



**IN THE UPPER TRIBUNAL
ADMINISTRATIVE APPEALS CHAMBER
(TRAFFIC COMMISSIONER APPEALS)**

**Appeal No. UA-2024-000881-T
[2024] UKUT 366 (AAC)**

**ON APPEAL from a DECISION of a TRAFFIC COMMISSIONER in the LONDON &
SOUTH EAST TRAFFIC AREA taken on 4 June 2024**

Before: E Mitchell, Judge of the Upper Tribunal
S Booth, Specialist Member of the Upper Tribunal
Mr D Rawsthorn, Specialist Member of the Upper Tribunal

Appellant: K & K HGV Transport Ltd

Commissioner's ref: OK2051565

Heard at: Field House, Bream's Buildings, central London on 13
November 2024

Date of decision: 14 November 2024

DECISION OF THE UPPER TRIBUNAL

**This appeal is dismissed. The Traffic Commissioner's decision involved no
error of law or fact.**

Subject matter: Revocation of standard operator's licence

REASONS FOR DECISION

Hearing before the Upper Tribunal

1. A hearing of this appeal was listed to begin at 10.30 a.m. on 13 November 2024 at Field House, central London. The Appellant's director, Mr K Ozbalci, whom the Upper Tribunal had been informed would represent the Appellant at the hearing, was not in attendance at 10.30 a.m. The Upper Tribunal's clerk rang Mr Ozbalci who informed the clerk that he had been delayed by a traffic problem but would arrive within 15 minutes. The clerk rang Mr Ozbalci again at 10.45 a.m. and was informed that he would be there "in eight minutes".

2. At 11 a.m. on 13 November 2014, the panel proceeded with a hearing in Mr Ozbalci's absence. The panel could not wait indefinitely in the hope that Mr Ozbalci might at some point arrive. Mr Ozbalci was given proper written notice of the time and place of the hearing and should have made arrangements to arrive on time. We are satisfied that proceeding with a hearing in the absence of the Appellant's representative was in accordance with the overriding objective of the Upper Tribunal Rules of dealing with cases fairly and justly.

3. After we (the Upper Tribunal panel) had risen and left the hearing venue, the clerk informed us that Mr Ozbalci arrived at the venue at about 11.15 a.m. The clerk, acting in accordance with the judge's previous instructions, asked Mr Ozbalci whether he wished to request a new hearing date or was content for this appeal to be decided on the papers. Mr Ozbalci informed the clerk that he was happy for a decision to be made on the papers.

Background

4. On 2 April 2024, the Office of the Traffic Commissioner (OTC) wrote to the operator (the present Appellant) noting that it did not have a designated transport manager. The letter informed the operator that the Traffic Commissioner was considering revoking the operator's licence and that, if the operator wished to make written representations, these were to be received by 23 April 2024. The letter also informed the operator that the Commissioner "may considering granting a period of grace to enable you to find a replacement...transport manager...but you need to ask".

5. On 3 April 2024, the OTC wrote to the operator to inform it that a recent application to nominate a transport manager, a Mr Adam Nienaltowski, was incomplete. Mr Nienaltowski had not signed and dated the application, nor had a director of the operator. The operator was told that this omission needed to be corrected by 17 April 2024. The 3 April 2024 letter again informed the operator that it could request a 'period of grace'.

6. On 3 May 2024, the OTC wrote to the operator once more to allow a further seven days in which to request a 'period of grace' failing which the operator's licence would be revoked.

7. On 4 June 2024, the Traffic Commissioner revoked the operator's licence. The Commissioner's decision letter read as follows:

"I refer to our letters dated 2 April 2024, 3 April 2024, and 3 May 2024 notifying you that the Traffic Commissioner was considering revoking your goods vehicle operator's licence. The correspondence referred to the loss of the company's transport manager.

In the absence of a completed transport manager application or a request for a period of grace, the Traffic Commissioner has revoked your operator's licence with effect from 4 June 2024 in accordance with the following grounds:

- Under section 27(1)(a) of the Act, that the licence-holder no longer meets the requirement of professional competence."

Legislative framework

8. Section 27(1) of the Goods Vehicles (Licensing of Operators) Act 1995 (1995 Act) specifies cases in which a Traffic Commissioner must revoke a standard operator's licence. A Commissioner must revoke the licence if at any time it appears to the Commissioner that the licence-holder no longer satisfies a requirement of section 13A (section 27(1)(a)).

9. The requirements of section 13A of the 1995 Act include that, in the case of a corporate operator such as the present Appellant, it has designated a suitable individual, or individuals, who satisfy the requirements of paragraph 14A(1) and (3) of

Schedule 3 to the Act. Such an individual is referred to in the 1995 Act as a “transport manager” (section 13A(5)).

10. Section 27(3A) of the 1995 Act permits a Traffic Commissioner to set a time limit for a licence-holder to rectify an apparent regulatory breach. This is known conventionally as a ‘period of grace’.

Grounds of appeal

11. The Appellant’s grounds of appeal were drafted on its behalf by its director Mr Ozbalci who writes that a close family member was recently ‘sectioned’ under the Mental Health Act 1983 and that revocation of the operator’s licence “severely impacted” his ability to care for the family member. The notice of appeal was accompanied by a letter dated 14 June 2024 from an NHS Foundation Trust which stated that the family member had been detained for treatment under section 3 of the 1983 Act.

Why this appeal is dismissed

12. Mr Ozbalci does not argue that the family member’s mental illness prevented him from attending to his responsibilities as director of a licensed operator of goods vehicles. But, if he had, it would not have helped on this appeal. There is nothing to suggest that the family member’s illness was drawn to the OTC’s attention prior to the revocation decision. The Commissioner’s decision cannot be criticised, therefore, for not having taken the matter into account.

13. The argument advanced by Mr Ozbalci is that revocation of the operator’s licence prevents him from providing a close family member with necessary care and support. There is nothing to suggest that this argument was put to the Traffic Commissioner. In any event, we do not see how it could have made any difference had it been put to the Commissioner. The regulatory system provided for by the 1995 Act cannot be relaxed so that a particular operator / its director can attend to caring responsibilities. We do not wish to sound harsh, but this is not a concern of the 1995 Act. The regulatory legislation sets the rules, and the Traffic Commissioners enforce them, in both cases without imposing a lower standard for operators with difficult personal circumstances, which is necessary to achieve the overriding aim of maintaining road safety.

14. We can identify no error of fact or law in the Traffic Commissioner's decision to revoke the operator's licence and must therefore dismiss this appeal.

**Authorised for issue by the Upper
Tribunal panel on 14 November
2024.**

Given under section 37(2) of the
Goods Vehicles (Licensing of
Operators) Act 1995.