



Neutral Citation Number: [2025] UKUT 231 (AAC)
Appeal No. UA-2024-000704-T

**IN THE UPPER TRIBUNAL
ADMINISTRATIVE APPEALS CHAMBER**

Britannia Bus Ltd

Appellant

Before: Upper Tribunal Judge Citron, Mr Rawsthorn and Mr Roantree

Hearing date: 20 May 2025
Hearing venue: Birmingham Civil and Family Justice Centre

Representation:
Appellant: by Murray Oliver of Smith Bowyer Clarke, solicitors

On appeal from:
Decision maker: Traffic Commissioner in the East of England Traffic Area
Ref: PF1124300
Date of decision: 22 May 2024

SUMMARY OF DECISION

**100 Transport – Traffic Commissioner Appeals
100.12 Revocation
100.15 Public service vehicles**

The appellant's PSV operator's licence was revoked by the Traffic Commission, on the ground that the appellant did not satisfy the requirement of financial standing, following expiry of a "period of grace". However, in granting the "period of grace", the Traffic Commissioner had not followed the two-step process required by Article 13.1 of the 2009 EU regulation, as explained by the Upper Tribunal in the case of *Egertons Recovery Group Ltd*; in particular, the first step, at which statutory notice (including a time limit in which to request a public inquiry) under regulation 9 of the Public Service Vehicles (Operators' Licences) Regulations 1995 should have been given, did not occur. The Upper Tribunal, following *Egertons*, held that this was a material error of law and set aside the revocation as a result.

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

The decision of the Upper Tribunal is to **allow** the appeal. We order that the Traffic Commissioner's revocation of Britannia Bus Ltd's operator's licence, notified in a letter of 22 May 2024, be **set aside**.

Subject matter

Revocation of licences

Procedure for granting time to rectify situation of non-satisfaction of requirements (a "period of grace")

Cases referred to

Bradley Fold Travel Ltd & anor v Secretary of State for Transport [2010] EWCA Civ 695

Egertons Recovery Group Ltd [2022] UKUT 141 (AAC)

REASONS FOR DECISION

1. In what follows, (unless the context otherwise indicates) references to "sections" (or "s") are to sections of the Public Passenger Vehicles Act 1981; and, to avoid having to say "he or she", the Traffic Commissioner (the "**TC**") will be referred to as "it".

The licence revocation appealed against, and the stay

2. The appellant appealed to the Upper Tribunal against the TC's revocation (the "**revocation**") of its standard licence under s17 with effect from 22 May 2024, notified in a letter from the Office of the TC ("**OTC**") of that date. The revocation was on the ground that the appellant no longer had appropriate financial standing, and so no longer satisfied the requirement of s14ZA(2)(c). (Under s17(1)(a), the TC must revoke a standard licence if the holder no longer satisfied the requirements of s14ZA(2)).
3. OTC's letter of 22 May 2024 also

- a. refused the appellant's request that the "period of grace" it had been granted be extended; and
 - b. referred to the appellant's request for a public inquiry and stated that the TC did "not consider that revocation of the licence should be deferred in order to allow such a hearing to be convened".
4. The appellant appealed to the Upper Tribunal against the revocation and, in a decision issued on 27 June 2024, the Upper Tribunal directed (under s50(8)) that the revocation shall not have effect until the appeal is disposed of.

Jurisdiction of the Upper Tribunal

5. The holder of a PSV operator's licence may appeal to the Upper Tribunal against a decision of the TC to revoke the licence: s50(4)(c).
6. The Upper Tribunal has jurisdiction to hear and determine all matters whether of fact or law for the purpose of the exercise of its functions under an enactment relating to transport. It has the power to make such order as it thinks fit or, in a case where it considers it appropriate, to remit the matter to a TC for rehearing and determination.
7. The Upper Tribunal may not take into consideration any circumstances which did not exist at the time of the determination which is the subject of the appeal.
8. The task for the Upper Tribunal on an appeal is to conclude whether or not, on objective grounds, a different view from that taken by the TC is the right one or (meaning the same thing) whether reason and the law impel the Upper Tribunal to take a different view (*Bradley Fold Travel and anor v Secretary of State for Transport* [2010] EWCA Civ 695 at [40]).

The Upper Tribunal hearing

9. We had before us a bundle of 213 pages (incorporating a bundle of 166 pages prepared by OTC), a written skeleton argument of the appellant, and an authorities bundle.
10. We are grateful to Mr Oliver for his submissions and assistance to the Upper Tribunal during the hearing.

Relevant background law

11. Section 17, as drafted, has two relevant qualifications to s17(1), the provision requiring the TC to revoke a licence in certain circumstances:

- a. section 17(1A) provides that, before revoking a standard licence under s17(1), the TC may serve on the holder a notice setting a time limit, in accordance with Article 13.1 of the “2009 Regulation”, for the holder to rectify the situation. Section 17(1B) then states that, if the holder rectifies the situation within the time limit set under s17(1A), the TC must not revoke the licence

(“2009 regulation” means Regulation (EC) No 1071/2009 of the European Parliament and of the Council of 21 October 2009 – part of retained EU law);

- b. section 17(4) provides that the TC shall not take any action under s17(1) in respect of any licence without first holding a public inquiry if the holder of the licence requests that a public inquiry be held.

12. Article 13.1 of the 2009 regulation reads as follows:

Where a competent authority establishes that an undertaking runs the risk of no longer fulfilling the requirements laid down in Article 3, it shall notify the undertaking thereof. Where a competent authority establishes that one or more of those requirements is no longer satisfied, it may set one of the following time limits for the undertaking to rectify the situation ... (c) a time limit not exceeding 6 months where the requirement of financial standing is not satisfied, in order to demonstrate that the requirement will again be satisfied on a permanent basis.

(the Article 3 requirements include that of financial standing)

13. Article 13.3 of the 2009 regulation reads as follows:

If the competent authority establishes that the undertaking no longer satisfies one or more of the requirements laid down in Article 3, it shall suspend or withdraw the authorisation to engage in the occupation of road transport operator within the time limits referred to in paragraph 1 of this Article.

14. Furthermore, regulation 9(1)(a) of the Public Service Vehicles (Operators' Licences) Regulations 1995 provides that, before exercising any of its powers

under s17(1), the TC who granted the licence shall give notice to the licence holder; regulation 9(2) sets out the things the notice must state:

- a. that the TC is considering such action;
- b. the grounds on which that consideration is based;
- c. that within 14 days of such notice the holder may make written representations to him with respect to the action or actions being considered;
- d. either—
 - i. that the TC proposes to hold an inquiry in relation to the action being considered and the date (being a date not less than 14 days from the notice) on which that inquiry will be held, or
 - ii. that the TC does not propose to hold an inquiry in relation to that action unless the holder, within 14 days of the notice, in writing requests him to do so.

15. The case of *Egertons Recovery Group Ltd* [2022] UKUT 141 (AAC) concerned a very similar, parallel regime for heavy goods vehicles; in particular, [39-41 and 45] in that case made clear that

- a. revocation of the licence is compulsory where the operator no longer satisfies the relevant statutory requirements; but
- b. before revocation can be ordered, the relevant statutory notice “must be sent, stating the grounds upon which the TC is considering an order of revocation and inviting the operator to make representations in respect of those grounds which must be received by the OTC within 21 days of the notice” – in this case, the relevant notice is that under regulation 9(1)(a) (which gives 14 rather than 21 days); furthermore,
- c. there is a right of an operator to request a public inquiry when a TC is considering an order of revocation;
- d. it is for the operator to determine within the period allowed whether to request a public inquiry or make representations and/or request a “period of grace”;

- e. a “period of grace” is an admission on the part of the operator that they no longer satisfy one or more of the statutory requirements;
 - f. Article 13.1 envisages a two-step process and the first step – when the TC establishes that the operator “runs the risk” of no longer fulfilling the requirements laid down in Article 3 – is the relevant statutory notice; the second step involves the TC setting a time limit (or “period of grace”) – and that “will be separately conveyed at a later date” to the statutory notice;
 - g. a finding that the operator no longer meets one of the requirements is necessary before a “period of grace” can be considered;
 - h. it is for the operator to provide to the TC, the information necessary for the TC to be satisfied that the operator has rectified the position within the “period of grace”; and
 - i. once a “period of grace” comes to an end, the operator has no further opportunity either to make representations or to request a public inquiry.
16. At [42] of *Egertons*, the Upper Tribunal did not accept, on the wording of the parallel provisions for heavy good vehicles, that a “period of grace” could only be granted in a statutory notice; such an interpretation would misinterpret Article 13; the Upper Tribunal concluded that paragraph as follows:

Whilst there may be cases in which the TC has been given notice of a material change along with representations and a request for a [“period of grace”] prior to the [relevant statutory] notice being issued, the notice cannot be dispensed with as the contents ensure that the operator is aware of all of the options available to them (including the right to request a public inquiry). This is particularly important when the request for a [“period of grace”] amounts to an admission that one of the mandatory requirements is no longer satisfied and that as a consequence, without a [“period of grace”] being granted, the licence shall be revoked. We find that it is almost inevitable that the grant of a [“period of grace”] will be subsequent to the [relevant statutory] notice.

Background to the revocation in this case

17. The appellant was the holder of a PSV operator’s licence authorising 8 public service vehicles. The licence was granted on 28 January 2014.

18. On 10 December 2023 OTC wrote to the appellant with a licence “check list” (for review) and request for current financial information.
19. The appellant responded in a letter dated 22 December 2023. The first paragraph of that letter stated:

Having conducted a review of the company’s finances in respect of our licence renewal, I have determined that the company does not currently meet financial standing regulations and as such, I request a period of grace to re-establish such standing. I can confirm that the company is profitable and I believe that financial standing can be achieved and maintained as outlined below.

20. The letter continued over two pages, with one section under the heading “*Reason for non-compliance*”, and another under the heading “*Re-attaining and maintaining financial standing*”. The “period of grace” requested was for six months. The final paragraph of the letter stated:

If the requested period of grace is not granted for any reason, then the company respectfully requests that the matter be referred for a public inquiry.

21. On 11 January 2024 OTC wrote to the appellant stating that the TC had considered its request for a period of grace and requesting further information (5 items were listed) before making a decision.
22. On 18 January 2024, the appellant, through its then-solicitors, responded to the 11 January letter from OTC. The penultimate paragraph read as follows:

If the [TC] is not minded to grant the period of grace requested at this stage and to allow for the voluntary curtailment down to four vehicles, then we are instructed to request a public inquiry in line with earlier correspondence, before any action is taken against the licence.

23. In an email to OTC on 15 February 2024 the appellant’s solicitors provided further information and expressed willingness to curtail the licence down to two vehicles.
24. On 19 February 2024 OTC wrote to the appellant; the letter began by referring to OTC’s 18 January 2024 letter “regarding the issues with financial standing”. The letter then referred to s17(1A) and the 2009 regulation, and stated that the TC had decided to allow the appellant’s licence to remain in force until 17

May 2024 in order to rectify matters. It then required certain further information and referred to the licence being reduced down to two vehicles. The fourth paragraph of the letter then read as follows:

On your application the [TC] has made a finding that you no longer meet the requirement of financial standing so as to allow you the requested Period of Grace. The [TC] has therefore complied with the requirements of section 17(1A) ... (in accordance with regulation 9 of the Public Service Vehicles (Operators' Licences) Regulations 1995). The TC is obliged to revoke the licence under the provisions of s17(1) ... if you fail to provide suitable financial evidence which shows you have continued access to the required funds by [17 May 2024].

25. On 16 May 2024 the appellant provided information as requested in OTC's letter of 19 February 2024; the letter accepted that the appellant still did not meet financial standing "as an average over the required period"; it referred to payments that were still expected; it "therefore" asked for the current period of grace to be extended by three months (to the maximum of six months); and if the TC was not agreeable to this request, a public inquiry was requested before any action was taken against the licence.
26. The revocation letter from OTC of 22 May 2024 said this (amongst other things):

The [TC] has considered the company's request for an extension of the period of grace, and in the light of the reasons stated above, has found the information, as has been provided by the company, falls short of meeting the standard that there are reasonable prospects for a 'good outcome' and therefore has refused the company's request for an extension to the period of grace.

The [TC] has also considered the company's request for a public inquiry and does not consider that revocation of the licence should be deferred to allow such a hearing to be convened.

The appellant's case

27. The appellant's case was that the revocation was
 - a. in breach of s17(4) – because no public inquiry was held - and so unlawful; and/or
 - b. disproportionate, in all the circumstances.

28. The appellant asked that the revocation be set aside.

Why the revocation falls to be set aside

29. It is clear that in this case the TC did not follow the two-step process for granting “periods of grace” that, per *Egertons*, is required by the 2009 regulation; in particular, the TC did not give notice under regulation 9 of the Public Service Vehicles (Operators' Licences) Regulations 1995, which should have been the first step; instead, it “jumped” to the second step, which was the OTC letter of 19 February 2024. It is not hard to understand, on the facts of this case, why the TC took that approach: it was the appellant who first asked for a “period of grace”, having stated that it was not meeting the requirement of financial standing (see its letter of 22 December 2023). However, as was said in *Egertons* at [42], the first stage of the period of grace process cannot be “dispensed with” in circumstances such as these, and the facts of this case bring out one important reason why: the operator’s decision as to whether request (and so require) a public inquiry must be made prior to the “period of grace” being granted, since, once it is granted, the right to a public inquiry is (in effect) lost; it is therefore important as a matter of procedural fairness that, via the 14-day period for requesting a public inquiry that is built in to the notification procedure in the first stage of the “period of grace” process (see [14d] above), the operator is put on notice that it is at this stage of the process that it must choose whether or not it wants a public inquiry.

30. In our view, the TC erred in law in not carrying out the first stage of the period of grace process as laid down in the 2009 regulation, by not giving correct notice under regulation 9 of the Public Service Vehicles (Operators' Licences) Regulations 1995; and that the error was material, as following that procedure may have caused the appellant to have requested a public inquiry at a time when that option was still open to it; and the holding of such an inquiry may have produced a different outcome to the revocation.

31. It follows that the revocation falls to be set aside.

Disposal

32. Having decided to set aside the revocation, we have considered whether to make any further order. We note that because a stay was granted in this case, our allowing the appeal and setting aside the revocation continues, rather than

alters, the status quo. It seems to us unnecessary to make any further order: needless to say, if the TC has continuing concerns about the appellant's compliance, it can commence any action open to it in law (including, needless to say, following any required procedures).

33. In the light of this outcome, it is unnecessary for us to consider any other arguments or grounds raised by the appellant.

Zachary Citron
Judge of the Upper Tribunal

David Rawsthorn
Gary Roantree
Members of the Upper Tribunal

Authorised by the Judge for issue on 2 July 2025