



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

**Appeal No: UA/2022/000207/T  
NCN: [2022] UKUT 236 (AAC)**

**ON APPEAL from A DECISION of the TRAFFIC COMMISSIONER for the  
NORTH EAST of ENGLAND TRAFFIC AREA**

**Before:** M Hemingway: Judge of the Upper Tribunal  
Dr P Mann: Member of the Upper Tribunal  
S Booth: Member of the Upper Tribunal

**Appellant:** David Donald

**Reference Number:** DL/648/KL

**Representation:** For the appellant: In person

**Heard at:** Remote hearing administered at the Rolls Buildings in London

**Date of Hearing:** 16 August 2022

**Date of Decision:** 30 August 2022

**DECISIONS OF THE UPPER TRIBUNAL**

This appeal is dismissed.

**Subject matter:** Good repute of a transport manager

**Cases referred to:**

*Bradley Fold Travel Ltd & Anor v Secretary of State for Transport* [2010] EWCA Civ 695.



Appeal no: UA-2022/000207/T

## REASONS FOR DECISION

1. David Donald (“the appellant”) has appealed to the Upper Tribunal from a decision of the Traffic Commissioner (“TC”) embodied in a letter of 13 January 2022, to disqualify him from acting as a transport manager (on the basis of loss of good repute) for an indefinite period and to require him to regain his Certificate of Professional Competence Transport Manager qualification (“CPC”) by way of a rehabilitative measure, before re-entering the transport industry as a transport manager.
2. Aside from the licence in respect of which the appellant was most latterly transport manager, he has, according to records held by the Office of the Traffic Commissioner (“OTC”) been the transport manager on various other operator licences from time to time. There is, no adverse compliance history or no significant adverse compliance history recorded with respect to those licenses at the time he was transport manager.
3. On 14 August 2020 a Goods Vehicles Operators Licence was granted to an Operator (“the operator”), authorising the use of 4 vehicles. That was subsequently increased to 5. The appellant was nominated, on that date, as that Operator’s transport manager.
4. On 30 July 2021 a Vehicle Examiner employed by the Driver and Vehicle Standards Agency carried out an unannounced visit at the Operator’s premises in order to conduct a maintenance investigation. That investigation led to the production of a Maintenance Investigation Visit Report (“the Report”) which recorded an unsatisfactory outcome. The Report, it is fair to say, highlighted a number of failings of some considerable significance with respect to vehicle maintenance issues. In consequence of the content of the report the TC called both the Operator and the appellant in his capacity as transport manager, to a public inquiry (“PI”). On 8 September 2021 the appellant resigned from his position as the Operator’s transport manager.
5. On 17 November 2021 the OTC wrote to the appellant informing him that the PI would take place, at Leeds, on 12 January 2022. The letter told him that consideration would be given at the PI to the question of whether he continued to be of good repute as a transport manager. He was also informed, in the same letter, that if he were found to be no longer of good repute, mandatory disqualification from acting as a transport manager would follow and that it would be open to the TC to stipulate any rehabilitative measures which might include a requirement for him to regain professional competence by way of examination, before re-entering the transport industry as a transport manager. A copy of the Report was provided with that letter and it was made clear to the appellant that he could make written representations in addition to attending the PI.
6. The appellant did make some brief written representations. In doing so, he explained that it had become apparent to him, shortly after taking up the appointment as the Operator’s transport manager, that the owner of the company paid little regard to “*recommendations and observations*” which he offered. He recounted an occasion when his daughter, who is also transport manager, had joined him on a 2-day visit to the Operator’s premises and had suggested to him that he should “*walk away*” from the appointment. He appears to indicate that he then failed to visit the Operator’s premises for a period of 2 months whilst he considered what to do. He also said that he had ceased all other commitments as a transport manager and did not anticipate acting as one in the future. But he did not attend the PI. He says his failure to attend was, at least in part, due to it being held in Leeds whereas he resides some distance away in Leven.

7. The PI proceeded in the appellant's absence. The TC went on to make a number of findings regarding failings of the Operator and the appellant as transport manager. As a result of those considerations the TC took the above decisions. In a letter setting out the TC's reasoning and explaining the decisions, the OTC the TC said this:

#### **“Findings**

- The Operator has been parking his vehicles in an unauthorised Operating Centre (OC) at a Retail Park opposite the nominated OC.
- The Driver defect Reporting system is ineffective. The DVSA review of records identified that 26% of inspection records recorded driver reportable defects. On multiple occasions serious defects identified by drivers have gone without rectification of a protracted period of time including tyres.
- 6-weekly PMI interval breached frequently identified by DVSA by up to 30 days. There was no evidence of first use inspections of the vehicles.
- MOT initial failure rate is far above the national average standing at 66.67% against a national average of 14.38%. Equally the final failure rate stands at 66.67% versus a national average of 9.69%. Failures include safety critical defects such as brakes and doors/emergency exits.
- The Operator has an undertaking for the TM to visit weekly, noting the stated hours were 16 per week. At the time of the DVSA investigation no documented TM visit had occurred for 2 months. The Operator had not informed the Office of the Traffic Commissioner (OTC) of this material change, in view of the breach of the licence undertaking.

#### **Consideration and Decision**

The Transport Manager, Mr. Donald has not exercised continuous and effective management of the transport operation. He lives in Scotland (with a 100-mile drive) and had failed to attend the OC for a protracted period prior to the DVSA investigation. The maintenance failings identified by the DVSA investigation are bread and butter transport manager responsibilities. Mr. Donald gained his CPC qualification in 1997. I was not presented with any evidence of professional development in the intervening period. Mr. Donald wrote to me in advance of the hearing and stated that he felt that he never received the full cooperation of the Operator when he wasn't in attendance at the OC and he expressed regret at not having resigned from the role earlier. The fact is he remained the professional competence on the licence during a time in which the maintenance standards of the vehicles were allowed to reach concerning levels of non-compliance. This directly impacts on public safety of passengers and road safety of other road users. Mr. Donald states that he will no longer undertake TM roles, however, given the seriousness of the shortcoming identified, I judge that he has forfeited his good repute. I disqualify Mr. Donald from acting as a TM for an indeterminate period. Given the lack of any evidence of professional development, he should first resit and pass the CPC qualification should he wish to return to the industry as a TM.”

The Traffic Commissioner specified the following measures that you must comply with before the declaration of unfitness can be removed;

- You must resit and pass the CPC qualification.

Measures specified may be varied by the Traffic Commissioner on application from you or by the Traffic Commissioner subject to notice being given to you in accordance with Paragraph 7C of Schedule 3 to the Act”.

8. The appellant appealed to the Upper Tribunal. In his grounds of appeal, he acknowledged the finding of loss of repute and the disqualification. He did not, at that stage, directly take issue with either the loss of repute or the disqualification but simply put forward a suggestion that he ought not to be required to re-sit the CPC examination but should instead, as an alternative rehabilitative

measure, be required to undertake some refresher training. He expressed a willingness to attend such training.

9. We held a remote hearing of the appeal which was conducted via video-link. The appellant participated. He was not represented. The video-link worked well and there were no technical difficulties. The appellant acknowledged that he had failed in his duties as a transport manager and that he should have removed himself from the post at an earlier stage. He said he recognised that he has difficulties in using information technology and noted that its use has become much more prevalent in recent times within the transport industry. He had remained as a transport manager longer than he should have done in part because he was seeking to establish possible customers for his daughter who was seeking to make her own way as a relatively newly qualified transport manager. He said having passed his CPC examination in 1997 he had not undertaken any professional development or refresher training and had not known, until 2006, that such might be available. He thought it unlikely, though not inconceivable, that he would work as a transport manager at some point in the future if able to do so. He thought he would probably pass his CPC examination if called upon to do so. But he regretted what he regarded as the TC's decision to take away his "status" as a CPC holder.

10. Paragraph 17 of Schedule 4 to the Transport Act 1985 (as amended) provides that the Upper Tribunal has "*full jurisdiction to hear and determine all matters (whether of law or of fact) for the purpose of the exercise of their functions under an enactment relating to transport*". But in *Bradley Fold Travel Ltd & Anor v Secretary of State for Transport* [2010] EWCA Civ 695 it was explained that the Upper Tribunal is not required to rehear all of the evidence by conducting what would, in effect, be a new first instance hearing. Rather, it has the duty to hear and 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. Further, it was said that in order to succeed, an appellant must show that the process of reasoning and the application of the relevant law requires the Upper Tribunal to adopt a different view to that taken by the TC.

11. We are not sure that the appellant was, in fact, mounting any challenge or at least any serious one, to the adverse findings made by the TC or to the decision to the effect that his reputation had been lost. But, in fairness to him, we have considered those matters. But the TC's findings, as set out above, followed from the content of the Report and the appellant has done nothing either to dispute what is said in the Report or to assert that the failings were not, primarily at least, his responsibility. He did hint at a suggestion that the Operator's owner might bear some responsibility for not heeding advice he had supplied in his capacity as transport manager. Perhaps that is so but if a transport manager is faced with such a situation, the appropriate course of action is to resign and to bring the concerns to the attention of the OTC. He did eventually resign but that was a significantly belated act. It is also particularly damning that having been advised by his daughter that he ought to resign, he responded by simply staying away from the Operator's premises for a period of 2 months whilst he considered what to do. Such does, we have to say, amount to dereliction of duty. Clearly then, there was a proper basis for the TC to conclude that reputation had been lost.

12. It is right to say that the TC, in deciding the question of reputation, was required to ask himself whether a negative finding would be proportionate. The TC did not say anything specific as to proportionality, but we are satisfied that, given the content of the TC's analysis under the heading "Consideration and Decision" as recorded above, such an assessment was undertaken. We do have some concern that the TC did not appear to expressly consider factors which might have weighed in favour of the appellant with respect to an assessment of proportionality such as his apparent good record as transport manager on previous licences. But we are satisfied given the recent and clear failings identified, that such would not have impacted the outcome. The failings were significant. They comfortably justified the F-tT's conclusion as to loss of reputation.

13. Disqualification, following reputation, was of course mandatory. The F-tT chose to make the disqualification indefinite rather than fixing a period. Although this is not a point made by the

appellant himself, we think there is something to be said for the argument that a brief explanation ought to have been offered as to why the disqualification was being made indefinite. But there was ample material before the TC to justify an indefinite disqualification. Further, the TC was not effectively debarring the appellant from returning to the industry because it was made clear, in effect, that the passing of the CPC examination would or might lead to a route back. We conclude that the TC's decision to disqualify for an indefinite period was justifiable and not plainly wrong. Against that background the lack of a specific explanation as to why the disqualification imposed was not for a fixed period was unnecessary.

14. As to the rehabilitative measure imposed, being the requirement to pass the CPC examination, we are of the view that such was fair and appropriate. That is so bearing in mind that the appellant had passed his CPC as long ago as 1997 and had not, even on his own account, undertaken any professional development training or refresher training of any sort since. Further, his own evidence indicated a failure to keep in touch with modern developments within the industry. We can understand why the appellant might have preferred refresher training as a specified rehabilitative measure instead, but we are some distance from being able to say that the TC was plainly wrong in imposing the condition or requirement which was imposed.

15. We are grateful to the appellant for his participation in the hearing. We are grateful to him for his frankness in acknowledging his own failings. He is now at an age when most people have retired and it may be that, in consequence of our decision on this appeal, his involvement in the industry, at least on the level it has been in the past, will be at an end. If so, then we regret that. But in all of the circumstances we do not think we can viably take any cause other than to dismiss his appeal.

**M Hemingway: Judge of the Upper Tribunal**  
**S Booth: Member of the Upper Tribunal**  
**Dr P Mann: Member of the Upper Tribunal**

**Authorised for issue on 30 August 2022**