



**KEVIN ROY GRIGGS, trading as KDP Skips and Waste Removal
[2024] UKUT 46 (AAC)**

Appeal No.: UA-2023-000255-T

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

**IN AN APPEAL FROM THE DECISION OF:
NICHOLAS DENTON, DEPUTY TRAFFIC COMMISSIONER FOR THE
EAST OF ENGLAND TRAFFIC AREA
DATED 10th FEBRUARY 2023**

Before:

**Elizabeth Ovey, Judge of the Upper Tribunal
Richard Fry, Specialist Member of the Upper Tribunal
Sarah Booth, Specialist Member of the Upper Tribunal**

**Appellant: KEVIN ROY GRIGGS, trading as KDP Skips and Waste
Removal**

Attendance: The Appellant appeared in person.

Heard at: The Rolls Building, 7 Rolls Building, Fetter Lane, London EC4A
1NL

Date of hearing: 28th September 2023

Date of decision: 8th February 2024

DECISION OF THE UPPER TRIBUNAL

IT IS HEREBY ORDERED that the appeal be DISMISSED.

SUBJECT MATTER: Restricted licence; subsequent convictions; whether fit to hold a licence

CASES REFERRED TO: *Bryan Haulage Limited (No. 2) 217/2002; Priority Freight Limited and Williams 2009/225; Bradley Fold Travel Limited and Peter Wright v. Secretary of State for Transport [2010] EWCA Civ 695, [2011] R.T.R. 13; Redsky Wholesalers Limited T/2013/07, [2013] UKUT 0194 (AAC); Arnold*

Transport & Sons Limited v. Department of Environment Northern Ireland, NT/2013/82, [2014] UKUT 0162 (AAC); Ingram (trading as T.I.P. Skips) T/2018/10, [2018] UKUT 0353 (AAC).

REASONS FOR DECISION

Introduction

1. This is an appeal by Mr. Kevin Roy Griggs, trading as KDP Skips and Waste Removal, against the decision of the Deputy Traffic Commissioner for the East of England Traffic Area (“the TC”) given on 10th February 2023. By his decision the TC revoked Mr. Griggs’s restricted goods vehicle operator’s licence from 00.01 on 13th March 2023 and disqualified him from holding an operator’s licence and from being the director of a company holding or obtaining such a licence for the 12 month period from the revocation until 13th March 2024.

2. Those parts of the TC’s decision were made under the provisions of the Goods Vehicles (Licensing of Operators) Act 1995. The TC also revoked Mr. Griggs’s vocational driving entitlement and disqualified him from driving large goods vehicles for 12 months. The TC’s power to do so, however, was derived from the Road Traffic Act 1988 and under s.119 of that Act any appeal must be made to the magistrates’ court rather than to the Upper Tribunal.

The facts

3. Before the TC made his decision, Mr. Griggs was the holder of a restricted licence with a start date of 2nd August 2018. He was called to a public inquiry by a letter dated 24th October 2022 which identified areas of concern which we summarise as:

3.1. Failure to notify convictions.

3.2. Failure to observe the rules on drivers’ hours and tachographs.

4. The detailed evidence leading to the TC’s concerns was contained in a report dated 26th October 2021 from Police Constable Michael Collins, an officer from the Commercial Vehicle Unit, supplemented by Mr. Griggs’s application, dated 1st July 2018, for his licence. The relevance of the application is that it contains standard form undertakings as to, among other matters, the observance of the rules on drivers’ hours and tachographs, the keeping of proper records and the notification of convictions.

5. In his evidence P.C. Collins explained that on 28th July 2021 he had decided to stop a lorry, which turned out to be Mr. Griggs’s lorry, for a tachograph analysis, roadworthiness inspection and document check. He duly

stopped the lorry. While he was conducting a document check, he found an intelligence report against the vehicle, stating that it, and Mr. Griggs, had been involved in an alleged incident on 21st July 2021. He also identified on the tachograph analysis a number of card swaps involving Mr. Griggs's tachograph card and that of his son.

6. The incident of 21st July 2021 began with a collision between Mr. Griggs's lorry and a Peugeot van at a roundabout on a slip road off the M25. The van had a dashboard camera which recorded much of the episode. Mr. Griggs's lorry was originally in the far lane, lane 4, while the van was in the third lane, lane 3. The road layout changed on the junction and as the van moved ahead of the lorry, the collision took place. This seems to have been the result of the van changing lanes and cutting across in front of Mr. Griggs's lorry. The vehicles continued out of the junction and on to the A12 slip road, at which point Mr. Griggs, who had moved to the near side of the van, undertook it and then drove at an angle directly in front of it, causing the van to halt. Mr. Griggs got out of the lorry, picking up a wooden object which turned out to be a table leg, and approached the van, swinging the table leg. He then returned to the lorry and replaced the table leg, at which point the passengers in the van got out. There were some verbal exchanges and Mr. Griggs went back to his lorry and got the table leg out again. One of the van passengers went to the rear of the van while the other remained in the front, using his mobile. Mr. Griggs came up close to him and shouted at him. The passenger did not react at once, but then turned away and Mr. Griggs struck him on the back with the table leg. The passenger gave him a business card for insurance purposes. Mr. Griggs returned to his lorry and drove off, in what appeared to be a careless and aggressive manner.

7. Sufficient information as to this incident was available on 28th July 2021 to P.C. Collins and two fellow officers who had come to assist to cause them to decide to arrest Mr. Griggs on suspicion of causing actual bodily harm.

8. The officers then searched the lorry and found two wooden objects, one of which proved to be the table leg in question, and a document bag which contained, among other cards, a tachograph card in the name of Thomas Griggs, Mr. Griggs's son. Mr. Griggs was informed of the concern about the level of card swapping involving that card which the tachograph analysis had revealed and stated that he was teaching his son to drive. In view of the number of card swaps which had taken place (P.C. Collins' report gives details of 13 instances between 30th June and 26th July 2021), he was then additionally arrested for fraud.

9. In the event the charging threshold was not met for any prosecution relating to the use of tachograph cards. Mr. Griggs attended a voluntary interview with P.C. Collins on 18th August 2021 to which he brought requested information including tachograph data. His paperwork was found to be satisfactory and he showed a good understanding relating to tachograph knowledge, regulations and the rationale of why the regulations are in place. When asked why he did not use Slot 2 of the vehicle tachograph unit, however,

he said he did not know that he had to. We note that Mr. Griggs produced a targeted operator assessment report dated 18th September 2020 in which the examiner recorded that Mr. Griggs was hoping that his son would join him in the business. His son had in fact held a provisional licence since 2012.

10. As respects the incident on 21st July 2021, Mr. Griggs was charged with offences of assault by beating, possession of an offensive weapon in a public place, use of threatening, abusive or insulting words or behaviour with intent to cause fear of or to provoke unlawful violence and driving without due care and attention. He pleaded guilty and was sentenced by the Crown Court to one month's imprisonment suspended for 12 months for, we understand, possession of the table leg, which was forfeited. For the assault he was sentenced to a further six months' imprisonment suspended for 12 months, completion of 100 hours unpaid work and a financial penalty.¹ P.C. Collins states in his report that in addition Mr. Griggs was awarded four penalty points on his licence. This was disputed by Mr. Griggs, who wrote to the TC on 14th November 2022 with a copy of his licence summary dated 24th October 2022 which shows three points only. He explained that they related to an award of penalty points in May 2020 and admitted that he had not informed the TC of that fact, but explained that his wife, who did much of the paperwork, had been undergoing chemotherapy and radiotherapy at the time. Apart from the dispute as to the four penalty points, Mr. Griggs does not dispute the sentence imposed by the Crown Court and does not suggest that he notified the TC of the convictions. We note that the TC in his decision states that the four penalty points were for the motoring offence.

11. For completeness, we record that the letter calling Mr. Griggs to the public inquiry also raised the possibility that Mr. Griggs might no longer have sufficient financial resources to meet the statutory requirements. Evidence of financial standing sufficient for the operation of one vehicle was provided in advance of the inquiry. Mr. Griggs was then operating one vehicle only.

12. It should also be noted that, very sadly, Mr. Thomas Griggs was killed in a motor bike accident on 4th August 2022. As was noted at the inquiry, he was therefore unable to shed any light on the use of his tachograph card.

The first hearing before the TC

13. The inquiry opened on 2nd December 2022 and Mr. Griggs was represented by Mr. Marsh of Ward International Consulting Ltd. In addition to the financial evidence, there was a considerable body of evidence relating to vehicle maintenance, defect reporting, work done and the forward planning system. There was also evidence of a limited number of infringements of the driving hours regulations.

¹ It appears from the TC's decision that he also received a sentence of one month's imprisonment, suspended for 12 months, for using threatening behaviour.

14. At the hearing on 2nd December 2022 Mr. Griggs gave evidence which, so far as relevant, we summarise as follows:
- 14.1. He did not realise he was required to notify the convictions to the TC.
 - 14.2. He kept Thomas's card in the document bag together with other relevant cards.
 - 14.3. Thomas would accompany him on journeys and when he got close to his 4½ hours driving limit Thomas would take over and Mr. Griggs would supervise him from the passenger seat.
 - 14.4. The changeover of drivers and the fitting of L plates could be done swiftly. The L plates were tucked behind the seat and he pointed them out to P.C. Collins.
 - 14.5. He and Thomas did not use Slot 2 because he did not realise it ought to be used to record a break for the non-driver.
 - 14.6. Although Thomas obtained a provisional licence in 2012, he did other things for a time and then when Mr. Griggs started the skip hire firm he was subject to a driving ban which continued until February 2019. Thereafter it took time to get back the HGV provisional licence although he had his ordinary driver's licence back.
 - 14.7. Thomas would join his father for the last job of the day or when Mr. Griggs was finishing up and they were going back to the yard.
 - 14.8. On 21st July 2021 it was the van which collided with his lorry. While the two vehicles were going round the roundabout, the occupants of the van were making hand signs at Mr. Griggs and when the vehicles stopped they initially had objects in their hands.
 - 14.9. Mr. Griggs and his wife downloaded tachograph data but did not look at the data and analyse it at suitable intervals. and so did not take steps to reduce infringements.
15. Mr. Marsh on behalf of Mr. Griggs submitted that apart from the issue of the use of the tachograph cards and the convictions there was nothing sufficiently untoward in his operations to call him to the attention of the TC. The TC agreed with that submission.
16. Mr. Marsh further submitted that Mr. Griggs had made arrangements to cope with the contingency of having his operator's licence suspended and if the period was not in excess of two weeks there would not be a dramatic effect on the business except financially. If the licence was revoked, his business would be finished. He asked the TC to take into

account the fact that Mr. Griggs had had a terrible time over the previous two years and had done something out of character which he regretted.

17. The hearing then concluded and the TC took time to consider his decision. By an email sent on behalf of the TC on 7th December 2022 to Mr. Griggs and copied to Mr. Marsh the following questions were raised:
 - “i) The police have informed the Commissioner that there were no L-plates in the vehicle when they searched it on 28th July 2021. This contradicts Mr. Griggs’s statement at the inquiry that he always kept L-plates in the vehicle for use when Thomas Griggs was driving. Do you wish to comment?
 - ii) Do you know whether Thomas Griggs ever applied to take the theory or practical HGV tests? If he did, is there any evidence which you can provide?”
18. These questions were addressed by Mr. Griggs in a statement dated 9th December 2022. In answer to the first question, he said that the L-plates were indeed in the vehicle and that he had pointed them out to P.C. Collins by pointing to where they were, behind the passenger seat, while P.C. Collins was engaged in the tachograph analysis. No allegation had been made at that point that Mr. Griggs himself had been using Thomas’s card. He could not say why P.C. Collins said there were no L-plates in the vehicle. In answer to the second question he said that to the best of his knowledge Thomas had not made an application to take either of the tests, although he was aware that Thomas had previously made inquiries and had been informed that HGV tests had been suspended because of Covid.
19. There was also a further witness statement from P.C. Collins (by now Sergeant Collins) dated 29th December 2022 and video evidence from his body camera was produced. There was sound with the video evidence and a transcript of the sound recording was also provided. In the statement Sergeant Collins said that the vehicle was not displaying L-plates when it was stopped and no L-plates were found when it was searched. He also expressed the view, in response to what appears to have been a question from the TC, that it would not be possible to switch drivers, attach L-plates, insert a second driver’s tachograph card and complete the introductory procedure (including a thorough walk-round check) within 60 seconds, as appeared to have been done on a number of occasions according to the records.

The second hearing before the TC

20. The hearing was reconvened on 3rd February 2023 because in the intervening period the TC had had the opportunity to consider the video evidence of the incident on 21st July 2021 from the van’s dashboard

camera and the video evidence of Mr. Griggs's dealings with the police on 28th July 2021 from Sergeant Collins' body camera. Certain points arose which the TC wished to put to Mr. Griggs. Some of those points were relevant to his vocational entitlement rather than to his operator's licence and we shall not deal with those points. The points relevant to his operator's licence were the following.

21. First, the TC asked why Mr. Griggs went back to his lorry and picked up the table leg the second time. Mr. Griggs explained that when the passengers in the van got out, they were using threats.
22. Secondly, the TC played the relevant part of the video evidence from 28th July 2021 and pointed out that it did not show Mr. Griggs pointing the L-plates out to Sergeant Collins during the tachograph analysis. Mr. Griggs accepted that. Equally, the video evidence showed that the police did not search behind the passenger seat.
23. Thirdly, the TC asked Mr. Griggs to clarify how he used the table leg to wipe the windscreen. Mr. Griggs explained that he used to put a squeegee on the end and use it to wipe the windows and mirrors. It appears from the transcript that Sergeant Collins looked further at the transcript and agreed he could see the squeegee and that the table leg could have been used to make an improvised cleaning device.
24. As a separate matter the TC returned to the question of using Slot 2. Mr. Griggs said it was his stupidity not putting his card into Slot 2 and perhaps not reading up on tachograph rules. The transcript is not very clear on this point, but Mr. Griggs is recorded as saying that he now knows that if there are two of you in the cab you put two cards in.
25. The TC also explained that when asking the police about the feasibility of making the change of drivers within 60 seconds he had not had making walk-round checks in mind but simply the feasibility of the first driver going through the steps to remove his tachograph card and getting out of his seat and then the second driver getting in, putting his card in and going through the steps necessary to be ready to go. Sergeant Collins then gave evidence that it would be very tight but it could be possible. He was cross-examined by Mr. Marsh and agreed that the records showed that on various occasions the vehicle was stationary for several minutes longer than the period which elapsed between the removal of one card and the insertion of another. Mr. Griggs explained that the majority of the takeovers occurred in the yard, when he would probably ring Thomas and say he was on his way back. He would arrive, take out his card and put in Thomas's card, but then they would have a cup of tea or something. On other occasions it would be a quick changeover at the side of the road.
26. The hearing then concluded with further submissions from Mr. Marsh to the effect that in all the circumstances Mr. Griggs's operator's licence

should not be revoked, since that would destroy his business. If the TC did consider action, the appropriate course would be suspension of the licence for a period which did not have to be significant.

The TC's decision

27. The TC's decision was made on 10th February 2023. Having summarised the facts and the submissions made on behalf of Mr. Griggs, the TC first reminded himself that "fitness" (i.e., satisfaction of the requirement set out in s.13B of the Goods Vehicles (Licensing of Operators) Act 1995) was held in *Redsky Wholesalers Limited* T/2013/07, [2013] UKUT 0194 (AAC), not to be a significantly lower hurdle than the requirement of good repute which applies to standard licence holders under s.13A of the Act. He also noted that Mr. Griggs had been convicted of several offences, one of which was a "serious" offence within the meaning of Sch. 3 to the Act because a prison sentence exceeding three months had been passed. Good repute for the purposes of s.13A is to be determined in accordance with Sch. 3.
28. The TC then turned to consider whether Mr. Griggs had been using Thomas's tachograph card. He expressed himself concerned by the following matters:
 - 28.1. The tachograph analysis identified 13 occasions in a four week period on which Mr. Griggs removed his card after having driven for a length of time approaching 4.5 hours and Thomas's card was put in shortly thereafter. On the one day on which there was evidence of who was in the cab, 21st July 2021, Mr. Griggs was alone.
 - 28.2. The TC was not satisfied with the explanation for carrying Thomas's card in the vehicle. It seemed odd to keep two drivers' cards mixed up in that way.
 - 28.3. Mr. Griggs appeared not to be aware of the need to insert his card into Slot 2. Even assuming that his account was correct, supervising driving by a learner should be recorded as "other work" and so Mr. Griggs should not have carried on without a break.
 - 28.4. The TC accepted that Mr. Griggs did not appear to drive or work for very long hours, but it was not correct to say there could be no reason for using someone else's card. It would enable him to finish work earlier.
 - 28.5. The TC did not find Mr. Griggs a very reliable witness. He referred in particular to Mr. Griggs's evidence in his statement that he had pointed out the L-plates to Sergeant Collins and

showed him where they were and to his evidence at the inquiry that he had brought the van to a stop in a hatched area, although the video evidence showed that that was not the case. The TC also referred to Mr. Griggs's evidence in his statement that the L-plates were behind the passenger seat whereas at the reconvened inquiry he said they were behind the driver's seat. We pause here to comment that the transcript is not entirely clear in places, but we have not found a point at which Mr. Griggs said the L-plates were behind the driver's seat, whereas he clearly said at 00.30.00 on the transcript that they were behind the passenger seat.

29. Having regard to those matters, the TC concluded that on the balance of probabilities it was more likely than not that Mr. Griggs did make use of Thomas's card, because for his account to be true, "too many unlikely turns of events and too many coincidences have to be accepted". He nevertheless stopped short of making a formal finding to that effect on the ground that because the consequences would be exceptionally serious, a heavier degree of probability was required for such a finding.
30. The TC then dealt with Mr. Griggs's conduct as a driver, a matter with which, as we have said, we are not concerned.
31. The TC went on to make the following findings relevant to the operator's licence:
 - 31.1. Mr. Griggs had failed to fulfil his undertaking to notify convictions to the traffic commissioner within 28 days (a ground for revocation under s.26(1)(f) of the 1995 Act).
 - 31.2. Mr. Griggs had failed to fulfil his undertaking to ensure that vehicles are driven in a lawful manner, having been convicted of driving without due care and attention.
 - 31.3. Mr. Griggs had failed to fulfil his undertaking to ensure that the rules relating to drivers' hours and tachographs are observed. Even if he did not drive using Thomas's card he failed to insert his own card in Slot 2 and failed to take the required breaks on 13 occasions.
 - 31.4. Mr. Griggs had been convicted of a serious criminal offence (assault) and several related offences, for which he received three suspended prison sentences and a 100 hour community service order.
 - 31.5. Because of the convictions there had been a material change to the licence (a ground for revocation under s.26(1)(h) of the 1995 Act).

32. The TC then conducted a balancing act. On the positive side, he placed the facts that there were no serious compliance issues on the maintenance side and that Mr. Griggs had not committed offences of violence before or since the 21st July 2021 incident. On the negative side was the fact that that incident “was of an exceptionally serious and shocking nature”, involving the use of his skip lorry “to force another vehicle to stop in a wholly inappropriate location causing danger to other road users”. The TC also referred to “the abuse and violence dealt out by Mr. Griggs” to which other road users should not be subjected “no matter what the excuse”, expressing in parenthesis the view that Mr. Griggs was at least as much to blame for the clash of wing mirrors as the van driver. The negative was very weighty and heavily outweighed the positive factors, leading to the “inescapable conclusion” that Mr. Griggs was not fit to hold an operator’s licence.
33. The final paragraph of the TC’s reasoning before he gave his decision reads as follows:
- “24. Having seen the way in which Mr. Griggs used the threat of violence as a first resort, I cannot be confident that if the circumstances were repeated he would not act in a similar way. I therefore answer the *Priority Freight* question in the negative. Mr. Marsh was most eloquent on behalf of his client, but I nevertheless answer the *Bryan Haulage* question in the positive: the incident of 21 July 2021 was so serious as to merit the operator being put out of business. There is no place on Britain’s roads for a goods vehicle operator behaving like Mr. Griggs did that day.”
34. The operator’s licence was revoked under s.26(1)(f) and (h) of the 1995 Act. The revocation took effect from 13th March 2023 to give Mr. Griggs time to recover any skips which needed to be brought back.
35. The TC went on to state that in deciding whether to disqualify Mr. Griggs from holding or obtaining an operator’s licence and from being the director of any company holding or obtaining such a licence, he had had regard to paragraph 105 of the Senior Traffic Commissioner’s Statutory Guidance Document No. 10. He concluded that disqualification was appropriate because of the exceptionally serious nature of Mr. Griggs’s conduct. It would make little sense to revoke the licence and then immediately entertain a fresh application from him. The TC set the end point of the disqualification order at 13th March 2024, the date on which the offence of assault by beating would become spent.

The appeal

36. Mr. Griggs appealed against the TC’s decision by a notice of appeal dated 7th March 2023 and also applied for a stay of the decision.

37. The grounds of appeal were as follows:
- 37.1. There were additional positive features which the TC neglected to consider, namely:
 - 37.1.1. Mr. Griggs had held an operator's licence since 2018 and no previous enforcement action had been taken.
 - 37.1.2. The 2020 DVSA records examination was found to be satisfactory.
 - 37.1.3. The MOT test history is excellent, with no test failures.
 - 37.1.4. He had fully accepted his wrongdoing and fully co-operated with the police.
 - 37.1.5. Other than the issues surrounding the swapping of cards, there were no other compliance issues found by the police when his records were examined.
 - 37.2. The TC was wrong to answer the *Priority Freight* question in the negative. He had based his answer solely on the conclusion that he could not be confident that Mr. Griggs would not react in the same way as he did on 21st July 2021 if he found himself in similar circumstances and there was no justification for reaching that conclusion, particularly in the light of his finding that there had been no similar incident before or since and the mitigating circumstances he was aware of. He was also wrong to answer the *Bryan Haulage* question in the positive, given all the circumstances.
 - 37.3. The TC did not give Mr. Griggs or his representative an opportunity to make representations in relation to disqualification.
 - 37.4. It was not necessary or proportionate to revoke the operator's licence and disqualify Mr. Griggs when the TC had already revoked his vocational driving licence. Mr. Griggs had already been stopped from driving heavy goods vehicles on the road and revocation of his operator's licence took away all his means of earning a living.
38. The TC considered Mr. Griggs's application for a stay and refused it in a decision communicated by a letter from the Office of the Traffic Commissioner dated 13th March 2023. The grounds for refusal were essentially:
- 38.1. Mr. Griggs committed a very serious act of violence during a road rage incident and as a result received three prison sentences.

The convictions are not compatible with remaining fit to hold an operator's licence.

- 38.2. In summary, he did not think there was merit in the grounds of appeal.
- 38.3. He considered that Mr. Griggs posed a danger to other road users, "notwithstanding his protestations to the contrary".
39. Mr. Griggs renewed his application for a stay to the Upper Tribunal, but the application was refused by Judge Citron in a decision dated 22nd March 2023. His reasons were similar to those of the TC, namely, that the grounds of appeal were weak and that the TC had identified a threat to road safety in the form of a risk that Mr. Griggs might repeat the conduct he displayed on 21st July 2021.
40. Mr. Griggs represented himself at the hearing before us. He was understandably not able to add a great deal to the grounds of appeal set out in the notice of appeal, but he stressed that the incident of 21st July 2021 had been an isolated incident for which he had accepted responsibility and that he had done all that was required of him as a result. He drew attention to the lapse of time between the incident and the proceedings before the TC and said he had thought it was all over and done with. He also told us that the TC's decision had cost him his firm because he had lost his vocational driving entitlement.

The applicable law

41. The provisions of the Goods Vehicles (Licensing of Operators) Act 1995 which are relevant to this appeal are as follows:

"8.(4) A person applying for an operator's licence shall ... give to the traffic commissioner any further information which the commissioner may reasonably require for the discharge of his duties in relation to the application, and in particular shall, if required by the commissioner to do so, give to him any of the information specified in paragraph 1 of Schedule 2.

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

- (a) whether the requirements of sections 13A and 13C are satisfied; ...

(2) On an application for a restricted licence a traffic commissioner must consider –

- (a) whether the requirements of sections 13B and 13C are satisfied ...

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

...

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

13B. The requirement of this section is that the applicant is not unfit to hold an operator's licence by reason of –

- (a) any activities or convictions of which particulars may be required by virtue of paragraph 1(e) or (f) of Schedule 2;
- (b) any conviction required to be notified in accordance with section 9(1) (convictions etc. required to be notified subsequent to the making of an application).

26.(1) Subject to the following provisions of this section ... a traffic commissioner may direct that an operator's licence be revoked, suspended or curtailed ... on any of the following grounds -

...

- (f) that any undertaking recorded in the licence has not been fulfilled;

...

- (h) that since the licence was issued or varied there has been a material change in any of the circumstances of the licence-holder that were relevant to the issue or variation of the licence ...

27.(1) A traffic commissioner shall direct that a standard licence be revoked if at any time it appears to him that –

- (a) the licence-holder no longer satisfies one or more of the requirements of section 13A; ...

28.(1) Where, under section 26(1) or 27(1), a traffic commissioner directs that an operator's licence be revoked, the commissioner

may order the person who was the holder of the licence to be disqualified (either indefinitely or for such period as the commissioner thinks fit) from holding or obtaining an operator's licence ...

(4) Where a traffic commissioner makes an order under subsection (1) in respect of any person, the commissioner may direct that if that person, at any time or during such period as the commissioner may specify –

- (a) is a director of, or holds a controlling interest in –
 - (i) a company which holds a licence of the kind to which the order in question applies, or
 - (ii) a company of which such a company is a subsidiary, or
- (b) operates any goods vehicle in partnership with a person who holds such a licence,

that licence of that company or, as the case may be, of that person, shall be liable to revocation, suspension or curtailment under section 26.

Schedule 2, paragraph 1. The information referred to in section 8(4) is the following –

...

- (e) particulars of any relevant activities carried on, at any time before the making of the application, by any relevant person;
- (f) particulars of any notifiable convictions which have occurred during the five years preceding the making of the application

2. In this Schedule “relevant person” means ... the applicant ...

3. In paragraph 1(e) “relevant activities” means any of the following:

- (a) activities in carrying on any trade or business in the course of which vehicles of any description are operated;

...

[Notifiable convictions are convictions of offences set out in paragraph 5 of Schedule 2. Those offences are essentially offences arising under the goods vehicle regulation system and do not include the offences of which Mr. Griggs was convicted.]

Schedule 3, paragraph 1.(1) In determining whether an individual is of good repute, a traffic commissioner may have regard to any matter but shall, in particular, have regard to –

(a) any relevant convictions of the individual ...

(3) For the purposes of this paragraph, the relevant convictions of any person are –

...

(b) any conviction of that person of a serious offence within the meaning given in paragraph 3; ...

3.(1) A person is convicted of a “serious offence” if –

(a) he has been convicted of any offence under the law of any part of the United Kingdom ..., and

(b) on such conviction there was imposed on him for that offence a punishment falling within sub-paragraph (2).

(2) The punishments are –

(a) a sentence of imprisonment for a term exceeding three months ...”

42. It will be observed that there are some significant differences between restricted licences and standard licences. In particular, “fitness” under s.13B is to be judged by reference to the matters there set out, while in judging “good repute” under s.13A the commissioner may have regard to any matter, although specific matters are then identified. Further, a restricted licence is liable to revocation under s.26 only, which gives a power to revoke but does not oblige the commissioner to exercise the power, whereas a standard licence is also liable to revocation under s.27, which provides for mandatory revocation where, among other matters, the requirements of s.13A are not satisfied. We return to this when discussing the *Redsky* case referred to by the TC in paragraph 46 below.

43. Rights of appeal against a decision under s.26(1) and s.28(1) are given by s.37(1) and (4) respectively of the 1995 Act. The powers of the Upper

Tribunal on an appeal are set out in paragraph 17 of Schedule 4 to the Transport Act 1985, which reads as follows, so far as material:

“17.(1) The First-tier Tribunal and the Upper Tribunal are to have full jurisdiction to hear and determine all matters (whether of law or of fact) for the purpose of the exercise of any of their functions under an enactment relating to transport. In the case of the Upper Tribunal, this is subject to sub-paragraph (3).

(2) On an appeal from any determination of a traffic commissioner ..., the Upper Tribunal is to have power –

- (a) to make such order as it thinks fit; or
- (b) to remit the matter to –
 - (i) the traffic commissioner who made the decision against which the appeal is brought; or
 - (ii) as the case may be, such other traffic commissioner as may be required by the senior traffic commissioner to deal with the appeal,

for rehearing and determination by the commissioner in any case where the tribunal considers it appropriate;

and any such order is binding on the commissioner.

(3) The Upper Tribunal may not on any such appeal take into consideration any circumstances which did not exist at the time of the determination which is the subject of the appeal.”

44. It is well established that the task of the Upper Tribunal when considering an appeal from a decision of a traffic commissioner is to review the material before the traffic commissioner, and the Upper Tribunal will only allow an appeal if the appellant has shown that “the process of reasoning and the application of the relevant law require the tribunal to take a different view”, as explained in *Bradley Fold Travel Limited and Peter Wright v. Secretary of State for Transport* [2010] EWCA Civ 695, [2011] R.T.R. 13, at paragraphs 30-40. This is sometimes summarised as requiring the Upper Tribunal to conclude that the traffic commissioner was plainly wrong.
45. It is also well established that when considering mandatory revocation of a standard operator’s licence the questions a traffic commissioner will need to consider will include how likely the operator is to operate in

compliance with the licensing regime in future and whether the conduct which has taken place is such that the operator should be put out of business. The first of those questions was identified in *Priority Freight Limited and Williams* 2009/225 and is commonly referred to as “the *Priority Freight* question” and the second was identified in *Bryan Haulage Limited (No. 2)* 217/2002 and is commonly referred to as “the *Bryan Haulage* question”. It is clear from the decision in *Bryan Haulage* that the question was framed in the light of the need for a relationship of proportionality between the conduct found to have occurred and the sanction necessarily to be imposed. If a positive answer is to be given to the question, it is because revocation is a proportionate response to the relevant conduct. The *Priority Freight* question is regarded as a preliminary question, to be asked before the *Bryan Haulage* question is asked, because, as explained in *Priority Freight*, if the evidence demonstrates that the operator is very likely to be compliant in future, that may indicate that the case is not one in which the operator should be put out of business.

46. Both the *Bryan Haulage* and the *Priority Freight* questions were framed in the context of revocation of a standard licence, in relation to which one of the conditions to be satisfied on application is that the applicant is of good repute: see s.13A(2)(b) of the Goods Vehicles (Licensing of Operators) Act, set out above. Sch. 3 makes provision for how it is to be determined whether an applicant is of good repute. Sch. 3 does not apply to applicants for a restricted licence, who have to satisfy the different “fitness” requirement set out in s.13B. It was decided, however, in *Redsky Wholesalers Ltd.* that the *Bryan Haulage* and *Priority Freight* questions might appropriately be asked. The Tribunal put the position as follows:

“18. We disagree that, in this case, the “Priority Freight” and “Bryan Haulage” questions were inappropriate. In our view, they were helpful. Although the “Priority Freight” and “Bryan Haulage” cases relate to repute, the fundamental analysis arises from the fact that an operator’s licence (whether restricted or standard) is a possession and, as a matter of compliance with [the European Convention on Human Rights], a proportionate approach is required, and consideration of the likelihood of future compliance should inform the approach taken.

19. Although, in the absence of argument on the point, we draw back from holding that the “Priority Freight” approach is a requirement when considering the question of fitness to hold a restricted operator’s licence, we consider that the [Deputy Traffic Commissioner’s] approach was not inappropriate in the circumstances of this case. In particular, the “Priority Freight” question concerning future compliance (or otherwise) is very likely to be relevant to fitness in most cases. We do not think that fitness is a significantly lower hurdle than the requirement to be

of good repute, it is simply a different requirement. An operator putting badly maintained vehicles on the road represents an equal menace to public safety, whether or not they hold a restricted licence or a standard licence. If an operator (even a restricted licence holder) cannot be trusted to comply in future, we do not see how any such operator can hope to be regarded as fit to hold an operator's licence.

20. So far as the "Bryan Haulage" question is concerned, many holders of a restricted licence will not go out of business if their operator's licence is revoked ... In our view, having asked the "Priority Freight" question relating to future compliance, a Traffic Commissioner cannot be criticised for asking himself, in the context of assessing fitness, whether an operator's conduct is such that they deserve to lose their restricted operator's licence, whatever the consequences."

47. We think some care has to be exercised in the application of *Redsky*. The effect of s.27 of the 1995 Act combined with s.13A is to give rise to a continuing obligation on the holders of a standard licence to ensure that the s.13A requirements are met, as explained in *Arnold Transport & Sons Limited v. Department of Environment Northern Ireland*, NT/2013/82, [2014] UKUT 0162 (AAC), in which the equivalent provisions of the Goods Vehicles (Licensing of Operators) Act 2010 (Northern Ireland) were considered. There is nothing comparable in relation to restricted licences and s.13B and Schedule 2 are framed with reference to information relating to activities or convictions prior to the application for a licence or convictions subsequent to the application for a licence but before a decision on the application is made. It is not easy to see how fitness expressed in those terms can be a continuing requirement in the same way as the s.13A requirements. To that extent it is difficult to equate the requirements of fitness and good repute. In *Redsky* itself the traffic commissioner had found several grounds of revocation under s.26 were established and the Upper Tribunal rejected a ground of appeal asserting that the decision did not specify which subsections of s.26 were relied on, stating that if necessary reference to the call-up letter would lead to identification of the specific statutory provisions. It is clear from paragraph 2 of the Upper Tribunal's decision that fitness was considered in the context of a material change in circumstances under s.16(1)(h). Given that context, we think that the references to an assessment of fitness must be taken as requiring an assessment of whether the fitness test would be satisfied if it were applied again at the date of the public inquiry or whether, since the original application was granted, there had been material changes in the circumstances that originally led to the conclusion that the requirement was satisfied. The assessment would still have to be carried out by reference to information and convictions specified in paragraphs 1(e) and (f) of Schedule 2, but to information and convictions at the date of

the assessment rather than at the date of the application or before the application was decided.

48. In drawing this distinction, we certainly do not intend to depart from the statement in *Redsky* that fitness is not a significantly lower hurdle than repute. The information relevant to the fitness requirement is wide-ranging, covering as it does information about activities in carrying on any trade or business in the course of which vehicles of any description are operated and convictions in respect of a large number of offences relating to road traffic and transport matters. We note the case of *Ingram (trading as T.I.P. Skips)* T/2018/10, [2018] UKUT 0353 (AAC), in which the Upper Tribunal pointed out that the 1995 Act does not draw a watertight distinction between good repute and fitness considerations, since fitness is an integral part of good repute. It was also pointed out that the purpose of s.13B is to limit the matters which may be relied on in determining whether an applicant is unfit, but the wording of paragraph 1(e) of Schedule 2 does not require that information about the relevant activities has in fact been required. Further, we share the view of the Upper Tribunal in *Redsky* that the *Priority Freight* and *Bryan Haulage* questions are likely to be helpful to traffic commissioners in making a discretionary decision under s.26 whether a licence ought to be revoked.
49. The relevant law relating to drivers' hours is to be found in Regulation (EC) No.561/2006, which forms part of EU retained law following the United Kingdom's withdrawal from the European Union, but subject to amendments made by the Drivers' Hours and Tachographs (Amendment etc.) (EU Exit) Regulations 2019, S.I. 2019 No.453. Art. 6(5) requires a driver to record as "other work" any time spent as described in art. 4(e), which defines "other work" as all activities which are defined as working time in reg. 2 of the Road Transport (Working Time) Regulations 2005, S.I 2005 No. 639, except driving. The definition is very wide and would include supervising a learner driver. Art.4(d) also defines "break", which means any period during which a driver may not carry out any driving or other work. Art. 7 requires the driver to take a break of at least 45 minutes after a driving period of four and a half hours (or alternatively 15 minutes during the period followed by 30 minutes afterwards). It follows that, as the TC said, it is a breach of the drivers' hours requirements for a person to cease driving and then almost immediately to start supervising a learner, if the total time taken exceeds 4½ hours.

Discussion

50. We remind ourselves that the TC revoked Mr. Griggs's operator's licence on the grounds set out in s.26(1)(f) and (h). The first question for us is whether there was a plain error in the TC's findings that those grounds were established and the power to revoke arose.

51. S.26(1)(f) relates to failure to comply with undertakings. We have set out in paragraph 31 above the undertakings which the TC found were broken. All those undertakings were set out immediately above Mr. Griggs's signature on the application for the licence as well as being recorded on the licence itself. The TC was clearly well justified in finding that the undertakings were broken. Even if Mr. Griggs was unaware of the requirements relating to Slot 2, he ought as a responsible operator to have been aware of the relevant drivers' hours and tachograph requirements. In particular, he ought to have appreciated that supervising a learner driver was "other work" and could not be equated with taking a break.
52. S.26(1)(h) relates to a material change in the circumstances of the licence-holder. The material change which the TC identified was the fact that Mr. Griggs had been convicted of a number of offences. Although those offences were not relevant convictions within the meaning of paragraph 5 of Schedule 2 and so would not have had to be declared on an application form, they were all committed while Mr. Griggs was in the course of carrying on his business and were the product of an incident directly related to that business. Further, the conviction for assault was a conviction of an offence which fell within the definition of "serious offence" in paragraph 5 of Schedule 3. In our view, particulars of offences committed in the course of carrying on a business consisting of or including relevant activities could properly be required and Mr. Griggs's convictions constituted a material change in his circumstances for the purposes of s.26(1)(h). It would be surprising in the extreme if a traffic commissioner in assessing fitness for the purposes of s.13B were unable to take into account convictions for offences committed in the course of relevant activities which would be relevant to the fitness aspect of the good repute requirement.
53. It follows that in our view the TC was not plainly wrong in making those findings. Indeed, we conclude that he was plainly right. Realistically, the grounds of appeal do not include a challenge to those findings. Rather, they are in effect a challenge to the TC's exercise of his discretion to revoke.
54. We deal with the grounds of appeal as follows.

Failure to consider other positive features

55. In our view, the points made as to the absence of any previous enforcement action and the 2020 records examination go slightly further than the absence of compliance issues on the maintenance side, but not a great deal further. The MOT history, in contrast, is a particular example of the absence of such issues. We also accept that there is some positive element in Mr. Griggs's acceptance of his wrongdoing and his co-operation with the police, although it is of limited value by comparison with the negative weight which a lack of co-operation would

have had. We do not agree, however, that any slight addition to the positive side of the balance ought to have outweighed the substantial negative side.

The Priority Freight and Bryan Haulage questions

56. We agree that the TC's reason for giving a negative answer to the *Priority Freight* question was that he could not be confident that Mr. Griggs would not act in a similar way in similar circumstances. Mr. Griggs argues, in effect, that the TC had no reason to believe that he would not comply with the regulatory system generally and that he was not justified in forming the view he did of the risk that Mr. Griggs would act in a similar way in the light of his finding that there had been no similar incident before or afterwards and that there were mitigating circumstances.
57. In our view, this case is an example of one in which the *Priority Freight* question is not particularly helpful. We agree with Mr. Griggs in so far as he contends that there was no reason to conclude that he would not continue to comply with the regulatory requirements in relation to maintenance, record keeping and, once he had become aware of the relevant drivers' hours and tachograph requirements, those matters, if he worked with another driver in future. We think that to the extent that there were mitigating circumstances, they would have been taken into account by the criminal court when passing sentence. We have sympathy for Mr. Griggs over his wife's illness at the time, but difficult personal circumstances cannot justify exposing other road users to the risk of assault, threatening behaviour and unacceptable standards of driving. The difficulty with the *Priority Freight* question is that it is primarily designed to deal with an operator's general disposition or otherwise to comply with the requirements of the regulatory system rather than with the risk of isolated outbursts of road rage at unknown intervals when under pressure.
58. Having made that comment, however, we conclude that it is clear that what the TC was considering was whether there was an unacceptable risk that Mr. Griggs would repeat his conduct in similar stressful circumstances. The TC saw Mr. Griggs giving evidence on two occasions and had the opportunity to see the video evidence. He expressly noted that Mr. Griggs's "first resort" had been to violence and that, having once put the table leg away, he had returned to his lorry and taken it out again. In his reasons for refusing to grant a stay he explained that his confidence in future compliance was diminished by Mr. Griggs's inaccurate evidence at the inquiry. The TC was well entitled to form the assessment he did of the risk presented by Mr. Griggs.
59. The TC then addressed the *Bryan Haulage* question and answered it in the positive, stating that the incident was so serious as to merit Mr.

Griggs being put out of business. In the light of the findings the TC has made and his assessment of risk, his conclusion was understandable and reasonable.

Representations in respect of disqualification

60. Having read the transcript, we agree that Mr. Marsh did not in fact make any representations on disqualification to the TC. We do not, however, agree that he had no opportunity to do so. We have seen nothing to suggest that Mr. Marsh was cut short in any representations he wished to make. He made perfectly clear that the effect of revocation would itself be to destroy Mr. Griggs's business and the grounds of appeal do not suggest any further effect which would be produced by disqualification and which might affect whether or not the TC was right to disqualify Mr. Griggs.
61. In his decision the TC explained that in considering disqualification he had had regard to paragraph 105 of the Senior Traffic Commissioner's Statutory Document No. 10. The relevant paragraphs in the March 2023 version are, we think, paragraphs 107 and 108, which offer guidance that when a licence is revoked the traffic commissioner will wish to consider disqualification and advise a starting point of 1 to 3 years where it is the operator's first public inquiry. The TC explained that he regarded disqualification as appropriate in view of the "exceptionally serious" nature of Mr. Griggs's conduct, which meant that it would make little sense to revoke the licence and immediately to entertain a fresh application from Mr. Griggs. The period of disqualification was at the lower end of the suggested starting point and, as noted earlier, expired at the same time as his conviction for assault became spent. We cannot say that the TC was plainly wrong in having taken that course.

Decision not necessary and not proportionate

62. The question whether an individual should hold a vocational driving licence is to be determined in accordance with the requirements of the Road Traffic Act 1988 and raises different issues from the question whether an operator should continue to hold an operator's licence. The matters considered by the TC when dealing with revocation of the operator's licence were, for the reasons we have given, appropriate matters for consideration and it was open to the TC to reach the conclusion he did reach. Having concluded that revocation was the correct course, the TC was not obliged to change that view because he had also concluded that Mr. Griggs's vocational licence should be revoked.

Conclusion

63. For the above reasons, we have come to the conclusion that Mr. Griggs does not satisfy the *Bradley Fold* test. We therefore dismiss the appeal.
64. Finally, we apologise for the length of time it has taken to produce this decision. That is owing to illness in the judge's family.

E. Ovey
Judge of the Upper Tribunal
8th February 2024