NCN: [2022] UKUT 00148 (AAC)

IN THE UPPER TRIBUNAL **Appeal No. UA-2021-000040-T**

ADMINISTRATIVE APPEALS CHAMBER

(TRAFFIC COMMISSIONER APPEALS)

ON APPEAL from a DECISION of the TRAFFIC COMMISSIONER for the SOUTH EASTERN and METROPOLITAN TRAFFIC AREA

Decision dated:	30 December 2021
Appeal dated:	28 January 2022
Before:	Judge Rupert Jones: Judge of the Upper Tribunal
	Mr Stuart James: Member of the Upper Tribunal
	Dr Phebe Mann: Member of the Upper Tribunal
Appellants:	RAM Logistics Ltd
References:	OF201669
Attendances:	James Backhouse, solicitor from Backhouse Jones solicitors
Heard at:	Field House, London
Date of Upper Tribunal Hearing:	25 April 2022
Date of Decision:	7 June 2022

DECISION OF THE UPPER TRIBUNAL

The appeal against the Traffic Commissioner's decision dated 30 December 2021 is allowed. The decision to revoke Operator's Licence OF201669 is set aside and the decision is quashed. The licence may continue in effect.

Subject matter:

Revocation under sections 26 and 27 of the 1995 Act; procedural flaws in the PI given the grounds contained in the calling in letter were not established and the grounds relied upon for revocation were not notified in advance with no independent evidence presented from the DVSA in support; the grounds for revocation relied upon were not sufficiently identified and those findings of fact and evaluative conclusions were demonstrated to be wrong by the Appellant.


DIEU ET MON DROIT

REASONS FOR DECISION

The Appeal

1. The Appellant (RAM Logistics Ltd) appeals the decision of the Traffic Commissioner ('TC') dated 30 December 2021 to revoke the Heavy Goods Vehicle operator's licence held by the company under sections 26 and 27 of the Goods Vehicle (Licensing of Operators) Act 1995 Act 1995 ('the 1995 Act').

The TC's decision

2. The Traffic Commissioner's written decision provides reasons for the revocation of the Appellant's operator's licence. It followed a hearing that took place on 11 November 2021 ("the Public Inquiry"). There was an earlier hearing that took place on 06 October 2021, which did not relate to the Appellant but only in relation to a related company Titan Haulage Ltd, as there was not enough time for the Appellant's case to be heard on that date.

3. The prior factual background setting out the procedure leading to this appeal is contained in the Traffic Commissioner's written decision and the relevant case summary issued with the brief for the Public Inquiry.

4. Prior to the Public Inquiry (or 'PI') the office of the TC wrote to the directors of the Appellant in a calling in letter dated 25 August 2021 explaining the reasons for holding the PI. The letter set out the issues to be considered at the hearing as follows:

   'Specifically, the issues of concern to the Traffic Commissioner are that it appears:

   a) You have breached the conditions on your licence, namely that you failed to notify a change of directors within 28 days;
   b) Since the licence was issued, there has been a material change in the circumstances of its holder.

   The Traffic Commissioner will consider the possible links with Titan Haulage Ltd who have specified vehicle KX64 TKT on their application…Explanations will be sought for why the registered keeper of both vehicles currently specified on this licence ….is Kwiiikk Transport Ltd, a company of which the director is Rajinder Aujla. The Traffic Commissioner will consider Armarjit Singh Aujla's addition the licence as a director in light of his previous licence history.

   Because of the matters listed above, the Traffic Commissioner is also concerned that the company may not be of good repute, be of the appropriate financial standing or meet the requirements of professional competence……

   In addition, the Traffic Commissioner is also concerned that your nominated transport manger, Beant Kaur, may not be exercising continuous and effective

management of the company's transport activities……'A separate letter has been sent to Beant Kaur to invite her to the public inquiry which will also consider her competence and repute…...'

5. We accept the summary of issues to be decided at the PI contained within the 'Background' section of the Appellant's grounds of appeal as below:

"The only issues that the Appellant was called to the Public Inquiry for were;
1) That they have breached conditions of their licence, namely that [they] failed to notify a change of directors within 28 days (section 26 (1) (b));
2) That there has been a material change in the circumstances of the holder (section 26 (1) (h));
3) Possible links with Titan Haulage"

6. It is important to note that, following the PI, the Traffic Commissioner made the decision to revoke the Appellant's licence under sections 26 and 27 the Goods Vehicles (Licensing of Operators) Act 1995 on the grounds set out at paragraphs 1-3 of the decision dated 30 December 2021:

"1. Pursuant to adverse findings under Section 26(1)(b), (e), (f) and (h) of the Goods Vehicle (Licensing of Operators) Act 1995 and Section 27(1)(a) of the 1995 Act the Operator no longer meets the requirements of Section 13A(2) of the said Act - good repute. Accordingly, Licence OF2010669 is revoked with effect from 23:45 on 28 February 2022.

2. No direction is made under Section 28 of the 1995 Act.

3. The good repute of Transport Manager Ms Beant Kaur is severely tarnished but not lost."

7. The TC set out the background to the PI at paragraphs 4-7 of the decision:

4. The full history is set out in the Public Inquiry bundle case summary. On 8 June 2020 Mr Amarjit Singh Aujla became a director and majority shareholder of RAM Logistics Ltd. Mr Gurpinder Singh was also a director from the 1 February 2020 but formally resigned on 21 September 2021. Mr Aujla was given self-service access to VOL by the RAM on 16 June 2020 but his appointment was not added to VOL until 28 September 2020, i.e. two months late.

5. In 2013 Mr Aujla was a director of a company that had its Licence revoked, and he was disqualified from holding that position in any entity for two years ending on 17 August 2015. The decision in relation to Mr Aujla in 2013 included reference to Mr Aujla's gross and repeated deception in operating for hire and reward whilst holding a restricted licence. In November 2018 Kwiiikk Transport Ltd was called to a Public Inquiry. The sole director is Mr Aujla's wife and its then transport manger, his daughter. One of the purposes of the Hearing was to consider Mr Aujla's involvement in the business. As part of the Inquiry Mr Aujla made an application for his good repute to be restored so that he could become a director in the family businesses (which at this time were Kwiiikk Transport Ltd and Titan Haulage Ltd). The application to find good repute restored was refused. The Deputy Traffic Commissioner expressed concern at a conflict of evidence, namely the Transport Manager said Mr Aujla was driving full time for Kwiiikk Transport Ltd, but Mr Aujla said he was

driving for Titan Haulage Ltd. Further the Deputy Traffic Commissioner noted that no real evidence had been produced in terms of demonstrating now lawful behaviours.

6. Whilst processing an application made by Titan Haulage Ltd, OH2036888, it was noted that a vehicle specified on the application, KX64 TKT was currently specified on OF2010669 RAM Logistics Ltd from 23 July 2021. A registered keeper check showed the current keeper was Kwiiikk Transport Ltd from 6 March 2020. The vehicle was previously specified on Titan Haulage Ltd, OK1133764 from 6 June 2020 to 23 July 2021 and OF2010804 from 28 February 2020 to 6 June 2020. KX64 TKZ specified on the licence for RAM Logistics Ltd from 20 April 2021 was previously specified on Titan Haulage Ltd, OF2010804, from 5 July 2020 to 20 April 2021 & 2 May 2019 to 31 May 2019 and on licence OF1140458 Kwiiikk Transport Ltd from 31 May 2019 to 17 June 2020. A registered keeper check showed that Kwiiikk Transport Ltd from 7 May 2019. It was noted that vehicle EJ14 CZT, specified on the RAM Logistics Ltd Licence from 6 August 2018 until 23 July 2021 and is now specified on Kwiiikk Transport Ltd, OF1140458 from 23 July 2021.

7. I decided to call RAM Logistics Ltd to a Public Inquiry alongside Titan Haulage Ltd to ascertain whether everything was arms length and assess operator licensing compliance. Considering Mr Aujla's history, the Transport Manager Ms Kaur was also called to the Public Inquiry to assess compliance with the conditions and undertakings on the Licence…..'

8. The TC stated that the issues in the case were as follows at paragraphs 12 and 14 of the decision:

'Issues

12. There was no formal barrier to Mr Aujla becoming a statutory director of the Operator in June 2020. However, having had his good repute restoration application refused in 2018 Mr Aujla accepted at the Public Inquiry that he should have written in stating a positive case to provide assurances to compliance rather than just being added to VOL. Considering Mr Aujla's history, compliance since June 2020 is essential for two reasons. Firstly, it is a legal requirement and secondly the outcomes will demonstrate whether Mr Aujla now has a positive approach to transparency and lawful behaviours. It follows that the Transport Manager's role since her appointment is a key part of that assessment. At the conclusion of my balancing exercise, it is for me to determine whether any action is appropriate.'

..

Consideration and Findings

14. At the start of the hearing on 11 November 2021, I gave a steer as to where I would want oral evidence to expand upon the written representations. I then adjourned for a period for Miss Evans to take instructions. I did so out of fairness to Mr Aujla to ensure that his evidence would not have to be interrupted as issues arose. I was satisfied on financial standing but the areas to be expanded upon were: -

• A focus on how it is said that trust has been rebuilt. In November 2018 good repute was not regained. In 2018 a personal application was made for good repute to be restored but in 2020 Mr Aujla simply added his name to VOL.

• The maintenance records are very similar to Titan Haulage Ltd namely, the maintenance contractor and drivers are picking up very few defects, erratic brake testing and no maintenance contractor ID.

• Concerns with the driver defect sheets and the authenticity of defects recorded and whether the defects were repaired.

• The driver records indicate that Mr Padda was a full time driver inducted into RAM on the 20 September 2020 but it is clear that he is driving across all family businesses, for example week commencing 5 April 2021 he is driving for Titan and Kwiiikk; week commencing 22 March 2021 he is driving for Titan all week and week commencing 29 March he is driving for Titan for four days and RAM only for one day.

• From all the records sent for the Public Inquiry there is very little evidence that they have been touched or even seen by the Transport Manager and therefore I need to understand how Mr Aujla and Ms Kaur work together.'

9. The TC then made the following relevant findings in the decision:

16. On balance on this aspect, I am prepared to give Mr Aujla the benefit of the doubt. Since Traffic Commissioner Denton's decision, he did make a positive attempt for a finding of good repute regained in 2018. It failed but that was 18 months before becoming a director of RAM. As a matter of law Mr Aujla had served his disqualification period and therefore he was entitled to become a director of RAM, albeit it may put the Operator's Licence in some jeopardy. Further Mr Aujla is correct that by adding his name to VOL his history should have become apparent. For some reason a director questionnaire did not issue and therefore the further background checks did not happen at that point.

17. Regrettably when it comes to the undertaking to ensure vehicles are always kept in a roadworthy condition the picture is disappointing……

..

20. I now turn to the driver defect sheets for this vehicle which raised several concerns…..

21.I have a driver defect sheet which has an unclear date due to the staple but has an odometer reading of 695764. The original fault is crossed out with some vigour and has written on it "reported to boss". On the check sheet part at the top of that defect sheet the cross is next to tyres and wheel fixings suggesting that is where the fault was before the narrative was crossed out. The revised fault is said to be an ad blue fault. We have the same scenario on 13 August 2021 at odometer reading 695732. This denotes a lack of transparency and a potential attempt to rewrite the defect history of the vehicle. Mr Aujla told the Inquiry that he had missed these crossings out. They are obvious. The only way they can be 'missed' is if the sheets are not checked at all. Either scenario - not checking or deliberately amending without explanation - is unacceptable because it is a significant failing in the maintenance system.

22. In relation to its drivers, Mr Aujla told the Inquiry that when RAM does not have sufficient work the drivers are free to drive elsewhere. Mr Aujla originally said that available hours are checked when they start work for RAM again. He then changed this to admit there was no actual check just 'word of mouth'. I am promised that this would be checked in future but this his area causes me real concern. One of the reasons I am told I can trust Mr Aujla moving forward is because of the local day shift only nature of the Tarmac work. However, its drivers are working for other family companies and not just day shift. By way of example, week commencing 5/4/21 Mr Padda drove for Kwiiikk Transport (wife's company) Tuesday, Wednesday/Thursday and Friday Saturday overnight for Titan (daughter's company) and Sunday for Kwiik. Without proper checking there is a real risk that Mr Padda may have presented for work with RAM outside available hours.

Similarly, Driver Rai drove for Kwiiikk week commencing 16 August 2021 with no check on his availability when he returned to RAM. This poses a real risk to road safety.

…

25. There are a number of positives which indicate an improved approach by Mr Aujla supported by Ms Kaur (on the traffic side only). These are: -

• There is formal vehicle only hire rental agreements between Kwiiikk and RAM.

• No prohibitions have been issued (albeit there is no evidence of any roadside encounters, which have been limited in scope due to COVID challenges for the Enforcement Agency).

• One MOT which was a straight pass.

• A change in maintenance contractor with a workshop and roller brake test facility. This has limited weight as I have not seen any of its paperwork save for one roller brake test.

• Evidence of tool box talks on a number of topics for drivers.

• A missing mileage report was produced, and any missing mileage correlates with maintenance and repair documentation in the vehicle folders.

• Mr Aujla undertook a two day transport manager CPC refresher at the end of October 2020.

• Mr Aujla did the same course with a different provider on 3 & 4 November 2021.

• A transport consultant had been engaged to assist.

• An audit undertaking for 6 months is offered.

26. This was Mr Aujla's opportunity to demonstrate that he has changed his approach away from gross and repeated deception to compliance. Considering Mr Aujla's history there are a few aggravating features to which I give considerable weight:

• Enabling the transport manager to not be involved in the maintenance side of the transport operations.

• Safety critical deficiencies in the maintenance systems including the cited failings around brake testing, driver defect audit and lack of a robust retorque system.

• Attempts to mislead the Inquiry of checking drivers hours availability after working for other Operators.

27. There is no good reason for any of the failings. Mr Aujla knew what was required after the 2018 decision. Mr Aujla has failed to demonstrate compliance to a significant degree in crucial areas of safety. The positives cannot outweigh this. Indeed, these failings happened despite Mr Aujla undertaking additional training in 2020 and knowing what "good" looks like. This means I give very limited weight that the further training in November 2021 will improve things. I am left with untested promises which is disappointing after operating for over a year. It follows that when I pose the question do I trust the Operator/ Mr Aujla to be compliant moving forward the answer is no. The Operator does deserve to be put out of business and revocation cannot be disproportionate in the circumstances of this case. The maintenance system and the lack of effective driver checks after third party driving made this Operator an accident waiting to happen. Accordingly, I have reached the decision set out in paragraph 1 above.'

The Grounds of Appeal

10. The Appellant's grounds of appeal were set out in its notice of appeal dated 9 December 2021 as follows:

'1. The Traffic Commissioner had requested that the Appellant voluntarily produced maintenance and driver's hours records for the Public Inquiry hearing. These were produced cooperatively by the Appellant. The Traffic Commissioner proceeded to then undertake her own investigation of those records, presented her own opinion evidence of those records and then determined the facts based on that evidence. As a result this was conducted without the required objectivity/separation of the adjudicator from the witness.

2. Whilst it is accepted that as a specialist regulator a Traffic Commissioner can comment on records, in this case, there was no prior allegation in the call-in letter, or evidence (from a DVSA Officer or other witness to the inquiry) that any undertakings relating to maintenance or driver's hours systems was breached. The Appellant cooperatively produces these records in response to a 'requirement' in the call-in letter, and in effect has to prove their compliance, in areas for which they are not called to public inquiry in the first place. This approach of the Traffic Commissioner is an error of law in that it reverses the burden of proof for an existing licence holder resting on the Commissioner (*Muck-it v Merritt and Others* [2005] EWCA 1124 and *Patricia Bakewell (t/a PP Haulage* T/2017/4)).

3. It would also appear that the Traffic Commissioners decision makes no reference to any evidence that the Appellants' vehicles were not in a fit and serviceable condition or that any records were missing. The Commissioner makes a finding that, due to non-compliance with 'mere' guidance issued in the Guide to Maintaining Roadworthiness (in particular on brake testing), that the vehicles are not being kept in an unroadworthy condition.

4. There was no evidence heard at the inquiry, that vehicles when driven on the road did in fact have faulty braking systems, loose wheel nuts or that they were being driven with any safety related defects at all. There were no prohibitions issued to fleet or any MOT test failures. Indeed the objective evidence of the Appellant's fleet condition would lead to the conclusion that the Appellant's maintenance of their fleet was satisfactory, for example the operator has a 100% first time pass rate.

5. In fact quite to the contrary there was evidence before the Commissioner that, for example, brakes were operating correctly. For example, when reviewing the brake testing procedure, the Commissioner specifically identifies VRN KX64 TKZ as an example of the brake testing regime. From April 2021, the Commissioner identifies a number of inspections where it is alleged the brakes were not satisfactorily assessed; however on the last PMI where an efficiency test was undertaken, the braking performance was satisfactory. Therefore, in the absence of any repairs to the brakes during that period, it must rationally on the evidence available be the case that the brakes were operating satisfactorily throughout.

6. The same applies to the retorque record cited by the Commissioner. Whilst of course it is desirable for the applicant to follow the guidance issued under "careless torque costs lives", whereby a retorque is undertaken within either 30 minutes or 50kms, the evidence before the Commissioner at the inquiry that the retorque occurred after 340kms does not

also state that there had been any movement of the wheel nuts so as to cause a road safety issue.

7. Following a similar theme, the Commissioner with respect to driver's hours, suggests that because the Appellant does not undertake proper checks of the drivers previous working hours before engaging them, (the Traffic Commissioner fails to identify what a 'proper check' consists of), this provides a real road safety risk. There appears to be no evidence before the Inquiry, that there were any actual breaches of the driver's hours rules due to this alleged systems error and it is averred that the Appellant's checks by way of asking orally for confirmation from the driver of their availability, appears to be a sufficient system to mitigate the risk in this case. Operators are entitled to use systems that provide a solution in the context of their operational risk and here there is no evidence that the Appellant's solution was leading to any risk of offending at all.

8. The Commissioner goes onto a make a finding that the Appellant attempted to mislead the Inquiry in respect of the checking of driver's availability. This finding appears to be perverse when the Director firstly states checks are made when they start work and when pressed this is done by word of mouth. 'Word of mouth', or oral questions and answers are still a check and we cannot see how making such a comment is an attempt to mislead the Inquiry.

9. Finally, the Commissioner makes a finding that the Appellant's director is not checking defect reports as he was unaware of the defect being crossed through on the documents produced to the Commissioner. It has never been the case that a director of a Transport Company (or a Transport Manager for that matter) is expected to audit and review every single document produced in the course of their operation. To suggest that if the failure to see this crossing out represents a significant failing is simply plainly wrong. There is also no evidence to suggest that the defect being crossed through was a deliberate act to for example hide a defect (presuming this is the allegation being made) as it is not identified.

10. Due to the approach of the Traffic Commissioner in presenting effectively as a witness, her own opinion evidence to herself, as to the maintenance arrangements, in the absence of any DVSA evidence at all, the Appellant and its representative was put in a difficult position, in that the Appellant is entitled under Schedule 4 para 5 of the Goods Vehicles (Licensing of Operators) Regulations 1995, to cross examine any witness evidence presented at the Inquiry. When that evidence is presented by the Commissioner, of course the Commissioner cannot be cross examined.

11. The Appellant's aver that if the Commissioner had concerns over the contents of either the maintenance records or driver's hours records to the degree suggested in her decision, the appropriate course of action would be to refer that evidence to the DVSA so that an independent assessment and evidence could be given to the Inquiry, with the Appellant given the opportunity to test that evidence. Failure to do so in this case lead to a plainly wrong outcome and was wrong as a matter of fair procedure.

12. Furthermore, the Commissioner makes findings that the Operator has breached its undertakings to keep vehicles in a fit and serviceable condition and proper records being kept, due to a failure to comply with the guidance given in the Guide to Maintaining Roadworthiness ("GTMR").

13. Failure to comply with GTMR is not in itself a breach of a licence undertaking. To make a finding that an undertaking has been breached the Commissioner ought to have

evidence that vehicles were actually not in a fit and serviceable condition or that records that were legally required to be kept, were not kept. Within her decision, there is no evidence highlighting this.

14. On driver's hours rules, the undertaking is for the operator to ensure that the drivers hours rules are met. Again, there was no evidence that the driver's hours rules were actually breached to justify the Traffic Commissioner's adverse finding on this undertaking.

15.At its highest, the Commissioner is suggesting that due to a failure to comply with the guidance, there is a chance that road safety could be compromised. This finding does not justify a revocation of the licence.

16. It would appear that the Commissioner is shifting the burden of proof onto the Appellant to show proper systems in place to justify the granting of a licence, rather than with an existing licence holder it is incumbent on the Commissioner to assess whether the system that were in place were in fact leading to breaches of the undertakings listed on the licence.

17. It is also averred that the Commissioner failed to undertake a proper balancing exercise to justify the revocation of the licence. The number of positives listed by the Commissioner are numerous with only a small number of negatives. The perceived systems issues could quite easily be resolved through education and the assistance of the Transport Consultant identified by the Commissioner.

18. The Traffic Commissioner has failed to identify the Condition that the Appellant has breached to justify the adverse finding under section 26 (1) (b).

19. The Traffic Commissioner has failed to identify the statement of fact which was false or the statement of expectation that was not fulfilled to justify the finding under section 26 (1) (e).

20. The Traffic Commissioner has failed to identify which undertakings recorded on the licence have not been fulfilled, or if obliquely identified, has failed to identify the evidence of such a breach of section 26 (1) (f).

21. The Traffic Commissioner has failed to identify the material change in any of the circumstances of the Appellant to justify the finding under section 26 (1) (h).

22. For the above reasons, the Appellants argue that the decision of the Commissioner was perverse and clearly wrong.

23. The Appellant's invite the Upper Tribunal to quash the Traffic Commissioners decision and make such further order as the Upper Tribunal determines fit.

The Hearing and the Appellants' submissions

11. Mr Backhouse appeared for the Appellant at the hearing on 25 April 2022. We are grateful for his assistance. He relied on grounds of appeal set out above and five alleged errors in the TC's decision which we address in the discussion section below.

The Law

12. 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).

……

13. The 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—
…
(b) that the licence-holder has contravened any condition attached to the licence;
…
(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;"

14. 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)**.**

15. 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."

16. 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]

17. 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 Upper Tribunal's jurisdiction

18. 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.

19. The Upper Tribunal's jurisdiction was examined by the Court of Appeal in *Bradley Fold Travel Ltd and Anor v Secretary of State for Transport* [2010] EWCA Civ 695. The court applied *Subesh and ors v Secretary of State for the Home Department* [2004] EWCA Civ 56, where Woolf LJ held:

> "44….The first instance decision is taken to be correct until the contrary is shown…An Appellant, if he is to succeed, must persuade the appeal court or tribunal not merely that a different view of the facts from that taken below is reasonable and possible, but that there are objective grounds upon which the court ought to conclude that a different view is the right one…The true distinction is between the case where the appeal court might prefer a different view (perhaps on marginal grounds) and one where it concludes that the process of reasoning, and the application of the relevant law, require it to adopt a different view. The burden which an Appellant assumes is to show that the case falls within this latter category."

20. In order to succeed, the Appellant must show not merely that there are grounds for *preferring* a different view but that there are objective grounds upon which the Tribunal ought to conclude that the different view is the right one. Put another way

it is not enough that the Tribunal might *prefer* a different view; the Appellant must show that the process of reasoning and the application of the relevant law *require* the Tribunal to adopt a different view.

21. The Appellant therefore 'assumes the burden' of showing that the decision appealed against is 'plainly wrong' or at least 'wrong'.

22. The Tribunal is not required to rehear all the evidence by conducting what would, in effect, be a new first instance hearing. Instead it has the duty to hear and determine matters of both fact and law on the basis of the material before the Traffic Commissioner but without having the benefit of seeing and hearing the witnesses.

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

Discussion and analysis

24. We consider each of the Appellant's five grounds of appeal in turn.

Ground (1) - Requirement to produce documentation

25. The Appellant's first ground of appeal was that the Traffic Commissioner erred in law in including the 'requirement' to produce the documentation in the calling in papers without there being an evidential basis to do so, thereby reversing the burden of proving compliance and landing that burden on the Appellant. Mr Backhouse submitted that nevertheless, in the interest of co-operation, the Appellant produced such documentation to the Traffic Commissioner, understanding that they were producing those documents to an impartial and independent inquisitor.

26. Mr Backhouse submitted that in reaching her decision, the Traffic Commissioner commented on the standard of documentation as summarised below:

a) The similarity of the maintenance records to Titan Haulage Ltd as well as the sufficiency of detecting driver identified defects and the consistency of brake testing.
b) Concerns in respect of the driver defect sheets and their authenticity.
c) The TC expressed her own view that the picture in respect of the Appellant's capacity to comply with the undertaking to ensure that vehicles are kept in a fit and serviceable condition is *"disappointing"* and did so with reference specifically to maintenance records produced for KX64TKZ.
d) The Traffic Commissioner undertook a further review of produced maintenance documentation and defect sheets with reference to specific dates and with commentary on the sufficiency of brake tests.
e) The TC identified as an aggravating factor *"Safety critical deficiencies in the maintenance systems including the cited failings around brake testing, driver defect audit and lack of a robust retorque system."*

27. Mr Backhouse submitted that the TC's observations were made with reference to documentation that the Appellant provided in a co-operative manner, in response to a 'requirement' to produce documentation contained within the 'calling in' papers issued by the Traffic Commissioner in her role as an impartial inquisitor when in the medium of Public Inquiry.

28. This requirement was included in those papers despite there being no pre-notification of issues or allegation in respect of the standard of maintenance/drivers' hours contained within those same calling in papers, nor was there any evidence from any DVSA Officer or other witness within the Public Inquiry material making any such allegation.

29. He submitted that in the absence of any evidence, witness or otherwise, and/or in the absence of any pre-notification that the production of the required documentation may give rise to an allegation under section 26 of the 1995 Act, the Traffic Commissioner had no evidential basis to include such a 'requirement' in the calling in papers, in particular, where there was no statutory power that allows her to include such a 'requirement' at all.

30. He submitted that by including such a 'requirement' without having an evidential basis to do so, the Traffic Commissioner reversed the burden to prove compliance and placed that burden erroneously on the Appellant to produce documentation to satisfy her that their vehicles and drivers' hours systems are compliant – without her having any evidence to suggest that they were not.

31. He relied on the statement of Lord Justice Rix in the Court of Appeal in paragraph 69 of *Muck It Limited, Hazel Merritt, Hayley Merritt v The Secretary of State for Transport [2005] EWCA Civ 1124* as below:

> "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."

Our analysis

32. We are satisfied that there is substance and merit to this ground of appeal but in the manner it was originally put at paragraph 2 the grounds of appeal rather than the way it was presented in the skeleton argument and submissions.

33. We are satisfied that the TC erred in law in failing to afford the Appellant natural justice and procedural fairness in the conduct of the hearing and the reasons for revocation relied upon in the decision. There was a procedural flaw in the decision whereby the TC revoked the Appellant's licence on grounds that were not identified in the calling in letter or in the brief for the PI (the case summary). The TC failed to identify in advance the grounds and evidence on which she sought to rely upon against the Appellant. This significantly prejudiced the Appellant which was not properly informed of the case it had to meet at the PI and was deprived of the opportunity to understand the case it had to meet in rebuttal to the evidence that it had volunteered but which was relied on upon against it.

34. While the TC did not reverse the burden of proof by relying on the evidence produced by the Appellant, she did rely upon a case for revocation against the Appellant without a prima facie case for revocation (or breach of section 26) ever having previously been established and having rejected the grounds for revocation which had been relied upon in the calling in letter.

35. The brief notice of the TC's concerns which was given to the Appellant at the hearing, identified at paragraph 14 of the decision, was insufficient in time (being only a few minutes) and lacked specificity as to the grounds which were then to be relied upon for revocation. An adjournment should have been granted if these points were to be relied upon for revocation with notice in writing of the specific points of fact and law in issue (a fresh calling in letter).

36. The Appellant was unable to make the submissions at the PI that it now makes at paragraphs 4-9 of its grounds of appeal as to why there were no significant defects in its maintenance of vehicles and driver sheets and that the TC should not make any findings as to there being a re-writing of defect history or misleading the inquiry about checking driver hours (serious allegations akin to dishonesty). We are satisfied that if the Appellant had had the opportunity to make these submissions, these would have had merit and would have made a material difference to the TC's findings and conclusions for the reasons that are now submitted at paragraphs 4-9 of the grounds of appeal.

37. If the evidence produced by the Appellant itself had given rise to substantive grounds for revocation in breach of section 26, then the procedural irregularities identified might have been immaterial. However, for the reasons set out in the Appellant's grounds of appeal at paragraphs 4-9, we are satisfied that the evidence did not support the TC's findings and conclusion that the significant sanction of revocation should be employed. We are satisfied that the Appellant has demonstrated that the factual findings and evaluative conclusions set out in the decision to support revocation were, on balance, wrong.

Ground 2 - The Traffic Commissioner's analysis of the documentation

38. The Appellant's second ground of appeal was that the opinion evidence presented by the Traffic Commissioner on the documentation produced as to the merits of the Appellant's maintenance systems should have been produced as expert evidence from a suitable expert, which is typically provided by a DVSA officer's report and oral evidence. There was no opportunity for the Appellant in the PI to challenge the evidence by cross-examination or even to challenge a specific area of expertise. In effect, the TC acted as her own witness.

39. The Administrative Court decided *in R. (on the application of Al-Le Logistics Ltd) v Traffic Commissioner for the South Eastern and Metropolitan Traffic Area [2010] EWHC 134 (Admin)* at paragraph 92:

    "In *AM Richardson v. BETR 2000/65* the Transport Tribunal accepted that the Traffic Commissioner is a public authority and thus subject to control by section 6 of the Human Rights Act 1988. The Tribunal also accepted that the nature of proceedings before a Commissioner involves the determination of civil rights and obligations and that a Traffic Commissioner constitutes an independent and impartial tribunal."

40. Mr Backhouse accepted in the Appellant's grounds of appeal that the Traffic Commissioner is a specialist regulator and can therefore comment on records in the course of a hearing and come to a view as to their adequacy. However, he submitted that it should not be the case that prior to that hearing, the Traffic Commissioner undertook a detailed review of the documentation produced by the Appellant for the purposes of in effect providing her own opinion evidence to the inquiry before the hearing has started. Furthermore, she should not then rely on her analysis of that documentation carried out prior to the hearing and put opinions she has formed, based on her analysis, to the Appellant. The reason this is plainly wrong is that in so doing the Traffic Commissioner was becoming an expert witness in a hearing where she has a responsibility in law to adopt an impartial position as an inquirer.

41. He further submitted that to preserve impartiality and protect the Appellant's right to cross-examine (see below), the Traffic Commissioner should have referred the analysis of that documentation to a DVSA Officer (as a recognised expert witness) and have invited that person to enter their findings into the evidence to be considered at the Public Inquiry – be that either by written evidence or by requiring that person to attend the hearing. He submitted that it was well within the Traffic Commissioner's power to do this, it is perfectly normal for this approach to be adopted, and that this would have preserved her neutrality, independence and impartiality prior to the commencement of the hearing.

    Our analysis

42. We are satisfied that there is merit to this second ground of appeal for the reasons submitted. The TC further erred in law by failing to provide procedural fairness at the hearing, when making her decision and giving her reasons.

43. The TC relied on evidence against the Appellant that was not the product or subject of examination, investigation or presentation by any independent party (namely the DVSA) nor the subject of any adversarial argument of opportunity for evidence in rebuttal. She conducted her own analysis of the Appellant's evidence without it having previously been identified as problematic or a ground for revocation, and which had not of itself justified a PI, thus 'descending into the arena' effectively acting beyond merely an inquisitorial manner but in a prosecutorial manner or as her own witness.

44. We are satisfied that on the facts of this case, and from reading the Traffic Commissioner's decision, that referral to the DVSA for independent analysis or at least setting out the grounds for revocation in advance of the hearing were the proper approaches that the TC should have adopted. By undertaking her own analysis of the evidence produced by that Appellant, without advance notice, and setting out her opinion evidence to the inquiry relying on that prior analysis, in effect, the TC was acting as her own witness in the Public Inquiry.

45. As Mr Backhouse accepted, the TC might be entitled to come to her own view as to the quality of paperwork provided by the Appellant in her role as an adjudicator but as a minimum, the perceived defects should have been notified to the Appellant in advance of the hearing so that it had a fair opportunity to address these grounds for revocation in submissions and evidence.

46. Compounding the errors identified in Ground 1, the Traffic Commissioner therefore erred in failing to afford the Appellant a fair procedure by carrying out her own review of the maintenance evidence/documentation produced and, in effect, acting as her own expert witness against the Appellant (because the Traffic Commissioner was, in effect, giving opinion evidence to herself on the documents produced) in a hearing where the alleged defects she relied upon had not been previously identified or notified to the Appellant.

Ground 3 Failure to allow the Appellant the opportunity to cross-examine a witness and test witness evidence

47. It was the Appellant's third ground of appeal that the Traffic Commissioner erred in law and fair process by entering her own evidence into the Public Inquiry proceedings. Had the Traffic Commissioner referred the documents to the DVSA, as submitted in the Appellant's second ground of appeal, then that DVSA Officer could attend the hearing, would be recognised as an expert witness to review such documentation, and the Appellant's entitlement to cross-examination would be facilitated.

48. Mr Backhouse submitted that the Traffic Commissioner in this case essentially acted as her own witness, presenting her own conclusions at the hearing, relying on a prior analysis of documentation produced.

49. Paragraph 5(2) of Schedule 4 to the Goods Vehicles (Licensing of Operators) Regulations 1995 ("the Regulations") reads as below:

    "(2) Subject to sub-paragraph (5), a person entitled to appear at an inquiry in accordance with paragraph 3 of this Schedule shall be entitled to give evidence, call witnesses, to cross examine witnesses and to address the traffic commissioner both on the evidence and generally on the subject matter of the proceedings."

50. He submitted that by carrying out her own analysis of the documentation and relying on that analysis in the Public Inquiry, the Traffic Commissioner (to comply with the rights of the Appellant under the Regulations) should have allowed herself to become subject to cross-examination by the Appellant and/or the Appellant's legal representatives. He accepted that under paragraph 5(3) of the Regulations, the Traffic Commissioner does have some discretion as to how witness evidence is entered into a Public Inquiry; however, he submitted that having allowed herself to enter her own evidence, the TC should have allowed the Appellant to challenge that evidence. The Appellant must have the opportunity as they would with any expert or qualified or specialist witness to cross-examine that person on their qualifications, methodology of their analysis, etc., and in this case the Appellant was not permitted to do so, as the opinion 'witness' was the Traffic Commissioner, who did not allow herself to be cross-examined.

51. Mr Backhouse submitted that it can be seen that the TC's conduct of proceedings created a challenging position where the presiding decision maker expressed opinions on the documentation and the operator was likely to feel inhibited in challenging those opinions particularly where there is no expert witness to cross-examine.

Our analysis

52. We are not satisfied that this ground of appeal added anything to ground 2. In any event, the Appellant was not entitled to cross examine the TC.

Ground 4 Reliance on the DVSA's Guide to Maintaining Roadworthiness (GTMRW) and the Traffic Commissioner findings in respect of the Appellant's maintenance systems

53. Mr Backhouse submitted as the fourth ground of appeal that the Traffic Commissioner's decision to draw adverse conclusions in respect of the Appellant's maintenance systems, and to conclude that there had been a breach of undertakings, only with reference to the GTMRW and with no other tangible evidence in front of her, was plainly wrong.

54. The Traffic Commissioner made findings that the Appellant had breached the undertakings on their operator's licence relating to the proper maintenance of vehicles/trailers, thereby contravening section 26. The undertakings attached to an operator's licence in respect of maintenance systems and document retention are to make proper arrangements to ensure that:

"Records are kept (for at least 15 months) of all driver reports that record defects, and all safety inspection, routine maintenance and vehicle repair reports, and that these are made available on request;"
"Vehicles and trailers, including hired vehicles and trailers, are kept in a fit and serviceable condition;"

55. Mr Backhouse made the point that these undertakings do not refer to the DVSA's Guide to Maintaining Roadworthiness at all.

56. The Traffic Commissioner in her written decision stated:

> "10…The Guide to Maintaining Roadworthiness and linked documents are well known within the industry as crucial in ensuring systems are fit for purpose. The Guide's importance features in DVSA New Operator Seminars: one day Operator Licence Awareness courses and Transport Manager Refresher Courses."

57. He submitted that whilst the GTMRW may well be well-known and the DVSA themselves may refer to it (which you would expect, given it is their document), there is no incorporation of that document in the undertakings attached to a licence.

58. He submitted that in referring to 'mere' guidance in the Grounds of Appeal, what is meant by the Appellant is that the guidance in question has not been subject to legislative scrutiny nor has it been made with reference to any statutory requirement to comply with it. The DVSA's Guide to Maintaining Roadworthiness ("the GTMRW") is, ultimately, a document published by the Driver and Vehicles Standards Agency to assist operators in achieving a compliant system, it is not and does not purport to be the bible of mandatory elements of the operator's maintenance compliance systems.

59. As a result, Mr Backhouse submitted it was not an automatic breach of a statutory requirement, nor justification for an inevitable conclusion that arrangements are not satisfactory, where an operator does not implement everything in the GTMRW into their own compliance systems. Nor is there a requirement in the wording of the undertakings attached to an operator's licence to implement what is said in the GTMRW.

60. He submitted, therefore, that if a Traffic Commissioner wishes to make adverse findings in respect of an operator's maintenance systems, then they must have more tangible evidence in front of them other than, simply, the operator in question did not comply with the GTMRW. There must be sufficient proof that there is a failure in the operator's systems causing, or clearly likely to cause, vehicles to be out on the road not in a fit and serviceable condition, i.e., the wording of the undertaking identified in this skeleton argument. Then the degree of divergence from the undertaking must be assessed to determine if any, and if so, what action may be required – revocation is not inevitable at all.

61. He made the same submission in respect of the binding effect of guidance in respect of the *'Careless Torque Costs Lives'* documents regarding the retorquing procedures adopted.

Our analysis

62. We are satisfied that the TC was entitled to take into account and rely upon the guidance in TGMRW and other published guidance and this ground adds nothing of substance. The point is that the flaws and defects relied upon by the TC at paragraphs 17-21 of the decision were undermined by the points made at paragraphs 4-9 of the appeal grounds.

Ground 5 - Failure to undertake a proper balancing exercise and failure to identify breaches/contraventions as grounds relied upon for revocation

63. The Appellant's fifth ground of appeal was that the Traffic Commissioner's decision to revoke the Appellant's operator's licence was based upon the basis of a defective balancing exercise, was plainly wrong and her decision was perverse without providing specific reasons and/or breaches which she considered contravened section 26 of the Act.

64. The Traffic Commissioner in her written decision listed several positive and some aggravating factors in this case. Mr Backhouse submitted that the list of positives outweighs the aggravating factors in length and level of impact.

65. He therefore submitted that the Commissioner failed to undertake a proper balancing exercise to justify the revocation of the licence, in accordance with *2009/225 Priority Freight Limited and Paul Williams*. The number of positives listed by the Commissioner are numerous with only a small number of negatives. The perceived systems issues could quite easily be resolved through education and the assistance of the Transport Consultant identified by the Commissioner.

Our analysis

66. We are not satisfied that there is any merit to the argument that there was any error of law in carrying out the balancing exercise in the sense that it is not a mathematical exercise. It is not the number of negative indicators relied upon that matter when compared to the positive indicators. It is the significance of those indicators.

67. Nonetheless, we are satisfied that there were errors in findings in relation to the negative factors that were relied upon. We accept Mr Backhouse's submission that, in fact, there was positive arguments or evidence in front of the Traffic Commissioner at the Public Inquiry relevant to the Appellant's maintenance and drivers' hours systems, and those positive points are particularised at paragraphs 4 – 9 of the Appellant's grounds of appeal set out above.

68. Further, the TC made a finding that the Appellant's director was not checking defect reports as he was unaware of the defect being crossed through on two of the

documents produced to the Commissioner. We accept Mr Backhouse's submission that a director of a Transport Company (or a Transport Manager for that matter) is not expected to audit and review every single document produced in the course of their operation. There is also no evidence at all to suggest that the defect being crossed through was a deliberate act to for example hide a defect (presuming this is the allegation being made) as it is not identified. Therefore, it was wrong to make a finding that the failure to see this crossing-out represents a significant failing.

69. More fundamentally, we agree with paragraphs 18-21 of the grounds of appeal. The Traffic Commissioner has failed to identify in her decision which undertakings recorded on the licence have not been fulfilled, or if obliquely identified, has failed to identify the evidence of such a breach of section 26 (1) (f). The undertakings identified and included in this decision are only those which Mr Backhouse identified as being relevant undertakings in respect of maintenance and document retention.

70. The same point applied in relation to each of the other grounds relied upon by the TC for revocation at paragraph 1 of the decision.

71. In her decision, the Traffic Commissioner has failed to identify the condition that the Appellant has breached to justify the adverse finding under section 26 (1) (b). The Traffic Commissioner has failed to identify the statement of fact which was false or the statement of expectation that was not fulfilled to justify the finding under section 26 (1) (e). The Traffic Commissioner has failed to identify the material change in any of the circumstances of the Appellant to justify the finding under section 26 (1) (h).

72. These were highly material errors of fact and law which render the decision plainly wrong.

Remedy

73. We are satisfied that the TC erred in law in the ways described in Grounds 1, 2 and 5 and that these were all material errors that led to the decision to revoke being plainly wrong.

74. We must then consider what is the appropriate remedy for the purposes of paragraph 17 of Schedule 4 to the 1985 Act. We can make such order as we see fit, including remittal for a fresh hearing. After careful consideration we have decided not to remit this matter for a further PI. We understand the concerns that the TC had about the involvement of Mr Aujla in the Appellant, given his history, and the links with other companies (the grounds for the PI set out in the calling in letter). There were connected companies that were linked to the Appellant and there was a sharing of resources. It was appropriate for the companies to be investigated to check that they were operating in a lawful way, for example, that maintenance of vehicles and driver's hours were clearly managed and did not evade regulation.

75. However, the TC decided that the grounds set out in the calling in letter were not made out on the evidence and, but for these grounds, there would have been no PI. It would not be appropriate to remit the matter to a fresh tribunal based upon that calling in letter where it does not set out the grounds which the TC now relied upon. The grounds for revocation that were relied upon by the TC did not result from any independent examination or evidence pursued or presented by the DVSA and the Appellant has demonstrated that they do not have the merit that the TC considered that they did.

76. The Appellant's operation is discrete – based upon a contract with Tarmac Holding Ltd. There was an issue from time to time that a driver would drive for another family company and vice versa – when RAM Logistics Ltd did not have work for that driver. This did not provide evidence that drivers were breaching the drivers' hours rules and there was insufficient evidence of breaches because the matter was not investigated. The Appellant operator had sent in tachograph data – and had there been no tacho data then no complaints would have been raised by the TC. The Appellant nonetheless proved that it was substantially compliant. This is all the more so when there was insufficient evidence to prove that it was not compliant and its licence should be revoked.

77. Our decision does not prevent the DVSA or office of the TC conducting a fresh investigation if they have concerns. The matter can always be returned to the office of the TC for a fresh calling in letter and PI on specified grounds and substantiated evidence if that becomes appropriate.

Conclusion

78. The Appellant's appeal must be allowed and the revocation decision quashed as being plainly wrong. The licence will continue to be in effect.

Judge Rupert Jones
Judge of the Upper Tribunal

Authorised for release

Dated: 7 June 2022