

**IN THE UPPER TRIBUNAL  
ADMINISTRATIVE APPEALS CHAMBER**

**T/2017/038**

**1<sup>st</sup> Appellant:**                      **J & K Environmental Services Limited**

**2<sup>nd</sup> Appellant:**                      **Liliana MANOLE**

**On Appeal From:**                      **The Traffic Commissioner (South Eastern and  
Metropolitan Traffic Area)**

**Reference:**                              **OK 1146587**  
**Public Inquiry:**                      **21<sup>st</sup> March 2017 Eastbourne**  
**Decision Date:**                      **22<sup>nd</sup> May 2017**  
**Appeal to UTAAC:**                      **26<sup>th</sup> June 2017**  
**Upper Tribunal Hearing:**              **16<sup>th</sup> November 2017**

**DECISION OF THE UPPER TRIBUNAL  
ON AN APPEAL AGAINST THE TRAFFIC COMMISSIONER**

**Upper Tribunal Judge H. Levenson  
Upper Tribunal Member A. Guest  
Upper Tribunal Member M. Farmer**

*100.4 (Traffic Commissioner Appeals: Repute & Fitness).*

T/2017/038

**DECISION OF THE UPPER TRIBUNAL  
(ADMINISTRATIVE APPEALS CHAMBER)  
ON AN APPEAL AGAINST THE TRAFFIC COMMISSIONER FOR THE  
SOUTH EASTERN AND METROPOLITAN TRAFFIC AREA**

**Decision**

1. **This appeal succeeds in one very limited aspect only.** We confirm the decisions of the Traffic Commissioner (“the Commissioner”) given on 22<sup>nd</sup> May 2017 in respect of application reference OK 1146587 (a) to refuse the application for a licence by J & K Environmental Services Limited (the first appellant) for not meeting the requirement of good repute and (b) to find that Liliana Manole (the second appellant), the proposed Transport Manager, did not meet the requirement of good repute.

2. However, we remit to the same Commissioner the decision in respect of the second appellant for the sole purpose of ordering disqualification as required by paragraph 16(2) to Schedule 3 of the Goods Vehicle (Licensing of Operators) Act 1995 (“the 1995 Act”) and for assessing the period and conditions of such disqualification.

**Hearing**

3. We held an oral hearing of the appeal at Field House (London) on 16<sup>th</sup> November 2017. The appellants were represented by Carolyn Evans, solicitor of CE Transport Law Limited.

4. At the outset Ms Evans made an application to introduce new evidence which, she argued, satisfied the requirements set out in the Court of Appeal decision in Ladd v Marshall [1954] 1 WLR 1489. The evidence related to a later public inquiry into a different company in respect of which the second appellant was the nominated transport manager, and consisted of a decision by a Commissioner made on 2<sup>nd</sup> November 2017, in which the second appellant was accepted as transport manager, and the transcript of the relevant public inquiry held on 1<sup>st</sup> November 2017. However, paragraph 17(3) of Schedule 4 to the Transport Act 1985 provides that:

17(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 appeal.

5. In the present appeal the relevant time of the determination is 22<sup>nd</sup> May 2017 and the Act forbids the Upper Tribunal from taking account of events that happened in November 2017. The Ladd v Marshall requirements only come into effect in respect of evidence which does not fall foul of paragraph 17(3) – which would usually be previously unavailable evidence which relates to circumstances existing at the time of the Commissioner’s decision. Accordingly the new evidence submitted by Ms Evans is inadmissible as a matter of law.

### **The Relevant Provisions**

6. So far as is relevant the 1995 Act provides as follows (references are to section numbers):

13(1) On an application for a standard licence a traffic commissioner must consider –

(a) Whether the requirements of sections 13A and 13C are satisfied ...

13(5) If the traffic commissioner determines that any of the requirements that the commissioner has taken into account in accordance with subsection (1) ... are not satisfied, the commissioner must refuse the application.

13A(1) The requirements of this section are set out in subsections (2) and (3)

13A(2) The first requirement is that the traffic commissioner is satisfied that the applicant –

(a) ...

(b) is of good repute (as determined in accordance with paragraphs 1 to 5 of Schedule 3) ...

13A(3) The second requirement is that the traffic commissioner is satisfied that the applicant has designated a transport manager ... who

(a) is of good repute (as determined in accordance with paragraphs 1 to 5 of Schedule 3) ...

7. Schedule 3 requires professional competence and also provides as follows (references are to paragraph numbers):

1(1) In determining whether an individual is of good repute, a traffic commissioner may have regard to any matter but shall, in particular, have regard to –

(a) ...

(b) Any other information in his possession which appears to him to relate to the individual's fitness to hold a licence

1(2) In determining whether a company is of good repute, a traffic commissioner is to have regard to all the material evidence including, in particular –

(a) ...

(b) any other information in his possession as to the previous conduct of –

(i) any of the company's officers, servants or agents, or

(ii) any of its directors, in whatever capacity

if that conduct appears to him to relate to the company's fitness to hold a licence.

8(1) The requirement of professional competence falls to be satisfied by an individual.

8(2) Accordingly, where a company is required to satisfy that requirement, it does so if and so long as –

(a) it has in respect of its road transport undertaking a transport manager or managers ... ; and

(b) that transport manager ... is –

(i) of good repute ...

12 Paragraphs 1 to 5 shall have effect for the purposes of any provision of paragraph 8 ... by virtue of which it falls to be determined whether or not a transport manager is of good repute as they have effect for the purposes of determining for the purposes of any other provision of this Act whether or not any other individual is of good repute ...

16(1) In proceedings under this Act ... for determining whether a person who is a transport manager is of good repute ... a traffic commissioner must consider whether a finding that the person was no longer of good repute ... would constitute a disproportionate response.

16(2) If the commissioner determines that the person is no longer of good repute ... the commissioner must order the person to be disqualified (either indefinitely or for such period as the commissioner thinks fit) from acting as a transport manager.

### **Background**

8. The first appellant was incorporated as a limited company on 21<sup>st</sup> September 2015. On 28<sup>th</sup> June 2016 the Central Licensing Office in Leeds received its application for a standard national goods vehicle operator's licence for 6 vehicles and 6 trailers. The application form was submitted and signed by the second appellant, Ms Manole, who stated that she was the sole Director and gave her contact address as number 25 ... in Northolt, which was also given as the address of the business establishment. The registered office address of the limited company was given as care of a different limited company (apparently a firm of accountants) at number 5 ... in Barnet. Ms Manole stated that she herself would be the transport manager (she had a certificate of professional competence). The operating centre would be at rented premises at Kingdom Workshop in Northolt, where there were 12 parking spaces. The safety inspections would be carried out by Kingdom Workshop Limited (which had the same address as the operating centre).

9. Ms Manole also submitted a form of application to be added to the licence as transport manager. She gave her home address as the same number 25 and stated that

she would spend 8 to 12 hours a week on such duties. The only other employment that she declared was 25 hours weekly as Director of the first appellant.

10. On 22<sup>nd</sup> July 2016 a police constable made a witness statement to the effect that on 13<sup>th</sup> July 2016 he had been to Kingdom Workshop with DVSA officers and spoken there to Mr K “who I believed to be the owner of the premises) and to Ms Manole, who “told me that she worked in the office for Mr [K]”.

11. On 1<sup>st</sup> September 2016 Ms Manole notified a change of contact and business establishment address to number 47 ... in Harrow. On 17<sup>th</sup> October 2016 she applied for an interim licence. On the form she stated:

“... I have been made aware that an investigation is taking place yet no person from the Central Licensing Team nor my case-worker has given any details to me with regards to what is being investigated. I have no idea what the issue is therefore can not assist in anyone’s inquiries, as a result my application is being delayed. This is a new company and I am struggling to keep my potential customers. I therefore request this interim Licence application to be considered so that my company can operate during the period of this “investigation”. I fear that while no one informs me of what is potentially wrong or indicates a time when this investigation may conclude, thereby my application to be finally assessed, I will be forced to instruct my solicitors – Backhouse Jones”.

12. In fact, as subsequently explained by the Commissioner (paragraph 2 of her decision) “the standard checks identified possible links” to Mr K, who had been involved in a number of revoked licences, had lost his good repute as an individual and as a transport manager and was disqualified for an indeterminate period from being involved in an operator’s licence with effect from 23<sup>rd</sup> December 2014.

13. The application for an interim licence was refused and on 4<sup>th</sup> January 2017 the Office of the Traffic Commissioner notified the appellants that the Commissioner was proposing to refuse the application “as she is concerned as to the potential involvement of a person who has been disqualified from operator licensing” and informed the appellants that a public inquiry could be requested. This was requested and arranged. It was indicated that, in addition to the usual statutory requirements, the inquiry would also consider Ms Manole’s good repute and whether she was fronting for Mr K.

14. Meanwhile, the appellants had instructed Ms Evans, who wrote to the Office of the Traffic Commissioner on 14<sup>th</sup> March 2017. She pointed out that Ms Manole had not been a party to or the subject of any reference in any of the proceedings concerning Mr K. She stated that Ms Manole and Mr K were “cohabiting partners” and had been for about three years on an on/off basis, during which Ms Manole had resided with Mr K for most of the time but also resided on occasion with her cousin at number 47. For the previous two years she had worked for Mr K as a general clerk, principally in connection with the Kingdom Workshop, which was owned by Mr K. Her intention was to leave that employment and work independently from Mr K in running her own business, although she hoped to benefit from some of Mr K’s

previous customers and clients. Mr K had little to do with the general running and management of the workshop and had resigned as a Director of the company.

15. In what now seems a rather disingenuous statement Ms Evans also said that the “only apparent evidence” of Ms Manole’s connection with Mr K was the utilisation of maintenance and parking at Kingdom Workshop and the reference in the police statement of 22<sup>nd</sup> July 2016.

### **The Public Inquiry**

16. The public inquiry was held on 21<sup>st</sup> March 2017 at Eastbourne. The appellants were represented by Ms Evans. In the grounds of appeal to the Upper Tribunal Ms Evans stated that on the day of the hearing, after they (presumably herself and Ms Manole, and possibly their consultant) had been shown into the waiting room, the Commissioner’s clerk gave them a copy of a decision in a case involving company E Ltd and said that instructions should be taken on it. The decision had been available since 6<sup>th</sup> March 2017 and, Ms Evans stated, on the face of it, had no bearing on the current application. There was also a question as to whether the Commissioner had a full copy of a loan agreement. The clerk also had four questions written on a scrap of paper to which she said that the Commissioner wanted an immediate reply. These included questions about Ms Manole’s cousin and about a separate application by Mr K (to which Ms Manole did not know the answer).

17. In a written statement of 24<sup>th</sup> July 2017, made after the appeal to the Upper Tribunal had been lodged, the Commissioner stated that she herself had not been present at the above exchange but that the intention was to give advance notice of issues arising from the appellants’ written representations, give due warning of areas of questioning and to see whether the various administrative offices might need to be put on notice that their assistance may be required for the hearing.

18. We give here, from the transcript, a summary of the parts of the oral evidence that are particularly relevant for our purposes. The transcript is over 40 pages long but not all of the material covered turned out to be helpful for our purposes.

19. At the hearing Ms Manole said that she had met Mr K at a party about three and half years before the hearing, and that one of her relatives then worked for him as a driver. After a while they moved in together and after a year or so she started working for him as well. However, there were problems and on 1<sup>st</sup> March 2017 she found a flat at number 10 ... in Northwood and moved in on her own. She proposed to work from there, using one room as an office. However, at the time of the hearing she was still working for Mr K, at Kingdom Workshop, pending getting her own licence, although she had no contact with Mr K during the working day, Kingdom Workshop being run by G. (Later she said that still saw Mr K for “personal relationship”). She had known a little about Mr K’s regulatory history but now she had read the relevant papers. Her company was called J & K because Mr K (whose first name begins with J) had good connections and that might help her get jobs. Although Mr K was not connected with the business, she thought that people would associate the name of the company with him. She had discussed sub-contracting with, and been offered some by, “a very big company”. Her operating centre would be in Kingdom Workshop yard and they would do the maintenance. She had chosen them because she was familiar with their

work and they had a very good MoT pass rate. It was about five minutes away from her home and office address. She had not yet acquired any lorries.

20. Ms Manole also said that she had helped draw up a hire agreement for E Ltd with one of Mr K's companies – Kingdom Truck and Trailer Hire Ltd - which was run from the same premises where she worked. She gave some confusing evidence about E Ltd and whether it was a front for Mr K, and there was a recess so that she could discuss the matter with Ms Evans. The Commissioner also offered an adjournment.

21. Ms Manole said that her company's application was not a front for Mr K or anyone else, that Mr K would not work for the limited company in any capacity, and would not be a driver for it. She promised this. She had not worked for Kingdom Truck and Trailer Hire Ltd but had been alone in the office at the time that the agreement with E Ltd needed typing and had simply acted as a typist at Mr K's request. It was the only hire agreement she had any dealings with.

22. Ms Manole said that number 47 was where her cousin lived and had done so for a year. It was rented from an agency but Ms Manole did not know which one. Number 25 (the original address given on the application) was that of another relative, who owned it, and had known Mr K for about five years and worked for him at one stage. Ms Manole had never lived there but all her correspondence was (at the time) sent there. Mr K had had no connection to number 25. The accountants had been recommended to her by somebody who came into Mr K's office. This was two or three months after Ms Manole had started working there and she did not know the person who recommended the accountants very well and had not seen him again. She had asked similar advice of a number of people. She never discussed the accountant with Mr K but had later discovered that that the same accountants were the registered offices for Kingdom Workshops Limited and Kingdom Truck and Trailer Hire Ltd. This was a coincidence.

23. Ms Manole also gave evidence about the company that had provided a loan to start her business. She knew the company because Kingdom Workshop had loans with them. She had not provided any security or guarantees and owned no property but had an income and some savings. The loan had been drawn down and was in the appellants' business account, with interest accruing but no instalments repayable until the licence had been granted. Mr K had not been involved.

24. The Commissioner asked Ms Manole why Mr K would be linked on "192.com" to the building of which number 25 is part. She replied that she knew nothing about that and that he had never lived there. The Commissioner also put to her that that there was no record of the people whose names she had given as living at number 47 (although no source for this information was given at that stage). Ms Manole said that they did live there.

25. There was some questioning about whether Ms Manole had taken advice from (solicitors) but her answers were unclear (at least, to us). However, in the end, Ms Manole said that she had been lying when she told the Commissioner that she had spoken to Backhouse Jones. She had not in fact spoken to them.

### **The Commissioner's Decision**

26. The Commissioner's written decision was dated 22<sup>nd</sup> May 2017 and was sent out on the same day. We indicate here the principal relevant findings of fact, with some overlap with the undisputed facts given above by way of background and in the summary of evidence.

27. The Commissioner found that there were three links of the appellants to Mr K admitted before the call in to the Public Inquiry: (a) the proposed operating centre, (b) the proposed maintenance contractor, (c) Ms Manole's employment by a company of which Mr K is the sole shareholder.

28. Ms Manole lacked experience in operator licensing matters and her CPC was relatively new and had not been used. It seems from the Commissioner's statement of 24<sup>th</sup> July 2017 that, in addition to looking at 192.com on her computer during the hearing, she (the Commissioner) checked the Companies House registers after the hearing. On this basis she found that Kingdom Truck and Trailer Hire Ltd was incorporated on 17<sup>th</sup> December 2015 with its registered office at number 25, the same address that Ms Manole had given in the application forms as her correspondence and business address, and her home address. On 4<sup>th</sup> January 2016 the registered office of Kingdom Truck and Trailer Hire Ltd was changed to the same address as that given by the appellants as the proposed operating centre and as the address of the proposed maintenance contractor.

29. Ms Manole had never lived at number 25, although she had given it as her home address. She said it was owned by her cousin, who had known Mr K longer than she had, and had worked for him. She remained in a relationship with Mr K and was working for him pending the outcome of the application. Except for the question of Mr K's involvement the Commissioner found the facts in relation to the business loan as given in oral evidence and summarised above.

30. The Commissioner noted that Ms Manole was seeking to assure her that this would be Ms Manole's business alone, that many of the connections were only coincidence and that there was no fronting. "From the oral evidence, the demeanour of the witness and the public records I remain to be persuaded" (paragraph 12). The Commissioner referred to the coincidence in timing of the incorporation of Kingdom Truck and Trailer Hire Ltd and the first appellant, the shared use at different times of number 25, the importance of a transport manager providing a true home address, the fact that Ms Manole failed to give anywhere on the various forms the address at which she and Mr K were living together, or to disclose at an earlier stage that they were living together, the inconsistency between Ms Manole's claim to be planning to work at arm's length from Mr K but to benefit from his customers and clients, Ms Manole's untruth in relation to Backhouse Jones, the lack of security for the business loan ("the only evident security is that [the finance company] are also the financiers for [Mr K]'s businesses" - paragraph 18).

31. The Commissioner was also concerned that Mr K was a very experienced operator whereas Ms Manole was quite new to the business, and this would make her quite vulnerable to his influence. There were also other findings in relation to Mr K, but we are very aware that he was neither a party to nor a witness in the present proceedings.



On the above basis the Commissioner made the orders referred to in paragraph 1 above.

### **The Appeal**

32. In her grounds of appeal dated 12<sup>th</sup> June 2017 Ms Evans argued that there was no proper evidential or factual basis for forming the view that Ms Manole was not of good repute. She raised two specific matters and stated “those are the only grounds”. The first was significant procedural impropriety and breach of the rule of natural justice formerly referred to as *audi alterem partem* (in general terms, that a party is entitled to know the case against them). The second was a misapplication of the law in relation to what inference(s) can be drawn from the fact that a party has lied.

### **Lying**

33. We take the second matter first. Ms Evans relied on criminal jurisprudence showing that there can be various reasons for lying and that the fact that a defendant had lied was not necessarily evidence of guilt. This is so, but that is not the relevance here. Ms Evans referred to the statement by Ms Manole in connection with the application for an interim licence that in the circumstances she would be forced to instruct her solicitors, Backhouse Jones. We do not really see how that statement could be a lie or that the Commissioner took it to be a lie. The relevant matter was the admission during the public inquiry, when she first said that she had taken advice from Backhouse Jones, and then admitted to the Commissioner that that was a lie. The issue was not really whether that was indicative of “guilt” in relation to any particular allegation, or whether (in Ms Evans’s words) it was the result of “nervous panic”. The issue was whether total reliance could be placed on the evidence from Ms Manole. Taking this together with the (largely admitted) lack of frankness in the early stages of the application process, the Commissioner cannot be criticised on this basis for reaching the conclusions that she did reach.

### **Prior to the Hearing**

34. Ms Evans dealt with the natural justice argument under three different headings. The first related to the documents and questions from the clerk before the hearing began. Clearly, a Commissioner should be cautious about doing this where there is an unrepresented applicant, but that was not Ms Manole’s position. She had Ms Evans with her, an experienced solicitor with relevant specialist expertise. Ms Evans could have applied for an adjournment or advised Ms Manole to do so, but a decision was taken not to do this. That was their right but we do not see how they can later complain that they did not have an opportunity to deal with any new material.

35. Ms Evans incorporated into this two further matters. The first was an argument that questions were put to Ms Manole during the hearing, the relevance of which never became clear. However, insofar as these matters never formed part of the reasoning for the decision, in the event no harm was done. The second related to the questioning about how Ms Manole chose her accountant and whether she knew that one of Mr K’s companies had the same accountant. In our view these were perfectly legitimate questions and no amount of forewarning of the questions should have

changed Ms Manole's answers to them (and perhaps it should have been obvious in any event that these questions would be asked).

### **Investigator and Adjudicator**

36. Ms Evans pointed out that at one point they were given a series of "192" printouts and were told that the Commissioner would ask questions about them. These appear to have been obtained by the Commissioner "before being introduced as hearsay evidence without any reference to the manner in which they were obtained". Perhaps the Commissioner acted clumsily in this respect, but Ms Evans's point is also clumsily made. Much evidence in traffic cases is hearsay and in any event hearsay evidence is admissible. The fact that it is hearsay goes to its weight, not to its admissibility. This evidence appeared to show that Mr K had a connection with number 25, which Ms Manole had earlier and misleadingly given as her home address. Ms Evans suggested to us that without earlier sight of the documents, Ms Manole could not seek the information from Mr K (which would also be hearsay if she told the Commissioner what Mr K had told her). However, the point was what Ms Manole's explanation was, not what Mr K had to say about it. Ms Evans said that her attempts to question the reliability of "192" were dismissed. However, she has not sought to produce any evidence to us to show that printouts were inaccurate or that Mr K had no connection with number 25 or, if he did have a connection, what the nature of that connection was.

### **Undisclosed Material**

37. Ms Evans submitted that the Commissioner had relied on evidence which had not been disclosed to the appellants. This included "intelligence checks" which were not in the bundle, especially in relation to the Kingdom companies. In her statement of 24<sup>th</sup> July 2017 the Commissioner said (paragraph 6):

"... to the best of my knowledge there is nothing I saw that the Applicant did not, save for the Companies House and 192.com information which I looked at on my laptop screen and was in the public domain even prior to the public inquiry".

38. Commissioners should be very careful not to rely on information which is not disclosed to parties in good enough time for them to carry out their own research and to make representations. However, on the facts of this case, and in the absence of any request by a legally represented party for an adjournment, where the information is in the public domain and easily accessible, we cannot see that there was any significant breach of the rules of natural justice and fair procedure.

### **Conclusions**

39. Although Ms Evans complained that the Commissioner never made explicit findings on the question of fronting, we do not agree. Paragraph 12 of the decision (see paragraph 30 above) and other findings show that the Commissioner did make such findings. Neither do we accept that there was any significant ambush. It was clear that the application was subject to an investigation for fronting and arguably the appellants should have been better prepared. Ms Evans has presented nothing to

persuade us that there was any material error of law, or error in the findings of fact. The findings and conclusions reached by the Commissioner were proportionate and reasonable, there is no significant challenge on the basic facts other than whether the application was a front, and the Commissioner was entitled to draw from her findings the inference that she did draw.

40. For the above reasons we make the order indicated in paragraph1 above.

**H. Levenson**  
**Judge of the Upper Tribunal**

**22<sup>nd</sup> December 2017**