

**IN THE UPPER TRIBUNAL**

**Appeal No. T/2020/50**

**NCN: [2021] UKUT 0277 (AAC)**

**ADMINISTRATIVE APPEALS CHAMBER**

**(TRAFFIC COMMISSIONER APPEALS)**

**ON APPEAL from a DECISION of the DEPUTY TRAFFIC COMMISSIONER for WALES**

**Decision dated:** 1 September 2020

**Appeal dated:** 30 September 2020

**Before:** Judge Rupert Jones: Judge of the Upper Tribunal  
Mr A Guest: Member of the Upper Tribunal  
Mr S James: Member of the Upper Tribunal

**Appellant:** AMMANFORD RECYCLING LTD

**Reference:** OG1148761

**Attendances:** Mark Laprell, Counsel for the Appellant instructed by Beverley Bell Consulting Ltd

**Heard at:** Rolls Building, 7 Rolls Buildings, London, EC4A 1NL

**Date of Upper Tribunal Hearing:** 14 September 2021

**Date of Decision:** 10 November 2021

**Date of corrected decision:** 12 November 2021

**DECISION OF THE UPPER TRIBUNAL**

**The appeal against the Traffic Commissioner's decision dated 1 September 2020 is dismissed.**

**Subject matter:**

Revocation of the Appellant operator's restricted licence; disqualification of the Appellant and its directors, Richard Safadi and Adrian Leigh Stewart; whether the Traffic Commissioner's grounds for revocation were wrong applying the tests in *Bryan Haulage (No.2)* and *Priority Freight*; whether the public inquiry conducted was procedurally fair and sufficient advance

notice was given of matters relied upon in the Commissioner's decision; whether the directors gave misleading evidence at the inquiry.

## **REASONS FOR DECISION**

### **Introduction**

1. Ammanford Recycling Limited ('the Appellant') appeals to the Upper Tribunal by notice of appeal dated 30 September 2020 from a decision of the Deputy Traffic Commissioner (TC) made on 1 September 2020.
2. The TC's decision: revoked the operator's licence of the Appellant with effect from 1 October 2020; and disqualified the Appellant and its directors, Richard Safadi and Adrian Leigh Stewart, from holding or obtaining an operator's licence for three years from 1 October 2020 in the case of the Appellant and Mr Safadi and two years in the case of Mr Stewart. The Appellant has obtained a stay of the decision from the TC pending the resolution of this appeal.
3. The Appellant appeals the revocation of its licence and its disqualification by the TC and submits that the decision was wrong. The Appellant's grounds of appeal are that there was no reason not to permit its restricted operator's licence to become a standard national licence with an increase to five vehicles and five trailers because:
  - a) the TC reached a conclusion based in part, upon matters which were not the subject of the 2020 calling-in letter, nor were they raised evidentially during the hearing at the Public Inquiry ('PI') held on 20 August 2020. The hearing before the TC and his conclusion were therefore procedurally flawed and unfair.
  - b) the TC was wrong to conclude that the non-disclosure by directors of Mr Safadi's involvement and criminal convictions meant that he could not trust the Appellant operator to maintain compliance.
  - c) the TC provided no evidential basis for concluding that Mr Safadi was a dishonest man at the time of the 2020 PI.
  - d) as of September 2020, the TC ought to have concluded that the operator could be trusted to be compliant in the future (the Priority Freight question) because, as the TC found, the Appellant was largely regulatorily compliant, with a creditable transport manager, Mr Goggin, and had voluntarily set the record straight about the convictions of Mr Safadi.

### **Background Chronology**

4. Mr Laprell, Counsel for the Appellant provided a background chronology to this appeal, which we have adapted as follows:

2003: Richard Safadi was convicted of an insurance fraud and was sentenced to imprisonment.

2011: Richard Safadi is arrested and investigated by Her Majesty's Revenue & Customs in relation to evasion of income tax and VAT. The fraud alleged is one of unlawful evasion of the payment of VAT, failing to declare significant wealth on personal tax returns. There was also a failure to pay Corporation Tax. The amounts in total were said to be significant – in the region of £2,750,000.

2015: Richard Safadi is charged with offences of evasion of income tax, Corporation Tax and VAT between the years of 2007 and 2011. The Case involved tax evasion by failure to pay tax due on money received by three businesses operated by the defendants.

12 August 2016: Richard Safadi pleads guilty to three counts of tax evasion: Count 1, VAT evasion; Count 2, Corporation Tax evasion; and Count 3 PAYE evasion. Sentence was deferred to allow him time to make good the loss to the Revenue in the sum of £888,142.82

20 April 2017: a restricted O licence is granted to Ammanford Recycling Limited at the 2017 Public Inquiry by Traffic Commissioner Jones. The main issue at the 2017 Public Inquiry is the involvement of Richard Safadi in the proposed operator due to his involvement in revoked licences and the fact that a payment of £40,000 from Richard Safadi was apparent in the bank statements of Ammanford Recycling Limited. Adrian Stewart gives evidence at the First Public Inquiry that Mr Safadi would not be involved at any time in Ammanford Recycling Limited and that the £40,000 would be repaid over the next six months.

28 June 2017: Richard Safadi is appointed as a director of Ammanford Recycling Limited and removed on 4 July 2017.

5 July 2017: Mr Safadi receives a sentence of two years' imprisonment suspended for two years having repaid £880,000 to HMRC.

6 July 2017: Richard Safadi is re-appointed as a director of Ammanford Recycling Limited and is specified and removed several times thereafter, including in March 2018.

April 2019: a DVSA maintenance investigation into the operator found shortcomings in maintenance arrangements.

29 August 2019: calling-up letter for 2019 Public Inquiry which refers to Richard Safadi's involvement in revoked licences.

21 October 2019: second Public Inquiry before Deputy Traffic Commissioner Seculer, for which Beverley Bell Consulting Limited is instructed by the operator's solicitors, Morgan LaRoche. Beverley Bell attended the 2019 Public Inquiry to support an application for time to prepare a full operational compliance review to be carried out. At the Public Inquiry the witness statement of Wayne Williams and the Public Inquiry brief both referred to the fact that Richard Safadi was a director of the operator. Wayne William's statement dated 14 August 2019 stated at paragraph 1(d):

*"The responsible person is Adrian Leigh Stewart. He is a director and undertakes continuous professional development. Richard Safadi is also a director"*.

The 2019 Public Inquiry results in a 28-day suspension of the Operator's licence and the provision of undertakings by the operator, one of which is that Beverley Bell Consulting Limited will undertake a full operational review of the operator's compliance and submit a report to the Office of the Traffic Commissioner ('OTC') before the end of February 2020.

20 February 2020: Mrs Bell's report is submitted within the prescribed timeframe of the October 2019 undertaking prepared by Mrs Bell and Neil Lever. During the preparation of that report Richard Safadi had disclosed to Mrs Bell convictions in 2003 and the 2016-17 tax

evasion convictions referred to above to which she referred on page 6 of her report and in a separate letter dated 14 February 2020 to the OTC. That letter stated:

*'I wish to make it perfectly clear that neither Mr Jones nor myself were aware of the convictions of Richard Safadi until I conducted the compliance review [which followed a visit on 21 and 22 November 2019]. I met Mr Safadi personally and spent a long time with him. Within moments of me meeting him he told about his convictions and I asked if he had informed the OTC of them. He said that he hadn't done so as he thought the OTC was already aware of them. Mr Jones and I have discussed this we do not know if the OTC is already aware of the convictions of Mr Safadi. As stated in my report I assume that you are not.'*

4 August 2020: Call up letter issued for the 2020 PI following lifting of Covid 19 restrictions.

20 August 2020: The third Public Inquiry before Deputy Traffic Commissioner Seculer when the operator is represented by Beverley Bell, having dispensed with the services of Morgan LaRoche. The operator applied to upgrade its restricted licence to a standard national licence and to increase the vehicles on the licence to five vehicles and five trailers.

Evidence was given by Adrian Stewart, Richard Safadi and Stuart Goggin, the proposed transport manager, and the issues included the failure to disclose Richard Safadi's convictions and the fact that Adrian Stewart gave evidence at the 2017 Public Inquiry which conflicted with what actually happened regarding the involvement of Richard Safadi.

The Public Inquiry finished later than scheduled with another hearing waiting to take place and Mrs Bell opted to curtail her submissions and make written submissions feeling that she was under pressure of time although the Deputy Traffic Commissioner did say that she could take as long as she needed. The operator's case was essentially that Richard Safadi had volunteered that he had convictions to the OTC via Mrs Bell and that, because he was now being honest with the Traffic Commissioner, he could be relied upon to be trusted in the future. The Appellant submitted that the employment of Stuart Goggin had radically improved the operator licence compliance so the operator was capable of complying with the terms of the licence. The Deputy Traffic Commissioner was also invited to take account that the conduct which had led to the most recent conviction of Richard Safadi occurred between 2005 and 2011 and was therefore some nine years ago.

25 August 2020: Mrs Bell made supplementary written submissions to the TC which are addressed in more detail in the body of this decision.

1 September 2020: Decision of the Deputy Traffic Commissioner, revoking the "O" licence and disqualifying the Appellant (Ammanford Recycling Limited), Richard Safadi and Adrian Leigh Stewart from holding or obtaining an operator's licence for three years in the case of the operator and Mr Safadi and two years in the case of Mr Stewart.

### **The TC's Decision**

5. The TC's decision of 1 September 2020 ran to 13 pages. Reference to paragraphs within that decision are provided in square brackets. The TC considered the evidence at [10]-[33] and made factual findings at [34]-[54]. Thereafter, he came to the following conclusions and gave reasons which are summarised as follows:

6. The convictions against Mr Safadi were not disclosed by the Appellant, Mr Safadi or Mr Stewart to the OTC or TC in 2017 or at any time up to and including 2019 [34]-[38] and [45]-[52]. However, they were voluntarily disclosed to Mrs Bell by Mr Safadi on her audit visit in November 2019 and the directors had attended the 2020 PI to ‘face the music’ [56]. However, the non-disclosure and deception from the directors, Mr Safadi in particular, has been long term, sustained and repeated [59]. Mr Safadi had a previous licence revoked for a different company (ActionFormat Ltd) in June 2016 when disqualification was considered but not imposed on the basis he had acted out of ignorance [60]. The withdrawal of licence application by a further different company of which Mr Safadi was a director (Ammanford Limited) in August 2016 followed questions from the OTC about the non-disclosure of his possibly relevant earlier convictions and a bankruptcy order.
7. Mr Stewart’s repute was tarnished as a result of the serious breaches of undertakings and compliance requirements at the PI in October 2019. Taking into consideration his lack of transparency with the OTC his false evidence at the PI in 2019 and his failure to notify material changes there could be no doubt that his good repute would be forfeit on this occasion although no formal findings were made against his good repute [61].
8. Under the Act, the convictions of Mr Safadi and the conduct / repute of Mr Safadi and Mr Stewart as directors of the Appellant were clearly relevant to the Appellant’s fitness to hold an operator’s licence [62].
9. Having seen and heard from Mr Safadi the TC was not convinced that he was a ‘changed man’ and the level of compliance of the operator company at the time of the PI in October 2019 was poor [69]. Mr Safadi had had a licence revoked previously for regulatory failings and he could not be trusted to comply now despite the improvements leading up to the 2020 Inquiry [70]. The co-director, Mr Stewart, misled the TC in 2017 and he failed to take the opportunity to remedy the situation and disclose Mr Safadi’s involvement and background when appearing before the TC at the second PI in 2019 [72].
10. As a result of the TC’s lack of trust in the 2 directors, the TC had no confidence in the ability of the Appellant operator to comply with the operator licensing regime as Restricted or Standard licence Holders [73]. The TC considered the *Priority Freight* (T/2009/225) question: “How likely is it that this operator will, in future, operate in compliance with the operator’s licensing regime?” and answered, highly unlikely [74]. In regard to the *Bryan Haulage (no.2)* T/2002/217 question “is the conduct such that the operator ought to be put out of business?” the answer was firmly “yes” [75]. Revocation of the Appellant’s operator’s licence was both appropriate and proportionate [76]. As recently as October 2019 the Appellant was before the TC for serious regulatory failings which he found would have justified revocation at that juncture [77].
11. The TC made the revocation from 1 October 2020 under:  
Section 26(1)(h) – material change, namely that the company and its directors did not meet the required fitness;

Section 26(1)(b) – breach of the condition to notify convictions;  
Section 26(1)(c)(iii) – prohibitions issued in last 5 years;  
Section 26(1)(ca) – fixed penalties issued in last 5 years;  
Section 26(1)(e) - false statement to notify material convictions and changes;  
Section 26(1)(f) – breach of undertaking regarding keeping vehicles fit and serviceable;  
observing rules on drivers’ hours and tachographs etc; informing material changes [78].

12. In the call-up letter for the 2020 PI the Appellant operator and its directors were warned of the TC’s discretion under section 28 of the Act to order disqualification upon revocation of a licence [79]. Mr Safadi had previously had a licence revoked and both he and Mr Stewart had allowed road safety to be compromised. They had not engaged openly and honestly with the operator licensing system and the TC found them to be untrustworthy in terms of future compliance. In addition, Mr Safadi had the previous undeclared serious convictions from 2017 [80].

13. The TC considered that disqualification was appropriate and necessary, and the TC had regard to the representations made with regard to the date of Mr Safadi’s offences and the rehabilitations period in determining the length of the disqualification [81].

### **Relevant legislative provisions**

#### *Application for an operator’s licence*

14. Under section 2 of the Goods Vehicles (Licensing of Operators) Act 1995 a person shall not use a goods vehicle on a road for the carriage of goods for hire, reward, or in connection with any trade or business carried on by them unless that person possesses an Operator’s Licence. Section 13 sets out some requirements which an operator must meet when a licence is sought:

#### **‘13 Determination of applications for operators’ licences**

(1) Subject to sections 11 and 45(2), on an application for a standard licence a traffic commissioner shall consider—

- (a) whether the requirements of subsections (3) and (5) are satisfied, and
- (b) if he thinks fit, whether the requirements of subsection (6) are satisfied.

(2) Subject to sections 11 and 45(2), on an application for a restricted licence a traffic commissioner shall consider—

- (a) whether the requirements of subsections (4) and (5) are satisfied, and
- (b) if he thinks fit, whether the requirements of subsection (6) are satisfied.

(3) For the requirements of this subsection to be satisfied the traffic commissioner must be satisfied that the applicant fulfils the following requirements, namely—

- (a) that he is of good repute,
- (b) that he is of the appropriate financial standing, and
- (c) that he is professionally competent;

and the traffic commissioner shall determine whether or not that is the case in accordance with Schedule 3.

(4) For the requirements of this subsection to be satisfied the applicant must not be unfit to hold an operator’s licence by reason of—

(a) any activities or convictions of which particulars may be required to be given under section 8(4) by virtue of paragraph 1(e) or (f) of Schedule 2, or

(b) any conviction required to be notified in accordance with section 9(1).

(5) For the requirements of this subsection to be satisfied it must be possible (taking into account the traffic commissioner's powers under section 15(3) to issue a licence in terms that differ from those applied for) to issue a licence on the application in relation to which paragraphs (a) to (e) will apply—

(a) there are satisfactory arrangements for securing that—

(i) Part VI of the Transport Act 1968 (drivers' hours), and

(ii) the applicable Community rules, within the meaning of that Part, are complied with in the case of the vehicles used under the licence;

(b) there are satisfactory arrangements for securing that the vehicles used under the licence are not overloaded;

(c) there are satisfactory facilities and arrangements for maintaining the vehicles used under the licence in a fit and serviceable condition;

(d) at least one place in the traffic commissioner's area is specified in the licence as an operating centre of the licence-holder, and each place so specified is available and suitable for use as such an operating centre (disregarding any respect in which it may be unsuitable on environmental grounds);

(e) the capacity of the place so specified (if there is only one) or of both or all the places so specified taken together (if there are more than one) is sufficient to provide an operating centre for all the vehicles used under the licence.

(6) For the requirements of this subsection to be satisfied the provision of such facilities and arrangements as are mentioned in subsection (5)(c) must not be prejudiced by reason of the applicant's having insufficient financial resources for that purpose.'

9. Section 13A(2) provides some of the requirements that must be satisfied for standard licences:

**13A. Requirements for standard licences**

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

(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).

.....

*Revocation of a licence*

15. Section 26(1) of the above Act gives a TC the power to direct revocation of an operator's licence in the following terms:

**26 Revocation, suspension and curtailment of operators' licences.**

(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;
- (d) that during those five years, on occasions appearing to the commissioner to be sufficiently numerous to justify the giving of a direction under this subsection, there has been a conviction of the licence-holder or a servant or agent of his of an offence such as is mentioned in paragraph 5(j) of Schedule 2 or an issue of a fixed penalty notice or conditional offer under Part 3 of the Road Traffic Offenders Act 1988 to the licence-holder or a servant or agent of his in respect of such an offence;
- (e) that the licence-holder made, or procured to be made, for the purposes of—
  - (i) his application for the licence,
  - (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;
- (g) that the licence-holder, being an individual, has been made bankrupt or has had a debt relief order (under Part 7A of the Insolvency Act 1986) made in respect of him] or, being a company, has gone into liquidation, other than voluntary liquidation for the purpose of reconstruction;
- (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;
- (i) that the licence is liable to revocation, suspension or curtailment by virtue of a direction under section 28(4).

16. The burden of proof during a PI requires the Traffic Commissioner to be satisfied of the grounds for revocation as noted by Rix LJ in *Muck It Ltd and Others v. Secretary of State for Transport* (2005) EWCA Civ 1124:

“69. Turning back to sections 26 and 27 of the 1995 Act, I would conclude that for revocation to be possible under the former or mandatory under the latter, it is the commissioner who must be satisfied of the ground of revocation, and not the licence holder who must satisfy him to the contrary. That seems to me to be the natural way to regard both the language of those sections, and the situations contemplated in them. The context is that of a licence holder and the possible revocation of his licence. Revocation can only be done on some specified ground (section 26) or because one or other of the three fundamental requirements is no longer satisfied (section 27). Under section 26(4), the commissioner can only act if “the existence of” a ground comes to his notice. It is counter-intuitive to think of a licence holder being required to negative

the existence of a ground raised against him. So with section 27. The commissioner must revoke if “it appears to him” that the licence holder is no longer of good repute or of appropriate financial standing or professionally competent. That seems to me to mean that the commissioner must be satisfied that the requirements are no longer fulfilled. If it had been intended to place the same burden on the licence holder as had been placed on the original applicant, then the same language as that found in section 13 would have been used.”

17. Revocation must be proportionate: - the approach to proportionality was considered in 2002/217 *Bryan Haulage (No.2)*:

“In applying the *Crompton case* it seems to us that traffic commissioners and the Tribunal have to reconsider their approach. In cases involving mandatory revocation it has been common for findings to have been made along the lines of ‘I find your conduct to be so serious that I have had to conclude that you have lost your repute: accordingly, I have also to revoke your licence because the statute gives me no discretion’. The effect of the Court of Appeal’s judgment is that this two-stage approach is incorrect and that the sanction has to be considered at the earlier stage. Thus, the question is not whether the conduct is so serious as to amount to a loss of repute but whether it is so serious as to require revocation. Put simply, the question becomes ‘is the conduct such that the operator ought to be put out of business?’. On appeal, the Tribunal must consider not only the details of cases but also the overall result.”

[Emphasis Added]

18. An additional and preliminary question should also be asked as explained in 2009/225 *Priority Freight*:

“The third point taken by Mr. Laprell was that the Traffic Commissioner gave no reasons for concluding that ‘the conduct was such that the Appellant company ought to be put out of business’. There will be cases where it is only necessary to set out the conduct in question to make it apparent that the operator ought to be put out of business. We are quite satisfied that this was not such a case. On the contrary this was a case which called for a careful assessment of the weight to be given to all the various competing factors. In our view before answering the ‘Bryan Haulage question’ it will often be helpful to pose a preliminary question, namely: how likely is it that this operator will, in future, operate in compliance with the operator’s licensing regime? If the evidence demonstrates that it is unlikely then that will, of course, tend to support a conclusion that the operator ought to be put out of business. If the evidence demonstrates that the operator is very likely to be compliant in the future then that conclusion may indicate that it is not a case where the operator ought to be put out of business. We recognise, of course, that promises are easily made, perhaps all the more so in response to the pressures of a Public Inquiry. What matters is whether those promises will be kept. In the present case the Appellant company was entitled to rely on that old saying that ‘actions speak louder than words’.”

[Emphasis Added]

### *Disqualification*

19. Section 28 confers a power on a TC to order that the holder of a licence revoked under section 26 be disqualified either indefinitely or for such period as the TC sees fit, from holding or obtaining a licence.

### **28 Disqualification.**

(1) Where, under section 26(1) or 27(1), a traffic commissioner directs that an operator's licence be revoked, the commissioner may order the person who was the holder of the licence to be disqualified (either indefinitely or for such period as the commissioner thinks fit) from holding or obtaining an operator's licence; and so long as the disqualification is in force—

(a) any operator's licence held by him at the date of the making of the order (other than the licence revoked) shall be suspended, and

(b) notwithstanding anything in section 13 or 24, no operator's licence may be issued to him.

(2) If a person applies for or obtains an operator's licence while he is disqualified under subsection (1)—

(a) he is guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the standard scale, and

(b) any operator's licence issued to him on the application, or (as the case may be) the operator's licence obtained by him, shall be void.

(3) An order under subsection (1) may be limited so as to apply only to the holding or obtaining of an operator's licence in respect of one or more specified traffic areas and, if the order is so limited—

(a) paragraphs (a) and (b) of that subsection and subsection (2) shall apply only to any operator's licence to which the order applies, but

(b) notwithstanding section 5(4)(b), no other operator's licence held by the person in question shall authorise the use by him of any vehicle at a time when its operating centre is in a traffic area in respect of which he is disqualified by virtue of the order.

(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.

.....'

20. Guidance on section 28 is to be found in the case of *T/2010/029 David Finch Haulage*:

“The principles that derive from these and other cases on the point can be simply stated. The imposition of a period of disqualification following revocation is not a step to be taken routinely, but nor is it a step to be shirked if the circumstances render disqualification necessary in pursuit of the objectives of the operator licensing system. Although no additional feature is required over and above the grounds leading up to revocation, an operator is entitled to know why the circumstances of the case are such as to make a period of disqualification necessary. Additionally, periods of disqualification can range from comparatively short periods to an indefinite period, and can be confined to one traffic area or be extended to more than one. An operator subject to a period of disqualification is entitled to have some explanation, or a glimpse into the Traffic Commissioner's mind, so that he understands why a particular order for disqualification has been made. The giving of brief but adequate reasons will also promote a consistent approach, and explain why distinctions are made as between different cases and different people.”

## **The Upper Tribunal's jurisdiction**

21. Paragraph 17 of Schedule 4 to the Transport Act 1985 provides:

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

(2) On an appeal from any determination of a traffic commissioner other than an excluded determination, the Upper Tribunal is to have power-

- (a) to make such order as it thinks fit; or
- (b) to remit the matter to the traffic commissioner for rehearing and determination by the commissioner in any case where the tribunal considers it appropriate.

(3) The Upper Tribunal may not on any such appeal take into consideration any circumstances which did not exist at the time of the determination which is the subject of the appeal”.

22. The Upper Tribunal’s jurisdiction was examined by the Court of Appeal in *Bradley Fold Travel Ltd and Anor v Secretary of State for Transport* [2010] EWCA Civ 695. The court applied *Subesh and ors v Secretary of State for the Home Department* [2004] EWCA Civ 56, where Woolf LJ held:

“44....The first instance decision is taken to be correct until the contrary is shown...An Appellant, if he is to succeed, must persuade the appeal court or tribunal not merely that a different view of the facts from that taken below is reasonable and possible, but that there are objective grounds upon which the court ought to conclude that a different view is the right one...The true distinction is between the case where the appeal court might prefer a different view (perhaps on marginal grounds) and one where it concludes that the process of reasoning, and the application of the relevant law, require it to adopt a different view. The burden which an Appellant assumes is to show that the case falls within this latter category.”

23. The Tribunal is not required to rehear all the evidence by conducting what would, in effect, be a new first instance hearing. Instead it has the duty to hear and determine matters of both fact and law on the basis of the material before the Traffic Commissioner but without having the benefit of seeing and hearing the witnesses.

24. The Appellant ‘assumes the burden’ of showing that the decision appealed from is ‘wrong’.

25. In order to succeed the Appellant must show not merely that there are grounds for *preferring* a different view but that there are objective grounds upon which the Tribunal ought to conclude that the different view is the right one. Put another way it is not enough that the Tribunal might *prefer* a different view; the Appellant must show that the process of reasoning and the application of the relevant law *require* the Tribunal to adopt a different view.

26. In relation to sanction we note the guidance on proportionality provided in *Bryan Haulage No.2* 2002/217:

“That if loss of repute is found the inevitable sanction is revocation, possibly followed by an application for a fresh licence which may or not be granted. There must therefore be a relationship of proportionality between the finding and the sanction, and that relationship has a direct bearing on the approach to be adopted in any set of circumstances to the question of whether or not the individual has lost his repute.”

27. That is the approach which we have followed in considering this appeal.

## **The Appellant's submissions**

### *Oral submissions*

28. In his oral submissions, Mr Laprell suggested that there were four reasons that the TC relied upon to revoke the Appellant of its operator's licence and impose disqualification.
- a) A finding that the Appellant's director, Mr Safadi, had been involved with the two other companies – Ammanford Ltd and Actionformat Ltd – which had had previous licences withdrawn or revoked. Mr Laprell submitted that the matter was not notified to the Appellant in advance of the hearing nor put to the witnesses during the PI in 2020. Unfortunately, there had been no transcript of the PI in August 2020 and this was significant – the handwritten notes supported the Appellant's position. He therefore challenged this finding as being procedurally flawed – and this had been prefigured in the written grounds of appeal. It is addressed under Ground 1 below.
  - b) A finding that there had been misrepresentations by the directors in 2017 when the licence was first granted. Mr Laprell submitted that at the 2017 PI, Mr Stewart gave evidence that Mr Safadi was not involved in the company and purely lending it money and that this would be repaid. Mr Laprell submitted that the TC erred in his decision in finding that the fact Mr Safadi subsequently became a director a few weeks later (in June 2017) inevitably meant that Mr Stewart had lied and misled the TC at the PI in April 2017. Mr Laprell submitted the TC failed to consider whether Mr Stewart may have been giving honest evidence in April 2017 based on his belief at that time that Mr Safadi would not become a director but then circumstances subsequently changed. We address this as Ground 2 below.
  - c) A finding that there had been non-disclosure of Mr Safadi being a director of the Appellant at the 2019 PI. Mr Laprell submitted that the fact of Mr Safadi's directorship had been disclosed in several places in the papers for the 2019 PI and there had been no material non-disclosure. Likewise, he submitted that there had not been a material non-disclosure of Mr Safadi's conviction of 2017 in 2019 because he volunteered this to his representative, Beverley Bell in November 2019. This had been raised in his written grounds of appeal and we address this as Ground 3 below.
  - d) The convictions of Mr Safadi in 2002-2003 for insurance fraud and in 2016 for tax fraud relating to the years 2007-2011.
29. Mr Laprell submitted that the errors that the TC made in relying on the first three reasons (a)-c) or Grounds 1-3) were sufficient to demonstrate the threshold for revocation had not been met. Therefore, he submitted that the case should either be reheard (by a different TC) or the Tribunal should substitute its own decision and exercise our own judgment only in relation to matters that were not in dispute and did not depend on oral evidence.
30. Mr Laprell also made a general challenge to the finding that Mr Safadi was not a 'changed man', that the TC had not made a forward looking assessment in relation to the Appellant and the proportionality of the TC's decision was undermined by a failure

to consider the balancing considerations when weighing the *Bryan Haulage* and *Priority Freight* questions in the balance. We address this as Ground 4.

### *Ground 1*

31. Mr Laprell submitted that the TC reached a conclusion based in part, upon matters which were not the subject of the 2020 calling-in letter, nor were they raised evidentially during the hearing at the Public Inquiry ('PI'). The hearing and its conclusion were therefore procedurally flawed and unfair.
32. He submitted that in paragraph 41 onwards of the Decision, the Deputy Traffic Commissioner referred to Actionformat Limited and Ammanford Limited. They had been referred to in the calling-in letter to the October 2019 Public Inquiry but not in the calling-in letter for the August 2020 Public Inquiry. The issues arising from the revocation of an O licence granted to Actionformat Limited and an application for an O licence for Ammanford Limited were never addressed in evidence at the 2020 Public Inquiry, despite Richard Safadi giving evidence. The operator was therefore led to believe that Richard Safadi's involvement in Actionformat Limited and matters relating to Ammanford Limited (as opposed to Ammanford Recycling Limited) were not issues in August 2020 and the operator was deprived of the opportunity, as was its advocate, of addressing those issues.
33. Mr Laprell therefore submitted that the Public Inquiry in August 2020 was procedurally flawed and therefore unfair in that a matter was taken into account by the Deputy Traffic Commissioner which the operator had reasonably believed was not an issue of concern and to which the Deputy Traffic Commissioner did not refer in the calling-in letter or during evidence at the 2020 Public Inquiry.
34. He accepted that any issues relating to Actionformat Limited or Ammanford Limited had been on the agenda of issues for the 2019 Public Inquiry before the same Deputy Traffic Commissioner which had concluded with the suspension of the licence and undertakings already referred to. Accordingly, the operator and its advocate had no reason to believe that they needed to address those issues at the 2020 Public Inquiry. The 2020 Public Inquiry therefore failed to achieve the procedural fairness required as set out in *CM Coaches* [2019] UKUT 0254 where the Upper Tribunal said at paragraph 65(e) in relation to Michael Hazell:-

*"The traffic commissioner found that the use of Colin Holt's log-in details by Mr Hazell was 'utterly deceitful'. Mr Hazell had given an explanation that having used log-in details once, they were then stored and did not require any further inputting when Mr Hazell wished to log on to the VOL system. The TC did not question Mr Hazell's explanation and in the circumstances, it is unfair to determine that the use of such was 'utterly deceitful' without putting that allegation fairly and squarely to Mr Hazell"*

and at paragraph 67(f) in relation to CM Coaches:-

*"There is no question that the nomination of Mr Gray as transport manager was flawed as a result of Mr Hazell signing the form as a director when he was not and that reflects badly on him but the TC did not question Mr Gray about this or about his understanding of when Mr Hazell had ceased to become (sic) a director and why it was that he thought*

*that Mr Hazell could nominate him. It follows that the TC's finding that Mr Gray and Mr Hazell had colluded in Mr Gray's nomination cannot stand unless and until Mr Gray has been challenged on this issue".*

35. Mr Laprell relied on similar observations in *TR Benney Transport Limited* [2018] UKUT 0277 at paragraphs 18 and 23 and in *Midland Container Logistics Limited, James Donlon and DK Barnsley & Sons Limited* [2020] UKUT 0005 at paragraphs 45(a), (b) and 47. Therefore, he submitted that a matter which turned out to be a serious concern to the Deputy Traffic Commissioner and was a matter relevant to Mr Safadi's honesty and integrity was never put to any witness.
36. He submitted that the Deputy Traffic Commissioner simply stated that he had checked the 'O' licence history of the two licences of Actionformat Limited and Ammanford Limited. The TC was duty-bound to put to Messrs Safadi and, to a lesser extent, Stewart, the matters referred to in paragraphs 42-45 of the Decision for them to respond, but did not do so. The same point arises in relation to paragraph 60 of the Decision.
37. Mr Laprell relied in particular on the fact that there is no transcript of any part of the Public Inquiry of August 2020, despite the attempts to enhance the quality of the recording. The best that could be provided is the Deputy Traffic Commissioner's notes, which are not easy to decipher. In fact, there is a typescript version of those notes. The absence of a transcript was considered in appeal T/2018/19 *T.R.Benney Transport Limited* [2018] UKUT 0277 ACC at paragraphs 23-24:-

“23. We are grateful to the TC for supplying his notes, however, they are more in the nature of an aide memoire, than a record of proceedings. We make no criticism of the TC in this regard, but the fact remains that we are inhibited from considering the merits of Mr Backhouse's refined submission because we have only a partial record of the PI. The Appellant's oral evidence was central to the fair determination of the PI; yet there is no transcript of his evidence, other than the short closed session, which dealt with finances. As we have indicated, there is no live issue about financial standing. This appeal concerns matters which could and should have been put to the Appellant in the public session, which was not recorded. We cannot be satisfied, from the TC's notes that all relevant matters were put to the Appellant.

24. The Upper Tribunal may be unable to consider an Appeal fairly, in the absence of a transcript of the PI (*MME Services Limited* 2004/315 at paragraph 3). In some cases, the absence of a transcript may present no problem in the Tribunal. If a TC makes findings of fact, which do not depend to any significant degree on oral evidence, or where oral evidence would make no difference, the appeal to the Tribunal may proceed with no unfairness. However, in this case, the honesty of the Appellant was in issue. It is quite impossible to say that the Appellant's oral evidence to the PI was irrelevant: the TC's duty was in part to assess the Appellant's honesty by hearing him give evidence.
38. Mr Laprell submitted that the essence of that decision is that in a case which is a matter of pure law, or where the oral evidence is not relevant to findings of material fact, the absence of a transcript will not matter. However, in a case where a witness's honesty is to be considered, the absence of a transcript of that person's evidence will amount to a procedural flaw, which will require the Upper Tribunal to either remit the case for re-consideration of the material issues or, if the Upper Tribunal considers that it has sufficient undisputed material, to re-exercise the jurisdiction and substitute its own decision.

39. He submitted that in the present case, the honesty, or extent of dishonesty, of the Directors at the date of the Public Inquiry and in the past was very much in issue, with the result that the decision is procedurally flawed. In summary:-

Either:-

- (i) The companies were not referred to at all during the PI, in which case the Decision is unsustainable; or
- (ii) They were referred to but not put to the witnesses (Mr Safadi in particular), in which case the Decision is procedurally flawed; or
- (iii) They were put to the witnesses, but we have no idea what the responses were.

## *Ground 2*

40. Mr Laprell submitted that the TC was wrong to find that Mr Stewart had given misleading evidence at the PI in 2017 that Mr Safadi would have no involvement with the Appellant and failed to disclose Mr Safadi's intended involvement. Mr Laprell submitted that the TC erred in his decision in finding that the fact Mr Safadi subsequently became a director a few weeks later (in June 2017) inevitably meant that Mr Stewart had lied and misled the TC at the PI in April 2017. Mr Laprell submitted the TC failed to consider whether Mr Stewart may have been giving honest evidence in April 2017 based on his belief at that time that Mr Safadi would not become a director but then circumstances subsequently changed.

41. The transcript of the 20 April 2017 PI reveals three points at which Mr Stewart gave evidence to the TC that Mr Safadi would have no involvement in the Appellant:

'00:10:00

TC: Assuming that is what occurs and assuming the outcome of today is favourable, beyond that point in time, moving forward, would Mr. Safadi have any indirect, or direct involvement in Ammanford Recycling Limited?

Mr Stewart: No. He would not.

00:13:30

TC: So what's the rational for him? What's the logic for him lending the money then? Is it because that way he can get rid of the asset?

....

So Mr Safadi has no interest in the business, and will have no interest in the business...

Mr Stewart: He will have no interest.

00:15:00

TC: So you're saying Mr Safadi has no interest, and will have no interest in the business other than the fact that he has loaned some monies, which will be repaid without interest?

Mr Stewart: Correct.

TC: Is he being prosecuted, or something, by Natural Resources Wales? Are there some proceedings why he's wanting out?

Mr Stewart: There's a section 36 that's in place that is currently being dealt with.....'



42. Mr Laprell submitted that the TC failed to consider that there were two possible conclusions regarding Mr Stewart's evidence. The first is that Mr Stewart gave honest evidence that Mr Safadi would not be involved in the Appellant and there was a change of heart and then a failure to tell OTC and failure to register change of circumstances. The second is that Mr Stewart told a pack of lies to the TC in 2017 and it was always intended from the beginning that Mr Safadi would become a director of the Appellant. The TC had found that the second was the case and that Mr Stewart lied at the PI in 2017. However, Mr Laprell submitted that the TC never put to Mr Stewart at the PI in 2020 the two alternatives and gave him an opportunity to offer an innocent explanation for his evidence which he might have given.

### *Ground 3*

43. Mr Laprell submitted that the TC's decision really turned on the issue of whether the Appellant operator could be trusted to be compliant in the future, having said in 2017 that Mr Safadi would not be involved in the business, having not disclosed his convictions, when he was involved as a director, and having not mentioned his involvement in 2019.
44. The last of those non-disclosures forms the basis of paragraphs 35 and 72 of the TC's decision. In fact, however, the DTC's brief for the 2019 PI made perfectly clear Mr Safadi's involvement in the brief summary, the vehicle examiner's statement and in the Companies House documentation included. Any Operator, or their advocate, would assume in those circumstances that there was nothing to disclose in relation to Mr Safadi being a director:- the OTC was clearly aware of it.
45. Mr Laprell accepted that the Upper Tribunal did not have in the papers the brief from the 2019 Public Inquiry but the Appellant's solicitors supplied these in their entirety. The relevant pages in which the existence of Mr Safadi as a director of the Appellant was disclosed were at:-
- Page 4, three paragraphs from the end;  
Page 7, sixth bullet point;  
Page 24-28 for the Companies House information;  
Page 3 of the Public Inquiry witness statement of Wayne Williams, which is an unpaginated addition to the brief, served under cover of a letter of 13th September 2019 and in particular paragraph 1(d).
46. Therefore, he submitted that the TC erred in deciding that Mr Safadi's involvement in the Appellant had not been disclosed in 2019.

### *Ground 4*

47. Mr Laprell submitted that the TC was wrong to conclude that the non-disclosure by directors of Mr Safadi's involvement and criminal convictions meant that he could not trust the Appellant operator to maintain compliance.
48. The Deputy Traffic Commissioner concluded in paragraph 59 of the Decision that the non-disclosure and deception by the directors reflected on their long-term commitment to maintain compliance when the threat of the Public Inquiry had gone away. Mr Laprell submitted that this conclusion is unjustified and unfair.

49. He submitted that the Deputy Traffic Commissioner had already observed in paragraph 54 of the Decision that the records and the compliance review report showed that significant improvements had been made since February 2020 (perhaps it should read October 2019) and that the operator had acted on the recommendations of Mrs Bell. However, no Public Inquiry was pending at the time of the review or at all between October 2019 and 4 August 2020 because Deputy Traffic Commissioner Seculer did not adjourn the October 2019 Public Inquiry to obtain Mrs Bell's operational review. The October 2019 Public Inquiry had been concluded. It was not therefore correct that the improvement in compliance had occurred when there was an ongoing threat of a Public Inquiry.
50. In addition, the Deputy Traffic Commissioner ought to have given more weight to the fact that the operator had volunteered the information about Mr Safadi's convictions to Mrs Bell in the knowledge that she would include them in the information which she passed to the Office of the Traffic Commissioner.
51. Mr Laprell submitted that against the background of the factual history, the Deputy Traffic Commissioner ought to have concluded that the operator and its directors could be trusted in the future as the operator was sufficiently compliant and because it had volunteered to disclose the convictions referred to by Mrs Bell.
52. In paragraph 68 of the Decision, the deputy traffic commissioner stated: "*Having seen and heard from Mr Safadi I am not convinced at all that he is a changed man and the level of compliance of the operator company at the time of the Public Inquiry in October 2019 was poor*". In so stating, he submitted that the Deputy Traffic Commissioner reversed the burden of proof as set out in *Muck-It* by expressing himself as he did and by apparently placing the onus on Mr Safadi to demonstrate that he was changed whereas it was up to the Deputy Traffic Commissioner to establish evidentially that he remained a dishonest man at the time of the Public Inquiry in August 2020 and, based upon such evidence, to make a finding one way or the other.
53. In fact, there was no evidence that Mr Safadi had acted dishonestly since 2011, nine years earlier. All the matters set out in paragraphs 68-70 of the Decision are matters which were or ought to have been considered at the 2019 Public Inquiry when the Deputy Traffic Commissioner knew or ought to have known that he was a director of the company as it was in Mr Williams' statement and in his brief. Apparently he did not appreciate that fact as is apparent from the contents of paragraph 72 of this Decision in which he blamed Mr Stewart for failing to take the opportunity to remedy his misleading of the Traffic Commissioner in 2017 by disclosing Mr Safadi's involvement when he appeared before the Deputy Traffic Commissioner in October 2019.
54. In fact, the only relevant event which occurred between the 2019 and 2020 Public Inquiries was a significant improvement in operational compliance. The Deputy Traffic Commissioner ought to have been aware that Mr Safadi was involved as a director of the company at the Public Inquiry in 2019 as it was set out in paragraph 1(d) of the statement of Wayne Williams dated 14 August 2019. In the light of that, Mr Safadi's declaration of his 2016 conviction, and the improved achievement of operational compliance, the Deputy Traffic Commissioner ought to have concluded that, despite the history, the operator could be trusted in the future.

55. In relation to the *T.R.Benney* Decision and the lack of a transcript, Mr Laprell submitted that this is a case in which there should be a re-hearing. In the Decision the conduct of Messrs Stewart and Safadi and how it affects the willingness, or otherwise, of the Deputy Traffic Commissioner to trust them to be compliant in the future, everything in reality depends upon the assessment of their evidence. Whatever someone has done in the past, if the issue being addressed is the Priority Freight question, an assessment of their evidence is vital and, therefore, the absence of a transcript creates an impossible obstacle to the Decision being sustained.
56. Alternatively, a review of the Decision ought to lead to the conclusion that the Priority Freight question should have been answered positively, in the light of, in particular: a) dishonesty on the part of Mr Safadi occurred in or before 2011; b) the failure to disclose Mr Safadi's involvement in 2019 was understandable and not misleading in the light of the contents of the DTC's brief; c) Mr Safadi's ultimate disclosure, via Mrs Bell, which was entirely voluntary, there being no suggestion that the OTC, or DVSA had become aware of Mr Safadi's convictions, is very strong evidence to support the contention which forms the thrust of Mrs Bell's closing oral and written submissions, that the Operator can be trusted in the future.
57. That proposition is reinforced by the fact that regulatory compliance had so improved since the 2019 Public Inquiry and Mrs Bell's report dated February 2020, but covering the period at the end of 2019, and there were effective compliance systems in place and an able and effective Transport Manager running them.
58. In those circumstances, the revocation was of a licence of an Operator, who was currently regulatorily compliant, whose indiscretions as to information given to the Traffic Commissioner were historical and substantially remedied by the voluntary disclosure made by Mr Safadi in 2019. The matters which were the subject of that disclosure had all occurred not later than 2011 and probably over the 4-5 years prior to that and could no longer, in themselves, be taken to reflect Mr Safadi's character as at the date of the Public Inquiry.

## **Analysis and determination**

### *Ground 1*

59. We are not satisfied that the TC's decision was procedurally flawed by a failure to give the Appellant, in particular Mr Safadi, an opportunity to give evidence about Mr Safadi's previous directorship of two companies one who had its licence revoked (Actionformat Ltd) and the other whose application for a licence was withdrawn (Ammanford Ltd).
60. While we accept that there was no mention of these two companies, Actionformat Ltd and Ammanford Ltd, in the 2020 call up letter (sent on 4 August 2020), there was mention of them in the case summary which was within the brief for the 2020 PI and was sent to the Appellant in advance of the hearing on 20 August 2020. It was sent further to the calling-in letter dated 4 August 2020 which set out the key issues, allegations and evidence that would be considered by the TC at the PI.

61. The case summary for the 2020 PI referred to the original application for a vehicle operator licence dated 27 September 2016 and that the TC had noted that there were links to a variety of operators and that the TC had wished to address the links at a Public Inquiry. The case summary provided links to various operators including these two companies in the following terms:

‘.....**Actionformat Ltd:** The Traffic Commissioner has noted that the correspondence address and operating centre on this application are the same as Actionformat Ltd, whose licence was revoked. The Traffic Commissioner will have regard to that company’s attendance at a public inquiry on 22 June 2016 at which the revocation order was given as well as the disqualification of their sole director Richard Safadi. It is also noted that Companies House records show that Mr Safadi was a previous director of Ammanford Recycling Ltd.

....**Ammanford limited;** The Traffic Commissioner has noted that the correspondence address and operating centre on this application are the same as Ammanford Ltd, whose application for an operator’s licence was later withdrawn. It is noted that Richard Safadi was also the company director named on that application.’

62. The case summary then went on to set out the results of the 2017 PI and the 2019 PI and the basis of the referral for the 2020 PI.

63. The TC’s decision of 1 September 2020 addressed the two companies at [41]-[45] under the heading of ‘Findings of Fact’. In his Decision, the TC stated:

“as indicated during the Public Inquiry, I have checked the operator licensing records in respect of two licences connected with Mr Safadi:

- i. Action Format Limited – OG1088721;
- ii. Ammanford Limited – OG1147044”.

64. The TC then reviewed those histories at paragraphs 42-44 inclusive and, at paragraph 45 onwards, commented on that history and then on various other matters relating to declarations to the OTC in the following terms:

‘42. In the case of Actionformat Limited this licence was revoked at a public inquiry before me on 22<sup>nd</sup> June 2016 for numerous and significant regulatory failings. Whilst Mr Safadi was the sole director of the company in 2016.....The Case Summary states, incorrectly, that Richard Safadi was disqualified but at that hearing in June 2016, I accepted that the failure to notify his appointment as a director and the unauthorised use “had been a question of ignorance rather than deceit”, justifying non-disqualification.

43. In respect of Ammanford Limited, the application for the Restricted Licence in this case was intended to remedy the revocation of the Actionformat Limited licence on 22 June 2016....

44. The application was made on 25 July 2016 and withdrawn following a request made by the Central Licensing Unit for confirmation as to whether Mr Safadi had any previous convictions and whether he had failed to declare a bankruptcy order from 1994 which was on OTC records. The response from Mr Safadi’s transport consultants on 2 August 2016 states:

*“The information supplied to myself as a Transport Consultant of ‘Ammanford ltd’ was submitted on the application provided, I have since discovered that not all of the information*

*was correctly supplied to myself to have been able to input on the application form received by you.*

*I have spoken to Mr Richard Safadi regarding the application and he has agreed to withdraw the application, I will not be assisting this company any further with regards to this application.....*

.....

45. The history of these applications further confirms that Mr Safadi was fully aware of the duty to declare directorial appointments and raises further doubts as to his assertion that he failed to declare his convictions “on legal advice” in April 2017.’

65. The TC also returned to the topic of the Actionformat Ltd licence revocation and Ammanford Ltd application withdrawal at [60] of the decision under the heading “Considerations and Decisions”:

‘60. Mr Safadi has had a previous licence revoked in June 2016 when disqualification was considered but not imposed on accepting that he had acted out of ignorance, rather than by deceit, in operating his licence under the wrong trading entity. There can be no such concession on this occasion, and I note that the withdrawal of the Ammanford limited licence application in August 2016 followed questions from the OTC about the non-disclosure of possibly relevant earlier convictions and a bankruptcy order.’

66. As Mr Laprell submitted, there is an issue as to whether the Deputy Traffic Commissioner raised Actionformat Limited or Ammanford Limited during the hearing in evidence and gave Mr Safadi an opportunity to comment on his involvement with the companies and the history of the revocation and withdrawn application respectively.

67. In the Deputy Traffic Commissioner’s handwritten notes of the hearing, Actionformat Ltd alone is mentioned as having its licenced revoked and there being evidence given to TC Jones. This reference within the notes is not in the section on evidence, but in a section headed as being Mrs Bell’s opening submission. It is difficult to follow whether it purports to be something which Mrs Bell said, or a note by the TC for his own reference. There appears to be no reference to Actionformat, or Ammanford Limited in the section of the Decision headed “Evidence” at [10]-[33], nor in the DTC’s handwritten or typed notes of evidence and in particular, that of Mr Safadi.

68. The TC’s decision at [41] claims the history of the two companies was referred to during the hearing - ‘As indicated during the Public Inquiry’, but the TC does not address it in the summary of the evidence within the decision.

69. Therefore, there is very limited mention of the two companies in the DTC’s notes of evidence and there is no transcript of the PI to determine whether they were mentioned and, if so, whether the witnesses were referred to the issues which those licences raised and no record of what their evidence was in relation to them.

70. We accept the submission that there is limited evidence that those two companies and their licences were referred to during the PI in 2020 and that the Operator was offered an opportunity to say anything about them. That raises an issue as to whether the Deputy Traffic Commissioner’s concerns regarding those licences, were put to the operator.

71. We are prepared to assume, in the unfortunate absence of a transcript and for the sake of the Appellant's argument, and contrary to what the TC specifically stated in his decision, that the two companies and history of licence revocation / withdrawal were not addressed in any meaningful way in evidence during the PI in 2020. We are also prepared to accept that if, this evidence was to be relied upon against the Appellant by the TC in his decision, then natural justice required that the Appellant and Mr Safadi should have been given the opportunity to give evidence about it.
72. However, when considering whether there has been a procedural flaw which was in any way material to the TC's decision, it is important to bear in mind the following.
73. First, the history of the two companies and Mr Safadi's involvement in their respective licence revocation and withdrawal was relied upon by the TC in a limited way at [45] of the decision. This was in support of the finding that Mr Safadi 'was fully aware of the duty to declare directorial appointments and raises further doubts as to his assertion that he failed to declare his convictions "on legal advice" in April 2017'.
74. Given that the Appellant's own representative accepted in her post hearing submissions dated 25 August 2020, which are addressed in detail below, that there was a deliberate course of action on behalf of both directors, Mr Safadi and Mr Stewart, not to declare or disclose Mr Safadi's directorship or convictions at the time of application and PI in 2017, throughout 2018 and at the PI in October 2019, the point cannot be said to be seriously in issue.
75. The finding that Mr Safadi was fully aware of his duty to disclose and failed to do so was an unimpeachable finding of the TC. It was supported by a range of evidence and findings, such as the deliberate manipulation and timing of Mr Safadi's appointment and reappointment in June and July 2017. The TC gave ample reasons for rejecting the evidence of Mr Safadi and Mr Stewart that: they were unaware of the obligation to disclose the directorial appointments of Mr Safadi to the Appellant and his previous convictions; and that Mr Safadi failed to declare his convictions "on legal advice" in April 2017.
76. The reasons for rejecting this evidence are provided at [46]-[53] of the decision. They include inconsistency of Mr Stewart's, Mr Safadi's and Mr Goggin's evidence on the topic, Mr Safadi's deliberate choice not to attend the PI in October 2019, and his personal failure to rectify the non-disclosure and his stated disagreement with the advice - see [47]-[49] of the decision. The TC also reasonably relied on the fact that the directors were experienced and mature, and in the unlikely event they ever received advice from a solicitor to conceal matters, they would have known to ignore it given the clear guidance given to directors and operator's when applying for a licence.
77. We find nothing wrong in this reasoning and would add that the evidence of Mr Stewart and Mr Safadi on this topic was inherently implausible and improbable and the stated reason given by Mrs Bell in her letter dated 14 February 2020 for the non-disclosure of the convictions was that Mr Safadi believed that the TC was already aware of them, a further inconsistent account.
78. In all the circumstances, there was an admission by the Appellant's representative that there was deliberate deception in relation to Mr Safadi's directorship of the Appellant

and his previous convictions. There was a further full set of reasons provided by the TC for finding there to be a deliberate deception.

79. Therefore the history of the previous licence withdrawal and revocation for two other companies was immaterial to the finding and it is inevitable that the TC would have come to the conclusion that he did at [45] even if the history of the other two companies were not relied upon.
80. Second, the revocation and withdrawal relating to the licences for two previous companies are ones of undisputed fact as set out at [41]-[45]. The TC fairly set out that he did not suggest dishonesty in relation to the licence revocation in relation to Actionformat Limited. The matters leading to the withdrawal of the Ammanford Limited withdrawn licence application were ones raised by Mr Safadi's own transport consultants in 2016. The TC addressed this topic in a fair and even handed manner.
81. Third, Mr Laprell has not suggested an alternative, mitigating or innocent account or explanation that Mr Safadi would have given about the history of the licences for these two companies even if he had been asked about them during the hearing.
82. Fourth, the previous companies were addressed in the 2020 Case summary and the handwritten notes suggest the matter was at least raised by Mrs Bell in opening representations. It cannot be said that the Appellant had no notice of the relevance of the issue to proceedings. The call up letter itself does not have to address all the evidence to be relied upon.
83. Fifth, the history of the two companies was addressed at 2019 PI and in the call-up for that PI. The Appellant could not assume that this topic would no longer be relevant as the Appellant submits given that the 2019 PI was postponed for the further PI in 2020.
84. We accept that the TC returned to the topic of the two companies at [60] of the decision in the terms we have set out above. We are satisfied that this reasoning was not material to the decision and it is inevitable the TC would have come to the same conclusion without needing to rely on this history.
85. Therefore we are satisfied, that even if there was any procedural flaw in the manner in which the history of the two companies was considered in evidence at the PI in 2020, and Mr Safadi was not invited to comment on this history, the conclusions of the TC on the relevant issues were: either undisputed or not seriously disputed; amply supported by other evidence; and no alternative explanation or account is now provided that would undermine the TC's conclusions.
86. It is inevitable the TC would have come to the same conclusion regarding revocation and disqualification irrespective of the findings at [45] and [60] as they were not material and only supplementary to the main reasons he relied upon in making his decisions. The main reasons the TC relied upon for ordering revocation and disqualification are addressed below in relation to Grounds of Appeal 2-4.
87. Therefore, this is not a case where the absence of a transcript of the 2020 PI has any material effect on deciding whether the TC came to the wrong conclusions.

## *Ground 2*

88. The TC found that Mr Stewart had deliberately misled (lied to) the TC at the April 2017 PI in stating three times that Mr Safadi would have no involvement in the business and failed to disclose that Mr Safadi was to be involved in the business. At [37] & [52] of the decision the TC found in respect of Mr Stewart and Mr Safadi:

‘37. In fact the transcript revealed that on three occasions Mr Stewart stated categorially that Mr Safadi had no interest in the business and would have no future direct or indirect interest in the business. Those statement were patently false as within 9 weeks of the Public Inquiry, Mr Safadi was back on Companies House records as a director and Mr Stewart admitted that Mr Safadi’s involvement had been deliberately concealed at the Inquiry.

.....

52. I take a particularly serious view of their lack of openness with Traffic Commissioner when giving evidence at Public Inquiries. Witnesses are warned that they are not on oath but that false evidence may count against their repute. It certainly does in Mr Stewart’s case when on 3 occasions in April 2017, he stated categorially that Mr Safadi would have no direct or indirect involvement in the running of the operator company. Of course, Traffic Commissioner Jones was concerned about Mr Safadi’s potential involvement because of his past licensing history and an apparent injection of £40,000 from Mr Safadi. His concern would have been all the greater had he know that Mr Safadi had pleaded guilty and was awaiting sentence at Swansea Crown Court for serious fraud offences.’

89. We are satisfied that the TC did not err and was not wrong in making these findings. The TC was entitled to find that these were three deliberate lies given by Mr Stewart at the time of 20 April 2017 PI and his evidence did not constitute an honest and mistaken belief that Mr Safadi would have no involvement in the Appellant but which subsequently turned out to be wrong. This much was admitted in evidence by Mr Stewart at the 2020 PI. We are satisfied that the TC did not err or breach natural justice by failing to question Mr Stewart at the 2020 PI about whether there was an innocent explanation for his evidence in April 2017. It was admitted in evidence and was not in issue in the case.

90. It was further accepted by the Appellant’s representative, Beverley Bell CBE a former Senior Traffic Commissioner, that Mr Stewart’s evidence in 2017 and 2019 had been deliberately misleading regarding both Mr Safadi’s intended connection with the Appellant and non-disclosure of his previous convictions.

91. In her written submissions dated 25 August 2020 following the PI on 20 August 2020, Beverley Bell CBE, accepted the following:

‘13. The presiding TC has now heard evidence from Adrian Stewart and Richard Safadi and , again whilst their evidence was unpalatable resulting in the TC quite rightly being extremely annoyed with them, it was honest and neither of them sought to resile from their admissions either in their evidence in chief or when questioned by the TC. Both directors admitted that whilst there were other reasons for Mr Safadi being specified and de-specified as a director at Companies House the main reason was the fact that this would jeopardise both the original licence application and the licence continuation after grant.

14. In my respectful submission, this is highly relevant to the position going forward. Both Mr Stewart and Mr Safadi knew this would be the case when the convictions were reported to



the OTC and they knew the licence would be in jeopardy.....Instead, they chose to “face the music” by attending the inevitable public inquiry and finally accounting to the TC admitting their serious failings.....

....

16. For the avoidance of doubt, I wish to make it clear to the TC that it is accepted the failures of disclosure by both directors regarding Richard Safadi and his convictions not only strike at the every heart of the trust that is both a prerequisite at licence application stage and a continuing requirement during the life of the licence but also are very serious non-disclosures. These were not [non-] disclosures by omission or ignorance, there were disclosures intended to mislead the TC at the time of the grant of the licence. They were deliberate they were ongoing and it is accepted they would wholly justify the revocation of the licence. However the situation here is that the material non-disclosures were reported to the OTC by the operator itself with the full knowledge and agreement of both directors through the submission of the compliance review report and also a full and frank admission was made to the OTC and therefore the TC in February 2020 when the report was submitted. The TC is asked to specifically note that the report was completed in mid-December 2019 but that I [Beverley Bell] was out of the country on an extended foreign trip from then until the end of January 2020 hence the submission of the report to the OTC in mid-February 2020.

17. I therefore respectfully submit that the fact that the directors effectively self-referred these matters shows they can be trusted going forward to comply and to notify all material change.

.....

19. I submit that whilst the answer to the “Bryan Haulage” question of whether the conduct of both directors is such that the operator should be put out of business is “yes”, the answer to the Priority Freight question is that the operator through its two directors and its transport manager demonstrates very clearly that the operator is now compliant and will continue to be for the life of the licence.

.....’

[Emphasis Added]

92. There was simply no suggestion that Mr Stewart had an innocent explanation for his evidence at the 20 April 2017 PI. His evidence was accepted to be deliberately misleading. It was not in issue at the appeal – the Appellant / Mr Stewart did not suggest the alternative ‘innocent explanation’ to be their case even though Mr Laprell has attempted to rely upon it. There was a full admission of this at paragraph 13 of Beverley Bell’s letter above. There was a partial admission to this during the hearing recorded at [40] of the decision: ‘Mr Safadi admitted that he had manipulated the timing of directorial appointments / termination on Companies House records in order to obtain bank accounts although this was said to be on the advice of Santander’.
93. The TC’s findings were supported by further evidence and reasons at [46]-[51] of the decision which we have addressed above.
94. There was further incontrovertible evidence such as the pattern of Mr Safadi’s appointment as director of the Appellant two months after the first PI of 20 April 2017, on 28 June 2017 and his removal on 4 July 2017, the day before his sentencing at Swansea Crown Court on 5 July 2017 and then reappointment as director on 6 July 2017, the day after (followed by further removal and reappointment again in March 2018). This speaks for itself as a deliberate and attempted manipulation of the system by Mr Stewart and Mr Safadi to avoid Mr Safadi being named as a director of the Appellant so that the licence would be granted in April 2017 and continued thereafter

(with a consistent pattern of failing to notify the OTC of Mr Safadi's involvement in the company).

95. Therefore, there was no breach of natural justice or procedural safeguards in not putting to Mr Stewart at the 2020 hearing the possibility that he had been honest but mistaken rather than lying in his 2017 evidence. The TC's findings and conclusions were not wrong.

*Ground 3*

96. The Appellant relies upon the fact that Mr Safadi's directorship of the Appellant had been disclosed in papers for PI in October 2019. It was mentioned in four places including in: the Public inquiry Brief in the background section; in the Call up letter of 29 August 2019 which notes he was appointed as a director in March 2018 – and asks the TC to address why the company failed to notify the OTC of the directorial change; and in the report of Wayne Williams, the Traffic Examiner.
97. We are not satisfied that this demonstrates any error on the part of the TC in 2020 in making the findings that both directors and the Appellant failed to notify the TC or OTC of Mr Safadi's directorship of the Appellant and previous convictions at any time from 2017 to 2019.
98. Again, it was not in dispute that neither the Appellant, Mr Safadi nor Mr Stewart had made the necessary disclosures. This was admitted to be a deliberate non-disclosure of both Mr Safadi's directorship and his convictions from 2017 up to 2019 as was accepted by Beverley Bell in her letter of 25 August 2020 which is quoted above.
99. Likewise, for all the reasons set out above, the TC's findings that Mr Safadi deliberately avoided attending the 2019 PI so as to conceal his involvement with the Appellant – see [35] and [49] of the decision – were rational and reasonable:

'35. I find that the operator company through its directors, has deliberately concealed Mr Safadi's involvement in the operator company, most particular in April 2017, and again in Mr Safadi's non-attendance in October 2019.

.....

49..... Yet as a director, Mr Safadi was complicit in not attending the Public Inquiry in October 2019 when he knew Mr Jones was acting for the operator company. He also did not nothing personally to rectify the non-disclosure and his statement disagreement with the advice [not to declare his convictions].'

100. These findings have not been shown to be wrong, as Beverley Bell accepted prior to the TC's decision being made. The fact that the OTC had independently discovered and recorded Mr Safadi's directorship of the Appellant from March 2018 does not mean that the Appellant, Mr Safadi or Mr Stewart disclosed it to the OTC at any time from 2017 or 2019. Nor does it mean that the TC was aware of it during the 2019 PI. Notwithstanding the TC or OTC's state of knowledge, it was at all time the duty of the Appellant and its directors to disclose Mr Safadi's appointments and reappointments as a director as a change of circumstances and his previous convictions. They did not do so deliberately, as was accepted and the TC found, and they cannot

delegate or avoid that disclosure duty or rely on mitigation that the OTC may independently have become aware of it through checks at Companies House.

101. Therefore it is no defence or mitigation to attempt to rely on any suggestion that the company, Mr Safadi or Mr Stewart did not disclose Mr Safadi's directorship or convictions because they believed TC already aware of it (the suggestion in Beverley Bell's letter of 14 February 2020 ). This explanation was inconsistent with that given evidence – that it was on advice – and is not pursued as a ground of appeal or in the PI evidence.

102. Both explanations were rejected by the TC for good reason in his decision and Mrs Bell has accepted the concealment was deliberate. In any event, the Appellant and directors were required to disclose the relevant information and could not rely on it coming to the OTC's knowledge through other means. The fact that it was finally disclosed in Mrs Bell's compliance report of February 2020 did not obviate the responsibility for the directors to report and disclose the convictions directly and personally to the OTC and TC. They deliberately failed to do so as Mrs Bell accepted.

103. Even accepting Beverley Bell's account in her letter and compliance report of February 2020 that Mr Safadi volunteered his convictions to her at their meeting on 21 November 2019, this was after the October 2019 PI had finished and was only in response to her being appointed as a new representative and to prepare a compliance report. It is not suggested that Mr Safadi, having disclosed his conviction to Mrs Bell, then instructed her immediately to pass this disclosure onto the TC. Rather, Mrs Bell fairly and rightly considered herself duty bound to disclose it to the OTC in the compliance report.

104. Even at this very late stage by the end of 2019, Mr Safadi had not directly informed the TC or OTC of his involvement and convictions. These matters were only disclosed to the OTC in February 2020 by his representative. The TC was right to find that there was repeated, ongoing and deliberate non-disclosure for a long time - since the time of the initial licence application in 2017 throughout the change in circumstances in 2017 and 2018 and at the 2019 PI. This much was effectively admitted and the TC was not wrong in making these findings.

#### *Ground 4*

105. Mr Laprell challenges the finding of the TC at [68] 'Having seen and heard from Mr Safadi I am not convinced at all that he is a changed man and the level of compliance of the operator company at the time of the Public Inquiry in October 2019 was poor.' It is submitted that there was no basis for this finding, the TC reversed the burden of proof and that the TC failed to give any reasons for the finding.

106. We do not accept this ground of appeal. The TC heard Mr Safadi's evidence in August 2020 and rejected much of it – finding much of it to be untruthful. For example, at [45] to [54], as is explained above, the TC gave sufficient reasons for rejecting Mr Safadi's evidence that he had not disclosed his convictions 'on legal advice' in April 2017. 'I find the evidence that they acted on legal advice wholly unconvincing' [47] -

this was a finding that Mr Safadi continued to mislead the TC in evidence during the PI as of August 2020.

107. The TC was therefore entitled to make the finding that Mr Safadi was not a ‘changed man’. He did not reverse the burden of proof in making this finding because the TC satisfied himself that the evidence given on this topic in August 2020 was dishonest or deliberately misleading. It was a fresh and current finding as of 2020. It was also a finding made against both directors (that Mr Stewart also gave false evidence) and further to the finding set out above at [52] that Mr Stewart had given false evidence to a TC during the PI in 2017.
108. This was also set against the backdrop of the TC’s finding at [50]:  
‘I find that the number and seriousness of the false declarations and failures to inform the OTC of highly relevant matters is a clear breach of the explicit undertakings made when obtaining an operator’s licence and totally inconsistent with the conduct expected of legitimate operators.’
109. The currency of both director’s continued misleading evidence was important when applying the *Priority Freight* question of whether they or the Appellant could be trusted to comply with the operator’s licensing regime in the future.
110. As Beverley Bell properly and sensibly conceded in her letter dated 25 August 2020 ‘the answer to the “Bryan Haulage” question of whether the conduct of both directors is such that the operator should be put out of business is “yes”’. The TC’s conclusion at [75] was ‘firmly “yes”’. The TC properly included a proportionality assessment at [76] of the decision having weighed up the fact that the Appellant had over 40 employees and revocation of the licence may lead to the cessation of the business [75].
111. Mrs Bell’s submission was that ‘the answer to the *Priority Freight* question is that the operator through its two directors and its transport manager demonstrates very clearly that the operator is now compliant and will continue to be for the life of the licence’. It is on this basis that Mr Laprell challenges the conclusion of the TC and submits he came to the wrong answer.
112. We are not satisfied that the TC was wrong in coming to the opposite conclusion which he did at [74] of the decision that it was highly unlikely that the operation in future, operate in compliance with the operator’s licensing regime.
113. We are satisfied that the TC conducted a sufficient balancing exercise and forward-looking assessment when coming to this conclusion. First the TC accepted the positive points made on behalf of the Appellant such as: the voluntary disclosure of the Mr Safadi’s conviction to Mrs Bell by Safadi on her audit visit in November 2019; that the directors attended the PI to face the music; Mr Coggin was a competent Transport Manager; and that his recent involvement has resulted in significant improvements in records and systems; and that there had been improved compliance because of the delay since the 2019 PI [55] to [58]. The TC also accepted that there had been ‘significant improvements ...since February 2020 and that the operator company has acted on the recommendations made by Mrs Bell in her audit report [54]. He also accepted that the conviction of Mr Safadi had been in 2017 relating to events in 2011 so that some time had passed.

114. The TC balanced this against all the negative features of the case highlighted above. We do not accept Mr Laprell’s characterisation that the TC only relied on four points to justify revocation in the way he submitted. There was a range of matters relied on by the TC beyond Mr Safadi’s convictions and the deliberate, repeated and ongoing non-disclosure of his directorship and convictions by both directors and the previous revocation and withdrawal of two other business with which Mr Safadi was involved. The further matters included the seriousness of Mr Stewart misleading a TC in evidence in 2017 and Mr Safadi avoiding attending the 2019 PI. Most importantly, the TC found both directors to be giving false evidence about matters as at the 2020 hearing.

115. Further, the TC also placed particular significant reliance on the fact the level of compliance of the operator company at the time of the Public Inquiry in October 2019 was poor – see [68] of the decision. He found: ‘Indeed the DVSA investigation revealed significant failings across maintenance and drivers hours. Serious prohibitions had been issued in respect of an Ad-Blue emissions cheat device and having an insecure load. I found that the failings demonstrated “a serious risk to road safety and merit revocation” [69]. This was a finding justifying revocation in its own right independently of the directors’ behaviour.

116. Further there had been failings by the Appellant since the 2019 PI as found by the TC in the decision: ‘I further find that the operator company has, since the last public inquiry, acquired prohibitions, one an “Immediate” prohibition for a seriously under-inflated tyre on the 8<sup>th</sup> October 2019 and a fixed penalty on the 10<sup>th</sup> March 2020, for failing to keep records of other work. These are explained in Mrs Bell’s submissions as being the actions of an agency driver, but they nevertheless reflect on the operator company’s compliance’ [53].

117. The range of subsections of section 26 under which the TC found that revocation was merited (as set out in [78] and cited above) demonstrates the reasonableness of the TC’s conclusion. As he also concluded:

“To do otherwise would send entirely the wrong message to the legitimate licence holders and to the industry at large. If it was perceived that operators who might otherwise be disqualified or lacking fitness could obtain a licence by deceit and then pray in aid lapse of time, past/present compliance and/or the consequences of revocation then openness would be undermined. Of course, in this case, the operator company cannot even pray in aid past compliance. As recently as October 2019 they were before me for serious regulatory failings which I found would have justified revocation at that juncture.” [77]

118. Again, we can find no error in this reasoning. Therefore, we are satisfied that the TC properly made a forward looking assessment when considering the *Bryan Haulage* and *Priority Freight* questions and revocation was proportionate.

119. In relation to disqualification, we are satisfied that the TC’s conclusions were equally not wrong:

‘Mr Safadi has previously had a licence revoked and both he and Mr Stewart have allowed road safety to be compromised. They have not engaged openly and honestly with the operator licensing system and I have found them to be untrustworthy in terms of future compliance. In addition, Mr Safadi has the previously undeclared serious convictions from 2017.’ [80]

120. We are finally satisfied that given the strength of the adverse findings, the length of revocations and disqualifications was proportionate.

### **Conclusion**

121. The decisions of the TC were not wrong. Even assuming there was a procedural error in the limited sense we have considered in Ground 1, it was not material to the outcome and given the strength of the case and the seriousness of the TC's findings it was inevitable that he would have come to same conclusion. Even had we needed to review and conduct the same exercise would have come to the same conclusion for the same reasons.

122. We dismiss this appeal to the Upper Tribunal.

123. In light of this, the stay of the TC's decision previously granted by the TC must come to an end. Mr Laprell submitted that in the event of such an outcome we should allow three months for an orderly winding up of the Appellant's transport operations carried out under its current restricted operator's licence. However, we are satisfied the date from which the revocation and the disqualifications are to run is two months from the issue of this decision as we have been shown no evidence that it would not be practicable to do so in this reasonable timescale.

Authorised for release

Rupert Jones  
Judge of the Upper Tribunal

Dated: 10 November 2021

Decision amended under Rule 42 of the Tribunal Procedure (Upper Tribunal) Rules 2008 to correct accidental error of omission in copying quote in [117]:

12 November 2021