

**IN THE UPPER TRIBUNAL
ADMINISTRATIVE APPEALS CHAMBER
(TRAFFIC COMMISSIONER APPEALS)
ON APPEAL FROM THE DECISION OF A DEPUTY TRAFFIC COMMISSIONER
BETWEEN:**

**(1) CATCH 22 BUS LIMITED
(2) PHILIP HIGGS**

Appellant

-and-

THE SECRETARY OF STATE FOR TRANSPORT

Respondent

**THE RESPONSE OF
THE SECRETARY OF STATE FOR TRANSPORT**

1. The Secretary of State for Transport has two relevant functions. First, he appoints to and may remove Traffic Commissioners (including the Senior and Deputy Commissioners) from office. Second, he has a general responsibility for road transport operations and regulation, and in particular, the operation and interpretation of relevant domestic legislation. It is strictly in this second capacity that he has sought to be and has been added as a Respondent to this appeal.
2. Albeit on different grounds to those raised by the Appellants, the Secretary of State agrees that this appeal should be granted as the Deputy Traffic Commissioner (DTC) erred in law in finding that the Appellants had lost good repute.
3. The Secretary of State does not agree, with what appears to be the Appellants' primary ground, that conduct has to be unlawful in order to fall within the wide scope of paragraph 1 Schedule 3 Public Passenger Vehicles Act 1981. It is clear that a traffic commissioner must have regard to "*all the relevant evidence*" of conduct when

considering good repute. There is nothing in EC Regulation 1071/2009 to the contrary. There is no limitation to the types of conduct which can or cannot be taken into account under this wide inquiry and certainly no requirement that such conduct be unlawful. There is certainly no need for a conviction (see the cases reported at page 29 of the 20 July 2016 Digest.) The Secretary of State agrees with paragraphs 44 and 57 of the Senior Traffic Commissioner's Statutory Document No 1 on Good Repute and Fitness.

4. Therefore, the specific conduct at the heart of this appeal did not have to be found to amount to a tort and/or a crime or be otherwise unlawful in order for it to be taken into account.
5. On the other hand, as established by the Court of Appeal in *Crompton v Dept of Transport* [2003] EWCA Civ 64 and also in the Transport Tribunal's decision in *D & H Travel Limited* 2006/487 conduct can only be considered if it is relevant to the regulatory regime under consideration.
6. Albeit considering the Goods Vehicles regulatory regime and Schedule 3 of the 1995 Act, Kennedy LJ was clear in *Crompton* that "...Parliament cannot have intended a traffic commissioner ever to have regard to immaterial evidence, so the conclusion must surely be that the schedule requires the traffic commissioner when considering alleged loss of repute to focus on matters relevant to the individual's fitness to hold a licence..." (para 19(5).)
7. The President of the Transport Tribunal in *D & H*, considering Schedule 3 of the 1981 Act considered that the Traffic Commissioner should not have taken into account the serious findings of an Employment Tribunal of sex discrimination (improper comments and incidents of contact at staff parties) against a fellow employee because they "...did not relate to the operation of vehicles in the business but also that the circumstances were such that it was inappropriate to introduce it under the general provisions..." (para 7.)
8. This issue was also considered by the Upper Tribunal in the case of *Heart of Wales Bus and Coach Company* [2011] UKUT 364 (AAC) where the test was put this way: "Generally, however, to cross the line, Traffic Commissioners should require evidentially established and relevant conduct that is patently unacceptable in a

regulated industry that requires operators and Transport Managers to be of good repute.”

9. Similar considerations, albeit in a different statutory context, arose in the case of *R (Christopher Stace) v Milton Keynes Magistrates’ Court* [2006] EWHC 1049 where both the Traffic Commissioner and the Magistrates on appeal had revoked Mr Stace’s PCV Driver’s Licence following convictions for assaulting his wife. Keith J considered that the Magistrates had failed to consider this conduct in the context of the Claimant’s fitness to drive passenger carrying vehicles and this issue formed part of his reason for remitting the matter back to the Magistrates.
10. Conversely, Mr Plemming QC, giving judgment on an appeal by way of Case Stated in the Administrative Court, accepted that a conviction of a sex offence relating to a 15 year girl on a bus was “a very powerful indicator that such a person is not a fit person to hold” a PCV Driver’s licence “applying the extended meaning of ‘conduct’ as set out in section 121 (1)(b) that decision maker is allowed to take into account of, any conduct which is ‘in any other respect relevant to his holding a passenger carrying vehicle driver’s licence’” (although he did not disturb the Magistrate’s conclusion to the contrary) (see *Secretary of State v Snowden* [2002] EWHC 2394, para 36.)
11. It is also accepted that licensing is based on trust and that “*Traffic Commissioners must be able to trust those to whom they grant operator’s licences to operate in compliance with the regulatory regime...*” (T/2012/34 Martin Joseph Formby t/a G&G Transport, para 17) but it is also clear that that trust does not arise in a personal relationship between the private person of the Commissioner and the private person of the licence-holder but it is trust between the office of Traffic Commissioner and the licence-holder in relation to the regulatory regime.
12. It is also important that conduct which is personally offensive to the decision maker, or to the decision maker’s colleagues or “superiors”, does not or does not appear to colour the judgment of the decision maker in relation to the substantive issues under consideration. In this case, in the final event, there were no other matters of regulatory concern and only the Second Appellant’s particular conduct in relation to the Senior Traffic Commissioner was left open by the Commissioner as possible evidence of loss of good repute. The avoidance of bias or an appearance of bias is why contempt in the face of a Court is usually best dealt with by a judge other than the one before whom the contempt occurred (see *Arlidge* 4th ed. para 10-53.) Whilst a different

Commissioner dealt with the issue in this case, this was not in the context of a separate contempt proceeding (which does not exist in this jurisdiction) and it is suggested that in such circumstances, such matters should not be dealt with within the regulatory regime at all but should be referred to the Police and indeed such matters can be dealt with by the criminal law, far removed from the substantive legal process with which they were connected¹. The Secretary of State considers that that is the appropriate way of dealing with such conduct. In this case, the Traffic Commissioner appears to have acted beyond his jurisdiction.

13. The link between the regulatory regime and the instant conduct (i.e. that the Senior Traffic Commissioner was the subject of the relevant conduct and that the person undertaking or causing or permitting the conduct had been the subject of a public inquiry held by the Senior Traffic Commissioner) was not sufficient in this case to permit it to be taken into account when considering good repute.
14. Therefore, there having been no other matters before the Deputy Traffic Commissioner which could have justified his findings, the appeal should be granted and his orders should be set aside and the applicant's licence increase granted.

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¹ <http://www.manchestereveningnews.co.uk/news/greater-manchester-news/surrogate-mum-judge-protest-stalking-11514169>