

Appeal No: T2017/41

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

**ON APPEAL from the DECISION of the TRAFFIC COMMISSIONER FOR
THE SCOTTISH TRAFFIC AREA (Ms J Aitken)**

Dated: 14 June 2017

Before:

Marion Caldwell QC	Judge of the Upper Tribunal
Mr G Inch	Member of the Upper Tribunal
Mr J Robinson	Member of the Upper Tribunal

Appellants:

G & E ROBERTSON t/a GE RECOVERY

Attendance:

For the Appellants: Mr Graeme Robertson

Heard at: George House, 126 George Street, Edinburgh.

Date of Hearing: 1 September 2017

Date of Decision: 14 December 2017

DECISION OF THE UPPER TRIBUNAL

The appeal is dismissed.

Subject Matter

Application for a standard national goods vehicles operator's licence to operate four vehicles and four trailers; stable establishment, good repute, financial standing, and professional competence.

Cases referred to:

NT/2013/82 Arnold Transport & Sons Ltd v DOENI NT/2013/82

Aspey Trucks Ltd 2010/49

Bradley Fold Travel Ltd & Peter Wright–v-Secretary of State for Transport [2010] EWCA Civ. 695

NT/2013/52 & 53 Fergal Hughes v DOENI & Perry McKee Homes Ltd v DOENI

Graeme Robertson T 2016/38.

T/2012/17 NCF (Leicester)

Mr W Meikle (t/a MBS Transport) T2016/7

REASONS FOR DECISION

Introduction

1. This is an appeal from the decision of the Traffic Commissioner for the Scottish Traffic Area, made on 14 June 2017. In summary, the Traffic Commissioner refused the appellants' application for a standard national goods vehicles operator's licence to operate 4 vehicles and 4 trailers on the ground of failure to meet the requirements of section 13(A)(2) of the Goods Vehicles (Licensing of Operators) Act 1995 ("the 1995 Act") namely, effective and stable establishment in Great Britain; good repute; financial standing and professional competence.

Background

2. The factual background to this appeal appeared from the documents, the transcript, the Traffic Commissioner's decision, the decisions of the Traffic Commissioner and Upper Tribunal regarding the revocation of William Meikle's operator's licence and his disqualification (T2016/7) and the decisions of the Deputy Traffic Commissioner and Upper Tribunal on the impounding of Graeme Robertson's vehicle YY52 HSN (T2016/38).

3. The appellants are a partnership comprising brothers Graeme and Eion Robertson trading as G&E Recovery. On 26 August 2016 they submitted an application for a new standard national goods vehicles operator's licence to operate 4 vehicles and 4 trailers from their address at 40 Station Road, Armadale, Bathgate. Their trade or business was stated as haulage. Safety inspections were to be undertaken by Station Commercials of the same address. Mr Thomas Henry Wale of Harthill was nominated as an internal transport manager.

4. On 9 December 2015 a Public Inquiry had been held at Edinburgh to consider the goods vehicle operator's licence OM1146718 held by William Meikle who traded as MBS Transport Limited. The nominated operating centre for that licence was old Station Yard, Armadale, Bathgate. On 23 December 2015 the Traffic Commissioner issued a written decision. She found there to be close commercial working arrangements between William Meikle and Graeme and Eion Robertson which had joint venture or informal partnership aspects to them with mutual interwoven support. The Robertsons undertook vehicle inspections and repairs for William Meikle with no labour charge to him. The Robertsons, or their trading names G&E and GE, were registered keepers of vehicles specified on William Meikle's licence. These vehicles were kept at the Robertsons' premises which was also the operating centre for William Meikle's licence. William Meikle allowed the Robertsons the cover of his operator licence; the vehicles used by the Robertsons were specified on William Meikle's licence and his discs were issued and on display. The vehicles were operated and controlled by the Robertsons who did not hold an operator's licence in any entity. Those arrangements were continuing on the day of the Public inquiry on 9 December 2015. The Traffic Commissioner found that neither Mr Meikle nor his company had proper arrangements or systems to meet the licence undertakings and that he had breached his licence undertakings. She found that arrangements for securing roadworthiness were unsatisfactory. Given that the Robertsons were the people relied on by William Meikle to inspect and repair his vehicles she found that the arrangements with them did not secure the licence undertakings and that the inspection sheets tendered at the Public Inquiry were contrived. The Traffic Commissioner held that William Meikle had grossly offended against fair competition because honest, compliant licensed operators did not get the work which the Robertsons and he took. The Traffic Commissioner revoked the operator's licence held by William Meikle with effect from 8 January 2016 and disqualified him for three years from holding an operator licence. William Meikle appealed to the Upper Tribunal. On appeal, William Meikle accepted that he had let the Robertsons use lorries specified on his operator's licence. On 15 August 2016 the Upper Tribunal dismissed the appeal (T2016/7).

5. On 11 January 2016 at the M6 Todhills site, DVSA checked vehicle FX05 EVC. The vehicle was being driven by Eion Robertson and was displaying a disc in the name of William Meikle trading as MBS Transport Limited; the licence which had just been revoked. Eion Robertson told the traffic examiner that William Meikle was appealing the revocation of his licence. Eion Robertson of Robertson International Haulage, 40 Station Road, Armadale was found to be the registered keeper of FX05 EVC. Pre-impounding letters were sent out to Graeme and Eion Robertson, G & E Recovery and Robertson Haulage, but these were not collected by the addressees.

6. On 11 May 2016 a Renault HGV registration number YY52 HSN was stopped on the M6 Todhills, Cumbria and found to be in use without a goods vehicle operator's licence. The vehicle was impounded by DVSA. Graeme Robertson, the owner, applied for the return of the detained vehicle. At the hearing before the Deputy Traffic Commissioner on 6 June 2016, Graeme Robertson said that he agreed with the conclusion of the Traffic Commissioner in her decision of 23 December 2015 about the "shelter of the licence" being provided by William Meikle to the Robertsons and that this was not one he would dispute. He agreed that these working arrangements had continued until the date of the impounding on 11 May 2016 (page 145, paragraph 67). The Deputy Traffic Commissioner refused the return of the vehicle by decision dated 9 June 2016. Graeme Robertson appealed to the Upper Tribunal which upheld the decision of the Deputy Traffic Commissioner on 3 March 2017 (T 2016/38).

7. On 2 December 2016, after the submission of the present application, DVSA examiners checked vehicle FX05 ECV at Craigforth (M9). Mr Eion Robertson was driving and the vehicle had a disc in the name of John Alexander Allan OM 1072147. Eion Robertson said that he was employed by Mr Allan. Eion Robertson was found to be the registered keeper of the vehicle but said that he did not know who owned it. This encounter led Traffic Examiner Wardrop and his colleagues to investigate further. John Allan told the traffic examiner that he rented the vehicle from the Robertsons and William Meikle; that he did not employ either the Robertsons or William Meikle but had been involved with them since 2016. He said that Graeme Robertson had initially asked for his licence disc but he said it could not be transferred in that way. A report was prepared for the Traffic Commissioner.

8. On 2 August 2016, Christopher Meikle, the son of William Meikle and trading as Meikle Building Services, applied for a restricted operator's licence for 2 vehicles.

9. The Traffic Commissioner decided to hold Public inquiry to discuss the areas of concern about the appellants' application. A call-up letter was issued on 2 May 2017 (pages 10–14). The call-up letter advised that the following would be considered at the Public inquiry:

- (a) The business connection to William Meikle and the role William Meikle would have in the appellants' transport operation;
- (b) The Traffic Commissioner noted that the appellant had been operating without a goods vehicle operator's licence;
- (c) The Traffic Commissioner was aware that on 2 December 2016 DVSA had encountered vehicle FX05 EVC driven by Eion Robertson displaying a disc for goods vehicle operator John Alexander Allan (OM1072147). DVSA had established that the registered keeper of the vehicle was Eion Robertson and the work being undertaken was on behalf of G & E Recovery;
- (d) The Traffic Commissioner noted that during the encounter with DVSA on 2 December 2016 a tachograph analysis identified a number of drivers hours offences by Eion Robertson and also established that the vehicle was not being parked at the specified operating centre;

- (e) The Traffic Commissioner understood that the appellant had connections with the Farm Supply People (OM114607) and Christopher Meikle (OM1146718) and would seek to establish the extent of those connections.

The appellants were advised to prepare evidence of financial standing to show access to an average of £20,900 over the previous 3 months and should include original bank statements for the preceding 28 days and details of any overdraft facility or other loan arrangement.

10. A conjoined a Public inquiry and driver conduct hearing was held at Edinburgh on 6 June 2017 to consider:

- (1) The appellant's licence application, OM 1147723;
- (2) The LGV licence entitlement held by Eion Robertson;
- (3) Christopher Meikle's licence application, OM 1146718;
- (4) The operator licence held by John Alexander Allan, OM 1072147; and
- (5) The operator licence held by The Farm Supply People Ltd and variation application, OM 1143604.

11. Evidence was given at the Public Inquiry by Barry Wardrop, Traffic Examiner for DVSA, Graeme Robertson, Eion Robertson, Christopher Meikle, and for the Farm Supply Co Ltd by Robert Kirk Blacklock, Kim Blacklock and Mrs Robertson. Mrs. Robertson is not related to the appellants. The appellants were represented by James Morrison, solicitor. As the applications by Christopher Meikle and the Farm Supply People Ltd did not significantly influence the Traffic Commissioner's decision regarding the appellants' application, no further reference need be made to them

12. At the outset of the Public Inquiry, Mr Morrison on behalf of his clients stated that they did not take exception to the Traffic Examiner's report (pages 39 to 117).

13. Eion Robertson gave evidence that he was the registered keeper of FX05 EVC but that the vehicle was owned by Graeme Robertson. He said that the vehicle was rented to John Allan as long as he wanted it. Eion Robertson found work for it, the work would be subcontracted to John Allan and John Allan would take a cut. Eion Robertson was paid for the driving. This arrangement had been in place for 5 to 6 months. When he was stopped in the vehicle on 2 December 2016 the vehicle was showing John Allan's disc. On 2 December 2016 he was carrying a load for Flowers Direct. He admitted that he had been doing regular haulage for this company without an operator's licence.

14. Eion Robertson accepted that the Traffic Examiner found tachograph offences which Eion Robertson attributed to miscalculations and misunderstanding. He admitted that he had made mistakes but said that he had learned from his mistakes. He admitted that he had other tachograph offences as the employer of one of his drivers. This was during a period when he was working for William Meikle. He pled guilty to these offences. He also had convictions for speeding and for using a mobile phone while driving.

15. Regarding William Meikle, he said that he did not know his licence had been revoked until the vehicle was impounded as a result of the encounter on 11 January 2016. He said he knew he had been to a public inquiry but he had lodged an appeal. Also, he said there was an arrangement between the Robertsons and one of Mr Meikle's companies for finance to buy vehicle FX05 EVC; they had not been able to raise the finance themselves as they did not have an operator's licence. He said that he now had no dealings with Mr Meikle.

16. Graeme Robertson gave evidence that the partnership comprised himself and Eion. He was not going to challenge the impounding inquiry evidence. He had been trading as Station Commercials but now everything went through G & E Robertson. If the licence were granted his role would be inspecting and supervising as he could not do physical work. He was not a driver.

The Traffic Commissioner's decision on the appellant's application

17. Having considered the evidence, the Traffic Commissioner found that there was no reason to cause her to upset the findings of fact she had made in the William Meikle decision. She found that the appellants had been operating unlawfully without an operator's licence for a long period, certainly since 2014 and most likely for all the period of the William Meikle licence. She concluded this from the sharing of vehicles and general interweaving of business. There had been unlawful operation on 11 January 2016, within days of the revocation of William Meikle's licence and again on 11 May 2016; on the latter occasion no other's disc was used.

18. The Traffic Commissioner found that the appellant had been engaging on a regular basis in unlicensed goods vehicle operating. This was discovered on 2 December 2016 when Eion Robertson was driving and John Allan's disc was in use.

19. She found that G & E Robertson had approached John Allan for the use of his licence and disc. She found that John Allan had provided the cover of his licence and disc to the appellants and that at no time was Eion Robertson a servant of John Allan or under his control. She found that the invoice produced to the Traffic Examiner by John Allan and those invoices ostensibly between John Allan and William Meikle were fabricated in response to the examiner's investigation.

20. Given her previous findings in relation to the Meikle vehicles and inspection sheets, the Traffic Commissioner found that the appellants could not be trusted with the safety inspections and roadworthiness standards required by the licence undertakings.

21. She held that Eion Robertson had shown himself as a driver to be deficient in compliance with the drivers hours and tachograph regulations. Accordingly, she found that the appellants could not be trusted to comply with the licence undertakings in respect of compliance with the drivers hours and tachograph rules and keeping of records.

22. As the appellants' nominated Traffic Manager, Mr. Wale, had not appeared to give evidence at the Public inquiry the Traffic Commissioner was unable to be reassured that the transport manager would be able to exercise effective and continuing control over the appellants.

23. No up-to-date bank statements had been produced at the Public Inquiry and so she was unable to be satisfied on financial standing. However, the Traffic Commissioner did state if this had been the only area of concern it was possible that the financial standing could have been shown by production of relevant bank statements.

24. The Traffic Commissioner held that there was such a pattern of deliberate and sustained unlawful operating that she was unable to be satisfied on the issue of repute, bearing in mind the guidance of the Upper Tribunal in Aspey Trucks Ltd (T2010/49). She found that even after the impounding of YY52 HSN, this unlawful operating continued.

Grounds of Appeal

25. The grounds of appeal are at pages 593 to 599. In summary, the main grounds of appeal are that:

- (1) The appellants took issue with the Traffic Commissioner's finding that their premises were insufficient for 4 vehicles as they have 1.75 acres of ground;
- (2) They should not be held responsible for William Meikle's failure of maintenance;
- (3) While the Traffic Commissioner had emphasized that they had been operating without a licence, when they had applied for a licence to work within the system, this was refused; they posed the question, "Does she want them to continue working illegally in order to provide for their families?";
- (4) The Traffic Commissioner had called them dishonest but now they were admitting their mistakes and that they had done wrong; there had been mistakes on both sides;
- (5) They disputed the Traffic Commissioner's finding that they knew William Meikle had lost his licence; they submitted they had not known this on 11 January 2016 when FX05 EVC was stopped at Todhills;
- (6) They said that they had provided bank statements to the Traffic Commissioner's office which had been lost; they then presented duplicates but the Traffic Commissioner had not asked to see them; and
- (7) The application process had taken too long.

Appeal before the Upper Tribunal

26. The appellants expanded upon the grounds of appeal at the Upper Tribunal hearing. Mr Graeme Robertson accepted that they had operated illegally in the past and that they had done wrong. He stated that he did not dispute that they had done haulage for Flowers Direct and Sextons without a licence. However, their intention now was to work within the system

27. Mr Graeme Robertson advised the Upper Tribunal that it had been their intention to employ a transport manager who had obtained a CPC by examination. Unfortunately, the nominated transport manager had suffered an accident on the day before the Public Inquiry and had not been able to attend. In addition, Mr Eion Robertson intended to obtain his CPC.

28. Mr Graeme Robertson said that they had been operating from the same premises for 35 years. They owned the premises outright; it was mortgage free.

29. Regarding maintenance, he said that he had performed running repairs for Mr Meikle's vehicles but other than that there had been no maintenance. He submitted that the appellants should not be held responsible for other people's lack of commitment to their vehicles.

30. Mr Graeme Robertson accepted that they had been advised in the call up letter (pages 10–14) to provide evidence of financial standing showing they had access to an average of £20,900 over the preceding three months. He said that original bank statements had been provided during the application process which demonstrated this. However, he acknowledged that as at the date of the Public Inquiry the Traffic Commissioner did not have available to her bank statements for the preceding three months.

Discussion

31. The following principles (extracted from the Digest of Traffic Commissioner Appeals) as to the proper approach to an appeal in the Upper Tribunal can be found in the decision of the Court of Appeal in the case of Bradley Fold Travel Ltd & Peter Wright –v- Secretary of State for Transport [2010] EWCA Civ. 695:

- (1) The Tribunal is not required to rehear all the evidence by conducting what would, in effect, be a new first instance hearing. Instead it has the duty to hear and determine matters of both fact and law on the basis of the material before the Traffic Commissioner but without having the benefit of seeing and hearing the witnesses.
- (2) The Appellant ‘assumes the burden’ of showing that the decision appealed from is wrong.
- (3) In order to succeed the Appellant must show not merely that there are grounds for *preferring* a different view but that there are objective grounds upon which the Tribunal ought to conclude that the different view is the right one. Put another way it is not enough that the Tribunal might *prefer* a different view; 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 phrase “plainly wrong” as a shorthand description of this test. (NT/2013/52 & 53 Fergal Hughes v DOENI & Perry McKee Homes Ltd v DOENI, paragraph 8)

32. Having considered the evidence, and the submissions made for the appellants we are not satisfied that the decision of the Traffic Commissioner was ‘plainly wrong’.

33. The onus of showing that an applicant for a licence satisfies the statutory requirements for a standard licence set down in section 13A of the 1995 Act is on the applicant.

34. Given the evidence before the Traffic Commissioner, her findings in the William Meikle Public Inquiry, the findings of the Impounding Inquiry of 9 June 2016 and the appellants’ admitted history of illegal operating, the Traffic Commissioner had good grounds for finding that the appellants had previously operated for a lengthy period illegally and that they had been dishonest. She therefore had justifiable grounds for being concerned that they could not be trusted to operate honestly in the future and meet the licence obligations. She also considered what positive findings she could make in the appellants’ favour and was unable to identify any.

Effective and Stable Establishment

35. In terms of section 13A(2)(a), a standard licence cannot be granted unless the Traffic Commissioner is satisfied that the applicant has an effective and stable establishment in Great Britain as determined in accordance with Article 5 of Regulation (EC) No 1071/2009 (“the 2009 Regulation”). This is more than merely having sufficient premises to accommodate the vehicles. It is the address where the operator must keep its core business documents and, in particular, accounting documents, personnel management documents, documents containing data relating to driving time and rest periods and any other document

to which the Traffic Commissioner or enforcing authorities require access in order to verify compliance with the requirements of the licence. These will include tachographs, drivers' hours and working time records; driver defect reports; preventative maintenance records; annual test records; prohibitions and related documentation; copies of driving licences; a copy of the transport manager's certificate of professional competence and documentation related to compliance with the operator licence requirements. It is the address where the vehicles are kept together with appropriate technical equipment and facilities for an operating centre. (See STC, statutory document No. 4, paragraphs 34–37).

36. Based on her findings in the Meikle Public Inquiry (see paragraph 4 above) and her finding that Mr. Eion Robertson as a driver was deficient in compliance with drivers' hours and tachograph regulations, she found that the appellants could not be trusted with safety inspections and roadworthiness standards required by licence undertakings or with compliance with drivers' hours, tachograph rules and the keeping of records. We can find nothing in the evidence or in the appellants' arguments that suggest that the Traffic Commissioner was not justified in relying on her earlier findings. Those findings were relevant to the matters she had to consider for the appellant's application and entitled her to conclude that she was not satisfied regarding the requirements of section 13A(2)(a). The appellants' disagree with some of these finding but that does not mean that the Traffic Commissioner did not have good grounds for making them or that her findings were wrong.

37. We therefore find no merit in the first two grounds of appeal

Good Repute

38. Section 13A(2)(b) provides that Traffic Commissioner must be satisfied the applicant is of good repute. Regarding an application for a licence (as contrasted with taking regulatory action), the Upper Tribunal stated in Aspey Trucks Ltd 2010/49 (at paragraph 10),

"In a case such as this, the Deputy Traffic Commissioner was not looking at putting someone out of business. Rather, he was deciding whether or not to give his official seal of approval to a person seeking to join an industry where those licensed to operate on a Standard National or Standard International basis must, by virtue of S.13(3), prove upon entry to it that they are of good repute. In this respect, Traffic Commissioners are the gatekeepers to the industry – and the public, other operators, and customers and competitors alike, all expect that those permitted to join the industry will not blemish or undermine its good name, or abuse the privileges that it bestows. What does 'Repute' mean if it does not refer to the reasonable opinions of other properly interested right-thinking people, be they members of the public or law-abiding participants in the industry."

39. "Good repute" is determined in accordance with paragraphs 1 to 5 of Schedule 3 to the 1995 Act.

40. The terms of Regulation 5(1) and 5(2) of the Goods Vehicles (Qualifications of Operators) Regulations (Northern Ireland) 2012, are identical to the terms of paragraph 1 of Schedule 3 to the 1995 Act. In the appeal of NT/2013/82 Arnold Transport & Sons Ltd v DOENI NT/2013/82, which concerned the 2012 Regulations, the Tribunal said:

“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”.

41. It is clear that the Traffic Commissioner was entitled to take into account the past conduct of the appellants. That conduct was material to the issue she had to decide. That conduct was such that she had good grounds for finding that she could not be satisfied as to the requirement of good repute and it was not unreasonable for her so to hold. The Traffic Commissioner explained in her decision that there had been such a pattern of sustained unlawful operating that she was unable to find that the appellants had demonstrated the necessary good repute. For the reasons stated above, the Traffic Commissioner had ample grounds on which to make that finding and it was not unreasonable for her so to do. We are therefore satisfied that no criticism can be made of her findings and conclusions regarding repute.

42. Regarding the question of whether the appellants were aware that William Meikle’s licence had been revoked, the Deputy Traffic Commissioner in his decision dated 9 June 2016, found that they would have had such knowledge at least from 11 January 2016 when Eion Robertson was stopped in FX05 EVC. The Traffic Commissioner in reaching her decision on the appellant’s application did not make a specific finding that the appellants were aware that William Meikle’s licence had been revoked prior to FX05 EVC being stopped and such a finding was not essential to her conclusions, given the other evidence of illegal operations.

43. We therefore find no merit in the 3rd to 5th grounds of appeal.

Financial Standing

44. Section 13A(2)(c) of the 1995 Act provides that an applicant for a standard operator's licence must be of appropriate financial standing "as determined in accordance with Article 7" of the 2009 Regulation.

45. The nature and the purpose of this requirement was explained in T/2012/17 NCF (Leicester):

"11. *Being of appropriate financial standing has always been considered to be a continuing requirement. In other words it is a requirement that the operator must satisfy for the duration of the licence. In our view this is now made crystal clear in Article 7(1) of Regulation (EC) No 1071/2009 of the European Parliament and of the Council, ("Regulation 1071/2009"), which provides: 'In order to satisfy the requirement laid down in Article 3(1)(c), an undertaking shall at all times be able to meet its financial obligations in the course of the annual accounting year'.*

12. *The purpose of the requirement to be of appropriate financial standing is spelt out, in general terms, in recital 10 to Regulation 1071/2009, which provides: 'It is necessary for road transport undertakings to have a minimum financial standing to ensure their proper launching and administration'. In our view 'administration', for the purposes of this Regulation, means the organisation and running of a haulage business which holds an operator's licence. In particular the requirement is intended to ensure that vehicles can be operated safely because the operator can afford to maintain them promptly and properly."*

46. The information as to financial standing requires to be current. The appellants accepted that as at the date of the Public inquiry they had not put the Traffic Commissioner in possession of the necessary vouching of their financial standing. It was therefore not unreasonable for her to hold that she could not be satisfied as to the requirement of financial standing.

47. We were not addressed on the question of the application process taking too long but we assume that this related to the financial information that had been provided being out of date. However, this could have been updated prior to the Public Inquiry.

48. We therefore find no merit in the remaining grounds of appeal, 6 and 7.

Professional Competence

49. Section 13A(2)(d) of the 1995 Act provides that the Traffic Commissioner must be satisfied that the applicant is professionally competent. This requirement must be satisfied by an individual (paragraph 8 of Schedule 3 to the 1995 Act). Neither Graeme Robertson nor Eion Robertson is the holder of a CPC. Nevertheless, this requirement could be satisfied by the appointment of a transport manager who is professionally competent and of good repute (paragraph 9 of Schedule 3 to the 1995 Act).

50. The appellants had nominated a transport manager in order to meet this requirement. However, the nominated transport manager did not attend the Public Inquiry and given the history and characters of the partners of G & E Robertson, the Traffic Commissioner felt unable to be satisfied that he would be able to exercise effective and continuing control over the appellants. In the circumstances, we can find no fault with the Traffic Commissioner's approach and findings about this requirement.

Decision

51. In all the circumstances, the Tribunal concludes that the Traffic Commissioner's decision cannot be impugned. The appeal is dismissed.

(Signed)
MARION CALDWELL QC
Judge of the Upper Tribunal
Date: 14 December 2017