



IN THE UPPER TRIBUNAL

**Appeal No. UA-2021-000056-T
[2023] UKUT 43 (AAC).**

**ADMINISTRATIVE APPEALS CHAMBER
(TRAFFIC COMMISSIONER APPEALS)**

**ON APPEAL from a DECISION of the DEPUTY TRAFFIC COMMISSIONER for the
East of England Traffic Area.**

Appellant: ADA Haulage Ltd

**Deputy Traffic Commissioner
Decision dated:** 10 August 2021

**Appeal to Upper Tribunal
dated:** 6 September 2021

Reference no: OF2005000

Date of Upper Tribunal Hearing: 23 January 2023

Place of Hearing: Field House, London

Before: Judge Rupert Jones: Judge of the Upper Tribunal
Ms Sarah Booth: Member of the Upper Tribunal
Mr Stuart James: Member of the Upper Tribunal

DECISION OF THE UPPER TRIBUNAL

The appeal is dismissed. The revocation of the Appellant's operator's licence has already taken effect and no further order is required.

SUBJECT MATTER

Proceeding in absence; Revocation of Operator's Licence.

REASONS FOR DECISION

1. This is the appeal of A.D.A. Haulage Limited ("the Appellant") to the Upper Tribunal from a decision of a Deputy Traffic Commissioner (the 'DTC'), contained in a letter and written reasons dated 10 August 2021, to revoke the company's operator's

licence. The Order for revocation followed a public inquiry held remotely on 10 August 2021 by video technology (MS Teams). The DTC announced his decision orally at the end of the hearing but prepared written reasons of the same date.

2. The order of revocation was made under the DTC's discretionary powers pursuant to section 26(1)(a), (b), c(iii), (f) and (h) of the Goods Vehicles (Licensing of Operators) Act 1995 ('the Act'). It was to take effect at 2345 hours on 10 September 2021. The Appellant made no application for a stay of the DTC's decision so that the order for revocation came into force on that date.

The grounds of appeal

3. The Appellant appealed to the Upper Tribunal on 6 September 2021. The notice of appeal was prepared by its sole director, Mr Inout Alexandru Covaci but listed Mr Sidhu, the Transport Manager, as the representative. The notice included the following grounds of appeal:

'As I was a new operator and still learning towards my profession, The traffic commissioner neglected all our positive efforts towards our operator's licence in future and chose to revoke our licence from 10/09/2021.

I am still in shock that even after explaining our future strategies in respect to our operators' licence, the traffic commissioner delivered the decision of revoking our licence.

We accept our mistakes which we done in the past and took the measures to avoid them occurring in the future. Also, with our new transport manager, I am learning and enhancing my skills which will help me in my future to run my transport more effectively.

I have invested in this business and this is the only source of income I have to support my family in these hard times. It's shocking to see how they just neglect our side and chose to revoke our licence.

I would like to appeal against the traffic commissioner's decision as this is totally one sided and would like to request you to deliver justice in my case.

Grounds of Appeal:

- 1) Transport running in a professional manner
- 2) With the help of our new transport manager, all our maintenance records are maintained and stored in a safe place.
- 3) We are fully complying with our operator's licence requirements.
- 4) All the policies and procedures are maintained to run our transport.
- 5) At the time of DVSA vehicle examiner inspection, our vehicle was already at the garage to do some maintenance work. Without even starting the vehicle and inspecting our vehicle, Inspection reports have been made.
- 6) We tried to explain our side but the Traffic Commissioner totally ignored our positive efforts.
- 7) We are competent enough to run our business and with our new transport manager and his experience in this field, it's a bonus for our transport to deliver our best in future.'

The hearing – proceeding in absence

4. The hearing before the Tribunal was listed for 12pm on 23 January 2023 but no party attended by that time or 12.30pm. The Appellant's sole director, Mr Covaci, did not attend, nor did any person or representative on behalf of the Appellant company.

5. The Tribunal clerk rang Mr Covaci who stated that he was in Ipswich and believed the hearing was to be taking place on 26 January 2023. As instructed by the Tribunal, the clerk rang a further time to specifically ask whether Mr Covaci sought an adjournment or postponement of the hearing. The clerk informed the Tribunal that Mr Covaci had stated he did seek such an adjournment so that he could attend on another hearing date.
6. We refused that application for an adjournment and gave our decision in open court to proceed in absence. Below, we repeat and expand upon our reasons for doing so.
7. First, we are satisfied it was in the interests of justice to proceed in the Appellant's absence. We are satisfied that, for the purposes of Rule 38 of the Tribunal Procedure (Upper Tribunal) Rules, the Appellant had been notified in writing of the correct date, time and venue of the hearing on two occasions.
8. The Appellant company, of which Mr Covaci is the sole director, was first notified in writing by letter from the Tribunal dated 16 December 2022 which was sent by email. The same notification was sent to Mr Sidhu, the Appellant's proposed transport manager who was listed on the notice of appeal as the appellant's representative.
9. A hard copy of the appeal bundle was sent to the Appellant on 23 December 2022.
10. There was no reply to any of the correspondence from the Tribunal which included a request to confirm attendance at the hearing.
11. In light of this, on 13 January 2023, the Tribunal sent a reminder letter to the Appellant and Mr Sidhu regarding the upcoming hearing asking for confirmation as to who would be attending.
12. On 16 January 2023 Mr Covaci replied to the Tribunal in an email stating:

My name is Alexandru Covaci I was director to ADA Haulage Ltd (made by Mr Amrit Sing Sidhu) the transport manager of the company.
He ask me 20k for the company and promise me loads of favours with work. He made on my behalf a loan at the bank without me knowing as he had all my details because I trust him. He made that loan illegal, lying with the company made me a fraud so he can take a part of the money for his personal interests and the other part for Maximus Haulage. I can come with proofs as what he made those transfers.
He was lying to me and I trust him as he told me that he is my brother and he will help me to work with the company that he sold me but he took from me 50k and dispera [disappear] leaving me in debts.

Thank you for reading this, maybe is useful in court
For other inquiries I am available as I said I can proof what he done to me and I have loads of other proofs that he is doing illegal businesses.
Thank you
Kind regards

13. We make no findings as to the truth of the contents of this email – serious allegations have been made against another person, who is a representative but not a party to

proceedings, and has not had an opportunity to respond. Likewise, we make no findings regarding the reliability or credibility of Mr Covaci and his integrity, even if the contents of this email were true. Further, we disregard the email when considering the substance of the appeal. The email is irrelevant to the substantive issues before us - whether the DTC was wrong in making his decision to revoke the licence on the grounds he relied upon. The contents of the email are irrelevant to the issues in the appeal and we therefore put them out of our mind.

14. However, the important point to note from the email is that it does suggest that Mr Covaci was aware of the hearing and the forthcoming appeal and wanted to make written representations. We are therefore satisfied that the Appellant had been properly and accurately notified of the date, time and place of the hearing for the purposes of Rule 38(a).
15. To the extent Mr Covaci believed the hearing was to take place on 26 January 2023, we are satisfied he was at best careless and should reasonably have been aware of the date and made steps to attend if he wished to attend. Alternatively, he deliberately and voluntarily chose not to attend.
16. In the circumstances of the case, we are satisfied that it is was in the interests of justice to proceed in the Appellant's absence for the purposes of Rule 38(b). We are satisfied that the Appellant, through Mr Covaci and Mr Sidhu, had a reasonable opportunity to make representations in writing and orally to present their appeal and arguments and any evidence. They made written representations in the notice of appeal and in the recent email from Mr Covaci in his email of 16 January 2023.
17. Second, we are satisfied it was just and fair to refuse the adjournment application. We are satisfied that it is just and fair to refuse the adjournment, in accordance with our case management powers under Rule 5(3) and the overriding objective under Rule 2. We have taken into account fairness in the proceedings. The Appellant has been given a full opportunity to participate and repeatedly notified of the hearing but not attended. We will take into account everything relevant that it has said in writing, the Appellant's grounds of appeal submissions and arguments regarding the DTC's decision, as part of our consideration. The Appellant had the opportunity to serve any further written evidence in support of the appeal but has not done so. We also take into account that the appeal is effectively one as to a point of law and we would not be considering live oral evidence in any event.
18. We also take into account the need to avoid delay. The case is already old – 16 months have passed since the notice of appeal was lodged at the Upper Tribunal. We have taken into account prejudice to the Appellant - having regard to the consequences for the Appellant of proceeding in its absence given the seriousness of the appeal and the issue at stake – revocation of its operator license. However, we note that the Appellant has not applied for the stay of the decision, thus the revocation of the licence took place 16 months ago so that the Appellant cannot have operated Goods Vehicles for an extensive period of time. It has not sought to remedy this. Further, Mr Covaci states he 'was' a director so the status of the Appellant company itself is not clear.

The Public Inquiry and DTC's decision

19. As set out above, the DTC held a public inquiry (PI) on 10 August 2021 and gave an oral decision at the end of proceedings which was followed by a written decision with reasons that were sent to the parties.

20. Relevant parts of the DTC's written decision dated 10 August 2021 were as follows:

12. From all of the evidence I have seen and heard today I am satisfied, on the balance of probabilities that:

(a) This operator was 'using an unauthorised operating centre for a significant length of time because the detail given by 'Traffic 'Examiner Pope (page 52) about this issue is such that he must have been told what he recorded there to be able to say what he said. The operator's response to this (page 57 of the bundle) is also in keeping 'with what the Traffic 'Examiner wrote on page 52. Those two documents sit together. What does not sit with, them is the operator telling me today that it was only a matter of hours that the vehicle was parked where it should not have been due to 'his car breaking down. That is a totally different account to what is said at pages 52 and 57 of the bundle. Section 7 of the Act was therefore breached on many occasions (from at least November 2020 until 18 February 2021 when DVSA investigated) and this happened when the Traffic Commissioner had not been notified and no application was made for a new operating centre. All breaches to section 7 of the Act are an offence. I therefore find that offences under section 7 of the Act occurred on a significant number of occasions.

(b) 'Road safety critical defects were found between 'Preventative 'Maintenance 'Inspections ('PMIs') at the time of the DVSA investigation. I therefore find that the vehicle was in service on the public road with those road safety critical defects present. 'Road safety was compromised as a 'result. The vehicle was being operated when it was not in a fit and roadworthy conditions.

(c) The fact that the PMI sheets were showing this meant the operator should have been aware of it and done something to stop it from happening, for example far more frequent/ regular PMIs. That clearly did not happen.

(d) A road safety critical defect was identified by Vehicle Examiner Salter at the inspection that he undertook on 18 February 2021. The photographs in the 'Public Inquiry bundle at pages 146 onwards says it all. As a result, an immediate prohibition was issued, and it was "S" marked. The "S" denotes a significant failure in maintenance. I find there was a significant failure in maintenance and again road safety was seriously compromised by the mechanical state of that vehicle.

(e) In order to have an immediate prohibition, such as this removed the vehicle must have the defects -repaired and it must also pass an MOT. There is no exemption for that requirement. Until the prohibition was removed the vehicle was not allowed to be used on any public road save for taking the vehicle to and from a pre-booked MOT.

(f) This prohibition was 'not removed until 04 June 2021. The removal notice is at page 1(c) of the bundle.

....

(i) Therefore, the vehicle was being operated whilst still subject to an immediate and 'S' marked prohibition.

(j) Only 13 days later, on 24 May 2021, the vehicle was presented for its PMI. I initially wondered why it had four PMI sheets for that date and then I realised it was because it took four sheets to manually record the 38 defects that were identified and rectified. Many of those defects are road safety related .and many are also defects that the driver should have spotted. I

noted it took from 24 May 2021 until 04 June 2021 for the defects to be -rectified so that the -roadworthiness declaration could be signed.

(k) This is totally shocking because I find that when the vehicle was spotted with the ANPR cameras on 13 May 2021 (and it was, I also found, being operated then), many or all of those defects -identified at the PMI on 24 May 2021 would have been present. That means that the vehicle was not only being operated in contravention of the prohibition, but it was also operated when it -was unroadworthy and so again -road safety was compromised and put at risk.

(l) The proposed transport manager accepted that the vehicle had been operated on other days, not just 13 May and this only stopped when he became aware the prohibition that was in place.

(m) The operator operated without a transport manager from November 2020 until the present and at no time has there been a Request for a period of grace. I see no persuasive reason to depart from the date given by DVSA for this happening.

(n) The operator failed to notify the Traffic Commissioner that he no longer had a transport manager.

(o) The operator breached the conditions on its operator's licence.

(p) The operator breached the undertakings on its operator's licence.

(q) The sole director, Mr Covaci, failed to exercise any, or any effective Management control to ensure compliance.

(r) There have been some improvements made since the proposed, transport manager started to help from April 2021. They include ensuring the vehicle is fully roadworthy, proper planning of maintenance, better oversight of driver defect -reporting, regular and thorough analysis of Driver's hours and working time. The operator is given credit for those things.

Balancing exercise.

13. I have given the operator as much credit as I can give to it looking at the operator as it appears before me today, and after undertaking a careful balancing exercise, I still find that the negatives significantly outweigh the positives. Regulatory action is required.

Statutory document number 10, Annex 4 consideration

14. Repeating all of my findings, and after giving the operator as much credit as I can give to it, I find the entry point for regulatory action to be in the 'Severe to serious' category but more in the "severe" than the 'serious'.

Good repute of the operator.

15. I have asked myself the Priority Freight question, but this is a case where the non-compliance stems from the acts or omissions of the sole director, Mr Covaci, -and there is very little tangible evidence before me to show that he is capable of being compliant in the future. I simply cannot trust him given what has happened before and by that, I mean right up to 13 May 2021 when he was clearly operating in contravention of the immediate prohibition and when road safety was also put at risk. Repeating all of my other findings I answer the Priority Freight question in the negative; I do not trust the operator to be compliant in the future. For the same reasons, despite the credit that I have given to the operator, I answer the Bryan Haulage question in the positive; the conduct of this operator is such that it ought to be put out of business, it is entirely proportionate to find that this operator has lost its good repute, it is therefore a mandatory requirement that I revoke this operator's licence.

Discretionary powers

16. Repeating all of my findings again, and after giving the operator as much credit as I can give to it I find that it is proportionate to revoke the operator's licence under my discretionary powers pursuant to sections 26(1)(a),(b), (c)(iii), (f) and (h) of the Act

Orders of revocation

17. All orders of revocation will take effect at 2345 hours on 10 September 2021.

Consideration of Disqualification

18. After giving this operator as much credit as I can give to it I have stepped back from disqualifying this operator, but only just. I do think that the breach to the prohibition notice was deliberate, but the other non-compliance was, I think, down to total ignorance or reckless behaviour but not a deliberate act. No order is made under section 28 of the Act.

The Law

Revocation

21. Section 13A(2) of the Goods Vehicles (Licensing of Operators) Act 1995 provides some of the requirements that must be satisfied for the grant of standard licences:

13A. Requirements for standard licences

- (1) The requirements of this section are set out in subsections (2) and (3).
- (2) The first requirement is that the traffic commissioner is satisfied that the applicant—
 - (a) has an effective and stable establishment in Great Britain (as determined in accordance with Article 5 of the 2009 Regulation),
 - (b) is of good repute (as determined in accordance with paragraphs 1 to 5 of Schedule 3),
 - (c) has appropriate financial standing (as determined in accordance with Article 7 of the 2009 Regulation), and
 - (d) is professionally competent (as determined in accordance with paragraphs 8 to 13 of Schedule 3).

.....

22. A traffic commissioner (TC) may revoke a licence once granted under section 26 of the Act (discretionary revocation). The relevant sections of section 26 of the 1995 Act as relied upon in the Traffic Commissioner’s decision are included below:

“(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) [in the case of a heavy goods vehicle licence,] 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 [heavy goods] 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;

(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;

...

(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;

[Emphasis Added]

23. Mandatory revocation by the TC is enabled by section 27(1) of the 1995 Act:

27 Revocation of standard licences.

(1) A traffic commissioner shall direct that a standard licence be revoked if at any time it appears to him that

(a) the licence-holder no longer satisfies the requirements of section 13A(2), or

(b) the transport manager designated in accordance with Article 4 of the 2009 Regulation no longer satisfies the requirements of section 13A(3).

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

“69. Turning back to sections 26 and 27 of the 1995 Act, I would conclude that for revocation to be possible under the former or mandatory under the latter, it is the commissioner who must be satisfied of the ground of revocation, and not the licence holder who must satisfy him to the contrary. That seems to me to be the natural way to regard both the language of those sections, and the situations contemplated in them. The context is that of a licence holder and the possible revocation of his licence. Revocation can only be done on some specified ground (section 26) or because one or other of the three fundamental requirements is no longer satisfied (section 27). Under section 26(4), the commissioner can only act if “the existence of” a ground comes to his notice. It is counter-intuitive to think of a licence holder being required to negative the existence of a ground raised against him. So with section 27. The commissioner must revoke if “it appears to him” that the licence holder is no longer of good repute or of appropriate financial standing or professionally competent. That seems to me to mean that the commissioner must be satisfied that the requirements are no longer fulfilled. If it had been intended to place the same burden on the licence holder as had been placed on the original applicant, then the same language as that found in section 13 would have been used.”

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

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

to be put out of business?'. On appeal, the Tribunal must consider not only the details of cases but also the overall result."

[Emphasis Added]

26. An additional and preliminary question to that in *Bryan Haulage (No.2)* should also be asked as explained in 2009/225 *Priority Freight*:

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

[Emphasis Added]

The Tribunal’s jurisdiction on appeal

27. 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—

(i) the traffic commissioner who made the decision against which the appeal is brought; or

(ii) as the case may be, such other traffic commissioner as may be required by the senior traffic commissioner to deal with the appeal,

for rehearing and determination by the commissioner in any case where the tribunal considers it appropriate;

and any such order is binding on the commissioner.

(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.

28. Paragraph 17(1) of Schedule 4 to the Transport Act 1985 thus provides that “*the Upper Tribunal are to have full jurisdiction to hear and determine all matters (whether of law or of fact) for the purposes of the exercise of any of their functions under an enactment relating to transport*”.

29. Nonetheless, in *Bradley Fold Travel Ltd & Anor v Secretary of State for Transport* [2010] EWCA Civ 695, the Court of Appeal explained that the then Transport Tribunal (now the Upper Tribunal) is not required to re-hear all of the evidence but, instead, has the duty to determine matters of fact and law on the basis of the material which was before the TC but without having the benefit of hearing and seeing from witnesses. 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.”

30. The Court of Appeal therefore explained that an appellant assumes the burden of showing that the decision which is the subject of the appeal is ‘wrong’ (what used to be referred to as ‘plainly wrong’), in order to succeed. An appellant must show not merely that there are grounds for preferring a different view but that there are objective grounds upon which it ought to be concluded that the different view is the right one. Put another way, an appellant, in order to succeed, must show that the process of reasoning and the application of the law requires the Upper Tribunal to take a different view.

31. The Upper Tribunal, in deciding an appeal such as this, is not permitted to take into consideration any circumstances which did not exist at the time of the determination which is the subject of the appeal (see paragraph 17(3) of Schedule 4 to the Transport Act 1985). Therefore, we should not have regards to events that post-date the revocation decision of 22 October 2021 in deciding whether the TC’s decision is wrong.

Discussion and analysis

32. We are not satisfied that the Appellant has demonstrated that the DTC’s decision of 10 August 2021 to revoke its operator’s licence was wrong. The DTC made very serious findings against the operator and Mr Covaci in his written reasons dated 10 August 2021 which followed the PI. Paragraph 12 sets out numerous breaches and failures on the part of the operator, Mr Covaci and others.

33. The grounds of appeal state:

- 1) Transport running in a professional manner.
- 2) With the help of our new transport manager, all our maintenance records are maintained and stored in a safe place.
- 3) We are fully complying with our operator's licence requirements.

- 4) All the policies and procedures maintained to run our transport.
 - 5) At the time of DVSA vehicle examiner inspection, our vehicle was already at the garage to do some maintenance work. Without even starting the vehicle and inspecting our vehicle, Inspection reports have been made.
 - 6) We tried to explain our side but the Traffic Commissioner totally ignored our positive efforts.
 - 7) We are competent enough to run our business and with our new transport manager and his experience in this field, it's a bonus for our transport to deliver our best in future.'
34. Essentially, Mr Covaci has not sought to dispute most of the findings of the DTC in his grounds of appeal 'We accept our mistakes we done in the past...'. To the extent that ground 5 (and possibly ground 4) disputes the DTC's factual findings as to past conduct, we reject it. We are satisfied that the DTC's findings were reasonably open to him on the evidence before him, he gave sufficient reasons for the findings, he took into account relevant evidence and ignored irrelevant evidence. We are satisfied that all the findings at paragraph 12 of the decision that were multiple and serious breaches were not 'wrong' in law or fact.
35. The remaining grounds 1-4 and 6-7 appear to apply to the Appellant's current operation at the time of the decision or the appeal and be forward looking. We can only examine the events and evidence as it relates to the circumstances at the time of the DTC's revocation decision. The appeal therefore turns on the reasonableness and proportionality of the revocation decision and whether the DTC properly and fairly applied and answered the *Priority Freight* and *Bryan Haulage* questions or whether he exercised his discretion rationally.
36. We are satisfied that the DTC conducted the exercise properly and rationally and his decision cannot be considered to be wrong in any sense, let alone 'plainly wrong'. The DTC asked the proper and correct questions and answered them reasonably. He took into account and balanced the positive material in favour of the Appellant when making his revocation decision (and in refusing to make any disqualification order).
37. The Appellant submits that the DTC failed to give sufficient weight to the positive evidence of change and attitude and the demonstration of future compliance as set out in Grounds 1-4 and 6-7. However, we are satisfied that the DTC did take into account this evidence at paragraphs 12(r) and 13 of his decision (primarily assistance from a proposed transport manager as from April 2021). Having read the transcript of the PI and other material available to the DTC, there was no other detailed or written evidence in support of the argument that there had been such a significant change or attitude on behalf of the Appellant and that this was so powerful as to outweigh the very serious findings as to the past breaches committed. The DTC was entitled to find that revocation would be proportionate.
38. At paragraph 15 of the DTC's decision, he was entitled to find that he could not trust the operator going forward and the conduct was so serious the operator should be put out of business for the reasons he gave:

15. I have asked myself the Priority Freight question, but this is a case where the non-compliance stems from the acts or omissions of the sole director, Mr Covaci, -and there is

very little tangible evidence before me to show that he is capable of being compliant in the future. I simply cannot trust him given what has happened before and by that, I mean right up to 13 May 2021 when he was clearly operating in contravention of the immediate prohibition and when road safety was also put at risk. Repeating all of my other findings I answer the Priority Freight question in the negative; I do not trust the operator to be compliant in the future. For the same reasons, despite the credit that I have given to the operator, I answer the Bryan Haulage question in the positive; the conduct of this operator is such that it ought to be put out of business, it is entirely proportionate to find that this operator has lost its good repute, it is therefore a mandatory requirement that I revoke this operator's licence.

39. Therefore, it cannot be said that the DTC ignored or failed to take into account any relevant evidence or that his decision was unreasonable or disproportionate. Furthermore, in the exercise of his discretion he was entitled to decide the *Priority Freight* and *Bryan Haulage* questions in the way that he did.

Conclusion

40. We are not satisfied that the DTC's revocation decision has been demonstrated to be wrong. Accordingly, the appeal is dismissed. Given that the revocation was to come into force on 8 September 2021 and there has been no application for a stay, the DTC's decision has already been effected and no further order is required.

Judge Rupert Jones
Judge of the Upper Tribunal
Authorised for issue on 10 February 2023