



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

Appeal No. UA-2023-000144-T

ON APPEAL from a DECISION of the TRAFFIC COMMISSIONER for the EAST of ENGLAND

Before: M Hemingway: Judge of the Upper Tribunal
K Pepperell: Member of the Upper Tribunal
D Rawsthorn: Member of the Upper Tribunal

Appellant: Leafy Designs Ltd

Reference No: OF1089625

Representation:

For the appellant: Mr S Clarke (Counsel)

Heard at: Field House in London

Date of Hearing: 12 April 2023

Date of Decision: 15 May 2023

DECISION OF THE UPPER TRIBUNAL

This appeal is dismissed.

Subject matter: Repute

Cases referred to:

Bradley Fold Travel Ltd & Anor v Secretary of State for Transport [2010] EWCA Civ 695.
R v Barton and Booth [2020] EWCA Crim 575
Ivey v Genting Casinos (UK) Ltd [2017] UKSC 67



REASONS FOR DECISION

1. This appeal to the Upper Tribunal has been brought by Leafy Designs Ltd (“the Operator”) and by its two directors Mustak Ahmed Umarji (“Mr Umarji”) and Harunbhai Daubhai Patel (“Mr Patel”). The appeal is directed towards decisions of the Senior Traffic Commissioner (“the STC”) explained in written reasons of 14 February 2023 (“the written reasons”), to revoke the Operator’s standard international goods vehicle operator’s licence, to disqualify the Operator from holding or obtaining such a licence for a period of 2 years, to disqualify Mr Umarji from holding an operator’s licence for a period of two years, and to disqualify Mr Patel from holding an operator’s licence for a period of one year. The STC made certain other decisions concerning different individuals but none of those decisions are appealed in these proceedings. The STC’s decision was made following a public inquiry (“PI”) which was heard over two days on 16 March 2022 and 5 January 2023. The appellants were legally represented at the PI.

2. We heard the appeal, at Field House in London and by way of a traditional face-to-face hearing, on 12 April 2023. Each appellant was represented by Mr S Clarke of Counsel. We are grateful to Mr Clarke for his clear and helpful oral submissions. In addition to having the benefit of those oral submissions we had extensive documentation in the form of an Upper Tribunal Bundle (“the bundle”) which ran to 1002 pages, a transcript of the PI, a skeleton argument prepared by Mr Clarke, and copies of *R v Barton and Booth* [2020] EWCA Crim 575 and *Ivey v Genting Casinos (UK) Ltd* [2017] UKSC 67. There were some administrative mishaps with respect to the documentation included in the bundle (some documentation had initially not been included) but by the time of the hearing that had been dealt with and Mr Clarke was ready to proceed. Upper Tribunal Judge Hemingway had granted a stay of the effect of the decisions of the STC and had simultaneously directed expedition. In light of a stay having been given, it was necessary for Mr Clarke not only to address us as to the merits of the appeal but also as to (in the event of our not allowing the appeal) the appropriate period to be permitted for the winding up of the Operator’s business which had been carried out under the licence.

3. Prior to setting out something of the background circumstances, we shall make mention of a number of relevant statutory provisions. Section 13A(2)(b) of the Goods Vehicles (Licensing of Operators) Act 1995 (“the Act”) requires an applicant for or the holder of a licence to be “*of good repute (as determined in accordance with paragraphs 1-5 of Schedule 3)*”. Section 26 provides that a traffic commissioner may direct that a licence be revoked, suspended or curtailed for various reasons which include “*that the licence holder has contravened any condition attached to the licence*” (Section 26(1)(b)); that during the five years ending with the date the direction was given “*a fixed penalty notice or conditional offer has been issued under Part 3 of the Road Traffic Offenders Act 1988 to the licence-holder in respect of an offence within sub-paragraph (i) of paragraph (c) or to a servant or agent of the licence-holder in respect of an offence within sub-paragraph (ii) of that paragraph*” (26(1)(ca)); “*that the licence-holder made, or procured to be made for the purposes of – (i) his application for a licence, an application for the variation of the licence, or 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” (26(1)e); “that any undertaking recorded in the licence has not been fulfilled” (26(1)(f)); and 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” (26(1)(h)). Section 27 of the Act provides that a traffic commissioner shall direct (our underlining) that a standard licence be revoked where it appears that “the licence holder no longer satisfies one or more of the requirements of section 13A” (27(1)(a)). Section 28 of the Act empowers a traffic commissioner, in the event of revocation of a licence, to disqualify “any person who was the holder of a licence”, from holding an operator’s licence “either indefinitely or for such period as the commissioner thinks fit” (Section 28(1)).

4. The full background circumstances are set out in the STC’s written reasons and the accompanying documentation. But in brief, the Operator was incorporated on 1 September 2006. Its directors were and still are Mr Umarji and Mr Patel. The Operator applied for a standard national licence in 2009. The application was granted following a PI which took place on 24 August 2010. The licence was subsequently upgraded to a standard international licence. The transport manager during the time the Operator held only a standard licence was one Michael Lynch. At the time of the upgrade application, another transport manager, one Dharminder Singh was appointed transport manager. The date of that appointment was 28 May 2019. Mr Lynch continued to be under the employ of the Operator but not officially as transport manager. He was referred to at one point as “*transport assistant*”. The licence authorised 12 vehicles and 8 trailers.

5. The Operator sought a variation of the licence to increase the number of vehicles to 19. The application was made on 24 August 2021. It was subsequently withdrawn on 25 January 2022, but some water flowed under the bridge before that happened. Following the making of the application the Driver and Vehicle Standards Agency (“DVSA”) conducted a desk-based assessment which it completed on 27 October 2021. As part of that process the Operator provided the DVSA with a written response. We shall have to say more about that response later. The DVSA found what can fairly be described as an extensive list of concerns regarding vehicle maintenance and organisational issues. We shall not set out all of them. They are set out in the STC’s written reasons (paragraph 11). But to pick some of them out, the DVSA found that whilst 12 vehicles were in operation only 9 were actually specified on the licence; that braking performance was not assessed at each vehicle inspection; that the safety defect and recall systems were limited; that driver reportable defects were being left to preventative maintenance inspections; that there were maintenance arrangements with organisations not specified on the licence; that there was limited or no explanation or evidence regarding systems relating to emissions, wheel and tyre management, load security, security requirements, driver documents, training records and working time directive compliance; that there was no evidence of investigation following vehicle MOT failures; and that relevant documentation relating to driver licence and tachograph information was missing. Matters were reported to the Office of the Traffic Commissioner (“OTC”).

6. On 15 February 2022 the OTC wrote to the Operator and its directors, with reference to the DVSA desk-based report. It was said it had been decided to call a PI “*to investigate these apparent shortcomings and to give you an opportunity to explain what you are doing to improve compliance with the rules and the fulfilment of the undertakings that were given at the time the licence was applied for and show evidence to support this*”. It was indicated that

regulatory action might follow and a number of areas of concern were specified. Revocation and disqualification were identified as possible outcomes.

7. The PI opened on 16 March 2022. Mr Umarji and Mr Patel attended and were represented. Mr Lynch and Mr Singh also attended. Some evidence was taken. All of that is recorded in the PI transcript and referred to in some detail in the STC's written reasons. Essentially, the Operator accepted some shortcomings but argued its processes had been "*completely transformed*" as a result of the use of new software and monthly infringement reporting. The question of the written response to and communications with the DVSA, regarding its concerns, cropped up. That is because whilst the written response to the DVSA's inquiries of the Operator appeared to have been signed by Mr Umarji as a director and by Mr Singh as the Operator's transport manager, Mr Singh said he had never signed any such document. The STC in his written reasons was later to write;

"23. However, as the updated Case Summary refers, during the course of the first hearing, Dharminder Singh disputed that he had seen or signed any of the documentation lodged with the DVSA as part of its desk-based assessment. As a result, and in order to ensure the fairness of proceedings, I adjourned the hearing in order to reserve that material. The Office of the Traffic Commissioner carried out those instructions on 18 July 2022, with an invitation to Dharminder Singh and Ms Evans [the representative of the Operator and directors at each PI hearing] to make additional representations. Mr Singh eventually allowed his written representations to be disclosed to the operator so that I might take them into account (see below)".

8. With respect to written material which was sent to the OTC on behalf of the Operator between the two PI hearings, the STC wrote;

"24. A response was received from Ms Evans, on behalf of the operator, dated 15 August 2022. That included the statement from Mr Umarji. Admissions were made confirming that Dharminder Singh was retained by the operator in order to upgrade to an international licence, but with Mr Lynch to remain using his National Certificate of Professional Competence. It was apparently agreed that Mr Lynch would perform most of the Transport Manager duties and ensure that the paperwork was in order.

25. In addition, Mr Umarji confirmed that when the DVSA request was received, he passed it to Mr Lynch to start collecting the paperwork required. They apparently tried to contact Mr Singh but were unable to speak with him. As the paperwork had to be returned by 27 September 2021, one of the staff signed on Mr Singh's behalf. They apparently did not think there was anything wrong with this. It was suggested that Mr Singh had previously authorised someone to do so when, he was unable to attend the office. The documents were only ever collated by Mr Umarji and Mr Singh. Mr Umarji admitted that he should not have allowed this to occur".

9. The PI was reconvened on 5 January 2023. Written material had been submitted on behalf of the Operator and Mr Umarji and Mr Patel. Mr Singh was also in attendance and made it clear he was representing himself. There was now a tension between the decision taken by Mr Singh and that taken by the Operator and the directors. As to the developments since the first PI hearing, Amanpreet Kaur was appointed as the Operator's transport manager on 31 March 2022. On 12 December 2022 it was arranged for Invergold Associates Ltd, a firm of external transport compliance consultants, to carry out an audit to assess the then level of regulatory

compliance. The report following the audit indicated there had been what Mr Clarke described in his skeleton argument as “*significant and substantial improvements to the Operator’s maintenance and compliance systems*”, much of which had been achieved under the auspices of Ms Kaur. As to further written material, this included a statement of Mr Umarji of 14 August 2022. It is worth setting out some of the content of that statement. With respect to the appointment of Mr Singh, Mr Umarji said this;

“6. As Michael Lynch only holds the National CPC, we started to look for someone with an international CPC. Mike was keen to stay on in the role and so we agreed to find someone to cover the role temporarily, until he could sit the International CPC examination.

7. I knew Dharminder Singh through another transport company and agreed with him to become our Transport Manager. We agreed that Mike would perform most of the work on the ground and make sure that the paperwork was in order. This would mean that Dharminder would not be required to come into the office very often, as Mike would take care of everything.

8. When I look back now, I realise that I should have simply found a permanent replacement for Mike Lynch, but we thought that the arrangement was just for a few months until Mike could upgrade his own qualification. As we had been working with Mike for 10 years, we wanted to continue to use him as the Transport manager as he had a good track record.”

10. Mr Umarji went on to say he had paid Mr Singh £400 per month for his work as a transport manager. He then moved on in the statement to deal with the issue of Mr Singh’s signature. This is what he said about that;

“11. On the 13th of September 2021, an email was sent to me and Dharminder, which attached the desk-based assessment, and I passed it to Mike to start completing it. Looking at the messages from the DVSA which I have gone through with my solicitor, I can see that although he received the original desk-based assessment, there is no read receipt from his email address. I don’t know whether this is because he did not agree to send one or because he never opened it. My office sent a read receipt a minute after it was received at 13.03.

12. After we received the desk-based assessment, I called and spoke to him. I cannot recall what we agreed in terms of how to proceed.

13. I tried to call Dharminder several times over the next week to discuss the content of the desk-based assessment, which was being prepared mostly by Mike, but was not able to get hold of him.

14. We had to comply with the request by the 27th of September 2021.

15. On the afternoon of the 27th September 2021 me, Mike and some other members of staff were in the office getting the last of the paperwork together. As we couldn’t get hold of Dharminder, one of the staff signed the response on his behalf.

16. I didn’t think anything of this as he had previously authorised us to sign documentation on his behalf, when he couldn’t come in and counter sign.

17. On the 27th of September 2021 at 15:49, we sent a completed desk-based assessment back to the REO.

18. Over the next few days we continued to send the material requested in the desk-based assessment.

19. On the 28th of October 2021, both me and Dharminder received a request for further information, in relation to the unsatisfactory elements. We had just seven days to send a response.

20. Again, the response in the bundle was put together by me and Michael Lynch and signed in the office on behalf of Dharminder Singh.

21. During lockdown, as it became continually difficult for Dharminder to come into the office, he would ask us to sign documentation on his behalf. Sometimes he would come into the office and ask us to sign after his departure and sign a piece of paper for someone in the office to copy.

22. On the 7th of November 2020, he WhatsApp'd me a copy of his signature and asked me to copy it, following a telephone conversation when I had asked him to come into sign something around that time. (Appendix 4).

23. I should never have allowed this practice to start and should certainly never have allowed such an important document to be signed on Dharminder's behalf in the office. At the time, Dharminder had been coming in very infrequently due to COVID, we were under a lot of pressure to comply with the request by the deadline and I had been unable to reach him by telephone.”

11. Mr Umarji went on to express surprise (he said he was “stunned”) that Mr Singh, at the initial PI hearing, had given evidence to the effect that he had not known anything about the desk-based assessment. He then went on to address certain of the concerns of the DVSA and pointed to what he regarded as recent improvements.

12. At the PI hearing of 5 January 2023, Mr Singh acknowledged, under close questioning, that he had provided a sample signature via a WhatsApp message, which enabled that signature to be copied. He gave evidence about the, on any view, extremely limited input he had had as the Operator's transport manager. Mr Umarji gave evidence which included his account of the input of Mr Singh which he too agreed, in effect, was limited, and his account as to the use of Mr Singh's signature with respect to the communications with the DVSA. As to the latter, he said he did not show Mr Singh the contents of the response to the DVSA prior to its being signed and sent (page 806 of the Upper Tribunal Bundle). Ms Kaur gave evidence as to her involvement. The three issues of real importance stemming from the PI and the evidence given to it, might be said to be the concern about the maintenance and safety issues, the concern about the genuineness or otherwise of the arrangement whereby Mr Singh was acting as transport manager so the Operator could be viewed as complying with requirements for an international licence, and the dishonesty or otherwise involved in the signing of documents by way of a copy of Mr Singh's signature, in order to make it seem as if he had signed.

13. The STC was unimpressed by the transport manager arrangement involving Mr Singh and the copying of his signature by the Operator. This is what he made of those matters:

38. *Mr Singh gave the impression of an inconsistent witness. Mr Umarji contradicted his denial of having access to the records, but both accepted that his visits were short and infrequent. The evidence and representations were clear, this was intended to be a short arrangement with Mr Lynch actually carrying out the tasks of the Transport Manager pending him requalifying which never occurred. All the evidence suggests that Mr Lynch was aware and heavily involved. The arrangement was a device from the outset. It was suggested that after I started to uncover the extent of this deception, the parties had come clean. I regret that the evidence does not support that conclusion. At the second hearing I was informed that Michael Lynch had left his employment with this operator in April 2022, shortly after the first hearing. I was only informed of this at the second hearing, but what also emerged was clear evidence of the knowledge and the failure to notify. The attempt to blame the pressures of the pandemic did not live up to scrutiny. The nomination of Mr Singh to support the upgrade to standard international operations was a sham and only possible through the collusion of the Directors, Mr Singh and Mr Lynch. It was accepted from the beginning, despite the TMI form, that Mr Singh did not have enough time to be the Transport Manager so they agreed that Mr Lynch would continue, and that Mr Singh would oversee him. That so called oversight amounted to the brief visits described by both witnesses.*

39. *The intervention by DVSA gave the operator opportunity to regularise the position. Instead, in response to the request of 27 September 2021, Mr Lynch, in the presence of Mr Umarji, instructed a member of staff to sign, purporting to be Mr Singh. The content had been checked by Mr Umarji and Mr Lynch but purported to show that Mr Singh was involved, meeting the obligations of a Transport Manager and had authorised the response. A similar approach was taken to the request for follow up information. Irrespective of whether anyone could have thought that Mr Singh has agreed to this, there can have been no doubt that this was a false document, and so false that it was intended to mislead. I was initially left with the impression that this had only occurred to the parties once Mr Singh had admitted that it was not his signature in response to my examination at the first hearing. That too proved to be misleading. Mr Singh was present at the Customer Visit conducted by Invergold in January 2022. Mr Umarji was not sure if Mr Singh was aware of the content but there was a discussion about the DVSA conclusions in the desk-based assessment. There was an agreement to work together to address the concerns. Mr Singh apparently suggested finding another CPC holder to fulfil the role. The Directors were aware then that they needed help to get compliance up to scratch and they decided to find another Transport manager. That led to the appointment of Ms Kaur.*

40. *Mr Umarji tried to claim that there was no cover up, but the operator and Mr Singh agreed that he would attend a Transport Manager refresher course. What possible benefit would that afford if he was not actually exercising the Transport Manager functions? I am satisfied that its only purpose was to present to authorities, as it was in advance of the first hearing, to bolster the operator's claim that it could ensure future compliance, based on the nomination of Mr Singh. Once again, the parties failed to disclose the true position and that continued to a degree until my cross-examination during the second hearing."*

14. The STC went on to note that the issues identified by the DVSA had been accepted by the Operator. He noted that an operator is required to supervise and monitor the actions of a transport manager. He observed "*The evidence confirms that Mr Singh's appointment was a clear device to allow Mr Lynch to continue to act as de facto Transport Manager even though he did not hold the requisite qualification to manage international operations*". He posed the

question as to whether the Operator could be trusted to ensure future regulatory compliance. He referred to the involvement and the evidence of Ms Kaur. As to compliance he said this:

“53. I was told the operator needed a “wake-up call”. The inspection records suggest that roller brake testing is still not consistent with vehicles being presented under-weight. On Mr Umarji’s evidence arrangements for trailers to be loaded have only been engaged within the fortnight before the second hearing, despite the considerable gap between the two hearings. After the second hearing I was provided with a brake test report for FJ64KCG, showing 67%, 25%, 24%. The secondary brake reading was not transposed on the Preventative Maintenance Inspection record completed by M N Commercials. I was told that drivers undertake walk rounds in the morning and that they have received training. Whilst examining the recent inspection records, it was suggested to me that the named contractor had left driver detectable defects on successive inspection forms because the operator had opted to have the defects rectified elsewhere. Ms Kaur was told that a Director had spoken to the contractor and she has personally checked some of the defects to ensure that they have been rectified. This was not apparent from the maintenance records and there was no written record of any contact with the maintenance contractor. I have subsequently been supplied with a maintenance contract dated 6 January 2023 with MN Commercials. I did not invite additional material beyond “actuarial” evidence of the type described by the Upper Tribunal in 2013/047 Dundee Plant Hire Ltd. It does go to further illustrate that this operator was unable to address important issues such as these despite the long delay between the two hearings”.

15. He continued:

“55... From the outset of proceedings, the operator acknowledged the serious issues identified by DVSA. What it apparently failed to appreciate is that I was misled by the operator’s statement regarding professional competence. Prior to the first hearing it was suggested that I might find this case to fall within the “Moderate” category. The operator then acknowledged in writing that Mr Singh attended the Operating Centre approximately once per month, but that his role has been largely supervisory with most of the tasks performed by Mr Lynch. The full extent of the efforts to mislead only became apparent during the second hearing when evidence emerged of the repeated failures to come clean in the face of the obvious. The suggestion following the first hearing that the operator had only just woken up to the seriousness of its position was not supported by the evidence and I am satisfied that it persisted with a device that was intended to mislead, to its own commercial advantage”.

16. The STC concluded:

59. This may have been the operator’s first Public Inquiry, but it consisted of two hearings separated by 9 months, during which the operator had adequate opportunity to put things right. A licence is issued to an operator on trust that the operator will comply with the requirements. As was suggested by the Upper Tribunal in 2014/008 Duncan McKee and Mary McKee and 2006/277 Fenlon, that trust is one of the foundation stones of operator licensing. Traffic Commissioners must be able to trust operators to comply with all the relevant laws, rules and regulations because it would be a physical and financial impossibility to police every aspect of the licensing system all day and every day. In addition, operators must be able to trust other operators to observe the relevant laws, rules and regulations. If trust between operators breaks down and some operators believe that others are obtaining an unfair commercial advantage by ignoring laws, rules and regulations then standards will inevitably

slip, and the public will suffer. Other operators looking at the facts of this case would be entitled to question their efforts to comply if deterrent action were not to be taken as per the Tribunal in 2019/025 John Stuart Strachan t/a Strachan Haulage. I have set the revocation date to allow for an orderly and safe run down of the operations and by reference to the representations received following the second hearing.

60. For all the reasons summarised above, the operator's actions have so eroded my trust that I have concluded that the operator must be removed from the industry and that accordingly I have recorded a loss of repute, pursuant to section 27(1)(a). I have referred to the device employed by the operator and the continued failure to admit the extent of the deceit. I have recorded the deliberate acts that undermined the jurisdiction and were intended to afford a clear commercial advantage, so that the case fell within the "Severe" category. As the Tribunal explained in 2005/457 Leslie John Ings, the purpose of the jurisdiction is to regulate the conduct of operators so as to ensure, first and foremost, compliance with the legislative framework of operator's licensing. There is no requirement to identify additional features so as to consider disqualification, but in this case, the conduct is such that a period of disqualification is required so as to emphasise the seriousness. There is no tariff system but the Senior Traffic Commissioners Statutory Directions give starting points; for an operator's first public inquiry, consideration might be given to a disqualification period of between 1 and 3 years, but more serious conduct may merit disqualification of between 5 to 10 years, severe cases may merit disqualification for an indefinite period. In setting the period I have taken account of the recent improvements and have settled on a period of 2 years for the operator. I can distinguish between the actions of the two Directors. They were both clearly aware of the initial devise and of the attempts to mislead me. However, Mr Umarji was present when the false signature was applied to the response to DVSA. Accordingly, Mr Patel will be disqualified for a period of 12 months, whilst Mr Umarji will be disqualified for two years".

17. An appeal was made to the Upper Tribunal. The grounds of appeal were succinct. Those grounds were:

- i. The Traffic Commissioner placed too much weight on the misleading signature placed on the Operators response to the DBA – PI Bundle, p83; [see para.18 below] and*
- ii. The decisions of the Traffic Commissioner are, in all the circumstances of the case, disproportionate.*

18. As to the approach we must take with respect to an appeal such as this, paragraph 17 of Schedule 4 to the Transport Act 1985 (as amended) provides that 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 their functions under an enactment relating to transport*". However, it was explained by the Court of Appeal in *Bradley Fold Travel Ltd & Anor v Secretary of State for Transport* [2010] EWCA Civ 695 that the Transport Tribunal (now the Upper Tribunal) will not be required to rehear all the evidence by conducting what would, in effect, be a new first instance hearing. Rather, it has the duty to hear and determine matters of fact and law on the basis of the material before the TC but without having the benefit of seeing and hearing from witnesses. The appellant assumes the burden of showing that the decision appealed against was wrong. In order to succeed an appellant must show that the process of reasoning and the application of the relevant law requires the adopting of a different view. That is said to translate into a requirement that an appellant must show either

that the TC materially erred in law or otherwise reached a decision that was plainly wrong. Further, paragraph 17(3) of the same Schedule provides that in deciding an appeal 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.

19. As to disposal, the Upper Tribunal has power, if allowing an appeal, to make such order as it thinks fit or to remit the matter back to the TC for rehearing if it considers such a course to be appropriate.

20. Mr Clarke had appreciated the need to flesh out the contentions made in the grounds, and he did so in his skeleton argument. In that document he referred to recent improvements made by the Operator with respect to its maintenance and compliance procedures and observed that whilst STC had made only “*sparing reference*” to them. He seemed to suggest the STC might not have properly taken those improvements (and he went on to list a number of them) into account, but then observed that the STC had made reference to “*recent improvements*” in his written reasons. As to any wrongdoing or dishonesty, he referred to a number of considerations in order to place matters into context. Mr Umarji had made several efforts to contact Mr Singh prior to the signing of the response to the DVSA but without success. Mr Singh had been sent a copy of the DVSA communications and the request for further information. Mr Singh had, it was said, provided a copy of his signature via WhatsApp, “*so that it might be copied onto documents*”. Mr Umarji had indicated in his witness statement that “*the placing of Mr Singh’s purported signature to documents was done with the knowledge, cooperation, and consent of Mr Singh*”. Mr Clarke drew attention to Mr Umarji’s observation in this statement that “*I didn’t think anything of this as he had previously authorised us to sign documentation on his behalf, when he couldn’t come in and countersign*”.

21. Mr Clarke suggested that the STC had not, in fact, decided to revoke the licence because of the concerns surrounding maintenance and compliance. Rather, he had done so because of the concerns surrounding dishonesty. But as to the dishonesty, argued Mr Clarke, he had made “*no concession to the possibility of a deficit in judgement rather than to deliberate and calculatedly dishonest conduct*”. In other words, we suppose, the contention is that the STC did not consider and make findings about whether the signature issue (and possibly the transport manager arrangement issue) was the result of poor judgement rather than something more sinister. Mr Clarke did accept that the placing of a signature intended to replicate Mr Singh’s signature on documents sent to the DVSA amounted to misrepresentation but suggested such a failing was a limited one because none of the information contained in the documentation sent to the DVSA was itself incorrect or misleading. The STC had been wrong to refer to a “*continued failure to admit the extent of the deceit*”. It had been admitted by Mr Umarji prior to the second PI hearing. The transport manager arrangement had not been deception directed towards the STC even if there had been a failure to exercise continuous and effective control over the transport activities. The STC (and this was built on at the hearing of the appeal) had simply asked himself if there had been dishonesty and had decided, since he had concluded that there had, that revocation and disqualification should follow. But what he ought to have done, having decided there was dishonesty, was to have evaluated its nature, substance and extent, before going on to decide what regulatory action was needed. Mr Clarke saw support for that proposition in the *R v Barton and Booth* and the *Ivey v Genting Casinos* cases which we have cited above. He accepted in his skeleton, that if we were not with him regarding his submissions on dishonesty, then he could not succeed in persuading us that the outcome was disproportionate. But otherwise, he argued it was and

stressed that this had been the first time the Operator had had to attend a PI, that there were positive features (the improvements) which had not been taken into account, and that there had been substantial delay between the two PI hearings.

22. Before us Mr Clarke argued that there are degrees of dishonesty. He drew an analogy with the “*different states of knowledge*” considerations with respect to what knowledge an owner of an impounded vehicle might have or might have imputed to him/her, concerning the unlawful usage of that vehicle by a commercial user, who is not the owner. It is necessary to look into the mind of relevant actors before addressing the degree of culpability. That contention is at the heart of this case and the exercise to be carried out is one of mitigation. There were two dishonest acts. Both were, conceded Mr Clarke “*objectively dishonest*”. But they were not as bad as the STC had found. However, the STC had shut his mind to the possibility of there having been mitigating factors. He had rushed to decide that the acts formed the worst kind of dishonesty. He had made comments during the PI which suggested a lack of balance. It appeared he had made his mind up about matters at some point during or shortly after the conclusion of the first PI hearing. He had not borne in mind that there are degrees of dishonesty. When questioned by the panel, Mr Clarke acknowledged that the placing of a signature on the type of document sent to the DVLA amounted to a certification by the signatory that the contents were true. But that does not mean what was done amounted to significant dishonesty. The document itself told no lies. It only told a lie about who signed it. Whilst Mr Singh’s signature appears on certain other documents contained within the Upper Tribunal bundle, the STC had not made findings that those signatures were false. So, the Upper Tribunal should not seek to reach its own view about that. As to proportionality, Mr Clarke, as he had said in his skeleton, indicated he could not pursue an argument as to proportionality if we were not with him regarding at least some of his submissions on dishonesty. But otherwise, he said he could. In the event of us deciding to dismiss the appeal a period of 30 days for the winding up of the business would be appropriate.

23. We are not sure whether the points made in the skeleton when taken with the oral submissions amount to the making of an additional ground of appeal to the effect that the STC erred in failing to adequately consider or failing to properly weigh the improvements he accepted had been made with respect to the Operator’s maintenance and compliance procedures. But to cover the position, we amend the grounds to include the contention and we shall address it.

24. The STC was right to be concerned about the failings which were identified by the DVSA in its desk-based assessment. The shortcomings were obviously serious involving, as they did, failings which had relevance to the safety of the road traffic operations which were being undertaken. The contrary was rightly not argued before us. As to improvement it is clear that the STC accepted there had been some. However, as he observed at paragraph 53 of the written reasons, there had been a considerable gap between the two PI hearings and, therefore, plenty of opportunity for the relevant procedures to be brought up to scratch. But there remained concerns despite that lengthy period as well as the initial period between the desk-based assessment and the first PI hearing. The STC identified them in that paragraph and expressed concern that the Operator had been unable to rectify them and in effect get further down the road to full compliance despite such a lengthy opportunity to do so. In those circumstances it is not the case that the STC disregarded or overlooked the improvements (he was aware of them but thought the Operator should have done better) and we cannot accept an argument that he ought to have attached greater weight than he did to the improvements he

found there to have been. So, if this was intended to form an additional ground of appeal, it is one which we must reject.

25. We now turn to the arguments surrounding dishonesty. We think it clear that Mr Clarke was accepting an element of dishonesty with respect to the signature issue and the transport manager issue. We do accept that there are degrees of dishonesty. As a matter of simple common-sense that is obviously right. To that extent, Mr Clarke was pushing at an open door before us. But just because an appellant can point to conduct which if committed would lead to a conclusion that the overall transaction could have been more dishonest than it was (such as Mr Clarke pointing out that whilst the false placing of what appeared to be Mr Singh's signature on the response document was dishonest it would have been worse if the document itself contained false information) that does not wipe out the dishonesty that there has been. But we accept that, generally speaking, there normally has to be an evaluation as to the substance, nature and degree of any dishonesty before a properly informed decision as to regulatory action may be taken. But where matters are straightforward that need not be a lengthy evaluation and need not generate a lengthy written explanation. It will depend on the circumstances.

26. Before we turn to the question of whether the STC did properly undertake such an exercise we shall say something briefly about what we think may have been an invitation to us to categorise different types of dishonesty and construct a hierarchy of the types based upon severity. If Mr Clarke was proffering such an invitation, we would politely decline it. We have made clear our view that there are degrees of dishonesty (which we do not think to be a controversial view) and that there will, ordinarily, have to be some evaluation of its nature in individual cases. But to attempt to categorise, classify and construct a hierarchy would, we think, not only be unnecessary but would run the risk of being significantly overly prescriptive.

27. We now move on to consider whether the STC did err, with respect to dishonesty, in the ways suggested. We look at the transport manager issue first. What the STC found, in effect and indeed in terms, was that the Operator had used the appointment of Mr Singh as a device so as to seem to be fulfilling the regulatory requirements for an international licence. The upshot was that the transport manager duties were effectively being carried out by a person (Mr Lynch) who did not have the qualifications to undertake such a task. The STC described the arrangement as a "*sham*". We remind ourselves of what Mr Umarji had to say in his witness statement to the effect that he (and we assume Mr Patel) had wanted to retain Mr Lynch and that what was put in place was, at the time, intended to be temporary. But the fact is that the arrangement resulted in the impression that a specific regulatory requirement of importance (it is mandatory an Operator has an appropriately qualified transport manager in place for the licence it holds) was being complied with when, to the knowledge of the directors, it was not. What the STC had to say at paragraph 38 of the written reasons about the arrangement being a sham and about it being an arrangement undertaken with the collusion of Mr Umarji and Mr Patel, represented a proper assessment not only as to whether there had been dishonesty but whether that dishonesty (which there clearly had been), was significant. The STC clearly decided that it was. So, the STC did not commit the structural error of failing to ask himself about the nature of the dishonesty. Nor, we would add, did he err through deciding it was serious. We ask ourselves how a deliberate and, notwithstanding what was said to be a temporary device, quite concerted arrangement to give an untruthful impression that relevant requirements were met when they were not, could be viewed as anything falling

short of serious. We do not think it can be. Certainly, we do not think the STC was plainly wrong or wrong at all in treating it as such.

28. We now turn to the signature issues. We note that it has been accepted by Mr Umarji that Mr Singh's signature was placed on two documents sent to the DVSA. We also note in passing that the fact he has sent a copy of his signature by way of WhatsApp coupled with the comments of Mr Umarji at paragraphs 16 and 21 of his witness statement, suggests the practice was not limited to those two signatures. Nevertheless, we shall confine ourselves to the STC's specific findings. He found (see paragraph 39 of the written reasons) that what had occurred was dishonest, that the response to the DVSA amounted to a "*false document*", and that there had been an intention to mislead. In making those points, the STC was again carrying out the evaluation process as to the seriousness of the dishonesty which Mr Clarke has argued he failed to do. It is that evaluation which caused him, whilst not making a finding that the substance of the document contained false information, to regard that dishonesty as serious. Further, he was not plainly wrong in deciding it was given, as he said, that there was an intention to mislead. What was misleading was the impression given to the effect that an appropriately qualified transport manager had certified the content to be true. Whilst we have read what Mr Umarji says about not thinking anything of the act of falsely placing a signature of a transport manager on a document sent to the DVSA concerning regulatory matters, we think it must have been obvious it was an act of dishonesty, and we are sure that is what the STC thought too. He was fully entitled to do so. As to the cases cited to us by Mr Clarke, it is not necessary to say anything about them because of our conclusion that the STC did properly evaluate the dishonesty and did not simply conclude that dishonesty (without examining it) was sufficient to justify the outcomes he reached.

29. That deals with the bulk of the arguments concerning dishonesty advanced by Mr Clarke. But for completeness, we do not see any significance with respect to arguments based upon whether any dishonesty can be characterised as an intention to deceive the STC or an intention to deceive the regulatory regime. That is an empty distinction. Whilst Mr Clarke seeks to make much of the STC (wrongly he says) taking the view that the deception continued up to and throughout at least part of the second PI hearing, we prefer to focus on the substance of it rather than the timing. In any event, we note the point made by the STC at paragraph 40 of the written reasons. We also note that whilst admissions were made by Mr Umarji in his witness statement, a point stressed by Mr Clarke who suggested what was said amounted to full disclosure, such admissions were not made or offered at or before the first PI hearing and that what was said in that statement regarding the transport manager arrangement, (see paragraphs 6-8) did not read as a proper acknowledgement that a decision had been taken to implement what amounted to a sham device. We do not think the STC had reached a decision during or soon after the first PI hearing. Had he reached a view during the first hearing he would have decided matters there and then. Further, the overall reasoning is based upon evidence and submissions given at both hearings.

30. Strictly speaking, given Mr Clarke's concession regarding proportionality coupled with our rejection of his submissions on dishonesty, we do not have to say anything about the final ground of appeal. We shall simply confine ourselves to deciding that given the findings as to previous maintenance failings and dishonesty, and given the careful balancing exercise undertaken by the STC with respect to revocation and disqualification, we would conclude that the decisions were not disproportionate.

31. We are very grateful to Mr Clarke for his characteristically helpful and interesting submissions. But for the above reasons the appeal is dismissed.

32. As indicated, the effect of the above decisions of the STC has been stayed. The appellants may have the 30-day period sought. The decisions shall now take effect from 23:59 hours on 14 June 2023.

M Hemingway
D Rawsthorn
K Pepperell
Dated: 15 May 2023