



Appeal No.: T/2018/59

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

**IN AN APPEAL FROM THE DECISION OF:
SARAH BELL, TRAFFIC COMMISSIONER FOR THE LONDON AND
SOUTH EAST TRAFFIC AREA
DATED 9th AUGUST 2019**

Before:

**Elizabeth Ovey, Judge of the Upper Tribunal
Andrew Guest, Specialist Member of the Upper Tribunal
David Rawsthorn, Specialist Member of the Upper Tribunal**

Appellant: MARK ANTHONY WARREN

Attendance: Mr. Warren appeared in person.

Heard at: Field House, 15-25 Breems Buildings, London EC4A 1DZ

Date of hearing: 11th December 2018

Date of decision: 12th February 2019

DECISION OF THE UPPER TRIBUNAL

IT IS HEREBY ORDERED that the appeal against disqualification be DISMISSED but that the period of disqualification be REDUCED from three years to one year.

SUBJECT MATTER: Loss of repute as transport manager; disqualification; length of period of disqualification

CASES REFERRED TO: 2009/307 *Anne Jones Edwards and Edward Anthony Edwards; Bradley Fold Travel Limited and Peter Wright v. Secretary of State for Transport* [2010] EWCA Civ 695; *Silvertree* [2013] UKUT 0117 (AAC)

REASONS FOR DECISION

Preliminary

1. This is an appeal against the decision dated 9th August 2018 of the Traffic Commissioner for the London and South East Traffic Area (“the TC”), in so far as the decision related to the Appellant (“Mr. Warren”). By her decision the TC made a finding that Mr. Warren, who holds a certificate of professional competence as a transport manager, was no longer of good repute within the meaning of Schedule 3 to the Public Passenger Vehicles Act 1981 and was unfit to manage the transport activities of an undertaking and therefore, as required by paragraph 7B(2) of that Schedule, disqualified him from acting as a transport manager. The period of disqualification was specified as three years commencing at 23.45 on 30th September 2018.

2. The decision was made following a public inquiry held on 24th July 2018, to which Mr. Warren was called by a call-up letter dated 8th June 2018. The letter duly warned Mr. Warren that the TC had decided to consider whether he met the requirements of good repute and professional competence, having reviewed his former role as transport manager. Mr. Warren had been the transport manager of Meritrule Limited, which held public service vehicle operator’s licence number PK0002520. That company was also called to attend the inquiry, at which the TC intended to consider whether or not to take regulatory action in relation to its licence. In addition, the inquiry was being held jointly with a public inquiry in respect of the licence held by Classic Routemasters Limited, licence number PK144925. Mr. Warren was never the nominated transport manager of Classic Routemasters, but had applied to become so.

3. The reason for holding a joint public inquiry was that, as explained further below, the TC had identified, from the material before her and evidence given at a public inquiry in relation to Classic Routemasters held on 23rd April 2018, a possibility that both Meritrule and Classic Routemasters were engaged in “fronting” for a Mr. Paul Jones, sometimes known as Paul Adam Smith (“Mr. Jones”). This concern was additional to other concerns about both operators which had led to their being called to a public inquiry. Fronting was explained by the Upper Tribunal in *Silvertree* [2013] UKUT 0117 (AAC) as occurring:

“when appearances suggest that a vehicle, (or fleet), is being operated by the holder of an operators licence when the reality is that it is being operated by an entity, (i.e. an individual, partnership or company), which does not hold an operators licence and the manner in which the vehicle is being operated requires, if the operation is to be lawful, that the real operator holds an operator’s licence.” (para. 4)

This definition was adopted by the TC in a letter dated 24th April 2018 notifying Meritrule that the inquiry to which it had already been called was to be held jointly with an adjourned hearing of the inquiry into Classic Routemasters’ licence and that fronting was to be considered.

4. Neither Meritrule nor Classic Routemasters attended the joint public inquiry on 24th July 2018. The outcome as respects the companies was that:

- (1) Meritrule's licence was revoked and the company and its sole director, Mrs. Jane Jones, were disqualified from holding a licence for a period of 10 years;
- (2) Classic Routemasters' licence was revoked and the company and its sole director, Miss Melanie Zetterlund, were disqualified from holding a licence for a period of three years.

The decision was made on the ground that, as summarised in paragraphs 24 to 26, there was "strong and cogent evidence" to infer that Mrs. Jones (Mr. Jones' mother) and Miss Zetterlund were fronting for Mr. Jones. The TC went on to say, however, in paragraph 26, that even if she was wrong on fronting, the operators had lost their good reputation because of their lack of transparency and proper record-keeping.

5. The TC further stated in paragraph 29 that on her findings Mr. Jones was a *de facto* and shadow director. He was not called to the inquiry on that basis and therefore the TC did not make a formal disqualification order, but she did state that if he were to apply for an operator's licence in the future, the application must be considered by a Traffic Commissioner or Deputy and he would need to address the concerns set out in the decision.

6. As respects Mr. Warren, the TC in effect asked herself whether he had colluded in the fronting which had taken place and concluded that he had not. She nevertheless decided that he had been a transport manager in name only and that it was appropriate to remove him for a period, which she set at three years.

7. The question we have to consider is whether the TC's decision in relation to Mr. Warren was plainly wrong: see *Bradley Fold Travel Limited and Peter Wright v. Secretary of State for Transport* [2010] EWCA Civ 695. To answer this question requires a more detailed consideration of the material before the TC as it stood on 24th July 2018. Understandably, it was gathered in piecemeal fashion, with the full picture emerging only gradually.

The facts relating to the companies and Mr. Jones

8. It is helpful to approach the material by explaining the information before the TC as to Mr. Jones and to begin with Black Velvet Travel Limited ("BVTL"), a company which used to hold operator's licence number PH1075733. So far as is relevant, there was a change of ownership of BVTL on or about 31st July 2014 and Mr. Jones was appointed a director on 1st August 2014. A Mr. Bishop was appointed a director on 13th August 2014. There were no other directors.

9. On 2nd September 2014 Mr. Jones was convicted of possessing counterfeit £20 banknotes with a face value of £9,600 and of spending three of them. He was sentenced to 16 months imprisonment, suspended for two years, and ordered to do 150 hours of unpaid work. This was a serious offence as defined in paragraph 1(4)(a) of Schedule 3 to the Public Passenger Vehicles Act and accordingly, by virtue of s.82 of that Act and

regulation 21 of and Schedule 1 to the Public Service Vehicles (Operators' Licences) Regulations 1995, S.I. 1995 No. 2908, a relevant conviction for the purposes of the Act including the question whether BVTL continued to be of good repute: see Schedule 3, paragraph 1(2). It appears that the prison sentence was suspended because in the judge's view the jobs of the BVTL employees depended on Mr. Jones. He is described in a contemporaneous newspaper report as the "new owner" of BVTL who rescued it after it went into administration. Mr. Jones ceased to be a director of BVTL on the day of his conviction.

10. BVTL was called to a public inquiry held by the TC (sitting as the Traffic Commissioner for the West of England) on 10th September 2015 on a number of grounds, including the facts set out above in relation to Mr. Jones. Another company, Western Greyhound Limited ("WGL"), which held licence number PH0006741, was also called to the inquiry, it being a joint inquiry because Mr. Bishop acquired WGL on 9th December 2014 and became the sole director. In addition, the former and current directors and former and proposed transport managers of the two companies were called to the inquiry.

11. It is not necessary to go into all the matters considered by the TC in relation to all the parties who were called. The material points are:

- (1) the TC identified significant serious shortcomings since Mr. Bishop took over BVTL and WGL posing a serious risk to road safety, passenger confidence and fair competition. She concluded that good repute was lost and the companies' operator's licences must be revoked;
- (2) the TC further found that neither operator satisfied the financial standing requirements and the licences must be revoked on that ground also;
- (3) the TC found that BVTL and WGL were at the very least a joint enterprise by Mr. Bishop and Mr. Jones, relying on the facts that:
 - (a) in an e-mail received via Southampton City Council Mr. Jones held himself out as a director of BVTL in relation to an application to change the bank account into which payments were made;
 - (b) the previous director and owner of BVTL arranged to meet Mr. Jones in relation to post purchase matters but was left dealing with Mr. Bishop;
 - (c) the previous director and owner of WGL arranged to meet Mr. Bishop on 16th December 2014 but was met by Mr. Jones, who described himself as the general manager of the business and set out plans for it;
 - (d) following a serious traffic accident involving a BVTL vehicle, Mr. Jones described himself as the owner of both BVTL and WGL;

- (4) BVTL, WGL and Mr. Bishop were disqualified for an indeterminate period from holding an operator's licence;
- (5) the TC referred to fronting and the *Silvertree* definition in connection with Mr. Jones but made no formal findings of shadow directorship or any similar matter because Mr. Jones was not called in and she did not hear from Mr. Bishop, nor did he send a statement. She did, however, direct that if Mr. Jones applied to be involved in operator licensing "in any guise" the application must be referred to a Traffic Commissioner or a Deputy.

12. Companies House records as at 27th March 2018 showed that since 12th July 2016 Mr. Jones had been the sole director of Hireyourtransport.com Limited, of which he was also the sole shareholder until 1st February 2017. His mother acquired his shareholding on that date. The TC also had prints of that company's web site and Facebook pages which appeared to show that it was offering buses and coaches for hire and was recruiting staff including drivers "due to continued expansion". It subsequently emerged that Mr. Jones remained the sole director until 1st May 2018, when Mrs. Jones became the sole director.

13. On 6th February 2018 Yourtransport Group Limited was incorporated with Mrs. Jones as the sole director and shareholder. On 20th February 2018 Yourtransport Group became the majority shareholder in Classic Routemasters.

14. Turning now to Meritrule, its operator's licence start date was 31st December 1992 but Mrs. Jones was not appointed a director until 26th July 2016, at which point she was the sole director. As set out in the TC's brief at p.3 of the bundle, it was called to a public inquiry on 6th August 2014 to consider an application to add Mr. Jones as the transport manager, in respect of which inquiries from the Central Licensing Office had been left unanswered. The same inquiry was also to consider an application for a standard licence made by Surrey Etc. Limited, of which Mr. Jones was a director and the proposed transport manager. Both applications were withdrawn and the inquiry was cancelled.

15. On 22nd November 2017 an application was made to increase Meritrule's vehicle authorisation from two vehicles to six. At that stage no vehicles were currently specified but Mr. Warren was shown as having been appointed transport manager on 13th November 2017. Evidence of financial standing was requested but the bank statements received were in the name of Mrs. Jones personally. By a letter dated 8th January 2018 statements in the name of the company were requested but no reply was received. The application to increase the vehicle authorisation was refused and in the light of the inevitable concerns that Meritrule might no longer be of the appropriate financial standing a letter dated 2nd February 2018 was sent to the company informing it that the TC was considering revoking the licence.

16. In response to that letter, Mr. Jones contacted the TC's office by telephone on behalf of his mother, explained that her mother had recently passed away and asked for an extension of time to get the financial information to the office. This was agreed. Mr. Jones later rang back to ask if parent company finances could be used.

17. On 26th February 2018 Mrs. Jones wrote to the TC's office referring to Mr. Jones' conversation and adding that she herself had been in hospital for four days having surgery. She explained that "we have chosen" to open a new company account to meet the TC's request.

18. There was a casenote on the system dated 3rd March 2017 (see p.3 of the bundle) saying that Mrs. Jones had given permission for Mr. Jones to be the nominated contact for the licence.

19. On 18th January 2018 a Mr. Philip Bannister was appointed a director of Meritrule. He resigned on 18th April 2018. The appointment and resignation were not notified. Mr. Bannister was a former director of Earlswood Coaches Limited.

20. In those circumstances a call-up letter dated 6th April 2018 was sent to Mrs. Jones directing that she and Mr. Jones must attend an inquiry to be held on 22nd May 2018. The TC's brief at p.4 identifies the concerns which caused the TC to call Meritrule to a public inquiry as the facts that:

- (1) it appeared not to have held a bank account until 6th February 2018;
- (2) Mr. Jones was the Mr. Jones involved in the revoked BVTL licence;
- (3) Mrs. Jones was the major shareholder in Hireyourtransport.com Limited which appeared to be operating without an operator's licence.

21. The brief also noted that Mr. Warren, the transport manager, was currently applying to be the nominated transport manager for Classic Routemasters and had been asked to attend a public inquiry on 23rd April 2018 for that company. It appears from p.92 that he joined Classic Routemasters on 11th January 2018 and fulfilled the transport manager role from that date. His TM1 form, applying to be the nominated transport manager, stated that he would dedicate 10 hours a week to the company's business. It was lodged on 21st January 2018.

22. The Classic Routemasters inquiry was duly held and was attended by Mr. Warren, Miss Zetterlund and a solicitor on behalf of the company and its director. The call-up letter is not in the bundle of documents before us, but we have a transcript of the hearing and it is clear that financial standing was in issue, as was good repute as a result of failing to respond to correspondence requiring evidence of financial standing to be produced. It further appears that Classic Routemasters' licence was granted with effect from 27th July 2016 but the company did not carry on any activities until October 2017, when it began taking bookings ready for the summer 2018 season. Although the company owned four vehicles, there was only one fit for use, which had been used on only one occasion, on 8th March 2018. That was the only work which, it was said, Classic Routemasters had carried out (p.88).

23. During the course of the inquiry it emerged that:

- (1) from 22nd November 2016 to 12th February 2018 the registered keeper of the vehicle used on 8th March 2018, 499 YMK, was Meritrule. On

18th April 2018 the registered keeper changed to Yourtransport Group Limited, which had the same registered office as Meritrule;

- (2) there had been an application to change the Classic Routemasters operating centre made on line by Miss Zetterlund and Mr. Jones, who she described as one of her colleagues;
- (3) the Classic Routemasters bank statements showed a number of transactions which caused the TC to observe that “they did not look [like] the bank statements of a company that has been dormant, apart from the one journey” (p.96). This was subsequently explained as representing work for bookings Miss Zetterlund had taken in the expectation of having four operating vehicles but which she had hired out when her own vehicles turned out not to be operational;
- (4) the statements showed loans on 6th April 2018 from an entity (the identity of which is redacted) linked to Meritrule. Subsequent discussion (see p.97) suggests that the entity in question was Hireyourtransport.com.

24. In the light of those matters the TC decided to adjourn the inquiry and to send an additional matters letter raising the issue of fronting for Mr. Jones. She also stated that evidence would be needed of how bookings had been dealt with and noted for the record that Companies House print-outs had been obtained that day for Hireyourtransport.com, Meritrule, Earlswood Coaches Limited, Classic Routemasters itself and Yourtransport Group Limited.

25. We have already referred in paragraph 3 above to the additional matters letter dated 24th April 2018 sent to Meritrule. An application to adjourn the inquiry listed to take place on 22nd May 2018 was made on 21st May but was refused. The inquiry was attended by a solicitor, but she had to withdraw shortly before it began because she was without instructions. Meritrule’s licence was suspended and it was required to return the vehicle discs by no later than 16.00 on Friday 25th May 2018. In the written confirmation of her decision the TC recorded that her office had had great difficulty in contacting Mrs. Jones and stated that the only reason for stopping short of revoking the licence was that Mrs. Jones might be at a medical appointment, having regard to an email she (the TC) had seen.

26. The Meritrule discs were in fact returned under cover of a letter from Mr. Warren dated 30th May 2018, in which he explained that the delay “was due to them sitting ready to go and not being posted in time, due to the bank holiday”. At the same time he notified the TC that he had resigned as transport manager of Meritrule.

27. It appears from paragraph 13 of the decision appealed against that the solicitor who attended on 22nd May 2018 for Meritrule also attended for Classic Routemasters, but then had to withdraw owing to potential conflicts of interest. Classic Routemasters’ licence was also suspended.

28. None of Meritrule, Classic Routemasters, Mrs. Jones, Miss Zetterlund and Mr. Jones attended the inquiry on 24th July 2018. Classic Routemasters lodged a surrender

request in advance and returned the vehicle discs. Miss Zetterlund told the TC's office that she would not be attending and sent through a GP appointment card. She said she understood a decision might be made in her absence. Meritrule told Mr. Warren that it intended to surrender its licence but had made no surrender request by 24th July 2018. Attempts to contact Mrs. Jones and Mr. Jones were met by what the TC called "a wall of silence".

The facts relating to Mr. Warren

29. Mr. Warren did attend the inquiry on 24th July 2018 and gave oral evidence. We summarise the salient points as follows:

- (1) Mr. Warren knew Mr. Jones from a time when he worked for Coaches Etc., originally as a driver and then doing office work after he suffered a heart attack. Mr. Jones was his manager;
- (2) Mr. Warren left that employment and went to Premier Transport, which put him through his certificate of professional competence ("CPC") as a transport manager. He obtained that in January 2016;
- (3) he left Premier Transport on 2nd August 2017 with the intention of setting up a company offering services as a compliance adviser, but was advised by his CPC trainer to get more experience as a transport manager first. He did not immediately find work;
- (4) in about May 2017 Mr. Jones had approached him saying that he was looking at starting up and needed a transport manager. From 2nd May 2017 he was on the licence for Links Transit Limited, for which he was doing four hours a week. Later he became unable to contact Links Transit and resigned as the transport manager on 6th April 2018;
- (5) it transpired (as Mr. Warren understood matters) that Mr. Jones was setting up a brokerage business under the name Hireyourtransport.com and operational work would be undertaken by Mrs. Jones' company Meritrule or Yourtransport Group. Mr. Jones had approached him to act as transport manager on behalf of his mother;
- (6) Mr. Warren started to work full-time for Meritrule in about September 2017, although in fact there was nothing for him to do because there were no vehicles and so he was not receiving a salary. He was claiming universal credit;
- (7) he was approached to act as transport manager for Classic Routemasters by Miss Zetterlund on the recommendation of Mr. Jones. He made some investigations and inquiries in the industry and was told that Miss Zetterlund was a nice person who could be trusted. Alarm bells rang some two weeks later when she asked him if he fancied a trip to Eastbourne for a public inquiry;

- (8) as far as he was aware, neither Classic Routemasters nor Meritrule had operated any vehicles while he was the nominated transport manager or acting as transport manager;
- (9) after he started work for Meritrule, Mr. Warren rang Mr. Jones three or four times a week and went down to the office, but nothing much seemed to be happening. He kept saying he was going to have to look at resigning, but was asked to be patient. Things “started coming out of the woodwork” in particular with what he heard at the previous inquiries. He left the first one saying that he would be resigning. He was concerned about the situation given that he had previously been in the industry for 29 years without even one tachograph offence against him as a driver;
- (10) he thought the Meritrule vehicle discs were with Mrs. Jones but did not check, which he acknowledged he ought to have done as transport manager. He understood that the Classic Routemasters and Meritrule discs could be put in a bus (which we understand to imply that any other company could have used the discs on a bus which it operated);
- (11) he had seen the Hireyourtransport.com web site but thought that was a 2017 version rather than the 2018 version. He understood that the 2018 version conveyed the message that the company was operating passenger vehicles;
- (12) he had seen a coach with Hireyourtransport.com livery in the depot and when he asked about it he was told that was what the branding was going to look like. He had asked whether it had been out on the road and was told it had not. There was no operator’s licence in the window. He thought the coach belonged to Earlswood Coaches;
- (13) Mr. Warren was not really able to explain why Hireyourtransport.com should be looking for drivers;
- (14) he had known Mr. Bannister, the director of Earlswood Coaches, for a long time. He had been unaware that Mr. Bannister had resigned before Earlswood Coaches’ licence was revoked, although he was aware of the revocation. He was aware that Mr. Bannister had become a director of Meritrule for a while and understood it was to have a director on site because of Mrs. Jones’ illness;
- (15) he had met Mrs. Jones three or four times in an official capacity and they had been together when he filled in the transport manager forms. He had seen her in the yard three or four months before the hearing and found out then that she was not well. Mr. Jones was handling the affairs of Meritrule for the time being while she was having treatment;
- (16) Mr. Warren thought Yourtransport Group Limited was the brand name for Hireyourtransport.com and was another brokerage company;

- (17) he did not check the Hireyourtransport.com web site and was unaware of the material on it suggesting that it was an operating company. He could not say why Hireyourtransport.com had paid Mrs. Jones £10,000 in December 2017 or £5,000 on 23rd November 2017. He thought he had been “hung out to dry”;
- (18) he was aware of what he called the WGL debacle;
- (19) he had returned the Meritrule and Classic Routemasters discs. Mr. Jones gave him the Meritrule discs and Miss Zetterlund the Classic Routemasters discs;
- (20) in his covering letter dated 30th May 2018 he had given assurances that the licences had not been used in any capacity, but he did not actually know that.

30. In addition, the TC has recorded in paragraph 20 of the decision that Mr. Warren confirmed current full-time employment with Meritrule on his application to be nominated transport manager for Classic Routemasters and that he accepted that that was misleading and the form should have stated that Meritrule was not currently operating but he had committed those hours to it.

31. The transcript includes references to previous hearings in the plural. Mr. Warren explained to us that he had attended not only on 24th April 2018 but also on 22nd May 2018 when the licences were suspended.

32. The transcript shows that what Mr. Warren said about the WGL debacle was in response to an interrupted question from the TC referring to Mr. Jones’ historic conviction “in terms of –”. It is not entirely clear from the transcript whether Mr. Warren meant that he was aware of the conviction or simply of the previous inquiry relating to BVTL and WGL, but he explained to us that he was aware of the conviction and the suspended prison sentence.

The TC’s decision

33. We need say little about the decision in so far as it relates to Meritrule, Classic Routemasters, Mrs. Jones and Miss Zetterlund. It is, however, relevant to our decision to state that it appears to us that the TC’s decision as respects those parties was well justified for the reasons she gave. We also quote paragraph 28 of the decision, which reads:

“Mr. Paul Jones’s history is clearly set out in my decision of November 2015. Mr. Jones has chosen not to apply for an Operator’s Licence in his own right. Mr. Jones has endeavoured to use a brokerage to suggest transparency and lawful conduct. However, that is not the conclusion the evidence leads me to for the reasons set out above. Operators must take great care to ensure their operations are lawful and safe, with accurate records kept, including where work is sourced via brokerage arrangements. Any Operator found to be ‘fronting’, particularly where that fronting is for an individual who may be in difficulties in obtaining a Licence, should not be surprised when robust action is taken. It

is important that all ‘fronting’ is eliminated to protect the legitimate commercial vehicle industry, both PSV and HGV. I therefore make no apology in making the example of these two Operators and their Directors. In particular, Mrs. Jones has been ‘fronting’ in a considered way and for a longer period. The ‘fronting’ is not just directly through Meritrule but also by assisting a purported veil of legitimacy through directorship and shareholdings in linked entities. A deterrence message is clearly required. Anyone else tempted to assist in a similar way cannot say they are taken by surprise if a similar fate lands at their door.”

34. The TC’s reasons for her decision in relation to Mr. Warren are to be found in paragraph 31, which reads as follows:

“Mr Warren has allowed the use of his name to provide a legitimate front to these two Operators. Mr. Warren failed to take any meaningful steps to satisfy himself that these Operators were not trading. He should have notified CLO immediately his name was associated with the Licences that he was not performing any duties in light of the non-trading. He should also have made it his business to ensure that he had custody of the vehicle discs or that they were returned to CLO. Instead, the evidence I heard is such that it would have been open for me to find collusion on his part. I have stepped back from doing so, just. I have given Mr. Warren credit for attending the July hearing when nobody else did and reduced his period of disqualification accordingly. He also answered my questions directly, albeit a little confused on occasion. I have accepted this time that Mr. Warren was perhaps too trusting of Mr. Jones even knowing his background. However a Transport Manager in name only, which this effectively was, is about as serious as it can be. It is entirely appropriate to remove Mr. Warren for a period to protect the reputation of professional Transport Managers, who attend and conduct their business in a diligent manner. Accordingly, I have reached the decision [already set out].”

The appeal

35. We summarise Mr. Warren’s grounds of appeal as follows:

- (1) he was penalised because the TC could not penalise Mr. Jones in relation to Meritrule and Classic Routemasters, just as she could not in the BVTL and WGL case;
- (2) he understood that there was a group structure under which Yourtransport Group was a holding company and Hireyourtransport was a brokerage company. The business plan was to take struggling companies into the group and those companies would operate the work, together with outside companies in busy periods. At the relevant time Classic Routemasters and Earlswood Coaches were in the group, but only Earlswood Coaches was operating. The intention was to get the Classic Routemasters vehicles back on the road and to acquire vehicles for Meritrule. There was no work for him to do pending the resolution of those matters;

- (3) he had no reason to look at the Hireyourtransport.com web site;
- (4) he believed that the Meritrule discs were in the office. He had not started his role in relation to Meritrule;
- (5) he did not allow his name to be used as a front. He resigned when Mr. Jones' connection with Classic Routemasters emerged at the first hearing and questions of financial standing arose;
- (6) he has found nothing to say that he was obliged to inform the Central Licensing Office that he had no "job" to do.

36. Mr. Warren's oral submissions to us were in effect a repeat of his evidence at the inquiry and what is said in his grounds of appeal. He understandably stressed his length of experience in the industry with an unblemished record. He also made clear the importance to him of having gained his CPC, which he sees as a form of retirement provision now that he is unable for health reasons to drive.

37. We do not accept that the TC's decision was plainly wrong in so far as she decided that Mr. Warren had lost his good repute, although he did not collude in the fronting which took place between September 2017 and May 2018, the period in which he was nominally the transport manager for Meritrule and, for the latter part of the period seeking nomination as transport manager for Classic Routemasters.

38. The difficulty for Mr. Warren is essentially that, being aware that Mr. Jones had been convicted of a serious offence, he allowed a situation to continue in which, from the point of view of the licensing system, Meritrule and Classic Routemasters could operate provided they had vehicles on the road (if necessary by having a formal agreement in place by which they had access to a vehicle even if they did not own it). He knew from the outset that Mr. Jones had some practical involvement with Meritrule and that Mr. Jones was engaged in establishing a group which would include operators. His appointment as transport manager of Meritrule in particular became increasingly farcical as time passed, he continued to be contracted to work full-time for the company and he did nothing. These arrangements, as the TC concluded, enabled Meritrule and Classic Routemasters to engage in transactions with Hireyourtransport.com at a time when the latter company's web site plainly implied that it was operating, vehicles had in fact been owned by both companies and the vehicle discs were apparently available to be used in vehicles owned or providing services operated by Hireyourtransport.

39. We do not go behind the TC's conclusion that Mr. Warren was simply too trusting of Mr. Jones, but the way in which the situation was allowed to drift for months on end demonstrates that Mr. Warren was not as alert as he ought to have been to the duties and responsibilities of a transport manager. S.82 of the 1981 Act applies the definition of "transport manager" found in article 2 of Regulation (EC) No. 1071/2009, which states that a transport manager is a person who "effectively and continuously manages the transport activities" of the company employing him. In our view, such management requires the performance of duties and exercise of responsibilities, even when the company is not actively providing services, of a significantly more active nature than the steps taken by Mr. Warren to ascertain what is happening in relation to the business.

40. In the present case, the fact that Mr. Warren was the transport manager for Meritrule implied to the Central Licensing Office and the TC that, among other things, he accepted responsibility for ensuring that the vehicle discs were in appropriate custody and could not be misused. He himself recognised at the inquiry that he ought to have checked where the discs were. Indeed, the fact that he was the transport manager with a full-time contract implied that he was performing duties which secured compliance with all aspects of the regulatory system and which required full-time employment. It was not sufficient for him to say that there was nothing to do and for him to do nothing when he was representing to the regulator that he was actively discharging duties and responsibilities.

40. Specifically in relation to the points made by Mr. Warren:

- (1) his understanding of the group arrangements (which was explained rather more fully in his grounds of appeal than in his evidence at the inquiry) may explain why he did not think that Hireyourtransport.com was operating rather than providing brokerage services but does not alter the fact that he simply did nothing in relation to Meritrule. It is therefore not necessary to consider the difficulties which might arise if the more detailed explanation constituted fresh evidence;
- (2) even if it is accepted that he had no reason to look at the Hireyourtransport.com web site, at least after he initially saw it, as he told the TC, again that does not alter the fact of his inaction in relation to Meritrule;
- (3) we have explained why he ought to have ensured proper custody of the Meritrule discs. This applies all the more in relation to Classic Routemasters, as respects which he was acting as transport manager, albeit not on a full-time basis;
- (4) reading paragraph 31 of the decision as a whole, we do not think that the TC has found that Mr. Warren knowingly allowed the use of his name to provide a legitimate front, but rather that she found that his inaction enabled fronting to take place without his knowledge;
- (5) although Mr. Warren has found nothing which states that he was obliged to tell the Central Licensing Office that he had no job to do, he was obliged to dispel the impression that he was exercising the duties and responsibilities of a transport manager when he plainly was not doing so, even to the extent required in relation to a company not actively operating. In addition, he himself accepted that when he applied to become the transport manager of Classic Routemasters, he ought to have made clear that he was not actually working full-time for Meritrule but had committed those hours.

41. In those circumstances, we conclude that the TC was not influenced by a wish to penalise Mr. Warren because she could not penalise Mr. Jones when she found that

Mr. Warren had lost his good repute. It follows that, as explained at the outset, a mandatory ground for disqualification was established.

42. The remaining question is whether the period of disqualification was excessive. Here we part company with the TC. To the extent that her reasons for choosing the period of three years are expressed, she proceeded on the basis that Mr. Warren had effectively been a transport manager in name only, which “is about as serious as it can be”. We entirely agree as a matter of principle that for a transport manager to be a transport manager in name only is a very serious matter. In the present case, however, we think that to impose a three year period of disqualification fails to take into account the following matters:

- (1) since the TC did not find collusion on the part of Mr. Warren, it follows that he accepted the Meritrule appointment in good faith. He did not start with the intention of being a transport manager in name only. Although we agree that he ought to have taken more active steps than he did, it is understandable that he kept hoping that matters would be resolved and he would have a proper job to do. This is particularly so given that Meritrule did apply for additional discs in November 2017;
- (2) when matters came to a head with the inquiries of 23rd April and 22nd May 2018, Mr. Warren did resign reasonably promptly owing to his concerns about how the companies were being operated;
- (3) in other cases in which a person has been disqualified for being a transport manager in name only, an operating business has been actively run by someone else: see, for example, 2009/307 *Anne Jones Edwards and Edward Anthony Edwards*, referred to in connection with this principle in Statutory Document No. 3 at paragraph 25. In such circumstances, the nominated transport manager is aware of the extensive business for which he is responsible but which is in fact being managed by another person. The unusual feature of the present case is that Meritrule was not itself operating and on the TC’s findings, Mr. Warren was not aware that, as seems to have been the case, Hireyourtransport.com was effectively operating what ought to have been Meritrule’s business. We note also that in the *Edwards* case, Mrs. Edwards was disqualified for six months only;
- (4) in the present case, Miss Zetterlund has been found to have fronted, whereas Mr. Warren was simply too trusting, but has been disqualified for the same period as Mr. Warren. That is so despite the facts that the TC says she has given Mr. Warren credit for attending the inquiry (unlike Miss Zetterlund) and states that he answered her questions directly. Even allowing for the importance of the diligent conduct of business by transport managers, we do not think that it is appropriate to make no distinction in terms of the period of disqualification between Miss Zetterlund, the sole director of Classic Routemasters, and Mr. Warren, given her collusion in Mr. Jones’ fronting arrangements and Mr. Warren’s absence of collusion.

43. For those reasons, we dismiss Mr. Warren's appeal against disqualification but reduce the period of disqualification to a period of one year calculated from 23.45 on 30th September 2018.

44. Finally, we regret the delay in producing this decision, which resulted from the Christmas break and Judge Ovey's other professional commitments.

(signed on the original)

E. Ovey
Judge of the Upper Tribunal
13th February 2019