



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

**[2019] UKUT 0377 (AAC)  
Case No. T/2019/64**

**ON APPEAL from the DECISION of the DEPUTY TRAFFIC COMMISSIONER  
FOR THE NORTH EAST OF ENGLAND TRAFFIC AREA (Mr Mark Hinchliffe)**

**Dated: 2 August 2019**

**Before:**

**C.G. Ward  
Mr. L. Milliken  
Mr. G. Inch**

Judge of the Upper Tribunal  
Member of the Upper Tribunal  
Member of the Upper Tribunal

**Appellant:** Terence Hebden

**Attendance:**

For the Appellant: In person

**Heard at:** Field House, London EC4

**Date of Hearing:** 5 December 2019

**Date of Decision:** 9 December 2019

**DECISION OF THE UPPER TRIBUNAL**

The appeal is dismissed.

**Subject Matter**

Fronting – loss of repute – revocation of operator’s licence – disqualification –  
professional competence

Fresh evidence

## **Cases referred to:**

Ladd v Marshall [1954] EWCA Civ1; [1954] 1WLR 1489  
T-2015/36 W. Martin Oliver Partnership  
T-2018/27 Allen Transport Ltd  
Bramley Ferry Supplies Ltd v HMRC [2017] UKUT 214 (TCC)  
Bradley Fold v Secretary of State for Transport [2010] EWCA Civ 695  
Silvertree Transport Ltd [2013] UKUT 117 (AAC)

## **REASONS**

### **Introduction**

1. This is an appeal from the decision of the Deputy Traffic Commissioner for the North East of England Traffic Area taken on 2 August 2019 and communicated by letter dated 6 August. The notice of appeal was received by the Upper Tribunal on 11 September and so was a few days late. Mr Hebden had been in hospital and time is extended so as to admit his appeal to consideration.

### **The Decision**

2. In a decision given following a public inquiry into this and a number of associated cases (see below), the decision so far as Mr Hebden is concerned was (in each case with effect from 23.59 hours on 16 August 2019):

a. that his operator licence be revoked under ss.26(1) and 27(1) of the Goods Vehicles (Licensing of Operators) Act 1995;

b. that he be indefinitely disqualified from holding or obtaining an operator's licence in all traffic areas, under s.28(5) of the Act;

c. that the provisions of s.28(4) of the Act applied, so that if, whilst disqualified, Mr Hebden was involved to the specified extent with a company or partnership with an operator's licence, that licence would be liable to revocation, suspension or curtailment; and

d. that under para 16(2) of schedule 3 to the Act, Mr Hebden was no longer of good repute and that there were no measures appropriate to specify under para 17(2) of that Schedule

### **The Public Inquiry**

3. The public inquiry was held on 29 July 2019. The cases of a number of companies and individuals were heard together. Those involved were RM Group Ltd, Michael Dudley Holgate, Peter Lane Tod, RM Leisure Homes Ltd, Fay Andrew, GHD Transport Ltd, Graham Dudley Holgate, SSRS (Hull) Ltd, David Steven Radford, Wayne Smith Holm and Mr Hebden. Some parties were involved in more than one capacity: in Mr Hebden's case he was a participant as operator (Terence Hebden t/a Driver Agency and Transport Services Humbs) and as transport manager.

4. Those who attended and gave evidence were Graham Holgate, Peter Tod, Fay Andrew and Mr Hebden; Senior Traffic Examiner Berriman, Traffic Examiner Wills and Vehicle Examiner Jackson.

5. It is right to record that the Deputy Traffic Commissioner took no action in respect of Mr Tod or Mr Holm.

6. Mr Hebden made an application to the Deputy Traffic Commissioner for his evidence to be given in private. He was allowed to make his application in private. It was refused because there were no exceptional circumstances or other ground<sup>1</sup> made out. The Deputy Traffic Commissioner did however indicate that he would permit Mr Hebden to make “No comment” answers if he wished, a facility of which Mr Hebden did not in fact avail himself.

### **Relevant legislative provisions and other legal principles**

7. Section 26(1) of the Act provides (so far as material):

“(1) Subject to the following provisions of this section and the provisions of section 29, a traffic commissioner may direct that an operator's licence be revoked, suspended or curtailed (within the meaning given in subsection (11)) on any of the following grounds—

(a) that a place in the traffic area to which the licence relates has, at a time when it was not specified in the licence as an operating centre of the licence-holder, been used as an operating centre for vehicles authorised to be used under the licence;

(b) that the licence-holder has contravened any condition attached to the licence;

(c) that during the five years ending with the date on which the direction is given there has been—

(i) a conviction of the licence-holder of an offence such as is mentioned in any of sub-paragraphs (a) to (i) of paragraph 5 of Schedule 2;

(ii) a conviction of a servant or agent of the licence-holder of any such offence, other than an offence such as is mentioned in sub-paragraph (c), (e) or (h) of that paragraph; or

(iii) a prohibition under section 69 or 70 of the Road Traffic Act 1988 (power to prohibit driving of unfit or overloaded vehicles) of the driving of a vehicle of which the licence-holder was the owner when the prohibition was imposed;

(ca) that during those five years a fixed penalty notice or conditional offer has been issued under Part 3 of the Road Traffic Offenders Act 1988 to the licence-holder in respect of an offence within sub-paragraph (i) of paragraph (c) or to a servant or agent of the licence-holder in respect of an offence within sub-paragraph (ii) of that paragraph;

...

(e) that the licence-holder made, or procured to be made, for the purposes of—

(i) his application for the licence,

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<sup>1</sup> i.e. under para.2 of Schedule 4 to the Goods Vehicles (Licensing of Operators) Regulations 1995

- (ii) an application for the variation of the licence, or
- (iii) a request for a direction under paragraph 1 or 3 of Schedule 4, a statement of fact that, whether to his knowledge or not, was false, or a statement of expectation that has not been fulfilled;
- (f) that any undertaking recorded in the licence has not been fulfilled;
- ...
- (h) that since the licence was issued or varied there has been a material change in any of the circumstances of the licence-holder that were relevant to the issue or variation of the licence;
- ... .”

8. By section 28(1):

“(1) A traffic commissioner shall direct that a standard licence be revoked if at any time it appears to him that —

- (a) the licence-holder no longer satisfies the requirements of section 13A(2), or
- (b) the transport manager designated in accordance with Article 4 of the 2009 Regulation no longer satisfies the requirements of section 13A(3).”

9. Section 13A imposes the following requirements:

“(2) The first requirement is that the traffic commissioner is satisfied that the applicant—

- (a) has an effective and stable establishment in Great Britain (as determined in accordance with Article 5 of the 2009 Regulation),
- (b) is of good repute (as determined in accordance with paragraphs 1 to 5 of Schedule 3),
- (c) has appropriate financial standing (as determined in accordance with Article 7 of the 2009 Regulation), and
- (d) is professionally competent (as determined in accordance with paragraphs 8 to 13 of Schedule 3).

(3) The second requirement is that the traffic commissioner is satisfied that the applicant has designated a transport manager in accordance with Article 4 of the 2009 Regulation who—

- (a) is of good repute (as determined in accordance with paragraphs 1 to 5 of Schedule 3),
- (b) is professionally competent (as determined in accordance with paragraph 13 of Schedule 3), and
- (c) in the case of a transport manager designated under Article 4.2 of the 2009 Regulation—
  - (i) is not prohibited from being so designated by a traffic commissioner, and
  - (ii) is not designated to act as transport manager for a greater number of road transport undertakings or in respect of a greater number of vehicles than the traffic commissioner considers appropriate, having regard to the upper limits in Article 4.2(c) of the 2009 Regulation, or such smaller number as the commissioner considers appropriate (see Article 4.3 of the Regulation).”

10. By section 28:

“(4) Where a traffic commissioner makes an order under subsection (1) in respect of any person, the commissioner may direct that if that person, at any time or during such period as the commissioner may specify—

- (a) is a director of, or holds a controlling interest in—
  - (i) a company which holds a licence of the kind to which the order in question applies, or
  - (ii) a company of which such a company is a subsidiary, or
- (b) operates any goods vehicles in partnership with a person who holds such a licence,  
that licence of that company or, as the case may be, of that person, shall be liable to revocation, suspension or curtailment under section 26.

(5) The powers conferred by subsections (1) and (4) in relation to the person who was the holder of a licence shall be exercisable also—

- (a) where that person was a company, in relation to any director of that company, and
- (b) where that person operated vehicles under the licence in partnership with other persons, in relation to any of those other persons;

and any reference in this section or in section 26 or 29 to subsection (1) or (4) above includes a reference to that subsection as it applies by virtue of this subsection.”

11. Paragraph 16(2) of Schedule 3 provides:

“The traffic commissioner by whom a disqualification order is made under paragraph 16(2) may specify measures with which the disqualified person must comply before the order can be cancelled or varied.”

12. Paragraph 17(2) of Schedule 3 provides:

“(2) If the commissioner determines that the person is no longer of good repute or (as the case may be) professionally competent, the commissioner must order the person to be disqualified (either indefinitely or for such period as the commissioner thinks fit) from acting as a transport manager.”

13. Turning to the legal approach governing the admission of new evidence by the Upper Tribunal in this jurisdiction, the correct approach is to apply the rule in *Ladd v Marshall* [1954] EWCA Civ1; [1954] 1WLR 1489 as a guideline to inform the panel’s discretion. In summary, the requirements are:

- (i) The evidence which it is sought to have admitted must be evidence which could not have been obtained, with reasonable diligence, for use at the first instance hearing.

- (ii) 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.

(iii) It must be evidence which is apparently credible though not necessarily incontrovertible.

14. The applicability of the rule in *Ladd v Marshall* in this jurisdiction has been emphasised in T-2015/36 *W. Martin Oliver Partnership*. An application to the Court of Appeal for permission to appeal against the Upper Tribunal's ruling on the issue was considered by Flaux LJ to be "unarguably hopeless and totally without merit".

15. Nonetheless, the Upper Tribunal's rules 5 and 15, which bear on the evidence to be considered by the Upper Tribunal, have to be applied in the light of the overriding objective in rule 2(2) of enabling the Upper Tribunal to deal with cases fairly and justly. That includes avoiding unnecessary formality and seeking flexibility in the proceedings and ensuring, so far as practicable, that the parties are able to participate fully in the proceedings. T-2018/27 *Allen Transport Ltd* contains a careful review of the authorities which it is not necessary to repeat here. In *Bramley Ferry Supplies Ltd v HMRC* [2017] UKUT 214 (TCC) the Upper Tribunal said:

"22. Given the rather different context of the Upper Tribunal Rules, we accept the points raised by Mr Bedenham that we should not apply the criteria in *Ladd v. Marshall* as strict rules in the exercise of our discretion as to whether to admit new evidence. The principle governing the exercise our discretion under Rule 15(2) must be that we should deal with cases fairly and justly in accordance with the overriding objective. That requires us to take into account all of the circumstances of the case.

23. That having been said, the *Ladd v Marshall* criteria are not irrelevant. We agree with the Tribunal in *Reed Employment* that the *Ladd v. Marshall* criteria are of "persuasive authority as to how to give effect to the overriding objective": see *Reed Employment* [97]. The *Ladd v. Marshall* criteria should therefore be borne in mind when exercising our discretion under Rule 15(2)(a): see *Reed Employment* [100]. So whilst we take into account the fact the stay has been granted and that there is a possibility for HMRC to respond to the introduction of new evidence, we also have regard to the fact that the first of the criteria in *Ladd v Marshall* is not fulfilled."

### **The appeal to the Upper Tribunal**

16. Mr Hebden's written grounds of appeal were briefly stated:

"I feel that my voice has not been heard in the long run up to the public inquiry. I also feel that Mr Paul Berriman from the DVLA was perhaps not in full knowledge of all the circumstances leading up to the public inquiry."

17. Although RM Leisure Homes Ltd and Fay Andrew had initially commenced an appeal to the Upper Tribunal, their appeal was struck out by Upper Tribunal Judge Levenson on 1 November 2019 for failure to comply with Directions. Accordingly, of the numerous parties whose cases were addressed by the public inquiry, only Mr Hebden's was live when this appeal was heard by the Upper Tribunal.

18. An application by Mr Hebden for the Upper Tribunal hearing to be held in private was refused by the judge on 13 November 2019.

19. It was explained to Mr Hebden, before inviting him to present his case amplifying his brief written grounds, that (a) the Upper Tribunal would only intervene where the decision of a Traffic Commissioner could be said to be “plainly wrong”<sup>2</sup> and (b) that question would normally be considered on the basis of the evidence which had been before the Traffic Commissioner and that, whilst the Upper Tribunal had a discretion to admit further evidence, it would not normally be exercised in favour of doing so where the evidence had been available to be given at the public inquiry, but was not.

20. Mr Hebden’s case consisted of a presentation of the events and in particular his dealings with certain of the other individuals and companies whose cases had likewise been the subject of the public inquiry. Much of what he told the Panel had already been in evidence before the Deputy Traffic Commissioner. To the extent that it amounted to further evidence, the Panel exercises its discretion against admitting it because it could have been given to the public inquiry and, if it was to be given at all, should have been. That was particularly so in a case such as the present, where the Deputy Traffic Commissioner had gone to considerable lengths to set up an inquiry which could look at the interlinked operations and conduct of numerous individuals and companies, each of whom (had they elected to attend the public inquiry) might have wished to question Mr Hebden as to the matters in his evidence or to give their own evidence on the point. If, as his written grounds of appeal to the Upper Tribunal suggest, he had concerns about the run-up to the public inquiry, before or at the public inquiry was the opportunity for those issues to be aired. The Panel also considers that the evidence, even if it were to be admitted, would not add very much: it did not appear to go to the heart of the reasons why the Deputy Traffic Commissioner had decided as he had in respect of Mr Hebden. The Panel concluded that Mr Hebden’s further evidence falls foul of both the first and second limbs of the *Ladd v Marshall* test. Turning to the “overriding objective”, Mr Hebden had had a full opportunity to participate in the public inquiry, of which he had availed himself. This had included the opportunity to make, in private, his application for his evidence to be given in private, albeit in the event it (as will be seen, correctly) proved unsuccessful. He has had the chance to participate fully in the Upper Tribunal proceedings also and any formality involved in relying on the principles of *Ladd v Marshall* in exercising our discretion is in the circumstances of this case described in this paragraph not “unnecessary” formality. The requirements of the overriding objective are met.

21. Although Mr Hebden indicated that he had felt disadvantaged by being required to give evidence in public, the Deputy Traffic Commissioner had given him the opportunity to make his application in private to give evidence in private. Mr Hebden accepted that – on the basis of what he had told the Deputy Traffic Commissioner in private session at the time – the latter was entitled to refuse his application. As the panel in the exercise of its discretion is not admitting any additional evidence, the Deputy Traffic Commissioner’s ruling on the point is beyond challenge.

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<sup>2</sup> Bradley Fold v Secretary of State for Transport [2010] EWCA Civ 695

22. The Deputy Traffic Commissioner expressed the reasons for his substantive decision in the following terms:

“92. Terence Hebden deserves some sympathy, given his poor health – but not much, given his willingness to abdicate his responsibilities as a director and transport manager and to participate in a pretend arrangement whereby his operator’s licence and vehicle authorisation could be absorbed into Michael Holgate’s business. He did this for anticipated financial gain although he is unlikely to achieve any gain. He has previously (and successfully) deceived the TC at public inquiry as to his links with the R&M companies and vehicles, and he attempted to deceive DVSA officers by presenting them with entirely fake and fraudulent documents, given to him by Fay Andrew – although on balance I believe Michael Holgate was behind it all. It is a positive point that, when confronted, he admitted the attempted deception both to the DVSA officers, and to me. As a consequence of all these events, he may suffer a significant financial loss. I am sorry about this, but this is the price he has to pay for agreeing to the arrangement he entered into, largely for the benefit of Michael Holgate. Eventually telling the truth to the DVSA when faced with the obvious tell-tale signs of document fabrication does not necessarily mean that Mr Hebden can be trusted in the future. The regulatory starting point is severe. Taking account of the totality of the evidence and the repeated nature of Mr Hebden’s lack of candour in the past – if I ask, can I trust Terence Hebden to be compliant in the future? I cannot. Does his operation deserve to be put out of business? If it depends for its existence on its operator’s licence then yes, it does.

93. I find that Terence Hebden, t/a DATS, as an operator, has lost his good repute. I find that his vehicles were not using his authorised operating centres. He failed to notify the TC of Graham Holgate’s conviction. There have been PG9s and fixed penalties, including for a dangerous load, an AdBlue emulator, tachographs not fitted and, recently, two specified vehicles have been found to have no insurance cover. There have been breaches of statements of intent and undertakings. And as an overarching issue, there has been a material change of circumstances because the licence was used as a front by RM Group Hull Ltd and its controlling mind, Michael Holgate. I find that Terence Hebden has lost his good repute as transport manager and is not fit to be a transport manager. It is a proportionate response to impose a disqualification from acting as a transport manager in the future and I am unable to think of an appropriate rehabilitation measure in the circumstances of this case. The operator therefore is also without professional competence.”

23. When asked to suggest why these paragraphs, being the nub of the Deputy Traffic Commissioner’s decision, might be “plainly wrong”, Mr Hebden referred to the fake invoices. He said that these had been handed to him in an envelope and he and the DVSA representative had seen them at the same time i.e. when the envelope was opened. Asked if evidence to that effect had been given at the public inquiry, he said that it had not. For the reasons above, the Panel declines to admit such further evidence and on the material he had, the Deputy Traffic Commissioner was entitled to reach the conclusion that he was complicit in attempting to deceive DVSA officers by putting forward fake documents.



24. In response to questioning from the Panel, he accepted that, as implemented by Michael Holgate, the arrangements to which he (Mr Hebden) had been party amounted to “fronting”. The Deputy Traffic Commissioner, adapting the definition from *Re Silvertree Transport Ltd* [2013] UKUT 117 (AAC) had said at para 82 that what happened in the present case was

”the creation of appearances to suggest that a significant number of vehicles (or fleets of vehicles) were being operated by the holders of a number of operator’s licences, when the reality is that they were being operated by a company (under the control of an individual) which did not hold an operator’s licence authorising it to operate to the extent and degree that it did – and the manner in which the vehicles were being operated required, if the operation was to be lawful, that the real operator possessed a much larger operator’s licence and greater authorisation than was actually the case.”

In the panel’s view, the Deputy Traffic Commissioner was undoubtedly entitled to take the view which he did of Mr Hebden’s complicity in such a serious arrangement.

25. In a further response, Mr Hebden accepted that when acting as transport manager he was precluded by ill-health from attending to his duties he should have applied for another individual to become the transport manager. In the panel’s view, had he done so, there would not have been the same opportunity for malpractice to occur at the instigation of Mr Holgate in matters for which Mr Hebden remained answerable.

26. Accordingly, the appeal fails. The relatively small amount of further evidence is not admitted, but it would not have helped Mr Hebden if it had been admitted. Neither for the reasons advanced by Mr Hebden in his grounds of appeal nor as a result of the Panel’s examination of the case can it be said that the decision of the Deputy Traffic Commissioner was “plainly wrong”. Indeed, it is a conspicuously clear and well-reasoned decision, one which he was undoubtedly entitled to come to and which the Panel considers to be correct.

**C.G.Ward**  
**Judge of the Upper Tribunal**  
**Date: 9 December 2019**