Appeal No.: T/2019/16
NCN: [2019] UKUT 253 (AAC)

IN THE UPPER TRIBUNAL
ADMINISTRATIVE APPEALS CHAMBER
TRAFFIC COMMISSIONER APPEALS

IN AN APPEAL FROM THE DECISION OF:
MISS SARAH BELL, TRAFFIC COMMISSIONER FOR THE LONDON AND SOUTH EAST TRAFFIC AREA
DATED 23rd JANUARY 2019

Before:

Elizabeth Ovey, Judge of the Upper Tribunal
Stuart James, Specialist Member of the Upper Tribunal
David Rawsthorn, Specialist Member of the Upper Tribunal

Appellants: (1) COACH HIRE SURREY LIMITED
(2) PAUL JONES

Attendance: Mr. Douglas Lloyd appeared for the appellants instructed by Stone King LLP

Heard at: Field House, 15-25 Breams Buildings, London EC4A 1DZ
Date of hearing: 21st May 2019
Date of decision: 13th August 2019

DECISION OF THE UPPER TRIBUNAL

IT IS HEREBY ORDERED that the appeal be DISMISSED.

SUBJECT MATTER: Relevant considerations; approach to decisions at previous inquiries; omissions and mistakes in relation to previous convictions; conduct at hearing; reasons for length of period of disqualification; reasons for refusal of period of grace

CASES REFERRED TO: *2000/041 Hi-Kube*; *2000/059 Dolan Tipper Services Limited*; *2003/132 J.B. Hogger*; *Muck it Limited* v. *Secretary of State for Transport*

[2005] EWCA Civ 1124; *Bradley Fold Travel Limited and Peter Wright* v. *Secretary of State for Transport* [2010] EWCA Civ 695, [2011] R.T.R. 13; *T/2010/29 David Finch Haulage*; *T/2011/36 LSB Limited*, [2011] UKUT 358 (AAC); *T/2014/40-41 C G Cargo Limited and Sandhu*, [2014] UKUT 0436 (AAC); *T/2014/50 Andrew Harris t/a Harris of Leicester*, [2014] UKUT 0483 (AAC); *T/2018/01 David King t/a Military World*, [2018] UKUT 0098 (AAC)

REASONS FOR DECISION

Introduction

1. This is an appeal by two appellants (together "the Appellants"), Coach Hire Surrey Limited ("CHSL") and Mr. Paul Jones ("Mr. Jones"), against the decision of the Traffic Commissioner for the London and South East Traffic Area ("the TC"). By her decision the TC:

(1) found that CHSL no longer met the requirements of good repute, financial standing and professional competence set out in s.14ZA(2) of the Public Passenger Vehicles Act 1981 and accordingly revoked its operator's licence no. PK1135165;

(2) decided that CHSL and Mr. Jones were disqualified from holding or obtaining an operator's licence or being involved in an entity which holds such a licence for a period of 10 years from 23.45 on 28th February 2019;

(3) decided that CHSL had failed to satisfy her that Mr. Jones met the requirements for good repute.

2. The facts are as follows.

3. CHSL applied for an operator's licence on 4th December 2014. The application form was signed by Mr. David Harriss ("Mr. Harriss"), who was then the sole director of CHSL and was also the nominated transport manager. The operating centre was identified as Unit 7-9 Osier Way, Mitcham. Mr. Harriss resigned as a director on 28th August 2018 and Mr. Jones was appointed in his place the following day.

4. Also on 29th August 2018 Mr. Jones applied to become the transport manager of CHSL. In the application form he gave his name as Adam Smith, but the papers include a certified copy of a change of name deed dated 26th February 2016 by which Mr. Jones changed his name from Adam Smith to Paul Jones. A certificate of professional competence was granted to Mr. Jones in the name Adam Smith on 12th July 2012, so his use of that name is understandable. The form was signed by him in the name Paul Jones. No convictions were included on the form.

5. There was also an application to vary the licence by the removal of Mr. Harriss and the addition of Mr. Jones. The form stated that Mr. Jones had been involved with

a company or business which had gone or was going into liquidation, owing money; that he had been involved with a company or business that had gone or was going into receivership; and that he had been involved with a business that had gone or was going into administration or a company voluntary arrangement. It was explained that Mr. Jones had worked as manager for Western Greyhound Limited ("Western Greyhound"), which had gone into administration while he was there. He was made redundant after 12 weeks of employment but stayed on to help the administrators secure the sale of most of the assets. It was also stated that Mr. Jones had not been convicted of a relevant offence which must be declared to the TC.

6. The form contained licence undertakings which included undertakings that:

(1) an unauthorised operating centre was not used in any traffic area;

(2) Mr. Jones would notify the TC of any convictions against himself;

(3) he would ensure that the TC was notified within 28 days of any changes which might affect the licence, if issued, including a change in the financial status of the licence holder.

7. Mr. Jones also applied to change the operating centre from Osier Way to Millstream Farm, 17 Brighton Road, Salfords, Redhill. There were to be five vehicles, giving rise to a financial standing requirement of £25,550.

8. These applications led to a letter dated 3rd September 2018 from the Office of the Traffic Commissioners ("OTC") requesting supporting documentation and asking why Mr. Jones had failed to declare convictions which appeared in the OTC records. He responded by a letter dated 11th September 2018 in which he said:

> "With regard to my conviction for Possession of counterfeit currency in early 2014, the part of the form that was due to be completed in relation to this was in fact completed by the previous owner of Coach Hire Surrey Ltd. and not myself, allow me to give you a brief outline of the offence.
>
> I was arrested and charged with 3 offences however once it had gone to crown court I pleaded guilty to one of the charges and not guilty to the other two and the crown prosecution service decided to NFA (no further action) to two out of the three charges and I then pleaded guilty to Possession of the counterfeit currency and was sentenced to 12 months custodial, suspended for 18 months and 120 hours community service and a £600 fine.
>
> I can confirm that the fine was paid in full 24 hours after the sentence and my order was carried out and completed in the time frame set out for me and I am pleased to confirm that I have not been arrested or charged with any offence of any kind since this date in 2014 and I would also like to point out that I had also not been arrested prior to this offence since 2007. I am aware that the traffic commissioner will take my conviction in a very dim light however after hours of reading up on the DVSA guidelines set out by the lead TC I am aware that they have the power to overlook this conviction, but in light of this along with

> other negative involvements involving myself and the Office of the Traffic Commissioner I would like to request a public inquiry as I feel that would be the only fair way for my case to be put across and after several instances in the past where she has only heard about me and never met me in person to ask any relevant questions I do feel that this is now the only way to move forward."

We return later to the "other negative involvements" with the TC.

9. By a letter dated 31st October 2018 the OTC requested documents to support CHSL's financial standing and additional information about the proposed operating centre. Mr. Jones responded to the first request by enclosing with a letter dated 1st November 2018 a Barclays bank statement showing (and showing only) a payment into CHSL's business premium account of £22,550 on 1st November 2018 and a balance of that amount. Mr. Jones explained in the letter that the account was a business savings account set up for the purpose of holding the financial standing. The letter also expressed concern that the OTC was asking for duplicate information about the operating centre and continued:

> "I would like to draw your attention to the following operating licence: Busin and Clubin Ltd. PK1119570.
>
> In the last notice and proceeding the named company has also included Mill Stream Farm … as their operating centre. This has been accepted by the office of the traffic commissioner and said licence updated to reflect said decision.
>
> Can I please point out that this parking space rented to Busin and Clubin Ltd. is rented to them by Coach Hire Surrey Ltd.
>
> Can I please ask why the said proposed operating centre for Coach Hire Surrey Ltd. has not been expected (*sic*) but has been accepted for Busin and Clubin Ltd. I would like your response in writing to this matter.
>
> On another letter sent to me the footnote reads "In the meantime you are reminded that you have no authority to use any new operating centre included in the application nor any increase vehicle authorisation."
>
> I can confirm that Coach Hire Surrey Ltd. is in fact operating from Mill Stream Farm … and I am fully aware that the licence authorisation is for 3 operating licences.
>
> As you have not approved the proposed operating centre, please can you confirm to me in writing where you would like the vehicles of Coach Hire Surrey Ltd. to be parked as we no longer have access to the previous operating centre.
>
> As you may be aware I have applied to be the nominated transport manager for Coach Hire Surrey Ltd., however this is yet to be confirmed. At this exact moment in time I am acting as the transport manager for Coach Hire Surrey Ltd. as it would be very negligent of me not to. Would you prefer at this stage that

> I seek to find an external transport agency, not connected to any previous licence connected to me to forefeel (*sic*) the activities of the transport manager whilst the pending public inquiry that I have requested gets heard."

In the event Mr. Jones was notified that the new operating centre was approved for the parking of three vehicles by a letter dated 16th November 2018.

10. On 10th December 2018 Mr. Jones sent to the OTC by e-mail an up to date bank statement which showed no further transactions on CHSL's bank account with the exception of the crediting of interest. The OTC in reply asked for three months' worth of trading statements. Mr. Jones responded on the same day saying that there was another bank account but the process of changing the mandate from Mr. Harriss to him had taken a lot longer than expected. Current account statements for the period 21st April to 19th October 2018 were then produced. The calculations of financial standing based on those statements showed insufficient funds.

The other involvements

11. The documents in the bundle before us show that Mr. Jones has been connected in various ways with a number of other companies providing public transport services. They are as follows:

(1) from about 27th March 2013 to 12th March 2014 Mr. Jones was the director and controlling shareholder of BETC ("BETC"). He then transferred his shares to Mr. Richard Hill and resigned as a director but continued to be employed as general manager. A public inquiry was held by the present TC in relation to BETC on 9th May 2017, but the matters with which that inquiry dealt did not relate to Mr. Jones, although in the evidence it was alleged that he had left the company's affairs in a mess. It is stated in the case summary at p.5 of our bundle that the name Adam Smith appears on 5th June 2018 in relation to a variation application. When the case summary was prepared BETC's licence had been revoked, subject to an appeal;

(2) Mr. Jones (under the name Adam Smith), as one of two directors, applied on 8th April 2014 for an operator's licence for Surrey Etc. Limited ("Surrey Etc.") and was the nominated transport manager. The other director was Mr. Nigel Thomas. The application was subsequently withdrawn. It is alleged in a letter dated 7th October 2014 from a firm of solicitors called Oliver Legal to the then traffic commissioner for the South Eastern and Metropolitan Traffic Area that Surrey Etc. was incorporated in an attempt to steal work from BETC. Other allegations are also made in relation to Mr. Jones, but we have seen nothing to support any of them. We note, however, that BETC appears to have traded under the name Buses Etc. and that another company called Croydon Coaches Limited appears to have traded under the name Coaches Etc. Mr. Jones appears to have had some form of connection with the latter company;

(3) from 1st August to 2nd September 2014 Mr. Jones was a director of Black Velvet Travel Limited ("Black Velvet"), in relation to which a public inquiry was held on 10th September 2015, jointly with an inquiry in respect of Western Greyhound, by the present TC in the capacity of Traffic Commissioner for the Western Traffic Area. Our bundle includes a newspaper cutting which states that Mr. Jones' sentence for possessing counterfeit currency was suspended because the Black Velvet employees depended upon him for their employment;

(4) the decision made by the TC following that inquiry shows that there was evidence that Mr. Jones had held himself out as a director of Western Greyhound and in February 2015 described himself as the owner of both Black Velvet and Western Greyhound. The decision included an addendum requiring that if Mr. Jones applied to be involved in operator licensing in Great Britain, the application must be referred to a traffic commissioner or deputy and could not be dealt with under delegated authority;

(5) on 12th July 2016 Mr. Jones became the sole director of Hireyourtranport.com Limited ("Hireyourtransport.com"). He resigned on 1st May 2018 but was reappointed on 1st September 2018. He was also the controlling shareholder from 12th July 2016 to 1st February 2017 and again from 1st September 2018. In the intervening periods Mrs. Jane Jones was the sole director and controlling shareholder;

(6) Mrs. Jones was the sole director and controlling shareholder of Meritrule Limited, in relation to which the TC held a public inquiry on 24th July 2018. The evidence at that inquiry included the facts that Mrs. Jones was Mr. Jones' mother and had given permission for him to be the nominated contact in relation to the Meritrule licence. The Meritrule transport manager, Mr. Mark Warren, gave evidence that Mr. Jones had approached him to become the transport manager in about July 2017. He understood that Hireyourtransport.com was a brokerage company and expected Meritrule, which had been effectively dormant, to start operating again. It did not do so, but the Hireyourtransport.com website and Facebook pages appeared to show that that company was hiring coaches and buses and employing drivers, conductors and cleaners;

(7) the Meritrule inquiry was conjoined with an inquiry in relation to Classic Routemasters Limited, of which Mr. Warren was again the transport manager, having become so in about January 2018 on the recommendation of Mr. Jones. On 20th February 2018 a company called Yourtransport Group Limited, incorporated on 6th February 2018 with Mrs. Jones as its sole director and shareholder, became the majority shareholder of Classic Routemasters. The director, Miss Zetterlund, referred to Mr. Jones as a colleague and there was some evidence of links with Hireyourtransport.com, including payments for fuel and drivers. As far as Mr. Warren knew, Classic Routemasters operated only on 8th March 2018;

(8) Meritrule and Classic Routemasters were called to a conjoined inquiry inter alia because the TC was concerned that they might be fronting for Mr. Jones. In her decision she concluded that there was strong and cogent evidence to infer that Mrs. Jones and Miss Zetterlund were fronting for Mr. Jones and found that he was a de facto and shadow director. He was not called to the inquiry on that basis and so the TC did not make a formal disqualification order, but she repeated what she had said at the end of the Black Velvet and Western Greyhound inquiry and warned him that if he applied for an operator's licence he would need to address all the concerns set out in the decision. Meritrule and Mrs. Jones were disqualified for 10 years; Classic Routemasters and Miss Zetterlund were disqualified for three years; and Mr. Warren was also disqualified for three years. All of them lost their good repute.

The call-up letter

12. The call-up letter is dated 7th November 2018. The purpose of the inquiry was identified as being to investigate apparent shortcomings and to consider whether the applications should be granted in whole or in part. The issues of concern were said to be that it appeared that since the licence was granted there had been a material change in the circumstances of its holder and that CHSL might not be of good repute, be of the appropriate financial standing or meet the requirements of professional competence. Attention was specifically drawn to:

(1) Mr. Jones' undeclared 2014 conviction;

(2) his links to the revoked Black Velvet and Western Greyhound licences, which the TC had found to be at least a joint enterprise between Mr. Jones and Mr. Michael Bishop;

(3) his links to the revoked BETC licence;

(4) his links to the revoked Meritrule and Classic Routemaster licences, of which the TC had found he was the de facto and shadow director;

(5) the question whether Hireyourtransport.com had been operating public service vehicle licences without an authorised licence.

13. The letter reminded Mr. Jones that a traffic commissioner is entitled to treat the conduct of a sole director effectively as the conduct of the limited company and to determine fitness and repute accordingly. He was instructed to prepare evidence of financial standing, which must show access to an average of £16,750 over the last three months for the current three vehicles, increasing to £25,550 taking account of the request for an increase in authorisation to five vehicles. The letter also made clear that the possible outcomes of the inquiry included the loss of CHSL's licence.

The public inquiry

14. The public inquiry was held on 13th December 2018. In her decision the TC attached some significance not only to the evidence given by Mr. Jones at the inquiry but also to his conduct. We therefore set out in some detail the course which the inquiry took.

15. The TC began by seeking to establish that Mr. Jones understood the reasons for which CHSL had been called to the inquiry. Mr. Jones asked that they should have "for the file" that he had requested the inquiry. The TC pointed out that that was already a matter of record and a slightly testy exchange followed.

16. The TC then drew Mr. Jones' attention to the newspaper cutting mentioned in paragraph 11(3) above, which had been handed to him that morning and from which it appeared that he had pleaded guilty to three counts in total and had been sentenced to 16 months' imprisonment suspended for 24 months and required to undertake 150 hours of community service. That was different from what he had said in his letter dated 11th September 2018. The TC asked Mr. Jones about the discrepancy. He said he could not remember what was correct and suggested she ought not to rely on a newspaper cutting. This led to another slightly testy exchange in the course of which Mr. Jones set out the efforts he had made to find out the correct information, but accepted that his letter did not qualify the apparent certainty of what he was stating.

17. The next topic was Mr. Jones' acquisition of CHSL. He explained that he had known Mr. Harriss for many years. Mr. Harriss wished to retire and Mr. Jones proposed that he should acquire the company, which was done through one solicitor acting for both parties. He paid a sum for goodwill, but there were no vehicles and no drivers, Mr. Harriss being the only one. Mr. Jones then said that Mr. Harriss had had three vehicles and he had purchased one from him in a separate transaction.

18. Mr. Jones was then asked about the fact that his application to become a transport manager did not declare his convictions. He said that the form had been filled in by someone in his office but accepted that he had signed it. He thought he must have skim read it but assured the TC that there was no intention to deceive. He asked her whether she thought he was deliberately trying to hide his convictions. He then said that both the director questionnaire and the transport manager application form had been done by Mr. Harriss on line and he had later signed the printed version. Mr. Jones insisted on the distinction between signing and completing forms.

19. After some questions about the ownership of a number of vehicles appearing in photographs of the proposed operating centre, the TC turned to Mr. Jones' letter dated 1st November 2018 and was critical of its tone. Another difficult exchange followed, in which he required to be shown where in the legislation it said that he had to park at the address on the licence. Ultimately the TC adjourned the inquiry for 20 minutes to take the heat out of the room. In the interval Mr. Jones was provided with a copy of paragraph 34 of the Senior Traffic Commissioner's Statutory Guidance and Statutory Directions no. 4 on Operating Centres, which refers to s.23 of the Public Vehicles Licensing Act 1981. He accepted that it covered his point. He also accepted that there was no application for a period of grace in the light of the difficulties at the previous operating centre.

20. The TC then turned to the question of financial standing and drew attention to the relevant Statutory Guidance under which she was entitled to see statements for three months and to see that the funds were available over and above the usual ins and outs of trading. The information produced did not satisfy those requirements. Mr. Jones said that money was going through Hireyourtransport.com, that CHSL was not trading between 29th August and 16th October 2018 and that vehicles had moved in that period for brake tests, to go to the paint shop and for an MOT test but the mileage had not been recorded. After 16th October 2018 there was a period when CHSL was trading but did not have access to its bank account, so Mr. Jones personally made cash payments to the driver and for first use inspections. It then transpired that CHSL's current account was the same one as Mr. Harriss had operated. The TC made clear that she wanted three months' statements for the period up to the application to increase the number of vehicles authorised under the licence and three months' statements for the period up to the hearing. Mr. Jones was somewhat resistant, on the grounds that he only took over from 1st September 2018 and the TC pointed out that the licence holder was the company CHSL, which was now Mr. Jones himself. He agreed he would get the statements from the bank.

21. As respects Black Velvet and Western Greyhound, the TC explained to Mr. Jones that she had heard oral evidence about his holding himself out as a director and found it credible, but invited him to tell her what he wanted to tell her. Mr. Jones explained that he had gone to Black Velvet with two "financial backers", Mr. Michael Bishop and Mr. Thomas. The court case had meant he could no longer be the director or transport manager and it had led to some ill feeling between the three of them. It was decided by all of them that Black Velvet would have to become Mr. Bishop's company "in whole" and Mr. Thomas resigned because he had no faith in Mr. Bishop to turn the company around. Mr. Jones was employed as the general manager and another person was employed as an operations manager.

22. Mr. Jones further explained that when Black Velvet was back on its feet Mr. Bishop was involved with Western Greyhound and asked him whether he "would like to head that up with him as his front man, to go down there and look after day-to-day runnings". He had done so and worked very hard, but an insurance problem then arose as a result of which Western Greyhound eventually had to go into administration. He helped the administrators deal with the company's assets and was then made redundant. During that period he worked very closely with Mr. David Tarrant, the transport manager.

23. The TC drew Mr. Jones' attention to paragraph 26 of her decision in relation to Black Velvet and Western Greyhound, in which it is stated that Mr. Tarrant provided a statement which appeared to suggest that he was a transport manager in name only. Mr. Jones repeated that Mr. Tarrant had worked very hard to secure jobs. She also pointed out that it appeared from the newspaper cutting that part of his mitigation at his trial was the need to protect the jobs of the Black Velvet employees, but he knew or should have known that a conviction for dishonesty would prevent him from being a director. Mr. Jones then said that he had not appreciated it at the time and the decision had been made for him after the event by Mr. Bishop.

24. As respects Classic Routemasters, Mr. Jones said he had been a part-time driver for Ms. Zetterlund but had declined at first to become involved in a new company. Later she got into difficulties and he hired her a bus and then lent her some money. Then Yourtransport Group Limited decided to step in. Mr. Jones described Yourtransport Group as the family business, run by him and his mother, except that his mother became ill. Hireyourtransport.com was to be a brokerage business. In the end nothing got operated because Classic Routemasters was such a mess and then all the creditors were told to contact Hireyourtransport.com.

25. As respects Meritrule, Mr. Jones said that as his mother was ill he had come to the public inquiry on 22nd May 2018 but was not allowed to speak. The licence was then suspended and neither he nor his mother attended at the resumed hearing on 24th July 2018 because by then they had no use for Meritrule. They were not using the operator's licence and his mother did not wish to fight it. He was nothing to do with his mother's company at that point. Meritrule was not trading and was not contributing to Hireyourtransport.com's turnover. The TC put to Mr. Jones that it would have an impact on the family business but he did not accept that. He said he could not be held responsible for another person's limited company in which he held no shares and of which he was not a director.

26. The TC then attempted to ask Mr. Jones what he had to say about the findings she had made in the Meritrule decision. After first asking her to clarify her findings and saying he thought they were working on fact, not fiction, Mr. Jones said that the TC's coming to a conclusion that he was more involved with both companies was based on no fact. The TC pointed out that she had relied on the documentation and Mr. Warren's evidence. She took Mr. Jones to Mr. Warren's evidence, starting at paragraph 18 of the bundle, at which point Mr. Jones referred to dyslexia and said sometimes he did not see things. He gave an account of his business relationship with Mr. Warren, which involved work done at Croydon Coaches, BETC and Hireyourtransport.com. The TC asked him if he wished to say anything else about her decision in relation to Classic Routemasters and Meritrule and eventually read to him her conclusion that Ms. Zetterlund and Mrs. Jones were fronting for Mr. Jones, with her reasons, as set out in paragraphs 24 to 29 of the decision. Mr. Jones said that the decision was wrong and repeated that there was no hard evidence to assume any of what the TC had just read was true. The TC said that she was not reviewing her decision but was pointing out to him that on the evidence there were a number of indicators that Hireyourtransport was more than a brokerage and that Meritrule and Classic Routemasters were part of aiding that. Mr. Jones' response was:

> "I'm very glad that criminal law's not processed the same way otherwise there'd be people locked up everywhere just on people's hearsay."

27. In response to a further invitation from the TC to say what he would like to say about the decision, Mr. Jones repeated that neither Meritrule nor Classic Routemasters were his company. He was involved with both of them and that was never a secret. The connection with Hireyourtransport.com was not hidden and its name was written on vehicles being operated by Classic Routemasters and on vehicles Hireyourtransport.com did not own because other companies were doing the work Hireyourtransport.com had secured. The only reason why Mr. Jones had taken over

CHSL was that he could no longer rely on other companies. He complained that no account was being taken of the very good performance of Croydon Coaches and BETC while he was running those companies, where everything had gone wrong after he left. The TC said it was for him to present evidence. Mr. Jones said he had not brought anything with him because although he had several personal references he was going to achieve, he had wanted to see where the inquiry went first because he did not want to spend weeks and weeks and weeks running around for the TC to throw the book at him because of matters he could not defend because he did not own the companies. The TC then adjourned the hearing briefly to allow Mr. Jones to look at the bundle and make sure he had said to her everything he wanted to say.

28. On the return after the adjournment, Mr. Jones said he understood that the bundle was the TC's snapshot of him and it did not read too well, but he asked for the opportunity to prove that what was in the bundle was not true by operating a compliant company. He said he had not sought advice and perhaps the way he had gone around had not been correct. His letter dated 1st November 2018 had not been the right approach but he was upset. How he operated vehicles and maintained them on the road had never really been brought into question. He had read previous decisions and had tried to adopt procedures to ensure the company was run as well as possible. He had not brought the evidence of that with him because he was not sure how things would go or how much to bring. All he had brought was a fuel cards account.

29. The TC asked Mr. Jones how he kept himself up to date. He explained that he had not done refresher training as a transport manager but had done driver courses and so was aware of the new Time Directive. He then accepted that he was not fully up to date, but said it had been a very difficult year. The TC asked why he was operating vehicles if he could not do it properly. Mr. Jones asserted that he was probably better equipped than a lot of people he had come across in the last five months, who were just as qualified as him but knew a third of what he knew. The TC took exception to that statement, pointing out that he had not been a transport manager, he had done no refresher training and he had brought nothing from which she could assess his competence for herself.

30. There was then a further adjournment while Mr. Jones obtained bank statements to enable the TC to consider financial standing. The statements showed that Mr. Harriss' only customer was apparently Hireyourtransport.com, raising the question why Mr. Jones should pay anything for CHSL's goodwill. The TC suggested that Mr. Jones was really paying for the licence, to which he replied that it was a good purchase because he had been offered £10,000 for the domain name which came with it. He said he had forgotten and had been mistaken in saying all he acquired was goodwill. It also appeared that the current account had continued to be used after the date of purchase by Mr. Jones, although he said that he did not have control of it until October 2018. He was not troubled because Mr. Harriss had told him that the balance on the account at the date of purchase would be nil and it was. He accepted it was wrong that Mr. Harriss had continued to use debit cards and the account had gone overdrawn. The TC did the financial standing calculations and concluded that at the time of the application there was only enough money, on average, for two vehicles. She did not have three months of statements up to the date of the hearing, or at least up to the end of November and

gave Mr. Jones till the end of the week to produce the statements. The hearing was then concluded.

31. Mr. Jones duly provided a current account statement for the period 5th October to 14th December 2018 stamped by the bank. In his covering e-mail he explained that there had been no activity yet on the account. The statement shows that to be the case from mid-October 2018, when Mr. Jones says he gained control of the account.

The decision

32. The TC gave a written decision dated 23rd January 2019. After setting out the background, the TC continued:

> "19. There are some cases where it is only necessary to set out the conduct in question to make it apparent that good repute is lost, a Licence should be revoked and an Operator put out of business, as per 2012/034 Martin Joseph Formby t/a G&G Transport, 2012/020 A+ Logistics Ltd. In the case before me, I set out the material facts and findings in the following paragraphs.
>
> 20. The chronology below is highly relevant, as it not only sets out the order of events but also their proximity to each other.
>
> [There follows a chronology beginning with the application on 11th April 2014 by Surrey Etc. for a licence and concluding with 2nd September 2020, the date on which the rehabilitation period in respect of Mr. Jones' convictions will end.]
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> 21. As stated above, the case revolves around the honesty and integrity of Mr. Jones, trust lying at the heart of the operator-licensing regime.
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> 22. The letter from Mr. Jones to CLO dated 1 November 2018 (page 58/59 of the bundle) is confrontational and more akin to pre action inter-partes correspondence. At the hearing, Mr. Jones represented the Licence holder as if the operator licensing regime was on trial and the traffic commissioners a party to that litigation. In the circumstances of this case, I find this was a tactic to try to deflect from dealing properly with the above history. By way of example:
>
> i) He insisted on putting on the record as soon as the case opened that he had requested the public inquiry. The request was already in the hearing bundle.
>
> ii) Mr. Jones failed to lodge evidence of financial standing in the prescribed manner by the call in deadline. He was intractable when I demonstrated at the hearing why it still did not meet the requirements of the STC's Statutory Document No. 2. He presented as if I was being difficult with him rather than abiding by the Statutory Guidance to which I must have regard and the Statutory Directions, which I must follow.

iii) He requested me to state my authority on why there had been a breach of the Licence terms by moving the operating centre without notifying the change to my office. SGSD 4 refers at paragraph 34 to vehicles being normally kept at the authorised operating centre. Further, the requirement is attached to all PSV Licences as demonstrated by page 3 of the Licence issued to this Operator on 4 September 2016 attached at "Annex A".

iv) He challenged the 2014 sentencing details in the PI Brief and poured scorn on the apparent reliance on media reports in that regard. He brought no evidence to suggest that the journalist's court reporting was wrong. At the hearing, he feigned ignorance on the actual details of his sentence due to the passage of time. Yet there is nothing equivocal about the letter dated 11 September 2018 (page 51 of the bundle) where he states that he only pleaded to one count and received a 12 month sentence suspended for 18 months and 120 community service. The certificate of conviction demonstrates the accuracy of the media court reporting and the inaccuracy within the written and oral evidence of Mr. Jones in this regard. To ensure Mr. Jones cannot mislead others, I attach marked Annex B a copy of the certificate of conviction.

v) He did not bring any evidence in support of his personal rehabilitation measures to date, apart from oral confirmation of completing the community service order. Overall, Mr. Jones presented as attaching little importance to the detail of the convictions for 3 counts of dishonesty or his sentence, where he was fortunate to escape immediate custody. This is disingenuous, particularly when he remains un-rehabilitated in the eyes of the law.

vi) He did not bring any evidence in support of the compliance systems moving forward to ensure road safety. Mr. Jones suggested that compliance improved historically when he became involved in a PSV operation. The BVTS/WGL decision directly contradicts that assertion (e.g. the wheel loss in December 2014 when it was pure chance no one was injured or worse) and Mr. Jones brought no corroborative evidence to support his assertion.

vii) He did not bring any evidence to demonstrate that previous arrangements between his "brokerage" and Meritrule and other PSV Operators were legitimate "arms length" arrangements. By way of example, he said that the financial arrangements with CRM were because Miss Zetterlund tricked him out of the money and he lost a lot of personal funds. Mr. Jones produced no corroborative evidence at the hearing.

viii) In summary, he had done no obvious preparation for the hearing based on the call in letter and papers. It was often a challenge to keep him focused on the actual questions posed and on details. Mr. Jones said that he had not read the Meritrule written decision in detail because he is heavily dyslexic. After a few more questions, I offered a break for him to go over the bundle and see if there was anything else he wanted to say to me. Mr. Jones said he did not want more time to consider the hearing bundle because he had already read it so many times. The Meritrule decision is at pages 170 to 176 of that bundle.

23. From observing Mr. Jones and listening to his evidence, I did not find him a credible or compelling witness."

33. The TC then set out Mr. Jones' response to the letter dated 3rd September 2018 inquiring why he failed to declare his convictions, namely, that it was the fault of the previous owner and that he would like to request a public inquiry. She described the request as appearing to be a form of pre-emptive strike and continued:

"25. … The chronology sets out the reality of the situation. On the date that the change of director form and TM1 form were lodged, Mr. Jones was aware of the BVTL, WGL and Meritrule Limited decisions; that any application or change identified with him had to be referred to a Traffic Commissioner and the information that would be required. A Public Inquiry was highly likely in any event."

34. Having noted the importance of completing the forms correctly, of which Mr. Jones was deemed to have knowledge, the TC said:

"27. In any event, I am unable to accept his assertion that there was no intentional attempt to mislead. In particular:-

i) I issued the Meritrule written decision (pages 170 -183 of the PI bundle just 3 weeks before Mr. Jones's name was added to this Licence. At paragraph 29 it says: "… Mr. Jones is found as a de facto and shadow Director … if he applies for an Operator's licence in the future, I again make it clear that that must be considered by a Traffic Commissioner or Deputy and not under any delegated authority. Further, he will need to address all the concerns which are set out in this written [decision] as part of that process."

ii) Mr. Jones attached his wet signature to the TM1 form twice on 29 August 2018 (pages 33 to 36 of the PI bundle), both as Director and proposed Transport Manager. The section headed "Convictions & Penalties" states "none added" and this is not amended by Mr. Jones;

iii) The "error" on the TM1 form should have caused him to also review the director questionnaire. He did not.

iv) Mr. Jones produced his Deed Poll to cover the difference between the name on the TM1 and his CPC Certificate. However, at no time before 3 September 2018 does he link these back to his convictions, the BVTL, WGL or Meritrule decisions.

v) The director questionnaire does refer to the financial failing of WGL (page 43 of the bundle) but the answer refers to being a "manager" and not to the formal findings made on his role. This entry is highly selective and would not of itself alert CLO to previous findings. On balance, it is more akin to window dressing to give a semblance of transparency to the form.

28. Mr. Jones told me he paid [a specified sum] for CHSL. At the very end, Mr. Jones said that the price included the domain name but it was no more than an aside. It is clear that effectively Mr. Jones paid [that sum] for the operator Licence because CHSL had only worked for HYT and the previous director was the only driver. It follows that there was no goodwill to purchase and the one vehicle purchased was done separately.

29. There is no mandatory revocation for "more than one serious offence" pursuant to Schedule 3 of the 1981 Act for a limited company. However, the provision is relevant to Mr. Jones' good repute as the proposed Transport Manager and his status in the business when considering the good repute of this Operator. I have particularly considered paragraph 10 onwards in Martin Joseph Formby (see above), which is very helpful on how to address similar situations, including the relevance of events since the convictions.

30. In the light of the findings above, I see no good reason to depart from my stated views of Mr. Jones in the BVTL, WGL and Meritrule decisions. They remain on the record un-amended. By way of positives, Mr. Jones put forward that he had no convictions before or after 2014. I give this limited weight in the light of the ongoing disingenuous behaviour since his conviction. The conviction relates to 3 serious acts of dishonesty, including the abhorrent action of putting fake cash in the charity tin.[1] Since that time, he has worked in the shadows because he knew his conviction would pose a problem. Once confronted by CLO on 3 September 2018, he has lied, glossed and scorned without a hint of embarrassment or contrition, including at the hearing. Indeed at the hearing his evidence was so fluid it ebbed and flowed like a river, by way of example paragraph 22(ii), 22(iv) and 22(viii) above. Having taken into account the words, demeanour and conduct of Mr. Jones it is difficult to find any redeeming features. I gave him a number of adjournments during the day to gather his thoughts. Regrettably, he failed to improve his approach or behaviour right to the end. I gave him 24 hours to lodge any further documentation he wanted to rely on. He sent a current finance balance.

[1] This appears from the newspaper coverage before the TC.

31. The evidence is overwhelming that this entity through the conduct of its current director is no longer of good repute. I cannot trust him and therefore the Operator moving forward – there is no material evidence to suggest otherwise. Indeed the evidence is compelling that the legitimate hard working industry and the public who are impacted by his conduct and lack of honesty need the mendacious Mr. Jones removed. To do otherwise would bring the whole regime into disrepute.

32. Finally, the Operator asks me to use my discretion, accept financial standing as met on a final balance with a period of grace. I see no good reason to in the circumstances of this case. The Licence was granted in February 2015. In his haste to take the business over after the loss of Meritrule as a front, Mr. Jones failed to ensure there were available records to show financial standing over 3 months. It is just another example of Mr. Jones putting his own requirements above all else."

35. In conclusion the TC dealt with disqualification as follows:

"33. I have reminded myself of the helpful guidance on disqualification from the Upper Tribunal set out starting at paragraph 54 of Statutory Guidance on the Principles of Decision Making …

34. In T/2010/29 David Finch Haulage the then Transport Tribunal said: "The principles that derive from these and other cases on the point can be simply stated. The imposition of a period of disqualification following revocation is not a step to be taken routinely, but nor is it a step to be shirked if the circumstances render disqualification necessary in pursuit of the objectives of the operator licensing system." A lengthy disqualification is entirely appropriate after years where Mr. Jones has worked tirelessly to stay in the industry under the radar. It is necessary to send the message that Traffic Commissioners take pride in their role of protecting road safety and fair competition. Let the lengthy disqualification also be a deterrent to anyone foolish enough to work in ways that prevent transparent regulation."

The appeal

36. The appeal was brought on 15th February 2019, by which time Mr. Jones had instructed solicitors. They also applied on his behalf for a stay, but that application was refused by the TC on 14th February 2019 and, when renewed to the Upper Tribunal, by Judge Levenson on 21st February 2019.

37. There are three grounds of appeal, as follows:

(1) the TC took into account matters which she should not have taken into account and/or did not adequately explain why she did take them into account such that her findings are unsafe and/or plainly wrong and should be set aside;

(2) the TC has failed properly to analyse the period of disqualification ordered and that order is unsafe and should be set aside;

(3) the TC's other decisions have effectively flowed from her reasoning in relation to repute and are therefore also unsafe.

Those grounds were expanded upon in some detail. We also had the advantage of the skeleton argument supplementing the grounds of appeal prepared by Mr. Lloyd, who was instructed to appear on the appeal, and of his oral submissions, for which we are grateful.

38. We remind ourselves at the outset that in the traffic jurisdiction the appellant assumes the burden of showing that the decision appealed against is wrong, in the sense that the process of reasoning and the application of the law require the Tribunal to take a different view from that taken below, as explained by the Court of Appeal in *Bradley Fold Travel Limited and Peter Wright* v. *Secretary of State for Transport* [2010] EWCA Civ 695, [2011] R.T.R. 13. The question is whether the TC was plainly wrong, not what decision the Upper Tribunal would have made if it had been in the TC's place.

39. We also remind ourselves that in giving its reasons for the conclusion it reached on the breadth of the review undertaken in a traffic case, the Court of Appeal said:

> "36. … although the jurisdiction is to hear and determine matters of both fact and law, the material before the Transport Tribunal [now the Upper Tribunal] will consist only of the documents placed before the Deputy Commissioner and the transcript of the evidence; the Tribunal will not have the advantage that the Deputy Commissioner had of seeing the parties and the witnesses, hearing them give evidence and assessing their credibility both from the words spoken but also the manner in which the evidence was given. Recognising that advantage both in relation to credibility and findings of fact, in *Biogen Inc. v. Medeva Ltd* [1997] RPC 1, Lord Hoffmann explained (at 45):
>
> > "The need for appellate caution in reversing the trial judge's evaluation of the facts is based upon much more solid grounds than professional courtesy. It is because specific findings of fact, even by the most meticulous judge, are inherently an incomplete statement of the impression which was made upon him by the primary evidence. His expressed findings are always surrounded by a penumbra of imprecision as to emphasis, relative weight, minor qualification and nuance ... of which time and language do not permit exact expression, but which may play an important part in the judge's overall evaluation."

40. Finally, we note the issues before the TC and how that affected the burden of proof. In substance the TC was considering:

(1) whether CHSL itself continued to be of good repute, to be of the appropriate financial standing and to meet the requirements of professional competence. If not, it would no longer meet the mandatory requirements of s.14ZA(2) of the Public Passenger Vehicles Act 1981

and s.17(1) would then require revocation of its licence. Before revoking the licence it was for the TC to satisfy herself that the grounds for revocation existed: see *Muck it Limited* v. *Secretary of State for Transport* [2005] EWCA Civ 1124;

(2) whether Mr. Jones should be accepted as the transport manager. As that was an application by CHSL it was for the company to satisfy the TC that Mr. Jones met the requirement of good repute under s.14ZA(3): see *T/2011/36 LSB Limited*, [2011] UKUT 358 (AAC), at paragraph 16. It was not a case in which the TC was directly determining whether or not Mr. Jones was of good repute as a transport manager. The provisions of paragraphs 7A to 7C of Schedule 3 to the 1981 Act apply where such an issue is to be determined and require as a starting point a notice to the transport manager that such an issue is to be determined. No such notice was given in this case. Although paragraph 35 of the decision might appear to suggest that the TC was making a substantive adverse finding, in our view it is to be read in the light of the actual decision in paragraph 3.

The TC rightly reminded herself in paragraph 16 of the decision that the onus was not on CHSL and Mr. Jones in terms of adverse findings and any regulatory action.

41. It is of course the case that under paragraph 1(2) of Schedule 3 the good repute of a company is determined having regard to all the relevant evidence, which includes evidence of relevant convictions of its directors and their previous conduct in relation to the operation of vehicles of any description in any business. It is, however, the repute of CHSL which is relevant, although it is affected by the conduct of Mr. Jones. Indeed, as the TC reminded herself in paragraph 15, where there is a sole director a traffic commissioner is entitled to treat his or her conduct as the conduct of the limited company and to determine repute or fitness accordingly.

First ground of appeal

42. Mr. Lloyd helpfully put his case on this ground under three headings:

(1) previous decisions;

(2) criminal conviction/inaccurate sentencing information;

(3) criticism of Mr. Jones' conduct at the hearing.

We adopt that approach.

(i) Previous decisions

43. There is no doubt that the TC took into account the conclusions she had reached about Mr. Jones at the Black Velvet, Western Greyhound, Classic Routemasters and Meritrule inquiries. There is also no doubt that Mr. Jones did not give oral evidence at either inquiry. Finally, although in the Black Velvet and Western Greyhound case the

TC did not make formal findings of shadow directorship or anything similar against Mr. Jones because he was not called in, there is no doubt that she did make such findings in the Classic Routemasters and Meritrule case.

44. Mr. Lloyd told us, no doubt on instructions, that Mr. Jones was not even aware of the Black Velvet and Western Greyhound inquiry because he had left Black Velvet in March that year (i.e. 2015). It may be the case that that is when Mr. Jones left Black Velvet, but it is clear from the decision that (i) the original Western Greyhound call up letter was dated 19th February 2015 and evidence of financial standing from Black Velvet had to be provided by the same date as evidence from Western Greyhound, making it probable that the Black Velvet call up letter was also dated 19th February 2015 (paragraph 31), (ii) additional matters for consideration at the inquiry relating to the involvement of Mr. Jones, his conviction and his holding himself out in December 2014 as a director of Black Velvet were notified by letters dated 26th February and 9th March 2015 (paragraph 8) and (iii) the inquiry was originally due to be held on 23rd and 24th March 2015 (same paragraph). In those circumstances, although it may be that Mr. Jones was not aware when the inquiry was ultimately held and that he did not have a copy of the bundle, we conclude that it is highly likely that he was aware that an inquiry was going to be held and that his involvement in the business of both Western Greyhound and Black Velvet was going to come under scrutiny. He has not suggested that he wished to attend and give evidence.

45. It was not suggested that Mr. Jones was unaware of the Classic Routemasters and Meritrule inquiry. Any such suggestion would have been unsustainable, since Mr. Jones attended at a hearing on 22nd May 2018 on behalf of Meritrule, albeit that the hearing did not proceed since the solicitor then representing Classic Routemasters had to withdraw as a result of a conflict of interest. His evidence at the CHSL inquiry was that he would not have attended if he had known he did not have to come and that after the licence had been suspended he had much more important things to do. Mr. Lloyd submitted that Mr. Jones took the approach that they were separate companies. He knew, however, that his involvement with the companies was in issue and he deliberately chose not to attend and give evidence.

46. In those circumstances the weight to be attached to the fact that that the TC's conclusions were reached without hearing evidence from Mr. Jones is limited. We accept the proposition in *2003/132 J.B. Hogger* referred to in the grounds of appeal and Mr. Lloyd's skeleton argument that where there has been a previous inquiry very careful assessment of the evidence is called for, but we think it must be put into its wider context. It was said:

> "6. Where the effect of a previous finding needs to be considered it seems to us that it will generally be important to ask questions along these lines:-
>
> (i) Was there, in fact, a finding on this point in the earlier case? If the answer is 'No', then the problem disappears.
>
> (ii) How important was that finding to the final outcome? The more important the finding the greater the risk of confusion and injustice if a different conclusion is reached and the more compelling the evidence needs to be before a different conclusion is reached. The less significant

> the finding the less the risk of confusion and injustice if a different conclusion is reached but there must still be clear evidence to warrant a different conclusion.
>
> (iii) What is the strength of the evidence which is said to show that the finding was wrong?
>
> At the end of the day it will, of course, be for the Traffic Commissioner or Deputy Traffic Commissioner conducting the Public Inquiry to assess the evidence put before him and to reach appropriate conclusions founded on that evidence. Where good repute is called into question as a result of what is said to have happened or been said at a previous Public Inquiry a very careful assessment of the evidence is called for in order to avoid the kind of difficulties referred to in some recent decisions, albeit in a different context."

47. *Hogger* was a case in which the appellant had been at the previous inquiry and had given evidence, inter alia, that he was not the director of a particular company although he had worked for it. He was then called to attend an inquiry as to his good repute on the basis of his previous evidence. At that inquiry he wished to challenge what was said to be a finding that he had been a director. The traffic commissioner hearing the matter made clear his unwillingness to go behind a finding of the previous inquiry but adjourned to enable the appellant to apply for permission to appeal out of time against the decision in the previous inquiry. That application was dismissed, but the Tribunal made clear that it may be appropriate for a different decision to be reached at a later inquiry based on the evidence then being heard. That is why the Tribunal's focus was on the strength of the evidence that the previous decision was wrong.

48. In the present case, the complaint is essentially that the TC did not reach a different decision. The contention in the grounds of appeal and the skeleton argument is that the TC did not pay proper regard to the fact that Mr. Jones had not previously given evidence. In his oral submissions Mr. Lloyd said that the TC should have put out of her mind her previous findings, because the unfairness of not having heard Mr. Jones could not be remedied. He conceded that she might have asked Mr. Jones about where he had worked previously for background and information but in all the circumstances of the case she should not have relied on her previous decisions in relation to good repute. He also submitted that it was necessary to look separately at the two inquiries.

49. In our view this is not realistic. The TC had made her previous decisions on the basis of the evidence then before her and the decisions explained what that evidence was. In the Classic Routemasters and Meritrule decision she took into account the material from the Black Velvet and Western Greyhound decision. The evidence contained in the decisions was effectively evidence before her in the CHSL inquiry. What fairness required was that (i) Mr. Jones should know in advance that the TC was going to raise the issue of his involvement with Black Velvet, Western Greyhound, Classic Routemasters and Meritrule so that he was in a position to produce the evidence that the previous decisions were wrong, (ii) he should have the opportunity to give oral evidence of why the decisions were wrong and (iii) he or his representative should have the opportunity to make submissions to the TC on why the decisions were wrong. All of those requirements were satisfied, as appears from the account of the facts and the inquiry set out above.

50. Mr. Jones' difficulty is that he did not seek advice in relation to the inquiry, he produced no documentary evidence to support his case and he made no real attempt to address the details of the evidence which supported the TC's findings: for example, the evidence that he had held himself out as a director of Black Velvet and said that he owned Black Velvet and Western Greyhound, or the evidence of the various transactions involving Classic Routemasters, Meritrule and Hireyourtransport.com and the appearance on web sites that Hireyourtransport.com was operating public service vehicles. He was given ample opportunity to say anything he wanted to say, but in effect engaged in broad denial, primarily on the grounds that he was not a director or shareholder of Classic Routemasters or Meritrule, which were separate companies. That does not assist where the issue is one of fronting, as it was here. As respects Black Velvet and Western Greyhound, he emphasised the amount of work he had done. Again that does not assist.

51. We recognise that Mr. Jones is a lay person and may have had difficulty in understanding how his arguments should be framed. His dyslexia will not have assisted. It was, however, his own choice not to obtain representation and to try to deal with the matter on his own and on the basis of having read some guidance and decisions. Further, the TC found that he was not a credible or compelling witness. We are not persuaded that there was anything wrong in the way in which the TC approached the question of good repute in so far as she took into account the previous decisions.

(ii) Criminal conviction/inaccurate sentencing information

52. Mr. Lloyd's submission on this point was that the TC was right to have regard to the existence of the convictions and the original failure to provide details, but she ought not to have relied on the later provision of inaccurate details as evidence supporting loss of good repute. Given that the sentence was suspended, had been imposed some years earlier and had been completed long before, it is understandable that Mr. Jones' recollection might have been imperfect.

53. A "serious offence" is defined in paragraph 1(4) of Schedule 3 to the 1981 Act to include inter alia a sentence of imprisonment for more than three months or a community service order for more than 60 hours unpaid work. Suspended sentences fall within this provision: see *T/2014/50 Andrew Harris t/a Harris of Leicester*, [2014] UKUT 0483 (AAC). It is therefore clear from the certificate of conviction that Mr. Jones has two convictions for a serious offence, both by reference to the sentence of imprisonment and by reference to the community service order. The TC rightly stated in paragraph 29 of her decision that there is no mandatory revocation for "more than one serious offence" pursuant to Schedule 3 of the 1981 Act in relation to a limited company. She also rightly stated that the offences were relevant to Mr. Jones' good repute as a proposed transport manager and his status in the business when considering the good repute of CHSL. That is inevitably the case because under paragraph 1(3) convictions for more than one serious offence lead to an individual's loss of repute unless the traffic commissioner decides under paragraph 1(8) to disregard the convictions on the ground of lapse of time. Mr. Lloyd's acceptance that the TC was right to have regard to the existence of the convictions was inevitable.

54. Mr. Lloyd also bowed to the inevitable in accepting that the TC was right to have regard to the original failure to provide details. She referred in this connection to *2000/041 Hi-Kube* for the proposition that a traffic commissioner is entitled to conclude that an application form should have been checked by a company secretary or the directors. As respects the significance of failure to declare a conviction, reference may also be made to *2000/059 Dolan Tipper Services Limited*. This is compounded by the fact that in paragraph 27 of her decision the TC rejected Mr. Jones' assertion that there was no intentional attempt to mislead. She had heard Mr. Jones' evidence on the point and was entitled, in the light of her overall assessment of his credibility, to do so, having regard to the reasons she gave.

55. As respects the fact that Mr. Jones gave inaccurate details of his convictions, this point is mentioned only in paragraph 22, in the context of the examples given by the TC of Mr. Jones' approach to the hearing. The underlying point is that Mr. Jones' behaviour was a tactical manoeuvre by which he sought to deflect the TC from dealing with the history set out in the chronology. It is a truism that the regulatory system is built on trust. The TC was entitled to take account of behaviour by Mr. Jones which suggested that his approach to the system was confrontational rather than co-operative. That was all the more the case when the point at issue concerned unqualified statements from him which on his own evidence he was not sure about, and he was attempting to discourage the TC from establishing the inaccuracy of what he had said.

(iii) Criticism of Mr. Jones' conduct at the hearing

56. What is said here is that although a traffic commissioner is entitled to make criticisms of an individual's approach to a hearing the TC ought not, in this case, to have used them "to support adverse findings against Mr. Jones in regard to his repute". As we have said, the TC was not making adverse findings against Mr. Jones himself; the finding of loss of repute related to CHSL. The issue as we see it is in substance whether a company of which Mr. Jones had become the sole director in place of Mr. Harriss would comply with the licensing regime in future or whether, on the evidence, it had lost its repute as an operator which was likely to do so.

57. Under paragraph 1(2) of Schedule 3 a traffic commissioner is entitled to take into account all the evidence, including evidence of conduct by a director which is not directly concerned with the operation of vehicles in the course of a business, which is relevant to the question of repute. As we have said in paragraph 55 above, the TC was entitled to take account of behaviour by Mr. Jones which suggested that his approach to the regulatory system was confrontational. To establish that the TC was plainly wrong in taking into account the behaviour to which she referred in her decision would require us, without having seen Mr. Jones giving evidence, to come to the conclusion that no reasonable traffic commissioner could have come to the view which she did. This is obviously a high hurdle and all the more so when there is the cumulative effect of Mr. Jones' behaviour to be considered.

58. Doing the best we can on the basis of the transcript, we do not accept that that hurdle has been cleared. The background is that in his letter of 11th September 2018, which he was anxious to have on record, Mr. Jones asked for a public inquiry as "the only fair way for my case to be put across" and impliedly expressed his willingness to answer "any relevant questions" which the TC might have. He also clearly implied that

he was aware that the TC so far had a negative view of him. One would have expected, in those circumstances, that he would have taken care to comply in all respects with the licensing system and in particular to behave in a way calculated to remove the TC's concerns about him.

59. Against that background, the tone of the letter dated 1st November 2018 is surprising and the substance shows disregard of the requirements in relation to operating centres. It is a highly inappropriate letter for anyone, whether a lawyer or an unrepresented lay person, to have written. Even if written "in some frustration" (for which there was little reason) it shows a serious lack of judgment on the part of Mr. Jones that he allowed his frustration to take such a form. It is suggested in the grounds of appeal and Mr. Lloyd's skeleton argument that the TC said that the letter itself was a tactic to try to deflect her from dealing with the history of the matter. We do not so read paragraph 22 of the decision. Rather, the TC noted the tone of the letter, which was certainly capable of being indicative of Mr. Jones' approach to the regime, and then moved on to deal with Mr. Jones' conduct at the hearing.

60. Mr. Jones' conduct is also surprising in someone who professedly wished to deal with the TC's concerns. It is now submitted on his behalf that "many" of the criticised aspects of his "defence" are better characterised as merely clumsy and not untypical of the approach often adopted by an unrepresented lay person. We repeat that what Mr. Jones was supposedly coming to the inquiry to do was to address the concerns raised by the TC. The call-up letter had warned him of what those concerns were, had expressly drawn his attention to the Senior Traffic Commissioner's Statutory Guidance and Statutory Directions, had told him what financial standing evidence was required and had advised him to identify competent legal or professional help and representation quickly unless he was confident he did not need it. As the TC said in paragraph 22(viii), Mr. Jones had done no obvious preparation based on the call-up letter and papers. He said himself that he had deliberately not brought references with him because he did not want to spend weeks assembling evidence if the TC was going to throw the book at him in connection with companies he did not control, but he made no attempt to produce evidence explaining the true state of affairs between Hireyourtransport.com and Classic Routemasters and Meritrule. What he did was to challenge the TC on points which ought to have been uncontroversial if he had considered the available guidance (such as the nature of evidence of financial standing and the requirement that vehicles should normally be parked at the authorised operating centre) and to attack the quality of the evidence before her without adducing any of his own.

61. In those circumstances it is difficult to see how Mr. Jones thought he was making a serious attempt to put his case across. It is even more difficult to see how he thought he was persuading the TC that CHSL was an operator which, with him at the helm, could be trusted to be compliant. In our view, his general conduct went beyond the normal clumsiness of an unrepresented lay person. He often seemed to prefer to attack rather than even to try to answer the points being put to him. We are not persuaded that the TC was plainly wrong in finding, bearing in mind the circumstances of the case, that the way Mr. Jones conducted himself at the hearing was a tactic to try to deflect her from dealing with the matters which had led to the holding of the inquiry. On that basis, she was fully entitled to take his conduct into account in considering CHSL's repute.

(iv) Other matters

62. There are some additional points raised in the grounds of appeal which we now turn to address, since Mr. Lloyd made clear that his skeleton was supplemental to the grounds of appeal.

63. The first is the statement in paragraph 19 by which the TC introduced her chronology, that there are some cases in which it is only necessary to set out the conduct in question to make it apparent that good repute is lost. It is said that the TC did not make clear whether or not she was adopting that approach and on the assumption that she was it was particularly incumbent on her to ensure that the facts relied on were relevant to the issues. We agree that the TC might have made clearer the part that that statement played in her reasoning. We do not agree that it increased the need for the TC to ensure that the facts relied on were relevant to the issues. That is always necessary. The question is whether it can be seen that the TC placed reliance on matters which were not relevant in a way which was or might have been material to her decision.

64. That question is addressed in paragraph 12 of the grounds of appeal, which identifies a number of matters set out in the chronology in paragraph 20 of the decision which are said to be irrelevant and not capable of supporting an adverse inference against CHSL and Mr. Jones. That submission is made in the light of the fact that the TC described the chronology as highly relevant because it not only set out the order of events but also their proximity to each other. It is contended that the description of events suggests previously formulated views regarding Mr. Jones following previous hearings at which he did not attend or give evidence.

65. Again we think this is somewhat unrealistic. It was always known that the TC had formed certain views about Mr. Jones as a result of previous inquiries. The CHSL inquiry was intended to allow him the opportunity to try to persuade the TC to take a different view of him. Having heard his oral evidence and considered the very limited additional documentation provided, the TC concluded, as set out in paragraph 30 of her decision, that there was no good reason to depart from her previous views. Inevitably, therefore, in producing her chronology, she listed events which related to her view of Mr. Jones's conduct over the years. Inevitably some of those events were of a neutral nature and simply set the scene. We have noted the various specific date entries identified in the grounds of appeal and agree that in isolation many of them, such as appointments and resignations of directors, do not appear significant and would not justify an adverse inference as to repute. Clearly, however, it is significant that such appointments and resignations occurred and the proximity of events may also be significant. For example, the Appellants query the inclusion of 9th August 2018, the date of the Classic Routemasters and Meritrule decision (a matter which we should have expected to find included anyway), but paragraph 32 of the decision makes clear that the TC regarded the fact that it was as shortly thereafter as 29th August 2018 that Mr. Jones took over as the sole director of CHSL as evidence that he was looking for a business after the loss of Meritrule as a front. She also refers to this aspect of the chronology in paragraph 27(i).

66. At the end of the day, the position is that, in the light of the material considered in paragraphs 19 to 30 of the decision the TC reached the conclusion that she could not trust Mr. Jones. That material included his conduct at the hearing and his failure to

address the issues raised in the call-up letter, his lack of credibility as a witness, his failure to declare his convictions, her conclusion that there was an intention to mislead, her finding that the sum paid for CHSL was effectively a payment for the operator's licence and the existence of the convictions, which remained unspent, all of which led the TC to say that she saw no reason to depart from her stated views of Mr. Jones. Again we agree that the TC might have made clearer the points at which she regarded the proximity of events as particularly significant (although what she said must be understood in the context of the previous inquiries), but we do not accept that the introduction to the chronology, read with the chronology, shows that the TC took irrelevant matters into account in a way which might have had a material effect on her decision.

67. It is also contended in the grounds of appeal that the TC's rejection of Mr. Jones' evidence that there was no intention to mislead cites matters which could not properly have supported her view. The first of those is the reference to her findings in the Meritrule case. It seems clear to us that that reference was setting the context for the subsequent failures to provide information. Mr. Jones has never suggested that he was unaware of what the TC said in the Meritrule case, and as on any view he had had some involvement with Meritrule as a result of his mother's illness, that is not surprising. He therefore knew that the TC wanted any application by him to be considered by a traffic commissioner or deputy. Against that background, we think she was entitled to conclude as she did, given the number of examples of omitted or incomplete information. Mr. Jones certainly made no attempt at that stage to meet what he well knew were the TC's concerns.

68. Finally, in his oral submissions Mr. Lloyd referred specifically to the inclusion in the bundle at p.71 of the letter dated 7th October 2014 from Oliver Legal which we mentioned in paragraph 11 (2) above. The letter is not referred to in the TC's decision and there is no reason to suppose she gave it any weight in reaching her decision.

Second ground of appeal

69. This ground of appeal is put on first on the basis that there is no clear and careful assessment of the TC's reasons for deciding that a period of 10 years was the appropriate period. It is said that in the absence of an explanation the period could be arbitrary and the decision is unfair and unsafe in that respect. It was suggested in the grounds of appeal that the TC had simply adopted the same period of disqualification as that imposed on Mrs. Jones. In his oral submissions Mr. Lloyd pointed out that Mr. Jones would in any case have to satisfy the TC (or another traffic commissioner) as to his repute at a later stage and suggested that the length seemed to be attributable to the deterrence factor.

70. We accept that the TC dealt briefly with her reasons for imposing a 10 year period. She did, however, identify three factors:

(1) that Mr. Jones had worked tirelessly for years to stay in the industry under the radar;

(2) that it was necessary to send the message that the traffic commissioners take pride in their role of protecting road safety and fair competition;

(3) that it was necessary to deter those foolish enough to work in ways that prevent transparent regulation.

Those are factors which are consistent with the Statutory Guidance to which the TC referred, which itself is derived from the case law. They are also consistent with *T/2010/29 David Finch Haulage*, to which the TC again referred. In all the circumstances, we think the reasons given were sufficient.

71. We point out in addition that the Statutory Guidance is also referred to in *T/2014/40-41 C G Cargo Limited and Sandhu*, [2014] UKUT 0436 (AAC), which drew attention to the suggested range of 5 to 10 years for conduct meriting the description "severe". Examples of "severe" conduct include any conduct designed to strike at the relationship of trust between traffic commissioners and operators and conduct designed to mislead the OTC. The TC clearly regarded Mr. Jones' conduct as severe for those purposes and on the basis of her findings of fact she was justified in doing so.

72. As an alternative, it was argued that in *T/2018/01 David King t/a Military World*, [2018] UKUT 0098 (AAC) the Upper Tribunal referred to the rehabilitation period specified in the Rehabilitation of Offenders Act 1974 as a barometer for assessing the length of a period of disqualification, whereas the TC in the present case did not make any such link. Here the rehabilitation period expires in September 2020. We do not think that it was intended in *King* to lay down a general rule that the period of disqualification should be closely linked to the period of rehabilitation. That was a case in which loss of repute was mandatory as a result of Mr. King's convictions. In such circumstances, the rehabilitation period may be a helpful guide. In the present case, although clearly the TC had regard to Mr. Jones' convictions, the major factor was his involvement in fronting, which was not a matter for the criminal courts. There is no reason to look for a close link to the rehabilitation period for offending behaviour which in fact occurred before the principal events giving rise to the loss of trust.

Third ground of appeal

73. This ground of appeal relates in part to the decision that CHSL had lost professional competence, which it is said flows from the TC's decision as to loss of repute. We think that is correct and since we are not setting aside the latter decision, we need say nothing further about the former.

74. It is also said that the refusal of a period of grace to show financial standing resulted from the TC's failure to consider the request properly, again as a result of flawed decision making in relation to repute. It is pointed out that the evidence in fact demonstrated a healthy bank balance, the ownership of CHSL had been through a transitional period and most of the problems dated to a period prior to Mr. Jones' ownership and that there was nothing to suggest that financial standing over a longer period would not be evidenced if a period of grace were to be allowed.

75. The basis of the TC's refusal of a period of grace was Mr. Jones' haste to take the business over after the loss of Meritrule as a front, as a result of which Mr. Jones failed to ensure the records to show financial standing were available. This she described as another example of his putting his own requirements above all else. On the evidence before the TC, Mr. Jones seems to have been unconcerned about CHSL's

financial position for a remarkably long period for a new owner and director. We note he was expecting a £nil bank balance, but took no steps to add to CHSL's available funds. Given her other findings. we do not accept that the TC was plainly wrong in refusing to grant a period of grace.

Conclusion

76. It follows that in our view the grounds of appeal are not made out. We accordingly dismiss the appeal.

(signed on the original)

Judge of the Upper Tribunal
13th August 2019