

Neutral Citation Number: [2026] UKUT 445 (AAC)
Appeal No. UA-2026-000053-NT

IN THE UPPER TRIBUNAL
ADMINISTRATIVE APPEALS CHAMBER

TRAFFIC COMMISSIONER AND DoI (NI) APPEALS

Appellant:	**Emmet Gildernew**
Respondent's ref:	**N/A**
Before:	**Kenneth Mullan, Judge of the Upper Tribunal** **Kerry Pepperell, Member of the Tribunal** **Ian Luckett, Member of the Tribunal**
Hearing date:	3 September 2026
Mode of hearing:	In person
Heard at:	Royal Courts of Justice, Chichester Street Belfast BT1 3JF
Representation:	
Appellant:	Mr John McManus
Respondent:	Ms Jones, of counsel, instructed by Ms Haughey DSO
Decision Date:	11 November 2026

ON APPEAL from the DECISION of the TRANSPORT REGULATION UNIT dated 31 December 2025

This appeal is ALLOWED

KEYWORDS: Transport – Traffic Commissioner and DfI (NI) Appeals (100), Application (100.1), Call-up letters (100.2), Repute & fitness (100.4), Public Inquiries (100.9), Regulatory action (100.1), Decisions and reasons (100.19).

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; NT/2013/52 & 53; *Arnold Transport & Sons Ltd v DOENI* 2014 UKUT 162 AAC; *Crompton (T/a David Crompton Haulage) v. Department of Transport North Western Area* [2003] EWCA Civ 64; *Nolan Transport v VOSA & Secretary of State for Transport* 2012 UKUT 221 AAC.

SUMMARY OF DECISION

The Appellant made an application on 13 May 2025 for a Standard International Goods Vehicle Operator's licence authorising two vehicles and two trailers. A previous licence had been revoked on 7 February 2023. Following receipt of additional documentation and information from the Appellant, his application was considered at an 'In Chambers Hearing' on 3 December 2025. The application was then refused on 31 December 2025.

The Upper Tribunal allowed the appeal, concluding that the decision-making process on the Appellant's application involved procedural errors or irregularities of such significance that the Presiding Officer's eventual decision on the application is 'plainly wrong'.

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

DECISION

The appeal is ALLOWED

REASONS FOR DECISION

Background

The previous licence

1. The Appellant previously held a good vehicles operator's licence authorising 2 vehicles and 3 trailers.

2. A DVA compliance audit was held on 17 November 2022. A copy of the compliance is to be found at pages 13 to 32 of the bundle.

3. Correspondence was sent to the Appellant on 4 January 2023 by the Transport Regulation Unit (TRU), on behalf of the Department. In this correspondence, the TRU noted the following:

> 'The Department has been made aware of issues with your compliance after receiving details of a large list of infringements attributed to you and reviewing the results of an audit carried out on 17 November 2022 by the Driver and Vehicle Agency (DVA). The Transport Regulation Unit also contacted you via letter on 06 October 2022 and 24 October 2022 requesting further information.
>
> The Department requested a full audit of the business as a result of a large list of infringements attributed to this licence. The result of this audit has highlighted major issues with regard to compliance, which represent a risk to road safety. It appears to be a lack of knowledge of the most basic compliance requirements to hold a licence. The following are the most concerning issues highlighted on the audit report:

- The operator has no preemptive maintenance plan and there are no safety inspections and brake testing being carried out.
- No evidence of daily walk-around checks being carried out by the driver.
- No maintenance records kept.
- No evidence of compliance with drivers' hours regulations.
- No drivers' hours' records kept.
- No evidence of the Transport Manager ever being involved in the business and therefore acting in name only.

4. Consequent on non-receipt of a response from the Appellant and based on the results of the compliance audit, the Department indicated its proposal to revoke the Appellant's operator's licence on five different grounds which were set out in the correspondence. The Department concluded:

> 'Section 24 (1) of the (Goods Vehicles (Licensing of Operators) Acy (Northern Ireland) Act (2010) states that the Department shall direct that a standard licence be revoked if at any time it appears to the Department that the
>
> a) licence-holder no longer satisfies the requirements of section 12A(3)(b), namely to be professionally competent.
>
> In view of the evidence the Department considers that you no longer satisfy the requirement to be professionally competent.
>
> In accordance with Section 24(3) of the Act the Department is serving notice on you that it is considering making a direction to revoke your operator's licence on the grounds detailed above …'

5. The Department offered the Appellant the opportunity to make written representations and to request a public hearing.

6. By way of email correspondence dated 25 January 2023, the Appellant made written representations.

7. Through written correspondence dated 7 February 2023, the Department made a direction revoking the Appellant's operator's licence.

The application for a further operator's licence

8. The Appellant made a further application for a Standard International goods vehicle operator's licence. A copy of the licence application, together with relevant attachments, is set out in the appeal bundle at pages 43 to 63.

9. Receipt of the application was acknowledged by the Department in correspondence to the Appellant dated 13 May 2025.

10. In the same correspondence, the Department sought additional information, including:

    - A copy of the advertisement submitted in support of the application
    - Financial information (appropriate sources were detailed) in the

Appellant's name showing ready access to sufficient money to support the application

- A completed online transport manager nomination
- A completed application declaration
- Further details in respect of the proposed operating centre

11. There then followed an exchange of correspondence between the Appellant and the Department. The exchange followed a pattern whereby the Department requested addition documentation and/or information from the Appellant in connection with the application and the Appellant replied. Copies of the exchange are set out in the appeal bundle from pages 71 to 107.

12. In further correspondence dated 15 August 2025, the Department signalled to the Appellant that a decision had been made to hold his application in abeyance pending the outcome on an operating centre assessment to be carried out by the DVA.

13. From pages 111 to 132 of the bundle is a copy of the DVA report of the operating centre assessment. We return to that report below. For the moment, we note that at section 9, the assessor has noted the following:

> 'The operating centre is in a rural setting. I have assessed that one 44 tonne vehicle, one 18 tonne vehicle and one trailer can currently park at the site.'

14. In correspondence dated 16 September 2025 the Department wrote to the Appellant seeking confirmation to weight conditions which would be attached to the nominated operating centre. A signed confirmation to that effect is included in the appeal bundle at page 138.

15. In correspondence dated 30 September 2025, the Department informed the Appellant that:

> 'The Department has decided to convene an in-chambers hearing to consider the application due to your previous regulatory history and the fact that there was an unsatisfactory stage 2 audit carried out in October 2022 and a licence (ON1135102) was revoked in March 2023.
>
> The hearing will give you the opportunity to present your case.
>
> The application has been forwarded to the Transport Regulation Unit (TRU) in Belfast.
>
> The TRU will write to you with further details in due course, which will include notice of the date, venue, and full details of the issues of concern to Department.'

16. In further correspondence dated 12 November 2025, the Department wrote to the Appellant in the following terms:

> 'I refer to the above Standard International Goods Vehicle Operator's Licence application seeking authorisation for the use of 2 vehicles & 2

trailers.

In view of the concerns described below, the Department invites you to attend a hearing to be held 'In Chambers' on 3rd December 2025 at 2:00pm. This hearing will take place in James House, 2 – 4 Cromac Avenue, The Gasworks, Belfast, BT7 2JA

The purpose of the hearing is to discuss the background to your licence application **and to decide whether a public inquiry is required**. In particular, the Department wishes to discuss the following concerns:

- Previous Goods Vehicle Operator's Licence (GVOL), ON1135102, was revoked on 7th March 2023
- Very Serious Infringements (VSI's) were accumulated over a period of two and a half years on GVOL ON1135102 which resulted in the Department requesting that a Stage Audit 2 be carried out.
- A Stage 2 Audit was carried out by the Driver & Vehicle Agency (DVA) in October 2022 and was found to be unsatisfactory in all areas apart from "Weights"
- The nominated Transport Manager (TM) for the application is employed full-time at M Ltd and as a TM for another operator. There are concerns as to how they can effectively carry out their duties.
- Application declarations
- How transport needs have been met since previous licence was revoked
- Unlawful use of vehicles … and …

Both the applicant and the nominated Transport Manager should attend the hearing.

The Department would like you to provide the following evidence before the hearing:

- Vehicle Utilisation reports for both … and … covering the period from 10th May 2025 to 10th November 2025. (There is no need to provide raw. ddd data files at this time)

The Department would like you to provide the following evidence on the day of the hearing:

• Vehicle Unit printouts for both … and … on the following dates 10th May 2025 and 10th November 2025, these printouts should clearly show the vehicle registration number, date, odometer readings and vehicle activity. (There is no need to provide raw. ddd data files at this time)

You should now prepare evidence to show how you will comply with the conditions and undertakings of your licence, if granted, as this will be discussed at the hearing.

17. The emphasis here is our own.

18. In email correspondence dated 1 December 2025, the Appellant stated the following:

> 'I would like to inform you that I am not in a position to provide vehicle utilisation reports. As I do not currently hold an operator's licence there is no requirement to download and analyse data and I don't have a company card to perform VU data downloads.
>
> Regarding printouts. For … I can bring a current one but can only go back to the 14th of May as a new smart2 head was fitted on this date per legislative requirements.
>
> The tachograph in … appears to be currently dead. This vehicle is in … tachograph centre to see if it can be repaired and information retrieved. I will let you know the situation when they update me.'

19. The In Chambers Hearing took place on 3 December 2025.

The decision under appeal to the Upper Tribunal

20. On 31 December 2025, the Department wrote to the Appellant in the following terms:

> 'I refer to your Standard International Goods Vehicle Operator's Licence application and the In-Chambers Hearing that you attended on 3rd December 2025 at James House, 2-4 Cromac Avenue, The Gasworks, Belfast, BT7 2JA.
>
> The Department invited you to attend the In-Chambers Hearing to discuss concerns regarding your compliance with the statutory conditions and undertakings of the above Act, with particular reference to the requirements of
>
> **Section 12A(2)(b) and Section 12C(4) which state that:**
>
> **Section 12A(2)(b) – The Department must be satisfied applicant fulfils requirements to be of Good Repute**
>
> **Section 12C(4) – There are satisfactory facilities and arrangements for maintaining vehicle used under the licence in a fit and serviceable condition.**
>
> The Department, having completed a full and comprehensive review of all the evidence related to your case, has determined that **your application authorising the use of 2 vehicles and 2 trailers is refused**. I enclose the Department's written-reasoned decision with this letter.

The Presiding Officer's decision in more detail

21. The Presiding Officer's decision is set out at pages 158 to 164 of the appeal bundle. The summary decision was as follows:

> 'The applicant does not satisfy good repute within the meaning of Section 12A(2)(b) of the Goods Vehicles (Licensing of Operators) Act (Northern Ireland) 2010.
>
> The application ON2082448 for a standard international operator's licence authorising two vehicles and two trailers is refused in accordance with Section 12(5) of the Goods Vehicles (Licensing of Operators) Act (Northern Ireland) 2010.'

22. The Presiding Officer stated that the In Chambers Hearing had been arranged to consider the following concerns:

    a. possible unlawful use of vehicles;

    b. whether a false declaration had been made on the application form;

    c. a history of 14 Very Serious Infringements (VSIs) recorded on previous licence ON1135102 over approximately two and a half years; and

    d. an unsatisfactory DVA compliance audit in November 2022.

23. In more detail, the Presiding Officer made the following findings and determinations:

Background and compliance history

The Appellant's previous licence was revoked after the Appellant was unable to provide the documentation necessary to demonstrate compliance with the statutory undertakings relating to vehicle maintenance, safety inspections, brake testing and transport control. A November 2022 DVA audit found serious compliance failures: no maintenance, safety-inspection, or brake-test records for 15 months; no planned maintenance regime; and ineffective transport-manager oversight.

The prior licence also had 14 Very Serious Infringements (VSIs) over about two and a half years.

Evidence considered

The DVA audit recorded regular livestock trips to local markets, sometimes for other people, indicating commercial vehicle use.

After receiving a proposal to revoke letter, the Appellant promised to introduce defect reporting, planned inspections, and tachograph analysis. However, no evidence showed these systems were actually implemented.

•At the hearing, his explanations about vehicle use, brake testing, maintenance records, and tachograph controls were inconsistent. He ultimately could not confirm brake tests had been completed or provide relevant records.

About 10,000 km of recorded mileage conflicted with his claim that the vehicle was used only on the farm or along a lane.

Findings and decision

The Presiding Officer found, on the balance of probabilities, that the vehicle had

been operated without the required operator's licence.

The Presiding Officer did not find the Appellant's account to be credible.

The Appellant's account that the operation was largely inactive was not accepted. This was treated as an attempt to mislead the Department about the extent and nature of vehicle use.

Illegal operation alone might potentially have been addressed through strict conditions, a qualified transport manager, consultant support, and an independent audit.

The case involved both illegal operation, and dishonesty, in that the Appellant sought to mislead the Department about the extent and nature of vehicle use.

The combination of illegal operation and dishonesty was considered too serious to permit confidence in future compliance. The proposed transport-management arrangements could not remedy the failure to satisfy good repute under the Goods Vehicles (Licensing of Operators) Act (Northern Ireland) 2010.

The presence of a transport manager, consultant support, or the offer of future audits does not outweigh the seriousness of the dishonesty the Presiding Officer had found.

24. An appeal against the Presiding Officer's decision was received in the office of the Administrative Appeals Chamber of the Upper Tribunal on 21 January 2026.

Relevant legislative framework

24. Sections 12(1)-(2), 12A(1)-(2), of the Goods Vehicles (Licensing of Operators) Act (Northern Ireland) 2010 ('the 2010 Act') provide:

12. Determination of applications for operators' licences

On an application for a restricted licence the Department must consider—

(a) whether the requirements of sections 12A and 12C are satisfied; and

(b) if the Department thinks fit, whether the requirement of section 12D is satisfied.

Requirements for standard licences

12A.(1) The requirements of this section are set out in subsections (2) and (3).

(2) The first requirement is that the Department is satisfied that the applicant—

(a) has an effective and stable establishment in Northern Ireland (as determined in such manner as may be prescribed);

(b) is of good repute (as determined in such manner as may be prescribed

and

(c) has appropriate financial standing (as determined in such manner as may be prescribed);

25. Regulations 5(1) and (2) of the Goods Vehicles (Qualifications of Operators) Regulations (Northern Ireland) 2012, as amended, provide:

'**Determination of good repute**

5.— (1) In determining whether an individual is of good repute under section 12A(2)(b) of the 2010 Act or regulation 13A(1)(b), the Department may have

regard to any matter but shall, in particular, have regard to—

(a) any convictions or penalties incurred by the individual or any other relevant person; and

(b) any other information in its possession which appears to the Department to relate to the individual's fitness to hold a licence.

(2) For the purposes of these Regulations, any convictions or penalties incurred by any person include —

(a) any conviction or penalty incurred by that person of an offence under the law of any part of the United Kingdom or any corresponding offence under the law of any country or territory outside the United Kingdom;

(b) any conviction of that person of a serious offence within the meaning given in regulation 7; and

(c) any conviction of that person of a road transport offence within the meaning given in regulation 8.

The proper approach on appeal to the Upper Tribunal

25. In NT/2013/52 & 53 Fergal Hughes v DOENI & Perry McKee Homes Ltd v DOENI, the Upper Tribunal said the following, at paragraph 8 of its decision, on the proper approach on appeal to the Upper Tribunal:

> '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 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.'

26. The Upper Tribunal In NT/2013/52 & 53 Fergal Hughes v DOENI & Perry McKee Homes Ltd v DOENI was considering an appeal to the Upper Tribunal against a decision of the Head of the Traffic Regulation Unit under the Goods Vehicles (Licensing of Operators) Act (Northern Ireland) 2010. There is no doubt, however, that the principles set out by the Upper Tribunal in paragraph 8, are derived from parallel appeals, such as the one in the instant case, where the appeal is against a decision of a Traffic Commissioner under the Goods Vehicles (Licensing of Operators) Act 1995 and Regulations made under that Act – see paragraph 4 of NT/2013/52 & 53 Fergal Hughes v DOENI & Perry McKee Homes Ltd v DOENI.

General principles on the operation of the Act and Regulations

27. At paragraphs 10 to 13 of the decision in NT/2013/82 Arnold Transport & Sons Ltd v DOENI, the Upper Tribunal set out the following general principles in the operation of the legislative provisions in Great Britain and Northern Ireland:

> 'Some General Principles
>
> 10. An operator's licence can only be granted if the applicant satisfies the Department that the relevant requirements, set out in s. 12 of the 2010 Act as amended, have been met. [The expression Department is used in the legislation but for the purposes of the decisions required to be taken under the legislation it is the Head of the TRU who takes them]. The relevant requirements are now set out in Paragraph 17(5) of the Goods Vehicles (Qualifications of Operators) Regulations (Northern Ireland) 2012, ("the Qualifications Regulations), which substitutes a new s.12 and adds ss. 12A-12E to the 2010 Act. The Qualifications Regulations also contain important provisions in relation to Good Repute, Professional Competence and Transport Managers.
>
> 11. The grant of an operator's licence does not mean that an operator can then proceed on the basis that the requirements that must be met in order to obtain a licence can thereafter be disregarded. In our view it is clear both from the terms of the 2010 Act and from Regulation 1071/2009 that these are continuing obligations, which an operator is expected to meet throughout the life of the licence. It is implicit in the terms of s. 23, which gives the Department power to revoke, suspend or curtail an operator's licence, that this can take place at any time and for any reasonable cause, including matters covered by the requirements of s. 12 as amended. It is explicit in s. 24, which provides that a standard licence shall be revoked if at any time it appears that the licence-holder is no longer (i) of good repute, (ii) of appropriate financial standing or, (iii) professionally competent. The underlining, in each case is ours. First, we wish to stress that once it appears that the licence-holder is no longer of good repute, or of appropriate financial standing or professionally competent the licence must be revoked because the Act makes it clear that there is no room for any exercise of discretion. Second, the use of the expression 'at any time' makes the continuing nature of the obligations crystal clear.
>
> 12. The Tribunal has stated on many occasions that operator's licensing is based on trust. Since it is impossible to police every operator and every vehicle at all times the Department in Northern Ireland, (and Traffic Commissioners in GB), must feel able to trust operators to comply with all relevant parts of the operator's licensing regime. In addition other operators must be able to trust their competitors to comply, otherwise they will no longer compete on a level playing field. In our view this reflects the general public interest in ensuring that Heavy Goods Vehicles are properly maintained and safely driven. Unfair competition is against the public interest because it encourages operators to cut corners in order to remain in business. Cutting corners all too easily leads to compromising safe operation.
>
> 13. It is important that operators understand that if their actions cast doubt on whether they can be trusted to comply with the regulatory regime they are likely to be called to a Public Inquiry at which their fitness to hold an operator's licence will be called into question. It will become clear, in due course, that fitness to hold an operator's licence is an essential element of good repute. It is also important for operators to understand that the Head of the TRU is clearly alive to the old saying that: *"actions speak louder than words"*, (see paragraph 2(xxix) above). We agree that this is a helpful and appropriate approach. The attitude of an operator when something goes wrong can be very instructive. Some recognise the problem at once and take immediate and effective steps to put matters right. Others only recognise the problem when it is set out in a call-up letter and begin to put matters right in the period before the Public Inquiry takes place. A third group leave it even later and

come to the Public Inquiry with promises of action in the future. A fourth group bury their heads in the sand and wait to be told what to do during the Public Inquiry. It will be for the Head of the TRU to assess the position on the facts of each individual case. However it seems clear that prompt and effective action is likely to be given greater weight than untested promises to put matters right in the future.'

Repute

28. In the appeal of *NT/2013/82 Arnold Transport & Sons Ltd v DOENI* the Tribunal said this at paragraph18:

> "18. The provisions in relation to Good Repute are set out in Regulations 5-9 of the Qualifications Regulations. The scope of the requirement to be of good repute can best be assessed by considering the terms of Regulation 5(1), (in relation to individuals), and Regulation 5(2), (in relation to companies). Regulation 5(1) permits the Department to have regard to "any matter" but requires it to have regard to (i) any convictions or penalties incurred by the individual or any other relevant person and (ii) any other information which appears to the Department to relate to the individual's "fitness" to hold a licence. Regulation 5(2) requires the Department to have regard to "all the material evidence" but, in particular, to (i) any convictions or penalties incurred by the company, company employees or any other relevant person and (ii) any other information as to past conduct on the part of the company or any relevant person if the conduct appears to the Department to relate to the company's "fitness" to hold a licence. We have underlined the word 'fitness' in both these provisions because it is critical to understanding the breadth of the requirement to be of good repute. It means, for example, that an operator who cannot be trusted to comply with the operator's licensing regime is unlikely to be fit to hold an operator's licence".

29. In *Crompton (T/a David Crompton Haulage) v. Department of Transport North Western Area* [2003] EWCA Civ 64 (31 January 2003), the Court of Appeal for England and Wales said the following at paragraph 19(5):

> "That brings us back to the 1995 Act, which also contains no definition of good repute, but it is noticeable that in schedule 3 the opening words of paragraph 1(2) dealing with a company are more restrictive than the opening words of paragraph 1(1) dealing with an individual. When a traffic commissioner is considering if an individual is of good repute he can have regard to "any matter", but if he is considering a company he must confine himself to "all the material evidence". The difference in wording is a little surprising but Parliament cannot have intended a traffic commissioner ever to have regard to immaterial evidence, so the conclusion must surely be that the schedule requires the traffic commissioner when considering alleged loss of repute to focus on matters relevant to the individual's fitness to hold a licence, bearing in mind –
>
> > "(a) that an existing licence is a possession safeguarded by Article 1 of the First Protocol, and –
> > "(b) that if loss of repute is found the inevitable sanction is revocation, possibly followed by an application for a fresh licence which may or not be granted."
> >
> > "There must therefore be a relationship of proportionality between the finding and the sanction, and that relationship has a direct bearing on the approach to be adopted in any set of circumstances to the question of whether or not the individual has lost his repute.

"All of that seems to me to be in the end non-contentious.'

30. He added, at paragraphs 24 and 25:

> 'Reading the decision of the Traffic Commissioner as a whole I cannot escape the conclusion that although she did initially ask herself whether the operators behaviour related to his fitness to hold a licence she then became more concerned with the unacceptability of the behaviour, and failed to give mature consideration to the question of whether that behaviour really did demonstrate for the purposes of section 27(1) a loss of good repute, bearing in mind the inevitable consequences of such a finding, and the need for proportionality. In saying that I am not suggesting that there was any need for the Traffic Commissioner expressly to refer to proportionality, or to anything other than the domestic legislation which was directly relevant, but the inappropriateness of her approach does seem to me to be most clearly demonstrated by her refusal to accept that by writing as he did to Miss Farr, and by apologising to the Traffic Commissioner herself, the operator had done enough to demonstrate that at any rate by 26th November 2001 he was once again a person of good repute.
>
> The Transport Tribunal, having set out the facts and summarised the submissions made on behalf of the appellant, said that his solicitor "repeatedly referred to the loss of the appellant's good repute as too high a penalty or sanction, although he accepted the use of such terminology in the context of the jurisdiction and powers of Traffic Commissioners was inappropriate." The terminology may have been inappropriate, but no doubt it was used because of the approach adopted by the Traffic Commissioner, whose decision in part is reminiscent of a judgment in proceedings for contempt of court. I recognise, as did the Tribunal, that the Traffic Commissioner had the benefit of seeing the operator, but to my mind little now turns on that because the Traffic Commissioner made her conclusions clear. The Tribunal recognised that "her decision may be viewed as harsh" but does not seem to have asked itself why it should be viewed in that way. In my judgment the reason was that the approach adopted by the Traffic Commissioner faltered in the way that I have described. That was an error of law.'

The Department's Guidance on Inquiries and Hearings

31. The Department's guidance on hearings and inquiries is to be found in Its 'Practice Guidance Document No. 9 – The Principles of Decision Making & The Concept of Proportionality' - https://www.infrastructure-ni.gov.uk/publications/tru-practice-guidance-principles-decision-making-and-concept-proportionality.

32. In the 'Instructions' section of Document No.9, the guidance commences with a discussion of 'Alternative Disposals to a Public Inquiry' before moving on, in the next section, to 'The Public Inquiry.

33. Annex 5 to Document No. 9 provides further guidance on 'Alternative Disposals to a Public Inquiry'.

34. In paragraph 74, the Guidance states the following:

> 'If the Department feels the issues are sufficiently serious to warrant a formal meeting with the applicant, operator and/or transport manager they can call the relevant party to formal 'in-chambers' meeting (ICH) to discuss the issues of concern. This may be sufficient to formally highlight the Department's concerns and may be able to be resolved at the meeting or through an action plan to address the issues of concern. However, subject to the level of seriousness of the issues, taking cognizance of all the relevant factors will

dictate any recommended actions. If the presiding officer, normally the Deputy Head of TRU, determines the issues are sufficiently serious or pose a significant risk to road safety, fair competition or undermine the licensing process a report will be escalated with a recommendation of the appropriate steps required to further consider the case, which may include a public inquiry recommendation.'

35. In paragraph 89, the Guidance states the following about the value of a Public Inquiry':

'The value of hearing all of the relevant evidence and submissions at public inquiry is long established …'

36. In the introduction to Annex 5, the Guidance sets out the justification for having alternative disposals t public hearings:

'Some cases might appear on the papers to require the convening of a public inquiry, but they may, in fact, be dealt with by an alternative disposal. Operators, applicants and/or transport managers can submit written representations in response to reports of noncompliance or other adverse information. There is no requirement on the Department to engage with applicants, operators, transport managers or other parties immediately prior to a hearing or during those proceedings. ICH or PH between the Department and operator **are intended to offer an alternative to a public inquiry where the issues are less serious**.

…

In borderline cases, where a public inquiry looks to be required, the Department may decide to call an operator to a PH. **In situations that fall short of an obvious need to call an operator and/or transport manager, the Department may request an ICH.** This Annex **sets out a consistent approach to the administration and purpose** of these alternatives to public inquiry.'

37. The emphasis here is our own.

38. In a section headed 'Submissions', the Guidance states the following:

'An ICH **is unlikely to be appropriate** in the following circumstances:

- the operator is operating more vehicles than it has authority for
- the operator was abusive to the DVA Examiner/investigating officer or failed to stop when requested to do so
- **there are real concerns about repute**, professional competence or financial standing or establishment
- the failings are across a number of areas required by the operator licence
- there are large scale failures on compliance – i.e. with the drivers' hours' rules, tachograph regulations, maintenance, vehicle weights, operating licensing etc.

…

If the action **is not likely to involve additional undertakings, suspension, curtailment or revocation**, the Deputy Head of TRU can proceed to consider whether the case falls within the following criteria:

…

39. Once again, the emphasis here is our own.

40. In a section headed 'Attendance by the operator', the Guidance states the following:

> '**The letter inviting the operator to an ICH or PH will advise the operator of the purposes of the invitation and the matters to be considered. Those issues will be identified again at the commencement of the ICH or preliminary hearing.** There is no requirement to publish a statutory notice as a PH is generally not held in public. Similar protocol applies to PH as with a public inquiry; however, an ICH does not need to be recorded but good practice dictates comprehensive notes must be taken by the clerk of the hearing and formally written up as an official record. These must be made available to the operator/applicant/transport manager if a copy is requested. They can be redacted if deemed necessary.'

41. Once again, the emphasis here is our own.

The Skeleton Arguments

The Appellant

42. In his Skeleton Argument, Mr McManus made the following submissions:

> Repute must be assessed transparently and against the Department's own criteria (set out in paragraph 61 of Practice Guidance Document No. 1 Good Repute and Fitness). Any adverse decision must identify the specific evidence relied upon, explain how it affects repute, and state the weight given to it. This is necessary for a fair decision and a meaningful appeal.
>
> It was submitted that the decision of the Presiding Officer relied too broadly on historic matters. Although prior licence history and audit findings may be relevant, the Presiding Officer had to identify the particular issues that supported a loss-of-repute finding. Older matters should be treated cautiously, particularly where time has passed (see paragraph 71 of Practice Guidance Document No. 1 'Good Repute and Fitness').
>
> The previous licence revocation did not concern repute. The earlier revocation arose from compliance, maintenance and professional-competence issues, rather than a finding that he lacked repute. It therefore should not have been treated as establishing a present repute concern.
>
> The appellant and his representative contend that the in-chambers hearing, the Presiding Officer appeared partisan from the outset. They also dispute any finding that the Appellant changed his explanation during that hearing; the appellant and Mr Logue intend to give evidence on this point.
>
> Compliance safeguards were available. The appellant says he proactively sought professional support from Mr Logue of AJT and appointed Ruairi Gildernew as transport manager. As the decision acknowledges these arrangements could potentially meet regulatory requirements, the appellant argues that a licence could have been granted with conditions or undertakings instead of finding repute affected.
>
> The allegation of illegal operation is disputed. The finding is based on inference and supposition rather than evidence. In particular, the conclusion that 10,000 km of use was consistent with illegal operation is challenged, saying no objective basis was provided.
>
> Other adverse points are contested. The brake-testing issue is said to relate to the 2022 audit and 2023 revocation, with no advance request for the relevant data before the hearing. The Appellant also disputed the Presiding Officer's conclusion that there was a dishonesty concern.

The submission preserved the Appellant's right to add oral arguments at the Upper Tribunal hearing.

The Respondent

43. In her Skeleton Argument, Ms Jones set out a detailed analysis under the following headings:

- The appeal procedure;
- The need for trust in the licensing regime; and
- The requirement for the Appellant to be of good repute.

44. In so doing, she emphasised that operator licensing depends on trust, safety, and fair competition. She submitted that the Presiding Officer made reasonable findings from the evidence, applied the correct legal test, and had no discretion to grant the licence once good repute was not established. She asked the Upper Tribunal to dismiss the appeal.

45. In summary, her remaining submissions were as follows:

- The appeal is a review, not a complete rehearing. The Appellant bears the burden of showing that the original decision was "plainly wrong" or that the reasoning and law require a different result.

- The Upper Tribunal should give weight to the Presiding Officer's assessment of credibility because that officer heard the evidence directly.

- Under the 2010 Act, good repute is mandatory for a licence. If the Department is not satisfied on that point, it must refuse the application; it cannot grant a licence subject to corrective conditions.

- Vehicle use: Evidence showed approximately 10,000 km travelled by an 18-tonne vehicle. The Presiding Officer was entitled to reject the explanation that use was only minimal, private, or confined to farm/lane movements, and to find that operation requiring an operator's licence had occurred without authorisation.

- Inconsistent evidence: The Appellant's account of brake testing changed during the hearing—from tests having been performed, to records being outside the retention period, to being unable to confirm the tests occurred. This supported adverse credibility findings.

- 2022 audit: It was proper to consider the prior unsatisfactory audit and revocation history, not as direct proof of unlawful use in 2025, but to assess whether earlier compliance failures had actually been remedied.

- Future compliance proposals: Although the Appellant proposed using an external company for inspections and maintenance and AJT for compliance support, these future arrangements could not cure an existing failure to demonstrate good repute.

The hearing before the Upper Tribunal

46. The hearing took place with the Appellant in attendance. Mr McManus appeared on behalf of the appellant. Mr Eoin Logue attended from AJT Transport Consultancy. Ashley Jones BL appeared on behalf of the respondent and Mary Haughey attended as solicitor for the Department.

47. Mr McManus opened by submitting that this was, in essence, a new licence application

following an earlier revocation. He accepted that there had been a poor audit in 2022 and accepted that the findings arising from that audit were serious. However, he stressed that the 2022 proceedings did not result in a finding of loss of repute and did not result in a finding of lack of professional competence. He pointed out that the Department was aware at that stage of tachograph convictions and previous conduct but nevertheless did not proceed on a repute basis. His submission was that the present decision effectively sought to revisit historical maintenance failings and elevate them into a later finding of dishonesty and loss of repute.

48. A significant part of Mr McManus' submissions centred on the absence of any contemporaneous note of the In Chambers Hearing. He submitted that the reasons given in the decision were insufficient, particularly given the seriousness of the finding ultimately made. He questioned what weight had been attached to the various matters referred to throughout the decision and submitted that it was difficult to understand precisely how the Presiding Officer had moved from concerns about vehicle usage to a finding of dishonesty and loss of good repute. Mr McManus submitted that the case should either have proceeded to a Public Inquiry or at least to a Preliminary Hearing. He argued that the process that was adopted did not adequately reflect the seriousness of the allegations ultimately determined. Particular emphasis was placed on paragraph 23 of the decision. He submitted that the Presiding Officer there effectively accepted that the application may otherwise have been capable of being granted and that the refusal ultimately rested upon findings of dishonesty. It followed, in his submission, that dishonesty was not merely part of the reasoning but the determinative feature of the decision.

49. There was considerable discussion about the mileage evidence relied upon by the Department. The decision repeatedly referred to approximately 10,000 kilometres. Mr Logue's position was that the figure had accumulated over approximately 25 months rather than 12 months, resulting in an average figure which he suggested was unremarkable given the Appellant's farming activities. Mr McManus submitted that the significance attached to the mileage throughout the decision may therefore have been overstated.

50. The Appellant then gave evidence. He explained that he is a farmer and described the layout of his landholding. He explained that his farm is spread across approximately 10 to 12 miles. The furthest parcel of land consists of approximately 12 acres. There is a further parcel located approximately half a mile to one or two miles from his home. He said that he farms approximately 80 acres in total, with around 20 acres comprised within 2 parcels located away from the home farm. He described himself as a beef farmer with approximately 80 cattle and explained that the land is actively used for grazing.

51. The Appellant gave evidence that he routinely drives around those parcels of land to observe livestock. He explained that he suffers from difficulties with his knee and that the elevated seating position within the lorry allows him to view cattle more easily than would otherwise be the case. He said that he uses the vehicle to travel around the road system adjoining the fields so that he can visually inspect cattle and ensure that everything is in order. He estimated that a typical round journey would be approximately 25 miles and explained that this was something he did regularly while cattle were grazing.

52. When asked about the In Chambers Hearing itself, the Appellant said that there was a repeated emphasis on honesty throughout the meeting. He said that at one stage he was told by the Presiding Officer that he was not believed. He described the atmosphere as hostile. His evidence was that he attended believing he was there to answer questions and assist with the licence application. He believed that the purpose of the hearing was to help determine whether a licence could be granted. He did not attend expecting a final determination on his honesty or his repute. At the conclusion of the hearing, he was told that he would receive a decision within approximately 2 weeks. He said that he did not understand that to mean that his repute could be finally determined at that stage. Although he accepted that he could have brought legal representation, he did not think that such a hearing necessitated it.

53. Mr Logue then gave evidence. He explained that AJT Transport Consultancy is a family business which has operated for approximately 5 years and employs 4 staff. He became involved with the Appellant through his father. He described his role at regulatory hearings as typically attending alongside operators and assisting them through the process. He said that he had attended numerous In Chambers Hearings previously.

54. His evidence was that this hearing was unusual because of the extent to which it focused on allegations of dishonesty. He recalled that the Presiding Officer repeatedly returned to the mileage issue and repeatedly indicated scepticism about the explanation being given. Mr Logue said that the Presiding Officer appeared unwilling to accept the explanation involving use of the vehicle to observe cattle and manage farmland. He recalled discussions about the Appellant's bad knee and the use of the elevated vehicle position but observed that these matters are largely absent from the final decision.

55. The Tribunal specifically explored with Mr Logue the extent to which the reasons reflected the discussions that took place during the hearing. It became apparent that a number of matters which the Appellant and Mr Logue regarded as significant features of the hearing did not appear, or appeared only in limited form, within the decision itself.

56. There was then substantial discussion about the purpose and status of an In Chambers Hearing. We considered the wording of the call up letter. The letter expressly stated that the purpose of the hearing was to discuss the background to the application **and determine whether a Public Inquiry was required.** We also considered the Department's published guidance regarding In Chambers Hearings and Preliminary Hearings. The emphasis here is our own.

57. What struck the panel during those discussions was that the guidance appears to describe In Chambers Hearings as an alternative disposal mechanism for less serious cases and expressly identifies cases involving real concerns regarding repute as being unlikely to be suitable for that process. The guidance repeatedly envisages In Chambers Hearings as part of a process through which it can be established whether further proceedings are necessary.

58. The Department's answer to these concerns was effectively that the Presiding Officer who conducted this hearing was authorised to conduct Public Inquiries and possessed the same expertise and decision-making authority in either forum. We found ourselves returning repeatedly to the point that this was not really the issue. The concern was not whether the Presiding Officer possessed sufficient experience or authority. Rather, the concern was whether the process itself was appropriate for findings of the gravity eventually reached.

Analysis

59. A Public Inquiry serves purposes beyond identifying the person making the decision. It is a formal and public process. The allegations are formally identified. The statutory basis for the proceedings is clearly articulated. The potential consequences are made known in advance. The operator is therefore put on notice of the seriousness of the matters to be determined and is placed in a position to make an informed decision regarding legal representation and preparation of evidence. The fact that findings may be published further emphasises the significance of the proceedings. It seemed to the panel that findings of dishonesty leading to loss of good repute belong within that framework, irrespective of whether the same individual may be authorised to preside over both forms of hearing.

60. The absence of any contemporaneous record of the In Chambers Hearing was another matter which continued to trouble the panel. The guidance appears to provide that comprehensive notes should be taken and formally written up as the official record. No such record was before us. The difficulty this created became apparent throughout the hearing. Numerous submissions and explanations depended upon exactly what had been asked and exactly how

answers had been given. There was no objective means of verifying any of these matters.

61. This issue became particularly acute in relation to brake testing. The call up papers did not, so far as we could determine, identify brake testing as a matter requiring detailed consideration. Nor was the Appellant directed to bring brake testing records to the hearing. Yet the decision contains findings regarding brake testing and apparent inconsistencies in the appellant's responses.

62. The difficulty is that we cannot determine from the decision what brake testing issue was actually under investigation. If the relevant issue concerned operation of a vehicle outside the operator licensing regime, then the significance of brake testing is not immediately obvious. On the other hand, if the questioning related to historical matters arising from the 2022 audit, then those matters predated the application by some years and there was no indication that documentary evidence concerning brake testing would be required at the hearing. The Appellant himself appeared uncertain as to precisely what aspect of brake testing was being discussed. Without a contemporaneous note or record we are unable to determine what was asked, what records were expected, what answers were given or what importance was attached to those answers by the decision-maker. We make no finding regarding the substantive brake testing issue, but it seemed to us to illustrate the broader procedural concerns that arose throughout the appeal.

63. Another matter which featured in our discussions was the Appellant's evidence that there was another individual present in the room for parts of the hearing but absent for others, and that there were periods during which only the Presiding Officer, the Appellant and Mr Logue were present. We made no findings in relation to those matters. There is no hearing record. The Presiding Officer has not given evidence. It would therefore be unfair to attempt to resolve competing accounts of what occurred. Equally, it would be unfair to expect the Department's representatives to confirm or deny matters relating to a hearing at which they were not present. It nevertheless appeared to us that this again illustrated why serious allegations of dishonesty and loss of good repute ought properly to be addressed through the more formal structure of a Public Inquiry.

64. We have also considered whether the procedure adopted engaged broader concerns regarding fairness under Article 6. Whilst we reached no concluded view on the point, there was concern that the Appellant attended a procedure which, on the face of the call up letter and the Department's own guidance, appeared directed towards determining whether a Public Inquiry was required, yet which ultimately resulted in findings of dishonesty and loss of good repute. Those findings carry significant consequences for the Appellant going forward. The absence of a contemporaneous record, the lack of notice that such findings might be finally determined at the hearing, and the inability of the Tribunal to scrutinise the oral exchanges said to underpin the decision all appeared capable of raising questions as to whether the Appellant received a procedurally fair hearing consistent with Article 6 principles.

65. In paragraph 1 of his decision, the Presiding Officer observes that the In Chambers Hearing had been arranged to address a number of listed concerns. Those concerns are substantive in nature. There is no reference in any part of his decision to the reasons why the Department chose to adopt an In Chambers Hearing as the appropriate forum in which to address these substantive concerns, and did not, as it suggested it would in the call up letter, address or set out any analysis of the question of whether a public inquiry was required.

66. As noted in paragraphs 52, 54 and 55 above, the Appellant and Mr Logue, appeared to have been blindsided by the form, structure and tenor of the In Chambers Hearing, which, they submitted was contrary to what they had expected. We have already noted, in paragraph 60 above, the difficulties created by the absence of any contemporaneous record of the In Chambers Hearing, contrary to the published guidance.

67. The In Chambers Hearing took place on 3 December 2025. We have heard evidence that it was signalled that the Presiding Officer's decision would be issued within 2 weeks of that date. On 22 December 2025, the Appellant forwarded email correspondence to the office of the TRU, in which he referred to the timescale for the issue of the decision which had been set out, and asking why he had not received a decision after nearly three calendar weeks and with a pending holiday period. The decision was issued to the Appellant on 31 December 2025 which is a swift turnaround given the intervening holiday.

68. Our biggest concerns, however, about the decision-making procedures adopted by the Department are set out in paragraphs 59 to 64 above and draw on the analysis of the hearing before the Upper Tribunal set out in paragraphs 46 to 58.

69. Based on all of that, we have no hesitation in concluding that the decision-making process on the Appellant's application for a Standard International goods vehicle operator's licence involved procedural errors or irregularities of such significance that the Presiding Officer's eventual decision on the application, dated 31 December 2025, is 'plainly wrong'.

70. In his Skeleton Argument, Mr McManus made the following submission:

> 'The appellant and his representative at the in chambers hearing indicate that the initial decision maker from the commencement of the in chambers hearing displayed a partisan approach adverse to the appellant's application.'

71. We have not addressed this submission in our analysis. The absence of any contemporaneous record of the In Chambers Hearing makes it difficult for us to assess this assertion. Further, and acknowledging the concerns of the Appellant and his representative, the issue is not material to our decision in the case.

Conclusion

72. The appeal is allowed. The decision of the Presiding Officer dated 31 December 2025 is set aside.
73. We remit the case to the Department for reconsideration of the Appellant's extant application for a Standard International goods vehicle operator's licence authorising two vehicles and two trailers. The Tribunal has considered that it is appropriate to take that course - *Nolan Transport v VOSA & Secretary of State for Transport* - at paragraphs 104 & 132. We cannot make findings of fact in respect of the other conditions for the grant of an operator's licence.
74. It is our view that a Public Inquiry is mandated as part of the decision-making process on the application. The further Public Hearing should not be heard before the same Presiding Officer who determined the application on 31 December 2025 following the In Chambers Hearing on 3 December 2025.

Kenneth Mullan
Judge of the Upper Tribunal

Authorised by the Judge for issue on 11 November 2026