



NCN: [2021] UKUT 197 (AAC)
Appeal No. T/2021/22

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

ON APPEAL from the DECISION of the TRAFFIC COMMISSIONER

Before: M Hemingway: Judge of the Upper Tribunal
D Rawsthorn: Member of the Upper Tribunal
A Guest: Member of the Upper Tribunal

First Appellant: Enviroblast ICS Ltd

Second Appellant: Thomas Poole

Heard at: The Rolls Building in London

On: 14 July 2021

Date of Decision: 10 August 2021

DECISION OF THE UPPER TRIBUNAL

The appeal of Enviroblast ICS Ltd is dismissed.
The appeal of Thomas Poole is dismissed.

SUBJECT MATTER

Revocation
Disqualification

CASES REFERRED TO

Bradley Fold Travel Ltd. and Another v Secretary of State for Transport [2010] EWCA Civ 695

REASONS FOR DECISION

1. This is an appeal to the Upper Tribunal which has been brought by Enviroblast ICS Ltd. (“Enviroblast”) and Thomas Mark Poole (“Mr Poole”) from decisions of the Traffic Commissioner for the North West of England (“the TC”) made with respect to each of them. The TC decided to revoke Enviroblast’s restricted goods vehicle operator’s licence (OC1144624) with effect from 0001 hours on 17 March 2021 pursuant to section 26(1)(a), (b), (e), (f) and (h) of the

Goods Vehicles (Licensing of Operators) Act 1995 (“the 1995 Act”); to disqualify Enviroblast from holding or obtaining any type of operator’s licence in any traffic area, for a period of two years commencing on 17 March 2021 pursuant to section 28(1) of the 1995 Act; and to disqualify Mr Poole from holding or obtaining any type of operator’s licence in any traffic area and from being the director of any company holding or obtaining such a licence, for a period of two years from 17 March 2021 pursuant to section 28(1), (4) and (5) of the 1995 Act. The TC simultaneously made two decisions which have not been appealed, the first of those being a decision refusing a variation application concerning the location of Enviroblast’s operating centre, the second being a decision to refuse an application made by ETA Skip Hire (NW) Ltd for a restricted goods vehicle operator’s licence.

2. A stay of the effect of the various decisions which were the subject of this appeal was sought on behalf of each appellant. However, such was initially refused by the TC and then, on 19 March 2021, by Upper Tribunal Judge Hemingway.

3. The Upper Tribunal held an oral hearing of the appeal on 14 July 2021. However, there was no attendance by or on behalf of either appellant. The two appellants had previously been represented by Backhouse Jones Solicitors but, prior to the hearing, that firm had notified the Upper Tribunal that it was no longer acting. Notice of the hearing was, therefore, sent to each appellant. The failure of the appellants to appear/be represented before the Upper Tribunal was unexplained. In the circumstances, the Upper Tribunal decided to proceed.

4. Enviroblast was granted the above restricted licence in March 2017. Its two original directors subsequently left the company. Its current sole director is Mr Poole. He became its sole director and sole shareholder on or about 1 June 2020. Prior to that, he had been the sole director and shareholder of ETA Skips (NW) Ltd. That business was, in fact, a continuation of a business which had initially been established by his father and had traded as ETA Skip Hire Ltd. That latter company was dissolved in December 2020. Mr Poole had not previously held an operator’s licence with respect to ETA Skips (NW) Ltd but he submitted a new application to the Office of the Traffic Commissioner (OTC) for such a licence on 4 February 2021.

5. Enviroblast’s and Mr Poole’s difficulties with the regulatory system commenced in May of 2020 when one P Snelson, a Vehicle Examiner with the Driver and Vehicle Standards Agency, had commenced an investigation which was to encompass the activities of both Enviroblast and ETA Skip Hire (NW) Ltd. The conclusions of Vehicle Examiner Snelson were subsequently to lead to the TC convening a Public Inquiry (PI) which took place remotely on 15 February 2021. The background to the calling of the PI is carefully summarised by the TC in his written reasons of 18 February 2021 and we gratefully set them out here.

“7. The public inquiry was convened on 15 February 2021 and heard virtually with all parties located remotely. Present for the operator was its sole director Thomas Mark Poole. The operator and Mr Poole were legally represented by Mr Scott Bell of Backhouse Jones solicitors. DVSA Vehicle Examiner Paul Snelson also gave evidence (although his report was not the subject of any significant dispute).

8. In advance of the hearing I was provided with bank statements for ETA Skip Hire (NW) Limited and a selection of driver defect reports for vehicles PF08 SSK and HX06 LDL. I was also provided with safety inspection record sheets for those two vehicles competed by Fieldings Commercial. No other documentary evidence relating to the operation of vehicles was submitted by the operator.

9. In May 2020 the DVSA received information that ETA Skip Hire Limited was using an unauthorised operating centre at the Platt Fold Street premises. The company was sent an invitation to apply for an operator's licence but did not respond.

10. In August 2020 Vehicle Examiner Paul Snelson visited Platt Fold Street and saw several goods vehicles in the livery of "ETA Skip Hire" enter the site. He recorded the registration number of one such vehicle as PF08 SSK. That vehicle had been recorded on the Enviroblast licence since 4 June 2020 although the registered keeper details remained as its previous (unrelated) operator. The vehicle was recorded at the DVLA with a statutory off-road notice (SORN) and that remained the position on the date of the public inquiry.

11. VE Snelson also observed 3 other goods vehicles in ETA Skip Hire livery as he went around his duties in the Leigh area in August 2020. One was HX06 LDL which was registered to Enviroblast and had been recorded on the operator licence since 2019.

12. Another vehicle observed by VE Snelson was LT59 NPE which was registered with ETA Skip Hire as its recorded keeper but was not currently recorded on any operator's licence having been removed by its last (again unrelated) operator in April 2020. The last MoT for that vehicle had expired on 30 January 2020 and its road tax had expired on 28 May 2020.

13. The fourth vehicle observed was SF56 EOW. That vehicle remained registered to a previous unrelated licence holder who had removed it from their licence in February 2019. It was not currently registered on any licence and its last MoT certificate had expired on 2 February 2019. The road tax had expired on 1 July 2020.

14. Automatic Number Plate Recording evidence was sought, and this confirmed that all of the above vehicles had been sighted on public roads on numerous occasions between 12 October 2020 and 11 January 2021.

15. VE Snelson visited Enviroblast's authorised operating centre at Nortex Mill in Bolton in November 2020. He could not locate the unit supposedly in use by the operator and was told by other occupiers that they had moved on. The maintenance provider named on the licence also told VE Snelson that they had not had any recent dealing with the operator and believed the company had been sold.

16. VE Snelson said he had tried to arrange a meeting with Mr Poole, but he initially claimed he was away and then that he was self-isolating due to the pandemic. Mr Poole did try to contact VE Snelson subsequently but by then the matter had been referred to the Traffic Commissioner.

17. The landlord at Nortex Mill provided information that Enviroblast had left the premises on 31 May 2020. They did however concede they had since become aware of another tenant who had been sub-letting to Enviroblast for a short period without permission. This arrangement was directed to cease.

18. These were the core elements that led to the calling of the public inquiry".

6. Enviroblast and Mr Poole were each ably represented at the PI by Mr S Bell of Backhouse Jones Solicitors. Certain concessions were made on behalf of the two appellants and Mr Bell acknowledged that “there was a long list of issues” of concern. However, he argued that Mr Poole had been attempting to regularise the position with respect to his operation of the relevant licence and that there were “small shoots of recovery”. He accepted, realistically, that at some point the licence held by Enviroblast would have to be revoked but he urged the TC to consider suspending any revocation action for a period sufficient to allow ETA Skip Hire (NW) Ltd to have its own application for a licence to be considered and granted. It is assumed the plan was for the latter to replace the former. He argued that Mr Poole had not acted out of a deliberate disregard for the regulatory regime and that, whilst the matter might be a close-run thing, there was no need for any disqualification to be imposed.

7. The TC carefully analysed the evidence in this way:

“19. I will first set out the facts of the case that do not appear to be in dispute. There are further findings of fact which I made and will detail later in this decision together with Mr Poole’s attempt to explain some of these matters.

20. The facts not in dispute are as follows:

- i) There was no evidence presented to establish that Enviroblast met the requirements of financial standing. Mr Poole has not used a bank account in Enviroblast’s name since he acquired the company in June 2020. The business’ trading activity was undertaken through a bank account in the name of ETA Skip Hire (NW) Limited.
- ii) Between June and December 2020 Enviroblast did not use its operating centre at Nortex Mill. Its purported operating centre was at Platt Fold Street during that time, but this was not authorised.
- iii) Thomas Mark Poole was previously a director of a company named Direct Marketing Organisation Limited at the time it entered liquidation in 2015. That relevant insolvency was not disclosed when Mr Poole’s appointment as director of Enviroblast was notified to my office on 2 June 2020.
- iv) Thomas Mark Poole was convicted on 11 February 2020 of operating an unauthorised waste site contrary to Regulations 12 and 38(1)(a) of the Environmental Permitting (England and Wales) Regulations 2016. He was fined £1600. ETA Skip Hire Limited was also convicted of the same offence.
- v) This conviction was notifiable and relevant in accordance with the guidance in the Senior Traffic Commissioner’s Statutory Document Number 1. That conviction was not disclosed when Mr Poole’s appointment as director of Enviroblast was notified to my office on 2 June 2020.
- vi) The operator had changed maintenance provider without notifying my office. There was no evidence provided of a contract with the new maintenance provider.
- vii) Vehicle HX06 LDL had been used regularly on public roads by the business controlled by Mr Poole since 1 November 2020 when its road tax had expired, and this use was continuing.
- viii) Vehicle PF08 SSK had been used regularly on public roads by the business controlled by Mr Poole since August 2020 when it was recorded as SORNed with the DVLA. The vehicle had also

- been used regularly on public roads after its MoT expired on 31 December 2020.
- ix) Vehicle LT59 EOW had been used regularly on public roads by the business controlled by Mr Poole since at least June 2020 when its road tax had expired
 - x) Vehicle SF56 EOW had been used regularly on public roads by the business controlled by Mr Poole since at least July 2020 when its road tax had expired, and MoT had expired
 - xi) ETA Skip Hire (NW) Limited was in possession of goods vehicles SF56 EOW and SN05 EMB prior to Mr Poole's acquisition of Enviroblast in June 2020.
 - xii) The drivers used by the business had until recently been engaged on a self-employed basis and paid in cash.

21. In relation to financial standing, Mr Poole claimed that he had not been able to access Enviroblast's bank account since acquiring the business as a previous director (who resigned in January 2020) was refusing to cooperate with the necessary authority. I struggle to understand why this is a difficulty given the Companies House record clearly shows that person's removal. Mr Poole did not provide any documentary evidence to support this assertion.

22. The statements provided for ETA Skip Hire (NW) Limited did show the required level of financial standing for 3 vehicles on a 3-month average but only just. This was only achieved as a result of two large deposits in January 2021. One was for £11,814 and Mr Poole claimed this was cash proceeds of skip hire. The second was a deposit of £27,004 which Mr Poole claimed was a VAT refund. He could not produce documentary evidence to support either assertion.

23. The statements did not record any payments consistent with fuel use by goods vehicles. Mr Poole claimed this was because fuel was paid in cash. There was also no evidence of wage payments and Mr Poole revealed that drivers were self-employed and paid in cash. He said it was only when receiving advice ahead of the public inquiry that he became aware such a practice was improper.

24. It was also clear that Mr Poole personally was withdrawing large amounts from the account with the effect that more money was being drawn out in November and December 2020 than was paid in. In total over the 3 months Mr Poole had withdrawn over £50,000 including a precise sum of £6,000 in each of the 3 months.

25. I found Mr Poole's explanation for these withdrawals to be unconvincing as he claimed they were to reimburse him for various expenses but without any supporting evidence. The monthly payments of £6,000 he claimed were to his uncle in relation to wages for driving and to reimburse him for tipping fees. Mr Poole appeared unsure when asked what amount his uncle was paid in wages and could not explain why the amount each month came to precisely the same round figure.

26. It was also conceded that there was no documentary record of the agreement to sell Enviroblast to Mr Poole. Mr Poole claimed that negotiations to purchase Enviroblast started in March 2020 and that he saw it as an opportunity to grow his business. I am however concerned that the acquisition of that licence holding company coincided with Mr Poole's existing company ETA Skip Hire (NW) Limited coming under scrutiny for unauthorised use of goods vehicles.

27. VE Snelson produced a publicity type photograph open sourced on Google and dated stamped May 2020 which showed goods vehicles SF56 EOW and SN05 EMB in ETA Skip Hire livery alongside a smaller Transit type vehicle.

28. Mr Poole admitted that the vehicles were in possession of ETA Skip Hire (NW) Limited prior to June 2020. He denied they had been used on the road for the purposes of the business. He said he had arranged for them to be marked in the company livery and assembled merely for publicity purposes. Given the other examples of blatant disregard for the requirements of operator licencing by Mr Poole, I find this explanation highly improbable.

29. I am satisfied on the balance of probabilities that ETA Skip Hire (NW) Limited was operating goods vehicles prior to Mr Poole's acquisition of Enviroblast in June 2020 and when no operators' licence was in force for the former company.

30. It is also evident that in the second half of 2020 Mr Poole's business was in possession of 4 goods vehicles. Mr Poole also insisted that he had not operated more than the 3 vehicles authorised by the Enviroblast licence at any given time.

31. This is simply not consistent with the ANPR evidence which suggests all 4 vehicles were in regular use in the period between October and mid-January 2021. Further publicity photographs were also seen by me apparently dating from around November 2020 and taken at Platt Fold Street. These showed all 4 vehicles in their ETA Skip Hire livery with a driver in front of each. I am satisfied that it is more likely than not that 4 goods vehicles were being operated at the same time.

32. In any event, I am also satisfied that those vehicles were not being operated by the licence holder Enviroblast but by the unlicensed entity. I have seen no evidence to suggest that company has traded in any way since it was acquired by Mr Poole in June 2020. The safety inspection sheets provided were all addressed to ETA Skip Hire and the bank statements of ETA Skip Hire (NW) Limited confirm it paid for those inspections.

33. The fact that both companies are in common ownership does not make this any more acceptable in the circumstances of this case.

34. It is also clear that all 4 vehicles have been operated persistently without valid road tax. 3 of the vehicles have also been operated persistently after their MoT certificates had expired.

35. Mr Poole offered a variety of explanations for this state of affairs. He claimed to be unaware of the status of some of the vehicles. In relation to the tax status of the vehicles, Mr Poole vaguely claimed that some technical problem had prevented him from taxing the vehicles using the online system. Even it was true [sic] that he had tried to tax the vehicles, that would also infer he knew that they were untaxed when he used them thereafter.

36. In relation to the use of PF08 SSK after the MoT had expired, Mr Poole claimed (without supporting evidence) that he had been told by the maintenance provider that the MoT expiry date had been extended due to the pandemic. In fact, the MoT expiry date on 31 December 2020 already reflected the extension provisions. Mr Poole allowed this vehicle to continue to be used regularly on

public roads into February 2021 despite being served with the brief for the public inquiry which clearly set out the MoT status of that vehicle. Indeed, were it not for a recent mechanical issue, the vehicle would still have been in use on the day of the public inquiry.

37. Mr Poole's claim that he was innocently misled as to the position on that vehicle is also wholly undermined by the fact he has operated two other vehicles when their MoT certificates had expired months previously.

38. SF56 EOW had not been the subject of a valid MoT certificate since 28 February 2019 which appears to be around the time it was acquired by the ETA Skip Hire business (whether that was the original company, or the NW company established by Mr Poole).

39. Mr Poole also claimed to have acquired LT59 NPE in around May 2020. Its last MoT certificate had expired in February 2020. He said he purchased it cheaply as it needed repairs. I pressed him on whether he knew it was not the subject of a valid MoT when he bought the vehicle. Mr Poole said he did not know. Frankly, it beggars belief that anyone would buy a vehicle without checking such a fundamental detail about its MoT status.

40. The cumulative effect of the position in relation to these vehicles is that I find that Mr Poole knowingly allowed them to be used on public roads when he knew they were untaxed and did not have valid MoT certificates.

41. In relation to the operating centre issue, Mr Poole sought to lay the blame with Gary Tonge, the former director of Enviroblast. Mr Poole said that Mr Tonge had updated the online licensing system when transferring ownership of the company. Mr Poole claimed that Mr Tonge had assured him he had transferred the operating centre details from Nortex Mill to Platt Fold Street.

42. It is correct that the online system does show that Mr Tonge updated the system on 1 June 2020 to remove his name as director and add that of Mr Poole. However, there is no evidence of an application to vary the operating centre being made at that time.

43. On June 2020 there are a series of entries to the system in Mr Poole's name which include changing the correspondence address of the operator and recording PF08 SSK on the licence. Mr Poole said that these changes were in fact made by Mr Tonge while he showed him how to operate the system.

44. Mr Poole insisted he was unaware that the operating centre at Platt Fold Street was unauthorised until contacted by my office in December 2020. Mr Poole said he had immediately started to keep the vehicles back at Nortex Mill from then, having reached an agreement with one of the tenants there. The rent payment was yet another cash transaction with Mr Poole unable to produce any written confirmation of the arrangement.

45. Whether or not the use of Nortex Mill resumed in December 2020, what is clear is that the vehicles were operated from the unauthorised premises at Platt Fold Street between June and December 2020.

46. There is insufficient evidence for me to conclude that Mr Poole deliberately allowed the operating centre issue to continue. However at the very least he is

culpable for completely failing to check that the operator's licence complied with the basis requirement of an authorised operating centre.

47. Mr Poole also sought to hold Mr Tonge responsible for the fact that the form nominating him as a director was submitted with the questions about involvement in previous insolvent companies and previous convictions wrongly answered in the negative. Mr Poole insisted that had he known about those questions he would have ensured they were answered accurately and would have disclosed the relevant matters.

48. The online system confirms that it was Mr Tong who apparently submitted the relevant form. As such, I hold back from a finding that Mr Poole failed in person to complete the form accurately. Nevertheless, I do find that Mr Poole was under a duty to make those disclosures to my office when being appointed as director and he ought to have ensured that any information provided by another person on his behalf was complete and accurate.

49. The fact of Mr Poole's directorship of the previously liquidated company is not a matter I consider needs to be examined in detail for the purposes of this hearing, [sic] other than the point that it clearly fell to be disclosed on Mr Poole being added to this licence as a director.

50. The criminal conviction is however highly relevant to the question of whether Mr Poole can be trusted to operate compliantly in the future.

51. Mr Poole was fined £1600 after he pleaded guilty at the first hearing of the case on 11 February 2020. I accept that the conviction became spent for the purposes of the Rehabilitation of Offenders Act 1974 (ROA 1974) on 11 February 2021 (4 days before the public inquiry).

52. I have taken into account the guidance and directions in the Senior Traffic Commissioner's Statutory Document No. 1 and have determined the conviction should be admitted in evidence.

53. The relevant consideration I have applied for are these:

- i. The conviction was for an offence contrary to regulation 38 of the Environmental Permitting (England and Wales) Regulations 2016. Such an offence is identified as "relevant" and "notifiable" by the provisions of Statutory Document 1.
- ii. The conviction was not spent when Mr Poole was added to the Enviroblast ICS licence as a director on 1 June 2020. As discussed above, the conviction ought to have been disclosed at the time. Had that happened it is likely that the public inquiry would have been convened well before the conviction became spent.
- iii. The linked conviction of ETA Skip Hire Limited was not subject to the provisions of the ROA 1974 as it involved a corporate entity
- iv. Thomas Poole was not a statutory officer of ETA Skip Hire Limited, but the evidence supplied by the Environment Agency was that he was the individual in control of the operation which led to the prosecution. This was supported by the fact of Mr Poole's conviction in an individual capacity.

- v. The facts which led to the conviction are discussed in detail below, but I am satisfied they are so relevant to the question of Mr Poole's fitness that the exemption in section 7(3) of the ROA 1974 applies namely,

“If at any stage in any proceedings before a judicial authority in Great Britain...the authority is satisfied, in the light of any considerations which appear to it to be relevant (including any evidence which has been or may thereafter be put before it), that justice cannot be done in the case except by admitting or requiring evidence relating to a person's spent convictions or to circumstances ancillary thereto, that authority may admit or, as the case may be, require the evidence in question..., and may determine any issue to which the evidence relates in disregard, so far as necessary, of those provisions.”

54. The conviction followed the illegal operation of a waste site at Leigh by ETA Skip Hire Limited, a company with Mark Poole (Mr Poole's father as sole director and shareholder). The events occurred between 13 August 2018 and 16 April 2019.

55. I was provided with a copy of the summons issued to Mr Poole and the Environment Agency case summary. Mr Poole did attempt at the hearing to dispute some of the details and claimed that some facts had been conceded by the prosecution at court. However, he was unable to supply me with a written basis of plea or any other document to establish that the conviction was on a basis other than that outlined in the case summary.

56. I therefore rely on the accepted approach in criminal proceedings that a conviction is on the basis of the prosecution case unless there is a basis of plea or a finding to the contrary by the court after hearing evidence.

57. The Environment Agency case was that ETA Skip Hire Limited and Mr Poole had undertaken waste activity at the site leased by the company when there was no permit for such operations. From August 2018 onwards Mr Poole was advised that operations should cease, and the site cleared. He was also advised how to apply for a permit.

58. Mr Poole continued to operate at the site without applying for a permit despite further attendance and instructions from the Environment Agency. This culminated in the issue of formal notices requiring the operation to cease by 17 December 2018. Mr Poole however continued to operate waste activities at the site well into January 2019.

59. During that time, the operation was not only unlawful but was carried out in such a manner that the Fire Service were required to attend on 12 separate occasions to deal with waste fires.

60. It was accepted that the site was eventually cleared by the date of the court hearing in February 2020.

61. The Environment Agency case summary contains some passages which are relevant to assessing Mr Poole's fitness. His culpability for the waste operation was described as “deliberate”. The case summary supports this by saying,

“...initially Thomas Poole may have been unaware of the permitting regime, however after the initial visit and advice he then failed to act upon it. He was on site during site inspections and was given extensive advice and guidance but despite this he continued to operate without the relevant permit or to abide by the exemption conditions. After being served with the Notice to clear the land he continued by allowing waste to be accepted at the site.”

62. The Environment Agency’s case summary concluded, “By not complying with the relevant permitting regime the Company was able to undercut legitimate businesses and make larger profits. As the Company failed to have a permit in place the application and subsistence fees were not paid. In addition, the need to ensure the relevant infrastructure was in place did not arise. This means that the Company was able to pass these on to its customers and offer lower prices, or alternatively make higher profits as its overheads were lower.”

63. I find those comments resonate having heard the evidence of how Mr Poole has subsequently approached the regulatory regime relating to the operation of goods vehicles.

64. It is also relevant to note that the Environment Agency prosecution coincided with Mr Poole establishing his ETA Skip Hire (NW) Limited. Mr Poole’s account was that his father had decided to leave the business and that he saw an opportunity to take on the business. He incorporated ETA Skip Hire (NW) Limited in August 2019 for this purpose (when the Environment Agency prosecution was still pending). The new company was granted a waste permit on 11 February 2020 (the same day as the court hearing).

65. I asked Mr Poole why he had established a new company to take over the business, when he could simply have taken over ETA Skip Hire Limited (as he subsequently did with Enviroblast). Mr Poole was vague as to the reasons why he had approached the matter that way. Again, there appears not to have been a written agreement for the transfer of assets between the two companies. Mr Poole was unable to give a precise date when ETA Skip Hire (NW) Limited had started operating the skip hire business other than to point to the issue of the waste permit.

66. Mr Poole denied my suggestion that he had established the new company as a device to allow the skip hire business to continue after the original company was prosecuted.

67. I am not convinced by that denial as it does appear to be a pattern of repeated conduct by Mr Poole when challenged about his business’ compliance with regulatory requirements. When ETA Skip Hire Limited faced the Environment Agency prosecution, Mr Poole reacted by moving its business to the new company. When ETA Skip Hire (NW) Limited came under scrutiny for unauthorised operation of good vehicles, Mr Poole decided to acquire another company which already held an operator’s licence. When it became apparent that the Enviroblast licence was in jeopardy, Mr Poole belatedly submitted a new application for an operator’s licence by ETA Skip Hire (NW) Limited”.

8. Then, having considered the evidence and submissions the TC set out his conclusions and his explanation for his decisions on the appeal in this way:

“73. The first significant finding that I must confirm is that I have not been provided with any evidence of the financial standing of Enviroblast as an operator. As this is a restricted licence, I am concerned in the absence of such evidence that the operator is unable to meet the continuing requirements in sections 13C and 13D of the Act.

74. I have not been asked to allow a period of grace or given any cause to believe that Enviroblast will achieve the required level of financial standing in future.

75. In relation to the fitness of the operator and Mr Poole as its sole director, I have considered the guidance in Statutory Document 10 and the balancing factors set out therein. I am struggling to identify any of the positive features mentioned in that document save for the absence of previous regulatory action against the company and Mr Poole in relation to operator licensing. I also note that there is no history of prohibitions or other enforcement action by the DVSA although this must be seen in the context that VE Snelson was unable to complete his investigation as Mr Poole was unavailable.

76. On the contrary the negative features are considerable and can be summarised as follows:

- Deliberate and/ or reckless act/s by the operator which led to undue risk to road safety or unfair commercial advantage. This specifically relates to the unauthorised use of vehicles, the use of untaxed and untested vehicles and the use of an unauthorised operating centre.
- Persistent offending. The operator and Mr Poole have repeatedly allowed the above issues to continue for a period of at least 6 months without addressing them.
- Ineffective management control and insufficient or no systems and procedures in place to prevent operator licence compliance failings. I have not seen any evidence of such systems and even if such systems are in place, the numerous failings suggest that they are completely ineffective.

77. These negative features completely outweigh any positive features. I also determine that the operator and Mr Poole’s conduct is such that it can properly be categorised as “Deliberate or reckless acts that compromised road safety and gave the operator a clear commercial advantage.” This brings it squarely into the category of “severe” for the purposes of regulatory action in accordance with the starting points in Statutory Document 10.

78. I have gone on to consider the *Priority Freight* question, namely “how likely is it that this operator will, in future, operate in compliance with the operator’s licensing regime?” The findings of fact I have made in this case can only lead to the conclusion that I cannot have any confidence in future compliance by Enviroblast or indeed any operator under the control of Mr Poole.

79. I am very clear that this is not a case of a naïve and inexperienced new entrant to the industry who with proper guidance and instruction could be trusted to develop a compliant approach. The failings in this case are of such a basic nature (such as the use of untaxed and untested vehicles on the road) that they cannot be attributed to ignorance. I am satisfied that Mr Poole has shown a

deliberate and blatant disregard to road traffic law as well as the requirements of operator's licensing. He has not sought to address any of the issues until the point when he has realised that seeking to avoid them any further is futile.

80. I also found much of Mr Poole's evidence at the inquiry to be evasive, vague and in some respects bordering on the dishonest (for example his denials of knowing the MoT status of some of his vehicles).

81. It is also highly relevant that Mr Poole came before me within a year of his being prosecuted by another regulator after he displayed a similar disregard to the requirements of environmental compliance coupled with the persistent failure to rectify matters. This is all too consistent with the approach he has evidently taken to operator licensing.

82. I have then gone on to consider the question posed in Bryan Haulage, "is the conduct such that the operator ought to be put out of business?" The circumstances of this case are such that I have little hesitation in answering that question in the affirmative. It would be an insult to the majority of other operators in the skip hire and wider transport industry who work hard to try to deliver compliance, to allow such an operator to continue in competition with them.

Decisions

83. I have concluded that the operator by reason of the failings found above lacks the fitness required to continue to hold an operator's licence and that the grounds for revocation in section 26(1)a, (b), (e), (f) and (h) of the Act are established.

84. I will defer the date of revocation to allow the orderly closure of the business or for the business to make alternative arrangements for its transport requirements to 17 March 2021.

85. I have considered whether to disqualify the operator and Thomas Mark Poole under Section 28 of the Act from holding or obtaining an operator's licence in the future, and from being the director of a company holding or obtaining such a licence. For the same reasons outlined in paragraphs 73 to 82 above, and having performed the same balancing act described therein, I conclude that the operator and Mr Poole should be so disqualified.

86. In deciding upon the length of disqualification, I have taken account of paragraph 100 of the STC's Statutory Guidance Document 10 and the suggested starting point of between 1 and 3 years at a first public inquiry. I consider the facts of this case are sufficiently serious that a period above the lower point is justified and I determine that a period of two years is appropriate to protect other road users and to protect compliant operators from unfair competition.

87. Whilst the application by ETA Skip Hire (NW) Limited for a new licence was not formally before the public inquiry, as a consequence of the decisions above it must inevitably fail. I therefore formally record its refusal.

88. I also formally record the refusal of the application to vary the operating centre made by Enviroblast.

89. I do not make an order for the suspension as suggested by Mr Bell as the intended purpose of allowing the ETA Skip Hire (NW) Limited application to be concluded is now redundant. For the avoidance of doubt, whilst the revocation of the licence is not effective until 17 March 2021, the operator must not operate any vehicles in the intervening period unless they are taxed, have a valid MoT certificate and are otherwise lawful and safe to be used on a road and comply with the requirements of the operator's licence".

9. As noted, Enviroblast and Mr Poole appealed to the Upper Tribunal. The grounds of appeal were prepared and submitted on behalf of the two appellants by Backhouse Jones Solicitors prior to their ceasing to act. Essentially, the grounds may be summarised as follows:

Ground 1 – the TC had erred in law through reaching adverse findings regarding the failure of Mr Poole to disclose his previous directorship of a company called Direct Marketing which had gone into liquidation (see paragraphs 47 - 49 of the TC's written reasons as set out above). Pursuant to schedule 2(1)(e) to the 1995 Act, there had been no legal obligation upon Mr Poole to disclose.

Ground 2 – the TC had erred in law through admitting the "spent" conviction of Mr Poole and, in any event, the manner in which he explored the issue had been procedurally unfair.

Ground 3 - there had been insufficient evidence before the TC to enable him to properly conclude that vehicles had been used by ETA Skip Hire (NW) Ltd. prior to Mr Poole buying Enviroblast.

Ground 4 – the TC had been plainly wrong in deciding (see para 31 of the TC's written reasons) that it was likely that all four of the relevant vehicles operated by ETA Skip Hire (NW) Ltd between October and January 2021 prior to Mr Poole's acquisition of Enviroblast, had been "operated at the same time".

10. Paragraph 17(1) of Schedule 4 to the Transport Act 1985 provides:

"The Upper Tribunal are to have full jurisdiction to hear and determine on all matters (whether of law or of fact) for the purpose of the exercise of any of their functions under an enactment related to transport".

11. Paragraph 17(3) of that Schedule provides that the Upper Tribunal may not take into consideration any circumstances that did not exist at the time of the determination which is the subject of the appeal. The Upper Tribunal's jurisdiction was examined by the Court of Appeal in *Bradley Fold Travel Ltd and Another v Secretary of State for Transport* [2010] EWCA Civ 695. It was stated that the Upper Tribunal has the duty, on an appeal to it, to determine matters of fact and law on the basis of the material before the TC but without the benefit of seeing and hearing from witnesses. It was further stated that the burden lies on an appellant to show, in order to succeed on appeal, that the process of reasoning and the application of the relevant law requires the Upper Tribunal to take a different view to that taken by a TC.

12. We start by making the general point that the TC's written reasons amply demonstrate that matters were considered by him with thoroughness, insight and diligence.

13. As to the first of the individual grounds of appeal (which of course have not been elaborated upon given the non-attendance before us), the specific question on the application form completed by or on behalf of Enviroblast when making the licence application reads “Has anyone you’ve named ever been involved with a business that has gone or is going into administration or a company voluntary arrangement?” and the recorded reply is “No”. Mr Poole had been named in the application. So, on any view, what had been said in response to that question was not true. It was not Mr Poole’s case at the PI that his understanding was that the legislation did not require him to make disclosure and that was why he had not done so. Rather, he simply blamed another individual whom he said had done “all the paperwork” for him. But of course, it was his responsibility to ensure that accurate information was given to the appropriate regulatory body. In those circumstances the TC was not plainly wrong nor in error of law in taking a point against Mr Poole to the effect he had provided untrue information. The matter was, in any event and in the face of the many other concerns, so peripheral that it would not have made a difference even if Mr Poole had made full disclosure which he had not. This ground is not made out.

14. As to the second ground, this appears to be directed towards the Upper Tribunal’s error of law rather than error of fact jurisdiction. But we detect no error of law or misdirection in what the TC had to say about the conviction in the passage which runs from paragraph 53 to paragraph 64 of the written reasons. The issue was raised at the PI (as is conceded in the grounds) although it may be that the TC had then forgotten to revisit it prior to the PI concluding. But, nevertheless, the representative for the two appellants was in a position to urge the re-visiting of the issue himself had he wished to. To the extent that the ground might also amount to a conclusion that the taking into account of the conviction was plainly wrong, we find no possible basis for such a view. As to grounds three and four, these are really no more than quibbles with the findings of fact made by the TC. But against the background of dishonesty and non-compliance and what the TC himself had described as “the other examples of blatant disregard for the requirements of operator licensing” not only was the TC entitled to make the findings he did but it is very difficult indeed to comprehend how different or more favourable findings from the perspective of either appellant could rationally have been made.

15. We have not, in this decision, spent very much time on our analysis of the grounds of appeal. But in truth, for the reasons cogently set out by the TC, the case of each appellant was hopeless. Indeed, it might be that a realistic understanding of that explains the lack of attendance before us. We are not able to conclude that the TC was in error of law or plainly wrong in any of his relevant findings and conclusions. Accordingly, we dismiss the appeal brought by Enviroblast and we dismiss the appeal brought by Mr Poole.

M R Hemingway
Judge of the Upper Tribunal
Dated: 10 August 2021