IN THE UPPER TRIBUNAL **Appeal No. UA-2023-000601-T**
ADMINISTRATIVE APPEALS CHAMBER **[2024] UKUT 132 (AAC)**

(TRAFFIC COMMISSIONER APPEALS)

ON APPEAL from a DECISION of a TRAFFIC COMMISSIONER for the NORTH WEST of ENGLAND TRAFFIC AREA

Before:	Mr E Mitchell, Judge of the Upper Tribunal Mr S James, Specialist Member of the Upper Tribunal Dr P Mann, Specialist Member of the Upper Tribunal
Appellant:	Croft Travel Lancashire Ltd (t/a Croft Travel)
Commissioner's ref:	PC2037248
Date of decision:	26 April 2023
Representation:	did not attend
Heard at:	Leeds Employment Tribunal, 4th Floor, City Exchange, 11 Albion Street, Leeds on 5 October 2023

DECISION OF THE UPPER TRIBUNAL

This appeal is dismissed.

Subject matter:	Designated transport manager.
Case law referred to:	*Blackmur t/a IJB Transport* [2021] UKUT 0313 (AAC).

REASONS FOR DECISION

Traffic Commissioner's decision

1. On 15 February 2023, the Office of the Traffic Commissioner (OTC) informed the Appellant operator that it had been brought to the Traffic Commissioner's attention that the operator had no transport manager specified on its public service vehicle (PSV) operator's licence. The letter went on to inform the operator that the Commissioner was considering revoking the operator's licence and set 1 March 2023 as the date by which any representations and request for a public inquiry were to be made. The letter added that the operator's representations could include a request to add a new transport manager to the operator's licence.

2. On 15 February 2023, the operator submitted to the OTC application forms for Mr F Saad and Mr M Evans to be specified on its licence as designated transport managers. On 23 February 2023, the OTC wrote to the operator to inform it that the information supplied for both Mr F Saad and Mr M Evans was incomplete. The operator was given until 9 March 2023 to supply the missing information. Both individuals emailed the OTC in an attempt to supply the missing information.

3. On 14 March 2023, the OTC wrote to the operator as follows:

> "Thanks for your letter two applications [sic] nominating Mr Evans and Mr Saad as transport managers.
>
> The Traffic Commissioner has considered the applications and decided to hold them in abeyance until after the upcoming public inquiry the two gentlemen are linked to.
>
> With the above in mind, the Traffic Commissioner has also decided to grant a Period of Grace to cover the licence until a decision can be made on the nominations of Mr Evans and Mr Saad.
>
> Under section 17(1)(a) of [the Public Passenger Vehicles Act 1981], and in accordance with Regulation (EC) 1071/2009, the Traffic Commissioner has decided to allow your licence to remain in force until 09 April 2023 without a specified replacement transport manager.

> …The Traffic Commissioner is obliged to revoke the licence under the provisions of section 17(1) of the Act if you fail to add a suitably qualified transport manager to your licence by the deadline stated above. That transport manager must have been accepted by the Traffic Commissioner as capable of meeting the requirements of section 14ZA."

4. On 21 March 2023, both Mr Saad and Mr Evans withdrew their offers to act as the operator's designated transport managers.

5. On 29 March 2023, the OTC emailed the operator, noting the recent withdrawal of Mr Saad and Mr Evans, and reminded the operator of the 9 April 2023 deadline set in its letter of 14 March 2023.

6. On 30 March 2023, the operator submitted a fresh transport manager application to the OTC, in respect of a Mr B Ford.

7. On 4 April 2023, the OTC wrote to the operator, informing it that the transport manager application in respect of Mr B Ford was incomplete. The section of the OTC application form which asks a prospective transport manager how many hours will be spent on transport manager duties each week had not been completed. The OTC also noted that Mr Ford would, if he became the operator's designated transport manager, be the designated transport manager for two operators, and had also applied for an operator's licence in his own right. The OTC sought confirmation that Mr Ford would be able effectively and continuously to manage the transport activities of the operators for whom he intended to be designated transport manager. The deadline for supplying a complete application, and answering the OTC's queries, was set at 18 April 2023.

8. On 21 April 2023, the operator's director, Ms Hughes, jointly with Mr Ford, responded to the OTC's letter of 4 April and attached a completed transport manager application form. Having explained that she had been away and had only just accessed her emails, Ms Hughes went on state that Mr Ford would devote 20 hours each week to his transport manager duties for the operator, "only visiting his own operating centre a couple of times a week", and intended to proceed with his own application for an operator's licence.

9. On 26 April 2023, the Traffic Commissioner revoked the operator's standard PSV operator's licence. No public inquiry was held beforehand. The Commissioner's decision letter read as follows:

"I refer to our letter dated 15 February 2023 and email dated 29 March 2023 notifying you that the Traffic Commissioner was considering revoking your public service vehicle operator's licence.

In the absence of a full response to the above the Traffic Commissioner has revoked your operator's licence with immediate effect for the following reasons:

- Section 17(1)(a) – No longer professionally competent

The Traffic Commissioner made a finding that you lacked professional competence from 14 February 2023.

The letter dated 15 February 2023 set out the consequences of your failing, to address the loss of your transport manager and properly set out the appropriate options for you to respond.

This was reinforced, at the direction of the Traffic Commissioner, by the email sent to you dated 29 March 2023 which reminded you that the licence will be revoked if you had not completed the appointment of a new transport manager or applied (in advance) for an extension to the Period of Grace by 09 April 2023. The email also warned that any application to extend the Period of Grace will only be considered if evidence of financial standing, as previously requested, had been supplied.

You then responded by submitting an incomplete application to add a new transport manager. The financial evidence was not submitted and there was no application to extend the Period of Grace.

A further letter was sent dated 04 April 2023 highlighting the deficiencies in the application and you were given until 18 April 2023. That date passed without any response.

Response dated 21 April 2023 is noted."

10. An internal OTC memorandum of 15 May 2023 revealed that the Traffic Commissioner had not authorised an extension of the operator's period of grace to 18 April 2023 nor was the Commissioner made aware, when he decided to revoke the

operator's licence, of the operator's communication of 21 April 2023 (although, we observe, the Commissioner's decision letter states that the communication was 'noted'). Insofar as relevant, the memorandum read as follows:

> "…I have now been made aware of an email from the operator dated 21 April 2023 enclosing a completed TM/1 application for Mr Ford and a letter setting out his proposed working hours. I was not aware of this email when I made my decision on 24 April 2023. I note however that the email was received 12 days after the period of grace expired. The covering email stated that the director had been away and had not seen the OTC email dated 4 April 2023 previously. That was the email that wrongly suggested the operator had until 18 April 2023 to respond. I note the financial evidence previously requested has not been supplied.
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> It is suggested above that, "it may have been possible for the request to add Mr Ford as TM to be complete although late and outside the PoG date". This is not in fact possible as a matter of law.
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> The legal position is made abundantly clear in SD3, "If a period of grace expires without the mandatory requirement being met then the traffic commissioner is obliged to revoke the operator licence." citing the UT's decision in *Blackmur T/A IJB Transport*: [2021] UKUT 313 (AAC).
>
> …Even if I was to stretch the law to its extremes and treat the effect of the OTC letter dated 4 April 2023 as a de facto extension of the period of grace to 18 April 2023 (even though it was not at my direction as TC), the Operator has clearly failed to complete the appointment of a TM by that date and has not requested an extension.
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> I have no power to direct the extension of a period of grace in retrospect. Had I been made aware of the email dated 21 April 2023 when I originally considered the matter on 24 April 2023 it would not have materially affected my decision."

The operator's appeal to the Upper Tribunal

11. The operator's notice of appeal to the Upper Tribunal, drafted by the operator's director, Rhianna Hughes, argues that the operator's licence was revoked unfairly for the following reasons:

(1) when Ms Hughes became a director of the operator on 15 February 2023, there was a full change of staff, and she arranged for a transport manager to "apply for the licence";

(2) upon learning that the Traffic Commissioner had doubts about the competence of her initial proposed transport managers, she "immediately sought out employment of a new transport manager who applied to the licence". This was all done before 9 April 2023 which led Ms Hughes to believe that no further period of grace would be necessary;

(3) unfortunately, a section was "missed" in Mr Ford's transport manager's application. The Commissioner's questions which were answered by email on 21 April 2023;

(4) "the matter of financial standing is still ongoing as when the previous director changed all of the company details over he added the significant person of control as a firm and not an individual". This prevented Ms Hughes from opening a bank account in the company's name and she was in correspondence with Companies House about rectification of the mistake. Once that is done, "I will be able to send over the full financial standing for Croft Travel (Lancashire) Ltd".

The hearing

12. The hearing of the operator's appeal was listed to begin at 2 p.m. By 2:10 p.m. no representative of the operator had arrived at the venue. The Upper Tribunal's clerk rang the telephone contact number provided by the operator, but the call went unanswered. The clerk rang again at 2:20 p.m. but, again, to no avail. To date, the operator has not contacted the Upper Tribunal to explain why no representative attended a hearing which the operator had itself requested.

13. Rule 38 of the Tribunal Procedure (Upper Tribunal) Rules 2008 provides as follows:

> "If a party fails to attend a hearing, the Upper Tribunal may proceed with the hearing if the Upper Tribunal—
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> (a) is satisfied that the party has been notified of the hearing or that reasonable steps have been taken to notify the party of the hearing; and
>
> (b) considers that it is in the interests of justice to proceed with the hearing."

14. We are satisfied that the operator was duly notified of the hearing. Indeed, the operator's director had informed the Upper Tribunal that the director intended to attend the hearing. Given the absence of any explanation for the operator's failure to attend and that the operator, which is a commercial entity and thus responsible for securing its own interests, had a reasonable opportunity to put its case in writing, we considered it to be in the interests of justice to hear this appeal in the absence of a representative for the operator.

Legal framework

15. Section 17(1) of the Public Passenger Vehicles Act 1981 ("1981 Act") provides as follows:

> "(1) A traffic commissioner must revoke a standard licence if it appears to the commissioner at any time that –
>
> …(b) the transport manager designated in accordance with Article 4 of the 2009 Regulation no longer satisfies the requirements of section 14ZA(3)."

16. Subsequent provisions of section 17 of the 1981 Act provide the legal basis for what, conventionally, is known as a 'period of grace':

> "(1A) Before revoking a standard licence under subsection (1), the traffic commissioner may serve on the holder a notice setting a time limit, in accordance with Article 13.1 of the 2009 Regulation, for the holder to rectify the situation.
>
> (1B) If the holder rectifies the situation within the time limit set under subsection (1A), the traffic commissioner must not revoke the licence."

17. Article 13.1 of Regulation (EC) No 1071/2009 provides as follows:

> "Where a competent authority establishes that an undertaking runs the risk of no longer fulfilling the requirements laid down in Article 3, it shall notify the undertaking thereof. Where a competent authority establishes that one or more of those requirements is no longer satisfied, it may set one of the following time limits for the undertaking to rectify the situation:
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> (a) a time limit not exceeding 6 months, which may be extended by 3 months in the event of the death or physical incapacity of the transport manager, for the recruitment of a replacement transport manager where the transport manager

> no longer satisfies the requirement as to good repute or professional competence…".

18. In *Blackmur t/a IJB Transport* [2021] UKUT 0312 (AAC), the Upper Tribunal held as follows (emphasis in original):

> "17. Once a [period of grace] has expired without the operator complying with its terms, a traffic commissioner **shall** revoke the licence when the matter is referred to him."

Conclusion

19. The Traffic Commissioner is required to revoke an operator's standard PSV operator's licence if the operator's designated transport manager no longer satisfies the requirements of section 14ZA(3) of the 1981 Act. The requirement to revoke must be read as extending to the case of an operator which no longer has a designated transport manager.

20. The operator's grounds of appeal do not clearly identify any mistake made by the Traffic Commissioner in revoking the operator's licence. However, the grounds may intend to argue that the Traffic Commissioner unfairly led the operator to believe that, once the operator had submitted a new designated transport manager application, there was no need to request a further period of grace (a period during which the operator would be permitted to operate without a designated transport manager). We shall approach the operator's grounds of appeal on that basis.

21. Whether the operator's period of grace expired on 9 April 2023 or 18 April 2023, it cannot be disputed that, at the expiry date, the operator had failed to submit a complete application form for authorisation of a designated transport manager. The form submitted on 30 March 2023, which was signed by Mr Ford and Ms Hughes, director of the operator, did not answer the form's standard question about the number of hours that, each week, the prospective transport manager would devote to managing the operator's transport operations. Since all other sections of the form were completed, and this application followed an earlier application that was also incomplete, this omission cannot be considered an oversight. The operator says the question was 'missed' but does not explain why. Given Mr Ford's other commitments, as documented in the evidence, it is more likely than not that the omission was intentional.

22. The operator's director, Ms Hughes, argues that, upon submitting the transport manager application in respect of Mr Ford, she assumed no further period of grace was required. However, we find that she had knowingly submitted an incomplete

transport manager application form. Ms Hughes could not reasonably have believed that a complete application had been submitted, that is one which was likely to lead to the authorisation of Mr Ford to act as the operator's transport manager. We therefore reject the argument that the operator's course of dealing with the OTC unfairly led the operator to believe that no further period of grace was required upon the expiry (on 9 or 18 April 2023) of the period of grace previously allowed. The operator could not reasonably have expected the Traffic Commissioner to authorise a transport manager to act as such in response to an application form that failed to address the important issue of the amount of time that Mr Ford intended to devote to managing the operator's transport activities. We therefore dismiss this appeal.

23. Finally, we apologise for the delay in giving this decision. Initially, due to an administrative oversight this case was not marked on the Upper Tribunal's case management system as ready for decision. And, subsequently, the judge was absent from duties while recovering from injuries sustained in an accident.

Authorised for issue by the Upper Tribunal panel on 8 May 2024.

Section 50(4) of the Public Passenger Vehicles Act 1981.