



# SENIOR TRAFFIC COMMISSIONER

## Statutory Document No. 12

### APPEALS

This document is issued pursuant to section 4C of the Public Passenger Vehicles Act 1981 (as amended). Representative organisations have been consulted in accordance with that provision.

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Senior Traffic Commissioner

## GUIDANCE

1. The Senior Traffic Commissioner for Great Britain issues the following Guidance under section 4C(1) of the Public Passenger Vehicles Act 1981 (“1981 Act”) and by reference to section 1(2) of the Goods Vehicles (Licensing of Operators) Act 1995 (“1995 Act”) to provide information as to the way in which the Senior Traffic Commissioner believes that traffic commissioners should interpret the law in relation to appeals.

### Basis of Guidance

2. A licence holder, transport manager, applicant or statutory objector who is dissatisfied with a traffic commissioner’s decision can appeal to the Administrative Appeals Chamber of the Upper Tribunal. The appeal form is available from the relevant Office of the Traffic Commissioner<sup>1</sup> (OTC) or the Upper Tribunal<sup>2</sup>. The notice of appeal must be received within one month of the date on which notice of the decision was sent to the appellant.
3. Vocational drivers who wish to appeal against a traffic commissioner’s decision in respect of their licence or licence application must appeal to their local Magistrates<sup>3</sup> or Sheriff’s Court<sup>4</sup>. An appeal must be lodged within 6 months of the date on which the driver is notified of the decision, and the driver is required to give prior notice in writing of the intention to appeal.

### Legislation

#### Review of Traffic Commissioner Decisions – Goods Cases

4. Section 36 of the Goods Vehicles (Licensing of Operators) Act 1995 allows a traffic commissioner to review and, as he/she thinks fit, vary or revoke any decision to grant or refuse an application for an operator’s licence, or a variation application, if the traffic commissioner is satisfied that a procedural requirement has not been complied with.<sup>5</sup> The Upper Tribunal considered that fairness of approach would not fall within this definition but it is limited to the procedural requirements as laid down in legislation, such as the sending of notice of the time of any public inquiry.<sup>6</sup>
5. The traffic commissioner can only conduct a review if:
  - notice is given to the applicant or operator of the intention to review the decision;
  - a person who appears to have an interest in the decision has requested a review of the decision; or
  - the traffic commissioner considers there to be exceptional circumstances that justify the review.

<sup>1</sup> <https://www.gov.uk/government/organisations/traffic-commissioners/about/access-and-opening>

<sup>2</sup> <https://www.gov.uk/courts-tribunals/upper-tribunal-administrative-appeals-chamber>

<sup>3</sup> <https://www.gov.uk/find-court-tribunal>

<sup>4</sup> <https://scotcourts.gov.uk/the-courts/gazetteer>

<sup>5</sup> An approach equivalent to the ‘slip rule’ in other jurisdictions was approved in [2012/047 Susan Tattersall](#)

<sup>6</sup> [2021/045 West Midlands Machinery Services Ltd](#)

6. Regulation 34 of the Goods Vehicles (Licensing of Operators) Regulations 1995 provides that the period to serve notice of review on the grounds of procedural irregularity is two months.
7. Section 37(6) of the 1995 Act provides that a person who within that prescribed period and who has been certified by the traffic commissioner as having an interest in the decision has asked for a review may appeal to the Upper Tribunal against a refusal of that application.<sup>7</sup>
8. Pursuant to Rule 30(3)(a) of the Tribunal Procedure (Upper Tribunal) Rules 2008, the Upper Tribunal can provide a decision without written reasons if either the decision was made with the consent of the parties, or the parties have consented to the Upper Tribunal not giving written reasons. This provides a facility for dealing with procedural irregularities, which come to light after the issuing of a regulatory decision.<sup>8</sup> This might be communicated via the stay decision.

#### Review of Traffic Commissioner Decisions – Passenger Cases

9. Section 49A of the Public Passenger Vehicles Act 1981 allows a traffic commissioner to review and, if he/she thinks fit, vary or revoke any decision to grant or refuse an application or variation, if the traffic commissioner is satisfied that a procedural requirement has not been complied with.
10. The traffic commissioner can only conduct a review if:
  - notice is given to the applicant or operator of the intention to review the decision;
  - a person who appears to have an interest in the decision has requested a review of the decision; or
  - the traffic commissioner considers there to be exceptional circumstances that justify the review.
11. Section 56A of the 1981 Act also allows a traffic commissioner to issue a corrected document or a notice in writing that the document is to have effect with such corrections as are stated in that notice, where it appears to the traffic commissioner that a document purporting to record, or issued in consequence of, a decision taken contains a clerical error.

#### Review of Decisions taken under Delegated Authority<sup>9</sup>

12. Notwithstanding the provisions of sections 69 and 74 of the Deregulation and Contracting Out Act 1994, members of staff acting on behalf of traffic commissioners are not permitted to take any decision which might be deemed to be judicial in nature and which should properly be taken by the commissioner exercising his or her power as a tribunal, nor any decision which might affect a person's rights subject to the limitations set out in section 7(1)(a) and 7(1)(b) of the Human Rights Act 1998.
13. The effect of a delegation is that the authorised member of staff may take decisions under the delegated powers. The Statutory Guidance and Statutory

<sup>7</sup> [2011/006 Mr & Mrs Nguntu \(Representors\) Re: Speedcrete CP Ltd](#)

<sup>8</sup> [2012/047 Susan Tattersall](#), NT/2021/050 Deborah Marie Toner t/a DDT Haulage

<sup>9</sup> [See Statutory Guidance and Statutory Directions on Delegations](#)

Directions on Delegations set out the requirements for an effective delegation. Any delegation must be in writing and not based on a misunderstanding of any custom or practice which might have developed amongst staff in one or more traffic areas. If a member of staff exceeds an explicit and clear delegation, then their actions are not those of the relevant traffic commissioner and as a matter of public law that traffic commissioner cannot be considered liable for any prejudice/liabilities arising.

- 14.** Where a decision is not listed in the delegation it must be referred to the traffic commissioner. In particular, any decision that would have the effect of revoking or suspending or curtailing a licence, whether of an operator or a driver, or limiting the use of a Certificate of Professional Competence by a transport manager, must be referred to the traffic commissioner. The delegation of the ability to grant an operator's licence is based on checks being carried out as required by the Statutory Guidance and Statutory Directions. Failure to conduct those checks may mean that the member of staff has acted ultra vires. There may of course be cases where a member of staff has made a straight-forward factual error.
- 15.** It will be for the traffic commissioner to determine whether that would have made a material difference to the decision and by reference to the statutory purpose of the licensing legislation, namely, to ensure road safety and the consistent application of the requirements. The traffic commissioner may therefore treat the erroneous decision as though it was their decision (under delegation) and can therefore be reviewed under the process described. The traffic commissioner may be asked to convene a hearing or conclude that the decision was so far outside the delegated authority that it cannot be tolerated due to its potential impact on road safety or fairness to existing operators.
- 16.** The Human Rights Act 1998 guarantees the rights of individuals, but property rights come from the lawful grant of a licence. Rights cannot be interfered with, without a proper process of law. Where a member of staff has failed to conduct the checks which are deemed necessary for the purposes set out in the Statutory Guidance and the Statutory Directions, it remains open to a traffic commissioner to conclude that what purports to be an operator's licence is in fact void. Before doing so the traffic commissioner should adopt the following process:
- staff of the Office of the Traffic Commissioner should write out immediately and notify the party of the error as quickly as possible;
  - the letter should describe the error and invite representations on what course the traffic commissioner might take;
  - the letter should advise the party that it should mitigate any potential losses;
  - an application may be dealt with without a hearing: where the party so requests, or with the consent of each party, or (3) where the traffic commissioner does not consider that a hearing would be appropriate;
  - if there has been any fault on the part of the applicant<sup>10</sup>, then a hearing will not be required.

### *Rights of Appeal – Goods Cases*

**42.17.** Section 37 of the Goods Vehicles (Licensing of Operators) Act 1995 gives an applicant for a licence or a variation the right of appeal to the Administrative

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<sup>10</sup> 2000/041 Hi-Kube Transport Ltd, 2015/063 Mr M and Mrs V Smith

Appeals Chamber of the Upper Tribunal against the refusal of an application or variation.

**13-18.** The holder of an operator's licence may appeal to the Tribunal against any direction given under sections 5(9); 26(1), (2), (6); 27(1), 31 or 32 of the 1995 Act in respect of the licence. The holder of an operator's licence may appeal any order made under section 26(6) on the suspension or curtailment of the licence. A person who is disqualified from holding or obtaining a licence under section 28 may also appeal. The Road Transport Operator Regulations 2011 give a transport manager a right of appeal to the Upper Tribunal against an order made in respect of repute and/or professional competence. This right of appeal is set out in Paragraph 16(4) of Schedule 3 of the 1995 Act. Paragraph 16(5) also allows the traffic commissioner to stay that order pending appeal and if refused the appellant may request the Upper Tribunal to stay that order.

**14-19.** Section 37(5) of the 1995 Act gives an objector a right of appeal against the grant of an application or variation<sup>11</sup> and section 37(6) gives a right of appeal to a person who has applied for a review under section 36, as above, and has been certified by the traffic commissioner as a person with an interest in the decision.

**15-20.** In the above provisions "operator's licence" does not include a time limited interim licence issued under section 24 which terminates on a specified date, and there is no facility under sections 29 and 37 of the 1995 Act to seek a stay of a decision to revoke an interim licence.<sup>12</sup>

#### *Rights of Appeal – Passenger Cases*

**16-21.** Section 50(1) of the Public Passenger Vehicles Act 1981 gives an applicant for the grant for a licence the right of appeal to the Upper Tribunal against a decision to refuse to grant the licence or to attach any condition to the licence. Section 50(3) gives a statutory objector<sup>13</sup> a right of appeal against the grant of a licence.

**17-22.** The Road Transport Operator Regulations 2011 give a transport manager a right of appeal to the Upper Tribunal against an order made in respect of repute and/or professional competence. This right of appeal is set out in Paragraph 7B(4) of Schedule 3 of the 1981 Act. Paragraph 7B(5) also allows the traffic commissioner to stay that order pending appeal and if refused the appellant may request the Upper Tribunal to stay that order.

**18-23.** Under section 50(4) of the 1981 Act the holder of a public service vehicle (PSV) operator's licence may appeal against any decision to:

- refuse an application to vary or remove any condition or undertaking;
- vary any condition, or to attach a new condition to the licence; or
- revoke or suspend the licence.

**19-24.** Section 50(4A) gives a right of appeal to a person who has applied for a review under section 49A, as above, and has been certified by the traffic commissioner as a person with an interest in the decision. A person who is disqualified from

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<sup>11</sup> See Statutory Guidance and Statutory Directions on Operating Centres

<sup>12</sup> Upper Tribunal stay decision in 2021/032 Background Haulage Ltd

<sup>13</sup> See Statutory Guidance and Statutory Directions on Operating Centres

holding or obtaining a licence under section 28 may also appeal under section 50(5).

### *Rights of Appeal – Traffic Regulation Conditions*

**20-25.** There is no right of appeal to the Upper Tribunal regarding conditions attached to a PSV operator's licence under section 8 of the Transport Act 1985 regarding the making of or the enforcement of traffic regulation conditions.

**21-26.** Section 9 of the Transport Act 1985 as amended provides that any person to whom Section 9(2) below applies may appeal to the Upper Tribunal against:

- (a) *the determination, variation or revocation of any traffic regulation conditions under section 7 of the Transport Act 1985 Act; or*
- (b) *the refusal by a traffic commissioner to comply with a request duly made under that section to determine, vary or revoke any such conditions.*

*The persons to whom this subsection applies are –*

- (a) *in relation to any determination, variation or revocation of conditions –*
  - (i) *any person who has registered under section 6 of the 1981 Act a local service which is, or is likely to be, affected by them; and*
  - (ii) *any traffic authority aggrieved by the decision in question; and*
- (b) *in relation to any refusal to comply with a request, the person making the request.*

*On the determination of an appeal the Secretary of State may confirm, vary or reverse the decision appealed against and may give such directions as he thinks fit to the traffic commissioner for giving effect to his decision.*

*An appeal lies at the instance of any persons mentioned below on any point of law arising from a decision of the Secretary of State on an appeal under this section –*

- (a) *to the High Court, where the area of the traffic commissioner concerned is in England or Wales; and*
- (b) *to the Court of Session, where it is in Scotland.*

*The persons who may appeal against any such decision of the Secretary of State are –*

- (a) *the person who appealed to him;*
- (b) *any person who had a right to appeal to him against the relevant decision of the traffic commissioner but did not exercise that right;*
- (c) *any traffic authority aggrieved by the decision; and*
- (d) *the traffic commissioner whose decision was appealed against.*

*If on an appeal under subsection (5) above the High Court or Court of Session is of the opinion that the decision appealed against was erroneous in point of law, it shall remit the matter to the Secretary of State with the opinion of the court for rehearing and determination by him.*



*No appeal to the Court of Appeal may be brought from a decision of the High Court except with the leave of the High Court or the Court of Appeal.*

*An appeal shall lie, with the leave of the Court of Session or the House of Lords, from any decision of the Court of Session; and such leave may be given on such terms as to costs, expenses, or otherwise as the Court of Session or the House of Lords determine.*

*The term "traffic authority" has the same meaning as in section 7 of the 1981 Act.*

#### *Rights of Appeal – Duly Made and Valid Objections*

**22-27.** Only an operator or statutory objector<sup>14</sup> can appeal to the Upper Tribunal against the decision of a traffic commissioner to grant an application. Representors have no right of appeal in this way but will be informed and have 14 days from the date of notification to apply to the Upper Tribunal to be made party to the appeal. Whilst representors cannot initiate an appeal to the Upper Tribunal they can apply to the High Court for a judicial review of the traffic commissioner's decision.

**23-28.** Only the operator has a right of appeal against any decision made on review and then only if conditions have been varied or placed on the licence or if an operating centre has been removed. Complainants may challenge the traffic commissioner's decision on whether to conduct a review and a decision upon review by seeking a judicial review of that decision through the High Court or Court of Session.

#### *Rights of Appeal – Stays and General Provisions*

**24-29.** Any subsequent appeal to the tribunal that results in an application for a 'stay' must be submitted immediately to the traffic commissioner who presided over the case. The decision of the traffic commissioner will be communicated to the appellant immediately.<sup>15</sup>

**25-30.** The Upper Tribunal has jurisdiction to judicially review decisions of First Tier Tribunals England and Wales: (a) where there is a procedural decision of a First-tier Tribunal which has no right of appeal and (b) in Criminal Injuries Compensation Appeals decided by the First Tier Tribunal.

**26-31.** Traffic commissioners, however, whilst sitting as tribunals, do not sit within the First Tier but cases may be transferred to the Administrative Appeals Chamber, as part of the Upper Tribunal, from the High Court.

#### *Rights of Appeal – Vocational Licence Holders*

**27-32.** Part IV of the Road Traffic Act 1988 (as amended) gives traffic commissioners the responsibility to consider, based on their conduct, the suitability of drivers who hold, or apply to hold, LGV and/or PCV licences. In the case of LGV holders or applicants "conduct" refers only to conduct as a driver of a motor vehicle, whilst

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<sup>14</sup> Objections on environmental grounds under section 12(1)(b) apply to heavy goods vehicles only, see Statutory Guidance and Statutory Directions on Operating Centres

<sup>15</sup> See Statutory Guidance and Statutory Directions on Case Management with regard to stays

for PCV holders or applicants it also refers to any other matter relevant to the holding of a PCV licence.

**28-33.** The Road Traffic Act 1988 gives the holder or an applicant for a heavy goods vehicle or passenger carrying vehicle driver's licence the right to be heard at a conduct hearing before a traffic commissioner who acts on behalf of the Secretary of State.

**29-34.** There is a subsequent right of appeal against the following decisions of the traffic commissioner:

- a refusal or failure to grant such a licence; or
- the imposition of any limitation on such a licence; or
- the suspension or revocation of such a licence; or
- an order of disqualification under section 114 (1) of the Act.

**30-35.** The appeal is to a Magistrates' or Sheriff's Court depending on where the appellant lives. On considering that appeal the court or sheriff may make such order as it or s/he thinks fit.

**31-36.** There are no specific provisions for a stay in relation to vocational drivers. If a driver lodges a complaint in the Magistrates' or Sheriff Court by way of appeal then any stay application must in the first instance be directed to them and not the traffic commissioner. A right of appeal is provided by section 119 of the Road Traffic Act 1988. There is no equivalent power in the Road Traffic Act 1988 to that provided for by section 29(2) of the Goods Vehicle (Licensing of Operator's) Act 1995 to stay decisions pending appeal but the Magistrates or Sheriff are given power to make "such order as it thinks fit"... "on any appeal" in section 119(3).<sup>16</sup>

## Case Law

**32-37.** This Guidance may be subject to decisions of the higher courts and to subsequent legislation. The Senior Traffic Commissioner has not sought to set out in this Statutory Guidance all of the case law relevant to the hearing of appeals by the Upper Tribunal. The Senior Traffic Commissioner has extracted the following principles and examples from existing case law.

**33-38.** A traffic commissioner has not in the past been considered a party to proceedings on appeal from his or her own decision.<sup>17</sup> The previous rule 14 of the Transport Tribunal Rules expressly excluded traffic commissioners from becoming a party to an appeal at the Transport Tribunal. Following the transfer of functions to the Upper Tribunal, by virtue of the Transfer of Functions (Transport Tribunal and Appeal Panel) Order 2009, appeals against traffic commissioner decisions are now governed by the Tribunal Procedure (Upper Tribunal) Rules 2008. Whilst a traffic commissioner is not automatically the respondent under the Upper Tribunal Rules, rule 1(3) allows a person to become "a party" if substituted or added as an interested party under rule 9 (substitution and addition of parties). Rule 33 also provides the right to make representations and rule 35 the entitlement to attend a hearing as set out in the Schedule. The refusal by the High Court to make a costs order under Civil Procedure Rule 44

<sup>16</sup> An appeal falls within the civil jurisdiction

<sup>17</sup> [Coach Hire Surrey Ltd & Jones v Traffic Commissioner \[2020\] EWCA Civ 1706](#), [Edward Coakley, Coakley Bus Company Ltd and Central Bus Company Ltd \(No. 1\) \[2003\] Scot CS 101](#) on appeal from [2001/065, 066 & 067](#)



against the traffic commissioner in [Meredith and Others v Traffic Commissioner for the Western Traffic Area \[2009\] EWHC 2975 \(Admin\)](#), indicates that a traffic commissioner is *not a party to the appeal in the way that term is generally understood*.<sup>18</sup> The normal course would be for the Secretary of State to seek to become a party.<sup>19</sup>

**34-39.** The appeal cases are clear that, like any other tribunal, traffic commissioners must comply with the Article 6 right to a fair hearing in deciding issues of civil law.<sup>20</sup> In advance of any appeal traffic commissioners are likely to follow the statement made by the Lord Chief Justice<sup>21</sup> giving the general position that parties are not normally permitted to obtain copies of the audio proceedings but a transcript may be made available upon application and at a cost. Any transcript will first need to be checked by the Office of the Traffic Commissioner.

**35-40.** The relevant sections give the grounds for appeal and a warning does not constitute a direction within the terms of any of the legislation mentioned above. It follows that the Upper Tribunal has no jurisdiction to hear the appeal. The legislation makes no provision for warnings and these may therefore be issued without first holding a public inquiry.<sup>22</sup> Similarly, the Upper Tribunal has now clarified that there is no right of appeal against the termination of a goods operator's licence under the provisions of section 45 of the Goods Vehicle (Licensing of Operators) Act 1995<sup>23</sup> or a traffic commissioner's decision to refuse an interim licence under section 24 of the Goods Vehicle (Licensing of Operators) Act 1995.<sup>24</sup>

**36-41.** An appeal is not the equivalent of an appeal, for instance, to the Crown Court in England and Wales, where effectively the case begins all over again. An appeal to the Upper Tribunal takes the form of a review of the material placed before the traffic commissioner together with a transcript of any hearing, which has taken place. As indicated elsewhere, the appellant assumes the burden of showing that the decision under appeal is wrong and in order to succeed must show that *"the process of reasoning and the application of the relevant case law require the Tribunal to adopt a different view"*. In practice, and in a number of appeal cases, the phrase *plainly wrong* has been used.<sup>25</sup> The Upper Tribunal is able to strike out appeals when there is *"no reasonable prospect of success in accordance with the provisions of rule 8(3)(c)"*.<sup>26</sup>

**37-42.** The Upper Tribunal is not bound by its previous decisions or those of its previous incarnation, as the Transport Tribunal.<sup>27</sup> It is however bound by the higher courts. In [Bradley Fold Travel Ltd and Peter Wright v Secretary of State](#)

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<sup>18</sup> Order dated 16<sup>th</sup> December 2009

<sup>19</sup> In [2011/060 Nolan Transport & Others](#) the Upper Tribunal commented that an appeal, which is fully argued, on both sides, has greater authority than one in which the Appellant alone is represented

<sup>20</sup> [Al-Le Logistics Limited etc \[2010\] EWHC 134 \(Admin\)](#) paragraph 92 and [2000/065 A M Richardson trading as D J Travel Consultants v DETR](#)

<sup>21</sup> 5<sup>th</sup> March 2013 on Applications for Audio Recordings of Court Proceedings

<sup>22</sup> [2008/268 Funstons Ltd](#), in [2012/027 David I Booker](#) the Upper Tribunal did not disapply Funstons and is therefore limited to its facts – see [2012/023 JA & VC Fryer Farms](#)

<sup>23</sup> [2014/020 Seamus Joseph Patterson trading as Patterson Plant](#)

<sup>24</sup> [2015/063 Mr M & Mrs V Smith](#)

<sup>25</sup> [Bradley Fold Travel Ltd and Peter Wright v Secretary of State for Transport \[2010\] EWCA Civ 695](#), [NT/2013/052 & 53 Fergal Hughes and Perry McKee Homes Ltd v DOENI](#)

<sup>26</sup> Case Management Directions in 2016/062 Roderick Munro trading as Ness Mini Coaches

<sup>27</sup> [2003/309 Benjamin Smith](#), although as a matter of practice it should distinguish or disapply any relevant case law, see also the exceptional approach adopted in [2014/010 Michael Charles Taylor](#)

[for Transport \[2010\] EWCA Civ 695](#), the Court of Appeal<sup>28</sup> stated that it is not enough that the appellant court *might prefer a different view* because the burden is on the appellant to show that *the process of reasoning and the application of the relevant law, require it to adopt a different view*. In *R (Jones) v First-tier Tribunal (Social Entitlement Chamber) and Another*<sup>29</sup>, the Supreme Court found that an appellate body should not venture too readily into findings of fact made by specialist first-instance decision makers. The Upper Tribunal has expressed the view that it is *“doubtful whether the Administrative Court has any jurisdiction in relation to the Administrative Appeals Chamber of the Upper Tribunal (which is a superior court of record) with appeals being heard by the Court of Appeal and that if such an application were to be made in future, it should include a fully reasoned argument to support the implicit assertion that the Administrative Court does have such jurisdiction.”*<sup>30</sup>

**38-43.** As there is a need to ensure that papers are read in advance of a hearing, the Upper Tribunal deprecates the production of bundles in addition to those documents which it has called for.<sup>31</sup> It does have discretion to admit evidence not in consideration before the traffic commissioner, however, in deciding whether or not to admit fresh evidence, it has consistently applied the conditions laid down by the Court of Appeal:<sup>32</sup>

- the new evidence must be admissible evidence;
- it must be evidence which could not have been obtained, with reasonable diligence, for use at the public inquiry;
- it must be evidence such that, if given, it would probably have had an important influence on the result of the case, though it does not have to be shown that it would have been decisive;
- it must be evidence which is apparently credible though not necessarily incontrovertible.

The Court of Appeal has indicated that the above principles could only be departed from in exceptional circumstances, where the interests of justice require.<sup>33</sup> The Upper Tribunal has adopted this approach and considered that there are not exceptional circumstances which would permit the admission of fresh evidence in the absence of a reasonable explanation for the failure to adduce it.<sup>34</sup>

**39-44.** If allegations of bias or misconduct are made, including a failure to disclose documents, the allegations must be set out in detail in the Notice of Appeal. In a case of alleged bias, the Tribunal has adopted the practice that affidavits must be served in order that the Tribunal may receive comments from witnesses and

<sup>28</sup> Addressing the nature of the Transport Tribunal's (now Upper Tribunal's) appellate jurisdiction, the Court applied [Subesh & Others v Secretary of State for the Home Department \[2004\] EWCA Civ 56](#)

<sup>29</sup> [R \(Jones\) v First-tier Tribunal \(Social Entitlement Chamber\) and Another \[2013\] UKSC 19](#)

<sup>30</sup> [2017/080 North Warwickshire Travel Ltd and Michael James](#)

<sup>31</sup> [2003/254 Alison Jones trading as Shamrock Coaches](#)

<sup>32</sup> [Ladd v Marshall \[1954\] EWCA Civ 1](#) as applied in [2001/068 Dukes Transport \(Graigavon\) Ltd v VI](#), [2001/060 Goldwings \(Wales\) Ltd trading as Thomas Oil Distributors](#), [2002/040 Thames Materials Ltd](#), [2015/010 Cornwall Busways Ltd](#), [2015/036 W Martin Oliver Partnership](#), [NT/2017/042 Mark Lyons v Driver & Vehicle Agency and Department for Infrastructure](#)

<sup>33</sup> [E and R v Secretary of State for the Home Department \[2004\] EWCA Civ 49](#)

<sup>34</sup> [2015/036 W Martin Oliver Partnership](#), [2022/572 Walsall Builders and Timber Merchants Ltd and Kamran Aftab](#)

the traffic commissioner. Where documents are alleged not to have been served, less formality is required but must be included in the Notice of Appeal, which the Tribunal is to consider so that this may also be served on the traffic commissioner and factual comments invited.<sup>35</sup> An allegation of bias is a serious matter and should not be made lightly. The maker will need to prove more than that the traffic commissioner came to the wrong conclusion and must specifically show that the traffic commissioner was prejudiced and/or predisposed to find against the party irrespective of the evidence.<sup>36</sup> Any complaint made independently of the appeal cannot be considered until after the final appeal has been determined.

**40-45.** Where there is a challenge to the accuracy of the transcript of proceedings before the traffic commissioner, this must be raised in an application (preferably early) to the Upper Tribunal.<sup>37</sup> Where there is no transcript and no reliable alternative the Upper Tribunal may order a rehearing of the original proceedings.<sup>38</sup> It is also incumbent on the presiding traffic commissioner (and clerk) to keep a proper note of the oral evidence and representations as these might be requested by the Tribunal in the event of there being no transcript of the hearing.<sup>39</sup>

**41-46.** The Upper Tribunal retains a power to order costs where it finds the conduct of the appellant has been unreasonable.<sup>40</sup>

**42-47.** In respect of appeals to the Magistrates or the Sheriff against a vocational driver decision, the status of the Statutory Direction in regard to vocational licence holders and applicants has been clarified by the Administrative Court.<sup>41</sup> The Senior Traffic Commissioner considers it beneficial for the judgment of the Administrative Court to be brought to the attention of the Magistrates or Sheriff.

**43-48.** The Upper Tribunal frequently stresses that traffic commissioners have the advantage of seeing and hearing directly from witnesses with the result that it is only in the clearest cases that the Tribunal will differ from the traffic commissioner when it comes to assessing the evidence which is before them, including the credibility of a witness. The Tribunal has also stated that providing that there is evidence to support a particular conclusion it is for the traffic commissioner to decide what weight, if any, to give to that evidence. It therefore follows that grounds of appeal which state expressly or by implication that the traffic commissioner gave too much or too little weight to a particular piece of evidence will have little or no prospect of success.<sup>42</sup>

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<sup>35</sup> [2014/072 Ian Russell Nicholas trading as Wigan Container Service, 2004/426 E A Scaffolding & Systems Ltd v SoS for Transport](#)

<sup>36</sup> [2015/057 A Adams](#) – applied the test laid down by the House of Lords in [Porter v Magill \[2001\] UKHL 67](#): “the judge did not consider his continuing to sit in the proceedings after the appellant made the remark quoted would have led a fair minded and informed observer to conclude that there was a real possibility of the judge being biased”

<sup>37</sup> [2000/001 R Gray Senior, RA Gray & JC Gray trading as H7R Gray v Colin & Fiona Graham, 2001/059 Stephen Ashton trading as Bank View Travel](#)

<sup>38</sup> [2004/315 MME Services Ltd](#)

<sup>39</sup> [2018/019 T.R. Benney Transport Ltd and Thomas Robert Benney, 2020/050 Ammanford Recycling Ltd](#)

<sup>40</sup> [2001/072 Alan R Brooks](#)

<sup>41</sup> [Meredith and Others v Traffic Commissioner for the Western Traffic Area \[2009\] EWHC 2975 \(Admin\)](#)

<sup>42</sup> NT/2017/042 Mark Lyons v Driver & Vehicle Agency and Department for Infrastructure

## DIRECTIONS

**44.49.** The Senior Traffic Commissioner for Great Britain issues the following Directions to traffic commissioners under section 4C of the Public Passenger Vehicles Act 1981 (as amended) and by reference to section 1(2) of the Goods Vehicles (Licensing of Operators) Act 1995 in respect of the approach to be taken by staff acting on behalf of individual traffic commissioners in relation to appeals.

### Vocational Driver Appeals to the Magistrates or Sheriff Courts

**45.50.** Whilst traffic commissioners are the respondents in these appeals in practice, they do not appear at the actual appeal hearings. Traffic commissioners are to be informed by their driver conduct clerks of any appeals and members of staff from the Office of the Traffic Commissioner may then instruct a solicitor to be present and to assist the Magistrates or Sheriff in considering an appeal against the decision of a traffic commissioner. It is for the traffic commissioner to decide if they wish to be represented at the appeal hearing as they are the respondent.

### Appeals to the Upper Tribunal

**46.51.** The Upper Tribunal decides appeals against decisions of traffic commissioners. The Upper Tribunal is a judicial body and is supported by HM Courts and Tribunal Service. It was originally established in its previous form under the Transport Act 1985 to hear and decide appeals against decisions of traffic commissioners. In September 2009 the majority of the Transport Tribunal's work was transferred into the new tribunal structure.

**47.52.** The procedure is set out in the Tribunal Procedure Rules. The Tribunal office will notify the traffic commissioner, and the following who are invited to respond:

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

**48.53.** The Upper Tribunal may, at any stage of an appeal, order any person (other than the traffic commissioner) to be added as a party to the appeal.

**49.54.** A right of appeal arises when, for example, a traffic commissioner:

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

**50-55.** 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.

**51-56.** Traffic commissioners play no part in the appeal itself but are required to assist the Upper Tribunal in its preparations.

**52-57.** An appeal should be lodged within one month of the decision being issued. An appellant who is outside that deadline can still ask the Upper Tribunal to extend the deadline but will probably be asked to explain the delay before the Upper Tribunal decides whether to extend the deadline or not. If the appeal is received out of time it will be appropriate for the Office of the Traffic Commissioner to ask the Tribunal if it is willing to proceed with the appeal before copying all of the papers.

## Impoundings

**53-58.** If the traffic commissioner decides that the impounding was lawful the appellant may choose to appeal to the Upper Tribunal but must lodge that appeal within one month of the traffic commissioner's decision.<sup>43</sup> The Upper Tribunal Secretariat will send notification of the appeal in the usual way. If no appeal has been lodged in this time, the vehicle may be sold or disposed of. If an appeal is made, the Office of the Traffic Commissioner should inform the DVSA Area Office, so that any disposal is prevented. DVSA should always notify the traffic commissioner when property has been disposed of.

## Appeals – General Principles

**54-59.** In preparing the bundle for the Upper Tribunal it might be helpful for members of staff to remind themselves of the purposes for which it is required: in most cases a traffic commissioner 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. In respect of their administrative functions, however, the Carltona principle<sup>44</sup> recognises that traffic commissioners cannot possibly make every decision personally and officials may act on their behalf. In those situations a decision may still only be taken by an official of appropriate seniority and experience and certain cases of special importance must be taken by a traffic commissioner. In law all of these decisions are the acts of the traffic commissioner provided that they are within stated delegations.

**55-60.** The appeal is not limited to a point of law and takes the form of a review of the traffic commissioner's decision and/or the reasons given for it, however, it is not a rehearing of the merits of the matter. The Upper Tribunal will consider whether the traffic commissioner properly applied the relevant tests in reaching their decision. The Upper Tribunal will be concerned with whether the traffic commissioner:

- was plainly wrong, or misdirected him or herself 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;

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<sup>43</sup> See Statutory Guidance and Statutory Directions on impounding

<sup>44</sup> See Statutory Guidance and Statutory Directions on Delegations and Multiple Licence Holders



- offended the rules of natural justice<sup>45</sup> 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 considering whether to overturn a decision, the Upper Tribunal will have regard to the well-known appellate test, relating to discretionary decisions, in order to determine whether the traffic commissioner has “exceeded the generous ambit within which a reasonable disagreement is possible”.<sup>46</sup>

**56-61.** The Upper Tribunal is mindful of the limited resources available to public bodies and that they would not be “*appropriately spent monitoring non-compliant operators who have failed to take steps which could have been taken*”. Whilst from the appellant’s perspective the granting of a period of grace might appear to be a small step, the Upper Tribunal considered both proportionality and administration of justice in a recent decision. The Tribunal held it was not in the interests of justice to grant a period of grace to an operator who had an opportunity to draw funds at the public inquiry stage but chose not to. The Upper Tribunal concluded that “*granting a period of in such circumstances might serve to encourage a strategic approach to the Tribunal and would be contrary to the co-operation and openness which the TC and the Tribunal expect in this regulatory sphere*”.<sup>47</sup>

**57-62.** The Upper Tribunal may not take account of circumstances which did not exist at the time when the traffic commissioner made his or her decision. The Tribunal therefore does not usually admit or consider fresh evidence which was not before the traffic commissioner, and does not usually hear witnesses and will only do so in those exceptional cases where the interests of justice require it. Where it does so, it is the responsibility of the Tribunal to ensure that copies of the relevant material are sent to all parties prior to the hearing.

## Appeal Documents

**58-63.** The Upper Tribunal can give directions so that the case is properly prepared and the appellant is provided with a bundle of documents identical to the bundles which the Tribunal Members will have ahead of the hearing. The Tribunal Secretary is obliged to supply copies of any documents received from the traffic commissioner upon request from a party unless the Upper Tribunal considers it unreasonable and gives reasons why.

**59-64.** The Upper Tribunal will ask the Office of the Traffic Commissioner to supply copies of all the relevant papers, including the transcript of the public inquiry if applicable. It is important to remember, however, that the current rules require the relevant traffic commissioner to send the Upper Tribunal a copy of the following upon receipt of a notice of appeal:

- the decision appealed against, whether given in writing by the traffic commissioner or transcribed, including reasons;
- all documents produced to the traffic commissioner in connection with the decision appealed against;

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<sup>45</sup> See Statutory Guidance and Statutory Directions on Case Management

<sup>46</sup> [G v G \[1985\] UKHL 13](#)

<sup>47</sup> [2018/017 North Warwickshire Travel Ltd \(No 2\) and Michael James](#)



- if a public inquiry was held, the transcript of the inquiry or, if no such transcript was produced, the traffic commissioner's note of that inquiry;
- and if relevant a list of the names and addresses of objectors and representors.

**60-65.** These Directions have been drafted to assist in the preparation of documents in advance of the hearing of an appeal against a traffic commissioner's decision.

**61-66.** Appellants are required to provide details about themselves, their representative (if relevant), details of any other parties, and details of the decision being appealed, the grounds of the appeal, whether a stay is or has been sought, and to supply:

- a copy of the decision letter issued by the traffic commissioner;
- the Grounds of Appeal;
- a copy of the 'Traffic Commissioner Stay' document (if applicable).

**62-67.** 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 on behalf of the traffic commissioner. It may assist the Tribunal to save wasted costs by the Office of the Traffic Commissioner to indicate which documents the appellant already has in its possession. Original evidence of available finance will have been scanned onto the Vehicle Operator Licensing system, to be retained and destroyed in line with the traffic commissioner data retention policy. This will ensure that relevant evidence is available in the event of an appeal. Other documents such as driver defect reports may be difficult to copy. It will not always be practicable to retain a copy of every piece of maintenance documentation produced to the traffic commissioner during the course of a public inquiry. Traffic commissioners will often ask for copies to be taken of a few illustrative examples only. It is therefore important that the Public Inquiry Clerk ensures that there is an accurate record of what was produced, for instance records between given dates and, as important, those which are not. The Upper Tribunal can then indicate those documents, which it expects the appellant to produce in support of the appeal.

**63-68.** Furthermore, the appeal may be part of a series of cases and as a consequence the Tribunal may already be in possession of some or all of the documents relevant to a particular appeal. In the above circumstances the Office of the Traffic Commissioner should check with the Tribunal Secretary and request confirmation in writing if it is not required to send copies of all the documents. That confirmation should be attached to the index or checklist contained in [Annex 2](#) and referred to in correspondence when the bundle of documents is sent to the Upper Tribunal.

**64-69.** Members of the Upper Tribunal and traffic commissioners are concerned that public money should not be unnecessarily wasted. There may be incidents where it is not necessary to copy all of the relevant documents referred to above and at [Annex 2](#).

**65-70.** The Upper Tribunal has given guidance to assist the Office of the Traffic Commissioner in preparing appeal bundles. This guidance is set out at [Annex 1](#) and contains some general rules to assist in completing the bundle for the Upper Tribunal. [Annex 2](#) provides a checklist to be attached to the bundle.

**66-71.** Whilst the preparation of the appeal papers falls under functions delegated by individual traffic commissioners they should still be referred to a traffic commissioner by the staff to enable sufficient time for a thorough check of the papers to be conducted.

### **Assistance to the Upper Tribunal Office**

**67-72.** Office of the Traffic Commissioner staff may assist the Upper Tribunal office by clearly marking “Redacted” and “Full” versions of a written decision or reasons, to ensure that evidence heard in closed session is not widely circulated.

**68-73.** The Upper Tribunal has also indicated that it would be assisted by Office of the Traffic Commissioner staff emailing to indicate once an appeal bundle has been sent to the Upper Tribunal office.

### **Formal Directions from the Upper Tribunal**

**69-74.** The traffic commissioner for the relevant traffic area must always be made aware of any appeal in advance of the hearing and preferably upon first receipt of notification. Where the Upper Tribunal makes a direction or formal request the traffic commissioner must be informed. Where a case is remitted for rehearing the traffic commissioner must also be alerted to any directions before any staff member takes action on their behalf.<sup>48</sup>

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<sup>48</sup> By example: [2012/028 Shamrock \(GB\) Ltd](#)

## ANNEX 1 - PREPARING APPEAL BUNDLES

### (1) **Pagination**

- (a) Bundles need not be paginated with each page being numbered individually and consecutively. Different sections of the file may be separated by cardboard or other tabbed dividers so long as these are clearly indexed. The indexing used at the original hearing should be clearly indicated. Letters and other documents should normally be included in chronological order per section
- (b) Where page numbers have been used they should be clear and in bold at the bottom of the copies supplied to the Tribunal and in a form that can be clearly distinguished from any other pagination on the document.

### (2) **Avoidance of duplication**

No more than **one copy of any document** should be included unless there is a good reason.

### (3) **Format and presentation**

- (a) Where possible the documents should be on A4 size paper. Where a document has to be read across rather than down the page, it should be so placed in the bundle as to ensure that the text starts nearest the spine.
- (b) Where any marking or writing in colour on a document is important, the document must be copied in colour or marked up correctly in colour.
- (c) Documents which are not easily legible should be transcribed and the transcription marked and placed next to the document transcribed.
- (d) Documents in a foreign language should be translated and the translation marked and placed next to the document translated. The translation should be agreed or, if it cannot be agreed, each party's proposed translation should be included.

### (4) **Binding**

- (a) All documents, with the exception of transcripts, must be bound together. This may be in a lever arch file, ring binder or plastic folder. Plastic sleeves containing loose documents must not be used. Binders and files must be strong enough to withstand heavy use.
- (b) Large documents such as plans should be placed in an easily accessible file.

## **(5) Indices and labels**

- (a) An index/checklist (see [Annex 2](#)) must be included at the front of the bundle listing all the documents and providing the page references for each of them. In the case of documents such as letters, invoices or bank statements, they may be given a general description.
- (b) Where the appeal bundle consists of more than one file, an index to all the files should be included in the first file and an index included for each file. Documents should be identified briefly but properly.
- (c) Where documents have not been copied by agreement with the Tribunal because it is already in possession of those documents they should be included on the index and marked: 'With Tribunal'.

## **(6) Identification**

- (a) Every bundle must be clearly identified, on the spine and on the front cover, with the name of the case and reference number. Where the bundle consists of more than one file, each file must be numbered on the front cover and the inside of the front cover.
- (b) Outer labels should use large lettering.

## **(7) Staples etc.**

All staples, heavy metal clips etc, must be removed.

## **(8) New Documents**

- (a) Before a new document is introduced into bundles which have already been delivered to the Tribunal, steps should be taken to ensure that it carries an appropriate bundle/page number so that it can be added to the court documents. It should not be stapled and it should be prepared with punch holes for immediate inclusion in the bundles in use.
- (b) An index should be produced for this file, updated as necessary.

## ANNEX 2 - DOCUMENT BUNDLE CHECKLISTS FROM OFFICE OF THE TRAFFIC COMMISSIONER TO THE UPPER TRIBUNAL

### COMPLIANCE

CASE REF:.....

DOCUMENTS IN THIS BUNDLE	CHECKED	TABS
<b>SECTION A.</b> The brief for the traffic commissioner, including the call-up letter and all documents which were enclosed with it.		1.
<b>SECTION B.</b> Correspondence between the call-up letter and the Public Inquiry (PI), if any.		2.
<b>SECTION C.</b> (1) Documents put in evidence during the hearing, if any, marked as to their source. (2) Documents put in evidence after the hearing, if any, marked as to their source.		3.
<b>SECTION D.</b> (1) The transcript of the PI, including the oral decision if any. (2) If the decision was made in office (i.e. with no PI), a full record of the decision.		4.
<b>SECTION E.</b> (1) Correspondence from a party received after the hearing e.g. relating to conditions or finance. (2) Relevant correspondence seen by the presiding traffic commissioner from any third party received after the hearing.		5.
<b>SECTION F</b> (1) Any documents which are confidential treated separately and clearly marked 'official sensitive'. (2) Any documents which are confidential, such as sensitive financial statements, treated separately and clearly marked 'official sensitive'		6.
<b>SECTION G.</b> The formal decision letter, together with any written reasons or written confirmation of any oral decision. Redacted and full versions must be clearly marked.		7.
<b>SECTION H.</b> All relevant material concerning stays		8.
<b>SECTION I.</b> Miscellaneous documents		9.

Signed.....NAME.....

Date.....OTC (Area).....

**LICENSING**

**CASE REF:**.....

<b>DOCUMENTS IN THIS BUNDLE</b>	<b>CHECKED</b>	<b>TABS</b>
<b>SECTION A.</b> Correspondence pertaining to a period of grace (professional competence). This includes the initial referral to the Traffic Commissioner by OTC Licensing.		1.
<b>SECTION B.</b> Correspondence between the grant of the period of grace and re-referral.		2.
<b>SECTION C.</b> Further referrals to the Traffic Commissioner by OTC Licensing and the decisions returned, including full reasoning.		3.
<b>SECTION D.</b> Formal decision letter.		4.
<b>SECTION E.</b> Correspondence subsequent to the decision letter being issued.		5.
<b>SECTION F</b> Further referral to the Traffic Commissioner from OTC Licensing and full written decision.		6.
<b>SECTION G.</b> Documents not made available to the Traffic Commissioner at the time of receipt but disclosed prior to the decision of 11 June.		7.
<b>SECTION H.</b> Material concerning stays, if any, in a separate bundle for the Tribunal's correspondence file.		8.
<b>SECTION I.</b> Miscellaneous documents		9.

Signed.....NAME.....

Date.....OTC (Area).....



## **ANNEX 3 - RETAINED EU LEGISLATION**

Regulation 5 of the Road Transport Operator Regulations 2011 states that a standard licence constitutes an authorisation to engage in the occupation of road transport operator for the purposes of:

**Regulation (EC) No 1071/2009 establishing common rules concerning conditions to be complied with to pursue the occupation of road transport operator repealed Council Directive 96/26 EC and applicable from 4<sup>th</sup> December 2011**

### **Article 15 - Decisions of the competent authorities and appeals**

1. Negative decisions taken by the competent authorities of the Member States pursuant to this Regulation, including the rejection of an application, the suspension or withdrawal of an existing authorisation and a declaration of unfitness of a transport manager, shall state the reasons on which they are based.

Such decisions shall take account of available information concerning infringements committed by the undertaking or the transport manager which are such as to detract from the good repute of the undertaking and of any other information at the disposal of the competent authority. They shall specify the rehabilitation measures applicable in the event of the suspension of an authorisation or a declaration of unfitness.

2. Member States shall take steps to ensure that the undertakings and persons concerned have the possibility of appealing the decisions referred to in paragraph 1 to at least one independent and impartial body or a court of law.