



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

**Appeal No. UA-2024-001081-T
[2024] UKUT 425 (AAC)**

**ON APPEAL from a DECISION of a TRAFFIC COMMISSIONER in the NORTH
EAST of ENGLAND TRAFFIC AREA taken on 2 July 2024**

Before: E Mitchell, Judge of the Upper Tribunal
R Fry, Specialist Member of the Upper Tribunal
K Pepperell, Specialist Member of the Upper Tribunal

Appellant: Ashro Shipping Ltd

Commissioner's ref: OB2047324

Date of Commissioner's decision: 2 July 2024

Heard at: Field House, Bream's Buildings, central London on 3
December 2024

Representation: For the Appellant, Mr Mark Francis (director of the
Appellant company). Mr Francis participated in the
hearing remotely using the *Cloud Video Platform*
application.

Date of decision: 12 December 2024

DECISION OF THE UPPER TRIBUNAL

This appeal is ALLOWED. The Traffic Commissioner's decision of 2 July 2024, directing revocation of operator's licence no. OB2047324, was made in error of law. Under section 37(2) of the Goods Vehicles (Licensing of Operators) Act 1995, the Upper Tribunal sets aside the Commissioner's direction.

ORDER OF THE UPPER TRIBUNAL

In exercise of the Upper Tribunal's power under paragraph 17(2) of Schedule 3 to the Transport Act 1985 to make such order as it sees fit on an appeal against a decision of the Traffic Commissioner, we order as follows:

- (1) our setting aside of the Traffic Commissioner's direction to revoke the operator's licence means that, for the time being, that licence is restored to the operator;
- (2) paragraph (1) above shall not affect the power of a Traffic Commissioner to direct revocation of the operator's licence following expiry of the deadline referred to in paragraph (4)(b) below;
- (3) the PTR (Proposal to Revoke) letter issued by the Office of the Traffic Commissioner on 3 June 2024 is to be treated as if it were a notice issued under section 27(2) of the Goods Vehicles (Licensing of Operators) Act 1995 on the same day that this decision of the Upper Tribunal is issued;
- (4) The PTR letter referred to in paragraph (3) above is to have effect subject to the following modifications:
 - (a) the words "Any written representations must be made to this office by **24/06/2024** for the traffic commissioner's consideration" are deleted;
 - (b) those deleted words are replaced with the following:

"Any written representations must be made to this office, no later than 21 days after the date on which the decision of the Upper Tribunal in case UA-2024-001081-T is issued, for the traffic commissioner's consideration".

Subject matter: Revocation of standard operator's licence / period of grace / public inquiries

Case law referred to: *McKee (Operator) & McKee (Transport Manager)* [2014] UKUT 0254 (AAC)

REASONS FOR DECISION

1. In these reasons:

- "1995 Act" means the Goods Vehicles (Licensing of Operators) Act 1995;
- "operator" means the Appellant company;
- "OTC" means the Office of the Traffic Commissioner.

The Traffic Commissioner's decision-making

2. On 3 June 2024, the OTC sent a Proposal to Revoke (PTR) letter to the operator. Having summarised the law about the requirement for an operator to have a transport manager, the letter went on:

"...It has been brought to the attention of the Traffic Commissioner that there is currently no transport manager specified on your licence...

...the traffic commissioner is considering the revocation of your operator's licence on the grounds detailed above [*no designated transport manager*]...Under section 27(3) [of the 1995 Act] you are entitled to make written representations to the traffic commissioner. Section 29(1) allows you to request a public inquiry, in order to offer further evidence as to why the licence should not be revoked.

Any written representations must be made to this office by **24/06/2024** for the traffic commissioner's consideration.

Your representations may include an application to add a replacement transport manager to your licence...

The traffic commissioner may consider granting a period of grace to enable you to find a replacement or whilst your nomination of a new transport manager is being considered, but you need to ask. The traffic commissioner is not obliged to grant a period of grace and is unlikely to do so unless there is evidence that a replacement will be recruited and that the licence requirements will be met in the meantime. An application for a period of grace must be in writing and set out what you are doing to resolve the matter. Guidance to request a period of grace whilst you recruit a new transport manager is attached at Annex B.

Annex B – Guidance for requesting a period of grace to satisfy the transport manager requirements

...There must be tangible evidence that a period of grace will be worthwhile, in other words, there are reasonable prospects that the mandatory requirement will be met before expiry of the specified period of grace .

...Please make any period of grace requests in writing and specify:

why your last transport manager has left and the circumstances.

what measures were taken to prevent loss of a suitable number of transport managers.

the period of time you seek for your period of grace

how you will cover the duties of a transport manager during the period of grace

what action you are taking to meet the transport manager requirement as soon as possible...”

3. On 27 June 2024, the operator’s director, Mr Francis, wrote to OTC as follows:

“Sorry for the late reply I have been onboard a ship and had no access to internet to reply before this date. Our transport manager has recently retired and we are actively seeking a replacement and I am also studying to pass the qualification myself. Would it be possible for you to grant a period of grace until we can find a replacement in the near future?”

4. In connection with Mr Francis’ statement that he was onboard a ship, we understand that the operator’s business involved transporting items to and from the Canary Islands.

5. On 2 July 2024, the Traffic Commissioner revoked the operator's licence. The decision letter read as follows:

"I refer to our letter dated 06.06.2024 notifying you that the Commissioner was considering revoking your operator's licence. The Traffic Commissioner has noted your late response dated 27 June 2024 and has stated that the operator should be contactable or provisions should be made for company correspondence to be received at all times, including periods of director's absence.

Therefore the Traffic Commissioner has revoked your operator's licence with effect from 02.07.2024 in accordance with the following grounds:

- Under section 27(1)(a) of the [1995] Act, that the licence holder no longer meets professional competence requirements in line with Section 13A(3)(a)(i) or 13A(3)(b).

..."

The OTC case file

6. Schedule 1(3)(b) to the Tribunal Procedure (Upper Tribunal) Rules 2018 requires the Traffic Commissioner, upon receipt of a notice of appeal against the Commissioner's decision, to send to the Upper Tribunal "all documents produced to the [Commissioner] in connection with the decision".

7. The OTC case file provided to the Upper Tribunal in this case, pursuant to Schedule 1(3)(b), consisted of three documents (eight pages). These were the Proposal to Revoke letter dated 3 June 2024, Mr Francis' email of 27 June 2024 and the revocation decision letter dated 2 July 2024. The OTC case file contained no documentation about previous regulatory interventions or concerns, and we therefore proceed on the basis that this operator had a fully compliant regulatory history. If the operator had previously been a cause for regulatory concern, we are sure that documentation about those concerns would have been put before the Traffic Commissioner.

Legal framework

8. Section 27(1)(a) of the 1995 Act requires a Traffic Commissioner to direct that a standard licence be revoked if at any time it appears to the Commissioner that the licence-holder no longer satisfies one or more of the requirements of section 13A.

9. The requirements of section 13A of the 1995 Act, insofar as relevant to the requirement for a corporate operator to designate a transport manager, are expressed as follows:

“(3) The second requirement is that the traffic commissioner is satisfied that the applicant —

...(b) if the applicant is not an individual...has designated a suitable number of individuals who satisfy the requirements set out in paragraph 14A(1) and (3) of Schedule 3...

(5) In this Act, “transport manager” means an individual designated under subsection (3)(a)(ii) or (b).”

10. Before giving a direction to revoke a standard operator’s licence, the Traffic Commissioner is required by section 27(2) of the 1995 Act to “give to [the licence-holder] notice in writing that he is considering giving such a direction”. Certain matters must be dealt with in a section 27(2) notice, such as “the grounds on which the traffic commissioner is considering giving a direction”, but the notice may also “set a time limit for the licence-holder to rectify the situation” (section 27(3A)). Conventionally, such a time limit is referred to as a ‘period of grace’. The time limit may not exceed 6 months or, in some cases, 9 months including where “more than 6 months is required to recruit a replacement transport manager” (section 27(3B)). If the licence-holder duly “rectifies the situation”, the Commissioner may not make the revocation direction (section 27(3B)).

11. In *McKee (Operator) & McKee (Transport Manager)* [2014] UKUT 0254 (AAC), the Upper Tribunal said:

“7. In our view, when considering whether or not to grant a period of grace, Traffic Commissioners will need some tangible evidence, beyond mere hope and aspiration, that granting a period of grace will be worthwhile, and that there are reasonable prospects for a good outcome. Some sort of analysis along these lines will be necessary because, amongst other reasons, Traffic

Commissioners have to decide how long to grant. Moreover, as with a stay, there is no point in granting a period of grace if the likely effect is just to put off the evil day when regulatory action will have to be taken.”

12. Section 29(1) of the 1995 Act provides that a Traffic Commissioner may not give a revocation direction under section 27(1) “without first holding an inquiry if the holder of the licence...requests that an inquiry be held”. Provision about the conduct of inquiries is made by Schedule 4 to the Goods Vehicles (Licensing of Operators) Regulations 1995 (“1995 Regulations”). Paragraph 5(2) of Schedule 4 provides as follows:

“...a person entitled to appear at an inquiry...shall be entitled to give evidence, call witnesses, to cross examine witnesses and to address the traffic commissioner both on the evidence and generally on the subject matter of the proceedings.”

13. Section 37(2) of the 1995 Act confers a right of appeal to the Upper Tribunal against a revocation direction given under section 27(1). The 1995 Act does not provide for a right of appeal against a Traffic Commissioner’s refusal to set a “time limit for rectifying the situation” (a period of grace) under section 27(3A).

14. Paragraph 17(2) of Schedule 3 to the Transport Act 1985 provides as follows:

“(2) On an appeal from any determination of a traffic commissioner...the Upper Tribunal is to have power—

(a) to make such order as it thinks fit; or

(b) to remit the matter to—

(i) the traffic commissioner who made the decision against which the appeal is brought; or

(ii) as the case may be, such other traffic commissioner as may be required by the senior traffic commissioner to deal with the appeal,

for rehearing and determination by the commissioner in any case where the tribunal considers it appropriate;

and any such order is binding on the commissioner.”

Grounds of appeal

15. The Appellant's written grounds of appeal, drafted by Mr Francis, argued that he was onboard ship when the OTC's PTR letter was emailed to him. As soon as he returned to the UK, he responded. The operator's previous transport manager retired at short notice leaving little time to find a replacement. The operator has no idea why its request for a period of grace was refused and it now has "a vehicle stranded in the Canary Islands with no licence". The operator cannot return that vehicle to the UK without a licence.

16. At the hearing before the Upper Tribunal, Mr Francis said that the operator's previous transport manager resigned without notifying the operator. His last contact with the previous transport manager was when she went on holiday and said she would be in touch on her return. Mr Francis had 'lined up' a new transport manager but his request for a period of grace was just ignored and not even acknowledged.

Conclusions

17. As we mentioned above, the 1995 Act does not provide a right of appeal against a Traffic Commissioner's refusal to grant a period of grace. Despite that, there are decisions, such as *McKee*, in which the Upper Tribunal has felt able to offer an opinion, albeit in quite general terms, on when a period of grace should, or should not, be granted.

18. While there is no right of appeal against a Commissioner's refusal to grant a period of grace, cases arise in which the refusal to grant a period of grace is an integral part of the decision to revoke an operator's licence. In such cases, we consider that the Traffic Commissioner's obligation to provide sufficient reasons for a licence revocation decision cannot be discharged unless some explanation is given for the refusal to grant a period of grace. We are satisfied that the present case falls into this category. The absence of a transport manager was the only regulatory concern mentioned in the PTR letter and, on the operator's case, the only impediment to it satisfying the requirement to have a transport manager was time.

19. In our judgment, the Traffic Commissioner was required, in this case, to give the operator some explanation as to why its request for a period of grace was refused. The circumstances do not speak for themselves or, to put it another way, this cannot be considered to be a case in which a request for a period of grace was bound to fail

despite the operator's request having been made three days after the deadline for providing written representations against revocation. We say that because there was no history of regulatory concern in relation to this operator, Mr Francis' reason for the late reply to the PTR letter was not obviously implausible and he informed the OTC that he was actively seeking a replacement transport manager.

20. The requirement for sufficient reasons to be given for a licence revocation decision required, in this case, some explanation as to why the Commissioner refused to grant a period of grace. Its absence was an error on a point of law.

21. The Traffic Commissioner further erred in law by failing to take account, in his revocation reasons, the absence of any adverse regulatory history in relation to this operator. That had to be a relevant consideration before concluding that this was an operator that deserved to be put out of business. If the actual reason for refusing to grant a period of grace, so that revocation became inevitable, was the operator's failure to make arrangements so that it was contactable at all times, again the requirement to give sufficient reasons for a revocation decision required some explanation as to why this was a failure that justified revoking the licence held by an operator with no adverse regulatory history.

22. We find that the Traffic Commissioner's decision was further flawed by virtue of the PTR letter's inaccurate, and unduly restrictive, description of an inquiry, given when that letter informed the operator of its right to request a public inquiry. The operator was informed that the purpose of an inquiry was "in order to offer further evidence as to why the licence should not be revoked". An inquiry is about more than that. Under the 1995 Regulations, a person entitled to attend an inquiry has the general right to "give evidence, call witnesses, to cross examine witnesses and to address the traffic commissioner". The OTC's misleadingly restrictive description of the purpose of a public inquiry diluted the protections afforded by Parliament to operators in the revocation decision-making process. If an inquiry is described as no more than opportunity to provide further evidence, that is bound to dissuade some operators from exercising the right. In the present case, the Commissioner's subsequent decision (subsequent to the PTR letter) was unfair because it was built on a foundation that undermined procedural protections that Parliament has seen fit to build into the licence-revocation process. We do not think it matters that the operator failed to respond to the PTR letter within the 21-day period afforded for making written representations because the PTR letter placed no time limit on

making a request for an inquiry. For the above reasons, the Commissioner's decision involved a further error of law.

Disposal

23. This appeal succeeds. The Commissioner erred in law in giving a direction to revoke this operator's licence. However, deciding what happens next is not so straightforward. The Commissioner's revocation direction cannot stand but, at the same time, the Upper Tribunal should not merely set aside the revocation direction and leave it at that. As things stand, if this operator resumes its business, upon the restoration of its operator's licence, it will be in breach of the requirement to have a designated transport manager and, for a standard licence holder, that is a mandatory ground for revocation under section 27(1) of the 1995 Act.

24. Our order disposing of this appeal, set out above before our reasons for allowing this appeal, endeavours to put the operator back in the position in which it stood just before the OTC issued its PTR letter. That letter was flawed because it failed properly to explain the operator's right to request a public inquiry. However, the operator is now well aware of what a public inquiry entails and so it would be artificial to expect the OTC to start the entire regulatory enforcement process afresh. Instead, we have ordered that the OTC's PTR letter of 3 June 2024 / notice under section 27(2) of the 1995 Act shall have effect as if it were a PTR letter / section 27(2) notice given on the day that our decision is issued.

25. Our order means that the operator should respond anew to the OTC's PTR letter / section 27(2) notice, and it has 21 days from the date on which this decision is issued to provide written representations against revocation to the OTC. The operator also has the opportunity to make a fresh request for a period of grace. For 21 days following the date on which this decision is issued, the operator's licence is restored. What happens next is in the hands of a Traffic Commissioner.

**Authorised for issue by the Upper
Tribunal panel on 12 December
2024.**

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