



Neutral citation no: [2025] UKUT 182 (AAC)

**Appeal no. UA-2025-000460-T**

**IN THE UPPER TRIBUNAL  
ADMINISTRATIVE APPEALS CHAMBER**

**Appellant:**

**Olleco (an unlimited company)**

**Before: Upper Tribunal Judge Mitchell**

**Decided on consideration of the papers**

**Representation:**

**Appellant:**

Backhouse Jones Ltd (solicitors)

*On appeal from:*

Decision maker: Traffic Commissioner in the West Midlands Traffic Area

Commissioner's ref: OD1144490

Date of decision: 24 March 2025

**SUMMARY OF DECISION**

**100 Transport (Traffic Commissioner and DfI NI) appeals**

**100.1 Applications**

Judicial summary

A failure by officials to put all relevant evidence before a Traffic Commissioner meant that the Commissioner's decision involved an error of law.

*Please note the Summary of Decision is included for the convenience of readers. It does not form part of the decision. The Decision and Reasons of the judge follow.*

### **DECISION OF THE UPPER TRIBUNAL**

**Subject to the Order below, this appeal is ALLOWED. The Traffic Commissioner's decision of 24 March 2025, to refuse the Appellant's application for variation of operator's licence OD1144490, involved an error of law. The Commissioner's decision is SET ASIDE.**

**Under paragraph 17(2) of Schedule 4 to the Transport Act 1985, the Upper Tribunal ORDERS as follows:**

**(1) This decision takes effect ONE WEEK after it is issued unless, within that period, the Upper Tribunal receives the Appellant's written objections to the manner in which this appeal has been decided.**

**(2) If written objections are duly received under paragraph (1) of this Order, this decision has no effect, and the matter is to be referred to a judge of the Upper Tribunal for case management directions.**

**(3) If this decision takes effect:**

**(a) the Appellant's application to vary operator's licence OD1144490 is remitted for reconsideration by a Traffic Commissioner nominated by the Senior Traffic Commissioner;**

**(b) subject to sub-paragraph (c), any requirement to do certain things in connection with an application for variation of an operator's licence provided for by, or under, the Goods Vehicles (Licensing of Operators) Act 1995, such as publication of advertisements, shall not apply if the requirement had been satisfied before the decision of 24 March 2025;**

**(c) sub-paragraph (b) does not apply to the extent that the Senior Traffic Commissioner, or his nominee, decides otherwise.**

## REASONS FOR DECISION

**Subject matter:** *variation of operator's licence*

### Background

#### The Traffic Commissioner's decision

1. The Appellant is an unlimited company within the meaning of section 3(4) of the Companies Act 2006. It holds eight operator's licence granted under the Goods Vehicles (Licensing of Operators) Act 1995. One licence specifies an operating centre in the West Midlands Traffic Area ("the West Midlands licence"). The Appellant applied to the Traffic Commissioner to vary the West Midlands licence. The variation sought was to increase the number of vehicles authorised to be used under the licence from 12 to 14, and to reduce the number of trailers from two to zero.
2. On 24 March 2025, a Traffic Commissioner refused the Appellant's variation application. The Commissioner was not satisfied that the Appellant satisfied the applicable financial standing requirement.
3. On 11 April 2025, the Appellant appealed to the Upper Tribunal against the Traffic Commissioner's decision. The matter was referred to a judge (myself) on 11 June 2025 once the Office of the Traffic Commissioner (OTC) case file had been received on 10 June 2025.
4. As well as the OTC case file, the Upper Tribunal received the following note from an unnamed Traffic Commissioner:

**"The Traffic Commissioner has asked that this note be brought to the attention of the senior judge...as a matter of urgency, so as to avoid a waste of resource and tribunal time.**

Upon reviewing the papers in respect of this appeal it has come to the attention of the Traffic Commissioner that there was an error within the original submission and the processing of the supporting documentation provided. The applicant submitted bank statements in the form of editable Excel spreadsheets, unfortunately it was not noted by the processing staff member that each

statement comprised of three worksheets, each covering a different month. In total spreadsheets were submitted for ten different bank accounts. While the statements submitted did not cover a full and consecutive twenty-eight day period for all of the accounts so as to allow an assessment to be made as described in Statutory Document 2, there was sufficient evidence for a calculation to be conducted across eight of the accounts; these have now been completed as detailed in document 39 of the bundle. Although the calculations still indicate a substantial shortfall from the requirement, they paint a different picture as to the potential lines that might have been followed with the applicant before reaching a final determination.

The Traffic Commissioner...is therefore inviting the Upper Tribunal to remit the matter back to the OTC, without the need for a hearing, so that a decision can be taken on the basis of a correct calculation and/or to allow the applicant to make further representations.”

Why this appeal is decided by a judge without a hearing and without a panel of specialist transport members of the Upper Tribunal

5. Under paragraph 3(c)(i) of a Practice Statement given by the Senior President of Tribunals on 26 March 2014, an appeal in a road transport case (as defined by the Tribunal Procedure (Upper Tribunal) Rules 2008) is to be decided by a judge sitting alone unless the Chamber President of the Administrative Appeals Chamber of the Upper Tribunal decides that it is appropriate for the appeal to be decided by a judge and two specialist transport members of the Upper Tribunal.

6. The Chamber President’s function under paragraph 3(c)(i) of the Practice Statement has been delegated to the lead judge for the Upper Tribunal’s road transport jurisdiction (currently myself), and any deputy lead judge for that jurisdiction (see paragraph 4(1)(a) of Schedule 4 to the Tribunals, Courts and Enforcement Act 2007 for a Chamber President’s power of delegation).

7. I consider that it is not appropriate for this appeal to be decided by a judge and two specialist transport members. As explained below, the appeal is allowed by reason of an error of law in the Traffic Commissioner’s decision, which is not a matter on which a judge requires the assistance of specialist transport members. Convening a panel to decide the appeal would also entail a certain delay, and avoiding delay is of course desirable provided it is in the interests of justice.

8. Under rule 34(1) of the Tribunal Procedure (Upper Tribunal) Rules 2008, the Upper Tribunal may make any decision without a hearing. In exercising this power, the Upper Tribunal must seek to give effect to the overriding objective of the 2008 Rules which is to deal with cases fairly and justly (rule 2(1), (3)). I decide that this appeal is to be decided without a hearing. Given the Traffic Commissioner's concession that the decision-making process on the variation application was flawed, a hearing would be an unnecessary waste of the Upper Tribunal's, and the Appellant's, resources.

### **Legal framework**

9. Section 37(1) of the Goods Vehicles (Licensing of Operators) Act 1995 provides a right of appeal to the Upper Tribunal against a Traffic Commissioner's refusal to grant an application for variation of an operator's licence.

10. Paragraph 17(1) of Schedule 4 to the Transport Act 1985 provides that the Upper Tribunal has "full jurisdiction to hear and determine all matters (whether of law or fact) for the purpose of the exercise of any of their functions under an enactment relating to transport".

### **Grounds of appeal and arguments**

11. In the light of the Traffic Commissioner's concession, I need not set out the grounds of appeal advanced by the Appellant. I do, however, record that the Appellant submits that, if this appeal succeeds, the Upper Tribunal should itself consider granting the variation application made in respect of the West Midlands licence.

### **Analysis**

12. The Traffic Commissioner's note (see paragraph 4 above) describes an error of law in the Commissioner's decision to refuse the Appellant's variation licence. Relevant evidence was not taken into consideration, which is an error of law.

### **Conclusion**

13. This appeal succeeds, and the Traffic Commissioner's decision is set aside.

14. The Appellant's variation application will now be reconsidered by a Traffic Commissioner. I leave it to the Senior Traffic Commissioner to decide which Commissioner is to reconsider the variation application. I am not able to decide the variation application for myself since I do not have the assistance of specialist transport members. In any event, the vast majority of successful appeals against a Traffic Commissioner's refusal to grant an application are remitted to the Commissioner even when the Upper Tribunal is sitting with specialist transport members.

15. I have dealt with this appeal quickly, without seeking the Appellant's representations as to whether it should be decided by a judge sitting alone (on my reading of the notice of appeal, the Appellant probably does not object to the appeal being allowed without a hearing). The Appellant may object to this. For this reason, the order given above provides that this decision comes into effect one week after the day on which it is issued unless, before the end of that week, the Upper Tribunal receives the Appellant's written objections to the way in which this appeal has been decided. If written objections are duly received, this decision shall not take effect, and the matter will be referred to a judge for case management directions.

**Upper Tribunal Judge Mitchell**

**Authorised for issue on 13 June 2025**

*Given under section 37(1) of the Goods Vehicles (Licensing of Operators) Act 1995*