



James Craig & Partners
t/a J Craig and Son
[2023] UKUT 210 (AAC)
Appeal No. UA-2023-000466-T

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

**ON APPEAL from the DECISION of the DEPUTY TRAFFIC COMMISSIONER
FOR THE SCOTTISH TRAFFIC AREA (Mr H Olson)**

Dated: 15 March 2023

Before:

Marion Caldwell KC	Judge of the Upper Tribunal
Mr David Rawsthorn	Member of the Upper Tribunal
Mr Gary Roantree	Member of the Upper Tribunal

Appellants: James Craig & Partners t/a J Craig and Son

Attendance: Mr John Craig
Mrs Janice Craig
Mrs Isla Craig

Representation for the Appellant: Mr John Craig

Heard at: Employment Appeal Tribunal Building, 52 Melville Street,
Edinburgh EH3 7HF

Date of Hearing: 10 August 2023

Date of Decision: 22 August 2023

DECISION OF THE UPPER TRIBUNAL

The appeal is dismissed.

Subject Matter

Application for restricted operator licence; requirement not to be unfit in terms of section 13B of the Goods Vehicles (Licensing of Operators) Act 1995; lack of evidence of ability and willingness to comply with regulatory regime; lack of evidence of ability and willingness to fulfil the undertakings on operator's licence application form; inadequate evidence of knowledge and understanding of the regulatory regime.

Cases referred to:

NT/2013/82 *Arnold Transport & Sons Ltd v DOENI*

Bradley Fold Travel Ltd & Peter Wright –v- Secretary of State for Transport [2010] EWCA Civ. 695

NT/2013/52 & 53 *Fergal Hughes v DOENI & Perry McKee Homes Ltd v DOENI*

Joseph Formby t/a G&G Transport [2012] UKUT 239 (AAC)

Introduction

1. This is an appeal from the decision of the Deputy Traffic Commissioner ("DTC") for the Scottish Traffic Area given on 15 March 2023. The decision of the DTC is as follows:

The application for a restricted licence is refused as I am not satisfied that the Partnership is a fit and proper person to hold a restricted goods vehicle operator's licence (s.13B of the Goods Vehicle (Licensing of Operators) Act 1995. I am not satisfied that the Partnership is able and willing to comply with the law in regard to vehicle operating and that the Partnership is able and willing to fulfil the undertakings on the "O"

licence application form (s.13C of the Goods Vehicle (Licensing of Operators) Act 1995).

2. The appeal was considered at an oral hearing at which Mr John Craig, Mrs Janice Craig and Mrs Isla Craig (Mr John Craig's wife) were in attendance. Mr John Craig represented the appellants.
3. The appellants are the partnership James Craig & Partners, trading as J Craig & Son. The partners are Mr James Craig, Mrs Janice Craig and Mr John Craig (hereinafter "Mr Craig").

Background

4. The appellants held a standard national goods vehicle operator's licence (OM0034959) from 24 April 1996 until 12 October 2020 when it was revoked by Traffic Commissioner Claire Gilmore at a Public Inquiry ("PI"). Mr John Craig had been the nominated Transport Manager ("TM") on the revoked licence.
5. The appellants were called to PI in 2020, because of the contents of a report by a DVSA Traffic Examiner ("TE"). As a result of the report, the Traffic Commissioner ("TC") was concerned that the appellants had not honoured the undertakings signed up to when the licence was applied for, namely, (i) that they would observe the rules on drivers hours and tachographs and keep proper records; and (ii) that the TC would be immediately informed of any changes or convictions which affected the licence. Further, there was concern that since the licence had been issued there had been a material change in the circumstances of its holder. Because of these issues, the TC was concerned that the appellants may not have a stable establishment in the United Kingdom, be of good repute, be of the appropriate financial standing or meet the requirements of professional competence. There was also concern that the Transport Manager, Mr John Craig, might not be exercising continuous and effective management of the transport activities of the undertaking¹.

¹ See call up letter at page 78.

6. The call up letter summarised the evidence in the TE's report:

On 7 June 2019, vehicle, BU06 LCF was stopped on the A9 and the driver was identified as Mr Craig. TE Haddow noted that the vehicle unit had not been downloaded since 19 January 2015, and that the vehicle was still locked onto the previous owner. The partnership was not in possession of a company card at the time of the stop. Multiple driver's hours infringements were recorded against Mr Craig however, it was noted by the examiner that Mr Craig frequently left his card in the vehicle unit. An investigation by TE Cobban commenced on 3 September 2019. Several attempts were made by the TE to arrange an operator visit. A section 99 letter was issued to the operator on 9 December 2019, to which no response was received. Further letters were issued by examiner Cobban to the partnership and to the nominated transport manager on 7 January 2020 to which no response was received by 24 January 2020.

7. At the PI the licence was revoked as a result of failure to meet financial standing. By letter dated 2 December 2020², the appellants were advised by the TC as follows:-

The Traffic Commissioner advised (at the PI) that she would retire and consider whether, having regard to the evidence before her, she should make any findings in relation to your repute as operator and transport manager.

The Traffic Commissioner had serious concerns in relation to your level of knowledge and understanding of the rules relating to driver's hours. She was also concerned by the lack of importance you appeared to attach to your call to public inquiry, demonstrated by your failure to provide documentation which had been requested. These are both matters which are likely to impact on the repute of any operator or transport manager.

In balancing, however the commissioner noted that you had completed your CPC training some years ago. You had recently taken on all the responsibilities in the business and had not, as a result, had time to devote to refreshing your skills. She also noted your evidence that the James Craig and Son family business was long established with a good reputation in terms of health and safety and customer service. This was also your first public inquiry. After careful and detailed consideration, the Traffic Commissioner has decided that, on this occasion, she need make no finding in relation to your repute. However, should you wish to apply for an operator licence at any point

² Page 82.

in the future you will need to appear before the Traffic Commissioner and satisfy her that your skills and knowledge are up-to-date, and that you are able, and willing, to comply at all times with the undertakings on any future licence.

8. On 1 November 2022 the appellants submitted an application for a restricted goods vehicle operator's licence (OM2060792) for 2 vehicles and 4 trailers.

Legal Framework

9. Section 2 of the Goods Vehicles (Licensing of Operators) Act 1995 provides that no person shall use a goods vehicle on a road for the carriage of goods, for hire or reward, or in connection with any trade or business carried on by him, except under a licence issued under the Act.
10. In terms of section 13 of the 1995 Act, in determining an application for a restricted operator licence, the traffic commissioner must be satisfied, among other things, that the applicant is not unfit to hold an operator's licence.
11. Section 13C of the 1995 Act requires satisfactory arrangements to have been made for a range of matters such as compliance with drivers' hours regulations and maintenance of vehicles. A restricted operator licence does not require the holder to have a transport manager.
12. Once a restricted licence has been granted the requirements of sections 13, 13B and 13C, among other conditions, are continuing obligations that require to be met throughout the lifetime of the licence³.
13. The burden of proof rests on an applicant for an operator's licence to demonstrate that he satisfies the regulatory requirements to hold a licence.

The PI and the decision of the DTC

³ *Arnold Transport & Sons Ltd v DOENI*, NT/2013/82, at paragraph 11.

14. The application was called to a Public Inquiry on 9 March 2023. The call up letter⁴ stated:

The Traffic Commissioner has reviewed the application and remains to be satisfied that the partnership meets the requirements to hold a licence. It has therefore been decided to hold a Public Inquiry to discuss the areas of concern, and to give you the opportunity to demonstrate how the partnership meets the requirements.

Specifically, the TC wished to be satisfied that the partnership:

- (a) Was not unfit to hold a licence, because of relevant activities, or convictions;
- (b) Had satisfactory arrangements to comply with the law regarding drivers hours;
- (c) Had satisfactory arrangements to ensure that vehicles were not overloaded;
- (d) Had satisfactory facilities and arrangements for maintaining the vehicles in a fit and serviceable condition;
- (e) ...
- (f)
- (g) Had sufficient financial resources to ensure that the vehicles can be maintained in a fit and serviceable condition⁵.

15. The call up letter informed the appellants of the evidence that would be considered at the PI. The evidence to be considered included the previous DVSA investigation:

On 3 September 2019 DVSA commenced an investigation to establish whether the operator was complying with the requirements regarding the use of tachographs, and in particular, the downloading of and analysing the raw data from the digital tachograph fitted to the vehicle operated by them. The investigation found several shortcomings in the company's systems for complying with the driver's hours rules and regulations. Following the investigation, a report was submitted to the Traffic Commissioner for consideration. The TE's conclusion states the following: *Despite numerous efforts to arrange a meeting to ascertain if the operator had introduced the necessary systems after the check on 7 June 2019, it was not possible to arrange a meeting to carry out the necessary checks. A letter requesting the production of documentation to show that systems had been introduced was not responded to by the required date. Both the*

⁴ Page 29.

⁵ See call up letter at page 29.

operator and the nominated transport manager, John Ross Craig, failed to respond to letters inviting them to interview. I have been unable to ascertain if the systems they have in place satisfy the undertakings on their licence when it was granted. As a consequence, it is considered that the operator is not complying with the Statement of Intent with regard to the undertaking submitted at the time of the application for the operator's licence.

16. The call up letter also referred to the findings and warning given by the TC in revoking the licence (referred to in paragraph 7 above). The letter went on to inform the appellants of what they should now do. This included the following:

Start to collect your own evidence to allow you to set out your case on the day. This might include at least the following documents:

- i. Details of the proposed vehicle maintenance system, including:*
 - *sample safety inspection records;*
 - *the proposed daily defect reporting system;*
 - *the original maintenance contract;*
 - *Forward Planner (or photographic evidence thereof if large);*
- ii. Details of how you will comply with the laws regarding drivers' hours including evidence of proposed systems for:*
 - *driver licence checks;*
 - *drivers' hours infringement reports;*
 - *vehicle unit download reports...*
 - *evidence of continuous professional development of the responsible person;*
 - *evidence of a recruitment and disciplinary process for drivers and managers;..."*

The Public Inquiry

17. Mr Craig represented the appellants at the PI. In support of the application, he had submitted documentation which satisfied the requirements for financial standing. He produced a Certificate of Conformity from NSF Certification UK Ltd which stated that J Craig & Son *"has satisfied the requirements of the Red Tractor Fresh Produce Standards for the following produce: Crop Production;*

*Harvesting; Potato; Storage*⁶. The certificate was for the period 26 April to 31 October 2022.

18. At the PI, the DTC asked him why he had not produced any material at all about details of the proposed maintenance system, or how the partnership would comply with laws regarding drivers' hours. He responded to the DTC that he did not think that evidence which could simply be downloaded from the internet would help the application; he thought that what the DTC wanted was to look him in the eye and believe that he could be trusted as a compliant operator.
19. He told the DTC that he did not think that any supporting evidence was necessary. He said that he had been operating vehicles for over 25 years, he had only been to one Public Inquiry, his vehicles had been stopped by the DVSA without any issue being identified, and he relied on the Red Tractor certificate of conformity which he said showed that another organisation trusted him to transport dangerous substances by road and that he met high standards imposed by another regulatory body.
20. He told the DTC that he had acquired his Transport Manager CPC about 25 years ago and had not done any formal continuing professional development to keep his knowledge up to date. As regards refreshing his knowledge and understanding of the rules on driver's hours, he said that he had not done anything. He told the DTC that if he came across something he did not know he would look it up on gov.uk and that he was always learning through his work.

The Deputy Traffic Commissioner's Decision

21. The DTC found as follows:

⁶ Page 95.

15. *My reason for rejecting the application is that at the previous Public Inquiry the Traffic Commissioner had considered, but refrained from finding that the Partnership and Mr Craig as Transport Manager had lost their repute. The Traffic Commissioner had told the Partnership and Mr Craig what they would need to do if they wanted to make an application in the future:-*
- i. *“...you will need to appear before a Traffic Commissioner and satisfy her that your skills and knowledge are up to date and that you are able, and willing, to comply at all times with the undertakings on any future licence.”*

The Partnership, and in particular, Mr Craig have failed to satisfy me of these requirements.

16. *Mr Craig seems to fail to understand that the reason that the Partnership’s previous licence was put at risk was because it failed to produce evidence of satisfactory systems to the DVSA. The Traffic Commissioner had been critical of the failure of the Partnership to produce any evidence of satisfactory systems at the first Public Inquiry. It is remarkable that Mr Craig could have thought that the failure to provide evidence that the Partnership would have satisfactory systems in place would be acceptable at this Public Inquiry.*
17. *It is remarkable that Mr Craig, having been told at the first Public Inquiry that the Traffic Commissioner had serious concerns about his knowledge and understanding of the rules relating to driver’s hours, has done nothing since to improve his knowledge and understanding. This appears to me to be evidence that Mr Craig does not understand the importance of (1) correcting the deficiencies in his knowledge of driver’s hours and (2) keeping up to date with the requirements of operating goods vehicles.*
18. *I am not satisfied that the Partnership is fit to hold an operator’s licence under s.13B of the Goods Vehicle (Licensing of Operators) Act 1995. I did consider whether or not Mr Craig’s attitude meant that I should make a positive finding that the Partnership was unfit to hold a restricted licence, however, with some hesitation, I have decided not to do so.*
19. *I am not satisfied that in terms of s.13C of Goods Vehicle (Licensing of Operators) Act 1995 there are satisfactory arrangements for ensuring compliance with the drivers’ hours rules and regulations, nor that there are satisfactory facilities and arrangements for maintaining the vehicles used under the licence in a fit and serviceable condition.*

22. The grounds of appeal are at page 180. The grounds narrate that the previous licence had been revoked due to lack of financial details. Regarding the lack of documents on vehicle maintenance, the appellant had not produced any because they had not been operating vehicles and Mr Craig did not realise that blank sheets would have sufficed. He now understood, that he should have produced more documents for the inquiry but, he said, in his defence, he did not think having a maintenance contract in place for a vehicle he might never purchase was the correct thing to do. He could not show forward planning of maintenance, insurance et cetera until he purchased a vehicle. His thoughts were to satisfy the TC that he was an upstanding citizen and that going forward would adhere to all the rules if granted a licence. He attached documentation with the grounds of appeal. He stated that he had failed to convey to the DTC that he had read the rules on the government website about driver's hours and was fully aware of them. He had asked the DTC to question him on this so that he could demonstrate his knowledge, but the DTC had declined. He submitted that the appellants were a family firm and required a restricted licence for transporting their own goods. They would be devastated if their lack of compliance or knowledge led to injury or death of another road user, and that was why they were committed to run their vehicles in a safe and responsible manner. They had no criminal convictions and were financially sound.

23. Submitted with the grounds of appeal was information downloaded from the government website on the responsibilities of HGV vehicle operators; key points of a good maintenance system, a pro forma safety inspection record from Malcolm Maintenance Services, HGV defect report form for drivers, TachPro trailer safety inspection and maintenance form, DVSA example weekly record sheet and sample VOR form. Mr Craig sought to have further documentation received at the Upper Tribunal hearing. The additional documentation submitted with the grounds of appeal and on the day of the Upper Tribunal hearing were received under reservation as to their admissibility.

24. Mr Craig expanded on his grounds of appeal before the Upper Tribunal.

(1) He submitted that the DTC's decision was unfair and disproportionate because the appellants had experience and an excellent past record with no DVSA or VOSA judgments against them. There had been no accidents or insurance claims since 1948. He said that at the 2020 PI the DVSA said they had no problem with the appellants running trucks but that they would have to pull their socks up. While he accepted that at the PI the proof of their knowledge might not have been there, their history should have demonstrated to the DTC that they knew what they were doing.

(2) the DTC seemed to think that they wanted a licence for hire and reward, that was wrong; they only wanted a restricted licence to move their own goods.

(3) the DTC failed to take account of the fact that the appellants were unable to secure a contract of maintenance because they had no vehicles. They had approached Volvo, Scania and DAF who had been unwilling to give them anything in writing. This was due to a lack of mechanics, he said. He said that he had read the letters sent to him by the OTC and what it had said about the documentation required. The letter that had been sent to them by the OTC in December 2022 did not apply to them as they were not running vehicles at that time and could not have provided what that letter asked for.

(4) The DTC was biased against Mr Craig because of his young age of 45 years and not having done a refresher transport manager CPC course. At the hearing before the Upper Tribunal, Mr Craig explained that what he meant by "bias" was that the DTC had not attached sufficient weight to their good history and too much weight to the fact that they had had two problems with DVSA in 30 years. He had attached too much weight to the fact that Mr Craig had gained his CPC 30 years ago. A transport manager CPC was not required for a restricted licence. His mother also had a CPC and his wife had worked in transport and knew the rules and regulations. He had gone on a CPC driver refresher course in 2015. If he did not know something he

would look it up. Most of it was just common sense. He stated that he educated himself every day by checking things online.

(5) Although the DTC said Mr Craig was of good repute the DTC did not believe anything he said or even that he had an office.

(6) the DTC misled him regarding appealing as he said that it would be quicker and cheaper to reapply than appeal. In fact, the appeal had cost him nothing and had been very quick.

(7) Mr Craig said that The DTC told him that if he had downloaded blank forms from the internet he would have granted the licence but then had gone on to say there was more to it than that and mentioned the fact that he had no up to date CPC.

(8) Mr Craig said that when they received the bundle for the appeal they realised the DTC had not believed they had a business or an office; that is why the appellants wanted to add some photographic evidence showing the farm, crops, animals, farming vehicles, farm buildings, farmland and the farm office.

Discussion and decision

25. The following principles (extracted from the Digest of Traffic Commissioner Appeals) as to the proper approach to an appeal in the Upper Tribunal can be found in the decision of the Court of Appeal in the case of *Bradley Fold Travel Ltd & Peter Wright –v- Secretary of State for Transport [2010] EWCA Civ. 695*:

- (1) *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.*
- (2) *The Appellant ‘assumes the burden’ of showing that the decision appealed from is wrong.*

- (3) *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.*

The Tribunal sometimes uses the phrase “plainly wrong” as a shorthand description of this test. (*NT/2013/52 & 53 Fergal Hughes v DOENI & Perry McKee Homes Ltd v DOENI*, paragraph 8).

26. Operator licensing is based on trust, as has long been recognised by courts and tribunals.

“Traffic Commissioners must be able to trust those to whom they grant operator’s licences to operate in compliance with the regulatory regime. The public and other operators must also be able to trust operators to comply with the regulatory regime”⁷.

27. In *NT/2013/82 Arnold Transport & Sons Ltd v DOENI*, the Tribunal said:

11. *“The Tribunal has stated on many occasions that operator’s licensing is based on trust. Since it is impossible to police every operator and every vehicle at all times the Department in Northern Ireland, (and Traffic Commissioners in GB), must feel able to trust operators to comply with all relevant parts of the operator’s licensing regime. In addition other operators must be able to trust their competitors to comply, otherwise they will no longer compete on a level playing field. In our view this reflects the general public interest in ensuring that Heavy Goods Vehicles are properly maintained and safely driven. Unfair competition is against the public interest because it encourages operators to cut corners in order to remain in business. Cutting corners all too easily leads to compromising safe operation.*

12. *It is important that operators understand that if their actions cast doubt on whether they can be trusted to comply with the regulatory regime they are likely to be called to a Public Inquiry at which their fitness to hold an operator’s licence will be called into question. It will become clear, in due course, that fitness to hold an operator’s licence is an essential element of good repute. It is also important for operators to understand that the Head of the TRU is clearly alive to the old saying that: “actions speak louder than words”, (see*

⁷ *Joseph Formby t/a G&G Transport* [2012] UKUT 239 (AAC), at paragraph 17.

paragraph 2(xxix) above). We agree that this is a helpful and appropriate approach. The attitude of an operator when something goes wrong can be very instructive. Some recognise the problem at once and take immediate and effective steps to put matters right. Others only recognise the problem when it is set out in a call-up letter and begin to put matters right in the period before the Public Inquiry takes place. A third group leave it even later and come to the Public Inquiry with promises of action in the future. A fourth group bury their heads in the sand and wait to be told what to do during the Public Inquiry. It will be for the Head of the TRU to assess the position on the facts of each individual case. However it seems clear that prompt and effective action is likely to be given greater weight than untested promises to put matters right in the future”.

28. The trust in question is not blind trust or based on mere assurance that the applicant for an operator’s licence will comply in future. It is trust based on evidence that the applicant has knowledge of the regulatory regime and the skill, ability and willingness to implement the regulatory regime.
29. As previously mentioned (paragraph 13), the burden of proof rests on an applicant for an operator’s licence to demonstrate that he satisfies the regulatory requirements to hold a licence.
30. The appellants may run a good farming business and are trusted by farming and food organisations. Farming is their core business. However, that says nothing about their knowledge of the regulatory regime for operating a heavy goods vehicle or their skill, ability and willingness to implement that regime. No evidence was placed before the DTC on which he could judge those matters. The appellants, and Mr Craig in particular, were put on notice by the TC in 2020 that she had serious concerns about his knowledge and understanding of the rules relating to driver’s hours. She was also concerned about the lack of importance he appeared to attach to the call to public inquiry, demonstrated by his failure to provide documentation which had been requested. She highlighted that these were both matters which were likely to impact on the repute of any operator or transport manager⁸. The appellants put no evidence before the DTC to demonstrate that anything had changed or improved since 2020. It is not good enough to say, as Mr Craig did at the PI⁹, that he looks

⁸ Decision letter dated 2 December 2020 at page 82. See also paragraph ** above.

⁹ Page 134 (at 47’30”).

things up online on a need to know basis. If he is ignorant of the regime and is not familiar with what he needs to know or comply with, then he will not be aware that he has to inform himself on some specific issue or other. While a TM CPC is not an essential requirement for a restricted licence, as the DTC explained, a refreshed CPC would have been one way of demonstrating up to date knowledge of the regulatory regime. There are also other sources of training in drivers' hours, but he had not availed himself of those either. The DTC was therefore entitled to find that Mr Craig had done nothing since 2020 to correct the deficiencies in his knowledge. We therefore reject the appellants' first and fourth grounds of appeal.

31. It is quite clear from the transcript of the PI and the DTC's decision that he was well aware that the appellants were seeking a restricted licence to move their own goods and not a licence to enable them to undertake hire and reward work. (See, for example, paragraph 4 and 14 of the DTC's decision.) We therefore reject the second ground of appeal.
32. By letter dated 20 December 2022¹⁰, Mr Craig was informed that a PI was to be held regarding the application for a restricted licence. That letter appears to have been based on a template that had not been properly adapted to address the appellants', or Mr Craig's, specific circumstances and, for that reason, may have been misleading. The issue of such template, inadequately adapted, letters should be avoided. However, that letter was then followed up by a letter to the appellants dated 6 January 2023¹¹ which was specific to the appellants. It outlined the evidence to be considered at the PI and what the appellants must do to evidence their proposed vehicle maintenance system and how they would comply with the laws regarding drivers' hours and to give details of their proposed systems. There is also information available on the government website providing guidance on applying for an operator's licence and how to prepare for a PI, with further links to Statutory Guidance¹². Despite the detailed

¹⁰ Page 13 ff.

¹¹ Page 29ff.

¹² See for example,

advice in the letter of 6 January 2023, the appellants produced no such evidence. While the appellants may have had difficulties in obtaining a proposed maintenance contract, the DTC's refusal to grant a licence did not hinge on that one omission. They did not put anything before the DTC to evidence their proposed vehicle maintenance system or their proposed systems for complying with the laws regarding drivers' hours. Further, as discussed above, the DTC was not satisfied that Mr Craig's skills, knowledge and understanding were up to date and that he was able and willing to comply at all times with the undertakings on any future licence. We therefore reject the third and seventh grounds of appeal.

33. The DTC made no finding on Mr Craig's credibility or reliability. However, he was not prepared to grant the appellants an operator licence on the *ipse dixit* or mere assertions by Mr Craig that he had knowledge of the regulatory system and would comply. To have granted a licence on such a basis would have been irresponsible. This is particularly so given the concerns of the TC in 2020 and the fact that Mr Craig had done nothing to refresh and improve his knowledge of the regulatory regime since then. Given the notice and information the appellants had been given by the TC in 2020 and in the call up letter, Mr Craig's belief that all he had to do was attend the PI and say he was an upstanding citizen who could be trusted was unreasonable and unrealistic. The fifth ground of appeal is therefore rejected.
34. At the PI, the DTC asked Mr Craig to tell him about his business. Mr Craig explained that they were farmers and they needed a restricted licence for movement of their own fresh produce¹³. He also explained the difficulties his business had been experiencing in finding good and reliable hauliers. He stated that in his office he had a diary and he noted things down in the diary¹⁴, he also

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1162667/221209_Guide_to_PI_Final_Copy.pdf

¹³ Page 121.

¹⁴ Page 125.

had a computer and access to the internet in the office¹⁵. The DTC did not take issue with these statements and there is no evidence in either the PI or the decision that he did not accept that the appellants had a farming business, farm office, diary and computer. The eighth ground of appeal is therefore rejected.

35. The sixth ground of appeal is not relevant to the question of whether or not the DTC was plainly wrong and is rejected.

Fresh Evidence

36. The appellants produced additional evidence for the appeal in the Upper Tribunal in support of their grounds of appeal. Although we have rejected the grounds of appeal, for completeness we explain why the additional evidence was inadmissible. The principles for allowing fresh evidence to be heard, and which apply to the Upper Tribunal, are laid down on the case of *Ladd v. Marshall* [1954] 1WLR 1489 where Denning LJ held (at 1491):

To justify the reception of fresh evidence...three conditions must be fulfilled: first it must be shown that the evidence could not have been obtained with reasonable diligence for use at the trial; secondly, the evidence must be such that, if given, it would probably have an important influence on the result of the case, though it need not be decisive; thirdly, the evidence must be such as is presumably to be believed, or in other words, it must be apparently credible, though it need not be incontrovertible.

37. The information downloaded from the government website on the responsibilities of HGV vehicle operator, and other documentary evidence submitted with the grounds of appeal, were all documents that could have been obtained with reasonable diligence for the PI and put before the DTC. The same applies to the photographic evidence showing the farm, farm office, forward planner and computer. The fresh evidence therefore does not satisfy the first requirement to be received at this stage. Accordingly, we refuse the request to admit this evidence.

¹⁵ Page 126.

38. We see no reason to disturb the DTC's findings or his reasoning in reaching his decision that he could not be satisfied that the partnership is a fit and proper person to hold a restricted goods vehicle operator's licence or that the partnership is able and willing to comply with the law in regard to vehicle operating or that the partnership is able and willing to fulfil the undertakings on the "O" licence application form.
39. There are no grounds for holding that the TC's decision on these issues was plainly wrong.

Decision

40. The decision of the TC dated 15 March 2023 is confirmed in all respects. The appeal is dismissed.

**Authorised for issue
On 22 August 2023**

**Marion Caldwell KC
Judge of the Upper Tribunal**

