



**IN THE UPPER TRIBUNAL
ADMINISTRATIVE APPEALS CHAMBER**

**Appeal No. UA-2021-000465-T
[2022] UKUT 227 (AAC)**

Appellant:

LILIANA ELENA MANOLE

DECISION OF THE UPPER TRIBUNAL

**Her Honour Judge Beech, Judge of the Upper Tribunal
Andrew Guest, Specialist Member
Sarah Booth, Specialist Member**

Decision date: 15th August 2022

ON APPEAL FROM:

**Tribunal: John Baker, Deputy Traffic Commissioner for the South
East & Metropolitan Traffic Area**
Licence No: OK1145531
Tribunal Venue: Field House, 15-25 Bream's Buildings, London, EC4A 1DZ
Date: 12th July 2022

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**IN THE UPPER TRIBUNAL
ADMINISTRATIVE APPEALS CHAMBER**

Appeal No. UA-2021-000465-T

On appeal from the Decision of John Baker, Deputy Traffic Commissioner for the South East & Metropolitan Area dated 17th November 2021

Liliana Elena Manole

Appellant

Before: Her Honour Judge Beech Upper Tribunal Judge
Specialist Member of the Upper Tribunal Andrew Guest
Specialist Member of the Upper Tribunal Sarah Booth

Hearing date: 12th July 2022

Representation:

Appellant: Ms Manole attended and was represented by Mr Clarke of Smith Bowyer Clarke

DECISION

The appeal is DISMISSED

Subject Matter: Whether the DTC was entitled to find that the Appellant as Transport Manager knew that the operator was a “front” on the evidence; whether the period of disqualification ordered following loss of repute was disproportionate.

Cases referred to: 2016/026 J Campbell trading as Vision Travel; Assicurzioni Generali SpA v Arab Insurance Group (2002) EWCA Civ 1642 (2003) 1 WLR 577; 2012/071 Silvertree Transport Limited; T/2005/367 K Jaggard; Bradley Fold Travel & Peter Wright v Secretary of State for Transport (2010) EWCA Civ.695.

REASONS FOR DECISION

1. This is an appeal from the decision of the Deputy Traffic Commissioner for the South East and Metropolitan Traffic Area (“DTC”) dated 17th November 2021

when he found that the Appellant had lost her good repute under paragraph 16(1) of Schedule 3 of the Goods Vehicles (Licensing of Operators) Act 1995 (the 1995 Act”) and disqualified her from acting as a transport manager under paragraph 16(2) of Schedule 3 of the 1995 Act for a period of two years from the date of the decision (with an effective disqualification period of two years and nine months).

Background

2. The background to this appeal can be found in the appeal bundle and the written decisions of the DTC and is as follows. The Appellant (“Ms Manole”) first came to the attention of the Traffic Commissioner for the South East and Metropolitan Traffic Area (“the TC”) when on 28th June 2016, Ms Manole made an application for a standard national operator’s licence as the sole director of J & K Environmental Services Limited, authorising six vehicles and six trailers. Ms Manole, who had recently qualified as a transport manager, was also the nominated transport manager. The information Ms Manole provided at that stage was that the company had been incorporated on 21st September 2015; her contact address, home address and the company’s place of establishment was an address in Barnet (“no.25”); the operating centre was situated at Kingdom Workshops Limited in Northolt which would also carry out the preventative maintenance inspections. On her application to be added to the licence as transport manager, Ms Manole declared that she would commit eight to twelve hours a week to her role as transport manager and further declared that her only other employment was that of director of the company to which she would commit twenty five hours a week.
3. The TC was concerned that the company and its proposed operation might be linked to John Kennedy who had been involved with a number of revoked operator’s licences, had lost his good repute as an individual as well as a transport manager and had been disqualified for an indefinite period from being involved in operator licencing with effect from 23rd December 2014. He was the sole shareholder of Kingdom Workshops Limited. On 22nd July 2016, a police officer attended the workshop premises and had spoken to Mr Kennedy. He also spoke to Ms Manole who was present. She told him that she worked in the office for Mr Kennedy.
4. Ms Manole then notified a change of address to the Office of the Traffic Commissioner (“OTC”). Her contact and the company’s business address were to be an address in Harrow (“no.47”). An application for an interim licence was refused because of the TC’s concerns and Ms Manole was advised that the TC was minded to refuse the licence application. Ms Manole’s good repute and fronting were raised as issues.
5. The public inquiry was listed for hearing on 21st March 2017. In the days leading up to the hearing, Ms Manole’s representative wrote to the OTC to advise that Ms Manole and Mr Kennedy had in fact been cohabiting partners for three years although on occasion, Ms Manole had resided at No.47 with a cousin. She had worked for Mr Kennedy for the previous two years as a general clerk, principally in connection with Kingdom Workshops. She intended to leave that employment once the licence was granted and work independently from Mr Kennedy although she hoped to benefit from some of his previous customers and clients (she had incorporated J & K into the name

of the business because they were Mr Kennedy's initials). Mr Kennedy had little to do with the management of the workshop.

6. At the hearing, the following evidence was elicited from Ms Manole:
 - In addition to Kingdom Workshops, Mr Kennedy controlled Kingdom Truck and Trailer Hire Limited which had been incorporated on 17th December 2015. Ms Manole denied that she had any connection with that entity although she had helped draw up a hire agreement between that company and "E Limited" because she happened to be in the office at the time. She denied that E Limited was a front for Mr Kennedy
 - Ms Manole had never lived at No.25 even though that is the address she gave as her home, correspondence and business address on the licence application. This was in fact the registered address of Kingdom Truck and Trailer Hire Limited until January 2016 when the company changed its address to that of Kingdom Workshops. As a result of that untruth, when completing the application form, Ms Manole had failed to provide an address for either the company or herself as transport manager and had failed to disclose to the OTC the address at which she and Mr Kennedy were residing
 - Ms Manole had remained in a relationship with Mr Kennedy although she had moved to an address in Northolt "No.10" which she would also use as her office
 - Whilst Ms Manole did not have any money or savings, the company had been given a business loan without any security or guarantees. The loan had been drawn down although no instalments were repayable until the licence had been granted. Kingdom Workshops obtained finance from the same finance company although Mr Kennedy had not been involved in the arrangements. The TC concluded that the only evident security was the link with Mr Kennedy's businesses
 - At an early stage, Ms Manole told the TC that she had taken advice from Backhouse Jones solicitors. She later accepted that she had been lying about that.
7. In a written decision dated 22nd May 2017, the TC took all the above matters into account and in particular the links with Mr Kennedy and found that she was not satisfied that the company or Ms Manole were of good repute (in other words, J&K Environmental Services was a front for Mr Kennedy).
8. Ms Manole appealed. In the interim, on 5th July 2017, the OTC received an application from Negru Trans Limited nominating Ms Manole as the company's transport manager. The company had been incorporated on 19th May 2015 and had been granted a standard national operator's licence authorising 3 vehicles and 2 trailers in August 2016. Mr Negru whose occupation on the Companies House record is that of "driver", was the sole director. The Operating Centre was Kingdom Workshops which was also the operator's maintenance provider.
9. The operator was called to a public inquiry for the DTC to consider Ms Manole's suitability for the position in view of the TC's finding that Ms Manole had not established good repute before her in March 2017. The hearing took

place eight months after the TC's decision, on 1st November 2017. Mr Negru and Ms Manole attended and were represented by Mr Brown, solicitor.

10. Mr Negru told the DTC that he employed one driver and that he had recently secured a contract with BIFA with a three months probationary period. Due to cash flow problems he had not paid invoices for a few months (the decision does not state the nature of those invoices) but he had recently improved the company finances by obtaining a loan (the decision does not state from whom). He knew Ms Manole because she worked in the offices at Kingdom Workshop and was aware that she held a CPC. His previous transport manager had left to set up her own business. He was shown as a "green" operator on the DVSA system.
11. The DTC stated that he would not go behind the decision of the TC with regard to Ms Manole's links with Mr Kennedy and the TC's finding that Ms Manole had not satisfied the TC that she was of good repute. He further noted that TC had found that Ms Manole had "*attempted to mislead*" the TC. Ms Manole told the DTC that she was no longer in a personal relationship with Mr Kennedy although she continued to work at Kingdom Workshops. She did not see him very often. Her intention was to reduce the hours that she worked at Kingdom Workshops were she to be appointed as a transport manager.
12. In his written decision dated 6th November 2017, the DTC considered whether there were links between Mr Negru and Mr Kennedy. He did not find any other than the fact that Mr Negru was one of a number of operators who rented space at Kingdom Workshops which was owned by Mr Kennedy. Neither were there any identifiable financial or business links between them. As for Ms Manole, the DTC stated as follows:

"8. .. I had to consider whether she had demonstrated and I was satisfied that it was more likely than not that she could be trusted to undertake the role of transport manager for Mr Negru. There was no issue over her competence in that she held a valid CPC qualification and had attended update training (sic) in this regard comparatively recently. The Traffic Commissioner had determined that she could not be trusted to hold her own licence and that the links between her and Mr Kennedy were such that conclusions could be drawn.

9. My decision turns on the question whether a person (in this case Ms Manole) who could not be trusted to hold their own licence could nevertheless be trusted to be a transport manager for another operator. There is a distinction in that as an operator and transport manager all the trust is vested in one person, in the case of a transport manager and separate operator there is a check and balance in that if either one is not fulfilling their duties honestly and effectively the other is expected to take action. I have also taken into account the circumstances of the case before the Traffic Commissioner in that the findings were that if a licence was granted to Ms Manole it would in effect be "a front" for Mr Kennedy. In the matter before me there is no evidence to suggest that this is the case".

The DTC granted the application subject to an undertaking that an independent audit of the transport operation would be carried out no later than 31st March 2018.

13. On 16th November 2017, upon the appeal from the decision of the TC dated 22nd May 2017, the Upper Tribunal upheld the findings of the TC with regard to Ms Manole being a front for Mr Kennedy and her failure to establish good repute.
14. On 24th April 2018, Mr Negru resigned as the sole director of Negru Trans Limited and was replaced by Dragos Aron, who also recorded his occupation as “*driver*” with Companies House. Paul Smith was then appointed as a director of the company on 1st November 2019, becoming the sole director on 1st March 2020, when Mr Aron resigned. The OTC was not informed of Mr Smith’s appointment within 28 days as required.
15. On 12th May 2020, an on-line application was made to increase the vehicle authorisation to ten. A Desk Based Assessment of compliance was then conducted by the DVSA which was marked as “unsatisfactory” partly due to requested documentation not having been received by the DVSA due to the size of the files. Upon receipt of the documentation, the marking was revised to “mostly satisfactory”. The bank statements that were submitted in support of the application showed several large payments made to Kingdom Workshops which required clarification and it further appeared that Mr Smith as director was being paid less than some employees despite being the sole director and shareholder.
16. It was determined that the variation application should be referred to a public inquiry. After the call up letter was sent, issues were then identified about Mr Smith’s failure to declare a conviction when he had been a director of Berkshire Recycling Limited in 2018 (a licence he had applied for) and how that licence application had been funded leading to concerns that the company in question may have been a front for someone who had previously had licences revoked and applications refused (Arthur Deville). Moreover, it was found that Ms Manole had been registered as the Company Secretary for Kingdom Workshops between 23rd June and 8th December 2020.
17. The public inquiry took place on 9th February 2021 via Microsoft Teams. Mr Smith and Ms Manole attended and were represented by Ms Newton of Smith Bowyer Clarke. Witness statements had been submitted along with other documentation beforehand. Mr Smith gave an unsatisfactory explanation as to the funding arrangements for Berkshire Recycling Limited, stating that his father had funded the business initially when all of the evidence pointed to Arthur Deville having done so. Mr Smith later accepted that he had made payments to Arthur Deville although these were to repay a loan made by Mr Deville to Mr Smith’s father.
18. Mr Smith’s evidence was that he had been given the opportunity to invest in Negru Trans Limited where he had been working as a driver. He had paid £100 to Dragos Aron for the company as the latter had wanted to leave. It was pointed out to Mr Smith that the certified accounts for 2019/20 showed a net profit of £142,027 which made it surprising that Mr Smith had only paid £100 for the business. He stated that there was a total of £37,600 in outstanding finance but did not supply further details. What was not drawn to Mr Smith’s attention was the shareholders fund which was said to be £246,200, which made the sale price of the business of £100 even more surprising. Mr Smith was the sole shareholder of the company.

19. A loan agreement for an interest free loan to Kingdom Workshops for £10,000 dated 15th April 2020 had been produced. Mr Smith stated that the loan had been requested as a matter of urgency by Vasile Gariliuc, the sole director of Kingdom Workshops at the time. Mr Smith could not explain why an interest free loan had been offered or why repayment was set at 5th July 2020 or why if the loan was so urgent it was not actually drawn down until 5th June 2020.
20. As for Mr Smith's remuneration, he accepted that as the sole director of a company making a healthy profit, his average weekly pay was just over £500 per week which was no better than some of the drivers' remuneration and in some cases worse. He stated that he was comfortable with the amount he was being paid and that he was being paid in dividends. He drove every day and relied on the accountant and Ms Manole to carry out much of the administration. He did not comment when it was pointed out that the fluctuation in his weekly payments did not square with an annual amount of dividend divided by 52. He averred that he spoke to customers and was aware of the amount of business and money that was going through the accounts and, according to his witness statement, he used "*the office staff*" for invoicing and banking. There was no evidence that office staff were employed other than Ms Manole.
21. Ms Manole told the DTC that Mr Kennedy did not have any interest in the company. She had not been aware that she was the Company Secretary for Kingdom Workshops Limited but then said that Vasile Gariliuc had in fact asked her to be Company Secretary although all she was doing at that stage was working in the Kingdom Workshop offices for one day a week to help train a new member of staff. She did not mention her Company Secretary appointment because she did not think that she needed to. Ms Manole had resigned her role in Kingdom Workshops in 2018 when she was approved as transport manager on the Negru Trans licence. She denied that she was in a relationship with Mr Kennedy and said that she only attended Kingdom Workshops one day a week to undertake drivers checks for Negru Trans. She met Mr Smith every week and spoke to him regularly about maintenance arrangements. She informed him of any drivers' hours infringements but she spoke to the drivers herself.
22. At the conclusion of the evidence, Ms Newton submitted that Mr Smith was not "business minded" and relied on accountants and those who ran the business. There was no evidence of a fronting arrangement. There was no evidence of suspicious payments from the bank account and the loan to Kingdom Workshops had been paid back before the issue was raised by the OTC. Ms Newton did not address the DTC on behalf of Ms Manole.
23. In his written determination dated 17th February 2021, the DTC found that having decided in 2018 that Ms Manole could be trusted as a transport manager on a licence, the position had changed. Mr Negru was no longer involved in the company and had ultimately been replaced by Mr Smith. Whilst the DTC accepted that there was no direct evidence of fronting, there was a "*a catalogue of circumstantial evidence*" which he needed to consider and weigh and in particular: the circumstances in which Berkshire Recycling Limited had been financed; that Arthur Deville funded the Berkshire Recycling licence; that he was a person who had previously had a licence revoked and had had applications refused; the situation had all of the hallmarks of fronting;

Mr Smith's payment of only £100 for total ownership of the company Negru Trans Limited was "*unbelievable*" particularly when the accounts showed a viable company with net profits of over £142,000; having paid "*such a derisory sum*" for the company, Mr Smith then undertook his sole director duties whilst accepting a level of remuneration below that of other employees and the explanation that his remuneration represented annual dividends did not square with an annual dividend split into equal parts; the circumstances behind the loan to Kingdom Workshops and the catalogue of suspicious payments made in "*rounded*" sums to Kingdom Workshops, for example, £10,000 in May 2020 for maintenance.

24. The DTC concluded that Mr Smith was not a controlling mind of the company and was a director in name only. Neither his presentation at the hearing nor the evidence he gave persuaded the DTC otherwise. The DTC did not consider it necessary to find who was the controlling mind and *de facto* director. It could have been Mr Kennedy, Mr Garilluc or Ms Manole. It was sufficient to find that it was not Mr Smith. The DTC answered the Priority Freight question, how likely is it that operator will operate in compliance with the operator's licence regime, in the negative. Despite the fairly positive response to the desk-based assessment, the DTC's findings went to the core of the relationship of trust between operators and Traffic Commissioners, which was a fundamental part of the regulatory system. To enable trust to be established, TCs must know who they are regulating. Because Mr Smith was a front for someone else, that trust could not be found. It followed that the operator deserved to be put out of business and an order of revocation for loss of good repute followed. The DTC ordered that Mr Smith be disqualified as a director for two years and made an order under s.28(4) of the 1995 Act. Those orders have not been appealed by Mr Smith.
25. As for Ms Manole, the DTC found:

"I find that whilst she seems to have carried out her transport manager role to an acceptable level in respect of compliance I am bound to conclude that she was party to the situation pertaining to Mr Smith and either colluded with others in what occurred or did nothing to prevent it. In either case this is unacceptable and consequently I order the loss of her repute as a transport manager. Once repute is lost, I am obliged to order a disqualification from acting as a transport manager and so order for an indefinite period".
26. It is of note that in addition to the matters identified by the DTC, it was not until 25th January 2021 (so shortly before the public inquiry) that the company's drivers ceased being treated and paid as self-employed drivers which is a matter that in itself goes to the good repute of the operator and the transport manager (see *T/2019/Bridgestep Ltd and Tom Bridge*).
27. Ms Manole appealed to the Tribunal and was represented by Mr Clarke. In a decision dated 8th September 2021, her appeal was allowed on the grounds that the DTC had provided inadequate reasoning for the decision that she had lost her good repute and inadequate reasoning underpinning the decision that she should be disqualified for an indefinite period, which in any event, appeared to be disproportionate when compared to the period of disqualification imposed upon Mr Smith. The order reads:

“.. the decision .. is remitted to the same Deputy Traffic Commissioner to be considered afresh in the light of this decision ..”

28. The remitted hearing took place on 11th November 2021. Ms Manole was represented by Mr Clarke. At the outset Mr Clarke indicated that he was not calling Ms Manole to give further evidence and submitted that as a result, the DTC was unable to ask her any further questions. Whilst the DTC did not agree with this approach, he nevertheless proceeded upon the basis that Mr Clarke would make representations even though no new evidence had been heard as that is what Mr Clarke said he was entitled to do. We should state at this stage that we consider that the words of the order of the Upper Tribunal *“to be considered afresh”* did entitle the DTC to ask questions and consider further evidence. It may have been helpful to issue a further call up letter but even without such a step being taken, the words of the order clearly entitled the DTC to consider the issues relating to Ms Manole afresh without restriction and that included hearing evidence from her. We find it surprising that Ms Manole would not have been keen to assist the DTC in considering her good repute afresh in the hope that when doing so and as a result of her evidence, he would step back from finding that she had lost her good repute.
29. In his decision dated 17th November 2021, the DTC fairly summarised Mr Clarke’s submissions in the following way:

“.. there was insufficient evidence to find that she (Ms Manole) was a party to the “fronting” by Mr Smith or colluded with others in that regard. There was nothing in the evidence which demonstrated fraud by her and nothing to show that she knew what was going on. Her performance within her statutory role as a transport manager had not fallen below an acceptable level and her repute should be retained”.

The DTC reminded himself that he was entitled to draw reasonable inferences from primary facts, relying on *2016/026 J Campbell trading as Vision Travel and Assicurzioni Generali SpA v Arab Insurance Group (2002) EWCA Civ 1642 (2003) 1 WLR 577* and he found as follows:

- a) The background to his decision was that Ms Manole had unsuccessfully appealed the refusal by the TC to grant her an operator’s licence on the grounds that the TC believed that the application was a “front” for another person and that Ms Manole had attempted to mislead the TC. When the DTC granted the company’s application to nominate Ms Manole as transport manager, the DTC highlighted the *“checks and balances”* in place when the director/operator and transport manager roles were vested in different people in that if one is not fulfilling their duties honestly and effectively, the other is expected to take action. The inference the DTC drew from this background was that Ms Manole should have been in no doubt what “fronting” for someone else was and how seriously it was viewed by TCs. She should also have been on high alert to spot anything that indicated that Mr Smith was a sham director (a finding which is not disputed);
- b) The context of his decision was that all the documentation and evidence showed that there were two people involved in the management of the company between 1st November 2019 and 9th February 2021 – Ms Manole and Mr Smith. The company was not large and did not have tiers of

management. Ms Manole gave evidence that she undertook all of the administration. In her words, “*invoices and everything*”. She gave evidence that she helped Mr Smith in his role as director, met with him every week to discuss compliance and where necessary asked him to meet with drivers as part of the disciplinary process. Ms Manole implied that Mr Smith carried out his duties as if he was a *bona fide* director overseeing compliance in conjunction with her. If this were true it would mean that Mr Smith was able to hide the fact that he was a sham director from Ms Manole for fifteen months. The DTC’s assessment of Mr Smith when he gave evidence was that he had neither the guile nor intellectual ability to do so. He accepted that he was paid a wage each week as a driver and the DTC did not believe that he would have exerted the extra effort to undertake the additional duties of a director as outlined. In assessing whether the evidence of Ms Manole was credible in this regard, the DTC took into account the findings made by the TC in 2017.

- c) The DTC repeated his findings with regard to Mr Smith’s evidence about the purchase of the company; his wages and the payments to Kingdom Workshop which required explanation. Those financial transactions pointed to Mr Smith being a sham director and Ms Manole was the person who, on her own evidence, undertook the administration. There was no one else. In addition, she was employed by Kingdom Workshop for one day a week and was the company secretary between 23rd June to 8th December 2020. She would inevitably have seen the questionable transactions which would have triggered questions and concerns in relation to Mr Smith’s directorship and his role. No evidence was presented to show she did anything in this regard.
30. The DTC concluded that Ms Manole knew that Mr Smith was a sham director and either colluded with others or alternatively, knowing of it, did nothing as a result. Even at the date of the first hearing, Ms Manole gave evidence intended to show that Mr Smith was a *bona fide* director despite all the factors pointing to the contrary. At whatever stage she knew the true picture, she should have resigned as transport manager and distanced herself from the company. The DTC referred to paragraph 52 of the Senior Traffic Commissioner’s Statutory Document 1 and the Upper Tribunal’s case of 2012/071 Silvertree Transport Limited in which it was determined that once a TC is satisfied that there is evidence establishing that fronting has taken place, he or she is entitled to take a serious view of such conduct and that those concerned must understand that such a finding put their good repute in jeopardy. The reason is that fronting involves deception.
31. The DTC took account of the fact that Ms Manole had failed in her own application for a licence on the ground that she was a front for another person and could not be trusted. The DTC had given her a chance to earn that trust by allowing her to be a transport manager and she had breached that trust. The fact that she was the transport manager rather than the director did not limit her culpability or allow her to distance herself from the illegality. Whilst the DTC had stated in his original decision that Ms Manole’s performance in relation to compliance was acceptable, on reflection he believed that he had been generous. In any event, the finding in relation to fronting was so serious that it outweighed any positive findings in relation to general compliance.

32. The DTC concluded that it was a proportionate response to his findings that Ms Manole lost her good repute as a transport manager under paragraph 16(1) of Schedule 3 of the 1995 Act.
33. Turning to disqualification, the DTC was persuaded that the order should be varied to a period of two years starting from the date of his decision. He had taken into account the period that Ms Manole had already served prior to the Upper Tribunal decision but had offset this against the fact that she had attended a previous public inquiry which was not the case for Mr Smith. The overall term was therefore two years nine months.
34. The Appeal By a Notice of Appeal dated 6th December 2021, Ms Manole appealed. There were three grounds of appeal:
1. The DTC's decision to remove Ms Manole's good repute and to disqualify her for a period of two years commencing from the date of the decision is inconsistent with the DTC's earlier decision, since overturned by the Upper Tribunal, that no new evidence had emerged since the making of the original decision. Mr Clarke did not provide the clarification needed for this ground to make sense and it was not pursued at the hearing;
 2. The decision to order the commencement of the period of disqualification to commence on 11 November 2021 is reasonable and irrational (we take that to mean "*unreasonable and irrational*") in that:
 - a. The DTC ought to have ordered the commencement date to be that of the original disqualification;
 - b. By ordering that the period of disqualification commence on 11th November 2021, the DTC effectively imposed a period of two years nine months rather than the two years expressly imposed;
 - c. The effect of the order for disqualification was to penalise Ms Manole in respect of her successful appeal against the earlier order for disqualification;
 3. When considering the disqualification imposed against Mr Smith (two years), the decision in respect of Ms Manole was disproportionate.
35. Prior to the hearing of this appeal, Mr Clarke filed a skeleton argument for which we were grateful although it did contain new grounds of appeal which we set out below. We gave Mr Clarke permission to rely upon them.
36. His first point concerned the inferences drawn from the primary facts found by the DTC concerning the background to the public inquiry. The DTC had identified as primary facts that:
- i. Ms Manole had attempted to mislead the TC in 2017; and
 - ii. That he had highlighted when granting Negru Trans' application to add Ms Manole on its licence as transport manager, the "*checks and balances*" in place when the director/operator and transport manager roles were vested in different people in that if one was not fulfilling

their duties honestly and effectively, the other is expected to take action.

From these primary facts, the DTC had then drawn the inference that Ms Manole should have been in no doubt what “fronting” was and how seriously it was viewed by TCs and that she should have been on high alert to spot anything that indicated that Mr Smith was a sham director (a finding which is undisputed).

37. Mr Clarke submitted that in coming to his determinations, the DTC had failed to conduct any evaluative exercise and that in any event, the test for drawing inferences set out in *Simpson v London* (supra) was not met. Mr Clarke took us to a passage in paragraph 44 of the judgment of Lord Clyde (Lord President of the Court of Sessions):

“ .. It is plain – when the proof of a disputed fact is in question – that, if the evidence is so scanty and so poor as to give rise to nothing better than surmise or conjecture, the fact cannot be held to be proved in law. For on surmise or conjecture, more or less probable in itself, is neither better nor worse than any other, where proof is concerned. On the other hand, the evidence – little and poor though it be – may be sufficiently circumstantial to afford ground on which a reasonable judge or jury may make an inference of fact from the little that is established; and this inference may be enough to prove, or negative, the disputed fact”.

In this instance, there was more than one inference to be drawn from the primary facts that the DTC had found. Mr Clarke did not indicate what alternative inference could be drawn from the DTC findings.

38. As for the DTC’s findings of primary fact concerning context (set out in paragraphs 29 b) and c) above), he had failed to make an assessment of Ms Manole’s ability or otherwise to see through a sham and his finding that Mr Smith had neither the guile nor intellectual ability to deceive Ms Manole was to make an unwarranted assumption concerning the intellectual ability of Ms Manole to detect such a fraud. Mr Clarke’s skeleton argument reminded the Tribunal that Ms Manole was Romanian with English as her second language. Mr Clarke submitted that if it was a sensible proposition that Ms Manole was a “dupe”, then the inferences the DTC drew did not “stand up” (Mr Clarke did not point to any particular aspect of the evidence which might support such a proposition). He further submitted that the DTC concentrated on the background circumstances rather than the position as at the date of the public inquiry. If there was a guiding mind behind Mr Smith, then there was also a guiding mind behind Ms Manole. The DTC went too far in finding that there cannot be a sham company without the complicity of the transport manager.
39. Mr Clarke’s third point went to the proportionality of the order of disqualification of two years nine months. He submitted that it “*smacked of “I am going to start again because you have appealed”..*”. Mr Clarke submitted that Mr Smith had been the greater offender in this fronting operation and if a disqualification order of two years was proportionate for him then it was wrong to find that an order equivalent to two years nine months was not too severe for Ms Manole.

Mr Clarke referred to paragraph 4 of the Tribunal case of T/2005/367 K Jaggard in which HHJ Brodrick stated:

“.. it is obviously unsatisfactory that the Traffic Commissioner did not give reasons for his orders of disqualification and in particular for the distinction made between the partners ...”

Mr Clarke submitted that the above quotation described the position that Ms Manole had found herself in i.e. being treated differently and more harshly by the DTC than the director, Mr Smith, without any explanation as to why her conduct warrants harsher treatment. The orders of disqualification should have been the same for Mr Smith and Ms Manole.

Discussion

40. The regulatory system is based on trust and amongst other matters, TCs need to know who they are dealing with, that they are trustworthy and that they have not been excluded from the regulatory system by reason of adverse findings resulting in orders of revocation and/or disqualification. Fronting is intended to undermine those basic requirements and it strikes at the heart of the regulatory system. The DTC was right to take a serious view of Ms Manole's conduct.
41. Mr Clarke's first point about the DTC's findings with regard to the background to the public inquiry is misconceived. First of all, whilst Mr Clarke referred to the DTC relying on the TC's finding in 2017 that Ms Manole had attempted to mislead her (and having read the TC's judgment we would go further and find that Ms Manole had lied to the TC in a number of material respects) Mr Clarke failed to mention the TC's finding that Ms Manole's application in 2017 was a front for someone else. Whilst not named, it is obvious that the "*someone else*" was Mr Kennedy. This too was referred to by the DTC. It is unarguable that the DTC failed to properly evaluate the evidence he relied upon and then failed to draw proper inferences. His conclusion that Ms Manole should have been in no doubt what fronting meant and how seriously it was viewed and that as transport manager she should have been on high alert with regard to signs of fronting is plainly right.
42. As for the DTC's findings with regard to context, the facts found by the DTC were irresistible. It was not suggested to the DTC that Ms Malone lacked the ability to see through a sham director and if it had been, then that would have given rise to questions about Ms Manole's ability and competence to be a transport manager. The fact that she is a Romanian with English as her second language was again, not a matter that was raised on behalf of Ms Manole and from the contents of her witness statement and the transcript of the first public inquiry, it would appear she has no difficulty in understanding or communicating in English. The primary findings of fact were well made out and the inferences drawn from them are not open to criticism.
43. Turning then to the period of disqualification, Mr Clarke's submission that the DTC did not provide any reasons for the disparity between the order of two years for Mr Smith and in effect, two years and nine months for Ms Manole is incorrect. The DTC's stated reason was that Ms Manole had come before a Tribunal in 2017 which was concerned with fronting and that her own

application on that occasion was found to be a front. Mr Smith had not been before a TC before. We are not satisfied that in the circumstances of Ms Manole's case that two years nine months is disproportionate or that she should have been treated in the same way as Mr Smith. Transport managers are the "eyes and ears" of the TCs and in this case, Ms Manole had not only attempted to obtain a licence in 2017 by lying and by acting as a front for someone else but she had, by being the nominated transport manager for Negru Trans facilitated that fronting operation.

Conclusion

44. There is no merit in this appeal and in all the circumstances we are not satisfied that the DTC's decision was plainly wrong in any respect and neither the facts nor the law applicable in this case should impel the Tribunal to allow this appeal as per the test in Bradley Fold Travel & Peter Wright v Secretary of State for Transport (2010) EWCA Civ.695. The appeal is dismissed.



**Her Honour Judge Beech
Judge of the Upper Tribunal
15th August 2022**