



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

**Appeal No. UA-2024-000923-T
[2025] UKUT 073 (AAC)**

**On APPEAL from a DECISION of a TRAFFIC COMMISSIONER in the SOUTH
EASTERN TRAFFIC AREA taken on 1 March 2024**

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

Appellant: Mark Jones

Commissioner's ref: OK2024813

Date of Commissioner's decision: 1 March 2024

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

Representation: The Appellant did not attend

Date of decision: 24 February 2025

DECISION OF THE UPPER TRIBUNAL

This appeal is DISMISSED. The Traffic Commissioner's decisions of 1 March 2024 (ref. OK2024813) involved neither error of law nor mistake of fact. Under section 37(2) and (4) of the Goods Vehicles (Licensing of Operators) Act 1995, the Upper Tribunal dismisses this appeal.

Subject matter: Revocation of restricted operator's licence; requests to terminate (or surrender) operator's licence

Case law referred to: *Eshugbayi Eleko v Officer Administering the Government of Nigeria and another* [1931] All ER Rep 44; *Cornwall Busways Ltd* T 2015/10; [2015] UKUT 0314 (AAC)

REASONS FOR DECISION

Introduction

1. We believe this is the first decision of the Upper Tribunal to analyse the nature of its jurisdiction in relation to a Traffic Commissioner's refusal, under section 16(4) of the Goods Vehicles (Licensing of Operator's) Act 1995, to accept an operator's request to terminate (or surrender) its licence.

2. There is no right of appeal to the Upper Tribunal against a Traffic Commissioner's refusal to accept an operator's request to surrender its licence. However, we incline to the view that it is open to an Appellant to argue that a Commissioner's regulatory decisions were invalid because a prior request to surrender an operator's licence was unlawfully refused. We do not express ourselves with any more certainty than that because we did not have the benefit of any legal submissions on the point. In this case, the Commissioner's refusal to accept a surrender request was clearly lawful since the evidence demonstrated that, at the date of the request, the Commissioner was considering giving a direction under section 26 of the 1995 Act, which is the only statutory ground on which a request in respect of a restricted licence may be refused. Our view is that the Commissioner's refusal to accept this operator's surrender request was free of any error of law.

3. Our decision also illustrates practical challenges that may arise in determining whether a Traffic Commissioner has power to refuse a request to surrender a restricted operator's licence. These difficulties are less likely to arise for standard licences because, here, it will often be very clear whether, at the date of the surrender request, regulatory action is being considered due to the formal notification requirements that attend the giving of directions, including revocation directions, in respect of standard licence under section 27(1) of the 1995 Act.

4. In these reasons:

- "1995 Act" means the Goods Vehicles (Licensing of Operators) Act 1995;
- "operator", "Mr Jones" and "Appellant" are used interchangeably;
- "OTC" means the Office of the Traffic Commissioner;
- "surrender" means the same thing as termination of an operator's licence under section 16(3) of the 1995 Act.

Events preceding the Traffic Commissioner's decisions

5. This operator held a restricted operator's licence granted under the 1995 Act. On 18 July 2023, the OTC wrote to the operator as follows:

"...the Traffic Commissioner has noted links to ROCK AND MUCK HAULAGE LTD and possible change of entity and has requested further information as below:

- Please provide bank statements in the name of Mark Jones covering a **recent three month period**.
- Please confirm if a change of entity has occurred in respect of the licence holder because companies house shows that the licence holder is the sole director of EARTH & STONE RECYCLING LTD.

...I must advise you that, if a change of entity has occurred, operating under the existing licence is unlawful, and was illegal from the date that the change took

effect. This licence should be surrendered, and the licence documents, together with any vehicle identity disc(s), returned.

[...]

A written response must be received by no later than **01/08/2023 or regulatory action may be taken against the licence.**”

6. The OTC case file includes no response from the operator to the letter of 18 July 2023. However, on 13 September 2023 the OTC received Mr Jones’ application to surrender his operator’s licence. The Traffic Commissioner refused to accept surrender of the licence, informed Mr Jones him that she was minded to revoke his operator’s licence, and called him to a public inquiry.

7. The public inquiry was held on 21 February 2024, but Mr Jones did not attend.

The Traffic Commissioner’s decision and reasons

8. On 28 February 2024, the Traffic Commissioner:

(1) refused the operator’s application to surrender his operating licence;

(2) revoked the operator’s licence, relying on the grounds in section 26(1)(a), (c)(iii), (ca), (e), (f) and (h) of the 1995 Act;

(3) made an order under section 28(1) of the 1995 Act indefinitely disqualifying Mr Jones from holding or obtaining an operator’s licence, and gave an associated direction under section 28(4).

9. The Traffic Commissioner took a dim view of this operator’s practices, as she found them to have been. The tenor of the Commissioner’s dissatisfaction may be seen in paragraph 6 of her reasons:

“The Traffic Examiner Public Inquiry report...sets out a catalogue of nefarious practices, systemic failings, and deliberate attempts to avoid investigation and potential enforcement action. Mr Jones has wasted a great deal of police and DVSA resource as they tried to obtain data, statutory records, and evidence under caution. Based on the compliance information available to DVSA, there

has been operation of vehicles without MOT, without vehicle excise duty paid, without the use of driver cards and when vehicles are in an unroadworthy condition. Mr Jones has prevented any meaningful follow-up to assess the extent of the failings or in terms of which entity/individuals have actually been operating the vehicles. Without wider explanation, I am satisfied that Mr Jones requested to surrender the licence was [sic] just one part of a catalogue of steps taken to prevent uncovering the full extent of mischief happening in the background.”

10. The Traffic Commissioner went on to make a number of specific adverse findings against the Appellant. These are set out in paragraph 8 of the Commissioner’s reasons but, in summary, she found: unauthorised use of an operating centre; in two separate roadside encounters, the Appellant was issued with immediate prohibition notices in respect of tyres and loose wheel nuts; fixed penalty notices had been issued to the Appellant’s drivers; while the MOT pass rate was generally good, vehicles had been operated without a valid MOT and without vehicle excise duty having been paid; breach of drivers’ hours and tachograph rules; failure to produce any evidence of sufficient financial standing.

11. The Traffic Commissioner could not identify any positive considerations in the Appellant’s favour apart from this being his first public inquiry (paragraph 9 of the reasons). The Commissioner explained in paragraph 11 why the Appellant’s operator’s licence should be revoked:

“11. I do not trust Mr Jones either in terms of day-to-day compliance or with the integrity of the operator licensing regime. Operators must be left in no doubt that such significant failing to cooperate; deliberately avoiding any engagement with the police and DVSA and undermining the inquisitorial process, will have a starting point of SEVERE in terms of the Senior Traffic Commissioner Statutory Document No. 10 Annex 4. In this case the only appropriate and proportionate outcome is revocation...”.

12. Paragraph 13 of the Traffic Commissioner’s reasons explained why she considered that Mr Jones should also be disqualified from holding or obtaining an operator’s licence:

(a) he made a false declaration on a 2019 application but was given the benefit of the doubt; the trust placed in the Appellant had proven to be misplaced;

(b) he operated vehicles without paying vehicle excise duty, which is “a fraud on the revenue” and “directly impacts fair competition”;

(c) only six days after the OTC’s July 2023 letter came a roadside encounter in respect of vehicle YK17 VMW “identifying serious issues across the board”;

(d) the Appellant operated four 32 tonne vehicles with little or no regard for safety;

(e) both before and after the surrender request, the Appellant ignored police and DVSA inquiries;

(f) the Appellant “has ignored the Public Inquiry process”.

13. The Commissioner’s reasons for disqualifying Mr Jones indefinitely were as follows:

“14. It is not possible to set a period of disqualification where there has been so little engagement. On the evidence before me now no set timescale would be meaningful. At present it is difficult to see what steps Mr Jones could take to rehabilitate himself in the eyes of the Traffic Commissioner. The lack of cooperation from July 2023 to date has a direct impact on my ability and therefore to that extent Mr Jones’s own actions have worked against him in terms of disqualification...”.

Legislative framework

Revocation of restricted operator’s licences

14. Section 26(1)(a) of the Goods Vehicles (Licensing of Operators) Act 1995 confers power on a Traffic Commissioner to direct that a restricted licence be revoked on certain grounds, which include:

(a) in the case of a heavy goods vehicle licence, a place other than one specified in the licence has been used as an operating centre (section 26(1)(a));

(b) in the previous five years, a prohibition under section 69 or 70 of the Road Traffic Act 1988 (power to prohibit driving of unfit or overloaded vehicles) has been given in respect of the driving of a vehicle owned by the licence holder (section 26(1)(c)(iii));

(c) in the previous five years, certain fixed penalty notices have been issued to the licence-holder, or the holder's servant or agent, under Part 3 of the Road Traffic Offenders Act 1988 (section 26(1)(ca));

(d) false statement in licence application (section 26(1)(e));

(e) an undertaking recorded in the licence has not been fulfilled (section 26(1)(f));

(f) since the licence was issued, there has been a material change in any of the circumstances of the licence-holder that were relevant to the issue of the licence (section 26(1)(h)).

15. Section 26(4) of the 1995 Act requires the Traffic Commissioner to consider giving a direction under section 26(1) whenever any of the grounds specified in section 26(1) are brought to the Commissioner's attention.

16. Section 27(1) of the 1995 Act requires the Traffic Commissioner, in certain cases, to direct revocation of a standard operator's licence, but this provision does not apply to restricted operator's licences. Before giving a revocation direction under section 27(1), the Commissioner "shall give to [the licence-holder] notice in writing that he is considering giving such a direction" (section 27(2)).

17. Where a Traffic Commissioner directs revocation of an operator's licence under section 26(1) of the 1995 Act, the Commissioner may also, under section 28(1), order that the former licence holder be disqualified from holding or obtaining an operator's licence "either indefinitely or for such period as the commissioner thinks fit". Upon making such an order, the Commissioner may also direct that, if the former licence holder, at any time or during a specified period, is a director of a company that holds an operator's licence or operates vehicles in partnership with a person who holds a licence, that licence shall be liable to revocation (section 28(4)).

'Surrender' of operator's licences

18. The Goods Vehicles (Licensing of Operators) Act 1995 does not, in terms, provide for the surrender of an operator's licence. The Act does, however, provide for

termination of a licence at the licence-holder's request and we understand that this process is conventionally referred to as surrender of an operator's licence.

19. Section 16(3) of the 1995 Act provides that, with one exception, a Traffic Commissioner must comply with a licence holder's request to terminate an operator's licence. The only exception to this duty on the face of the 1995 Act is provided for by section 16(4) as follows:

“(4) A traffic commissioner may refuse to comply with such a request if he or another traffic commissioner is considering giving a direction in respect of the licence under section 26 or 27.”

20. While the 1995 Act does not use the term 'surrender', the Goods Vehicles (Licensing of Operators) Regulations 1995 do. For example, regulation 28(3) requires “the licence” to be sent or delivered to a Traffic Commissioner, on or before a date notified to the licence holder, “if a licence is...surrendered”.

Rights of appeal

21. Certain Traffic Commissioner decisions, as specified in section 37 of the 1995 Act, carry a right of appeal to the Upper Tribunal. The specified decisions include directions revoking a restricted operator's licence under section 26(1) and disqualification orders, and associated directions, under section 28(1) and (4). However, section 37 does not mention a Commissioner's refusal under section 16(4) to comply with a request to surrender an operator's licence made under section 16(3)

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

22. Rule 35(1) of the 2008 Rules provides a 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.

23. 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

24. Some of the Appellant’s grounds of appeal relate to matters which were not the subject of the Traffic Commissioner’s adverse findings. The grounds that do relate to the Commissioner’s reasons for revoking the Appellant’s operator’s licence, refusing to accept his surrender request and making a disqualification order are as follows:

(1) the Appellant’s surrender request was not made in response to the OTC’s letter of 18 July 2023. It was made because the operator no longer owned any vehicles and so no longer needed an operator’s licence;

(2) a roadside encounter on 24 July 2023, which resulted in a fine of £1,000 in respect of four drivers’ hours offences, involved a vehicle (YK17 VMW) that was not owned by the Appellant and a driver whom the Appellant did not employ. Before July 2023, the Appellant “handed over my vehicles, drivers and projects to Daniel Smith (sole trader – new owner of the vehicles)”;

(3) the driver of vehicle YK17 VMW said he had been instructed by the Appellant to pick up the vehicle from Paddock Wood. The Appellant says that he did not have an operating centre at Paddock Wood but Daniel Smith, the new owner of the vehicles, “had a project...in Paddock Wood”;

(4) the Appellant accepts that the failure to renew vehicle excise tax for vehicle YK17 VMW, which was due on 1 May 2023, “may have been an oversight on my part” but, as such, did not justify disqualifying him from holding an operator’s licence;

(5) the reason why the Appellant asked Traffic Examiner Mepsted, on 23 August 2023, to postpone a visit, with police in attendance, was that, when the visit was notified, the Appellant no longer possessed any vehicles and had no operating centre. Around this time, the Appellant discovered that “Daniel Smith had not changed the logbooks”, he contacted Daniel Smith who “agreed to send on the data”;

(6) according to the Commissioner, vehicles YO18 ZWB, YO18 ZWD, NK17 UJD and YK17 VMV were specified on another operator’s licence and recorded as disposed of by the Appellant on 28 August 2023. This was inaccurate: “the vehicles were taken over before this date” and “it seems the person who made this change used 28/08/2023 for all the vehicles when the correct date was in July”. Daniel Smith told

the Appellant that he (Smith) would pay the “handful of road fines from July onwards for the vehicles”. It was wrong of the Commissioner to describe a ‘fraud’ on the revenue because all excise duty was “paid and backdated”;

(7) a letter dated 14 November 2023 requesting that the Appellant attend an interview at DVSA offices on 4 December 2023 was sent to what was, by then, a defunct operating centre. The Appellant did not become aware of the DVSA’s request until after the date of the proposed interview. Contrary to the Commissioner’s finding that he ignored police and DVSA attempts to investigate concerns, he never had any contact with the police about the roadside check;

(8) the Traffic Commissioner had no factual evidence to support her ‘allegations’ and “failed to consider that I was not running any vehicles”;

(9) when the Appellant’s vehicles were transferred, they were roadworthy and there was no evidence that the vehicles were unroadworthy before then;

(10) regarding the 2023 immediate prohibition notices in relation to tyres and loose wheel nuts, the Appellant submits “I was not present nor in charge of these vehicles”. The same applies to alleged breach of rules relating to drivers’ hours and tachographs;

(11) the Appellant did not produce financial evidence because it was not requested until after his business had closed;

(12) the Commissioner was wrong to find that the Appellant made a false declaration on a 2019 licence application and that the trust then shown in him was misplaced. He was never a part of JCG Transport Ltd and that is why he did not mention it in his sole operator’s licence application;

(13) the finding that the Appellant operated ‘multi axle lethal weapons’ with little regard for safety was inconsistent with the “good roadworthiness report when I owned the vehicles”;

(14) the Commissioner said that the Appellant ignored the public inquiry process, but he was not aware of this until ‘recently’.

Proceedings before the Upper Tribunal

25. The Upper Tribunal gave directions for a hearing of this appeal on 9 November 2024. On 26 November 2024, the Upper Tribunal requested the Appellant's availability to attend a hearing in January 2025 but received no response. On 20 December 2024, the Appellant was given written notice that his 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 Upper Tribunal staff emailed the Appellant asking him to confirm his attendance at the hearing, but, again, there was no response.

26. On 14 January 2025, the Upper Tribunal heard the Appellant's appeal in his absence.

Conclusions

Why this appeal was heard in the Appellant's absence

27. We were satisfied that the Appellant was given proper notice of the hearing in accordance with the Tribunal Procedure (Upper Tribunal) Rules 2008. We decided that it was in the interests of justice to hear the appeal in the Appellant's absence for the following reasons:

(a) the Appellant gave no reason for failing to attend the hearing on 14 January 2025;

(b) the Appellant has hardly engaged with these proceedings. He did not respond to any of the Upper Tribunal's requests to confirm his attendance at the hearing. The Appellant's limited engagement with these proceedings made us doubt whether he would attend a further hearing in the event that we adjourned the hearing;

(c) we considered the merits of this appeal to be weak, so that an adjournment would probably serve only to delay the inevitable dismissal of this appeal.

Challenging a Traffic Commissioner's refusal to accept a surrender request: matters of principle

28. The Appellant does not, in terms, argue that the Traffic Commissioner's regulatory decisions had no effect because, had his prior surrender request been

dealt with lawfully, there would have been no operator's licence to revoke. However, the Appellant is clearly aggrieved by the Commissioner's refusal to accept his surrender request, and the existence of an operator's licence at the date of the Commissioner's decisions raises jurisdictional issues for the Upper Tribunal since the existence of a licence is an objective condition precedent to the exercise of the Commissioner's powers and, in turn, those of the Upper Tribunal. This is why we decide to address, of our own volition, the question whether the Commissioner's response to the Appellant's surrender request affected the validity of her regulatory decisions (see *Eshugbayi Eleko v Officer Administering the Government of Nigeria and another* [1931] All ER Rep 44).

29. The first question is whether the Upper Tribunal's formal jurisdiction (area of competence or power) extends to appeals against a Traffic Commissioner's refusal to accept a licence holder's request to terminate its licence. Such decisions are taken under section 16(4) of the 1995 Act, but section 16(4) is not mentioned in the list of Commissioner decisions that may be appealed to the Upper Tribunal under section 37. To date, that absence does not appear to have troubled the Upper Tribunal (for example, see *Cornwall Busways Ltd* T 2015/10; [2015] UKUT 0314 (AAC)). However, those decisions were given without analysis of the nature of the Upper Tribunal's jurisdiction, if any, in relation to a Commissioner's decision to refuse an operator's request for termination of its licence.

30. The Upper Tribunal is a creature of statute and cannot therefore arrogate to itself power to decide appeals against decisions in respect of which the 1995 Act confers no right of appeal. This includes a Traffic Commissioner's decision to refuse to accept an operator's request to terminate its licence. Had Parliament intended to confer a right of appeal against such decisions, it would have said so in section 37. Nevertheless, many of the Commissioner decisions that do attract a right of appeal are predicated on the existence of an operator's licence. Self-evidently, a Commissioner cannot revoke an operator's licence that does not exist. It is by this indirect route that the Upper Tribunal might be required to address a Commissioner's response to an operator's request for termination of its operator's licence.

31. In the unlikely event that a Traffic Commissioner overlooked that an operator's licence had been terminated, when making a licence revocation decision or an associated disqualification order under the 1995 Act, the Upper Tribunal would be bound to hold that the revocation direction and any disqualification order were nullities. But are the Upper Tribunal's powers any wider than that? We incline to the

view that they are, but do not express ourselves with any more certainty than that because we do not have the benefit of any legal submissions on the issue.

32. If a Traffic Commissioner's refusal of a termination request contravened established principles of administrative law, such that the refusal would be quashed if challenged in judicial review proceedings, we incline to the view that the Upper Tribunal should, where the issue arises (a) treat the refusal as a nullity and (b) if the only reasonable response to the termination request would have been to accept it, treat any subsequent regulatory decisions, whose validity was dependent on the existence of an operator's licence when the decisions were taken, as nullities. This approach accords the Upper Tribunal's statutory responsibility to oversee the lawfulness of those Commissioner decisions which do attract a right of appeal. For instance, assume a case where the Upper Tribunal is satisfied that it was not open to the Commissioner to find, at the date of a surrender request, that a direction under section 26 or 27 of the 1995 Act was under consideration (that being the only ground on which section 16 permits refusal of a termination/surrender request). In our view, it would be consistent with the Upper Tribunal's statutory role for it to hold, on appeal, that any subsequent regulatory decisions, taken on the assumption that an operator's licence still existed, were invalid and of no effect.

Did the Traffic Commissioner lawfully refuse the Appellant's request to surrender his operator's licence?

33. The 1995 Act provides a single ground on which a Traffic Commissioner may refuse an operator's request for its licence to be terminated - that the "commissioner is considering giving a direction in respect of the licence under section 26 or 27".

34. In the case of a standard operator's licence, it will often be obvious whether, for the purposes of section 16(4) of the 1995 Act, a Traffic Commissioner is considering giving a direction under section 27. This is because section 27(2) requires the Commissioner, before giving a section 27(1) direction, to give the licence holder a written notice "that he is considering giving such a direction". However, section 27 only applies to standard licences and this case involved a restricted licence so that the Commissioner's enforcement powers were those conferred by section 26.

35. Section 26 of the 1995 Act contains no requirement for the Commissioner to give prior written notice that a section 26 direction is being considered. However, enforcement action in respect of restricted licences does not arise out of thin air. At

some point before taking action under section 26, a Commissioner begins the mental process of considering whether to take such action. It is a question of fact, to be decided on the evidence, whether such action is under consideration at the point at which a restricted licence-holder submits a request for its licence to be terminated under section 16(3).

36. In the present case, on 18 July 2023, which was nearly two months before the Appellant submitted his request to terminate his restricted licence, the OTC wrote to the Appellant seeking certain information. That letter ended with the words “A written response must be received by no later than 01/08/2023 or regulatory action may be taken against the licence”. The OTC papers contain no evidence that the Appellant did provide a written response by 1 August 2023. Instead, his first communication following the letter of 18 July 2023 was the surrender request in September 2023.

37. The only sensible interpretation of the term “regulatory action”, as used in the 18 July 2023 letter, is that it meant a direction under section 26 of the 1995 Act. On 18 July 2023, therefore, a direction under section 26 was in some sense under contemplation. Otherwise, there would have been no point in writing that letter. That letter made it clear that, in the absence of a written response by 1 August 2023, regulatory action may be taken. We think that a section 26 direction was probably under consideration, for the purposes of section 16(4), on 18 July 2023 but do not need to make a finding on that point. This is because the absence of any response from the Appellant by 1 August 2023 meant that, even if a direction under section 26 was not under consideration on 18 July 2023, it clearly was after that date. So far as the Traffic Commissioner’s regulatory state of mind on 2 August 2023 was concerned, the evidence admits of only one conclusion. The Appellant failed to heed a warning to do something by 1 August 2023 or “regulatory action may be taken” so that the Commissioner must on 2 August 2023 have been considering a direction under section 26. There is no evidence that anything happened between then and the operator’s surrender request to change the Commissioner’s regulatory state of mind. It follows that the Commissioner was not required by section 16(3) to accept the Appellant’s surrender request. Instead, section 16(4) gave the Commissioner discretion to accept or refuse the request.

38. The Traffic Commissioner’s reasons did not address whether regulatory action under section 26 of the 1995 Act was under consideration when the Appellant submitted his termination request. However, that was unnecessary. As we have just said, the only reasonable interpretation of the evidence is that, at the date on which

the termination/surrender request was submitted, the Commissioner was considering giving a direction under section 26.

39. The Traffic Commissioner's reasons made it clear why she exercised her discretion to refuse the Appellant's request to terminate/surrender his licence. The Commissioner found that the surrender request was "just one part of a catalogue of steps taken to prevent uncovering the full extent of mischief happening in the background". That was a reasonable, and lawful, reason for refusing to accept the Appellant's surrender request. No doubt, the Commissioner was well aware that, if the surrender request had been accepted, she could not have given a disqualification order under section 28(1) of the 1995 Act because such orders may only be made in conjunction with a direction revoking an operator's licence.

40. The upshot of the above is that, if the lawfulness of a Traffic Commissioner's refusal to accept an operator's request to surrender its licence may be challenged before the Upper Tribunal, it does not help this Appellant. The Commissioner had power to refuse to accept this operator's surrender request under section 16(4) of the 1995 Act, and she exercised that power lawfully and reasonably. This was not a case in which a Commissioner was bound to accept a surrender request, nor can it be viewed as a case in which a Commissioner unlawfully exercised the discretion to refuse a request. We may now, therefore, turn to the Appellant's appeal against the Commissioner's direction revoking his operator's licence and the disqualification order.

Why the Appellant's grounds of appeal are not made out

41. We shall consider the Appellant's grounds of appeal in the order set out above in paragraph 24:

(1) the Appellant's motives for submitting his surrender request are not relevant. What matters is whether regulatory action, in the form of a section 26 direction, was under consideration when the request was submitted. We have found above that it was;

(2) the public inquiry call-up brief recounted that the vehicles were not disposed of until 28 August 2023. The Appellant submitted no evidence to the Traffic Commissioner, nor did he argue, that the vehicles were in fact some other operator's responsibility at the date of the roadside encounter on 24 July 2023. He also failed to

make that argument in an email sent to a DVSA official on 21 August 2023 (see p.72 of the OTC case file). The argument now advanced before the Upper Tribunal is not supported by any evidence. The Appellant fails to establish that the Commissioner's decision was flawed by reason of any error of fact regarding ownership of, or responsibility for, vehicles, including the vehicle (YK17 VMW) involved with the roadside encounter, before 28 August 2023;

(3) this is an assertion unsupported by evidence. The argument is not made out;

(4) the failure to pay excise tax was only one of a number of failings relied on by the Commissioner. Absent that finding, we are satisfied that the Commissioner would have made the same decisions. In any event, a failure to pay vehicle excise tax cannot be considered a trifling matter even if due to an oversight. Any operator should have systems in place to ensure that vehicle excise tax is paid when due;

(5) this argument is not consistent with the email sent by the Appellant to the DVSA on 21 August 2023 which gave the reason for not being able to meet as "I am away until after the August bank holiday period";

(6) this argument is dealt with in paragraphs (2) and (4) above;

(7) the Appellant must have been aware that his request to surrender his licence had not been accepted. As a licence-holder, he therefore remained required by regulation 25 of the Goods Vehicles (Licensing of Operators) Regulations 1995 to maintain an effective address for correspondence and, if the previously notified address ceased to be effective, provide the OTC with an alternative. The Appellant cannot realistically expect the Upper Tribunal, on appeal against a Traffic Commissioner's regulatory decision, to be persuaded by an argument that relies on a licence-holder's failure to comply with regulatory requirements;

(8) there was evidence to support the Traffic Commissioner's adverse findings against the Appellant, and it is referred to in numerous places in her reasons;

(9) this argument assumes that it is accepted as fact that the Appellant transferred ownership of, or responsibility for, the vehicles at some point before 28 August 2023 but, as we have explained above, that assumption is not made out;

(10) this argument is effectively dealt with in paragraph (2) above;

(11) it was not for the Appellant to give himself permission to ignore the Traffic Commissioner's legitimate request for information;

(12) the public inquiry call-up brief stated that, on the Appellant's 2019 application, he failed to declare "links to...JCG Transport Ltd". That failure obviously did not prove fatal to that application, but it was a failure nonetheless and one which the Commissioner was subsequently entitled to rely on, amongst other matters, in concluding that the Appellant could not be trusted "in terms of day-to-day compliance or with the integrity of the operator licensing regime" (see paragraph 11 of the Commissioner's reasons);

(13) this argument is effectively dealt with in paragraph (2) above;

(14) this argument is effectively dealt with in paragraph (7) above.

Decision

42. None of the Appellant's grounds of appeal are made out. We therefore dismiss this appeal.

E Mitchell,
Judge of the Upper Tribunal
Authorised for issue on 24
February 2025.

Given under section 37(2) and (4) of
the Goods Vehicles (Licensing of
Operators) Act 1995.