



NCN: [2021] UKUT 122 (AAC)

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

**Appeal Nos. T/2020/41 & 42**

**ON APPEAL from a DECISION of the TRAFFIC COMMISSIONER for the East of England**

**Dated:** 31 July 2020

**Before:** Judge Rupert Jones: Judge of the Upper Tribunal  
Mr A Guest: Member of the Upper Tribunal  
Mr L Milliken: Member of the Upper Tribunal

**Appellants:** (1) Bunny Transport Ltd & Carol Grayling  
(2) Glossie Ltd & Robert Brow

**Reference:** OF1133611  
OF2030101

**Attendances:** Mr Ian Bridge, Counsel for the Appellants

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

**Date of Upper Tribunal Hearing:** 18 May 2021

**Date of Decision:** 20 May 2021

**DECISION OF THE UPPER TRIBUNAL**

**The appeal against Ms Grayling's disqualification is dismissed.**

**We give consent, pursuant to Rule 17(2) and (3) of the Tribunal Procedure (Upper Tribunal) Rules 2008 for the withdrawal of the appeals against the decisions to a) revoke the First Appellant's licence; and b) reject the Second Appellant's application for a licence.**

**Subject matter:**

Revocation of Operator's licence: disqualification of directors: application for licence refused on grounds of unfitness.

**REASONS FOR DECISION**

**Introduction**

1. The Appellants made appeals to the Upper Tribunal from decisions of the Traffic Commissioner (TC) made on 31 July 2020 by notices of appeal received on 28 August 2020. The TC's decisions followed a public inquiry (PI) held on 29 July 2020. The First Appellant is Bunny Transport Ltd of which Ms Carol Grayling is a director together with Mr Harley Grayling. The Second Appellant is Glossie Ltd of which Mr Robert Brow is the director and Carol Grayling is Company Secretary.
2. The First Appellant appealed the TC's decision to revoke its Restricted Goods Vehicle Operator's Licence which came into effect on 13 August 2020. Carol Grayling also appealed the decision to disqualify her from holding or obtaining an operator's licence for a period of 12 months.
3. The Second Appellant appealed the TC's decision to reject the application for a new Goods Vehicle Operator's licence.
4. On the afternoon of the hearing counsel appeared on behalf of the Appellants having been lately instructed and without prior notification to the Tribunal. He indicated that the First and Second Appellants wished to withdraw the appeals against revocation and rejection of the respective licences.
5. He made submissions in support of a new ground of appeal, that the disqualification of Ms Grayling was disproportionate and the TC's decision should be quashed.
6. We give consent, pursuant to Rule 17(2) and (3) of the Tribunal Procedure (Upper Tribunal) Rules 2008 for the withdrawal of the appeals against the decisions to a) revoke the First Appellant's licence; and b) reject the Second Appellant's application for a licence.
7. Therefore, the only remaining issue is the TC's decision to disqualify Ms Grayling.

**The Background**

8. The Background is set out at paragraphs 1-7 of the TC's decision:

‘1. Bunny Transport Ltd holds a Restricted Vehicle Operator's Licence authorising 5 vehicles only. The Directors are Carol Ann Grayling (appointed 24 July 2014) and Harley Earl Grayling (appointed 1 May 2015).

2. There is one Operating Centre at 40 Harvest Drive, South Lowestoft Industrial Estate, Lowestoft NR33 7NB. There are three declared contractors showing on the licensing record: Ray Goudy Trailer Repairs (which I was told had not been used for a period), In-house by H Grayling, and H B Commercial Ltd, undertaking Preventative Maintenance Inspections of vehicles at 8 weekly intervals.
3. There is a condition on that licence: that the director of Glossie Ltd, Robert Brow, shall have no involvement with Bunny Transport Limited without prior written referral to the Traffic Commissioner by the company director(s). Ms Grayling indicated to DVSA that she was unaware of this restriction on the operator's licence.
4. Glossie Ltd seeks a Restricted Goods Vehicle Operator's Licence authorising 2 vehicles only, which was received on 20 January 2020. The Director is Mr Robert Brow. The Company Secretary is Carol Grayling.
5. There is one proposed Operating Centre, again at 40 Harvest Drive, South Lowestoft Industrial Estate, Lowestoft NR33 7NB. The application proposes that vehicles and trailers will be inspected by HB Commercial Ltd at 8 weekly intervals.
6. Glossie Ltd previously held Licence OF1131077, which terminated in January 2020 when continuation was not sought, through non-payment of the fee.
7. Records indicate that Mr Brow had interests in Licences GF0231857, as sole Director of Melpot Trading Ltd until the operator failed to renew the: Restricted licence authorising 3 vehicles; OF1011831 as sole Director of CS&G Plant Hire Ltd, which was revoked in July 2014. That was not declared on this application form.'

### **The issues and conclusions from the Public Inquiry**

9. It is apparent from the above that the First and Second Appellants are connected or linked. Ms Grayling is a director of the First Appellant and company secretary of the Second Appellant. Mr Brow, as director of the Second Appellant was restricted from having involvement with the Second Appellant without prior written referral to the TC as a condition of the First Appellant's licence. The Operating Centre of the First Appellant and the proposed operating centre for the Second Appellant are the same.
10. Therefore, a joint public inquiry was held.
11. Both Appellants were notified in early June 2020 as to the issues to be considered at the PI.
12. Correspondence had been previously sent to the First Appellant expressing concerns around compliance. The PI was called for the TC to consider whether there were grounds to intervene in respect of the First Appellant's licence specifically by reference to the following sections of the Goods Vehicle (Licensing of Operators) Act 1995:
  - 26(1)(a) - whether the operator was operating from an unauthorised operating centre.
  - 26(1)(b) - whether the operator had breached conditions on the licence, specifically whether there was a failure to notify changes to the operating centre and the availability of finance.

26(1)(e) - whether statements of intent had been complied with, specifically that vehicles when not in use would normally be kept at the operating centre at Unit 40 Harvest Drive, Lowestoft, NR33 7NB.

26(1)(f) - whether the operator had not honoured the undertakings signed up to when they applied for their Licence, namely that they would observe the rules on drivers' hours and tachographs and keep proper records. -

26(1)(h) - whether since the licence had been issued there had been a material change in the circumstances of its holder, namely that they may no longer have sufficient finance as required under the terms of the licence, and that they may no longer be fit to hold an operator's licence.

13. The PI was also conducted for the Second Appellant to pursue its application for a licence because the TC had remained to be satisfied that the statutory criteria were met in relation to the following:

Section 13B - whether the applicant was fit to hold a licence;

Section 13C(2) - whether the company had satisfactory arrangements to comply with the law regarding driver's hours;

Section 13C(4) - whether the company had satisfactory facilities and arrangements for maintaining the vehicles in a fit and serviceable condition;

Section 13C(5) - whether the company had an operating centre which was available and suitable for that purpose;

Section 13C(6) - whether the company had an operating centre which was sufficient for all vehicles under the licence;

Section 13D – whether the company had sufficient financial resources to ensure that the vehicles were maintained in a fit and serviceable condition.

14. After considering the evidence provided and making findings of fact at [12]-[34] of the decision, the TC made determinations as to why the First Appellant's licence should be revoked. The TC gave the following reasons:

35. Financial evidence was considered and found to meet the required sums.

36. There are those cases where it is sufficient to set out the evidence to describe the relevant factors. The level of ignorance suggested by Ms Grayling in interview under caution was truly concerning. She appeared to have limited knowledge of the operator licence requirements, she was unaware of the responsibility for the vehicles specified on that licence, she was ignorant of where those vehicles should normally be kept, when not in use. I found Ms Grayling to have been selective in her approach to DVSA enquiries. Her inconsistency during examination also undermined her credibility.

37. Ms Grayling told me that she is trying her best and that she intends to purchase a new vehicle. That accords with Mr Brow's intention to specify two of the vehicles on this application. Ms Grayling points to the involvement of her son from 1 July 2020 but he has been a Director since 2015. She assured me that record keeping would improve but has remained with a contractor who she blames for delays in maintenance and the supply of.....I noted improved driver licence checks, but she continues to allow the unrestricted access to keys by

non-employees, connected with other businesses. She demonstrated little awareness of why this was an issue and has taken no action to improve her knowledge.

38. When I applied the initial questions suggested by the Upper Tribunal in appeal 2009/225 Priority Freight: *how likely is it that this operator will, in future, operate in compliance with the operator's licensing regime* I must conclude that there is little prospect. The Tribunal has remarked that: actions speak louder than words. There is little positive progress to draw on and what is more, based on the evidence above, I do not trust the operator to discharge those responsibilities.

39. As was said in 2006/27 Fenlon *'trust is one of the foundation stones of operator licensing. Traffic, commissioners must be able to trust operators to comply with all the relevant laws, rules and regulations because it would be a physical and financial impossibility to police every aspect of the licensing system all day and every day. In addition, operators must be able to trust other operators to observe the relevant laws, rules and regulations. If trust between operators breaks down and some operator believe that others are obtaining an unfair commercial advantage by ignoring laws, rules or regulations then standards will inevitably slip and the public will suffer.'*

40. I am satisfied to the civil standard of proof that I should make adverse findings under section 26(1)(a), (b), (e), (f), (h). I explored the impact of regulatory action, but put frankly the management of this licence and the failure to comply with basic requirements amounts to such a risk that I have proceeded to consider the Bryan Haulage (2002/017) question. It will be obvious that, in allowing "standards to fall to this level, I consider that. conduct to be so serious as to require revocation; I have noted that Current projects will last until October, revocation cannot await completion. I will allow until 23:45 13 August 2020. to make alternative arrangements, but that is when the revocation will take effect.'

15. The TC thereafter determined that Ms Grayling and Mr Grayling should be disqualified from holding or obtaining an operator's licence for a period of 12 months, providing the following reasons:

'41. I have considered whether disqualification is required as per the guidance in 2018/072 St Mickalos Company Ltd & M Timinis and 2010/29 David Finch Haulage. This is the first Public Inquiry for this operator but there can be no allowance for misleading the regulator. As the Upper Tribunal has recently identified in 2019/025 John Stuart Strachan t/a Strachan Haulage: "one of the aims of the regime is deterrence, both for the appellant and for operators as a whole, who might be tempted to flout the system". The operator is disqualified under section 28(1) from holding or obtaining an operator's licence for a period of 12 months. I distinguish between the position of Ms Grayling and the other Director, Mr Harvey Grayling, who Ms Grayling referred to as an employee, but Ms Grayling will be disqualified in similar terms under section 28(4).'

16. The TC concluded as follows as to why the Second Appellant's application for a new operator's licence should be rejected:

'42. Mr Brow did not assist himself or my understanding by his failure to distinguish between limited companies (in which he has an interest and acts as a Director), his personal interests and indeed his sole trader activity. That reflects the chaotic business relationships which I have described. I must be clear who is operating. The application was not assisted by the failure to declare the revocation of OF1011831, held by CS&G Plant Hire Ltd, in July 2014. The fact that Carpark Surfacing Grids Ltd (of which Steven Nichols and Gerald Torr are the other Directors) was previously known as 0888 Plant Hire (EA) Ltd, has not escaped me. However, it is the lack

of distinction between businesses, compounded by the suggestion that he would continue to operate vehicles in another livery, which have been maintained in the way described above, which leads me to conclude that I cannot be satisfied under section 13B.

43. The application fails accordingly. The applicant or Mr Brow are at liberty to re—apply, but I urge him to review his business arrangements and to ensure a clear demarcation between companies so as to avoid disappointment. He will wish to ensure that vehicles are in fact fit to be put back into operation. '

## Relevant legislative provisions

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

17. 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 not only 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.'

### *Revocation of a licence*

18. 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).

19. The burden of proof during a PI is for 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.”

### *Disqualification*

20. 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.

.....'

21. 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

22. 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”.

23. 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.”

24. 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.

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

26. 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.

27. In relation to sanction we note the guidance 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.”

28. That is the approach which we have followed in deciding this appeal.

### **The Appellants’ grounds of appeal**

29. The Appellants’ grounds of appeal were contained within their respective notices of appeal to the Upper Tribunal received on 28 August 2020. The grounds were abandoned on the day of the hearing when the Appellants sought to withdraw the appeals against the licence revocation and rejection. There is no need to consider any of these grounds therefore as they are no longer pursued.

30. We permitted Mr Bridge to pursue a new ground of appeal - that it was disproportionate for the TC to disqualify Ms Grayling from holding or obtaining an operator’s licence for a period of twelve months.

31. Mr Bridge submitted that the crux of the TC's decision was set out at [42] of the decision in relation to Mr Brow. There was a finding that there were chaotic business relationships involving Ms Grayling and Mr Brow and the TC could not be clear who was operating which business and under which licence. Mr Bridge submitted that the TC had found there was vagueness in relation to the operation of the First Appellant's licence and a question of Ms Grayling being used as a nominee.
32. Mr Bridge submitted that it was not necessary nor proportionate to disqualify Ms Grayling in addition to revoking the First Appellant's operating licence. He submitted that there were factual errors in the TC's decision and the Traffic Examiner Ms Lee, upon whose evidence the TC relied, had not been cross examined. As a result, both Mr Brow and Ms Grayling felt harshly treated and aggrieved with the decision. However, Mr Bridge did not want to pursue challenges to specific factual findings because he wanted to concentrate on the TC's invitation that Mr Brow could reapply for a licence if he could demonstrate clear separation in his business operation and meaningful supervision going forward.
33. Mr Bridge submitted that part of the factual background behind the disqualification related to Ms Grayling's lack of understanding as a director of the First Appellant as to the existence of a restriction on Mr Brow being involved in the First Appellant's operation. This was at the heart of the TC's decision to revoke the licence rather than any breaches of the First Appellant's licence which would have brought about dangers to other road users.
34. Mr Bridge submitted that the TC's central conclusion was that there was a blurring with the First Appellant company holding a licence but its vehicles being used by the Second Appellant and others. The TC had found that Mr Brow and others used Ms Grayling and the First Appellant as a nominee. He submitted that the TC understandably needed to know which company run which vehicles and who was truly operating the First and Second Appellants.
35. Mr Bridge submitted that the essence of the finding was in regard to Mr Brow at [42]:

'42.....Mr Brow did not assist himself or my understanding by his failure to distinguish between limited companies (in which he has an interest and acts as a Director), his personal interests and indeed his sole trader activity. That reflects the chaotic business relationships which I have described. I must be clear who is operating. The application was not assisted by the failure to declare the revocation of Of1011831, held by CS&G Plant Hire Ltd, in July 2014. However, it is the lack of distinction between businesses.....

43. The applicant or Mr Brow are at liberty to re-apply but I urge him to review his business arrangement and to ensure a clear demarcation.....'
36. However, Mr Bridge questioned whether it was necessary or proportionate to impose such a serious sanction against Ms Grayling with that background.
37. At my invitation Mr Bridge also made submissions on [41] of the decision and the TC's finding that Ms Grayling misled the regulator and whether this was at the heart of the disqualification. Mr Bridge submitted that the TC should ideally have set out specifically the details of what Ms Grayling said which it found was misleading and made clear factual findings. While the TC did make various findings, and implicit in them was that the First

Appellant was effectively a nominee for the Appellant company, the details of the finding as to what was misleading were not specified. Mr Bridge submitted that Ms Grayling was only on the cusp of being misleading – she would say that there was a genuine distinction to be drawn between the two companies and use of their vehicles. Their use was distinct from the Second Appellant. Mr Bridge submitted that there was no finding of dishonesty against Ms Grayling despite the restriction on the licence that Mr Brow should not have any management or involvement with the First Appellant’s licence. Mr Brow did not have such a role within the First Appellant.

### Discussion

38. We have no hesitation in rejecting the remaining ground of appeal. We are satisfied that the TC was not wrong in fact nor law in deciding to disqualify Ms Grayling for a period of twelve months. We are satisfied that such a sanction was not disproportionate.
39. The TC applied the correct test in law and gave sufficient reasons at [41] of the decision in relying on a finding that Ms Grayling had misled the regulator in order to disqualify her. That finding clearly undermined her repute and the ability of the TC to put any trust in her. This was a finding that was plainly open to the TC on all the evidence and in light of the inconsistencies in Ms Grayling’s evidence: during the DVSA investigation; in contact with the Traffic Examiners; during the interview under caution; in her correspondence; and in her oral evidence before the TC during the PI.
40. The finding that Ms Grayling misled the regulator was the crux of the reasoning in support of her disqualification rather than the additional finding that there was no separation, a blurring or at least a lack of distinction between the financial and business dealings of the First and Second Appellants (or at least Ms Grayling and Mr Brow). In any event, the findings of misleading the regulator and blurring the running of the business entities all go to Ms Grayling’s repute and the trust that could be placed in her.
41. We are satisfied that the Commissioner was not wrong to rely on findings of Ms Grayling misleading the regulator and the blurring of her business with Mr Brow’s – the findings were available to the TC on the evidence he received and he gave sufficient reasons for these findings within its decision.
42. For example, the TC’s conclusion that Ms Grayling had misled the regulator is set out at [41] of the decision. It was supported by numerous findings regarding Ms Grayling’s evidence earlier in the decision such as: her failure to disclose that Camel Sand and Gravel was Mr Brow’s sole trader business ([16]); inconsistent, misleading and evasive evidence as to whether Mr Nicholls was employed by the First Appellant as a driver ([19]); inconsistent evidence as to whether vehicles were rented from the second Appellant and how they were used ([20]); her evidence being contradicted by the Traffic Examiner ([22]); selective supply of evidence regarding where the vehicles were parked and other matters ([23]); inconsistent evidence about whether vehicles had been off road or being driven ([30]); allowing a situation where there were no driver defect reports ([31]); and failure to supply invoices regarding the payments for goods and services, such as vehicles or drivers and the blurring of business relationships ([33]).
43. Importantly, the TC also found that Ms Grayling had breached the spirit of the undertaking she had given in 2015 that Mr Brow would not be involved in the operation of the First Appellant’s licence ([33]).

44. In addition, the TC's conclusion at [41] must be read in light of and in addition to the earlier and additional conclusions as to why the First Appellant's licence should be revoked (see [36]-[40]) above.
45. The TC found that Ms Grayling had wilful disregard for the conditions of the First Appellant's licence. For example, the First Appellant had not consistently used the operating centre to park vehicles for a number of years but had operated vehicles from an unauthorised operating centre. That on its own might have merited disqualification. Ms Grayling's evidence was misleading and inconsistent suggesting she was not aware that she had to park vehicles at the operating centre and was unaware where the vehicles should normally be kept when not in use ([36]). Ms Grayling must have agreed to such an undertaking in acquiring and obtaining the licence - she went to great lengths to tell Ms Lee they were not being parked at home. She would have known she had to say that they were kept at the operating centre but failed to say they were in Lowestoft rather than Ipswich when it was convenient to her. The TC was entitled to find Ms Grayling was not interested in following the rules.
46. These findings were compounded by unsatisfactory arrangements for maintaining the First Appellant's vehicles and allowing other drivers such as Mr Nicholls to use the operating licence for their own ends rather than for the First Appellant ([37]).
47. We follow the existing law that traffic commissioners should assess the level of risk which arises from the way in which an operator operates and the degree of responsibility of those in charge. In appropriate cases commissioners are entitled to disqualify on the basis of the degree of risk. They are not compelled only to act after death or serious injury or damage has resulted from the method of operation – Mr Bridge drew that distinction but ultimately it is to no avail.
48. Read in light of all the TC's reasons for revocation there was very strong evidence to support disqualifying Ms Grayling for a period of twelve months. There were no grounds on which we could contemplate that the TC's decision to disqualify for this length of time was wrong as a matter of fact or law.
49. The length of disqualification in this case was towards the lower end of the scale. As Mr Bridge noted, Ms Grayling has in any event now served most of the twelve-month period of disqualification. We are satisfied that disqualification for twelve months was a proportionate sanction.
50. Notwithstanding the limited ground of appeal now pursued, we have independently considered whether there were any grounds in fact or law for finding that the TC erred in making any of its decisions. We are satisfied that there were not.

### **Conclusion**

51. We dismiss this appeal to the Upper Tribunal.

Authorised for release

Rupert Jones  
Judge of the Upper Tribunal  
Dated: 20 May 2021