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IN HIS MAJESTY'S COURT OF APPEAL IN NORTHERN IRELAND

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APPEAL FROM THE UPPER TIER TRIBUNAL TO THE COURT OF APPEAL

APPLICATION FOR LEAVE TO APPEAL

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BELVOIR LOGISTICS LIMITED AND SHANE TINNELLY

Appellants

and

DRIVER AND VEHICLE AGENCY

Respondent

_____

Mr Chambers KC with Ms McAuley (instructed by MMD Solicitors) for the Appellants
Ms McMahon KC with Ms Jones (instructed by the Departmental Solicitor's Office) for the Respondent

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Before: Keegan LCJ and Treacy LJ

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KEEGAN LCJ (*delivering the judgment of the court*)

Introduction

[1] This application arises in the context of the regulation of heavy goods vehicles ("HGVs"). The first appellant is a company registered to operate seven such vehicles. The second named appellant is sole director of the company. He was also driving the HGV on 26 October 2022 which is referred to in these proceedings. Criminal proceedings did not ensue but both appellants were thereafter subject to regulatory proceedings which we summarise as follows.

[2] The relevant history for present purposes is as follows. On 6 June 2024, the Presiding Officer ("PO"), on behalf of the Department for Infrastructure, Transport Regulation Unit, issued a decision following a Public Inquiry ("PI") which took place in relation to the appellants. That decision held as follows:

(i) That the appellant's operator's licence was to be revoked;

(ii) That on a finding of loss of good repute as transport manager, Shane Tinnelly, is disqualified from acting as transport manager indefinitely;

(iii) That on revocation of the operator's licence, Belvoir Logistics Ltd and its sole director, Shane Tinnelly, are disqualified from holding or obtaining an operator's licence for 12 months.

[3] In reaching the above findings, the PO relied upon an interaction on 26 October 2022 when the second named appellant was stopped when he was driving a HGV in England. As this was a case of repeat and significant regulatory failures relating to weight, tachographs, licence plates and evasion of officers a roadside interview was conducted. In addition, the vehicle that was stopped on 26 October 2022 was not registered and was over the limit of seven vehicles authorised. The PO described this at para 23 of his decision as follows:

> "I find the catalogue of offences, for an operator with only 7 vehicles, exceptionally poor, and the seriousness and repetition of the offences demonstrates a culture of non-compliance. …"

[4] During the interview with the Driver & Vehicle Agency ("DVA"), a caution was administered. The second named appellant responded 'no' or 'no comment' to some questions asked of him. The PO referred to this in his decision, and it was further developed on appeal before the Upper Tier Tribunal ("UTT") who found that an adverse inference could be drawn from the second appellant's no comment interview responses after caution.

This application

[5] The appellants seek leave to appeal the decision of the ("UTT") delivered on 10 November 2025 which upheld the PO's decision on the basis that the UTT erred in law when they concluded that it was permissible and/or appropriate to draw an adverse inference from the second named appellant's 'no comment' responses during his after caution interview with the DVA. Leave to appeal to the Court of Appeal was refused by the UTT by virtue of a decision of 12 January 2026.

[6] Alternatively, it is submitted by the appellants, that the potential for the ruling from the UTT to set a widespread precedent as to the drawing of adverse inferences in civil proceedings from silence at an after-caution interview is a compelling reason for this appellate court to hear the appeal.

Appellate principles

[7] No issue is taken with the relevant appellate principles. Article 2 of the Appeals from the Upper Tribunal to the Court of Appeal Order 2008 (SI 2008/2834), is the relevant provision which reads as follows:

> "Permission to appeal to the Court of Appeal in England and Wales or leave to appeal to the Court of Appeal in Northern Ireland shall not be granted unless the Upper Tribunal or, where the Upper Tribunal refuses permission, the relevant appellate court, considers that —
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> (a) the proposed appeal would raise some important point of principle or practice; or
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> (b) there is some other compelling reason for the relevant appellate court to hear the appeal."

[8] The applicable test was considered by the Northern Ireland Court of Appeal in *Martin v HMRC* [2006] NICA 56, when Weir LJ endorsed the approach of Girvan LJ in *McMahon t/a Irish Cottage Trading v Commissioners for Her Majesty's Revenue and Customs*:

> "On an application for permission to appeal from the rejection by the Upper Tribunal … of an appeal the question is … whether there is a compelling reason why the issue in which the claimant has failed twice at the two tiers of the tribunal system, which are competent to determine matters of that kind, should be subjected to a third judicial process."
> [emphasis added]

[9] Similarly, in *Tanfern v Cameron-MacDonald and Anor* [2000] 1 WLR 1311 the English Court of Appeal considered the identical provisions of section 55(1) of the Access to Justice Act 1991 when Brooke LJ said at para [42]:

> "… It will no longer be possible to pursue a second appeal to the Court of Appeal merely because the appeal is `properly arguable' or because it has a `real prospect of success' … the decision of the first appeal court is now to be given primacy unless the Court of Appeal itself considers that the appeal would raise an important point of principle or practice, or that there is some other compelling reason for it to hear this second appeal."

[10] Further, in *MA (Somalia) v Secretary of State for the Home Department* [2011] 2 All ER 65 at para [43] Sir John Dyson said:

> "Courts should approach appeals from (expert tribunals) with an appropriate degree of caution … they and they alone are the judges of the facts … Their decision should be respected unless it is quite clear that they have misdirected themselves in law. Appellate courts should not rush to find such misdirection simply because they might have reached a different conclusion on the facts or expressed themselves differently."

[11] Therefore, on a leave to appeal application of this nature courts should approach appeals from expert tribunals with an appropriate degree of caution as they and they alone are the judges of the facts.

Powers of this court

[12] The powers of the Court of Appeal to adjudicate upon and dispose of the appeal are provided for in section 13 and section 14 of the Tribunals, Courts and Enforcement Act 2007 ("the 2007 Act"). Section 14 of the 2007 Act is most relevant as follows:

> "(1) Subsection (2) applies if the relevant appellate court, in deciding an appeal under section 13, finds that the making of the decision concerned involved the making of an error on a point of law.
>
> (2) The relevant appellate court—
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> (a) may (but need not) set aside the decision of the Upper Tribunal, and
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> (b) if it does, must either—
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> (i) remit the case to the Upper Tribunal or, where the decision of the Upper Tribunal was on an appeal or reference from another tribunal or some other person to the Upper Tribunal or that other tribunal or person, with directions for its reconsideration, or
>
> (ii) re-make the decision.
>
> (3) In acting under subsection (2)(b)(i), the relevant appellate court may also—

(a) direct that the persons who are chosen to reconsider the case are not to be the same as those who—

(i) where the case is remitted to the Upper Tribunal, made the decision of the Upper Tribunal that has been set aside, or

(ii) where the case is remitted to another tribunal or person, made the decision in respect of which the appeal or reference to the Upper Tribunal was made;

(b) give procedural directions in connection with the reconsideration of the case by the Upper Tribunal or other tribunal or person.

(4) In acting under subsection (2)(b)(ii), the relevant appellate court—

(a) may make any decision which the Upper Tribunal could make if the Upper Tribunal were re-making the decision or (as the case may be) which the other tribunal or person could make if that other tribunal or person were re-making the decision, and

(b) may make such findings of fact as it considers appropriate."

The relevant decisions

[13] We summarise how both decisions deal with the question of adverse inferences as follows starting with the PO decision.

[14] In his decision the PO concluded that the no comment responses were a legal entitlement, but "not indicative of an open commitment to working with the enforcement authorities." He referred to the Department's Practice Guidance Document No. 1 regarding Good Repute, and that other relevant conduct may include, but not be limited to, matters such as:

> "A decision to not take the opportunity to give evidence which might result in inferences being drawn from silence.

[15] The appellants therefore advanced the following ground of appeal:

> "The Presiding Officer erred in law and in fact making his decision, taking various matters into account and discounting various matters, some of which were factually incorrect."

[16] An oral hearing of the appeal took place before the UTT on 21 January 2025. By decision dated 10 November 2025 (served on 23 November 2025), the UTT determined that the decision of the PO was not plainly wrong, and the appeal was dismissed.

[17] The primary focus is on paras [44]–[47] of the UTT decision. Summarising those paragraphs, we can see that the UTT placed reliance upon the fact that the appellant provided answers to the DVA officer prior to the interview. Having given the answers before caution, the UTT found it non-sensical for the second named appellant not to have given the same answers under caution. The UTT found that there is a common law principle of evidence within civil proceedings that an inference may be drawn from a party's failure to respond to an allegation or from a party's failure to give evidence. However, the UTT went on to say that "the adverse inference drawn by the PO in this case, was incidental to the more serious regulatory infringements that had taken place." The overall conclusion of the UTT was therefore that that there was no error of law in the PO having drawn an inference from the second named appellant's behaviour and that a rational inference was drawn in the circumstances of this case.

[18] In addition, the UTT found that whether it is appropriate to draw an inference and if so, the nature of the inference that can be drawn, will depend upon the facts of the case at hand applying the authority of *Shawe-Lincoln v Dr Arul Chezhayan Neelakandan* [2012] EWHC 1150, at para 82.

Consideration of this application

[19] The appellants contend that the UTT has erred in law in its analysis and conclusions in drawing an adverse inference from the after-caution interview of the second named appellant and invites this court to grant leave and allow the appeal and remit the case to a different decision maker. The argument is advanced that conclusions drawn on the basis of the adverse inference that the second named appellant "could not be trusted to co-operate and comply with the regulatory regime" inevitably fed into the conclusion that he, personally, was no longer of good repute, and should be disqualified as transport manager, and that the operator's licence should be revoked on the basis of loss of good repute.

[20] In support of this application reliance has been placed on a number of authorities by Mr Chambers KC which we have considered. The general position as to the drawing of adverse inferences in respect of failure to give evidence in civil proceedings is set out in *Wisniewski v Central Manchester Health Authority* [1998] PIQR P324 and more recently, in *Royal Mail Group Ltd v Efobi* [2021] UKSC 33 at para [41] as follows:

> "41. The question whether an adverse inference may be drawn from the absence of a witness is sometimes treated as a matter governed by legal criteria, for which the decision of the Court of Appeal in *Wisniewski v Central Manchester Health Authority* [1998] PIQR P324 is often cited as authority. Without intending to disparage the sensible statements made in that case, I think there is a risk of making overly legal and technical what really is or ought to be just a matter of ordinary rationality. So far as possible, tribunals should be free to draw, or to decline to draw, inferences from the facts of the case before them using their common sense without the need to consult law books when doing so. Whether any positive significance should be attached to the fact that a person has not given evidence depends entirely on the context and particular circumstances. Relevant considerations will naturally include such matters as whether the witness was available to give evidence, what relevant evidence it is reasonable to expect that the witness would have been able to give, what other relevant evidence there was bearing on the point(s) on which the witness could potentially have given relevant evidence, and the significance of those points in the context of the case as a whole. All these matters are inter-related and how these and any other relevant considerations should be assessed cannot be encapsulated in a set of legal rules."

[21] Furthermore, it was highlighted that the ways in which an adverse inference may arise in civil proceedings is not limited to a failure to give evidence but can extend to a failure to call witnesses or produce relevant documentation. In *Magdeev v Tsvetkov* [2020] EWHC 887, Cockerill J observed that the "tendency" to rely upon the principle of adverse inferences arising from the absence of witness evidence was to be "deprecated." It was noted at para [150]:

> "It is one which is likely to genuinely arise in relatively small numbers of cases; and even within those cases the number of times when it will be appropriate to exercise the discretion is likely to be still smaller."

[22] None of the above law is controversial. However, an appeal point arises in this case because of the interplay between criminal and civil or regulatory proceedings. It relates to the drawing of adverse inferences in civil proceedings pursuant to an after-caution Police and Criminal Evidence Act 1984 (1989 Order) ("PACE") interview in the absence of any warning that a failure to answer questions after caution could give rise to an inference in regulatory proceedings.

[23] However the context is key. As we understand it a DVA investigator will only caution a suspect if there are objectively reasonable grounds to believe that the suspect has committed a crime. The purpose of the caution is to inform the suspect of his legal (common law and ECHR) right to silence. The caution is a PACE caution framed in clear and simple terms:

> "You do not have to say anything, but it may harm your defence if you do not mention when questioned, something which you later rely on in court. Anything you do say may be given in evidence."

[24] In *Murray v UK* (1996) 22 EHRR 29, the European Court of Human Rights confirmed that:

> "45. Although not specifically mentioned in Article 6 (art. 6) of the Convention, there can be no doubt that the right to remain silent under police questioning and the privilege against self-incrimination are generally recognised international standards which lie at the heart of the notion of a fair procedure under Article 6 (art. 6) (see the *Funke* judgment cited above, loc cit)."

[25] In criminal law terms the only legal provision which permits a derogation from the right to silence is the Criminal Evidence (Northern Ireland) Order 1988. Article 3 provides:

> "(1) Where, in any proceedings against a person for an offence, evidence is given that the accused -
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> (a) at any time before he was charged with the offence, on being questioned under caution by a constable trying to discover whether or by whom the offence had been committed, failed to mention any fact relied on in his defence in those proceedings; or
> (b) on being charged with the offence or officially informed that he might be prosecuted for it, failed to mention any such fact,
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> being a fact which in the circumstances existing at the time the accused could reasonably have been expected to mention when so questioned, charged or informed, as the case may be, paragraph (2) applies.
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> (2) Where this paragraph applies -

(a) the court, in determining whether to commit the accused for trial or whether there is a case to answer;

(b) a judge, in deciding whether to grant an application made by the accused under Article 5 of the Criminal Justice (Serious Fraud) (Northern Ireland) Order 1988 (application for dismissal of charge where a case of fraud has been transferred from a magistrates' court to the Crown Court under Article 3 of that Order); and

(c) the court or jury, in determining whether the accused is guilty of the offence charged, may—

(i) draw such inferences from the failure as appear proper;

(ii) on the basis of such inferences treat the failure as, or as capable of amounting to, corroboration of any evidence given against the accused in relation to which the failure is material."

[26] We agree that the UTT's reliance on *Shawe-Lincoln v Neekandan* is somewhat misleading when read in context. Whilst it is a civil case, involving the non-availability of evidence to support the claimant's case as a result of the negligence of the defendant hospital in failing to keep records, it does not involve an interview after caution, nor does it involve an inference from silence. It was permissible for the UTT to rely upon *Shawe-Lincoln* to establish the proposition that the nature of the inference will depend on the facts of the case at hand. However, this authority does not engage with the ability of an after-caution interview to ground an adverse inference

[27] Furthermore, the Department's Practice Guidance Document No 1, regarding Good Repute, which was relied upon by the PO expressly refers to the drawing of an inference from a decision to not take the opportunity to give evidence but similarly does not extend to or include the drawing of an adverse inference from a failure to comment at an after caution interview.

[28] Thus, we think that the UTT has gone too far in finding that an after caution no comment interview conducted for the purpose of potential criminal proceedings can found an adverse inference in regulatory proceedings such as this. Properly analysed we think that this conclusion was unnecessary as the PO had simply made observations about the second named appellant's conduct which were valid. Had the UTT left the PO's conclusions intact there would be no valid appeal. Whilst not

conceding the appeal Ms McMahon frankly accepted the general principle that an after caution no comment response in the context of potential criminal prosecution should not found an adverse inference in related civil or regulatory proceedings. That is the correct position. Therefore, we can easily correct the mistake made by the UTT in this judgment as we have done.

[29] Following from the above, as both counsel agreed during the hearing, there are three courses open to us, namely refuse leave, grant leave but uphold the decision made or grant leave and remit the matter for further consideration.

[30] We have considered the competing arguments as to which course we should take. The choice we make is dictated by the particular facts of this case and our clear view that the outcome reached by the PO, affirmed by the UTT was inevitable notwithstanding the error of law made by the UTT. The overarching purpose of the regulatory proceedings is public safety. In that regard the respondent rightly highlights a DVA Audit in February 2024, which looked at behaviours between 2021-2024, and rated the first appellant "unsatisfactory" across the Maintenance, Drivers' Hours and Transport Manager category. The rating of "satisfactory" had been given for Weights and Establishment. Furthermore, both appellants had been warned that their good repute was at risk, and therefore, that professional competence was in issue.

[31] It is also highly material that prior to referencing adverse inference in his decision, the PO had already considered eight separate encounters with DVA, with infringements found including:

(a) Failure to follow the Driver & Vehicle Standards Agency for inspection x2.

(b) Drivers failing to use drivers' card to record drivers' hours information x 30.

(c) Defective speed limiter with 53 overspeed notifications up to 80mph (not overrun).

(d) Failure to produce manual tachograph records.

(e) Unauthorised removal of an immobilisation device.

(f) Obscured number plate.

(g) Most Serious Infringements ("MSI's") x5 for drivers' hours including daily breaks, daily drive and daily rest periods.

(h) MSI x4 for defective braking system.

(i) MSI x6 for defective tyres.

Conclusion

[32] In light of our findings above, we grant leave to appeal and find that the decision of the UTT involved an error of law which we have now corrected. However, looking at the decision of the PO as a whole, a prima facie case was clearly established against the appellants independent of any reference to adverse inference. Therefore, pursuant to our powers as set out in Section 14 of the Tribunals, Courts and Enforcement Act 2007 we decline to set aside the decision of the UTT because we are entirely satisfied that in substance the PO's decision upheld by the UTT was sound. That concludes the matter and means that the stay will now be lifted.