



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

**Appeal No. UA-2024-000962-T
[2025] UKUT 106 (AAC)**

**ON APPEAL from a DECISION of a TRAFFIC COMMISSIONER for the WEST
MIDLANDS TRAFFIC AREA taken on 03 July 2024**

Before: J. Butler, Judge of the Upper Tribunal
D. Rawsthorn, Specialist Member of the Upper Tribunal
M. Smith, Specialist Member of the Upper Tribunal

Appellant: 24Y Logistics Limited

Commissioner's ref: OD2050948

Date of Commissioner's decision: 3 July 2024

Heard at: Birmingham Civil Justice Centre, Priory Courts, 33 Bull
Street, Birmingham, B4 6DS, on 14 March 2025

Representation: For the Appellant, Mr Rahim Rafiq (director).

Date of decision: 21 March 2025

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

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

DECISION OF THE UPPER TRIBUNAL

This appeal is ALLOWED. The Traffic Commissioner's decision of 3 July 2024, directing the revocation of operator's licence no. OD2050948, was made in error of law. Under section 37(2) of the Goods Vehicles (Licensing of Operators) Act 1995, the Upper Tribunal sets aside the Traffic Commissioner's direction.

ORDER OF THE UPPER TRIBUNAL

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

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

"Any written representations must be made to this office, no later than 21 days after the date on which the decision of the Upper Tribunal in case UA-2024-000962-T is issued, for the traffic commissioner's consideration".

For the avoidance of doubt, the above order achieves the effect of maintaining the stay of the revocation direction agreed by the Traffic Commissioner on 25 July 2024, until the time limit in paragraph 4(b) above has ended. The effect of the stay is achieved because the direction revoking the operator's licence has been set aside, and our order gives the operator a new period of time to make written representations to the Traffic Commissioner before any fresh direction to revoke may be made.

REASONS FOR DECISION

1. In these reasons:

- "1995 Act" means the Goods Vehicles (Licensing of Operators) Act 1995;
- "operator" means the Appellant company, 24Y Logistics Limited, of which Mr Rafiq, is a director;
- "OTC" means the Office of the Traffic Commissioner.

The Traffic Commissioner's decision-making

2. On 6 June 2024, the OTC sent a Proposal to Revoke ("PTR") letter to the operator. Having summarised the law about the requirement for an operator to have a transport manager, the letter proceeded to state:

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

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

*Any written representations must be made to this office by **27/06/2024** for the traffic commissioner's consideration.*

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

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

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

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

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

why your last transport manager has left and the circumstances.

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

the period of time you seek for your period of grace.

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

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

3. On 12 June 2024, Mr Rafiq emailed the OTC, in the following terms:

"In response to your letter dated 06/06/2024 requiring an early response from us regarding our Transport Manager.

Please note we are actively seeking a new Transport Manager due to our past Transport Manager retiring.

We have contacted relevant agencies and we are also actively searching job sites and the like.

We would like to assure you we will also be keeping up with our duties in regards to vehicle inspection and driver records.

We will update you as soon as we have hired somebody.

Can we please have a short period of grace while we find a suitable person."

4. On 12 June 2024, a compliance team manager in the North East Compliance Team replied to Mr Rafiq's email, stating:

"Thank you for your email, the content of which is noted. Please can you kindly confirm by return which agencies you have contacted and which job sites are being used in the search for a new transport manager? Please provide a response by no later than 27 June 2024."

5. Mr Rafiq did not reply to that email. He explained at the hearing on 14 March 2025 that the email went into his inbox's spam folder, and he therefore did not see it. Mr Rafiq explained that after receiving the Traffic Commissioner's decision letter dated 03 July 2024, he searched his emails and located the email dated 12 June 2024 in his spam folder.

6. On 03 July 2024, the Traffic Commissioner revoked the operator's licence. The decision letter stated:

*"I refer to our letter dated 06.06.2024 notifying you that the Commissioner was considering revoking your operator's licence. In the absence of a satisfactory response to this letter or a request for a public inquiry to be held the Traffic Commissioner has revoked your operator's licence with effect from **03 July 2024** in accordance with the following grounds:*

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

..."

The OTC case file

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

8. In this appeal, the OTC case file provided to the Upper Tribunal, in accordance with Schedule 1(3)(b), consisted of eight documents (21 pages). These were the

Proposal to Revoke letter dated 06 June 2024, Mr Rafiq's email of 12 June 2024, the email from the National Compliance team dated 12 June 2024, the revocation letter dated 03 July 2024, email correspondence from the Appellant's solicitor dated 11 July 2024 requesting an update and email correspondence advising the Stay had been granted, dated 25 July 2024. The OTC case file did not contain any information about previous regulatory interventions or concerns. We therefore proceed on the basis that this operator had a fully compliant regulatory history and that any documents indicating cause for regulatory concern would have been put before the Traffic Commissioner.

Legal framework

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

10. The relevant requirements of section 13A of the 1995 Act concerning the requirement for a corporate operator to designate a transport manager, are stated in the following terms in the 1995 Act:

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

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

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

11. Before giving a direction to revoke a standard operator's licence, section 27(2) of the 1995 Act requires the Traffic Commissioner to: “give to [the licence-holder] notice in writing that he is considering giving such a direction”. There are requirements for what a section 27(2) notice must contain, such as “the grounds on which the traffic commissioner is considering giving a direction”. However, the notice may also “set a time limit for the licence-holder to rectify the situation” (section 27(3A)). This is generally referred to by the Traffic Commissioners and operators as a ‘period of grace’. The time limit may not exceed 6 months or, in some cases, 9 months including where “more than 6 months is required to recruit a replacement transport manager” (section 27(3B)). If the licence-holder duly “rectifies the situation”, the Traffic Commissioner may not make the revocation direction (section 27(3B)).

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

“7. In our view, when considering whether or not to grant a period of grace, Traffic Commissioners will need some tangible evidence, beyond mere hope and aspiration, that granting a period of grace will be worthwhile, and that there are reasonable prospects for a good outcome. Some sort of analysis along these lines will be necessary because, amongst other reasons, Traffic Commissioners have to decide how long to grant. Moreover, as with a stay, there is no point in granting a period of grace if the likely effect is just to put off the evil day when regulatory action will have to be taken.”

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

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

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

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

(b) to remit the matter to—

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

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

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

and any such order is binding on the commissioner.”

Grounds of appeal

15. The written appeal grounds argued that the operator’s previous transport manager retired on 05 June 2024 and advised him he had a three-month period to find

a replacement. Upon receiving the OTC letter on 12 June 2024, Mr Rafiq immediately communicated by email to northeastcompliance@otc.gov.uk that they (the company) were actively searching for a new transport manager and assured them that they would maintain full compliance with all vehicle inspections and other regulatory duties during this interim period. The appeal grounds stated Mr Rafiq requested a period of grace and set out what efforts were being made. The appeal grounds stated that the reply went straight into Mr Rafiq's spam folder, and he was unaware that the Traffic Commissioner had asked for further information.

16. The appeal grounds state that Mr Rafiq was taken by complete surprise that the operator's licence had been revoked even though the new Transport Manager was now employed and in position. This was a reference to the company employing Mr Philip Hunt as the new Transport Manager on 28 June 2024. The grounds stated Mr Hunt was employed with the intent to minimise any disruption to their operations and continue the commitment to regulatory adherence. The appeal grounds argued that the company had remained fully compliant with all the requirements of its operator's licence and could provide detailed records of ongoing compliance and inspection activities to support this. The grounds referred to the negative consequences of having the licence revoked and argued that the circumstances and the company's demonstrated commitment to compliance and finding a replacement promptly, mean it was respectfully requesting reconsideration to allow it to continue its operations without interruption.

17. Mr Rafiq attended the hearing before the Upper Tribunal on 14 March 2025, with support from Mr Manning, who provides informal help to the company 24Y Logistics Limited. At the hearing, Mr Rafiq confirmed his surname is Rafiq and his first name is Rahim. The Upper Tribunal recorded that information incorrectly for Mr Rafiq's appeal, and we apologise for this. Mr Rafiq also confirmed that the operator that held the licence OD2050948 until it was revoked on 03 July 2024, is 24Y Logistics Limited.

18. At the hearing, Mr Rafiq reiterated the written appeal grounds. He explained that he had become aware of the letters dated 06 June 2024 and 03 July 2024 by receiving the recorded delivery copies. Mr Rafiq also explained that on 28 June 2024, he found a suitable Transport Manager, Mr Philip Hunt, and that he had a contract of employment for him at the hearing if the Tribunal required sight of it. Mr Rafiq explained Mr Hunt was an external Transport Manager, who had been working with the company since 28 June 2024.

19. Mr Rafiq explained that he has office staff who deal with paperwork, and they have shared access to the email inbox. This means they will generally see emails that come into the inbox. However, neither they, nor Mr Rafiq, had seen the email dated 12 June 2024 from Tamara Reilly at OTC, as it had gone into the spam folder for the inbox. When asked how they became aware of the email in question, Mr Rafiq explained that they looked for something in the emails to explain what had happened after the email was sent to the OTC on 12 June 2024. When they searched the spam folder, they discovered the email in question.

20. Mr Rafiq explained that after he sent OTC his email dated 12 June 2024, he was expecting an email or letter back saying he had until a specific date to find a suitable replacement for his old Transport Manager. He described expecting something like a notice that would set out the time given to find a replacement.

21. Mr Rafiq explained that during the period after his former Transport Manager retired and before the new Transport Manager started on 28 June 2024, he was personally downloading the drivers' cards for checking. Maintenance was done by his office, which was a longstanding practice, in place before his Transport Manager retired. He described scheduling a 6-weekly maintenance of each truck. Mr Rafiq also mentioned there was an on-site mechanic to deal with any issues that arose with the two trucks owned by the company. Mr Rafiq described emphasising the importance to drivers that they must perform a proper check of the truck before it is loaded up for delivery, and having someone walk around with the driver, to make sure it is done. Mr Manning described Mr Rafiq being supported in this by an experienced colleague, Mr Kalil, during the period when there was no Transport Manager.

22. Mr Manning also observed that they received no notification during the time space between the letter of 06 June 2024 and the licence being revoked, which they considered unfair. The OTC did not set out any interim period of what it was going to do, including whether it was going to revoke the licence.

Conclusions

23. In our assessment, Mr Rafiq's email dated 12 June 2024 made a valid request on behalf of the operator to be given a period of grace. This request was set out at the end of Mr Rafiq's email dated 12 June 2024. While Mr Rafiq had not set out the specific time period he was requesting, we are satisfied the OTC understood it to be a request for a period of grace. See, for example, the description the OTC has given it in the

index to the bundle on page 12 which describes Mr Rafiq's email as: "*..requesting a Period of Grace*".

24. The Traffic Commissioner has never dealt with the operator's request for a period of grace. It is not mentioned in Ms Reilly's email dated 12 June 2024, apart from the general sentence that the contents of Mr Rafiq's email were noted. In circumstances where the Appellant(through Mr Rafiq) had made a valid request for a period of grace, we are satisfied it was procedurally unfair for the Traffic Commissioner to fail to make a decision about whether or not to grant one.

25. We do not consider this was a situation where a request for a period of grace was bound to fail. In reaching this conclusion, we note, and take into account, that Ms Reilly's email dated 12 June 2024 only requested limited information, specifically details of which agencies had been contacted and which job sites were being used. None of her questions dealt with the request for a period of grace. Nor did the email indicate that the other information Mr Rafiq had provided in his email dated 12 June 2024 was inadequate or incomplete.

26. While there is no right of appeal against a Traffic Commissioner's decision (or lack of decision) in respect of granting a period of grace, we are satisfied that the Traffic Commissioner's failure to address the request for one amounted to procedural irregularity.

27. Further and separately, we are satisfied that in circumstances where the outcome of the decision-making process was for the Traffic Commissioner to make a direction revoking the operator's licence, it was also procedurally irregular for the Traffic Commissioner, acting through the OTC, to:

- (a) only send Mr Rafiq the communication dated 12 June 2024 by email, rather than to send it by recorded delivery as well; and / or
- (b) fail to follow up on the lack of response from Mr Rafiq after 12 June 2024, especially in circumstances where: (i) the OTC had sent the 06 June 2024 letter and 03 July 2024 letters by recorded delivery as well as by email, and (ii) the OTC knew Mr Rafiq had requested a period of grace and the OTC had not responded to that request.

28. For the reasons set out above, we are satisfied the Traffic Commissioner's revocation direction involved procedural irregularity capable of making a material difference to the outcome or the fairness of the decision-making process. We are therefore satisfied the revocation direction involved one or more errors of law.

Disposal

29. We have decided that the appeal succeeds. The Traffic Commissioner erred in law in giving a direction to revoke the operator's licence. In these circumstances, the Traffic Commissioner's revocation direction cannot remain in place. If, however, the Upper Tribunal simply sets aside that direction, the effect of this appeal coming to an end, and the stay being lifted, will mean that as soon as its licence is restored, the operator will be in breach of the requirement to have an approved transport manager. Given the Appellant is a standard licence holder, this creates a mandatory ground for revocation under section 27(1) of the 1995 Act. This would leave the operator no better off than before its appeal succeeded

30. The Traffic Commissioner, not the Upper Tribunal, makes decisions under section 27 of the 1995 Act, including about whether to grant an operator a period of grace. Bearing this in mind, we have therefore formulated an order to dispose of this appeal, which seeks to place the operator, so far as possible, back in the position in which it stood just before the OTC issued its PTR letter.

31. Our order means that the operator must provide a fresh response to the OTC's PTR letter / section 27(2) notice dated 06 June 2024. The operator has 21 days from the date on which this decision is issued (which Mr Rafiq should note is the date of the letter that will be sent accompanying our decision) to provide written representations against revocation to the OTC.

32. Within that 21-day period, the operator also has the opportunity to make a fresh request to the Traffic Commissioner, asking for a period of grace to allow for it to identify a suitable new Transport Manager for approval. Our understanding is that the operator will also need to request a period of grace in respect of any existing nomination, to allow it to go through the approvals process. We note that the OTC's PTR letter explains that specific information should or must be provided if a period of grace is requested. The operator may wish to read the PTR letter carefully and note the information that it indicates should or must be provided.

33. As stated in the OTC's letter dated 06 June 2024, under section 29(1) of the 1995 Act, the operator also has the right to request a public inquiry, at which Mr Rafiq could give evidence relevant to the question of revocation. Section 29(1) confirms that at a public inquiry, Mr Rafiq would also be entitled to call witnesses, cross-examine witnesses, and address the Traffic Commissioner, both on the evidence, and generally on the subject matter of revocation.

34. The effect of our decision is that for a period of 21 days following the date on which this decision is issued, the operator's licence is restored. What happens next will be for the Traffic Commissioner to decide, based on what information and representations the operator provides.

J. Butler
Judge of the Upper Tribunal

**Authorised by the Judge for issue
on 21 March 2025.**

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