NCN: [2021] UKUT 267 (AAC)

IN THE UPPER TRIBUNAL **Appeal No. T/2021/45**
ADMINISTRATIVE APPEALS CHAMBER
(TRAFFIC COMMISSIONER APPEALS)

ON APPEAL from the DECISION of the TRAFFIC COMMISSIONER

Before:	M Hemingway:	Judge of the Upper Tribunal
	D Rawsthorn:	Member of the Upper Tribunal
	S James:	Member of the Upper Tribunal

Appellant: West Midlands Machinery Services Ltd

Reference: OD2041532

Date of Hearing: 15 October 2021 (at Birmingham)

Representation:

For the appellant: Mr James Backhouse (Solicitor)

DECISION OF THE UPPER TRIBUNAL

This appeal to the Upper Tribunal is allowed. The case is remitted for a full reconsideration to be undertaken by a different Traffic Commissioner to the one who made the decision of 9 June 2021. The reconsideration shall be undertaken by way of the holding of a public inquiry unless the Office of the Traffic Commissioner is informed by or on behalf of the Operator that one is not wanted and the Traffic Commissioner considers, in light of such an indication, that he/she is able to fairly determine matters without one.

CASES REFERRED TO

Bradley Fold Travel Ltd & Anor v Secretary of State for Transport [2010] EWCA Civ 695.
Balwant Singh Uppal [2014] UKUT 53 (AAC)

Appeal No. T/2021/45

REASONS FOR DECISION

1. This appeal to the Upper Tribunal has been brought by West Midlands Machinery Services Ltd, (the Operator) from a decision of the Traffic Commissioner for the West Midlands ("the TC") of 9 June 2021 (the date of the written reasons) refusing to grant its application for a standard international goods vehicle operator's licence. The application was refused pursuant to section 13A(2)(b) of the Goods Vehicles (Licensing of Operators) Act 1995 ("the 1995 Act"). Specifically, it was decided the Operator had not shown good repute.

2. We held an oral hearing of the appeal at Birmingham on 15 October 2021. At that hearing the Operator was represented by Mr James Backhouse, a Solicitor with Backhouse Jones Solicitors. We are grateful to Mr Backhouse for his thorough oral submissions.

3. By way of background, the appeal raised issues concerning what is often referred to as "*fronting*" whereby a disqualified operator seeks to circumvent adverse regulatory decisions by trading under the name of a different individual or operator. Clearly, fronting is a very serious matter given its capacity to enable previous transgressors to avoid the impact of properly made regulatory findings and decisions.

4. There is or was an entity known as K.J Hudson Machinery Services Ltd ("KJHMSL"). It had fallen foul of the regulatory regime with a degree of frequency having come to the attention of the same TC who has taken the above decision. The TC set out the relevant history of KJHMSL in his written reasons (see paragraph 4) concerning the Operator's appeal. The TC stated that KJHMSL had had a restricted licence revoked in February 2015 due to numerous prohibitions and fixed penalties having been incurred by its vehicles; it had had another licence revoked in November 2018 due to usage of an AdBlue emulator as well as its having operated more vehicles than the number authorised; and it had had a further licence revoked on 29 October 2020 due to failure to comply with an undertaking that one Kenneth Hudson would not be involved in the business and due to its having operated for a period when not properly licenced. Additionally, in February 2020, a licence held by one David Price had been revoked because, it had been found, he had been operating as a front for Kenneth Hudson and KJHMSL.

5. The TC had concerns that the Operator in this case might be intending to front for Kenneth Hudson and/or KJHMSL. It was explained in the TC's written reasons that he had been alerted to that possibility because the Operator's bank statements showed a payment to KJHMSL; because its prospective transport manager one Alan Cooper had been the transport manager for KJHMSL at a time when one of its licences had been revoked; and because records held at Companies House showed that the Operator was incorporated on 2 November 2020 which was only 4 days after the decision of 29 October 2020 to revoke KJHMSL's licence. So, the Operator was called to a Public Inquiry ("PI") so that the matter could be looked into.

6. The PI took place on 8 June 2021. It was attended by Nicola Greenfield who is the Operator's director and by the aforementioned Mr Cooper. The Operator was represented

by Mr Bell, another Solicitor from Backhouse Jones Solicitors. There is a transcript of the PI which we have read with care. One of the issues raised by the TC during the PI concerned a mobile telephone number which had been supplied by Nicola Greenfield as the Operator's contact number when the licence was applied for. The number is 07480402711. The TC pointed out, although not at the outset of the PI, that the same number was held by the Office of the Traffic Commissioner ("OTC") as a contact number for KJHMSL. This was, in fact, first raised by the TC during the course of the PI when he was asking questions of Nicola Greenfield. Upon that matter being raised Mr Bell correctly observed that there had been nothing in the paperwork sent in readiness for the PI which had indicated there was that apparent link between Nicola Greenfield and KJHMSL. He commented "*this has rather jumped out at me*". In other words, he was indicating he had been taken by surprise. The TC then (it seems) showed Mr Bell a computer screen evidencing that that number had, in the past, been provided to the OTC as a contact number by KJHMSL. Mr Bell did not seek an adjournment either to a different date (which would have afforded an opportunity we suppose for evidence to have been gathered as to the way in which mobile telephone numbers are recycled and the likelihood of the occurrence being a mere coincidence) or for a short period to enable him to take some instructions. Nicola Greenfield told the TC she had "*bought a pay as you go SIM*" and that the above number was the number which had been assigned to it. The PI then continued and other issues were addressed though the TC did return to the matter of the telephone number to observe "*I won't deny though that the fact that the phone numbers are the same is a bit of a niggle here*". After the PI had ended, but before the TC had made his decision on the application, Mr Bell sent to the OTC a letter enclosing what was said to be "*a receipt for the purchase of the sim card (attached) and the £10 top up*" which it was explained Nicola Greenfield had "*managed to find*". The letter closed with the words "*We are happy to reconvene the hearing to discuss the above if required (preferably Teams if needed), but my client was keen to provide this information to you*".

7. The TC went on to make his decision on the application without reconvening the PI though he did consider the evidence of the receipt in reaching that decision. In explaining his decision, he said this:

> "5. Concerned that the application from WMMSL might be yet another attempt by Kenneth Hudson and/or KJHMSL to circumvent their disqualification, I decided to consider it at a public inquiry. This was held at Birmingham on 8 June 2020.Present were director Nicola Greenfield, prospective transport manager Alan Cooper and Scott Bell, solicitor from Backhouse Jones, representing.
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> 6. Mr Bell made the reasonable point that it was difficult to prove a negative, ie that the application was not a front for KJHMSL. The bank statement was explained by the fact that WMMSL had purchased a couple of 3.5 tonne recovery trucks from KJHMSL and had since sold one of them on. WMMSL had originally been established as a buying and selling company, purchasing assets from distressed companies and selling them on for profit. This was its link with KJHMSL which had now entered liquidation. WMMSL had been incorporated on 2 November 2020, but evidence was provided to show that the idea for the company had been gestating for several months before this: it had not been a quick reaction to the revocation of KJHMSL's licence. The company wished to operate one HGV to start with in order to take specialist machinery services plant to auction-a different business model to that of KJHMSL. WMMSL had alighted on Alan Cooper as transport manager as he had known the Greenfield family for several years.
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> 7. I noted that the vehicles on KJHMSL's licence at the time of revocation had since appeared on another licence with no apparent connection to KJHMSL. I noted too that the operating centre proposed by WMMSL was different to the one which had been on the

licence of KJHMSL. However, I noted that the contact telephone number given in WMMSL's application by Nicola Greenfield was the same as the contact number which had been given by Claire Dey when she had submitted KJHMSL's licence application in 2019: this number had remained the contact number for KJHMSL throughout the life of its licence OD2025603. This suggested to me that the connection between the two businesses was closer than I was being told.

8. Nicola Greenfield stated that she had purchased a sim card with this number at a phone shop. She could not explain how it came to be that this mobile phone number was the same as that of KJHMSL's.

9. At this point I adjourned the inquiry in order to take a written decision. Later in the day, I received an e-mail from Scott Bell explaining that Nicola Greenfield had found the receipt relating to the purchase of the sim card. A copy of the receipt was attached: it was a handwritten note on a headed notepad of "thephonebox" mobile repair specialists. It recorded that £11 had been paid in cash on 30 January 2021 for a sim card with the phone number in question and a £10 top-up.

10. Essentially, I am being asked to decide which of the following scenarios is the more likely:
i) that sometime between October 2020 and January 2021 KJHMSL gave up their mobile phone number (although the company continued to do business until March 2021 when a voluntary liquidator was appointed) and that by sheer coincidence this was the very number that was associated with the sim card subsequently bought by WMMSL in January 2021;
ii) That the phone number used by KJHMSL has simply been passed by KJHMSL to WMMSL and that WMMSL has attempted to conceal that fact from me.

11. I have no hesitation in concluding that scenario ii) is by far the more likely on the balance of probability. The chances of scenario i) happening are infinitesimally small. It stretches credulity to accept that out of all the many millions of mobile phone numbers available, the number associated with the sim card purchased by WMMSL was the very same number which had been in the possession of KJHMSL. Neither was I convinced that the handwritten receipt on a notepad (albeit letterheaded) was authentic.

Conclusion
12. There are certainly aspects about WMMSL's business which are different from that of KJHMSL. The business model appears different, the operating centre is different and KJHMSL's vehicles appear to have been disposed of elsewhere. On the other hand, the transport manager is the same and, as I have concluded above, the connection between the two businesses is clearly closer than the applicant has admitted.

13. I mentioned to Mr Bell at the inquiry that the question of the phone number was a worrying niggle. After considering the matter further (paragraph 11 above refers) I am forced to find that the applicant has attempted to mislead me about the true nature of its connection with KJHMSL. For this reason, I conclude that I cannot have the trust in the applicant that is necessary for me to be able to grant it an operator's licence. Because of the deception it has practised, I am unable to find that, on the balance of probability, the applicant has the required good repute: I am accordingly refusing the application under Section 13A(2)(b) of the 1995 Act".

8. So, the application was refused. There followed, prior to the appeal being lodged with the Upper Tribunal, an application to the TC for reconsideration under section 36 of the 1995 Act. The asserted basis for the application was that, it was said, the TC had made a finding of dishonesty concerning the authenticity of the receipt but that, in such circumstances, there was an obligation upon him, prior to making such a finding, to put his concerns to the Operator (or specifically Nicola Greenfield) either by inviting further written representations or by reconvening the public inquiry. The TC responded via an e-mail sent on his behalf by the OTC, but which set out his thinking. We interpret his reasoning to

amount to a decision, on the merits, not to change his original decision. Whilst he expressed what we think to be wholly well-founded doubts that the circumstances did not bring the case within the ambit of section 36, he did not actually decline to review on that basis. As we say, we think what he did was to undertake a review but not to change his decision. The outcome, though, would be the same in any event. We note, insofar as anyone might think this to have relevance to our own deliberations on the appeal, that section 36 permits a TC to review a decision where "*a procedural requirement imposed by or under any enactment has not been complied with in relation to the decision*" (see section 36(1))and that a review can only be triggered by a number of circumstances including that "*a person who appears to have an interest in the decision*" (see section 36(2)(b)) has requested a review. We would accept that since the review request was made on behalf of the Operator (effectively Nicola Greenfield) it had been made by (or on behalf of) a person who has an interest in the decision. But we do not think the claimed failure to afford a right of reply is the sort of "*procedural requirement*" envisaged at section 36(1). Rather, what was before the TC was a contention as to the lawfulness or fairness of his approach (and so a challenge to his judgement) rather than an assertion a specific procedural requirement as laid down in legislation, such as by way of example the sending of notice of the time of any PI, had not been complied with. So, whilst what we have to say here is not essential to our decision and should not, therefore, be regarded as binding, we do not think the TC could have been criticised if, instead of deciding the review application on its merits, he had simply not admitted it for consideration. But before we leave the review issue, it is necessary for us to address one further aspect of it. The TC, in refusing to change his decision, stated after accepting he had decided not to seek further comment relating to his view of the receipt, "*I did so because it seemed to me that, irrespective of whether the applicant could show to me that recycling of phone numbers is a common practice (I know that it is-although Vodaphone waits 90 days before reassigning a number) or whether someone at the phone shop could be found to state that the sim card was sold to the applicant, in the end I would still be tasked with choosing between a many thousands to one chance on the one hand or a likely link between the applicant and KJHMSL on the other…*". We have set that out because it has been subsequently argued before us, on behalf of the Operator, that those words were indicative of the TC having carried out some post-hearing and undisclosed (to the parties) research.

9. Grounds of appeal to the Upper Tribunal then followed. There is a short preamble before the actual grounds are set out. The preamble is helpful, but we do need to make it clear we disagree with one assertion contained in it. It is suggested, in effect (at least on our reading) that it was apparent from his written reasons that the TC had accepted that credible explanations had been provided for those apparent links between the Operator and KJHMSL which had been specified prior to the commencement of the PI. We are, for ourselves, unable to detect any finding or conclusion in those written reasons to that effect. We think the author of the grounds (Mr Bell) probably had in mind paragraph 6 of the written reasons. We do not think that, in writing that paragraph, the TC was intending to make findings or conclusions as to the explanations offered for the apparent or possible links which had been identified in the call-up letter. We do not think he actually made such findings or conclusions. Rather, he was simply summarising the contentions about those links which had been made to him orally by Mr Bell on behalf of the Operator. We cannot see, in context, that paragraph six can realistically be read in any other way. Further, should it be necessary for us to say anything else on the point, it seems obvious from what is said at paragraph 12 of the written reasons, that the TC had not reached a positive view that the transport manager link had been credibly dealt with.

10. Moving onto the written grounds themselves, which have been expressed with helpful succinctness and clarity, they may be summarised as follows:

Ground One-the TC acted unfairly in not notifying the Operator or its representatives of the apparent connection he had detected between it and WJHMSL as a result of the telephone number issue, prior to or at the outset of the PI. Indeed, he had effectively ambushed the Operator by only raising the matter with Nicola Greenfield in "cross-examination".

Ground Two-the TC acted unfairly in making adverse findings to the effect that Nicola Greenfield had been dishonest and had produced a false receipt, without enabling her to respond.

Ground Three-the TC had (it was said) undertaken "*his own research into Ofcom data as to which provider the number is assigned to, without disclosing the "evidence" he had obtained from Ofcom to the Appellant*" and to have done so without giving the Operator a chance to see the evidence and comment upon it was unfair.

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

12. We have decided that ground one is made out. We have decided grounds two and three (albeit that before us Mr Backhouse spent most of his time pursuing ground two) are not made out. We shall explain why below.

13. We shall, first of all, deal with the grounds we have not found to have been made out. We have summarised ground two above. It seems to have been assumed, both with respect to what has been said in the written grounds and what has been argued before us at the hearing, that the question of Nicola Greenfield's honesty and credibility was only raised by the TC at a late stage and only with respect to the receipt. But we do not accept that such assumption is well founded. The issue in this case is and always was that of fronting. Whilst it might be just about possible to conceive of circumstances so unusual that a person might effectively find himself or herself acting as a front without realising it, it was obvious here that the TC was concerned, from the outset, with the possibility that she was knowingly acting as a front for Kenneth Hudson and/or WJHMSL. So, the question of honesty had been raised at the outset and this was not a case where dishonesty had suddenly become an issue as a result of the TC's views concerning the receipt.

14. The TC had been sent after the PI and unsolicited, the receipt, by those acting for the Operator. It is argued on the Operator's behalf that he then decided, without giving an opportunity for comment, that the receipt was a fraudulent document. Mr Backhouse says

(and generally speaking we would not disagree) that cogent evidence must be available in order to properly underpin a finding of deliberate deception. But we think Mr Backhouse and the author of the grounds (Mr Bell) mischaracterise what the TC was doing. The question of dishonesty was already squarely before him. That followed from the raising of the issue of fronting in the call-up letter (see above). The TC, as is clear from the PI transcript, had concerns about the telephone number issue which he had reiterated during the PI after Nicola Greenfield had given her evidence to the effect that she had purchased a sim card which happened to have the same number assigned to it as had been used by the entity it had been suggested she might have been fronting for. In order to deal with the TC's very understandable concerns she had sent the receipt. The TC, very properly, considered that evidence for what it was worth. What he had to say about it appears at paragraphs 9 and 11 of the written reasons (see above). We put it to Mr Backhouse, that the TC was, in fact, rather than making a positive finding that Nicola Greenfield had taken it upon herself to prepare and submit a fraudulent document after the PI, simply deciding that the receipt ought to be accorded no weight such that it did not afford an innocent explanation. He urged us not to take that view and contended that the TC was "*basically saying that the document is false*". We disagree. The TC's analysis of the receipt was focused upon its imperfections as a piece of evidence. It was a handwritten receipt on a notepad. The TC's observation that he was not "*convinced that the handwritten receipt on a notepad (albeit letterheaded) was authentic*" falls short of a positive finding that the document is false or that it has been fraudulently created. It reads much more readily as a finding that negligible or no weight can be attached to it. We conclude that the TC was limiting himself to a finding he could not attach weight to the document as an item of evidence, with the consequence that the link made by the telephone number was not credibly explained. That very significantly weakens the argument underpinning ground two to the effect that the TC had made a finding of fraud without putting it to the Operator for comment.

15. Mr Backhouse relied strongly, with respect to his contentions under ground two, upon what had been said and decided by the Upper Tribunal in *Balwant Singh Uppal* [2014] UKUT 53 (AAC). That was a decision where the fairness of affording a party a chance to comment upon new material before findings were made on it was, no doubt rightly, stressed. In particular having regard to the circumstances of this case, the Upper Tribunal said "*We can see no distinction in principle between cases where a Traffic Commissioner is proposing to come to conclusions on the basis of new material obtained through his own inquiries and cases where he proposes to come to conclusions adverse to the applicant or an operator on the basis of new material which that person has provided*". He argued that the *Uppal* case was on point and could not be distinguished. But as we have explained, this was not a case where the TC was coming to conclusions <u>on the basis</u> (our underlining) of new material. He undoubtedly had new material before him with which he had been provided after the PI. But his decision did not rely upon adverse findings based on the new material. As we have explained, the new material or new evidence was simply being given no weight. Thus, the situation obtaining in this case was materially different from that obtaining in the *Uppal* case and the *Uppal* case can, indeed, be distinguished.

16. Much has been made in written and oral argument about the letter which accompanied the receipt and the indication contained within it that the Operator was "*happy*" for the PI to be reconvened so that the issue of the telephone number could be explored further in light of that receipt. But the letter fell short of a request that it be reconvened. Mr Backhouse suggested the letter was effectively suggesting to the TC that he "*ought to*" reconvene but that seems to us to be inconsistent with the wording actually used. If a view was taken that

fairness required the PI to be reconvened in the event of adverse findings otherwise being made, then a clear request for it ought to have been made.

17. For all of the above reasons we have concluded that ground two does not identify an error of law, unfairness, or plainly wrong findings or conclusions.

18. We move on to ground three. We accept without any difficulty that, absent something most unusual, if a TC undertakes research after a PI and if adverse consequences to a party based on the results of that research are contemplated, then an opportunity to comment either in written submissions or at a reconvened PI ought to be given. The comments made by the TC in refusing to review his decision do seem to suggest (though the position is in our view not entirely clear) that either some research has been undertaken or that the TC had some pre-existing knowledge of the way Vodaphone operates with respect to the recycling of numbers. But it seems to us that any research which might have been undertaken was done so for the purposes of the review decision rather than the decision on the application. We say that because there is no reference to Vodaphone policy on number recycling and indeed no reference at all to anything other than evidence and information which was known to all parties, in the written reasons for the decision to refuse the application. The appeal is, of course, directed to the decision to refuse the application and not (indeed it does not seem to us there would have been a right of appeal) the decision on review. We put that point to Mr Backhouse. He argued that it was clear some research had been conducted, that it was unclear as to when it had been conducted and that just because the Vodaphone information had not been mentioned in the written reasons for the decision to refuse the licence, that did not mean the information gleaned from the research had not been taken into account.

19. We cannot be certain as to whether any such research was undertaken but we cannot dismiss the possibility that it was. However, it is in our view clear that any such information did not play a part in the TC's reasoning with respect to the decision to refuse the licence. The information concerning Vodaphone did play some, though we think a very limited, part in the review decision. That strongly suggests that any research that may have been carried out was undertaken between the making of the decision under appeal and the subsequent review decision. Further, despite Mr Backhouse's arguments to the contrary and his assertion that not all of the reasoning which has played a part in an outcome decision will necessarily find its way into written reasons, we think any technical information the TC was relying on and taking into account would have been specifically mentioned. That being so, we have concluded that the Operator has not shown unfairness as a result of the TC undertaking any research because it has not been shown such (if any was done at all) was undertaken prior to the decision under appeal being made and it has not been shown, therefore, that it played any part in the relevant decision making process.

20. In light of the above, we conclude that ground three is not made out. We would, though, wish to take the opportunity to stress that if, unusually, a TC finds it necessary to undertake research, any material or information which is gleaned from that ought (absent something exceptional) to be put before a potentially impacted party for comment prior to any decision being made.

21. We now move on to ground one. It is not apparent to us precisely when it was that the TC discovered that the telephone number provided by the Operator was the very same number which had been used by KJHMSL. We note from the PI transcript that, having raised the issue in questions put to Nicola Greenfield and having listened to Mr Bell's

observation that there had been no mention of the point in the papers, the TC said to him "*Yes, I'm sorry. I was checking it before the inquiry. I'm quite happy to show you on the screen*". So, it had either been discovered on a day prior to the PI hearing (though after the sending of the call-up letter and any related information) or on the morning of the PI hearing but prior to commencement. The telephone number link was very far indeed from being a minor or peripheral matter. It was something of such significance that it had (and has) the potential to determine the outcome of itself. In our judgement fairness demanded that, if the former scenario applied, the OTC notify the Operator's legal representatives upon discovery. If that had been done on a day prior to the date of the PI, it would have afforded the representatives (specifically Mr Bell) an opportunity to consider the matter, to take instructions, to consider whether evidence could be obtained which might have been capable of suggesting an innocent explanation, and to consider whether a postponement application should be made in order that any evidence which might have been obtainable could actually be obtained. If the second scenario applied then we are in no doubt that fairness demanded that the issue be raised with the Operator and Mr Bell at the very outset of the PI together with the offer of a short adjournment to enable him to take instructions and to consider how he might wish to proceed and whether he should seek an adjournment of the PI to a different day. Introducing the matter (particularly a matter of such a potentially damaging nature) only after the PI hearing had commenced and only during the course of the TC's questioning of Nicola Greenfield had the appearance of and was actually significantly unfair.

22. We have considered the question of materiality. It could be argued that, since no application for an adjournment was made on behalf of the legally represented Operator once the TC had disclosed the telephone number issue, that meant no such application would have been made even if the TC had taken the steps we have said he ought to have taken. We are a little surprised that a clear application for an adjournment was not made as soon as the matter was raised by the TC. But the way in which things had been done by the TC effectively and in our view unnecessarily, put the Operator and the representative on the spot. Disclosure on a day prior to the PI or, if that was impossible due to the timing of the discovery, disclosure at the outset of the PI coupled with an offer of a short adjournment would have afforded the opportunity for a less rushed and more measured consideration as to how to proceed. We think the Operator was entitled to that. It could also be argued that the telephone link issue causes such coruscating damage to the Operator's case that the unfairness we have detected could not possibly have impacted upon the outcome. But we think if the Operator believes it might succeed in explaining the telephone link, perhaps by the production of further relevant evidence if such can be obtained, then it should have the opportunity to do so in future proceedings which are fair.

23. In light of the above we have concluded that ground one is made out and we have decided that the proper course of action, as sought by Mr Backhouse, is to remit.

24. There was some discussion, at the hearing, as to whether, if we were minded to remit, the case should go back to the same TC or a different TC. There is something to be said for either course. As to that, remitting to the same TC would mean the matter would be dealt with by a TC who is already familiar with the case and indeed with the worrying background with respect to Kenneth Hudson and KJHMSL as set out above. But on balance, we have decided it is more appropriate, as this is the usual course of action, that the case be considered entirely afresh by a different TC.

25. This appeal to the Upper Tribunal then is allowed. The case is remitted for a reconsideration to be undertaken by a different Traffic Commissioner. A PI is to be held unless it is indicated to the OTC by or on behalf of the Operator that one is not wanted, and the TC is satisfied fairness does not require one.

M R Hemingway
Judge of the Upper Tribunal
Dated: 26 October 2021