

# Appealing to the

# ADMINISTRATIVE APPEALS CHAMBER OF THE UPPER TRIBUNAL

# **Traffic Commissioner appeals**

**HGV & PSV Licences** 

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#### Introduction

#### About this leaflet

This Explanatory Leaflet is intended to provide helpful information to the public. It is not a substitute for the Acts or the Rules and has no legal force. If you are unsure of your position or your options, you should seek professional legal advice. However, it is only a guide and does not have legal status. It does not cover all aspects of every situation, nor does it provide a full interpretation of the procedural rules.

#### This leaflet applies to England, Wales and Scotland.

At the end of this leaflet is a section in which the meaning of some words used in this leaflet, or in documents which you may receive from the Upper Tribunal Office, is explained. We recommend that you keep this leaflet for reference throughout your dealings with our office.

# What is the Administrative Appeals Chamber of the Upper Tribunal?

The Upper Tribunal was created by the Tribunals, Courts and Enforcement Act 2007. The Administrative Appeals Chamber is the part of the Upper Tribunal which hears and decides appeals on points of law from certain decisions of the First-tier Tribunal.

In September 2009 the power to decide appeals against decisions of Traffic Commissioners transferred into the Upper Tribunal. These cases concern operators of road vehicles (heavy goods vehicles and public service vehicles) and premises used as operating centres. Appeals under the Transport (Scotland) Act 2001 remain under the jurisdiction of the Transport Tribunal but can be made alongside appeals to the Upper Tribunal and using the same appeal forms.

The Administrative Appeals Chamber of the Upper Tribunal consists of High Court judges and other specialist judges appointed by the Queen. It also includes non-legal members who have experience in transport operations and its law and procedure. All judges are independent of, and in no way connected to, the Traffic Commissioners.

As the Upper Tribunal judges give judicial decisions neither they, nor any of the staff in the Upper Tribunal office, can give legal advice. If you want advice on the merits of your case or how to prepare it, you should seek help from a solicitor, a Citizens Advice Bureau or other adviser experienced in road transport law. You should find details in your local library or telephone directory.

# Types of Traffic Commissioner cases dealt with by Upper Tribunal

The Upper Tribunal deals with:

- Heavy Goods Vehicle appeals: relating to goods operator licences ("O licences") and operating centres.
- Public Service Vehicle Appeals: relating to bus operators and services, including financial penalties.

A right of appeal arises when, for example, a Traffic Commissioner:

- refuses to grant a licence, or
- refuses to vary an existing licence, or
- attaches conditions to the licence, or grants a licence which allows fewer vehicles than the number applied for, or
- [PSV cases] determines that registered local bus services have not been operated properly, and imposes financial penalties, or
- revokes, suspends or curtails an existing licence, or
- disqualifies an individual or a company.

#### For HGV cases see :

- Goods Vehicles (Licensing of Operators) Act 1995,
- Goods Vehicles (Licensing of Operators) Regulations 1995 (SI 1995/2869),
- Goods Vehicles Operators (Qualifications) Regulations 1999 (SI 1999/2430) and
- Goods Vehicles (Community Authorisations) Regulations 1992 (SI 1992/3077);

#### For PSV cases see:

- Public Passenger Vehicles Act 1981, Transport Act 1985,
- Public Service Vehicles (Operators' Licences) Regulations 1995 (SI 1995/2908).
- Public Service Vehicle Operators (Qualification) Regulations 1999 (SI 1999/2431) and
- Public Service Vehicles (Registration of Local Service Regulations 1986 (SI 1986/1671)

Copies are available on the Office of Public Sector Information, OPSI, website at www.opsi.gov.uk.

# Where are the offices of the Administrative Appeals Chamber dealing with Traffic Commissioner appeals?

There is an office in London headed by the Tribunal Manager, which deals with appeals from Traffic Commissioners' decisions in England, Wales and Scotland. The administrative staff process appeals, prepare case files for the judges, arrange oral hearings and deal with correspondence and queries. The address of the office is:

Upper Tribunal Administrative Appeals Chamber Traffic Commissioner appeals 7<sup>th</sup> Floor, Victory House 30-34 Kingsway London WC2B 6EX

Telephone (9am – 5pm) – 020 3077 5860 Fax – 020 3077 5836 Email – transport@tribunals.gsi.gov.uk

Appeals against decisions of the First-tier Tribunal (Transport) in driving standards, training provider, London service permit appeals and disputes over postal charges under section 94 of the Postal Services Act 2000 are administered by another team in the Upper Tribunal. Please refer to the leaflet 'Appealing to the Administrative Appeals Chamber of the Upper Tribunal against decisions from the General Regulatory Chamber' for further details. This can be found on the website www.tribunals.gov.uk.

# Who can appeal to the Upper Tribunal?

#### Operators

You can appeal against the decision if you are

- the applicant for a licence, or
- the licence-holder, or
- the former licence-holder.
- You may be an individual or a company or a partnership.

#### Other Parties

Sometimes a statutory objector has become involved in the case, and has the right to bring an appeal, or respond to an appeal brought by an operator. Objectors may include the Police, a local authority, any other planning authority, the Road Haulage Association, the Freight Transport Association, the British Association of Removers or a Trade Union.

Sometimes nearby property owners or occupiers have made representations, or given statements of views and opinions, to the Traffic Commissioner on environmental grounds, concerning a Heavy Goods Vehicle operating centre. (Does not apply to PSV cases.) These representors cannot appeal, but may be allowed to participate in appeals by others. (See below, page 5).

#### The Traffic Commissioner

The Traffic Commissioner is not a party to an appeal and cannot respond to it; but the Secretary of State (or the appropriate national authority in Scotland or Wales, if applicable) may wish to appear and has the right to respond to an appeal.

# How to appeal

#### Notice of appeal

Appeals are started by the appellant sending a written notice of appeal to the Tribunal with all necessary information. The notice must contain the information set out in the Upper Tribunal Procedure Rules. Forms intended to help appellants prepare their notice of appeal are available from our website <a href="https://www.tribunals.gov.uk">www.tribunals.gov.uk</a> or by contacting the office.

#### Do I need permission to appeal to the Upper Tribunal?

No. Not unless you are outside the time limit (see below).

#### Is there a time limit?

Yes. An appeal should be lodged within 1 month of the date the decision you are appealing against was sent to you. You should therefore lodge any appeal as soon as possible. If you are outside the 1 month you can ask the Tribunal to extend the deadline (the appeal form provides for this). You will have to give the reasons why you are late. The Tribunal will decide whether to extend the deadline or not.

## Stays

#### Can an order by a Traffic Commissioner be stayed?

Yes. If the Traffic Commissioner has made an order against which you could appeal, the order will normally come into force when ordered irrespective of the appeal. However, you can apply to the Commissioner to suspend the effects of his or her order until the appeal is decided. If the Commissioner refuses a stay, you can apply to the Tribunal to suspend the effects of the Commissioner's order until the time limit for appealing has expired or until the appeal is disposed of. The appeal form provides for those who wish to apply to the Tribunal for a stay at the same time as they make an appeal. If you want to apply for a stay, contact the Tribunal office to discuss it. You should be prepared to supply full reasons for the proposed stay.

Stays are dealt with as a matter of urgency. In your own interests you should send any stay application to the Tribunal as soon as possible after the Traffic Commissioner has refused it.

#### Reasons (grounds) for appealing

You must always give full details of your reasons for appealing. Space for this is provided on the appeal form but may be continued on a separate sheet if necessary.

# What happens next in appeals against decisions by Traffic Commissioners

The procedure is set out in the rules governing procedure in the Upper Tribunal. The Tribunal office notifies the Traffic Commissioner, and also notifies the appeal to, and invites responses from, the following:

- the operator (if he is not the appellant), and
- all statutory objectors (see above page 4), and
- all representors (see above page 4), and
- the Secretary of State (or the appropriate national authority in Scotland or Wales, if applicable).

## a) Response by an Operator or Objector

If you are the operator concerned or a statutory objector, but are not making the appeal, you can respond by writing to the Tribunal office stating that you want to be a party to the appeal.

# b) Response by a Representor

If you are a representor you can respond by writing to the Tribunal office, asking for permission to become a party to the appeal. The Tribunal will decide if you can be a party, and you will be notified in writing. (This applies only to HGV cases, not PSV cases.)

#### b) Response by the Secretary of State

The Secretary of State, or the appropriate national authority in Scotland or Wales if applicable, can respond by writing to the Tribunal office, stating that they want to be a party to the appeal.

#### Preparing the case for hearing

#### What documents will be needed?

In appeals from Traffic Commissioners, the Tribunal asks the Traffic Area Office to supply copies of all the relevant papers, including the transcript of the public inquiry if applicable. If necessary the Tribunal gives directions for the case to be properly prepared.

In advance of the hearing you will receive a bundle of documents identical to the bundles which the Tribunal members will have.

The appellant and all respondent parties are required to send to the Tribunal copies of whatever documents or information they rely on in support of their cases, if not already supplied by the Traffic Area Office.

#### Will there be an oral hearing?

Normally, yes. As soon as the case is ready, and the requirements of the Rules have been met, the Tribunal will list it for hearing. You must normally be given at least 14 days notice of the date of a hearing but usually you will be given more.

All parties will be entitled to appear and address the Tribunal when the appeal is heard. Parties and their representatives will be expected to make themselves available within a reasonable timescale.

Once the date for an oral hearing has been set, you will be sent a letter with details of the time and place, facilities available and a map to show you how to get there.

Oral hearings are normally in public unless the judge directs a private hearing. However, it is unusual for members of the public to come to hearings. If you would like your hearing to be private, you should say why and the judge will decide this.

Hearings are normally arranged in London, or (for Scottish cases) in Glasgow.

## Procedure At The Hearing

#### Is a hearing formal?

No. Proceedings are informal and neither the Tribunal nor representatives wear robes or wigs. Hearings are in public unless there are exceptional circumstances. On the day of the hearing you are advised to arrive a little before the appointed time so that you can make yourself known to the court clerk, familiarise yourself with the courtroom layout, get the documentation in order, and perhaps discuss the case with other parties (if any).

#### Is an appeal a full hearing or a review?

In most cases Traffic Commissioners will have made a decision after a hearing. On appeal, it will be for the appellant to show that the Traffic Commissioner was wrong and the hearing is called a Review Hearing.

#### Procedure at appeals against decisions by Traffic Commissioners

The appeal takes the form of a review of the Traffic Commissioner's decision and/or the reasons given for it. The appeal is not a rehearing of the merits of the matter. In its review the Upper Tribunal is concerned to ensure that the Traffic Commissioner properly applied the tests which

have to be applied in reaching a decision. In particular, the Upper Tribunal enquires whether Traffic Commissioners:

- were plainly wrong, or misdirected themselves about the law or the evidence:
- took into account any matter which should not have been taken into account or failed to take account of matters which should have been taken into account:
- offended the rules of natural justice in the conduct of proceedings by showing bias, refusing the right to be heard, or failing to make clear what was alleged against the applicant/licence holder.

When the hearing begins, the Judge invites the appellant to start first by setting out his or her case, explaining the grounds of the appeal and referring to the documents. The other party or parties (if any) have a similar opportunity to explain their case. Each party has an opportunity to set out the legal arguments it relies on in support of its case, and the Tribunal members may ask questions before, during or after the presentation.

The Upper Tribunal decides each appeal on the basis of the grounds stated in the notice of appeal and the documents provided to the Tribunal. The Tribunal may not take account of circumstances which did not exist at the time when the Traffic Commissioner made his decision. (See Transport Act 1985, Schedule 4 Para.9(2)). The Upper Tribunal does not usually admit or consider fresh evidence which was not before the Traffic Commissioner, and does not usually hear witnesses. If you want to introduce evidence you should write to the Tribunal about it well before the hearing. The Tribunal has discretion to allow this if it considers that the interests of justice require it.

# What you should do if you find you cannot attend an oral hearing

If you find that you will not be able to attend a hearing which has been fixed you should tell the Upper Tribunal office as soon as possible. You should write unless the time is very short in which case you may telephone.

If you would like the hearing postponed you should say why and the judge will decide what should happen. The judge may decide to go ahead with the hearing without you.

If you do not turn up at the hearing, the judge will decide whether to go ahead without you. If you are delayed on your journey to the hearing, you should make every effort to ring the office to let them know immediately.

However, if you were absent from the main hearing for a good reason, and the case was determined in your absence, you may be able to apply to the Tribunal to set aside its determination and re-list the appeal for hearing. You will have to satisfy the Tribunal that you had a good reason for failing to attend the hearing.

# What you should do if you wish to withdraw your appeal

It is possible for an appellant to withdraw an appeal, or a respondent party to withdraw their response, by sending a written notice of withdrawal to the Tribunal office. If you then want your appeal to be reinstated you should write to the Upper Tribunal office within one month. If you are late you may ask for an extension of time.

If the other party to the appeal has appealed you cannot withdraw from the appeal. You do not need to take any part but a decision will be made whether or not you do.

#### The decision of the Upper Tribunal on the appeal

#### Will there be a written decision?

Yes. The Tribunal may announce its decision at the conclusion of the main hearing or say that the decision will be given later. In either event, the Tribunal always draws up a formal order setting out what it has decided and sends it to all the parties. It also provides written reasons.

#### Particular issues which may arise on appeals

#### How much will it cost to appeal?

#### Will I have to pay fees to the Tribunal?

No. The services of the Tribunal are free of charge to users.

#### Will I be liable to pay costs?

Possibly. The Upper Tribunal can order one party to pay the costs of another party, if their conduct has been frivolous, vexatious, improper or unreasonable (see the rules governing procedure in the Upper Tribunal). More often, each party has to bear only its own costs. If there is only one party to the case, the question of costs does not arise. (The Traffic Commissioner is never a party to a Tribunal case).

## Is legal aid available?

No. Legal aid is not available in this jurisdiction

#### Representatives

You may choose to conduct your own case and appear on your own behalf, but it is open to you to have a representative to help you fill in the appeal form, deal with letters from the Upper Tribunal office, make and respond to submissions and appear in front of the judge for you if there is an oral hearing. Limited companies and corporate bodies must normally be represented.

Where there is a representative, the Tribunal will correspond only with the representative direct. If you dismiss or change your representative, you must inform the Tribunal immediately, otherwise they are entitled to assume that you are still represented and will send documents to the representative and not to you. If a representative is not legally qualified, a written authorisation to act signed by you is needed.

Your representative may be a friend or relative or may be from an organisation giving advice such as a Citizen's Advice Bureau. You may also be represented by a trade union representative or by a solicitor.

Even if you do not have a representative to help you with the initial stages of your case you can bring another person to any oral hearing and, with the judge's permission, that person can act as your representative or assist you to present your case.

## What to do if you are dissatisfied with the decision of the Upper Tribunal

# How to apply for the decision of the Upper Tribunal to be set aside

The Upper Tribunal has the power to set aside its decision in limited circumstances where there have been certain procedural errors. If you

think there has been a procedural error you should send a written application to set aside so that it is received no later than **one month** after the date of the office letter sending you the Upper Tribunal decision. You should give your reasons.

# How to appeal to the Court of Appeal or Court of Session against an Upper Tribunal decision

There is a right of appeal to the Court of Appeal (England and Wales) or Court of Session (Scotland) against the decision of an Upper Tribunal judge if it is wrong in law. You must have permission from the Upper Tribunal, or if the Upper Tribunal refuses, from the Court.

An application for permission to appeal to the Court of Appeal must be received by the Upper Tribunal within one month of the latest of-

- Written notice of the decision being sent to you, or
- of your being notified of amended reasons for, or a correction of, the decision following review (see below), or
- of your being notified that an application to set aside (made in time or with an extension of time) has not been successful.

The time limit may be extended by the Upper Tribunal judge.

You must make your application in writing identifying the alleged error or errors of law and stating the result you ask for.

# How the Upper Tribunal considers your application for permission to appeal

On an application for permission to appeal, the Upper Tribunal may review the decision and may set it aside, amend the reasons for it or correct it if-

> when making the decision the judge overlooked a legislative provision or binding authority which could have had a material effect on the decision, or

 since the decision a higher court has made another decision binding on the Upper Tribunal which, if made before the decision, could have had a material effect on it.

The Upper Tribunal must notify the parties in writing of the outcome of any review.

If the Upper Tribunal takes any action on review without first giving every party an opportunity to make representations it must allow that party to apply for the action to be set aside and the decision to be reviewed again.

If the Upper Tribunal does not review, or on review decides not to alter the decision, it must decide whether to grant permission to appeal to the Court of Appeal. It must record the decision in writing and give reasons for refusing permission. It can give permission in respect of only some of the grounds put forward, but if so, must give reasons for its refusal of the other grounds.

If you are refused permission to appeal by the Upper Tribunal you may renew your application in the Court of Appeal (England and Wales) or Court of Session (Scotland).

If the Upper Tribunal grants you permission you will need to appeal to the Court of Appeal/ Court of Session.

Appeal time limits are short so if you wish to renew your application or to appeal you should contact the Appeals Office as soon as possible.

The addresses for the Court of Appeal is:

The Civil Appeals Office, Room E307, The Royal Courts of Justice, Strand,

#### London WC2A 2LL.

#### Email -: civilappeals.registry@HMCS.gsi.gov.uk

Information on applying to the Court of Session in Scotland is available under the Rules of the Court of Session, which can be found at: www.scotcourts.gov.uk

If you wish to appeal to the Courts you are advised to take legal advice, as you may become liable for costs.

#### Standards and complaints

#### **Standards**

The Tribunal has certain standards of service and performance that it is committed to reaching. We aim to:

- respond to requests for forms within 2 working days
- process new cases and serve acknowledgements of notices of appeal within 5 working days
- · decide applications for stays as soon as possible
- offer hearing dates within six weeks of readiness
- notify parties of hearing dates within 5 working days of fixing the date
- draw up and dispatch to the parties signed decisions within 3 working days of their receipt
- · deal with all inquiries and correspondence, courteously and promptly

#### **Comments or complaints**

If you have any comments or complaints about the service you have received from the Transport Tribunal contact the Tribunal Manager:

Noreen Razvi 7<sup>th</sup> Floor, Victory House

30-34 Kingsway London WC2B 6EX

#### E mail: - transport@tribunals.gsi.gov.uk

If you then wish to take the matter further contact:

Mike Watson Central London Area Manager Tribunals Service 5<sup>th</sup> Floor, Fox Court 14 Grays Inn Road London, WC1XB 8HN

**PLEASE NOTE:** Neither the Tribunal Manager nor the Customer Service Unit can deal with complaints about judicial decisions.

#### Administrative Justice and Tribunals Council

The Administrative Justice and Tribunals Council has certain supervisory responsibilities with regard to many Tribunals, including the Upper Tribunal. Their address is:

Administrative Justice and Tribunals Council, 81 Chancery Lane, London, WC2A 1BQ,

Tel: 020 7855 5200

## The meaning of words

The following words are either used in this leaflet or may be used in documents you receive from the office of the Administrative Appeals Chamber of the Upper Tribunal.

- An appeal is made by a person or company.
- An **appellant** is the person, or other body, who is appealing.
- The Court of Appeal in London is a higher court (for cases in England and Wales) to which you may be able to appeal against an Upper Tribunal decision.
- The Court of Session in Edinburgh is a higher court (for cases in Scotland) to which you may be able to appeal against an Upper Tribunal decision.
- A direction is a written instruction by the Upper Tribunal judge, or a registrar, on the procedure that must be followed. The judge will make a direction at the beginning of an appeal as to the order in which the parties are to make their submissions and the time limits for doing so.
- Oral hearings are described in the section titled "Procedure at the hearing".
- Permission to appeal is the first essential step in the onward appeals process (i.e. to the Court of Appeal/ Court of Session). If you do not have permission you will not be able to appeal.
- A point of law, error of law and wrong in law: examples are
  - The tribunal did not apply the correct law or wrongly interpreted the law.

- The tribunal made a procedural error.
- The tribunal had no evidence, or not enough evidence, to support its decision.
- The tribunal did not give adequate reasons for its decision in the written statement of its reasons.

These are only examples and the tribunal may be wrong in law for some other reason not mentioned here. If you are uncertain you may like to seek advice as described in that section.

- A procedural error is something that has gone wrong with the procedure in an appeal. The procedural rules in relation to appeals to the Upper Tribunal are set out in the Upper Tribunal Rules. However, only certain limited errors give you the right to have a decision set aside.
- A registrar is a barrister or solicitor who works in the Upper Tribunal and who is authorised to deal with certain procedural matters. However, a judge will always decide an appeal or an application for permission to appeal.
- A response contains the observations made by a respondent in a written document answering the points made in an appeal or the points that the judge has raised in a direction. A response may also be called observations or submissions.
- A respondent is a person who has a right to take part in or oppose an appeal that has been made to the Upper Tribunal

When an individual appeals to the Administrative Appeals Chamber of the Upper Tribunal, the respondent will normally be:

 A statutory objector; e.g the Police, a local authority, any other planning authority, the Road Haulage Association, the Freight

- Transport Association, the British Association of Removers or a Trades Union.
- The Secretary of State (or the appropriate national authority in Scotland or Wales, if applicable) I.
- Representors e.g nearby property owners or occupiers who object on environmental grounds, concerning heavy goods vehicle operating centres.
- o There may also be other respondents, depending on the type of case. You will be told who they are.
- A submission is made by any party in a written document making or answering the points made in an appeal or dealing with the points that the judge has raised in a direction.
   Submissions may also be called observations.

#### **General Note**

The law governing the procedure on applications to the Upper Tribunal for permission to appeal and appeals is set out in the rules governing procedure in the Upper Tribunal.

The Upper Tribunal Rules are available on the Office of Public Sector Information, OPSI, website at <a href="www.opsi.gov.uk">www.opsi.gov.uk</a>. Copies of statutes and statutory instruments referred to in this leaflet can also be obtained from The Stationery Office (Telephone 0870 600 5522, website <a href="www.tsoshop.co.uk">www.tsoshop.co.uk</a>). It is important to note that statutes, regulations and rules may have been amended by subsequent legislation. Up to date versions can usually be found in the Encyclopaedia of Road Traffic or in Halsbury's Statutes.

#### Previous Decisions

Decisions made by the Upper Tribunal in Traffic Commissioner appeals are available on the Tribunal website (<a href="www.transporttribunal.gov.uk">www.transporttribunal.gov.uk</a>). Historical decisions of the Transport Tribunal from 2000 onwards can also be found at the same address. Decisions are also supplied to subscribers contact the Tribunal Office for details. In addition, the Tribunal's Digest is available on the website. This covers decisions by reference to subject matter and includes a chronological List of Decisions from 1985 onwards. All decisions are available from the Tribunal office on request.

### **Useful Addresses**

#### **Traffic Commissioners**

Eastern Traffic Area City House, 126-130 Hills Road, Cambridge, CB2 1NP Tel: 01223 531011

North Eastern Traffic Area Hillcrest House, 386 Harehills Lane, Harehills, Leeds, LS9 6NF

Tel: 0113 254 3224

North Western Traffic Area Stone Cross Place Stone Cross Lane North South Eastern and Metropolitan Traffic Area Ivy House Traffic Area 3 Ivy Terrace, Eastbourne, East Sussex BN21 4QT Tel: 01323 452 4035 Welsh Traffic Area 38 George Road Edgbaston Birmingham B15 1PL Tel: 0121 609 6823

West Midland Traffic Area 38 George Road Edgbaston

Golborne Birmingham Warrington WA3 2SH B15 1PL

Tel: 0121 609 6807

Tel: 01942 295021

Scottish Traffic Area J Floor, Western Traffic Area

Argyle House, 2 Rivergate, 3 Lady Lawson Street, Temple Quay,

Edinburgh Bristol, EH3 9SĔ BS1 6EH

Tel: 0131 200 4901 Tel: 0117 900 8516

The Senior Traffic Commissioner is the Traffic Commissioner for the South Eastern and Metropolitan Traffic Area.