



**IN THE UPPER TRIBUNAL
ADMINISTRATIVE APPEALS CHAMBER**

**Appeal No. UA-2023-001571-T
[2024] UKUT 444 (AAC)**

On appeal from the Decision of Richard Turfitt, Traffic Commissioner for the East of England dated 19th October 2023

Veltrans Green Ltd

Appellant

-and-

Secretary of State for Transport

Respondent

**Tribunal Judge Her Honour Judge Beech
Specialist Member of the Upper Tribunal Stuart James
Specialist Member of the Upper Tribunal Gary Roantree**

Hearing date: 10th October 2024

Representation:

Appellant: Laura Newton solicitor of Smith Bowyer Clarke on behalf of the Appellant and Tim Johnston of Counsel on behalf of the Respondent

DECISION

The appeal is ALLOWED in part and the revocation of the operator's licence is set aside. The matter is remitted back to the Traffic Commissioner for consideration of the outstanding variation application

Subject Matter: Adequacy of the propose to revoke letter; whether wording used in response to the propose to revoke letter should have been interpreted as a request

for a public inquiry; suitability of operating centre; material change; stable and effective establishment; breach of licence conditions

Cases referred to: T/2010/064 JWF (UK) Ltd; 2005/57 Maynard Winspear; Pamela Hibberd (UA-2022-000538-T); Newbold v The Coal Authority [2013] EWCA Civ 584; All Saints Spring Park Parochial Church Council v Church Commissioners [2024] UKPC 23.

REASONS FOR DECISION

1. This is an appeal from the decision of the Traffic Commissioner for the East of England (“the TC”) made on 19th October 2023 when he revoked the standard national operator’s licence of the Appellant (“the company”) under s.26(1)(b), (e) and (h) and s.27(1) of the Goods Vehicles (Licencing of Operators) Act 1995 (“the Act”).

The Background

2. The background relevant to the appeal can be found in the appeal and hearing bundles. In late 2022 (the precise date is not included in the bundles), the company applied for a standard national licence authorising three vehicles and three trailers. The correspondence address and the stable establishment address was 8 Ennismore Green, Luton (the home address of the director and transport manager) and the operating centre address was “*Red Lion, Weedon Road, upper Heyford, Northampton*”; the maintenance contractor was Paragon in Basildon. The sole director was Alexandru Veloiu and the Transport Manager was Irina Iordache (Mr Veloiu’s wife). It would appear that no assessment of the suitability of the proposed operating centre (which was in fact a truck stop) was undertaken by the DVSA prior to the operator’s licence being granted on 31st December 2022.
3. On 28th February 2023, the DVSA sent the company an invitation to an online new operator seminar which was to be held on 21st March 2023. The letter stated:

“This is to ensure that you are familiar with all aspects of vehicle and driver management as well as specific licence conditions. If the Traffic Commissioner found that your knowledge of the requirements relating to the operation of Goods Vehicles is lacking, this could be grounds to revoke your licence.”

The letter required the company to confirm attendance on or before 7th March 2023. No response was received.

4. On 7th March 2023, the DVSA wrote again noting that there had been no response from the company to the above invitation. The letter went on:

“Please note that we do not normally offer more than two opportunities to attend a seminar. If you would like to request a 2nd invite due to mitigating circumstances, please state reason(s) by return e-mail”.

Mr Veliou had clearly spoken to someone within the DVSA following receipt of the email, as he responded on 15th March 2023 stating:

“As we discussed on the phone, unfortunately I won’t be able to attend this seminar. Sorry for any inconvenience”.

There is no attendance note of this telephone conversation within the bundles.

5. A further invitation to a seminar was sent to the company on 25th April 2023. The seminar date was 16th May 2023 and the company was asked to confirm attendance by 2nd May 2023 and it was emphasised **“It has been noted that you did not attend your previous invite”** and the company was reminded that two offers to attend a seminar were not normally offered.
6. On 3rd May 2023, the DVSA wrote again, noting that no reply had been received to the second invitation. The letter continued:

“Please note that if you fail to attend this seminar, it will result in further action by DVSA”.

Mr Veliou responded on 9th May 2023 stating:

“Sorry for my late reply. I can confirm that I will attend the seminar, or if I will not be able to attend, it will be attended by the Transport Manager (if that is possible)”.

Nobody on behalf of the company attended the seminar on 16th May 2023.

7. On 13th June 2023, the DVSA emailed Ms Lordache attaching a letter requiring the production of records to enable a Desk Based Assessment of systems to take place (“DBA”) within fourteen days. Unfortunately, that letter is not within the bundle, only the covering email but a reply was required by 27th June 2023 and a copy of the letter was also sent to the company’s correspondence address. There was no response. The DVSA wrote again on 3rd July 2023. The letter was headed **“Failure to respond to an official request for records and information”** and gave the company a seven-day extension to submit the requested records. The letter concluded:

“Please be aware, that this is an official request ... and failure to respond will result in the case being returned of the Office of the Traffic Commissioner as unsatisfactory which will result in in (sic) further enforcement action”.

Neither a response to the letter or the requested documentation was received by the DVSA.

8. On 22nd June 2023, the Office of the Traffic Commissioner (“OTC”) wrote to the company. The letter referred to the operating centre using its correct title - “Red Lion Truck Stop” and stated:

“I refer to your goods vehicle operator’s licence which currently authorises you to operate 3 vehicles and 3 trailers from the operating centre detailed above.

Section 7(3) of the above Act defines an operating centre as the “base or centre at which the vehicle is normally kept”. When determining an application the Traffic Commissioner must consider if the proposed operating centre satisfies the requirement to be available and suitable for use as an operating centre, and that the capacity of the site is sufficient for the number of vehicles and trailers authorised respectively.

The Traffic Commissioner has received information regarding the Red Lion Truck Stop which indicates that the site may not meet the criteria for use as an operating centre. The site owners have confirmed that the site has capacity for 250 vehicles and trailers. Our records show that the current operators whose licences authorise use of the site have authority to park in excess of 250 vehicles. It is further understood that while the site owners may have given permission for you to park at the site, spaces are not designated for use by a single contractor and have to be booked in advance. This could mean that the site may be at full capacity and no longer available for use.

The failure to have an operating centre which is available and suitable, or has sufficient capacity for use as such, constitutes a material change to the licence in accordance with Section 26(1)(h) of the Act, and could potentially lead to the revocation of the licence. The Traffic Commissioner has asked that I write to you to put you on notice that he will be reviewing all licences which authorise the use of Red Lion Truck Stop as an operating centre. You are advised to take this opportunity to consider how you may ensure you meet the requirement to have an operating centre which satisfies the requirements of the Act. If you wish to seek authorisation of a new operating centre, you will need to apply to vary your goods vehicle operator’s licence. Variation applications can be made online using the Vehicle Operator Licensing system, details of which can be found at Manage your vehicle operator licence (website details given)”.

The company did not respond to the letter.

9. On 18th September 2023, a Propose to Revoke letter was sent to the company (“the PTR letter”). It was headed “**THIS LETTER REQUIRES URGENT ATTENTION**” and was sent to the correspondence address for the company by recorded delivery and to the email correspondence addresses of both the company and the transport manager. The letter set out the chronology of the company’s failures to respond to DVSA and OTC communications and continued:

“In view of the above, the traffic commissioner is considering making a direction under Section 26(1) of the Act to revoke your operator’s licence on the following grounds:

under Section 26(1)(b) of the Act that the holder of the licence has contravened any condition attached to the licence, namely condition to notify the Traffic Commissioner of relevant changes, including the Operating Centre.

under section 26(1)(e) of the Act that when applying for the licence the licence holder made the following statements that were either false or have not been fulfilled:

- i. The Operator would abide by any conditions which may be imposed on the licence namely:-*
- i. Cooperation with the DVSA.*
- ii. The Operating Centre is where the vehicle is normally kept.*

under section 26(1)(h) of the Act, that there has been, since the licence was issued or varied, a material change in any of the circumstances of the licence-holder, that were relevant to the issue or variation of the licence, namely Operating Centre has now become unsuitable.

- No Stable and Effective Establishment as Operating Centre at The Red Lion Truckstop, Weedon Road, Upper Heyford, Northampton. NN7 4DE is now unsuitable for use as an Operating centre due to operating model.*

Section 27(1) of the Act states that the traffic commissioner shall direct that a standard licence be revoked if at any time it appears to him/her that:

- a) The licence-holder no longer satisfies the requirements of Section 13A(2) of the Act, namely that the operator has an effective and stable establishment in Great Britain, is of good repute and has appropriate financial standing.*

In view of the evidence the traffic commissioner considers that you no longer satisfy the requirement to be an Operator with a stable and effective establishment, continue with good repute, maintain the required financial standing, and that the Transport Manager continues to meet Schedule 3 and explains the continued use of an unsuitable Operating Centre as identified in a letter dated 22/06/2023.

Furthermore, the traffic commissioner in accordance with Section 29(1) offers you the opportunity to request a public inquiry in order to offer further evidence as to why the licence should not be revoked. Any request for a public inquiry is to be made in writing to this office by 29/09/2023.

If no request for a public inquiry is received by this date your operator’s licence will be revoked. You will be required to return your operator’s licence, and disc(s) to this office on or before 06/10/2023.

You should note that the revocation of the licence will render unlawful the operation of vehicles for which an operator’s licence is required.”

10. The PTR letter did provoke a response. Ms Lordache wrote on 21st September 2023 stating:

"I must start by admitting that I failed to attend the New Operator Seminar. I apologise for that. I am the Transport Manager and my husband is the director. We are parents to 3 very young children and childcare is all but inexistent (sic) but I am not seeking to excuse myself or the Director. I have begun to re-engage with the DVSA to organise attending another Seminar as soon as one is available.

I received the letter about the suitability of the operating centre dated 22/06/2023 and I have been looking for a new centre since. I still use the Red Lion and I did not understand from your letter that I have to stop using it or stop operating. However, I found new parking facilities and will be placing the advert in the newspaper during next week (ISO 39).

Regarding the other correspondence you mentioned, in relation to the DBA, I apologise, I missed those altogether. I found them in my spam after receiving your letter. I am willing to engage in the DBA and have written to express this.

I realise the above is a late response filled with excuses but the operation has a stable establishment in the UK and the imposition to find a new operating centres is such short notice is severe for a small family operator such as ourselves.

Please consider allowing us a chance to prove these were not intentional errors but rather misunderstandings, especially regarding the suitability of the operating centre.

Thank you for your time and diligence in dealing with this response!"

11. On 10th October 2023, Ms Lordache attended the new operator seminar and evidence of financial standing was submitted to the OTC which was satisfactory. However, whilst Ms Lordache had indicated that an alternative operating centre had been identified and that a variation application would be advertised, no variation application was submitted. In his decision upon the application for a stay submitted by the company following revocation, the TC considered that this was difficult to understand given the attendance on the on-line seminar on 10th October 2023.
12. On 19th October 2023, the company's operator's licence was revoked with effect from 23.45 on 1st November 2023. The letter repeated the second and third paragraphs of the PTR letter save that in its reference to section 27(1) of the Act, good repute and financial standing were omitted as reasons for mandatory revocation.
13. There then followed numerous telephone conversations between Ms Lordache and the OTC. She stated that she did in fact have a new operating centre, the agreement having been signed on 23rd September 2023. She had not submitted a variation application in respect of it due to the PTR process taking place which she now realised was a mistake. She emailed a "*To whom it may concern*" document signed by the director of SDE Haulage Ltd in Northampton stating that permission had been given to the company to use premises located on the Aaron Road Industrial Estate in Peterborough as an operating centre for three vehicles and three trailers for "*the agreed fee*". Shortly

thereafter, the VOL was updated with an application for a new operating centre. Ms Lordache requested that the TC review his decision.

14. On 20th October 2023, the TC's response was set out in a letter:

"The Traffic Commissioner has stated ...

"this case was concerned with more than a delayed application for a new OC. The operator failed to respond appropriately and has only now made contact. The new OC has yet to be granted and there has still be no assessment by DVSA (sic). The operator and TM should know the basic requirements of an O/L. Given the above, it cannot be said that the decision to revoke was plainly wrong. It must now decide how to proceed. The operator has the run down period to lodge a new application and obtain interim authority"

This means that the revocation will be in place from 23.45 hours on 1 November 2023.

The Traffic Commissioner feels that this run down period until 1 November 2023, will give you opportunity to submit an new application (sic) for a new Operators Licence, with a request that consideration be given for the issuing of an interim licence to allow you to operate your vehicle ..."

Rather than submit a new application for an operator's licence, the company appealed on the following grounds:

- (i) The Traffic Commissioner was wrong to make a finding that the operator no longer satisfied the requirement for a stable and effective establishment.
- (ii) The Traffic Commissioner had no power to conduct a review of an existing operating centre at this stage in the licence, when it was available and being used.
- (iii) The Traffic Commissioner was wrong to find a breach of a specific licence condition regarding DVSA co-operation.
- (iv) The Traffic Commissioner was wrong in failing to offer a public inquiry (we take this to mean "*failing to hold a public inquiry*").

The grounds above were expanded by Ms Newton in her skeleton argument.

15. On 18th December 2023, the Secretary of State for Transport ("SofS") made a successful application to be joined as a party to assist the Tribunal with regard to the first three grounds of appeal and to make positive submissions on the fourth ground which raised a question of general public importance namely:

"In what manner, and with what degree of clarity, must a licence holder request (and so require) that an inquiry be held before the traffic commissioner can be found to have erred in law by not holding an inquiry before proceeding to revoke a licence?"

The appeal

16. At the hearing of this appeal, Ms Newton, solicitor of Smith Bowyer Clarke solicitors appeared on behalf of the company. Mr Johnston of counsel appeared on behalf of the Secretary of State. Both provided the tribunal with skeleton arguments for which we were grateful.

17. This appeal raises a number of issues which give cause for concern. Rather than follow the chronology of the grounds of appeal which to some extent overlap, and, which with the greatest of respect to Ms Newton, do not necessarily highlight all of the issues that need to be determined, we are satisfied that the better approach is to address the various topics on an individual basis which should produce an overall picture before considering the company's response to the PTR letter dated 18th September 2023.

18. The authorised operating centre

Section 7 of the Act sets out the requirement that a holder of an operator's licence must have a place to be used as an operating centre. Section 7(3) of the Act defines an operating centre as "*the base or centre at which the vehicle is normally kept*". The relevant provisions of s.13C of the Act can be summarised in this way:

(5) the operating centre specified on an operator's licence must be "*available and suitable for use*" as an operating centre of the licence holder;

(6) the capacity of the place specified as an operating centre must be sufficient to provide an operating centre for all the heavy goods vehicles used under the licence;

(9) In considering whether subsection (5) or (6) will apply in relation to every goods vehicle licence, the traffic commissioner may take into account (if this is the case) that any proposed operating centre of the applicant would be used -

(a) as an operating centre of the holders of other licences as well as an operating centre of the applicant; or

(b) by the applicant or by other persons for purposes other than keeping heavy goods vehicles used under the licence.

19. Discussion

In the normal course of events, when an application is made for a new licence, some basic steps are taken by the Office of the Traffic Commissioner ("OTC") in order to establish the following, pursuant to the provisions of s.7 & s.13C of the Act:

a) enquiries as to whether the applicant has permission to use the site as an operating centre and that there is a formal agreement in place between the site owner and the applicant guaranteeing parking facilities for the number of vehicles and trailers to be authorised on the licence. This requirement is substantially more than being able to take advantage of a publicly available parking facility provided the relevant parking fees are paid;

b) in a case where an applicant does not have exclusive use of the site or where there are concerns that other vehicles use the site (whether authorised on a licence or not), the appropriate step is to ask for a site plan showing where the designated parking for the applicant's vehicles is situated on the site and request details of the steps to be taken to prevent others parking in that area;

c) when it is known or there is reason to believe that the site is shared with other operators, then some investigation should be undertaken to ascertain the number of other vehicles which are authorised to use the site as an

operating centre and where the designated parking is situated for those vehicles on the site. It is often prudent for the DVSA to be asked to visit to make an assessment of the site's availability and suitability.

As the second paragraph of the TC's letter of 22nd June 2023 confirms:

“Section 7(3) of the above Act defines an operating centre as the “base or centre at which the vehicle is normally kept”. When determining an application the Traffic Commissioner must consider if the proposed operating centre satisfies the requirement to be available and suitable for use as an operating centre, and that the capacity of the site is sufficient for the number of vehicles and trailers authorised respectively”.

20. There is no evidence before this Tribunal that any of the basic and appropriate steps were taken prior to the grant of the company's licence. This is all the more surprising when all the OTC had to do was interrogate its own systems as was eventually done, to ascertain the number of vehicles authorised to use the site, make enquiries about the nature of the site and the number of parking spaces available. As became apparent after the grant of the company's licence, the address was nothing more than a parking facility for use by any goods vehicle or private vehicle, provided they paid the correct parking fee, with more vehicles authorised to use the facility as an operating centre than spaces available. There is no explanation as to how this unsatisfactory state of affairs came to pass or any evidence, such as a case worker's case file notes, detailing how it was determined that the truck stop was available and suitable for this company at the time of application, let alone the dozens of other licences that specified the truck stop as their operating centres. The *“bottom line”* is that the Red Lion Truck Stop is neither suitable or available without a formal agreement which guaranteed the company parking for three vehicles and three trailers within a designated area. It is clear that the company's licence should not have been granted with the Red Lion truck stop as its specified operating centre.
21. We have considered whether the company either misled the OTC whether by misrepresentation or by omitting to provide required information when making its application and we can find no evidence that would or could lead to that conclusion. We are not satisfied that describing it's proposed operating centre in its application as *“Red Lion”* without reference to it being a truck stop would/should be considered a misrepresentation or otherwise misleading, particularly as the OTC should have been well aware what type of facility the Red Lion was having authorised over 250 vehicles to be kept at the site when not in use.
22. Material Change
By s.26(1)(h) of the Act, an operator's licence may be revoked, suspended or curtailed on the ground that:
“since the licence was issued or varied there has been a material change in any of the circumstances of the licence-holder that were relevant to the issue or variation of the licence”

The material change relied upon by the TC in its correspondence to the company is that the “*operating centre has now become unsuitable*” . Beneath that paragraph is a bullet point:

- “*No Stable and Effective Establishment as Operating Centre at The Red Lion Truckstop, Weedon Road, Upper Heyford, Northampton. NN7 4DE is now unsuitable for use as an Operating centre due to operating model*”

It is far from clear whether the bullet point is to be read as part of the material change allegation or whether it is in fact to be read in conjunction with the following paragraph setting out concerns that the company may not have an effective and stable establishment, be of good repute and have appropriate financial standing.

23. It is the company’s case that there has been no material change in its circumstances since the application for and the granting of the licence and that action under s.26(1)(h) of the Act could not be justified. The circumstances of the company had not changed at all. The realisation on the part of the TC that there may have been some procedural irregularities/mistakes in the granting of this licence did not fall within the ambit of s.26(1)(h). The only option available to the TC was to serve a notice on the company during the five yearly review period provided under s.30 of the Act which enables a TC to remove an operating centre from a licence if deemed unsuitable under powers conferred upon the TC by s.31 of the Act.
24. In his oral submissions, Mr Johnston identified the change of circumstances relied upon by the TC as being the change of the TC’s view/understanding of the operating centre as a result of the new information that had come to light namely, that there were 250 parking spaces which was insufficient for the 250 plus vehicles authorised to park there; there were no designated parking spaces for the use of a single operator and that parking must be booked in advance. It is the SofS’s case that s.26(1)(h) of the Act is sufficiently broad to encompass any change of circumstances which are relevant to the issue or variation of an operator’s licence, including a TC’s change of view as to the suitability of a site as an operating centre. Moreover, the TC was relying on breaches of ss.26(1)(b) (e) and (f) of the Act, which when taken together with the unsuitability of the operating centre, amount to a material change. It would be “*a surprising set of circumstances*” if the TC was bound by a decision based on a mistake of fact on his part at the time of granting the licence which could not be reviewed save for the power to review under s.30 of the Act at the five-year point.
25. Discussion

We are satisfied that the plain wording of s.26(1)(h) of the Act does not extend to a TC changing their view about the suitability and availability of an operating centre when the circumstances of the operator had not changed since the application for and the granting of the operator’s licence, particularly when the operator had not caused or contributed to the circumstances in which an operator’s licence should not have been granted in the first place. The procedural irregularities are the result of failings within the OTC. And contrary to submissions that unless s.26(1)(h) is construed broadly there are no means

by which a decision can be reviewed before the five year review period, there is in fact a procedure for reviewing decisions to grant or refuse an operator's licence contained in s.36 of the Act if a procedural requirement imposed by or under any enactment has not been complied with in relation to the decision. It reads:

“36 Review of decisions.

(1) Subject to subsection (2), a traffic commissioner may review and, if he thinks fit, vary or revoke any decision of his, or of another traffic commissioner, to grant or refuse —

(a) an application for an operator's licence, or

(b) an application for the variation of such a licence in a case where section 17(3) required notice of the application to be published,

if he is satisfied that a procedural requirement imposed by or under any enactment has not been complied with in relation to the decision.

(2) A traffic commissioner may under subsection (1) review a decision only —

(a) if, within such period after the taking of the decision as may be prescribed, he or another traffic commissioner has given to the applicant or (as the case may be) the licence-holder notice of intention to review the decision;

(b) if, within that period, a person who appears to him to have an interest in the decision has requested that the decision be reviewed by a traffic commissioner; or

(c) (where neither paragraph (a) nor paragraph (b) applies), if he considers there to be exceptional circumstances that justify the review. ...”

The Tribunal was not taken to this section by either Ms Newton or Mr Johnston and so we have not had the benefit of submissions upon the construction of this section. However, our preliminary view is that the combined effect of ss.36(1) and (2) is that there is a power to review the grant of the licence in the circumstances set out in (2)(a) and (b) within two months of the grant (by virtue of reg 34 of the Goods Vehicles) Licensing of Operators Regulations 1995) and a power to review if a TC considers there to be exceptional circumstances justifying a review without any constraint on the timing of that review. We consider that the circumstances of this case would fulfil the criteria of “*exceptional*” under s.36(2)(c) of the Act, which would have entitled the TC to review the grant of the licence on the ground specified but this is not the statutory provision relied upon by the TC. Moreover, whilst Mr Johnston submitted that the TC also relied upon breaches of s.26(1)(b), (e) and (f) in support of a finding of material change, that is not how the PTR letter is worded. Material change is limited to the operating centre. In the circumstances, we are not satisfied that there was any evidence to base an allegation of material change as set out in the PTR and the revocation letters. Similarly, we are not satisfied that there had been a breach of s.26(1)(b) of the Act (the requirement to notify the TC of any relevant changes), the change cited being to the operating centre.

26. We consider that in the peculiar circumstances of this case and in particular, that the errors made prior to the granting of the licence authorising the Red

Lion as the operating centre were not caused or contributed by the company, the letter of 22nd June 2023 should have been clearer in setting out the requirement for the company to find an alternative operating centre and should have directed that the company regularise its position with regard to the operating centre within a given period of time (with or without the payment of a fee). We repeat, the company was not in a position of its own making with regard to the operating centre. Whilst we do not know how the company may have responded, in the absence of a timeline, the letter failed to convey any sense of importance or urgency with regard to regularising the position. As Ms lordache commented in her letter dated 21st September 2023 “*I did not understand from your letter that I have to stop using it or stop operating*”.

27. Paragraph 40 of Mr Johnston’s skeleton argument reads:

“The Tribunal will need to determine whether the June 2023 letter was merely suggestive and - even if it was - whether the appellant should have been granted more time, such that the TC erred when he suspended the licence on 19th of October 2023”.

We are satisfied that for the reasons given above, the letter was inadequate and that at the very least, time should have been given to the company to apply for a new operating centre even before the PTR was issued. In the result, we consider that the procedure adopted was unfair.

28. Stable and effective establishment

The requirement to have an effective and stable establishment is set out in paragraph A1 of Schedule 3 of the Act. The relevant parts provide:

“(1) A person has an effective and stable establishment in Great Britain under section 13A(2)(a) if the person satisfies, or will satisfy on the issuing of an operator’s licence, the requirements set out in sub-paragraph (2).

(2) The requirements are that the person—

(a) has premises in Great Britain at which the person—

(i) is able to access, in electronic or any other form, the originals of the person’s core business documents, and

(ii) carries out effectively and continuously, with appropriate equipment and facilities, the administration of the person’s transport service,

(b) has access to one or more goods vehicles that are authorised to be used under the person’s operator’s licence,

(c) has at a place or places in Great Britain—

(i) a number of goods vehicles referred to in paragraph (b) that is proportionate to the national or international transport operations carried out from each place, and

(ii) a number of drivers that is proportionate to the number of goods vehicles operating from that place ...”

29. It is the company’s case that the TC was plainly wrong to find that a concern relating to capacity and suitability of an operating centre equated to a lack of stable and effective establishment. It was not suggested that the operating centre was unavailable or that the company lacked a base at which records could be kept or that there was any issue with access to vehicles.

30. Discussion

31. The nominated address for the purposes of sub-paragraphs (1) & (2) of paragraph A1 of the Schedule is 8 Ennismore Green, Luton, not the Red Lion Truck Stop as is suggested in the PTR letter (see above). However, it might have been the case that the TC was concerned that the company’s failure to respond to correspondence and to comply with the requests made by the DVSA for relevant documents for the purposes of conducting a DBA gave rise to the concern that the address was not being used as required by the sub-paragraphs. The PTR letter is unclear and fails to adequately set out the grounds for concern. Moreover, it might have been the case that the TC considered that as a result of the unsatisfactory situation with the operating centre, that there was a breach of sub-paragraph (2)(c). Again, the PTR letter is unclear and fails to adequately set out the grounds for concern. Section 27(3) of the Act makes clear that that PTR letter “*shall state the grounds on which the traffic commissioner is considering giving a direction..”*

32. In his submissions, Mr Johnston referred the Tribunal to the case of Newbold v The Coal Authority (2013) EWCA Civ 584 concerning the adequacy of statutory notices (as in the case of a PTR letter), Sir Stanley Burnton held:

“In my judgment, ... a notice is valid provided it adequately provides the information required by the regulations ...”

We are not satisfied that the PTR letter did provide either clear or adequate information as to the grounds upon which the TC was considering revocation of the company’s licence. It follows that the PTR letter was defective.

33. And we go further. Whatever the reasoning for asserting that there was evidence that the company no longer satisfied the requirement to have a stable and effective establishment, which, if found to be the case, would result in mandatory revocation of the licence, the PTR letter should have put the company on notice that by virtue of s.27(3A) of the Act, the TC had a discretion to grant a period of grace and that accordingly, the company could ask the TC for time to regularise its position. Ms lordache’s response to the PTR was effectively asking for more time which may have been better informed/assisted by a reference to the right to apply for a period of grace in the PTR letter.

In all the circumstances, we consider that the failure in this instance to adequately set out reasons for the TC’s concerns and the failure to refer to the

TC's discretion to grant a period of grace renders the PTR letter seriously deficient and amounts to an error of law.

34. Breach of s.26(1)(e)

One of the two statements relied upon by the TC in support of a breach of s.26(1)(e) was that the company would abide by any conditions imposed on the licence, namely: cooperation with the DVSA. There is no condition recorded on the licence requiring cooperation with the DVSA and so it follows, there was no evidence upon which to base that assertion. However, as Ms Newton conceded, all operators have a positive duty to co-operate with the DVSA and the TC/OTC to enable investigation and regulation of their operational activities (see T/2010/064 JWF (UK) Ltd). Ms Newton further conceded that the company's failings in this regard went to the issue of good repute and as a result, whilst correctly identifying a cause for concern, the PTR letter is plainly wrong in its categorisation of that concern as a breach of condition.

35. Ms lordache's response to the PTR letter

It is the company's case that the response, and in particular, the paragraph -

"Please consider allowing us a chance to prove these were not intentional errors but rather misunderstandings, especially regarding the suitability of the operating centre"

in the context of this case and on a fair and reasonable interpretation, should have been taken to be a request for a public inquiry despite Ms lordache failing to specifically request a "public inquiry" or even a hearing. It was unlikely that either the director or Ms lordache, had any relevant experience upon which to draw when formulating a response to the PTR letter but in any event, the above quoted paragraph was sufficient. Ms Newton referred the Tribunal to the appeal decision of 2005/57 Maynard Winspear in which the Appellant specifically asked for a public inquiry, then subsequently asked for the date upon which the public inquiry was to take place and later referred in correspondence to the "interview" he was to have with the Traffic Commissioner. She submitted that this demonstrated the generous approach which must be afforded to operators who have the right to have a proposed revocation properly scrutinised. Ms Newton submitted that the Winspear appeal was similar on the facts to this present appeal.

36. Ms Newton also referred us to UA-2022-000538-T Pamela Hibberd in which the Appellant accepted that her licence would have to be revoked and that she would need to apply for a new licence. She advised the TC that she would not ask for a public inquiry prior to revocation unless the TC was minded to make findings with regard to professional competence and good repute. If the TC was so minded, the Appellant asked for a public inquiry. The licence was then revoked without a hearing, with findings that both good repute and professional competence were "severely tarnished .. which will have an impact .. on the future application ..". The licence revocation was overturned on appeal. Ms Newton submitted that the Hibberd appeal was helpful to the company in this case because the decision made clear that if an operator wanted a public inquiry "all you have to do is ask". It would be too restrictive to find that an operator must use the words "public inquiry" in order for one to

take place, particularly when the loss of a licence would affect “*lives and livelihoods*” and if such a narrow prescriptive approach was expected, the PTR letter inviting a response ought to direct that those words be used by the operator.

37. Discussion

The Tribunal has not sought to summarise the SofS’s submissions on this point prior to moving to our Discussion as we adopt them and incorporate them into our reasons.

38. The purpose of s.29(1) of the Act is to ensure that a licence revocation does not take place without giving an operator an opportunity to request a public inquiry. The purpose of the public inquiry is to give the operator an opportunity to adduce evidence, call witnesses to cross-examine witnesses and to address the TC. Parliament did not assume that a public inquiry would be necessary in all cases or that a public inquiry would be requested in all cases.

39. The correct approach when construing the response to a PTR letter is to ask how would “*a reasonable recipient of the notice interpret it, reading it in its statutory or contractual context*” (see the Privy Council decision in *All Saints Spring Park Parochial Church Council v Church Commissioners [2024 UKPC 23]*). A reasonable recipient (whether a TC or a member of staff in the OTC) of the company’s response would be aware:

a) Parliament did not assume a public inquiry would be necessary in all cases;

b) An operator can be taken to be familiar with the statutory regime (see *T/2012/30 MGM Haulage & Recycling Ltd [2012 UKUT 346 (AAC)]*) and can be taken to understand that they can request a public inquiry but if no request is made, a decision will be taken without a hearing;

c) The OTC will not find a request for a public inquiry when none is made.

40. Any request for a public inquiry is likely to contain the words “*public inquiry*”. At the very least a response to a PTR letter will make clear that the operator wishes to adduce further evidence or make further representations before a decision is taken. A response which requests a “*hearing*” or an “*interview*” or a “*meeting*” in order to put evidence before the TC to explain matters more fully and to explain errors, would, for example, be fairly construed as a request for a public inquiry.

41. We agree that upon a careful reading of Ms Lordache’s response, it could not reasonably be read to contain a request for a public inquiry. The PTR letter clearly explained the right to make representations and to request a public inquiry. The company chose to make written representations which explained in relation to each issue raised in the PTR letter why the error had occurred and what steps had been taken to remedy the situation and establish a new course of conduct. There was no suggestion that there was any more information or evidence that the company wished to produce that ought to be taken into account. This finding is reinforced by the company’s reaction when

it was notified on 19th October 2023 that its licence had been revoked. During the course of numerous telephone calls that day, the company did not raise the issue of why the company's request for a public inquiry or hearing had not taken been acted upon before the licence had been revoked. The reason for that is that the company had not asked for one.

42. The appeal decision of Winspear (ante) does not assist the company. Mr Winspear had asked for a hearing at the outset and continued to request a hearing or interview up to the point when his licence was revoked. Neither does the appeal decision of Hibberd (ante) assist as it states the obvious: if an operator would like a public inquiry, all they have to do is ask. Ms Lordache did not do so in her response letter.
43. To conclude, the PTR letter made clear that the company had the right to request a public inquiry but the company did not do so. Whether as a result of legal advice or otherwise, the company has had a change of heart about choosing to make written representations without requesting a public inquiry but there is no basis for reading the response letter so as to include such a request.

Disposal

44. Whilst Ground 4 fails, the remainder of the appeal succeeds. The PTR letter was poorly constructed and lacked reasons and the main basis for the PTR letter being sent (change of circumstances with regard to the operating centre) was misconceived. Whilst the director and the transport manager did not cover themselves with glory when it came to applying for a variation of the licence to use an alternative operating centre and in co-operating with the DVSA, it is of note that by 19th October 2023, Ms Lordache had attended a new operator seminar and she was co-operating with regard to the DBA (and ultimately, good repute was not cited in the revocation letter as a reason for revocation) and financial standing had been satisfied. Moreover, an alternative operating centre had been identified. In her skeleton argument, Ms Newton invited the Tribunal to remit the matter back to the TC for consideration of the variation application which remains outstanding and we agree that this is the appropriate disposal and we so order.
45. Finally, we apologise for the late publication of this decision which has been caused by the writer suffering injuries in an accident which has prevented her from discharging her judicial duties.



**Her Honour Judge Beech
Judge of the Upper Tribunal
30th December 2024**