



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

**Appeal No. UA-2024-000772-T
[2025] UKUT 067 (AAC)**

**ON APPEAL from a DECISION of a TRAFFIC COMMISSIONER in the WEST of
ENGLAND TRAFFIC AREA taken on 16 May 2024**

Before: Mr E Mitchell, Judge of the Upper Tribunal
Ms S Booth, Specialist Member of the Upper Tribunal
Mr I Lockett, Specialist Member of the Upper Tribunal

Appellant: New Village Logistics Ltd

Commissioner's ref: OH2070734

Date of Commissioner's decision: 16 May 2024

Heard at: Field House, Bream's Buildings, central London on 14
January 2025

Representation: The Appellant did not attend

Date of decision: 17 January 2025

Subject matter: Revocation of standard operator's licence

DECISION OF THE UPPER TRIBUNAL

This appeal is DISMISSED. The Traffic Commissioner's decision of 16 May 2024, directing revocation of operator's licence no. OH2070734, involved neither error of law nor mistake of fact. Under section 37(2) of the Goods Vehicles (Licensing of Operators) Act 1995, the Upper Tribunal dismisses this appeal.

REASONS FOR DECISION

1. In these reasons:

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

The Traffic Commissioner's decision-making

2. On 23 April 2024, the OTC wrote to the Appellant as follows:

"It is a requirement of holding an operator's licence that you either have a transport manager or a period of grace [*permitting temporary operation without a transport manager*]...It has been brought to the attention of the Traffic Commissioner that there is currently no transport manager specified on your licence to satisfy the requirement to have a suitable number of individuals who meet paragraphs 14A(1) and (2) or 14A(1) and (3) of Schedule 3 of the Goods Vehicles (Licensing of Operators) Act 1995 (the Act).

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 that the licence-holder no longer satisfies the requirement to designate a suitable number of transport managers. In view of the evidence currently available, it appears to the traffic commissioner that you may no longer satisfy the requirement to designate a suitable number of transport managers satisfying the requirements of paragraph 14A(1) and (2) or 14A(1) and (3) of Schedule 3 of the Act. Under Section 27(3) 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 14/05/2024 for the traffic commissioner's consideration.

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

3. The OTC received no response to the letter of 23 April 2024.

4. On 16 May 2024, a Traffic Commissioner revoked the operator's licence held by the Appellant. Addressed to a director of the Appellant company, the Commissioner's decision letter included the following:

"I refer to our letter dated 23 April 2024 notifying you that the Traffic Commissioner was considering revoking your goods vehicle operator's licence.

In the absence of a response to this letter or a request for a public inquiry to be held the Traffic Commissioner has revoked your operator's licence with effect from 16 May 2024 in accordance with the grounds stated in our letter: under Section 27(1)(a) of the Act as it no longer meets the requirements of professional competence."

Legislative framework

Goods Vehicles (Licensing of Operators) Act 1995

5. Section 27(1)(a) of the 1995 Act requires a Traffic Commissioner to direct that a standard operator's 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.

6. 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).”

7. 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”. The notice must invite the operator to make written representations, to be received by the Traffic Commissioner within 21 days of the date of the notice.

8. Regulation 25 of the Goods Vehicles (Licensing of Operators) Regulations 1995 (1995 Regulations), headed “notification of change of address”, provides as follows:

“If during the currency of a licence the address for correspondence as notified in the licence-holder’s application or as subsequently notified under this regulation ceases to be an effective address for correspondence the licence-holder shall within 28 days from the date of such event notify a traffic commissioner of an effective address for correspondence.”

Tribunal Procedure (Upper Tribunal) Rules 2008 (“the 2008 Rules”)

9. Rule 35(1) of the 2008 Rules provides the general rule that “each party is entitled to attend a hearing” before the Upper Tribunal. Rule 36(1) provides that each person entitled to attend a hearing must be given reasonable notice of its time and place, and rule 36(2) provides that, generally, that period must be at least 14 days.

10. Rule 38 of the 2008 Rules provides as follows:

“If a party fails to attend a hearing, the Upper Tribunal may proceed with the hearing if the Upper Tribunal—

(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.”

Grounds of appeal

11. The Appellant's written grounds of appeal, drafted by its director, read as follows:

“On December 11th 2023, I flew to India for medical purposes, from a year or so I am suffering from mental illness and depression, so I went to India to get treatment from a family doctor. I was in India from start of December 2023 to May end 2024. This whole time I was in treatment of my mental illness unfortunately in that I could not keep communication with my transport manager which is of course my fault as he sent me multiple emails. But at that time I was suffering a lot i.e. loss of memory & loss of sleep. After a long process I am eventually doing better and ready to start again. Please if can cancel the revoking of my operator's licence and give me one last chance. It would help me a lot to get things going again. Please if you need any more information or documentation to prove my travel or medical file let me know but please give me another. I can provide a transport manager now or any other requirement.”

Proceedings before the Upper Tribunal

12. The Upper Tribunal gave directions for a hearing of this appeal on 9 November 2024. On 20 December 2024, the Appellant was given written notice that the appeal would be heard on 14 January 2025. The notice asked the Appellant to return a confirmation of attendance form. No response having been received, on 8 January 2025 a member of the Upper Tribunal's staff emailed the Appellant's director asking for his attendance or non-attendance to be confirmed by return.

13. At 21:43 on 13 January 2025 (the day before the hearing), the Appellant's director emailed the Upper Tribunal as follows:

“Hi can i move it to May or June 2025 please i am currently unavailable. Sorry for delay reply”.

Conclusions

Why this appeal was heard in the Appellant's absence

14. We refused the Appellant's director's request for an adjournment and heard this appeal in the Appellant's absence. We were satisfied that the Appellant had been given proper notice of the hearing in accordance with the 2008 Rules. We decided that it was in the interests of justice to hear the appeal in the Appellant's absence for the following reasons:

(a) no good reason was given by the Appellant's director for his failure to attend the hearing. Simply being 'unavailable' is not a good reason;

(b) the Appellant's director has hardly engaged with these proceedings at all. The director did not respond to the Upper Tribunal's request to return a confirmation of attendance form. He was then asked to respond to a chasing email 'by return' but, instead, informed the Upper Tribunal at 9 p.m. on the day before the hearing that he was 'unavailable'. The director's limited engagement with these proceedings to date made us doubt whether he would attend a subsequent hearing in the event that we granted the request for an adjournment;

(c) our provisional assessment of the merits of this appeal suggested that an adjournment would probably serve only to delay its inevitable dismissal.

Why this appeal is refused

15. Section 27(1) of the 1995 Act requires the Traffic Commissioner to revoke a standard operator's licence if the operator does not satisfy the requirement to have a transport manager. There is a procedure whereby an operator may be permitted by the Traffic Commissioner temporarily to operate without a transport manager (known conventionally as a period of grace) but this operator made no request for a period of grace.

16. It is not clear whether the Appellant received the OTC's proposal to revoke letter of 23 April 2024. The Appellant's director concedes that he did not deal with emails sent to him by the (one time) transport manager when the director was in India, but those emails would probably not have forwarded the OTC's proposal to revoke letter since the proposed ground of revocation was that the Appellant did not have a

transport manager. But that does not matter. It was the Appellant's duty under regulation 25 of the 1995 Regulations to notify the Traffic Commissioner of an effective address for correspondence upon the previously notified address having ceased to be an effective address for corresponding with the licence holder. If the Appellant did not receive the OTC proposal to revoke letter it was because it failed to comply with its duty under regulation 25. That failure had nothing to do with the OTC nor the Commissioner and cannot affect the validity of the OTC's proposal to revoke letter / section 27(2) notice nor the Traffic Commissioner's subsequent decision to revoke the operator's licence.

17. The Appellant did not have a transport manager. The Traffic Commissioner was required by section 27(1) of the 1995 Act to revoke the Appellant's standard operator's licence once the Act's procedural requirements had been followed. Those requirements were followed and there was no element of procedural unfairness in the Commissioner's approach. The Commissioner's findings of fact are not challenged. The Commissioner's revocation of the Appellant's operator's licence involved neither an error of law nor any mistake of fact and we must therefore dismiss this appeal.

**E Mitchell,
Judge of the Upper Tribunal
Authorised for issue by the Upper
Tribunal panel on 17 January 2025.**

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