



Appeal No: UA-2023-000598-T
NCN No: [2025] UKUT 83 AAC)

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

**IN AN APPEAL FROM THE DECISION OF:
CLAIRE GILMORE, TRAFFIC COMMISSIONER FOR THE SCOTTISH
TRAFFIC AREA
DATED 18th APRIL 2023**

Before:

**Elizabeth Ovey, Judge of the Upper Tribunal
Martin Smith, Specialist Member of the Upper Tribunal
Gary Roantree, Specialist Member of the Upper Tribunal**

Appellant: London Bus Group Limited

Attendance: The Appellant was represented by its director, Mr. Dwayne Thandrayen

Heard at: Field House, 15-25 Breems Buildings, London EC4A 1DZ

Date of hearing: 21st January 2025

Date of decision: 10th March 2025

DECISION OF THE UPPER TRIBUNAL

IT IS HEREBY ORDERED that the appeal be DISMISSED.

IT IS DIRECTED that for the purposes of section 50(6) of the Public Passenger Vehicles Act 1981 this appeal is to be treated as disposed of 28 days after the date on which this decision is issued and that at 23.59 on that date the direction staying the effect of the Traffic Commissioner's decision shall cease to have effect.

SUBJECT MATTER: Failure to provide evidence of financial standing before the end of a period of grace; effect of listing a conjoined hearing with other holders of operator’s licences; relevance of the Lead Traffic Commissioner arrangements

CASES REFERRED TO: *Canalside UK Limited and Lewis Robley Horn t/a L R Horn* [2010] UKUT 283 (AAC); *Bradley Fold Travel Limited and Peter Wright v. Secretary of State for Transport* [2010] EWCA Civ 695, [2011] R.T.R. 13; *Re Finucane’s Application for Judicial Review* [2019] UKSC 7; *Ian James Blackmur t/a IJB Transport* [2021] UKUT 0312 (AAC); *Egertons Recovery Group Limited* [2022] UKUT 141 (AAC); *School and Nursery Milk Alliance Limited v. Scottish Ministers* [2022] CSOH 11, 2022 S.L.T. 262; *Croft Travel Lancashire Limited t/a Croft Travel* [2024] UKUT 132 (AAC)

REASONS FOR DECISION

Preliminary

1. This is an appeal by the Appellant, London Bus Group Limited (“London Bus”), against the decision of the Traffic Commissioner for the Scottish Traffic Area (“the TC”) given on 18th April 2023 following a public inquiry held on 16th February 2023. By her decision the TC revoked London Bus’s operator’s licence PK1108522 with effect from 18th May 2023 on the ground that London Bus did not meet the statutory requirement of appropriate financial standing.
2. The TC went on, however, to direct that her decision should not have effect until the expiration of the period within which an appeal might be brought against it and, if an appeal was brought, until the appeal was disposed of. London Bus appealed by notice of appeal dated 17th May 2023 and accordingly there is currently in force a stay of the TC’s decision.
3. This appeal originally came on for hearing on 21st September 2023, when London Bus was represented by Mr. Darren Finnegan of counsel, instructed by Beverley Bell Consulting Limited. As explained further below, however, the hearing was adjourned and in the event was not relisted until 21st January 2025. On that occasion London Bus was represented by its sole director, Mr. Dwayne Thandrayen. We are grateful to Mr. Thandrayen for his submissions.

The facts

4. London Bus is the holder of licence PK1108522, a standard national licence which started on 6th March 2012 (“the London licence”). Its correspondence address and one operating centre are at Unit 2, Gateway Industrial Estate, Hythe Road, London NW10 6RJ. It has another operating centre in Hayes. The licence gave authority for a total of six vehicles, although at the time the brief for the TC was prepared, no vehicles were specified.

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5. London Bus itself was incorporated on 16th September 2009. At the time of the application for the licence its sole director was Platform 2000 Limited and Mr. Thandrayen was the company secretary. He has been a director on a number of occasions since incorporation and has been the sole director since 20th August 2019. London Bus was called to a public inquiry on 2nd July 2013, which led to the suspension of the licence for one month and the addition of undertakings to the licence. It was called to a further public inquiry on 3rd March 2014 as a result of delays in complying with the undertakings then given and a warning was issued.

6. At the time of the public inquiry on 16th February 2023 Mr. Thandrayen was also the sole director of Club Class Bus Limited, which held standard national licence PC2002396 authorising the use of two vehicles from an operating centre in Liverpool from 1st February 2018 (“the Liverpool licence”) and standard national licence PB2004994 authorising the use of two vehicles from an operating centre in Blaydon on Tyne from 6th February 2018 (“the Newcastle licence”). On 6th December 2021 the transport manager on the Newcastle licence resigned as a result of the Covid pandemic. The Office of the Traffic Commissioner (“the OTC”) sent a letter dated 13th December 2021 to the operator asking for details of a new transport manager, but received no reply. The licence was therefore revoked with effect from 5th January 2022, but was subsequently reinstated by the traffic commissioner following an appeal to the Upper Tribunal on the grounds that the letter was not emailed to the operator and the posted letter was not received as a result of Covid.

7. Finally, Mr. Thandrayen was the sole director of Club Class Bus (Edinburgh) Limited, which held standard national licence PM2025617 authorising the use of one vehicle from an operating centre in Edinburgh from 23rd October 2019 (“the Edinburgh licence”). On 21st September 2022 the nominated transport manager on the Edinburgh licence emailed the OTC giving notice of his immediate resignation and asking to be removed from the Edinburgh licence with immediate effect. The OTC wrote to the operator on 23rd September 2022 informing it that the OTC had learned that the operator no longer had a transport manager and asking for a response by 7th October 2022. The letter was sent by recorded delivery to the correspondence address, which was the same as the correspondence address for London Bus and was signed for, apparently by Mr. Thandrayen. (P.72 of our bundle shows the conformation of delivery slip as bearing an illegible manuscript signature and a typed note that the document was signed for by “Dwayne”.) It was also sent by recorded delivery to the operator’s registered office address and the Edinburgh operating centre. No reply was received.

8. The public inquiry relating to London Bus and licence PK1108522 was conjoined with a public inquiry relating to the other three licences just mentioned. London Bus was called to the inquiry by a letter dated 12th January 2023 which identified the issues of concern as:

- 8.1. Apparent failure to honour the undertakings given when London Bus applied for its licence;
- 8.2. Whether London Bus was of good repute;
- 8.3. Whether London Bus was of the appropriate financial standing.

9. The evidence relied on consisted of the matters summarised in paragraphs 4 to 7 above. The call-up letter went on to state as one of the actions London Bus should take:

“Prepare your evidence of financial standing. The company need to show access to an average of £30,500 over the last three months. Financial standing is also required to be demonstrated to show access to an average £63,500 for all four licences PM2025617, PB2004694,¹ PC2002396 & PK1108522. Evidence of your financial standing should include the following original documents:

- a) (if available) the latest certified profit and loss account and balance sheet that have been prepared for the business,*
- b) original bank statements for the last three months,*
- c) details of any overdraft facility or other loan arrangement.”*

10. Mr. Thandrayen responded to the call-up letter by an email sent on 8th February 2023 to which were attached bank statements for the past three months and a revolving credit agreement, initially for £16,000 but said to have been increased to £44,000, which he described as “available to us”. He asked to be informed whether that was sufficient and said that if not, he could provide the OTC with parent company guarantees, a further £19,000 overdraft facility and “£38.5k credit card structure”. He also explained, with reference to the Edinburgh licence, that he had responded requesting a period of grace, although the response had not been received, and that the Club Class Bus companies provided “Party Bus” services which had been prohibited since the pandemic. The intention was to reopen in April 2023 with new vehicles which would meet the required emission standards.

11. The bank statements provided showed a credit balance as high as £30,500 only on 11th November and 15th December 2022 and 7th February 2023, which was the last day covered by the statements. Substantial balances on 1st, 11th and 14th November, 1st, 9th, 15th, 16th and 30th December 2022 and 3rd January 2023 were followed almost immediately by substantial transfers to National Bus Group. Substantial payments in were received from Iwoca Limited on 10th November and 9th December 2022 and substantial payments out were made to an Iwoca CD account on 5th and 16th December 2022. There were also transactions involving Protea Capital on 2nd December 2022.

12. The revolving credit agreement was made between London Bus and Iwoca Limited. It is signed on behalf of both parties and dated 10th November 2022. It was expressed to have no fixed duration and to have a credit limit of £16,000, subject to a unilateral right for Iwoca to change the amount. It was also subject to a condition precedent that one or more third parties should guarantee the obligations of London Bus. Condition 2 of the terms and conditions provided that after the initial drawdown London Bus could request additional credit and Iwoca could decline the application in its absolute discretion. Condition 8 provided that Iwoca would specify the guarantors. Condition 9 provided that Iwoca could suspend the right to draw on the facility without

¹ The correct licence number is in fact PB2004994, but we do not think the error is material.

notice. P.99 and 108 of the bundle appear to show the increase in the facility to £44,000. The latter page is a message sent on 7th February 2023 stating, “*Dwayne, you’ve been approved again*” and giving the end date of the approval as 9th March 2023.

13. The bundle also includes a guarantee by Protea Capital Holdings Limited, defined as “the Guarantor”, of the liabilities of Club Class Bus and subsidiaries, defined as “the Debtor”, to “*the Lender ... under the terms of certain debt agreements*” up to a limit of £35,000. There is no definition of “the Lender” and the agreements are not further identified. The guarantee is dated 30th January 2023 and expressed to be executed as a deed, signed by Mr. Thandrayen on behalf of Protea Capital in the presence of a witness. It is not executed by any other party.

The public inquiry

14. At the outset of the inquiry the TC explained that Mr. Thandrayen had been called to the inquiry primarily in relation to the Edinburgh licence, which she described as “*in my jurisdiction*”, and that some queries had been raised in relation to finance. She described the licences as “*connected licences*”, but unfortunately the next small section of the recording was unintelligible. At a later point, however, the TC said that finance and other statutory requirements had to be met “*across the piece*” and so the rest of the licences had been called in.

15. After some further preliminary discussion, the TC asked Mr. Thandrayen to give an overview of the corporate arrangements involving the various companies. In summary, he explained that:

15.1. He had begun to acquire Club Class Bus in 2016. Business in England and in Scotland was separated, hence the creation of Club Class Bus (Edinburgh), although he had thought it was a subsidiary of Club Class Bus and could not recall why it was not set up that way. In essence there was a Club Class Bus business in Newcastle, Manchester, Liverpool and Scotland.

15.2. The Club Class Bus businesses and London Bus were all part of the National Bus Group, of which Mr. Thandrayen was again the sole director. Those businesses generated revenue and National Bus Group was a centralised operating expenses company which avoided the need for different accounts payable departments. That was why two of the vehicles had been registered to National Bus Group, as the TC pointed out.

15.3. National Bus Group was a person of significant interest in relation to some of the operator companies, including London Bus, but not in relation to all of them.

15.4. Protea Capital Holdings was the ultimate parent company, which had several other commercial interests.

16. In the course of his explanation, Mr. Thandrayen stated that he was an accountant, which might explain why the structure was “*slightly a bit more complex*”

than it should be”, but it helped him to manage the businesses as effectively as he possibly could. The TC expressed concern that the vehicles owned by one company were managed by somebody else and probably the maintenance was also paid for by somebody else. As she put it:

“I need to know that this entity and the person who’s controlling this on a day to day basis is doing what they signed up to do when they got the licence.”

In response Mr. Thandrayen said that the commonality was himself and it was his responsibility to make sure it did happen. He also said that effectively all the financing rested with National Bus Group, but it did not get individual guarantees to be put in place.

17. Having clarified the structural arrangements, the TC referred to her responsibility for ensuring fair competition and the risk of companies avoiding liabilities through the use of such structures. The arrangements in place might be desirable from a company law perspective but could be problematical in terms of operator licensing because of the potential for concerns over unfair competition. Mr. Thandrayen said that he now understood the point.

18. The TC then turned to the transport manager issue which had arisen in relation to the Edinburgh licence. We do not need to go through that in detail, but we note that Mr. Thandrayen’s explanation was that because the Club Class Bus entities were not operating there was nothing for the transport manager to do. He had no evidence of having requested a period of grace because the person who sent the letter was no longer working for him and he did not have the recorded tracking number. He originally named one individual as the relevant employee, but subsequently recalled that it had been another who had worked as a temp for a week. Later he said that he was not sure she had sent the letter, although he had put before the TC a signed affidavit to the effect that it was sent.

19. The TC was critical of delegating the function of responding to such an important letter from the OTC to such an employee, especially since Mr. Thandrayen had also said that he did not himself receive and sign for the call-up letter and accompanying documents. although he accepted that someone had signed for them. She expressed concern that receiving documents from the OTC had been a source of difficulty, as demonstrated also in relation to the Newcastle licence. She also drew attention to the relevance of those matters to the question of repute and whether she could trust Mr. Thandrayen.

20. The TC then returned to the question of the financial documentation produced before her. After discussion of some of the problems which in her view it presented, the transcript continues:

“[TC] Now, where I find myself, we’ve gone through finance and we don’t meet it, ok. Finance is something I expect, Mr. Thandrayen, that you’d be able to remedy fairly quickly, is that correct?”

[Mr. Thandrayen] That’s correct.

[TC] Now, I say remedy fairly quickly, I would want to see finance as in cash in these accounts so that we've got money there for maintenance as and when because you could start operating a bus tomorrow? I appreciate you're saying, you might be saying to me you're not.

[Mr. Thandrayen] April.

...

[TC] Ok, so if I were to be persuaded on finance, ok, that could be remedied across all four licences with credit balances shown, is that what you're saying to me Mr. Thandrayen?

[Mr. Thandrayen] I'm quite happy to do that. It's an undertaking I'm willing to make. The availability of finance is within my control."

21. There was then further discussion of the transport manager issue, after which the TC took a short break before returning to announce her decision. She began by saying that in the round she was able to find that she could continue to trust Mr. Thandrayen to have the licence. That disposed of the good repute issue which had been raised by the call-up letter. She then dealt with finance before turning to the transport manager issue. As to finance, the TC said:

"Here are a number of issues that I need to address with you though in terms of the mandatory requirements of the licence which I've said which are separate issues, they're not discretionary ok. There is not finance for this licence, I want to just remind myself of the terms of the statutory documents ok, and in situations where a cross company guarantee or cross company finances are relied on, I don't have evidence of the finances of the parent company or anything before me today. And it is up to you to provide that evidence. So, on the evidence and as I explained to you going through it, there's no evidence that finance is met for certainly Club Class Edinburgh. And it's doubtful because I have no clear detail of company structure or anything before me, whether or not it's met for the other companies. So, I make a formal finding today that finance is not met in terms of section 27 1A (sic) of the Act across the four licences. Now, you have assured me that that can be remedied, ok. And I accept your evidence on that point and I'm going to allow four weeks for that to be so I'm going to give a period of grace. Now, you need to have regard to Statutory Document number two of the Senior Traffic Commissioner's guidance, ok. I need to see finance in each of these entities, ok. And if a parent company guarantee or any other company structures are to be relied upon funding then there are clear details of what has to be provided in that document. Ok. To me. Now, the obligation is on you to evidence that Mr. Thandrayen. I'm not, I'm giving you a lifeline on finance today, ok, but this is because I was in a situation today where this licence was liable to revocation. Ok. But you've given me your assurance that these matters can be remedied. It may be a case of having to set up separate bank accounts for you to read the Statutory Guidance yourself and satisfy yourself as to what needs to be provided. You've got four weeks to do that. Ok. So, there's a period of grace for four weeks, the formal finding that the licence did not meet finance be met and that's to be sent to my office in

advance of the four week period, ok. And I'll consider what's supplied at that basis. Is that clear?"

22. Mr. Thandrayen agreed that it was clear, but then proceeded to ask some further questions. Finally the TC repeated that he had to show that the three entities had sufficient financial resources to meet the licensing requirements and Mr. Thandrayen repeated that that was clear. The TC warned him that he had come close to revocation of the licences and went on to say:

"The law is the period of grace expires and the mandatory requirement is not met, the licence is revoked. Ok. There will be no more public inquiries, no more chances."

Again Mr. Thandrayen agreed that that was clear.

Events after the public inquiry

23. On 17th February 2023, the day after the public inquiry, the OTC wrote to Mr. Thandrayen setting out the formal findings of the TC in relation to finance and her decision to allow a period of grace. The letter says:

"A formal finding in terms of section 17(1)(a) of the 1981 Act in relation to each of the licences is made out.

*A 4 week POG (period of grace) is allowed to demonstrate financial standing on each of the following licences PM2025617, PC2002396, PB2004994 & PK1108522² **over a 4 week period with evidence to be submitted to the Office of the Traffic Commissioner in Edinburgh by 5pm on 15th March 2023.***

If evidence is not received to demonstrate financial standing across the four licences over a 4 week period by this date your operator's licence will be revoked."

24. No such evidence was received. On 21st March 2023 the OTC sent a further letter which, so far as material, read as follows:

"The Traffic Commissioner is aware that applications to surrender licences PB2004994 Club Class Bus Ltd., PC2002396 Club Class Bus Ltd and PM2025617 Club Class Bus Edinburgh Ltd. have been received on 17/03/23 and the Traffic Commissioner will accept the surrender of these licences, however she is aware that no response has been received from PK1108522 London Bus Group Ltd to the letter of 17/02/23.

The Traffic Commissioner will grant a further 14 days period of grace to PK1108522 London Bus Group Ltd to allow evidence of financial standing to be demonstrated by 5pm on 4th April 2023.

² We have corrected erroneous licence numbers.

If evidence is not received to demonstrate financial standing over a 4 weeks period by this date the operator’s licence for PK1108522 London Bus Group will be revoked.”

25. London Bus and Mr. Thandrayen did not provide such evidence by 4th April 2023. Instead, on that day he submitted an application to the South Eastern and Metropolitan Traffic Area to increase the authorisation on licence PK1108522 from 6 vehicles to 10 and requested a public inquiry. He also sent an email to a caseworker in the TC’s office informing him of the application made and the request for the public inquiry “*for which I will provide the required financial details to support said application.*” No reference was made to the failure to provide evidence of financial standing in relation to the existing authorisation.

26. On 10th April 2023 the OTC in Leeds sent a standard form letter to the effect that the variation application was incomplete and requesting that further evidence of financial standing be provided by 24th April. The letter was sent under delegated authority and the TC was not aware of it.

The decision of 18th April 2023

27. The decision sets out the facts up to the letter dated 17th February 2023 from the OTC to London Bus. It then explains that since no response had been received by 15th March 2023, the date specified in the letter, the matter was again referred to the TC. At that point it emerged that it could not be established whether the letter had been sent by recorded delivery to Mr. Thandrayen. Unlike the call-up letter and the letter dated 21st March 2023, it is not marked as having been so sent. The TC therefore decided to allow a further 14 day period of grace so that she could satisfy herself that there had been good service, a decision which led to the letter dated 21st March 2023.

28. The decision then continues:

“12. Mr. Thandrayen as sole director of operator company PK1108552 (sic) London Bus Group Ltd. has failed to provide evidence to demonstrate that the operator company has appropriate financial standing. I made a formal finding in that respect at the conclusion of the public inquiry on 16 February 2023. The period of grace, and the short extension to that, allowed by me has expired. I am therefore required to revoke the licence, pursuant to section 17(1)(a) of the 1981 Act. Reference is made to the decision of the Upper Tribunal in Tacsi Gwynedd Ltd. 2015/40.”

29. The TC went on to consider the question whether she was nevertheless obliged to hold a further public inquiry to consider the application to vary in the light of Mr. Thandrayen’s request. She concluded that she was not, on the ground that the obligation to hold a public inquiry before varying a licence, if requested to do so, applies only if the proposed variation would be a form of regulatory action.

30. The following passage should be noted:

“19. Standing that [i.e., the conclusion in relation to a public inquiry] and the failures to respond to correspondence from my office on Mr. Thandrayen’s part in this case (similar failures having been a matter of concern in relation to him in the past) I also have concerns in relation to his repute. I step back from making a formal finding in relation to repute on this occasion, but Mr. Thandrayen is on notice that I may consider the matter further should he be called to inquiry again.

20. It is unfortunate that proper regard was not given to the whole circumstances of this case prior to the issuing, under delegation, of the letter on 10 April seeking further evidence in support of the variation application. I accept that it could, perhaps, be said to give the impression that yet further time (until 24 April) has been afforded to Mr. Thandrayen to produce evidence that he is able to meet financial standing for this licence.

21. However, Mr. Thandrayen is already on the clearest of notice that his licence is liable to revocation. He has had the impact of failure to demonstrate appropriate financial standing explained to him in person, at public inquiry, and in several letters from my office since. He has chosen to ignore all of that and instead lodge a variation application as if nothing were amiss. It is also pertinent that Mr. Thandrayen is an experienced operator. He told me at inquiry that he had been called to PI before and had spoken with another Traffic Commissioner in relation to this licence.

22. Standing the foregoing, I do not consider that Mr. Thandrayen could reasonably claim to have been misled as to the immediate consequences for his operator licence, as a result of such letter having been issued in error.

23. For the reasons set out in paragraph 12 of this decision, I now revoke this licence ...”

31. As we mentioned in paragraph 2 above, the decision made clear that the TC was in effect granting a stay pending appeal. A formal application for a stay was in fact made and was duly granted.

The grounds of appeal

32. In the notice of appeal, the ground of appeal is stated to be that the letter dated 10th April 2023 from the OTC created a substantive legitimate expectation that the period of grace had been extended to 24th April 2023. In support it is said that:

32.1. The period of grace had already been extended and a further extension would not have appeared to the Appellant unusual or suspect;

32.2. Reliance on the letter is demonstrated by the fact that the Appellant sent further evidence of financial standing on 24th April 2023 which was more than sufficient to meet the requirement.

33. It is contended that as a result the TC was bound to permit the licence to continue on the basis that London Bus had complied with an expectation from the OTC, or that alternatively a public inquiry ought to have been held to cure any unauthorised representations which were intra vires the authority of the OTC in permitting a variation application despite an earlier order for revocation from the TC.

34. The grounds of appeal were drafted by Mr. Finnegan and in preparation for the hearing listed for 21st September 2023 he put in a skeleton argument dated 15th September 2023 to much the same effect. It concluded by submitting that fairness required the TC to wait until 24th April 2023 before revoking the licence.

35. In the event, when the case came to be heard the Upper Tribunal queried whether the principles of Scots public law applied on an appeal against a decision of the Traffic Commissioner for Scotland and if so, whether a doctrine of legitimate expectation applied in Scots law as it does in the law of England and Wales. The case was adjourned to enable counsel for London Bus to take instructions and further case management directions were given on 17th November 2023. Those directions included directions for a skeleton argument setting out the arguments London Bus intended to address to the Upper Tribunal at the hearing.

36. In the meantime, by a letter dated 5th October 2023, those instructing Mr. Finnegan had written to the Upper Tribunal submitting that the doctrine of legitimate expectation applies equally in both jurisdictions (citing *School and Nursery Milk Alliance Limited v. Scottish Ministers* [2022] CSOH 11, 2022 S.L.T. 262) and asking permission to add three further grounds of appeal, as follows:

- 36.1. A Lead Traffic Commissioner should not have been appointed for London Bus as it is not a multiple licence holder and it is not clear upon what basis the TC was dealing with the public inquiry hearing;
- 36.2. Alternatively, if a Lead Traffic Commissioner was correctly appointed, it should have been the traffic commissioner for London and the South East rather than the TC;
- 36.3. Further in the alternative, if the Lead Traffic Commissioner was correctly appointed, an appeal should be according to the law of England and Wales, not the law of Scotland.

37. The letter concluded by seeking an extension until close of business on 12th October 2023 for submission of an amended skeleton argument, on the basis that London Bus was notifying the OTC of the additional grounds and would seek some constructive dialogue, given the important issues raised for the wider industry. We think that the case management directions referred to in paragraph 35 above operated as a response to the request for an extension of time for filing an amended skeleton argument and we proceed on the footing that, so far as necessary, there was an implied grant of permission to amend the grounds of appeal.

38. In the event, Mr. Finnegan was obliged to withdraw from the case and those instructing him assisted London Bus to find solicitors to take the case forward, as
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explained in a further letter dated 20th October 2023. By an email dated 13th November 2023 CE Transport Law Limited notified the Upper Tribunal that they were now acting for London Bus. Shortly thereafter, however, by an email dated 22nd November 2023, CE Transport Law gave notice that they were no longer instructed.

39. There appears to have been some delay or difficulty in listing the case for hearing. At one stage Mr. Thandrayen was contemplating instructing counsel again but ultimately, as we have already said, he himself represented London Bus at the hearing. We did not in fact receive a further skeleton argument, but Mr. Thandrayen did seek to rely on the additional grounds of appeal, although it was noted that the OTC had expressed the view that the Upper Tribunal did not have jurisdiction to deal with them. Given the history of the case, we did not object to his doing so.

The legal context

40. The Public Passenger Vehicles Act 1981 (“the 1981 Act”), as amended, provides as follows, so far as material:

“4.(1) For the purposes of this Act there shall be –

(a) Such number of commissioners for England and Wales as the Secretary of State may consider appropriate; and

(b) A single commission for the Scottish Traffic Area (the “Scottish traffic commissioner”)

...

(3A) A traffic commissioner for England and Wales –

(a) May exercise the functions of a traffic commissioner in any traffic area in England and Wales; and

(b) May exercise in relation to the Scottish Traffic Area any functions of a traffic commissioner that relate to reserved matters within the meaning of the Scotland Act 1998.

(3B) The Scottish traffic commissioner –

(a) Is to exercise the functions of a traffic commissioner in relation to the Scottish Traffic Area; and

(b) May exercise in relation to any traffic area in England and Wales any functions of a traffic commissioner that relate to reserved matters within the meaning of the Scotland Act 1998.

...

14.(1) On an application for a standard licence a traffic commissioner must consider whether the requirements of sections 14ZA and 14ZC are satisfied.

...

14ZA.(1) The requirements of this section are set out in subsections (2) and (3).

(2) The first requirement is that the traffic commissioner is satisfied that the applicant –

(a) ...

(b) is of good repute (as determined in accordance with paragraph 1 of Schedule 3),

(c) has appropriate financial standing ...

17.(1) A traffic commissioner must revoke a standard licence if it appears to the commissioner at any time that –

(a) the holder no longer satisfies the requirements of section 14ZA(2) ...

(1A) Before revoking a standard licence under subsection (1), the traffic commissioner may serve on the holder a notice setting a time limit ... for the holder to rectify the situation.

(1B) If the holder rectifies the situation within the time limit set under subsection (1A), the traffic commissioner must not revoke the licence.

(2) Without prejudice to subsection (1) above, a traffic commissioner may, on any of the grounds specified in subsection (3) below, at any time –

(a) revoke a PSV operator's licence;

(b) suspend such a licence for such period as he directs;

(c) [repealed]

(d) vary any condition attached ... to such a licence ...

(3) The grounds for action under subsection (3) are [the grounds for regulatory action there specified].

(4) A traffic commissioner shall not take any action under subsection (1) or (2) above in respect of any licence without first holding an inquiry if the holder of the licence requests that an inquiry be held.

...

50. ...

(4) The holder of a PSV operator's licence may appeal to the Upper Tribunal against any decision of a traffic commissioner –

- (a) to refuse his application for the variation or removal of any condition attached to the licence or any undertaking recorded in it;*
- (b) to vary any such condition, or to attach any new condition to the licence, otherwise than on his application; or*
- (c) to revoke or suspend the licence.*

...

(6) A traffic commissioner –

- (a) making any such decision with respect to a licence as is mentioned in subsection (4)(b) or (c) above; ...*

may ... direct that his decision shall not have effect until the expiration of the period within which an appeal may be made to the Upper Tribunal and, if an appeal is made, until it is disposed of.

...

54.(1) A traffic commissioner may, at such places as appear to him to be convenient, hold such inquiries as he thinks fit in connection with the exercise of his functions.

...

Schedule 3

1. (1) ...

(2) In determining whether a company is of good repute, a traffic commissioner shall have regard to all the relevant evidence and in particular to –

- (a) relevant convictions of the company and its officers, employees and agents;*
- (aa) relevant fixed penalty notices issued to the company's officers, employees and agents; and*
- (b) such other information as the commissioner may have as to previous conduct of –*
 - (i) the company's officers, employees and agents in relation to the operation of vehicles of any description in the course of any business carried on by the company; and*

- (ii) *each of the company's directors, in whatever capacity, in relation to the operation of vehicles of any description in the course of any other business."*

41. Under Head E1 of Part II of Schedule 5 to the Scotland Act 1998 the subject matter of the 1981 Act and the Transport Act 1985, so far as relating to public service vehicle operator licensing, is a reserved matter. It follows that s.4(3B) of the 1981 Act has the effect, so far as material that the Traffic Commissioner for Scotland may exercise functions under the 1981 Act in relation to traffic areas in England and Wales.

42. The Senior Traffic Commissioner has power under s.4C of the 1981 Act to give guidance or general directions to the traffic commissioners as to the exercise of their functions under any enactment. S.4C(5) provides that the only guidance or directions which may be given to the Traffic Commissioner for Scotland are guidance or directions as to the exercise of functions that relate to reserved matters. It follows for present purposes that the Senior Traffic Commissioner's Statutory Documents, in so far as they relate to matters governed by the 1981 Act, are of equal relevance in England and Wales and in Scotland.

43. Statutory Document No.2 on Finance, to which the TC drew attention at the public inquiry, is issued pursuant to s.4C. The following extracts are relevant:

"23. It is a fundamental principle of company law that every company is a separate legal entity. If a company is part of a Group the company which holds the licence must not only operate the vehicles but also be able to demonstrate that it is of the appropriate financial standing. The traffic commissioner will have to be satisfied as to the detail of any Group guarantee. The more complicated the company structure and/or financial arrangements the greater the care which will be needed to demonstrate that the applicant company does have the money readily available to meet the requirement to be of appropriate financial standing.

...

27. When a period of grace is granted to an operator, they are responsible for ensuring that they demonstrate the requirement is met prior to the expiry of any period of grace. An operator should therefore actively manage any dates and request an extension, when appropriate, whilst remembering that the grant and any extension is always at the discretion of the traffic commissioner. If a period of grace expires without the mandatory requirement being met then the traffic commissioner is obliged to revoke the operator's licence. [The cases of 2021/052 Ian James Blackmur t/a IJB Transport and 2021/018 Egertons Recovery Group Ltd. are cited as authority for the proposition in the last sentence.]

...

29. Traffic commissioners are entitled to carefully examine the terms of any loan or credit agreement and to establish that it is subject to terms which

actually provide for the required sums to be drawn upon. Invoice finance or invoice agreements may be acceptable but only if accompanied by a copy of the signed agreement and a completed schedule signed on behalf of the finance company.”

44. Multiple licence holders are covered in Statutory Document No. 8 on Delegation. Annex 1 explains that a multiple licence holder is a holder of an operator’s licence in more than one area. The traffic commissioners in Great Britain have agreed arrangements under which such licence holders will be allocated to a Lead Traffic Commissioner (“LTC”) to whom all applications relating to those licences will be referred. Matters of non-compliance will also be referred to the LTC “*in the first instance*”. The point is made that bus operators tend to operate as separate companies in each traffic area, so the guidance will be more applicable to holders of goods vehicle operators’ licences, but bus operators whose licences are granted to a group of related companies or which form subsidiaries of a parent company may request that an LTC be appointed.

45. It is well established that the task of the Upper Tribunal when considering an appeal from a decision of a traffic commissioner is to review the material before the traffic commissioner, and the Upper Tribunal will only allow an appeal if the appellant has shown that “*the process of reasoning and the application of the relevant law require the tribunal to take a different view*”, as explained in *Bradley Fold Travel Limited and Peter Wright v. Secretary of State for Transport* [2010] EWCA Civ 695, [2011] R.T.R. 13, at paragraphs 30-40. This is sometimes summarised as requiring the Upper Tribunal to conclude that the traffic commissioner was plainly wrong.

The appeal hearing

46. At the hearing before us Mr. Thandrayen explained that the Liverpool, Newcastle and Edinburgh businesses had not recovered from the effects of the Covid restrictions and so he had surrendered the relevant licences. He had concentrated on London Bus and had applied to vary the licence. That business was operating and was providing minibus services transporting children for educational reasons. There had been some delays in payment but he had produced evidence of financial standing.

47. As respects the additional grounds of appeal, he submitted that there ought not to have been an LTC and that each company ought to be evaluated on its own. The only reason the licences were dealt with together was that he was the common director. The LTC procedure was wrongly applied to London Bus. If there were to be an LTC, it ought to have been the English traffic commissioner.

48. In response to questions, Mr. Thandrayen said that the companies had separate bank accounts but all payments came out of the shared services company accounts. London Bus made payments into the account and its payments were going out of it. He also said that he thought he had misunderstood the process because he had expected to be called to a public inquiry and he would have been able to go through the financial standing material then. It was not a deliberate failure to provide evidence of financial standing. He accepted that he might have got it wrong.

Discussion

49. We accept that London Bus was not a multiple licence holder as that expression is explained in Statutory Document No. 8, although Club Class Bus was. We have seen nothing to show, however, that the multiple licence holder procedure was followed in this case. The trigger for the public inquiry seems to have been, as the TC said, the failure of Club Class Bus (Edinburgh), which again was not a multiple licence holder, to respond to communications about the loss of its transport manager. The TC was the obvious traffic commissioner to deal with that issue and indeed London Bus does not appear to suggest otherwise.

50. As we understand the position, what then happened was that London Bus and Club Class Bus were called to hearings in respect of licences PK1108522, PB2004994 and PC2002396 which were listed together with the hearing in respect of licence PM2025617 as conjoined hearings. S.54(1) of the 1991 Act, set out in paragraph 40 above, gives traffic commissioners a wide discretion as respects the holding of a public inquiry. Listing is part of case management and is discussed in Statutory Document No. 9 on Case Management. We draw attention to paragraph 21, which states:

“Where there are obvious issues in common, it would clearly be unsatisfactory for the traffic commissioner(s) to come to what might be seen as inconsistent conclusions. The Upper Tribunal has indicated that it is perfectly proper to list related cases together.”

51. In support of the proposition in the last sentence, the Statutory Document cites, together with other cases, *Canalside UK Limited and Lewis Robley Horn t/a L R Horn* [2010] UKUT 283 (AAC), a case in which the traffic commissioner heard together a public inquiry to consider regulatory action against the company, which held a standard international operator’s licence, and to consider whether to grant a fresh application for such a licence made by the company’s sole director in his own name. No objection was taken to the joint inquiry at the time, but it was objected to on the appeal on the ground it led to *“chaos and confusion”*. The Upper Tribunal determined that the traffic commissioner had been right to adopt the course she had adopted, noting the director’s involvement with the management of the company and the interrelation of the question of financial standing of the company and the director. It stated at paragraph 5:

“Indeed, had she not considered matters together, a number of important evidential connections could not have been made.”

52. Mr. Thandrayen rightly identified himself as the common feature of the three companies called to the inquiry, since he was the common and sole director. He was also the sole director of the immediate parent company, National Bus, and of the ultimate parent, Protea Capital. Annexed to the skeleton argument before us is a diagram of the corporate structure of those (and other) companies which confirms the position. As the sole director, he was the person responsible for ensuring compliance with the regulatory regime in the case of each company. His approach to compliance as demonstrated in relation to one company was clearly capable of having evidential significance in relation to another.

53. Given that background, we do not find it surprising that the TC expressed concern about the good repute of London Bus, which effectively meant the repute of Mr. Thandrayen himself. Schedule 3, paragraph 1(2)(b), also set out in paragraph 40 above, makes clear that the conduct of a director in relation to the operation of vehicles in any business is relevant to a company's good repute. There was obviously a major common issue in relation to all four licences which, in our view, it was equally obviously sensible should be determined at one hearing.

54. It is almost invariably the case that when an operator of the size of these companies is called to a public inquiry evidence of continued financial standing will be required. This is a classic case in which a large part of the financial resources of all three operating companies was apparently passing to the parent, National Bus. Certainly that was the case as respects London Bus. Such an arrangement inevitably raises questions whether the necessary funds are readily available to the particular subsidiary or whether, on a call for funds, it might turn out that the parent's resources have gone to another subsidiary. That is why Statutory Document No. 2, as set out in paragraph 43 above, stresses the importance of looking at the detail of a group guarantee and why the TC was concerned about the absence of any evidence as to the financial resources of National Bus. Financial standing was another major common issue in relation to all four licences which it was obviously sensible to determine at one hearing.

55. Mr. Thandrayen did not object to the conjoined hearing at the time and we do not see any basis on which he could reasonably have done so. It was important that the TC should have the full picture and under s.4(3A) of the 1991 Act the TC clearly had power to exercise the functions of a traffic commissioner in relation to all four licences. The statutory provisions relevant to the inquiry apply throughout both England and Wales and Scotland. In our view London Bus was not prejudiced in any way by the course taken.

56. We are aware that the OTC has expressed the view that the additional grounds of appeal do not fall within the scope of s.50 of the 1991 Act, again set out in paragraph 40 above, and so are not within the jurisdiction of the Upper Tribunal. We have not seen the full correspondence in the context of which that view was expressed and so we do not seek to express any concluded views on the point. We confine ourselves to saying that as at present advised it seems to us that the administrative arrangements relating to the LTC procedure are an aspect of the deployment of traffic commissioners, which is primarily a matter for the Senior Traffic Commissioner under s.4B of the 1991 Act, and would not normally be relevant to a decision about the grant or refusal of an application or the variation, suspension or revocation of a licence, the matters with which the Upper Tribunal deals under s.50. The effect of s.4 of the Act is that all the traffic commissioners have jurisdiction to make such decisions in all traffic areas, except to the limited extent that, unlike the present case, the decision may relate to a case which does not involve reserved matters within the meaning of the Scotland Act 1998. We have, however, qualified our view by the word "normally", to reflect the fact that if such administrative arrangements gave rise to any substantive unfairness in the making of the decision, or were alleged to have given rise to such unfairness, the Upper Tribunal would have jurisdiction to consider whether the decision had been so affected. In any event, as we have already said, from what we have seen this is not a case which involves the LTC arrangements; it is a case about listing.

57. We therefore turn to the original ground of appeal, namely, whether the letter from the OTC dated 10th April 2023 created a substantive legitimate expectation. We have considered the *School and Nursery Milk Alliance* case identified by Mr. Finnegan, which states:

“44. Again, the law is not in dispute. An authority may not depart from a clear and unambiguous undertaking previously given, unless it is fair for it to do so, the court being the arbiter of fairness: Re Finucane’s Application for Judicial Review [2019] UKSC 7”

Finucane was a Northern Irish case in which the Supreme Court applied a number of authorities from England and Wales. The court in *School and Nursery Milk Alliance* went on to find that there had been a legitimate expectation that the applicant for judicial review would be consulted on the relevant proposals and that a challenge to the relevant regulations and guidance based upon a lack of proper consultation succeeded.

58. In those circumstances, we conclude that, as might be expected and hoped, all three jurisdictions within the United Kingdom apply a principle of legitimate expectation with the same features. That being the case, it will make no difference whether the principles of Scots public law or the principles of the public law of England and Wales apply to an appeal against the decision of the Scottish traffic commissioner and as we have heard no argument on the point, we do not express a view on it. It is not necessary to our decision.

59. Turning to the question whether London Bus had a legitimate expectation for these purposes, we note that the expectation is expressed to be:

“... a substantive legitimate expectation that the period of grace to provide financial standing evidence in order to avoid revocation of the operator’s licence was extended to 24/04/23, or put simply, that the licence would continue until financial standing was proven by that date.”

60. The primary problem with the submission that London Bus had such a legitimate expectation is that it ignores the effect of the statutory provisions governing the operation of a period of grace. Under s.17(1) a traffic commissioner is obliged to revoke a standard licence if it appears to the commissioner that the s.14ZA(2) requirements, which include the requirement of appropriate financial standing, are no longer satisfied. S.17(1A) mitigates the strictness of that requirement by enabling the traffic commissioner to serve a notice setting a time limit for the holder of the licence to rectify the situation. The power to grant a period of grace by giving such a notice arises only if the TC has already decided that the s.14ZA(2) requirements are not satisfied and the licence is liable to revocation. If the holder does rectify the situation within the time limit specified, then s.17(1B) replaces the subs.(1) obligation to revoke with an obligation not to revoke. If, however, the holder does not do so, the subs. (1) obligation remains and the licence must be revoked. That is the legal position as recently set out in *Ian James Blackmur t/a IJB Transport* [2021] UKUT 0312 (AAC), *Egertons Recovery Group Limited* [2022] UKUT 141 (AAC) (both cases on the comparable provisions in the Goods Vehicles (Licensing of Operators) Act 1995 and both referred to in Statutory Document No. 2) and *Croft Travel Lancashire Limited t/a Croft Travel* [2024] UKUT 132 (AAC) (a case on the 1981 Act).

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61. In the present case the TC made a finding of fact at the public inquiry that London Bus did not satisfy the requirement of appropriate financial standing and so came under an obligation to revoke the licence by virtue of s.17(1). That finding of fact was not challenged and could not realistically have been challenged, given the information before the TC as we have set it out. Having made that finding of fact, the TC went on to decide to exercise the power under s.17(1A) to serve a notice setting a time limit. Owing to concerns about whether or not the original notice had validly been served, the period of grace given to London Bus was in effect extended from 15th March to 4th April 2023. London Bus does not suggest that it provided evidence of financial standing by that date. The inevitable result was that the TC was obliged to revoke the licence, as she did by the decision of 18th April 2023.

62. Given the statutory background, we do not think that any expectation London Bus in the person of Mr. Thandrayen may have had can be described as “legitimate” in the sense that the TC had power to give effect to it. Whatever may have been said in the OTC’s letter of 10th April 2023 could not authorise the TC to disregard the statutory obligation under s.17(1). Even if we are wrong about that, however, we do not accept that it was a legitimate expectation in a more colloquial sense. The TC made every effort at the inquiry to ensure that Mr. Thandrayen understood what the position of London Bus was. He assured her that he would have no difficulty in producing evidence of financial standing. The letter of 17th February 2023 told him expressly that if he did not produce the evidence for all four licences by 15th March 2023 the licence would be revoked. When three of the four licences were surrendered, the letter dated 21st March 2023 extending the period of grace again told him expressly that if the evidence was not received by 4th April 2023, the licence would be revoked. Statutory Document No. 2, which he had been advised to consult, stated the position again.

63. Instead of heeding those warnings, Mr. Thandrayen waited until the last day of the period of grace and then made an application to vary the licence to a different traffic commissioner’s office without providing any evidence of financial standing. The TC, who had heard him at some length at the inquiry, took the view that that was a deliberate ploy and we can understand why she did so. On any view he took the risk that what the TC said and what the OTC wrote did not mean what the words appeared plainly to convey. All he needed to do was to produce the evidence which he had said he could easily produce, but he chose to take a different course. By the time the letter of 10th April 2023 was written, it was already too late for London Bus to avoid revocation. To the extent that he took steps in reliance on the terms of that letter, he was relying on an expectation that could not lawfully be made good.

64. In those circumstances it was not possible to “*cure any unauthorised representation*”, as the notice of appeal and the skeleton argument put it, and no useful purpose would have been served by holding another public inquiry for that purpose.

65. We have considered whether the TC was nevertheless bound to hold another public inquiry in accordance with s.17(4) of the 1991 Act as a result of the application to vary the licence combined with Mr. Thandrayen’s request for an inquiry. We accept that the specification of the number of vehicles authorised under a licence is a condition for these purposes and so a variation to increase the number of vehicles would be the variation of a condition for the purposes of s.17(2) if the traffic commissioner is taking

action on any of the grounds specified in s.17(3). This is the point which the TC considered in her decision and we have no doubt that she was correct to decide that all the grounds in subs. (3) relate to some form of regulatory action as a result of non-compliance or (paragraph (e)) a material change in the circumstances relevant to the original grant which might lead to regulatory action. The purpose of s.17(4) is to ensure that the holder has the opportunity to argue against the traffic commissioner's contemplated action. It is not to enable the holder to insist on an inquiry under the guise of making an application for a variation the holder desires but which the traffic commissioner would not otherwise have had in contemplation. Still less is it the purpose of s.17(4) to breathe new life, even temporarily, into a revoked licence.

66. Similarly, the TC was under no obligation to hold a further public inquiry as a matter of natural justice more widely understood, given the circumstances we have outlined in paragraphs 62 and 63. It would have been a pointless exercise.

Conclusion

67. For those reasons, we are not persuaded that the decision of the TC was plainly wrong. In our view, it was right and the appeal against revocation must be dismissed.

68. There remains the question from what date the revocation should take effect. We are aware that London Bus is currently carrying on business and we take the view that a period of winding down should be allowed. We are also aware that the TC made a direction under s.50(6) of the 1981 Act that her decision should not have effect until the appeal is disposed of. We therefore direct that for the purposes of s.50(6), the appeal is to be treated as disposed of 28 days after the date on which this decision is issued.

(authorised for issue)

E. Ovey
Judge of the Upper Tribunal
10 March 2025