



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

**NCN: [2024] UKUT 225 (AAC)  
Appeal No. UA-2023-001031-T**

**ON APPEAL from a DECISION of the TRAFFIC COMMISSIONER for the  
SCOTTISH TRAFFIC AREA**

**Before:** Ms L. Joanne Smith: Judge of the Upper Tribunal  
Mr D. Rawsthorn: Member of the Upper Tribunal  
Mr M. Smith: Member of the Upper Tribunal

**Appellant:** Mr Eric Stevenson Morrison  
**Respondent:** Traffic Commissioner for the Scottish Traffic Area  
**Reference No:** OM29422  
**Decision under appeal:** 6 July 2023

**Heard at:** Employment Appeal Tribunal Building, Edinburgh  
**Date of Hearing:** 16 April 2024  
**Date of Decision:** 31 July 2024

**DECISION OF THE UPPER TRIBUNAL**

The appeal is **DISMISSED**.

**Subject matter:** Revocation of operator's licence; financial standing; transport manager loss of good repute and professional competence.

**Cases referred to:**

*Bradley Fold Travel Ltd & Anor v Secretary of State for Transport* [2010] EWCA Civ 695. *Clarke v Edinburgh & District Tramways Co Ltd* [1919] UKHL 303; (1919) SC (HL) 35; 56 SLR 303. *Subesh & Ors v Secretary of State for the Home Department*

## REASONS FOR DECISION

1. This is an appeal to the Upper Tribunal brought by Mr Eric Stevenson Morrison (“the Appellant), against a decision of the Traffic Commissioner for the Scottish Traffic Area (“the TC”), dated 6 July 2023. The TC recorded adverse findings under the following provisions of the Act:
  - s.26(1)(b) - breach of licence condition to notify changes, including maintenance and ability of the Transport Manager (“TM”) to meet Schedule 3 requirements.
  - s.26(1)(e) – false statements regarding: inspections and maintenance; responsibility for continuous and effective management; operator to abide by conditions on the licence.
  - s.26(1)(h) – material change in circumstances since the licence was issued.
  - s.27(1)(f) – undertakings not fulfilled regarding: keeping vehicle in fit and serviceable condition; driver defect reporting; and complete maintenance records.
  
2. The TC revoked the Appellant’s operator’s licence under s.27(1)(a) of the Goods Vehicles (Licensing of Operators) Act 1995 (“the Act”) (operator no longer of sufficient financial standing) and under s.27(1)(b) of the Act (transport manager no longer satisfies specified requirements under paragraph 14A of Schedule 3 to the Act). The Appellant was disqualified from acting as Transport Manager, under paragraph 16(2) of Schedule 3 to the Act, for a period of one year. The order came into force at 2345hrs on 27 July 2023 to allow for the effective run down of the business.
  
3. The Appellant made an application to appeal the decision of the TC (signed and dated 21 July 2023) which was received by the Upper Tribunal on 28 July

2023. It was in time. The Appellant applied for a stay pending the outcome of the appeal, but this was refused by the TC by way of his decision dated 7 August 2023. The Appellant re-applied for a stay to the Upper Tribunal. After permitting a two week interim stay to allow time for the Appellant to perfect his grounds of appeal, the stay request was ultimately refused by Upper Tribunal Judge Mitchell by a decision authorised for issue on 15 September 2023.

4. The appeal was considered at a hearing, at the Employment Appeal Tribunal Building in Edinburgh, on 16 April 2024. The Appellant attended and was supported by family members at the hearing. He was unrepresented. The Respondent, as is common practice, was not represented at the hearing.

## **The facts**

### *Compliance history*

5. The Appellant was granted a Standard National Operator's Licence (the "licence") on 22 February 1991 which originally authorised four vehicles. The nominated operating centre for the licence was Four Acres, Rannoch Road, Johnstone and the Appellant was the nominated transport manager.
6. In 2006, the Appellant successfully applied to increase the authorisation on his license to six vehicles. On 10 May 2018, the Appellant attended a Public Inquiry ("PI") which was called due to maintenance shortcomings. Following the PI, his licence was curtailed from six vehicles to one vehicle for a period of four weeks. It was decided that the licence could be returned to a maximum authority of two vehicles if further evidence was submitted relating to financial standing, maintenance and booking a transport manager refresher training course. The evidence was not received therefore a three month period of grace was permitted to allow the evidence to be provided, but with a warning that if it wasn't provided, the Appellant's licence could be revoked. The Appellant provided all the required information by letter dated 21 January

2019. As a result, the Traffic Commissioner (“TC”) permitted his licence to extend to an authority of two vehicles and the matter was closed.

7. An Operator Performance Report showed that there had been no vehicle encounters with the Appellant’s vehicles since the PI in 2018. At the date of the Public Inquiry (“PI”) in this matter, the Appellant’s licence authorised the use of two vehicles.

## **The Public Inquiry**

### *PHR Grab Hire Ltd*

8. The TC’s concerns arose as a result of evidence relating to the Appellant which came to light during a PI, held in Glasgow on 20 February 2023, to determine the application for an operator’s licence submitted by Mr Ian McNaught, the sole director of “PHR Grab Hire Ltd”. The proposed operating centre was Four Acres, Rannoch Road, Johnstone, the same operating centre as the Appellant. Media reports and an objection from Police Scotland, had alerted the TC to the fact that an organised crime group, involved in illegal firearms and Class A drugs, had been operating from or very near to that site. Amongst those convicted and imprisoned for related offending was Mr Eric Morrison Jnr, son of the Appellant. In addition, BBC footage from a documentary called “A Dirty Business”, suggested that the site was used for the carriage and concealment of unlicensed waste disposal. The footage showed the Appellant at the site, wearing clothing that displayed the wording/logo of “PHR Services”, as well as a sign at the site displaying the initials “PHR”. The Appellant was further connected to the application through bank statements showing payments being made to “Eric Morrison”, emails from PHR Services with the name of “Eric Morrison” on them, and the fact that the two vehicles specified on the licence application were registered to “Eric Morrison”. During the PI, it was discovered that the Appellant is the uncle of Mr McNaught, and was to carry out the maintenance on Mr McNaught’s vehicles, contrary to that stated on the application.

9. The TC dealing with the matter found Mr McNaught's evidence to be so unreliable and implausible, that she was unable to trust that Mr McNaught would comply with the licencing regime. She rejected the commercial lease agreement between he and the Appellant, which was produced in evidence. She found that the business of PHR Grab Hire Ltd was most likely being operated by, and for the benefit of, the Appellant. This was due to the fact that PHR Grab Hire Ltd was incorporated just weeks after the damning BBC documentary was released, the contents of which clearly risked regulatory action being taken against the Appellant. The TC was also concerned about the suitability of the Rannoch Road site as an operating centre. She therefore refused Mr McNaught's application for a licence for PHR Grab Hire Ltd.

*As to this matter*

10. The Appellant was called to a PI by way of call up letter dated 1 June 2023 (updated and reissued on 6 June 2023), which stated that, as a result of the application for an operator's licence by PHR Grab Hire Ltd, the TC had concerns regarding the Appellant's good repute, financial standing, and professional competence as an operator. He was also concerned as to whether the operating centre specified on the Appellant's licence was suitable for heavy goods vehicles. The letter warned that the Appellant's licence was at risk. A separate letter was sent to the Appellant in his capacity as transport manager (dated 6 June 2023) which stated that the TC had concerns regarding the transport manager's good repute and professional competence, also putting the Appellant's licence at risk. The TC sought to hold a PI to investigate further, and to give the Appellant an opportunity to explain what had arisen in evidence against his repute. The PI took place in Edinburgh on 6 July 2023. The Appellant attended with the support of various members of his family. He was not represented.

*The evidence at the Public Inquiry*

11. The Appellant presented his comments to the TC by way of written representations and gave supporting oral evidence. The TC had asked the Appellant to provide evidence in support of his case prior to the PI, including financial, maintenance and other compliance related documentation. In advance of the PI, he provided financial evidence and fourteen sets of documents relating to maintenance, inspection and testing reports dating from September 2022 to June 2023. These are set out in detail in the TC's decision at paragraph 18. He was invited to submit further evidence, but he indicated via email that this was all the evidence he sought to admit.

12. Dealing initially with financial standing, the TC explained that the bank statements did not show sufficient financial standing and as this was a requirement to hold an operator's licence, he was obliged to revoke the Appellant's operator's licence. The Appellant explained in oral evidence that he had money owed to him and he had spent the previous two weeks collecting it in, with some still outstanding. The Appellant stated that he had four acres of property with a house, garage and offices on it. He stated that he had sufficient funds in his bank account on that day, and he offered to email a statement to the TC as proof. The TC stated that an emailed bank statement would not be admissible in evidence; the Appellant had been given ample opportunity to submit evidence prior to the PI and an emailed statement would not be stamped by the bank thereby failing to provide satisfactory proof as to its authenticity and accuracy. Citing the case of "*LWB Limited*", the TC found that the property owned by the Appellant did not count towards financial standing as there was no independent valuation of it and no evidence that it could be liquidated quickly. The TC proceeded to find that the Appellant did not have financial standing and stated that he was therefore obliged to revoke the operator's licence.

13. The TC then discussed the evidence which had unfolded during the PI to consider the PHR Grab Hire Ltd application, and which presented the Appellant and his business adversely. Firstly, the press reports and documentary which had connected the Appellant's operating centre site on

Rannoch Road with organised crime and illegal waste disposal, and had placed the Appellant at the scene wearing clothing with the “PHR Services” logo. In evidence, the Appellant distinguished “PHR Grab Hire Ltd” from “PHR Services”, stating that the “PHR” logo had been used over the years on numerous vehicles, private registrations and workwear. The Appellant stated that that the site had been connected to the lawful deposit of waste for 40 years, explaining that he had a breaker’s yard there which had been in the family for many years. He had been involved in three licences (all unexpired) which were for the carriage of controlled waste. He further explained that he was in the process of attempting to surrender one of them. He said there had been no proof of hazardous materials at the site and highlighted that he had not been charged with any criminal offending.

14. With regard to the email correspondence and “PHR Grab Hire Ltd” headed notepaper bearing the Appellant’s name, the Appellant explained that that he had limited knowledge of computers and emails hence he relied on his daughter, Ms Orr, to undertake this work. He said she may have got confused due to working in two locations but he had no explanation for his name appearing on headed notepaper and emails for another company. He confirmed that Mr McNaught was his nephew who had lived with him since the age of twelve years old and they had worked together for many years.

15. The Appellant was asked about Mr McNaught’s evidence (at the PHR Grab Hire Ltd PI) saying that he paid rent to his aunt (wife of the Appellant) to use the Rannoch Road operating centre to park his one vehicle and to gain access to the inspection pit there, but then stated that his payments were not for “rent” as such but rather to help support his aunt financially, as Eric Morrison Jnr had been imprisoned. The Appellant asserted that Mr McNaught was paying hire for the yard space, for machinery and for maintenance within his site at Rannoch Road. This was Mr McNaught’s attempt to run his own business after working with and being mentored by the Appellant.

16. Mr McNaught had also stated at the PHR Grab Hire Ltd PI, that his claim to undertake “in house” maintenance was untrue, and that the Appellant had completed the maintenance from the outset. The Appellant explained that the reference to “in-house” maintenance referred to the maintenance being done by the Appellant at the same operating site. The TC highlighted the fact that no one had notified the DVSA of the Appellant’s involvement with the maintenance of Mr McNaught’s vehicle. The Appellant acknowledged that this was correct.
17. Moving then to maintenance and inspections, the TC discussed the various documents that the Appellant had produced in evidence. He highlighted the fact that the inspection sheets were out of date. The Appellant did not realise this. The Appellant acknowledged that he was unsure of the results he required for satisfactory brake testing. The Appellant accepted that he had failed to record defects when driving and stated that he undertook some repairs without making records of them. He accepted that he had not consulted up to date DVSA Guidance and did not think that the driver defect reporting requirement applied to him. He admitted that he was “way off the mark”. He was unable to explain how he complied with legal requirements.

### **The decision of the Traffic Commissioner**

18. The TC, based on the evidence before him at the PI, recorded adverse decisions against the Appellant as set out at paragraph 1 above. Following the finding that the Appellant did not have sufficient financial standing, he revoked the operator’s licence under s.27(2)(a) of the Act. In light of his finding that the Appellant as transport manager, did not meet the statutory requirements in Schedule 3 of the Act, the TC revoked the Appellant’s operator’s licence under s.27(1)(b) (loss of good repute and of professional competence).
19. In making his decision, the TC asked the “*Priority Freight*” question – how likely is it that the operator will comply in the future? – and concluded that this



largely depended on the Appellant's ability to conduct his role as transport manager. He reasoned that given the Appellant's acceptance that he had not exercised effective or continuous management, his acknowledgement of being out of date on the regulatory regime, and the fact that his CPC training had not updated his practices, the few positives noted by the TC at the PI, were not enough to outweigh the negatives. The TC concluded that the Appellant was unlikely to be compliant going forward and that he was unlikely to be able to fulfil his role as transport manager.

20. The TC went on to disqualify the Appellant from acting as transport manager based on the same facts, and the case of *Alistair Walter* [2017] UKUT 0438 (AAC) which provides that the role of operator and transport manager in a business, having overlapping responsibilities, can rarely be legally separated and dealt with differently where they are the same person. The TC followed the guidance set down in *Statutory document 10: principles of decision making and the concept of proportionality*, which states that the starting point for the period of disqualification of a transport manager after a finding that he is no longer of good repute should be a minimum of one year. The TC set the orders to take effect from 27 July 2023 to allow for a safe run down of the business, having taken account of the Appellant's intention to retire seven years prior, a loss of sub-contracted work and the employment status of the driver.

### **The appeal**

21. In his appeal to the Upper Tribunal, the Appellant acknowledged his failings and specifically accepted that the TC was entitled to reach an adverse decision in respect of the inspection records produced, and a failure to notify relevant changes since the licence was issued. The Appellant's UT10 application to appeal form and written grounds of appeal largely amounted to something of a plea in mitigation, referring to the many years' experience he had in the industry, and the impact that the COVID-19 pandemic had on his business. He accepted that he is "behind the times" but asserts this he is able to meet the requirements of the operator's licence. Having implemented

changes, he submitted that revocation of the licence and his removal from the industry was “unreasonable, severe and detrimental to his livelihood”.

22. The Appellant was given a two week period, after his request for a stay, to revise his grounds of appeal but the revised grounds essentially repeated his submissions in the UT10 application for permission to appeal form. Ultimately, the Appellant takes issue with the TC’s decision to revoke his licence.

### **The appeal hearing**

23. The Appellant was self-represented at the appeal hearing. He had family members present by way of support. His oral submissions amounted to a plea for a second chance. He stated that he had an arrangement with an external party for brake testing, highlighting that he had never been failed at MOT for brakes. He stated that he had changed bank accounts around the time of the PI and his new account did not show financial standing at the start. He reiterated that he had chased his debtors, and he was now able to demonstrate financial standing in his account. He accepted that he had been using out of date inspection sheets but that these had now been updated. He accepted that he had not told the DVSA that he undertook his own maintenance, when an external firm was noted on his licence. He insisted that he was generally a compliant operator who had made mistakes, accepted them, and then put them right. He believed he should have been given a period of grace in order to demonstrate that he had financial standing. He disagreed with the TC’s decision to not allow this time and move directly to revocation of his licence, which the Appellant believed to be a disproportionate response in the circumstances of his case.

## The Law

24. As to the approach which the Upper Tribunal must take on an appeal such as this, Paragraph 17(1) of Schedule 4 to the Transport Act 1985 provides:

*“The Upper Tribunal are to have full jurisdiction to hear and determine on all matters (whether of law or of fact) for the purpose of the exercise of any of their functions under an enactment related to transport”.*

25. Paragraph 17(3) of that Schedule provides that the Upper Tribunal may not take into consideration any circumstances which did not exist at the time of the determination which is the subject of the appeal.

26. The task of the Upper Tribunal, therefore, when considering an appeal from a decision of a Traffic Commissioner is to review the material which was before the Traffic Commissioner; the Upper Tribunal will only allow an appeal if the appellant has shown that “the process of reasoning and the application of the relevant law require the tribunal to take a different view” (*Bradley Fold Travel Limited and Peter Wright v. Secretary of State for Transport* [2010] EWCA Civ 695, [2011] R.T.R. 13, at paragraphs 30-40). In essence therefore the approach of the Upper Tribunal is as stated by Lord Shaw of Dunfermline in *Clarke v Edinburgh & District Tramways Co Ltd* 1919 SC (HL) 35, 36-37, that an appellate court should only intervene if it is satisfied that the judge (in this case, the decision of the Traffic Commissioner) was “plainly wrong”.

## Discussion and decision of the Upper Tribunal

27. We were reminded of the principles involved in determining the case before us. In short, the decision of the TC is taken to be correct unless the contrary is shown, by objective grounds, upon which the Upper Tribunal ought to conclude that a different view is the right one (*Subesh & Ors v Secretary of State for the Home Department* [2004] EWCA Civ 56, para 44). The TC had

the considerable advantage of seeing, hearing and assessing the evidence before him, and that decision should not readily be overturned.

28. The Appellant accepted all the failings referred to by the TC, at the PI, in his written grounds of appeal and at the appeal hearing itself. His sole ground of appeal was whether the TC was plainly right to revoke his licence. The TC had done so for two reasons – due to a lack of financial standing and due to the Appellant, as transport manager, having lost his good repute and professional competence.

*Lack of financial standing*

29. Under s. 27(1)(a) of the Act, a TC “shall direct that a standard licence be revoked if at any time it appears to him that the licence holder no longer satisfies one or more of the requirements of section 13A” [my underlining throughout]. Section 13A of the Act outlines the requirements of holding a standard operator’s licence, one such requirement being good financial standing. Financial standing is set by paragraph 6A of Schedule 3 to the Act.

30. On the basis of the evidence before the TC, we consider that he was entitled to find that the Appellant’s financial standing was not satisfactory at the time of the PI. Both at the PI and during the appeal hearing, the Appellant stated that he had sufficient funds in his bank account on that day, having collected in some of the money owed to his business. He submitted at the appeal hearing that he should have been allowed time to present that evidence, which he had offered to produce to the TC, during the PI, by way of email.

31. While we have some sympathy with the Appellant’s submission that he should have been allowed time to demonstrate financial standing, we also noted that he had been given sufficient notice of the need to produce evidence of financial standing prior to the PI, while also being made aware of the serious consequences if he did not. The Appellant has been in the industry for long enough to know what is required in terms of proving financial standing. He

did not submit the evidence and he accepts that this is the case. The TC did not permit a current bank statement to be emailed to him on the day of the PI as it would not be stamped and therefore authenticated by the bank. As referred to by the TC, the case of *LWB Limited* [2011] UKUT 358 (AAC) found that a “snapshot” in time demonstrating financial standing is not enough. It is usual practice for a TC to require sight of a number of consecutive bank statements covering a period of months to show an average account balance which satisfies the financial standing requirement. It was appropriate for the TC to refuse sight of a single statement during a PI which showed a snapshot in time and which could not be presented in the correct manner.

32. Should the TC have instead adjourned to allow the Appellant time to produce the bank statements in the correct manner? We consider that the Appellant had been given sufficient opportunity to satisfy the TC that he was of good financial standing prior to the PI. Had financial standing been securely in place during the months prior to the call up letter, the Appellant’s bank statements could have, and should have, been presented well in advance of the PI. They were not forthcoming. It is likely that they would not have shown financial standing, and any adjournment to find the evidence would have simply delayed the inevitable.

33. Should the TC have taken the Appellant’s property into account when considering financial standing? The requirement for financial standing as part of holding an operator’s licence is to ensure that an operator can afford to pay for unexpected repairs to vehicles quickly, otherwise the temptation may be to use a potentially unsafe vehicle on the public roads in order to raise the funds to repair it. Cash sitting in the bank can be accessed swiftly. Property can be taken into account if it is independently valued and if it can be liquidated quickly to satisfy repair bills (*LWB Limited* [2011] UKUT 358 (AAC)). The Appellant’s property had been in the family for many years, and provides the location for the family home and business. It is not therefore likely to be tendered for conversion into cash, nor is it likely that this could be done at

speed. There can be no criticism of the TC's decision not to take the Appellant's property into account.

34. We find that the TC was plainly right to have handled this aspect of the PI as he did. He was entitled to find that the Appellant lacked financial standing at the time of the PI, and s.27(1)(a) of the Act provides clearly that where an operator does not have financial standing the licence shall be revoked. The TC was left with no option. The appeal cannot succeed on the basis that the revocation due to lack of financial standing was "plainly wrong".

*Revocation due to transport manager's loss of good repute and professional competence*

35. The Appellant either accepted or had no answer for the unsupportive evidence that had arisen at the PHR Grab Hire Ltd's PI, which connected him, albeit indirectly, to a site linked to organised crime and illegal waste storage/removal. His evidence during the appeal echoed his comments at the PI in this regard and there was no challenge presented. The same can be said in relation to his own maintenance and inspection records, which appeared to be of greater concern to the TC in making his decision. Again, the Appellant accepted the facts presented and acknowledged both at the PI and at the appeal hearing, that his maintenance and inspection standards were out of date and therefore lacking. He took no issue with the finding of loss of repute and/or professional competence as a transport manager.

36. Section 27(1)(b) of the Act provides that a TC shall direct that a standard licence be revoked if at any time it appears to him that the designated transport manager no longer satisfies one or more of the requirements set out in paragraph 14A(1) and (2) or (1) and (3) of Schedule 3. One of those requirements is that the transport manager is of good repute (paragraph 14A(1)(b) of Schedule 3 to the Act). A traffic commissioner shall not make a finding that a transport manager is not of good repute unless that person has been served with a notice stating the allegations against him, the fact that his

good repute is in issue, that he can make representations and that he can have an inquiry to determine the matter (paragraph 15(1) of Schedule 3 to the Act). Paragraph 16 of Schedule 3 to the Act deals with the position if such a finding is made:

*“16.(1) In proceedings under this Act or the 2009 Regulation for determining whether a person who is a transport manager is of good repute or professionally competent, a traffic commissioner must, in accordance with paragraph 5(2) (if applicable), consider whether a finding that the person was no longer of good repute or (as the case may be) professionally competent would constitute a disproportionate response.*

*(2) If the commissioner determines that the person is no longer of good repute or (as the case may be) professionally competent, the commissioner must order the person to be disqualified (either indefinitely or for such period as the commissioner thinks fit) from acting as a transport manager.”*

37. In this case, the TC found that the Appellant had lost his good repute and professional competence as transport manager on the basis that he accepted his lack of effective or continuous management, that he was out of date and that the CPC training had been insufficient to keep him on track with the regulatory requirements. The Appellant had been given warning of the risk that such a finding may be made, and was given the opportunity to make representations at a PI. The TC considered proportionality, balancing positives and negatives, and following the relevant case law guidance on the matter. In light of his finding of loss of good repute, he exercised his discretion to disqualify the Appellant from acting as Transport Manager for a period of one year, following the Statutory Guidance in making his decision. Given the fact that the Appellant does not dispute the findings of fact, the TC was obliged to revoke the Appellant's licence and while he chose to disqualify, he did not do so for an unreasonable period of time, following the guidance precisely. We do not find that the TC was plainly wrong in his decision to revoke the Appellant's licence on the basis of the Appellant's failings as transport manager. We cannot allow the appeal on this ground.

## **Conclusion**

38. For the reasons set out above, we confirm the decision of the TC and dismiss this appeal. We note that while the Appellant's licence has been revoked, he has not been disqualified from holding an operator's licence in the future so it is open to him to re-apply, although proposing a different transport manager in light of the one year disqualification.

**L. Joanne Smith  
Judge of the Upper  
Tribunal**

**Mr D. Rawsthorn  
Member of the Upper Tribunal**

**Mr M. Smith  
Member of the Upper Tribunal**

**(Authorised for issue on)  
31 July 2024**