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06 JUL 2015

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Appeal No. T/2015/16

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

**ON APPEAL from the DECISION of Joan Aitken TRAFFIC COMMISSIONER for
Scotland
Dated 17 February 2015**

Before:

**Kenneth Mullan
Mr A. Guest
Mr M. Farmer**

**Judge of the Upper Tribunal
Member of the Upper Tribunal
Member of the Upper Tribunal**

Appellant:

Heavy Haulage (Scotland) Limited

Attendances:

For the Appellant:

Mr T. Nesbitt

Heard at:

George House, 126 George Street, Edinburgh, EH2 4HH

Date of hearing:

1 May 2015

Date of decision:

6 July 2015

DECISION OF THE UPPER TRIBUNAL

IT IS HEREBY ORDERED that this appeal be DISMISSED with immediate effect

SUBJECT MATTER:-

Repute

CASES REFERRED TO:-

NT/2013/52 & 53 Fergal Hughes v DOENI & Perry
McKee Homes Ltd v DOENI, Asprey Trucks (2010/49),
Martin Joseph Formby t/a G and G Transport
(T/2012/34), AR Brown (2009/264), Crown Cold Store
& Distribution Limited (2006/235), Christopher Kilpatrick
t/a 4 Seasons Coach Hire (2001/57)

REASONS FOR DECISION

The decision under appeal to the Upper Tribunal

1. This is an appeal from the decision of the Traffic Commissioner for Scotland dated 17 February 2015.
2. The factual background to this appeal appears from the documents and the Traffic Commissioner's decision and is as follows:-
 - (i) By way of application dated 16 July 2014, Mr Edward Tottenham, sole director of Heavy Haulage (Scotland) Ltd, applied for a standard national goods vehicle operator's licence for that company. The application sought authorisation for five vehicles and five trailers to operate from an address in Kircaldy, which was the company's correspondence address. Safety inspections were proposed at six weekly intervals by RIW Commercials. Ms Karen McAllister of Edinburgh was nominated as an external Transport Manager, with daily hours of three from Monday to Friday. Her Transport Manager CPC was gained in 1989. She was not designated as a Transport Manager on any other licences.
 - (ii) No connections to other operators or licences were declared in the application form. The Traffic Commissioner was alerted, however, to apparent family and business connections between the application and revoked operators Randolph Transport Ltd and Mr William Tottenham and revoked director and Transport Manager, Ms Catherine Tottenham. In light of these apparent connections, the Traffic Commissioner directed that the application be considered at a Public Inquiry. The Traffic Commissioner refused the applicant's requests for an interim licence.
 - (iii) The Public Inquiry was held in Edinburgh on 28 January 2015. Mr Edward Tottenham was present and was represented. Ms Karen McAllister was not present despite her presence being required by the call-up letter. The Traffic Commissioner was informed that she had a medical appointment for that day. The applicant indicated a wish to withdraw her nomination as Transport Manager and had prepared papers to nominate director Mr Edward Tottenham.
 - (iv) In her written decision the Traffic Commissioner noted that the matters relating to the revocation of the operator's licence of Randolph Transport Ltd was set out in her written decision of 12 June 2014 and in the decision of the Upper Tribunal in *Randolph Transport Ltd and Catherine Tottenham* ([2014] UKUT 0460 (AAC) Appeal No: T/2014/59)). In that decision, the Upper Tribunal had upheld the decision of the Traffic Commissioner dated 12 June 2014 directing the revocation and indefinite disqualification of Ms Catherine Tottenham as an operator and transport manager. The Traffic Commissioner noted that Mr William Tottenham, the father of Mr Edward and Ms Catherine Tottenham, remained a disqualified operator indefinitely by virtue of an order made in 2000.
 - (v) The evidence given by Mr Edward Tottenham at the Public Inquiry was summarised by the Traffic Commissioner at paragraphs 7 to 16 of her decision and was as follows. Mr Edward Tottenham, who at the date of the Public Inquiry was aged 27, had left school at the age of 17 and commenced work with Randolph Transport Ltd. He did not

have LGV driving licence entitlement but undertook escort vehicle work. He had never worked in the company's office preferring to work outdoors 'with the guys.' Since the revocation of the licence of Randolph Transport Ltd, which was effective from November 2014, the company had continued to pay his monthly wages of £460 for doing nothing although he had assisted with family domestic arrangements in relation to his grandmother until her passing in November 2014.

- (vi) Lorries operated by Randolph Transport Ltd were, at the date of the Public Inquiry leased to a company in Ireland. If the licence was granted the lorries would return to the Randolph Industrial Estate in Kircaldy. The vehicles would still belong to Randolph Transport Ltd and would be leased from that company at the rate of £600 per vehicle per week excluding maintenance. Ms Catherine Tottenham was a director of a commercial property company. Mr William Tottenham was retired, was enjoying his retirement and had sufficient financial assets so as not to need to work again. He had informed Mr Edward Tottenham of the disqualification and appreciated that what he had done was not acceptable.
- (vii) Mr William Tottenham and Ms Catherine Tottenham would not be involved in the business of Heavy Haulage (Scotland) Ltd. There were letters from two prospective clients signalling an intention to do business with the new company. He accepted that he would have to be in the office with the new company. He would price on a day rate basis. He confirmed that he would be using the same operating centre as Randolph Transport Ltd which still owned the property. He would be paying rent of £20 per week inclusive of telephone and broadband and use of the Randolph Transport Ltd workshop.
- (viii) He accepted that the application for a goods vehicle operator's licence had come after the decision of the Traffic Commissioner dated 12 June 2014. His sister had explained that the licence for Randolph Transport Ltd would be revoked for '... a few years.' He opened the company, intending to trade, as there '... was money to be made.' It was '... a career choice, with longevity.' He had been assisted by an accountant who was involved in other family businesses as he did not know how to set up a company. The funds to meet the financial standing requirement had come from one of his father's company's at a competitive rate. There was an agreement to that effect although the copy in the brief was not signed. The funds had to be repaid within five years with interest. His father was not to be involved in the business but had an interest in his children being successful and in helping his children to achieve that aim.
- (ix) He would operate differently from his sister and father and had clear ideas as to how things would be done. He had met the proposed Transport Manager through a friend of his family. She was competent and she was to work regular hours on a commercial basis. She had not been paid anything at the date of the Public Inquiry. He had passed his CPC, had found the course to be very interesting and had learned a lot. Maintenance would be undertaken by RIW Commercials who had maintained the vehicles of Randolph Transport Ltd.
- (x) He would utilise a digital data tracker and downloading system. He had applied for five vehicles although his immediate need was for

three with a margin of two. Randolph Transport could not continue to pay him for doing nothing so he had made the relevant application. He would employ former Randolph Transport Ltd drivers. His sister continued to work in the office of Randolph Transport Ltd but he would not use her for administrative support doing all of the work himself.

- (xi) At paragraph 16 of her decision, the Traffic Commissioner noted correspondence, dated 23 January 2015, from the accountant referred to by Mr Edward Tottenham. In this correspondence the accountant stated that he had been instructed by Mr Edward Tottenham to incorporate a limited company in the name of Heavy Haulage (Scotland) Ltd for Mr Tottenham alone, as the sole shareholder and director. The accountant also confirmed that he had arranged for a loan for the company, that the loan was provided in commercial terms and was documented in accordance with current rules and legislation. A formal loan agreement was in place. All dealings had been conducted directly with Mr Edward Tottenham and no other individuals or companies had been involved.

- (xii) At paragraph 17 of her decision, the Traffic Commissioner also noted correspondence from Mr William Tottenham. After noting that Mr Edward Tottenham had applied for an operator's licence and had been called to a Public Inquiry, the correspondence was in the following terms:

'This is just to confirm to yourself that I have been retired from June last year and I do not have anything to do with the company that he has started. I am no longer involved in road transport and have no wish to be in the future as I am enjoying my retirement. I would like to think my past history with yourself, has no bearing on your decision on his application.'

- (xiii) At paragraph 18 of her decision, the Traffic Commissioner noted the closing submissions which had been made at the Public Inquiry. These were to the effect that there was nothing untoward about the application which had no connection with any other family business. Mr William Tottenham had retired and did not need to work due to his wealth. Other businesses would not have come forward to become involved if there was anything problematic with the new company. Mr Edward Tottenham had no convictions and was of good repute. The source of the funding was clear with funds deposited, a loan agreement and a personal guarantee in place. The financial standing requirement had been met. A limited company had been set up on the basis of the accountant's advice. Fair competition would not be compromised by the application being granted.

3. On 17 February 2015 the Traffic Commissioner made a decision to the following effect:

'I refuse this application as I am not satisfied as to the repute of the operator, the sole director and transport manager given the connections to the revoked and disqualified entity Randolph Transport Ltd and the disqualified persons William Tottenham and Catherine Tottenham all in terms of section 13A(2)(b) and Schedule 3 of the 1995 Act.'

4. The Appellant was notified of the decision of 17 February 2015 by way of correspondence dated the same day.

The appeal to the Upper Tribunal

5. On 27 February 2015 an appeal to the Upper Tribunal was received in the office of the Upper Tribunal.
6. The appellant had set out the following Grounds of Appeal:
 - (i) The Traffic Commissioner wrongly and/or in error of law decided (at paragraph 23 of her decision) that Mr Edward Tottenham's family connections 'go to his fitness', and (in effect) were in and themselves relevant to repute. Such a conclusion was unsupported by any reasoning, wrong in law and perverse.
 - (ii) The Traffic Commissioner wrongly and/or in error of law concluded (at paragraph 23 of her decision) that if she were to grant the licence application '*for all practical purposes my revocation and disqualification orders against Randolph Transport would be of no effect*' and that such a decision would put Mr William Tottenham in control of a heavy haulage business without embarking on any or any sufficient process of reasoning prior to coming to or sufficient to support that conclusion.
 - (iii) The Traffic Commissioner wrongly and/or in error of law decided (at paragraph 23 of her decision) that if she were to grant the licence application '*for all practical purposes my revocation and disqualification orders against Randolph Transport would be of no effect*' and that such a decision would put Mr William Tottenham in control of a heavy haulage business, when that conclusion was contrary to, and unsupported by, the weight of the evidence.
 - (iv) The Traffic Commissioner wrongly and/or in error of law decided to refuse the application saying, and citing as a reason for refusing the application, that if she were to grant it there would be a '*risk to public confidence*' in the licensing system. Such a factual conclusion was unsupported by any evidence or reasoning and played no proper part in the test for whether a licence should be granted.
 - (v) The Traffic Commissioner wrongly and/or in error of law in coming to her decision failed to have proper regard to a number of matters that should have been central to any sufficiently reasoned analysis of the issues before her, including:
 - a. Randolph Transport Ltd's licence and Heavy Haulage Scotland Ltd's application were for different types of Operator's Licences.
 - b. Randolph Transport Ltd's licence and Heavy Haulage Scotland Ltd's application were for different sized licences.
 - c. Eddie Tottenham had no managerial role in Randolph Transport Ltd.
 - d. Evidence that William Tottenham is in his sixties and had retired.
 - e. The honesty and openness of Edward Tottenham surrounding the loan agreement and the fact that the loan was provided in commercial terms.
 - f. Evidence from the accountant which confirmed that they had been instructed solely by Edward Tottenham.
 - g. Edward Tottenham's CPC qualification and lack of convictions.

7. Before the oral hearing in the Upper Tribunal, Mr Nesbitt submitted a Skeleton Argument on behalf of the Appellant for which we were grateful. Mr Nesbitt set out the relevant factual background, summarised the evidence adduced at the Public Inquiry and set out the decision of the Traffic Commissioner.
8. Mr Nesbitt expanded on the grounds of appeal, as follows:
 - (i) He set out in some detail the regulatory history in connection with Randolph Transport Ltd, Mr William Tottenham and Miss Catherine Tottenham. He submitted the regulatory history had to be accepted.
 - (ii) He accepted that there were acknowledged links with the former Randolph Transport Ltd business as (a) it was seeking to trade in the same haulage market (b) was proposing to use the same operating centre (c) that the initial funding for the business, in the form of a loan to underwrite the financial standing requirement came from a company which was owned indirectly by Mr William Tottenham and (d) that the Appellant acknowledged that he had a connection with Randolph Transport Ltd in that he had been an employee of the company and that the director Catherine Tottenham was his sister.
 - (iii) In general terms, what was inherent in the grounds of appeal was a '... central complaint [was] that the approach that the Traffic Commissioner adopted in deciding the application was flawed, and in several respects involved either a lack of appropriate analysis...'
 - (iv) The Appellant, although the son of a disqualified operator, was entitled to apply for a goods vehicle operator's licence and to run a transport business. Nonetheless, a Traffic Commissioner, faced with the situation which arose in the present case, was entitled to ask whether an applicant and/or director was, in fact, a 'front' for a disqualified operator. Where an assertion that the disqualified person might be involved in running the new business is strongly denied then matters came down to the question of whether the director making the denial is telling the truth '... If they are, the business will not be a front, if they are not it might be.'
 - (v) The Traffic Commissioner had not approached matters in the proper manner and had not even asked the correct question. The Commissioner had pre-judged matters. Having recited the evidence she went straight to a conclusion. Such a conclusion could only properly be arrived at after undertaking an assessment of the Appellant and his evidence and whether he might be telling the truth.
9. At the oral hearing of the appeal Mr Nesbitt added to the written grounds of appeal and expanded on the submissions made in his Skeleton Argument.

The reasoning of the Deputy Traffic Commissioner

10. The reasoning of the Traffic Commissioner was set out under the heading 'Consideration of the Evidence and My Decision' at paragraphs 22 to 26, as follows:
 - '22. The Asprey Trucks case emphasises the gatekeeper role of a Traffic Commissioner. In hearing this case I was reminded of a decision I took in 2010 – application by Roderick and Claire Munro – OM1093850 which was appealed to the Upper Tribunal (Appeal No. T2010/62) which upheld my decision on 17 December 2010. In that case the applicants were the son and daughter-in-law of a disqualified person in the context of a long established family business and a

licence I had to revoke. I find myself now recalling and using many of the phrases I used in that decision.

23. If I were to grant this application by Heavy Haulage, for all practical purposes my revocation and disqualification orders against Randolph Transport and my predecessor's disqualification of William Tottenham would have no effect. I would be putting Mr William Tottenham in control, to be the doyen, the overlord of a heavy haulage business again. I do not and cannot trust Mr William Tottenham not to be involved materially or influentially in the operation and director of Heavy Haulage were it granted a licence. It would be perverse and naïve of me to decide or think otherwise. All cases involving family members seeking effectively to be the phoenix for revoked licences do turn on their own individual facts and I have to make a judgement of those who come forth to apply for an operator's licence. Cases turn on their facts and ultimately a Traffic Commissioner seeing parties has to make a judgement of those facts. Schedule 3 of the Act at paragraph 1 says that in determining whether an individual is of good repute, the Traffic Commissioner may have regard to any matter but shall, in particular, have regard to [convictions] and any other information in her possession which appears to her to relate to an individual fitness to hold a licence. Here in this case I am in no doubt that the family connections and the context in which this application is made goes to the fitness of the applicant company and director Mr Edward Tottenham. But for Edward Tottenham being William Tottenham's son this application would not be being made. The father Mr William Tottenham has put the son Mr Edward Tottenham in this place.
24. If I were to grant this application, there would be a risk to public confidence in the goods vehicle operator's licensing regime. For the message it would give would be that a revoked and disqualified person need not worry for all they have to do is put a close family member up to apply for a licence and to set up a new company for that licence. I am entitled to pierce the company veil. I am entitled to pierce the family connections.
25. Fair competition does matter in a case like this. Mr Tottenham senior is wealthy. For all I know that wealth has been gained by the flouting of the goods vehicle operator licence jurisdiction. There has to be compliance and compliance comes at a price. The regulatory regime is important in its own right as was emphasised by the Court of Session in the case of Thomas Muir (Haulage) Ltd v Secretary of State [1999] SC 86.
26. In this case there is no clear water between this application and the revoked operator's licence and disqualified persons and also the business adviser Mr Campbell Kelly. Edward Tottenham and Heavy haulage Ltd only made this application because Edward is William Tottenham's son and he has the backing of William Tottenham's money and assets. The son cannot be separated from the father. I will not go down any Biblical routes of sins and fathers. That does not help decision-making. What I have here is overwhelming evidence tying this application to a revoked disqualified entity and disqualified persons. I cannot find there to be repute in this application. I cannot trust this entity and its director and now nominated transport manager, Mr Eddie Tottenham. The company and he are enthralled to Mr William Tottenham.'

Our analysis

11. We have no hesitation in upholding the decisions of the Deputy Traffic Commissioner.

12. In NT/2013/52 & 53 Fergal Hughes v DOENI & Perry McKee Homes Ltd v DOENI, the Upper Tribunal said the following, at paragraph 8 of its decision, on the proper approach on appeal to the Upper Tribunal:

‘There is a right of appeal to the Upper Tribunal against decisions by the Head of the TRU in the circumstances set out in s. 35 of the 2010 Act. Leave to appeal is not required. At the hearing of an appeal the Tribunal is entitled to hear and determine matters of both fact and law. However it is important to remember that the appeal is not the equivalent of a Crown Court hearing an appeal against conviction from a Magistrates Court, where the case, effectively, begins all over again. Instead an appeal hearing will take the form of a review of the material placed before the Head of the TRU, together with a transcript of any public inquiry, which has taken place. For a detailed explanation of the role of the Tribunal when hearing this type of appeal see paragraphs 34-40 of the decision of the Court of Appeal (Civil Division) in Bradley Fold Travel Ltd & Peter Wright v Secretary of State for Transport [2010] EWCA Civ. 695. Two other points emerge from these paragraphs. First, the Appellant assumes the burden of showing that the decision under appeal is wrong. Second, in order to succeed the Appellant must show that: *“the process of reasoning and the application of the relevant law require the Tribunal to adopt a different view”*. The Tribunal sometimes uses the expression *“plainly wrong”* as a shorthand description of this test.’

13. The Upper Tribunal In NT/2013/52 & 53 Fergal Hughes v DOENI & Perry McKee Homes Ltd v DOENI was considering an appeal to the Upper Tribunal against a decision of the Head of the Traffic Regulation Unit under the Goods Vehicles (Licensing of Operators) Act (Northern Ireland) 2010. There is no doubt, however, that the principles set out by the Upper Tribunal in paragraph 8, are derived from parallel appeals, such as the one in the instant case, where the appeal is against a decision of a Traffic Commissioner under the Goods vehicles (Licensing of Operators) Act 1995 and Regulations made under that Act – see paragraph 4 of NT/2013/52 & 53 Fergal Hughes v DOENI & Perry McKee Homes Ltd v DOENI.

14. We have not been satisfied that on the basis of the submissions which have been made by the appellant that it could be said that the decision of the Traffic Commissioner in the instant case was ‘plainly wrong’.

15. Mr Nesbitt is, of course, correct when he submits that any individual may make arrangements for the establishment of a limited company, appoint himself as a sole director of that company and use the limited company as a vehicle to make an application for a goods vehicle operator’s licence. Further he is correct to submit that on receipt of such an application the Traffic Commissioner is obliged to consider such an application on its merits and that if the relevant legislative requirements are satisfied the Traffic Commissioner is obliged to grant the application. Section 13(5) and (6) of the Goods Vehicle (Licensing of Operators) Act 1995 provides that:

‘(5) If the traffic commissioner determines that any of the requirements that the commissioner has taken into consideration in accordance with subsection (1) or (2) are not satisfied, the commissioner must refuse the application.

(6) In any other case the commissioner must grant the application, ...'

16. The requirements that the Traffic Commissioner is obliged to consider in accordance with section 13(1) include a determination as to whether the requirements of sections 13A and 13C are satisfied. In turn the section 13A requirements include the section 13A(2)(b) condition that the Traffic Commissioner is satisfied that the applicant is of good repute. Paragraph 1 (b) of Schedule 3 to the 1995 Act provides that:

'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) ... ; and

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

17. We would also note that section 8(4) of the 1995 Act provides that:

'(4) A person applying for an operator's licence shall also 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 ...'

18. In the instant case, we are wholly satisfied that the Traffic Commissioner did what she was obliged to do under the relevant legislative provisions. In paragraph 23 of her decision she reminded herself that each case turns on its own individual facts and that she has to '... make a judgement of those who come forth for an operator's licence.' She also noted her Schedule 3, paragraph 1(b) power to have regard to any information in her possession relating to fitness to hold a licence when determining whether an individual is of good repute. Accordingly she was entitled to have regard to the information in her possession concerning the relationship between the Appellant company and previous holders of operators' licence in the family of the company's sole director. She would, in our view, also have been entitled to exercise the section 8(4) power to require the Appellant to give her any further information about the familial relationship. She has not, as has been submitted, pre-judged the issues which were before her.

19. The Traffic Commissioner was correct to remind herself of what was said in *Asprey Trucks* (2010/49). At paragraph 10, the Upper Tribunal stated:

'In a case such as this, the Deputy Traffic Commissioner was not looking at putting someone out of business. Rather, he was deciding whether or not to give his official seal of approval to a person seeking to join an industry where those licensed to operate on a Standard National or Standard International basis must, by virtue of S.13(3), prove upon entry to it that they are of good repute. In this respect, Traffic Commissioners are the gatekeepers to the industry - and the public, other operators, and customers and competitors alike, all expect that those permitted to join the industry will not blemish or undermine its good name, or abuse the privileges that it bestows. What does "Repute" mean if it does not refer to the reasonable opinions of other properly interested right-thinking people, be they members of the public or law-abiding participants in the industry?'

20. Similar comments were made at paragraph 17 of *Martin Joseph Formby t/a G and G Transport* (T/2012/34).
21. We do not accept that the Traffic Commissioner was not entitled to take into account the information which she held about the familial relationships. In *2009/264 AR Brown*, a case with parallels distinct to the present, the Tribunal stated, at paragraph 4:

“When referring to para.1(1), Schedule 3 of the Act Mr Whiteford referred us only to the wording of sub-para.(b). He did not dwell on the opening words ‘have regard to all the relevant evidence and in particular to’ The relevant evidence included the family background, which the Traffic Commissioner fully reviewed. She had to make an assessment of whether the Appellant would be independent of his family if granted an operator’s licence and in so doing she had to take all matters into account, including his demeanour as a witness”.
22. Further, we do not accept a submission that the family connections could not go to the fitness or repute of the Appellant company - see *2009/264 AR Brown* above. In addition, in *2006/235 Crown Cold Store & Distribution Limited*, the Tribunal accepted and upheld the assessment of the evidence of the Deputy Traffic Commissioner, in a decision involving revocation on the ground of loss of repute, which evidence had included evidence of family relationships and continued involvement of the disqualified father in the business of his daughter. In *2001/57 Christopher Kilpatrick t/a 4 Seasons Coach Hire*, the Tribunal was reviewing a decision of the Deputy Traffic Commissioner which had refused an application for a goods vehicle operator’s licence. The Tribunal noted, at paragraphs 2(ii) to 3:
 - ‘(ii) The public inquiry took place before the Deputy Traffic Commissioner on 26 September 2001. The Appellant gave evidence and explained that he had recently been made redundant from work in an electronics factory. He intended to put his energies into a coach business, with assistance from his father. One of his father’s friends, Mr Donaldson, was to be the transport manager of the business. The Deputy Traffic Commissioner asked the Appellant about the details of the arrangements with Mr Donaldson and also about his ability to fulfil the undertakings made on the application form.
 - (iii) The Deputy Traffic Commissioner gave an oral decision. He set out the detail of the evidence and the Appellant’s inability to answer many of the questions. He referred to the interaction between father and son ... The Deputy Traffic Commissioner concluded that the Appellant did not meet the requirements for good repute and professional competence.
3. On hearing of the appeal the Appellant was represented by Mr Burke. He submitted that the Deputy Traffic Commissioner’s decision was unreasonable because the Appellant could not gain good repute without experience and that he ought to be permitted to start up in order to gain such experience: he was entitled to rely upon others. We have to say that we disagree. We have considered all the evidence and the Appellant’s present unsuitability to be an operator leaps from the page. He could not have fulfilled the undertakings given in the application because it is clear from the evidence that he does not fully

understand them. We would have come to the same conclusion as the Deputy Traffic Commissioner.'

23. Mr Nesbitt challenges the Traffic Commissioner's assessment of the evidence. He submits that it follows from the Traffic Commissioner's decision that she has found the evidence of Mr Edward Tottenham, particularly his evidence that his father and sister were to have no involvement in the business, on the basis of the father's retirement and wealth, and the sister's involvement in her own business, to be lacking in credibility. Mr Nesbitt submitted that a conclusion on the credibility of Mr Edward Tottenham was not specifically spelt out in the Traffic Commissioner's decision.
24. We have concluded that the Traffic Commissioner's assessment of the evidence which was before her was rigorous and rational. The Traffic Commissioner gave a sufficient explanation of her assessment of the evidence, explaining why she took the particular view of the evidence which she did. Any conflict in the evidence has been clearly resolved and explained. The Traffic Commissioner has assessed the evidence from Mr Edward Tottenham in the context of the other evidence which was before her. She did not have to arrive at a conclusion that his evidence lacked credibility. She was entitled to weigh and assess all of the evidence and conclude that the weight of the evidence supported her conclusions on repute and fitness. We find nothing wrong with that assessment.
25. In paragraph 19 of her decision, the Traffic Commissioner noted the links between the application before her and the revoked company Randolph Transport Ltd, disqualified persons William Tottenham and Catherine Tottenham and their account. The links were:
 - (i) The timeline for incorporation is aforesaid;
 - (ii) The family relationships son; father; sister
 - (iii) The same business adviser/accountant ... and his company;
 - (iv) The same operating centre;
 - (v) The use of Randolph Transport's office and workshop being available to the applicant at a nominal payment of £20 per week inclusive of phone charges and that being the correspondence address;
 - (vi) The same vehicles, the Randolph Transport vehicles being temporarily in Ireland being used by another pending return to Kircaldy to be used by Heavy Haulage;
 - (vii) The funds for financial standing coming direct from Kenilworth Ltd, an Isle of Man company, part of the web of company and offshore finance arrangements made by Mr Campbell Kelly for Mr Bill Tottenham; paid in August 2014; no interest paid as yet;
 - (viii) The same drivers will be re-employed;
 - (ix) Randolph Transport continues to pay Mr Eddie Tottenham, such arrangements being administered by Catherine Tottenham who still works in Randolph Transport's offices and for Blairhill one of the other Tottenham companies;
 - (x) The proposed customers are former customers of Randolph Transport;
 - (xi) Eddie Tottenham has worked for Randolph Transport since leaving school. He has no business knowledge; his involvement was on sites;
 - (xii) The intended use of the vehicles and nature of heavy haulage intended business is on all fours with that of Randolph Transport.'

26. That long list is one of connections between businesses and, save for (ii) above, not connections between individuals. The Traffic Commissioner was considering an application made by Heavy Haulage Ltd, not by Mr Edward Tottenham in his own name. She was entitled to explore the relationships between the Appellant company and Randolph Transport Ltd. She did not, as has been suggested, over-emphasise individual personal relationships.
27. Mr Nesbitt has set out a list of matters which, he submitted, were not taken into account. These were the matters set out at paragraph 6(v) above. We are of the view that it did not matter that the application was for a different type of operator's licence or for a different sized licence. The role that Mr Edward Tottenham had in Randolph Transport Ltd was taken into account. The Traffic Commissioner noted that he worked on sites, had no business knowledge and continued to be paid by that company. The Traffic Commissioner acknowledged his lack of convictions and that he held a CPC. The Traffic Commissioner simply did not accept the evidence from Mr William Tottenham concerning his retirement and lack of intention to participate in the business of Heavy Haulage (Scotland) Ltd. She was entitled to arrive at that conclusion which was not perverse. The involvement of the accountant in both businesses was addressed as a factor. The Traffic Commissioner did not doubt the transparency around the loan agreement but placed its significance in the context of the other evidence concerning links between the businesses.
28. Although not falling into the category of 'leaping out of the page', as noted by the Tribunal in *2001/57 Christopher Kilpatrick*, we observe that we can see why this application would be bound to fail on the basis of the lack of suitability of Mr Edward Tottenham, as sole director of the Appellant company, to hold a goods vehicle operator's licence. Additionally, the evidence is that he is a beginner and wholly inexperienced in the management of the business of a goods vehicle operator.

Disposal

29. The appeal is dismissed. The decision of the Traffic Commissioner dated 17 February 2015 is confirmed.



**Kenneth Mullan, Judge of the Upper Tribunal,
6 July 2015**