being asked to attend an interview but was unable to explain why he did not follow up that request, but noted that the dates were around the time of the original PI date in November 2023. Mr Coyle was referred to a letter he sent on 29 November 2023, in which he stated that Aaron Finlay had ceased employment with the Appellant after September 2023, however the stop was in July 2023. He said he got the dates wrong in the letter.
18. Mr McNamee, on behalf of the Appellant, stated that Mr Stephen Murphy of Barford Equipment Limited, had confirmed that no discussion had ever taken place with Mr Coyle regarding haulage work. Correspondence demonstrating this had been submitted at the trial before Belfast Magistrates’ Court. An email from Counsel, Mr Hayes BL, dated 12 December 2024, and who had represented Mr Coyle at the trial, was highlighted to the PO. This stated that the Appellant had been convicted of the offences of not having a roadworthiness certificate, failing to download driver data, and the driver failing to take daily rest. The email further confirmed [738]:

“District Judge Connor questioned Mr Coyle in relation to the assertion that he did not give Mr Richard Magee permission to use his vehicle on the dates in question and questioned why Mr Coyle did not inform the police of this or why it took him so long to engage with the DVA agents once he knew this information. The main piece of evidence that informed the judge’s decision was Exhibit AT17 that showed Mr Richard Magee

using the vehicle in question on separate occasions over a period of time.”

19. Mr Coyle acknowledged that the wall planner he produced after the November 2023 hearing only showed details of the three vehicles requested by the DVA, and not details of any other vehicles specified on the licence during 2023. He stated that he thought details of the three vehicles requested would be sufficient. He explained missing mileage reports by reference to the use of some of his vehicles for milk collection and delivery, which he believes is an exempt activity for the purposes of EU tachograph record keeping.
20. Mr Coyle was asked why only the first pages of the PMI sheets had been produced and sent, when the full reports should have been provided and would have shown additional, and helpful, details such as repairs and tyre tread depths etc. He explained this was a copying error but there were few defects to note in any event as the vehicles were only 1-2 years old. He accepted that the daily walk around check sheets were not always signed by drivers and that there were gaps in the paperwork where forms had not been completed. He had not provided a copy of the preventative maintenance inspection planner.
21. With regards to the drivers' hours records, Mr McNamee on behalf of the Appellant, submitted that the operator was exempt from keeping “domestic records” and tachograph records as a result of the milk exemption, therefore any errors in completing the records identified by the DVA officer were irrelevant. He did not provide a legal authority in support of this assertion. Mr Coyle stated that he had decided, prior to the PI, to discontinue logistics and undertake milk collections and deliveries only. He had added cameras and automatic downloaders to the three vehicles used for this purpose and he employed two drivers per vehicle. He supplied logbooks for each vehicle and stated that it was the responsibility of the driver using the vehicles to complete these records.
22. It was submitted, on behalf of the Appellant, that the arrangement of hiring vehicles and drivers, while not common practice, was permissible under the law. Involvement in the 9 July 2023 offences was denied, and he stated that it could be shown that the vehicles were properly maintained. The PO was asked to consider this as a case which demonstrated “moderate level seriousness” and asked that no action be taken that would interfere with the business. The PO deferred his decision for seven days and advised Mr Coyle that he could submit any further evidence in support of his case, within that seven-day period. No further evidence was provided by the Appellant.

The Presiding Officer's decision

23. On 6 January 2025, the PO signed off his written decision which comprised 40 paragraphs over 10 pages [744-753]. From his findings, the PO assessed the seriousness of the conduct as “severe” and thereafter, made the following directions:

- (i) Breach of section 23(1)(e) of the Goods Vehicles (Licensing of Operators) Act (Northern Ireland) 2010 and loss of repute in accordance with Section 24 of the Act found.
- (ii) Revocation of the licence pursuant to section 24(1)(a) of the Act on the basis that the operator no longer satisfies the requirement of good repute. The revocation was ordered to take effect from 23.59hrs on 10 February 2025.
- (iii) Operator Joe Coyle Transport Limited was disqualified from holding or obtaining an operator's licence for a period of three years with effect from 00.01 hours on 10 February 2025.
- (iv) Joseph Matthew Coyle was disqualified from holding or obtaining an operator's licence as an individual, director or a company or partner in a partnership for a period of three years with effect from 00.01 hours on the 10 February 2025.
- (v) Joseph Matthew Coyle was disqualified from acting as a transport manager for a period of three years, with effect from 00.01 hours on the 10 February 2025, due to the loss of his repute in that role.

The appeal

24. The Appellant lodged an appeal against the decision of the PO, dated 15 January 2025. The Appellant's grounds of appeal, as submitted by his solicitor, were set out in his application. Prior to the date of the appeal hearing before the Upper Tribunal, the Appellant submitted a skeleton argument which set out his finalised submissions, and which were expanded upon during the oral hearing.

25. There are three key grounds of appeal identified by the Appellant which can be summarised as follows:

- (i) The PO's decision errs factually in finding that the conviction at Belfast Magistrates' Court was based upon the District Judge determining that Mr Coyle had not been telling the truth. This finding infects the determination of the PO that Mr Coyle was not telling the truth during the PI, (paragraphs 21 and 34) and thus had lost his good repute.

- (ii) The decision of the PO involved matters predating the adjourned November 2023 Public Inquiry hence revocation of the operator's licence amounts to punishment of the operator for past misconduct with no regard to the changes made to the operation at the date of the PI (10 December 2024).
- (iii) The decision to revoke the operator's licence is neither necessary nor proportionate. The revocation does not allow sufficient time for alternative arrangements to be made by the farms relying on the operator and is insufficiently reasoned in this regard.

26. The DVA, represented by Ms Jones BL, submitted a skeleton argument in response, which reflects the oral arguments she presented on the day of the appeal hearing.

27. In addition, the Appellant's grounds of appeal submitted that it had fresh evidence which demonstrated that the driver on the 9 July 2023 stop had been operating independently. It was submitted that this evidence had not been available at the time of the PI, but had it been, the decision of the PO would have been different. The Appellant, in advance of the appeal hearing, made a written application to adduce this fresh evidence (dated 13 January 2026) and a written response was submitted by the Respondent (dated 16 February 2026).

The Approach of the Upper Tribunal

28. As to the approach which the Upper Tribunal must take on an appeal such as this, it was said, in the case of *Fergal Hughes v DOENI & Perry McKee Homes Ltd v DOENI* [2013] UKUT 618 AAC, NT/2013/52 & 53, at paragraph 8:

"There is a right of appeal to the Upper Tribunal against decisions by the Head of the TRU in the circumstances set out in s. 35 of the 2010 Act. Leave to appeal is not required. At the hearing of an appeal the Tribunal is entitled to hear and determine matters of both fact and law. However, it is important to remember that the appeal is not the equivalent of a Crown Court hearing or an appeal against conviction from a Magistrates Court, where the case, effectively, begins all over again. Instead, an appeal hearing will take the form of a review of the material placed before the Head of the TRU, together with a transcript of any public inquiry, which has taken place. For a detailed explanation of the role of the Tribunal when hearing this type of appeal see paragraphs 34-40 of the decision of the Court of Appeal (Civil Division) in Bradley Fold Travel Ltd & Peter Wright v Secretary of State for Transport [2010] EWCA Civ. 695.

Two other points emerge from these paragraphs. First, the Appellant assumes the burden of showing that the decision under appeal is wrong. Second, in order to succeed the Appellant must show that: “the process of reasoning and the application of the relevant law require the Tribunal to adopt a different view”. The Tribunal sometimes uses the expression “plainly wrong” as a shorthand description of this test.’

29. At paragraph 4, the Upper Tribunal stated:

“It is apparent that many of the provisions of the 2010 Act and the Regulations made under that Act are in identical terms to provisions found in the Goods Vehicles (Licensing of Operators) Act 1995, (“the 1995 Act”), and in the Regulations made under that Act. The 1995 Act and the Regulations made under it, govern the operation of goods vehicles in Great Britain. The provisional conclusion which we draw, (because the point has not been argued), is that this was a deliberate choice on the part of the Northern Ireland Assembly to ensure that there is a common standard for the operation of goods vehicles throughout the United Kingdom. It follows that decisions on the meaning of a section in the 1995 Act or a paragraph in the Regulations, made under that Act, are highly relevant to the interpretation of an identical provision in the Northern Ireland legislation and vice versa.”

30. The task of the Upper Tribunal, therefore, when considering an appeal from a decision of the Presiding Officer on behalf of the DfI in Northern Ireland, is to review the information which was before the PO, along with the decision based on that information. The Upper Tribunal will only allow an appeal if the appellant has shown that “the process of reasoning and the application of the relevant law require the tribunal to take a different view” (*Bradley Fold Travel Limited and Peter Wright v. Secretary of State for Transport* [2010] EWCA Civ 695, [2011] R.T.R. 13, at paragraphs 30-40). Therefore, the approach of the Upper Tribunal is as stated by Lord Shaw of Dunfermline in *Clarke v Edinburgh & District Tramways Co Ltd* 1919 SC (HL) 35, 36-37, that an appellate court should only intervene if it is satisfied that the judge (in this case, the decision of the PO on behalf of the DfI) was “plainly wrong”.

ANALYSIS

Why we did not admit fresh evidence

The application

31. The Appellant made a formal written application to adduce fresh evidence of relevance to his first ground of appeal. He submits that the evidence

indicates that the driver of the Appellant's vehicle on 9 July 2023, Mr Magee, had independent dealings with the company whose load was being carried at the time of the stop (Barford Equipment Ltd). This, he asserts, makes it more likely that driver Magee had in fact been driving for himself on that date, and not for the Appellant, when the Appellant's vehicle was stopped carrying Barford Equipment Ltd's load.

32. The evidence sought to be admitted is a witness statement of Mr Stephen Murphy from Barford Equipment Ltd, dated 16 May 2023, stating that he gave work directly to driver Magee just a few days prior to making that statement, which involved the transport of items from Northern Ireland to Selby, England. While it is not evidenced within the PI material, the Appellant states that driver Magee was stopped while transporting these goods and a criminal conviction ensued. The statement was obtained by DVA Examiner Todd following that encounter in May 2023. In addition, the Appellant seeks to admit an email between the same Mr Stephen Murphy and "Robert" at "Go Safe", dated 11 December 2024, stating that he had not contracted with Mr Coyle directly regarding the load on 9 July 2023, but had spoken to driver Magee about it. It is submitted that this evidence, including knowledge of driver Magee's conviction following the May 2023 stop, would have persuaded the PO to believe Mr Coyle's account, that he had no knowledge of that journey.

33. Attached to the application was several documents:

- (i) The statement of Stephen Murphy, Operations Manager of Barford Equipment Ltd, dated 16 May 2023. In this statement he indicates that driver Magee had contacted him a few days prior, asking if there were any loads to go to England, and he had provided Magee with details of a load between Coalisland, NI and Selby, England. It indicates that previous work had been done by him and was invoiced to RT Magee Haulage & Son.
- (ii) Exhibit SM1 attached to the statement of 16 May 2023. This is an invoice dated 19 April 2023 from McGrath Engineering of Coalisland to Barford Equipment Ltd detailing a list of equipment.
- (iii) Exhibit SM2 attached to the statement of 16 May 2023. This is a shipping note for exporter Barford Equipment Ltd dated 12 May 2023, from Belfast to Liverpool. This was contained in the PI material at [185] although it was difficult to read as it was a screenshot of a mobile phone showing the document.
- (iv) The first page of the statement of DVA Examiner Todd dated 6 November 2023 detailing the stop of vehicle S700 JCT on 9 July 2023 when it was within the Belfast dock, on its way to the Liverpool ferry freight terminal booth. This was when driver Magee stated that he was carrying a load

- for Joe Coyle Transport Limited of Strabane, NI. The full statement was contained within the PI materials [177-181].
- (v) A statement of Stephen Murphy dated 17 January 2024 in which he states that DVA Examiner Todd had approached him about the movement of a machine on 9 July 2023. He states that Barford Equipment Ltd contracted Joe Coyle Transport Limited to move that load on 9 July 2023 from NI to the UK. This statement was contained in the PI materials [186, 188 and 190].
 - (vi) An email between Stephen Murphy of Barford Equipment Ltd and “Robert” at “Go Safe”, dated 11 December 2024, clarifying that, further to his statement dated 17 January 2024, he had arranged this load through driver Magee and he had not spoken to Mr Coyle directly about it. This was not contained in the PI materials but details of this email was explained to the PO during the PI.
 - (vii) An email from Daniel Hayes BL to Mr McNamee’s office dated 12 December 2024, detailing the circumstances of the Belfast Magistrates’ Court conviction on 7 May 2024. This document was contained within the PI materials [738].

34. In response, the DVA submits that fresh evidence should not usually be admitted unless it meets the test set out in *Ladd v Marshall* [1954] EWCA Civ 1. Ms Jones submits that the evidence cures an earlier failure of the Appellant in not putting it before the PO. She challenges each of the four tests laid out in *Ladd v Marshall*. Firstly, she submits that the statement is not admissible as it relates to a different encounter, and it is unclear if the parties involved would consent to the sharing of this information for the purposes of this appeal. She submits the evidence could have been obtained with reasonable diligence before the PI, and it is not guaranteed that it would have had an important influence on the PO’s decision. Ms Jones leaves the question of its credibility to the Upper Tribunal.

The law

35. The Upper Tribunal has a broad discretionary power to admit evidence, whether or not it would be admissible in a civil trial in the UK, and whether or not it was available to a previous decision maker, by virtue of rule 15(2)(a) of the Tribunal Procedure (Upper Tribunal) Rules 2008. Rule 15(2)(b) provides a discretionary power to exclude otherwise admissible evidence, in specified circumstances. Any such discretionary power must be exercised in line with the overriding objective to deal with cases fairly and justly (Rule 2).
36. The proper approach to the admission of fresh evidence before the Upper Tribunal in transport appeals is detailed at length in the annex to *Allen*

*Transport Ltd (1) and Daniel Allen (2) [2019] UKUT 0074 (AAC), confirmed in Ana Cartland and Juan Carlos Rivera t/a London Magical Tours [2023] UKUT 227 (AAC). The test repeatedly applied in considering whether to admit fresh evidence is the four-stage test set out in *Ladd v Marshall* [1954] 1 WLR 1489, per Denning LJ:*

- (i) The fresh evidence must be admissible evidence.*
- (ii) It must be evidence which could not have been obtained, with reasonable diligence, for use at the [public inquiry]*
- (iii) It must be evidence such that, if given, it would probably have had an important influence on the result of the case, though it does not have to be shown that it would have been decisive.*
- (iv) It must be evidence which is apparently credible though not necessarily incontrovertible.*

37. In *Cavendish Green Ltd v HMRC* [2018] UKUT 66 (TCC), at paragraph 34, the Upper Tribunal expressed its view on the admission of fresh evidence as follows:

“It is important to appreciate that it is not sufficient for an appellant to say that the overriding objective should be to achieve the right result on the appeal come what may. An appeal hearing is not a hearing de novo, and it is inherent in the Ladd v Marshall approach that even if new evidence is credible and may have an important influence on the result of the case, an appellate court may decline to admit that evidence if the first of the criteria is not met. That is because an appeal inevitably involves delay, expense and the increased utilisation of the limited resources of the tribunal system. Hence there is a clear policy justification for requiring a party to present his entire case at first instance and not, without good reason, giving him a “second bite of the cherry” on different facts on appeal. The first-tier hearing and any appeal should not simply become an iterative process.”

38. As an appeal to the Upper Tribunal is not a hearing de novo, and as Rule 15(2) makes clear, the admission of new evidence on appeal, that was not before the first instance decision maker, is not a matter of right, but a matter upon which the Upper Tribunal must exercise a discretion.

Analysis

39. The fresh evidence sought to be admitted is the statement of Stephen Murphy (dated 16 May 2023) and the email from Mr Murphy (dated 11

December 2024). Mr McNamee asserts that this evidence demonstrates a business relationship between driver Magee and Barford Equipment Ltd thus the Appellant's account that he was not involved in the load stopped on 9 July 2023, should be believed.

40. We note that most of the other documents provided with the application were contained within the PI materials and were therefore before the PO. The PO was not aware that driver Magee had been stopped in May 2023, driving a load for the same company that was involved in the load carried on 9 July 2023. He was unaware of any criminal conviction(s) arising from that May 2023 stop. He had been told during the PI that Mr Coyle had not been spoken to directly in arranging the load which was stopped on 9 July 2023 [805].

41. Bearing in mind our discretionary power to admit evidence, and the overriding objective to deal with cases fairly and justly, we apply the *Ladd v Marshall* conditions, as follows:

(i) *The evidence must be admissible*: It is an established common law principle that evidence is admissible if it is logically probative of a matter in issue in a case. The question we ask ourselves is whether the statement of Mr Murphy dated 16 May 2023, and the email dated 11 December 2024, are logically probative of any of the matters in issue in this case. As identified by the Respondent, the matters referred to in the statement dated 16 May 2023 do not concern or refer to the Appellant. The statement indicates that driver Magee had undertaken work for Barford previously. Given the lack of connection to the Appellant, whose activities were being discussed at the PI in December 2024, the relevance to the issues in the appeal is unclear. It does not deal with whether Mr Coyle was aware of the load that was stopped in his vehicle on 9 July 2023. We do not consider this statement to be logically probative of any matter in issue at the PI. Evidence of driver Magee's convictions are not probative of any issue either. His activities with other hauliers, and any related convictions, do not help to prove or to disprove Mr Coyle's account that he did not consent to driver Magee driving the Appellant's vehicle on 9 July 2023, particularly given the extent of the other evidence which suggests otherwise.

The email dated 11 December 2024 from Mr Murphy to Robert at Go Safe, is written confirmation of the details that was provided to the PO during the PI [805]. As it relates to the load being transported on 9 July 2023, it is relevant evidence, although it cannot be considered fresh evidence that the PO was not aware of before making his decision.

(ii) *This must be evidence which could not have been obtained, with reasonable diligence, for use at the public inquiry:* While we need not consider the statement dated 16 May 2023 any further as we deem it to be inadmissible evidence, we find that it fails this test in any event. The statement was obtained well in advance of the PI and with reasonable diligence. Given the delays that arose between the three PI dates, it could have been obtained for presentation at the PI.

Regarding the email dated 11 December 2024, we must conclude, as has been suggested by the Respondent, that this evidence was in fact obtained by the Appellant with reasonable diligence and should have been presented to the PO before he made his decision. While Mr McNamee provided the PO with the detail during the PI, he had seven days thereafter to send this written confirmation of these details. We are entirely unclear as to why it was not provided during that time, particularly given the reliance that the Appellant now places upon it. On this basis, the email evidence, even if it was to be considered “fresh” evidence, fails at the second stage of the *Ladd v Marshall* test.

(iii) *It must be evidence such that, if given, would probably have had an important influence on the result of the case, though it does not have to be shown that it would have been decisive:* While both the statement and the email fail at the first and second hurdles respectively, we consider the remaining tests for completeness. Mr Murphy states in the email dated 11 December 2024 that he did not speak to Mr Coyle directly regarding the load carried on 9 July 2023. He dealt with driver Magee at all times. However, in his statement dated 17 January 2024, which was presented to the PO, he confirms that he contracted with Joe Coyle Transport Ltd to move machinery on 9 July from NI to the UK, giving “Joe Coyle” as the contact details and stating that he expected to be invoiced by Joe Coyle Transport Ltd. That evidence is sufficiently persuasive that any subsequent email stating that Mr Murphy did not speak to Joe Coyle personally about the load, does not necessarily undermine it. We are not satisfied that the email would have had an important influence on the result of the case as there was nothing to say that driver Magee was not able to contract on behalf of the Appellant. Given the lack of connection to the 9 July 2023 stop, we are not satisfied that the statement of Mr Murphy dated 16 May 2023 would have had an important influence on the case either.

(iv) *It must be evidence which is apparently credible though not necessarily incontrovertible:* Given that the email was written on 11 December 2024, which is some 11 months following the statement of 17 January 2024, and some 17 months after the stop on 9 July 2023, and

given that Barford Equipment Ltd are presumably a busy operation dealing with transport arrangements concerning many companies, drivers and hauliers, the evidence contained in the email has the potential to lack credibility if it had been presented at, or shortly after, the PI. Mr Murphy's recollection may have been mistaken given the amount of time and number of contractual dealings that took place within this 17-month period of time. Given that Mr Coyle asserts he did not consent to the journey on 9 July 2023, it is surprising that he did not seek to obtain confirmation from Mr Murphy much sooner, to avoid liability for offences arising from the stop, and to avoid any regulatory action being taken by the DfI.

There is no reason to consider the statement of Mr Murphy dated 16 May 2023 lacks credibility as this was obtained in a timely manner for the purposes of a DVA investigation, however, as it fails the first three *Ladd v Marshall* tests, its credibility alone does not render this evidence admissible in the appeal.

42. Consequently, the panel conclude that the fresh evidence in the form of the statement of Mr Murphy dated 16 May 2023 and the email from Mr Murphy to Robert from Go Safe dated 11 December 2024, is not admissible for the reasons outlined above.

Why we have dismissed this appeal

43. After setting out the background facts and the evidence given during the PI, the PO's decision was divided into three main sections. The first was to set out his findings, the second was his assessment of seriousness and the third, headed "Decision", set out his outcome determinations.

The PO's findings

44. The PO made findings in respect of three regulatory matters. The first was in relation to the suspicion that the Appellant had permitted other entities to authorise vehicles on his licence (licence lending). The second was in relation to the stop of vehicle S700 JCT on 9 July 2023, and the third was in relation to the Appellant's general regulatory compliance record.
45. In relation to the first, the PO concluded, rejecting Mr Coyle's evidence, that it was more likely than not that the Appellant was allowing other companies to use the spare capacity on its operator's licence. In reaching this conclusion he relied upon: the lack of evidence supporting the claimed hire agreements and the fact that Mr Coyle's promise to provide written hire agreements did not materialise; the lack of financial records of any cheque

payments having been made for the hire arrangements, even after being allowed an extra 7 days post hearing to provide the same; and the number of “hirers” (registered keepers) who did not hold their own operator’s licences either because they were revoked or refused. The PO determined that even if Mr Coyle’s version of events was correct, the use of many of the “hired” vehicles was unlawful. He reasoned that the hirers (registered keepers) were the “users” of the vehicles for the purposes of s.58(2) of the Goods Vehicles (Licensing of Operators) Act (Northern Ireland) 2010 Act as the drivers were employed (paid) by the hirers, but the “user” (hirer) often did not hold an operator’s licence. As the hirer (registered keeper) maintained the vehicles and paid the drivers, an unauthorised entity was therefore responsible for ensuring that the licence undertakings in respect of vehicle maintenance and drivers’ hours were complied with. This remained the case for the hire agreements with Roland Preka, as Mr Coyle was only a director of that company for a short period of weeks but the authorisation on the Appellant’s licence went on for longer.

46. At paragraph 32 of the decision, the PO makes his findings about the operator’s general regulatory compliance. He noted the positive factor that the Operator Compliance Risk Score (a DVSA analysis tool) for the Appellant is “amber”, and not red, for the categories of roadworthiness and traffic categories. However, on the negative side, he noted that there were 12 occasions when infringements or prohibitions were issued to the Appellant during the year 2022/23. There were three DVA encounters within Northern Ireland since April 2021 and only one of the three encounters was clear. Of the other two, two infringements identified were in the “very serious” category, one was in the “most serious” category and three were in the “serious” category. The documentation requested in 2023 was only supplied in part and deadlines were not met. When asked to provide the preventative maintenance planner, only three vehicles were included on it when there were more than three vehicles on the licence during this period. No new planner was produced for the December 2024 PI, and the PO did not accept Mr Coyle’s explanation for the omission. The documentation demonstrated gaps in the daily walk around checks, when the mileage of the vehicles showed that they had been in use during that period. Only the front page of the PMI records was provided, and the missing pages were not sent, even within the 7-day post-PI period. The PO identified that Regulations 3 and 10 of the Vehicles (Drivers Hours of Duty) Regulations (Northern Ireland) 1991, which provide for exemptions from the limitations on continuous hours of duty for drivers of goods vehicles and the duty to keep records, did not make reference to an exemption for milk collection or delivery. He concluded that the errors and anomalies identified in the record keeping were relevant considerations to take into account in his overall decision.

47. Mr McNamee reiterated, during the hearing, that the Appellant had an exemption from the drivers' hours and tachograph requirements as his business involved the collection and delivery of milk from farms. He had raised this with the PO during the PI although there was no legal authority presented in support of this contention. In his decision, the PO identified legislation which did not make provision for such an exemption. However, we find the PO to have misdirected himself on this point and therefore to be in error of law, by referencing out of date regulations. An exemption from the drivers' hours requirements (contained in Articles 6-9 of Regulation No (EC) 561/2006) and the tachograph requirements (contained in Regulation (EU) No. 165/2014) is available for "[a]ny vehicle which is being used for the collection of milk from farms or for the return to farms of milk containers or milk products intended for animal feed" by virtue of Regulations 3 and 5, and paragraph 12 of the Schedule to the Community Drivers' Hours and Recording Equipment (Exemptions and Supplementary Provisions) Regulations (Northern Ireland) 2009. This was acknowledged by the Respondent during the appeal, who submitted that it made no material difference to the outcome decision in any event.

48. During the appeal, Mr McNamee did not definitively suggest that this exemption rendered the PO's decision "plainly wrong". Nevertheless, we examined the regulatory infringement findings made by the PO, to ascertain the materiality of this error. We found, utilising the expertise of the specialist tribunal members, that the exemption did not exculpate the Appellant to such a degree that the regulatory failings occurring post business structure change were reduced to nil. There remained a significant number of breaches relating to maintaining vehicles in a roadworthy state after the business structure change, that did not relate to the exemption. As the exemption only applied to the Appellant after its change of business structure, and the PO was mainly considering activities that took place before that change, the exemption only had limited impact in any event. Consequently, we do not find that the PO's error on this point of law was material to his findings in respect of the appellant's general regulatory compliance record or to his determination of the seriousness of the activity being examined at this PI.

Ground of appeal (i): the Belfast Magistrates' Court convictions

49. At paragraph 31 of the decision [750], the PO made his findings about the offences arising from the stop of vehicle S700 JCT on 9 July 2023. Mr Coyle's evidence to the PO on this particular issue is outlined at paragraphs 18 to 21 of his decision [747-748] and is summarised at paragraphs 16 to 18

of this decision. His evidence to Belfast Magistrates' Court appears to have been the same. The PO made the following findings:

“31. In respect of the offences which were committed on the 10 July 2023 it is pertinent to note that the District Judge Connor found the operator guilty beyond reasonable doubt of the three offences detailed above having considered the claim by Mr Coyle that the vehicle in question was being used without his consent. Whilst I am not bound by the decision of the District Judge I believe I would need to identify something additional and compelling to find differently at the lower civil standard. I do not do so. In fact, I believe I am in possession of additional information which is inconsistent with the version of events given by Mr Coyle. In November 2023 he stated that Aaron Finlay had been employed by him until September 2023. It is highly unlikely that he would have mistaken September for June when the date was of such relevance. If his version is true, it is also not credible that he would have failed to mention to Vehicle Examiner Todd the claimed circumstances of the use of the vehicle when first contacted by telephone, and that he and his legal representative Mr McNamee would have failed to ensure that an interview appointment was kept. For all these reasons I do not accept the version of events given by Mr Coyle and conclude that his testimony to me was false.”

50. The Appellant raises a specific ground of appeal in relation to this aspect of the PO's decision. Mr McNamee contends that the PO infers that the reason for the Appellant's conviction at Belfast Magistrates' Court was because the District Judge found his evidence to be untruthful. He asserts that this factual error infected the remainder of the decision and resulted in the PO to wrongly determine that the Appellant had lost its good repute. He continues that the inference that Mr Coyle lied in his evidence to Belfast Magistrates' Court, is an unlawful one to make, particularly given the account of the trial provided by the Appellant's trial counsel, Mr Hayes BL, via email, dated 12 December 2024 [738] and which was before the PO in making his decision.

51. In response, Ms Jones states that the conviction at Belfast Magistrates' Court is only one factor that contributed to the PO's decision. She submits that the PO does not state that the Appellant lied, but rather that he is not bound by the conviction, and that he has a lower standard of proof to apply. The evidence before the PO was the fact of the Appellant's conviction, Mr Hayes' email, the Appellant's account of unauthorised use, the date of the stop, and the date that the Appellant said Mr Finlay was dismissed. She submits that it is for the PO to decide how much weight to place on the conviction. In this case, he identified additional evidence, that was not before the District Judge, which was inconsistent with the Appellant's

account. Ms Jones submits that the PO was entitled to draw the inference that he did, particularly given that Mr Coyle got the dates of Finlay's dismissal wrong, and he did not take action to recover the lorry that was retained by an ex-employee and which was standing idle elsewhere than in his operating centre. The PO concluded that the Appellant's account was not credible as it was not consistent with the other evidence before him.

52. We find that the PO's decision states that the Appellant was found guilty beyond reasonable doubt despite his claim that the vehicle was being used without his authority. He is bound by the fact that the Appellant was convicted as it was not appealed and must therefore stand. He states he is *"not bound by the decision of the District Judge"*. From a global reading of the PO's findings on this issue, we take this to mean that he is not bound to find that the Appellant is responsible for the offences arising from the stop on 9 July 2023 just because the District Judge did. However, the PO correctly points out that he must apply a lower standard of proof (the balance of probabilities) to find the Appellant responsible for these infringements. He reasoned that he required something "additional and compelling" to persuade him to find contrary to the District Judge who determined that the Appellant was liable beyond reasonable doubt. The PO identified additional evidence that contradicted the Appellant's account, namely that Mr Coyle had failed to mention this lack of consent to Vehicle Examiner Todd, when he was informed about the offending, on 27 September 2023. Further, in November 2023, Mr Coyle had reported, in an official letter, that Mr Finlay had ceased being employed by the operator in September 2023, knowing that offences involving Mr Finlay had happened in July 2023. He also failed to attend an interview to explain the situation to vehicle Examiner Todd which could have potentially excluded him from any liability for the July 2023 offences. In light of this additional evidence, the PO concluded that Mr Coyle's evidence to him during the PI, which was the same as the evidence he gave in the trial before the Magistrates' Court and which was rejected by the District Judge, was false testimony.

53. Mr McNamee continues that it was not appropriate for the PO to criticise Mr Coyle for not keeping an appointment with the DfI, particularly as he had explained that the date was close to the PI date, so he did not go. The inference drawn by the PO in this case, was not explicitly stated but was essentially that the Appellant ought to have attended the interview to exonerate himself from any wrongdoing at the earliest opportunity, and his failure to do so added to the reasons for the PO's determination that his denial did not accord with the remainder of the evidence. The PO is entitled to take any relevant evidence into account, and this is relevant to the issues before the PO at the PI. It is a common law principle of evidence within civil proceedings that an inference may be drawn from a party's failure to respond

to an allegation or from a party's failure to give evidence. Whether it is appropriate to draw an inference and if so, the nature of the inference that can be drawn, will depend upon the facts of the case at hand (*Shawe-Lincoln v Dr Arul Chezhan Neelakandan* [2012] EWHC 1150, at paragraph 82). We do not find any error of law in the PO having drawn an inference from the Appellant's behaviour following this stop. We find this to be a rational inference that the PO was entitled to draw in the circumstances of this case.

54. The PO does not make a finding, as asserted by Mr McNamee, that the reason for the Appellant's conviction at Belfast Magistrates' Court was because the District Judge found his version of events to be untruthful. He does not make any inference about the reason for the conviction. He simply finds that the oral evidence of Mr Coyle during the PI was untruthful because it was inconsistent with the other evidence presented to him. He was obliged, given the contradictory evidence before him, to make a finding that he either believed Mr Coyle's account and disregarded the other circumstances, or that Mr Coyle's account was not worthy of belief. On this occasion, he concluded the latter as the other evidence outweighed the veracity of Mr Coyle's account. This is a finding that the PO was entitled to make on the evidence before him. His finding is adequately reasoned. The email evidence from Mr Hayes BL, sets out a factual account of what took place at the Belfast Magistrates' Court trial. The content does not contradict any of the PO's findings. We cannot therefore conclude that the PO's findings in relation to the stop on 9 July 2023 are "plainly wrong". This ground of appeal is dismissed. All the findings of the PO, save for his misdirection relating to drivers' hours and tachograph exemptions for the collection and delivery of milk, remain intact. That misdirection does not materially affect the outcome decision in this case, for the reasons already outlined.

The PO's assessment of seriousness

55. Having made his findings, which the Upper Tribunal does not find to be materially in error of law, the PO went on to assess the seriousness of the Appellant's conduct, this being an essential prerequisite to an outcome determination in the case. In doing so, the PO states that he had regard to Departmental Guidance Document No. 9 and relevant Upper Tribunal decisions.

56. The PO found that the activity of licence lending created a significant risk to road safety and fair competition as the entities whose vehicles were listed on the Appellant's licence were not in possession of their own operator's licence issued by the DfI or a Traffic Commissioner, and in some instances had been considered unsuitable to hold an operator's licence. Even if the

vehicles had been hired (as claimed by Mr Coyle but not accepted as correct by the PO), the Appellant had delegated responsibility for the maintenance of the vehicles and oversight of the drivers to unlicensed entities which, in the PO's view, undermined the regulatory process and put road safety at risk.

57. As the PO did not accept Mr Coyle's account regarding the stop of vehicle S700 JCT on 9 July 2023, he made a finding that Mr Coyle had been lying, either in full or in part, in his evidence during the PI. Relying on *BKG Transport Limited & Oers* [2018] UKUT 0443 (AAC), he found that the Appellant had lost its good reputation.

58. The PO went on to find that the Appellant's regulatory compliance record was mixed. He balanced the good MOT pass rate and amber DVSA marking against significant failings in respect of the documentation presented on both PI dates, the incomplete supply of documentation for 2023 with a failure to produce complete maintenance records, gaps in the daily walk around checks and an absence of PMI planners. He found the negatives to be "worrying features" (paragraph 35 of the PO's decision [752]). Taking everything into account, the PO determined that the case fell into the "severe" category in relation to seriousness.

Ground of appeal (ii) – reliance on aged activity

59. The Appellant asserts that the PO erred in law in his reliance upon matters that occurred long before the PI took place, with no regard to the changes and improvements made to the operation by the time of the PI on 10 December 2024. Consequently, he submits that the decision to revoke the operator's licence amounts to a punishment rather than a proportionate response to regulatory infringements.

60. More specifically, Mr McNamee highlights the DfI's reference to a stop of vehicle RX08 EEO on 3 February 2022 which resulted in five Most Serious Infringements ("MSIs") being recorded. This vehicle was specified on an operator's licence held by Callan Renewables Limited between 30 March 2021 and 11 January 2023 and therefore, Mr McNamee submits that it should not have been part of the PI considering the actions of the Appellant. Mr McNamee continues that numerous documents were presented to demonstrate the PMI checks undertaken by the operator therefore it was perverse of the PO to find that the records were incomplete. He further asserts that the maintenance planner was requested in respect of the three vehicles on the Appellant's operator's licence at the time of the request, and the Appellant produced a maintenance planner for those three vehicles. He

submits that it was perverse for the PO to criticise the Appellant for its planner not containing details of other vehicles.

61. Ms Jones, on behalf of the Respondent, submits that the historical matters are not fully representative of the PO's decision as he refers to post November 2023 matters also. For example, there was a request in March 2024 to provide evidence and the resulting gaps in the documentation provided are referred to in the PO's decision. She asserts that in making his decision, the PO considered the older matters and noted the Appellant's current position at paragraph 25 [749]. She referred to the case of 2001/49 *Norbert Dentressangle*, highlighting that the PO cannot disregard historic matters simply because of the passage of time. She further highlighted that the Appellant does not dispute the facts of the historical matters but rather the reason as to why they occurred.
62. It is well established that reputation, and other requirements to hold an operator's licence, should be judged as at date of Traffic Commissioner's decision, and where revocation is being considered, the correct balancing exercise must be carried out (2001/49 *Norbert Dentressangle*, at paragraph 8). In T/2014/59 *Randolph Transport Ltd & Catherine Tottenham*, at paragraph 12, the Upper Tribunal stated that "[a]lthough reputation must be considered as at the date of the decision, that does not mean that the past becomes irrelevant. In many cases, the present is simply the culmination of past events".
63. The PI in this case took place in December 2024, after two earlier attempts to arrange it in February 2022 and again October 2024. It is fair to say that the majority of the matters under discussion related to incidents and activity that occurred during the years 2021 to 2023. However, the licence lending investigation continued to November 2024, just one month before the PI as it was noted that between November 2021 and November 2024, a total of 41 vehicles were on the operator's licence, and which were not registered to the operator. The Appellant was asked to produce documentation in March 2024, some nine months before the eventual PI, and it failed to produce ownership of the seven vehicles authorised on the operator's licence during the relevant time. Indeed, the PO identifies that the documentation continued to be incomplete pending both later PI dates despite the Appellant's change of business model.
64. In respect of the stop of vehicle RX08 EEO on 3 February 2022, the details on the PI brief stated that while the vehicle had never been listed on the Appellant's licence, he was the registered keeper of the vehicle on the date of the stop when the driver stated that he was driving for Joe Coyle, and five MSIs were noted [78]. The PO was entitled to question Mr Coyle about the

stop as his name and company were connected to it. The PO outlined the evidence provided by the Appellant at paragraph 17 of his decision [747] but he made no findings in relation to the stop. While it would have been preferable for findings to have been made, either to include it within his decision making or to expressly discount it, we are satisfied from the PO's findings and regulatory conclusions that he placed no reliance upon this incident in reaching his determination in this case. For these reasons, we do not consider that taking evidence from Mr Coyle on this incident renders the PO's decision "plainly wrong".

65. The missing information within the records was discussed during the PI [790]. The Appellant accepted that information was missing from the documentation he had submitted (driver downloads, infringement reports, mileage reports). In the opinion of the PO, Mr Coyle also demonstrated, within his oral evidence, some misunderstanding about what information was to be completed and recorded [795]. It is indeed the case that the Appellant produced a maintenance planner that showed the three vehicles that it was requested for. During the PI, Mr Coyle stated that he didn't think the others needed to be on the planner and that he only needed to show the vehicles requested [788]. However, a planner is a working document, which should provide details for all the vehicles on the licence at a given point in time, therefore the PO would have expected to see details of other vehicles on the planner, even if they had subsequently been taken off the operator's licence. Utilising the expertise of the specialist members of the tribunal, the records submitted were indeed incomplete and given the Appellant's acknowledgement of this, the PO was not "plainly wrong" to make such a finding. He allowed a period of seven days after the PI within which to provide any further evidence that might assist in determining the case. The Appellant did not take up the opportunity to fill any gaps identified in the evidence, for example, to provide the missing pages of the reports. It was thereafter a matter for the PO as to what weight to place on the significance of those missing records, which he explains in his assessment of seriousness, to be significant and worthy of being taken into account in his assessment.

66. The PO considered the history of the operation as well as the current state of the business. At paragraph 25 of his decision [749], he notes that the Appellant no longer operated the logistics side of the business choosing to concentrate on milk delivery and collections instead. He operated a reduced fleet for this purpose. He had added cameras and automatic downloaders to the vehicles and had employed two drivers and installed logbooks for each vehicle. The PO noted a lack of encounters or infringements and an effort to follow the regulations.

67. On a related point, Mr McNamee asserts that having found that the Appellant was untruthful, the PO wrongly relied on the case of *BKG Transport Limited & Oers* [2018] UKUT 0443 (AAC) in determining that due to the finding of untruthfulness, he had no choice but to find the Appellant had lost his good reputation. Ms Jones responds that the primary decision maker has the benefit of hearing evidence and testing it so the Upper Tribunal should only depart from such an impression of the evidence if there were strong cogent reasons for doing so. While the case of *BKG* differs on the facts, the PO found that the Appellant had lied therefore he was entitled to use the ratio of *BKG* in his decision.

68. In *BKG*, the directors of the operator company accepted that they had lied to the Traffic Commissioner, although one stated that he had not done so intentionally. In the present matter, the PO reasoned that the Appellant's account in oral evidence was untruthful. In both cases the Appellant's lies were found to be proven. In *BKG*, this was proven by the Appellants' admission. In the present case, by a reasoned finding. Having found that the Appellant's evidence was untruthful, we agree with the Respondent, that the PO was entitled to rely upon the ratio of *BKG*, which is clearly stated at paragraph 46:

"46... It is difficult to envisage any circumstances in which the good reputation of company directors and transport managers will be retained once it is accepted that lies have been told to the TC (or indeed to DVSA enforcement officers). The regulatory position of transport operations is based upon trust and the premeditated fabrication of an account to avoid adverse findings involving directors and a transport manager so fundamentally undermines that trust that it is inevitable that a significant and serious regulatory response will result."

69. The operator's licencing system is based on trust and those who enforce the regulatory regime must be able to trust that operators will work in accordance with the licensing system as established by Parliament. Where an operator is able to breach the rules without consequence, others may do the same to avoid a competitive disadvantage. This creates a breakdown in trust. In this case, the PO did exactly what he had to do. He was faced with two accounts. One in which the Appellant had authorised a driver to drive vehicle S700 JCT and in so doing committed regulatory offences while under the Appellant's control. And the other, in which the Appellant had not permitted the driver to drive vehicle S700 JCT thus any offences committed by the driver were not the responsibility of the Appellant as operator. The PO weighed up the evidence before him and decided that Mr Coyle's account was inconsistent with the remainder of the evidence, hence he did not accept Mr Coyle's evidence. The evidence before him was sufficient to underpin his

conclusions such that it cannot be said that his conclusions were perverse or irrational. The PO's finding that the Appellant's evidence was untruthful and therefore that he was entitled to follow the ratio in *BKG* to find, in consequence, that the Appellant's good repute had been lost, cannot be said to be "plainly wrong".

70. Bearing all these matters in mind, we find that the PO conducted an appropriate balancing exercise to establish seriousness, taking into account his findings on the matters stated in the PI brief, as well as the current state of the business and the improvements made. Per *Randolph* however, it was the view of the PO that the past misconduct outweighed the improvements, and he determined that the case came within the "severe" category of seriousness. In accordance with Annex 4 of Practice Guidance Document No 9 "The Principles of Decision Making and the Concept of Proportionality", Feb 2024, "severe" conduct is:

"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 attempt by the operator to conceal offences or failings"

71. In reaching this conclusion, the PO considered his findings on licence lending, which had persisted for three years, and which he found to risk road safety and fair competition. The Appellant did not manage the maintenance of the vehicles or the driver's requirements of many of the vehicles that he financially benefitted from. There were incomplete records provided to satisfy the PO that the Appellant was ensuring the safety requirements were met in relation to the vehicles on its operator's licence. We find that the PO was entitled to classify this activity as "severe" conduct as it was within the range of reasonable responses to the accepted evidence before him. His assessment of seriousness cannot be found to be "plainly wrong". This ground of appeal does not succeed.

The PO's decision to revoke the Appellant's operator's licence

72. Having determined that the case fell into the "severe" category in relation to seriousness, the PO went on to determine the regulatory outcome for the Appellant. He referred to 2009/225 *Priority Freight Ltd & Paul Williams* and found that the operator could not be trusted to operate in compliance with the regulations in the future. This was because the licence lending had continued for three years and only stopped when the PI was pending. He acknowledged that since then, the Appellant had been operating a small number of its own vehicles and there had been no adverse encounters but the documentation was still incomplete and in any event, given the lies found

to be told during the PI, trust in the Appellant as operator was lost. He determined “*I do not believe or find that I can trust Mr Coyle as an individual, a director or partner of a company which holds a licence or as a transport manager and believe as a consequence the operator deserves to be put out of business*” (paragraph 36 of the PO’s decision [752]).

73. From his findings and his assessment of seriousness, he determined that the Appellant had failed to comply with licence undertakings (s.23(1)(e) of the 2010 Act) and had lost its good repute (s.24(1)(a) of the 2010 Act). He revoked the Appellant’s operator’s licence, and allowed time to close down the business. He disqualified the Appellant and Mr Coyle from holding or obtaining an operator’s licence for three years. He determined that Mr Coyle had lost his good repute as transport manager and disqualified him from acting in such capacity for a period of three years.

Ground of appeal (iii) – unnecessary and disproportionate to revoke licence

74. Mr McNamee submits, on behalf of the Appellant, that the PO’s decision to revoke the Appellant’s operator’s licence was neither necessary nor proportionate. He asserts that proportionality of the revocation was not properly considered, stating that the PO’s decision to revoke was based upon his finding that Mr Coyle had lied in his evidence, that those lies meant he could not be trusted and therefore he did not consider the *Priority Freight* question in the manner he ought to have done. He repeated that at the time of the PI, the Appellant was only operating three lorries that were all engaged in milk delivery and collection based on one contract, and with upgrades to tachographs and improved MOT pass rates. Pointing to Practice Document No 9 “*TRU Practice Guidance Document No 9 (Principles of Decision Making and the Concept of Proportionality)*”, Mr McNamee highlights the lack of safety issues and therefore the lack of commercial disadvantage as of the date of the PI. Acknowledging that past events are relevant, he submits that when put in context, the past does not show a culmination of events, asserting that the PO was wrong to disregard the operator’s up to date business structure which had changed just prior to the PI taking place. In all, the Appellant submits that basing loss of repute on lies told during the PI amounts to a procedural irregularity and a material error of law

75. In response, the Respondent submits that paragraph 33-36 of the PO’s decision demonstrates that seriousness and proportionality was properly considered. The PO refers to the correct authorities therefore his decision cannot be criticised.

76. Under s.24(1)(a) of the 2010 Act, when a decision maker finds that the operator has lost its good repute, revocation of the licence is the mandatory

outcome. This ultimately results in putting the operator out of business. For this reason, the proportionality of the finding (and the outcome) must be considered. Hence, to justify a finding of loss of repute, the matters found proven against the operator must be such that revocation of the licence is a proportionate regulatory response (see *T/2015/39 Firstline International Ltd & William Lambie v Secretary of State for Transport*). The power to revoke an operator's licence should be exercised so as "*to achieve the objectives of the system*" depending on the seriousness of the case before the traffic commissioner, rather than as punishment for regulatory infringements (*Thomas Muir Haulage Ltd v Secretary of State* 1998 SLT 666). It is a matter of fact and degree for the PO to determine according to the facts of the case before him.

77. Proportionality requires consideration of two questions: (1) "How likely is it that this operator will, in the future, operate in compliance with the operator's licensing regime?" (2009/225 *Priority Freight Ltd & Paul Williams*) ("the *Priority Freight* question"), and (2) "Is the conduct such that the operator ought to be put out of business?" (*Bryan Haulage (No.2)* (T2002/217)). The *Priority Freight* question is ultimately a question of trust, which is established by balancing the negative factors with the positive factors in respect of an operator's conduct. The less likely it is that an operator is considered to be able to comply with the regulations in the future, the more likely a revocation (and possibly disqualification) are to follow. If a traffic commissioner answers these questions appropriately, then he need not explain why another option was unavailable, as revocation may be inevitable from that reasoning (2016/046 *R & M Vehicles Ltd, Graham Holgate and Michael Holgate*).
78. The PO determined that the case fell into the "severe" category of seriousness. Annex 4 of Practice Document No 9 provides that the starting point for regulatory action for the severe category of seriousness is: revocation with detailed consideration of disqualification; revocation; suspension that materially affects the transport operation; and significant indefinite curtailment that materially affects the transport operation. Revocation of the licence was therefore a clear option for the PO.
79. In dealing with proportionality, the PO asked the *Priority Freight* question i.e. how likely is it that the operator can be trusted going forward? He answered this question in the negative, on the basis that the Appellant had improperly authorised vehicles on his licence for a period of three years and only ceased this activity when it had been detected and he was called to a PI to answer to it. The PO acknowledged the change to the Appellant's business since that time, noting that it was operating fewer vehicles, all of which belonged to it, and there had been no adverse encounters recorded. However, the

PO noted that the documentation provided for the purposes of the third PI, following the business restructure, was still incomplete. This remains the case even despite the drivers' hours and tachograph exemptions for milk delivery and collection (see paragraph 48 of this decision). Hence, it could not be said that the operator had fail safe systems in place to maintain its vehicles in a roadworthy condition. Any gaps in the earlier records, which were found to be significant in terms of road safety, had not been filled by utilising the seven-day period post PI.

80. The *Priority Freight* question is based on trust, and the PO continued that “*if trust is lost it is not regained simply by ceasing the activity that led to the loss*” [752]. He reasoned that Mr Coyle had given false testimony at the PI and the guidance from the Upper Tribunal clearly provides that if it is found that lies were told, trust is affected. He concluded that he could not trust Mr Coyle as an individual, a director or partner of a company which holds a licence or as a transport manager. This conclusion, of itself, answers the *Priority Freight* question. While we note that the case of *Bryan Haulage* was not expressly referenced in the decision, the PO clearly dealt with this point by concluding that “*as a consequence of the loss of trust, the operator deserves to be put out of business*” (paragraph 36) [752].

81. We find that the PO applied the correct legal framework in determining that the operator had lost its good reputation. His conclusions were open to him on the evidence. His reasoning in relation to both the *Priority Freight* question (whether the operator could be trusted to comply in future) and the *Bryan Haulage* question (whether the conduct was such as to warrant being put out of business) was adequately reasoned. The licence-lending activity, which persisted for approximately three years, thus risking safety and fair competition for that period of time, and when combined with the 9 July 2023 stop and other regulatory infringements, was properly characterised as “severe”. The PO cannot be criticised for determining that this activity was not mitigated by the Appellant’s subsequent attempts to alter its business structure once regulatory intervention became likely. In those circumstances, we do not find it either irrational or “plainly wrong” for the PO to conclude that future compliance was unlikely, notwithstanding the opportunity afforded to the operator to rectify failings in the regulatory paperwork following the PI.

82. Given that loss of reputation renders revocation mandatory, the outcome was inevitable once that finding was made. The PO’s reasoning demonstrates that he did not impose a sanction for historic conduct alone. Rather, he explained why that conduct resulted in a loss of reputation and why revocation was necessary to maintain the integrity of, and meet the objectives of, the regulatory regime. The persistence of the infringements and the absence of

timely change justified the conclusion that the operator could not be relied upon to comply in future. The conclusion that the operator had lost good repute meant that revocation was an unavoidable outcome. We find that the PO acted within the scope of his powers and his choice of regulatory action was not “plainly wrong”.

83. Mr McNamee additionally submits that the PO did not provide sufficient time to allow for the effective winding down of the business after making his order of revocation. The Respondent submits that the impact of a regulatory decision on the Appellant’s contracts bears little relevance as to whether the PO’s decision was made in error of law. We agree with the Respondent on this point. The PO allowed sufficient time to close down the business and the length of time he allowed for this does not render his decision to revoke the Appellant’s operator’s licence “plainly wrong”.

Conclusion

84. Considering the PO’s decision as a whole, we find that he was entitled to determine as he did in this case. His decision was based on findings of fact that were grounded on the evidence before him. He adequately reasoned the rational conclusions he reached, having taken account of the positive aspects of the Appellant’s operation since the change in business structure. We find that the decision made by the Presiding Officer in this case, was reached lawfully and fairly and was not “plainly wrong”. This appeal is dismissed.

**Ms L. Joanne Smith
Judge of the Upper Tribunal**

**Mr D Rawsthorn
Member of the Upper Tribunal**

**Mr M Smith
Member of the Upper Tribunal**

**(Authorised for issue on)
29 September 2026**