



Neutral Citation Number: [2025] UKUT 273 (AAC)
Appeal No. UA-2024-001781-T

**IN THE UPPER TRIBUNAL
ADMINISTRATIVE APPEALS CHAMBER**

Tomsyl Ltd

Appellant

Before: **Upper Tribunal Judge Citron, Mr Rawsthorn and Mr Lockett**

Hearing date: 30 June 2025

Hearing venue: Field House, Breams Buildings, London EC4

Representation:

Appellant: by Mr Tomasz Mach, director of the Appellant

On appeal from:

Decision maker: Traffic Commissioner in the East of England Traffic Area

Ref: OF2056008

Date of decision: 20 November 2024

SUMMARY OF DECISION

100 Transport – Traffic Commissioner Appeals

100.8 Transport managers

100.12 Revocation

100.19 Decisions and reasons

The appellant removed its transport manager and then asked for a six month period of grace to rectify the situation and appoint a new one. The Traffic Commissioner refused the application for a period of grace, and the appellant's licence was revoked. The appellant had provided details of its efforts to recruit a new transport manager, but the Traffic Commissioner, in explaining its decision, simply stated that the appellant had not provided "tangible evidence" to indicate a positive outcome. The Upper Tribunal decided that the Traffic Commissioner's decision was inadequately explained: it was not clear if the Traffic Commissioner accepted the appellant's evidence (and if it did not, why?); and if the Traffic Commissioner *did* accept the appellant's evidence, it was unclear why there were not reasonable prospects for a new transport manager to be appointed in the course of the period of grace.

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 Tomsyl Ltd's operator's licence, notified in a letter of 20 November 2024, be **set aside**.

Subject matter

Revocation of licences

Reasons for refusal to grant 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

McKee (Operator) & McKee (Transport Manager) [2014] UKUT 0254 (AAC)

Ashro Shipping Ltd [2024] UKUT 425 (AAC)

REASONS FOR DECISION

1. In what follows, (unless the context otherwise indicates) references to "sections" (or "s") are to sections of the Goods Vehicles (Licencing of Operators) Act 1995; 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 s27(1)(a) with effect from 20 November 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 met professional competence requirements in line with s13A(3)(a)(i) or s13A(3)(b).
3. To explain these statutory references:

- a. under s27(1)(a), the TC must direct that a standard licence be revoked if the licence-holder no longer satisfies the requirements of s13A;
 - b. under s13A(3)(b), one of those requirements is that the licence-holder (which is not itself an individual) has designated a suitable number of individuals who satisfy the requirements set out in paragraph 14A(1) and (2) of Schedule 3;
 - c. those paragraphs set out the requirements for a transport manager: they must be, amongst other things, “of good repute” and “professionally competent”.
4. OTC’s letter of 20 November 2024 also referred to earlier correspondence (including “responses” by the appellant on 11 October (in which a “period of grace” was requested) and 7 November 2024) and commented that the TC was “not satisfied that tangible evidence has been provided”.
5. The appellant appealed to the Upper Tribunal against the revocation and, in a decision issued on 4 March 2025, the Upper Tribunal directed (under s29) (subject to a condition, since satisfied, that the Upper Tribunal receive details of the appellant’s proposed transport manager, include evidence of their qualification) that the revocation shall not have effect until the appeal is disposed of.

Jurisdiction of the Upper Tribunal

6. The holder of an operator’s licence may appeal to the Upper Tribunal against a direction under s27(1): s37(2).
7. 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.
8. 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.
9. 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

10. We had before us a bundle of 74 pages, incorporating a 36 page bundle prepared by OTC.
11. We are grateful to Mr Mach for attending the hearing and making his case, with assistance from an interpreter.

Background to the revocation

12. On 7 October 2024, Mr Mach removed the individual shown as the appellant's transport manager in OTC's electronic records.
13. OTC's letter of the following day said it had been brought to its attention that there was currently no transport manager specified on the appellant's licence. Citing s27(2), the letter gave notice that the TC was considering revocation of the licence. Citing s27(3), it informed the appellant that it was entitled to make written representations to the TC. Citing s29(1), it said the appellant could request a public inquiry, "in order to offer further evidence as to why the licence should not be revoked". The letter also said this:

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.

14. Annex B to the letter included the following:

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 will you 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.

15. The appellant's 8 October 2024 response, written by Mr Mach, included the following:

- a. a 6 month period of grace was sought
- b. the previous transport manager's contract was terminated because he was not fulfilling his duties; he was "only on paper, without performing any actual work"
- c. for the duration of the period of grace, should it be granted, Mr Mach had asked a "colleague", who was a transport manager to "assist" him, and he had agreed
- d. two transport managers had approached Mr Mach; he needed to "vet" them "to avoid a repeat of the previous situation"; Mr Mach also had contact with other candidates, but each needed to be "verified"
- e. the additional time would allow Mr Mach to "carefully select and hire the right person".

16. OTC's 5 November 2024 response asked for three pieces of information, "in order for the period of grace to be considered":

- a. why did the appellant not inform OTC of the previous transport manager's failure to fulfil his duties?
- b. had interviews been held with prospective candidates, and if so, what was the outcome?
- c. could more detail be provided as to who the colleague who would assist Mr Mach was, and what qualifications they hold?

17. Mr Mach responded as follows on 7 November 2024:

I had not previously informed you that my former Transport Manager was not fulfilling his duties because he had concealed from me what his role as Transport Manager actually entailed. Regarding the recruitment process for a new Transport Manager, I have already conducted two interviews, but I am approaching this matter very cautiously to avoid being disappointed again.

The person who could assist me in managing the company during a potential grace period, if granted, is [Mr PW], who owns a transport company. He can be reached at: [mobile telephone number].

The appellant's case

18. In the appeal form, Mr Mach wrote that he felt deeply wronged because he had answered OTC's questions (in their letter of 5 November 2024) and had requested a grace period to organise everything.

Why the revocation falls to be set aside

19. Although OTC's revocation letter (of 20 November 2024) was laconic in its explanation of why a period of grace was being refused (leading to immediate revocation) – the TC was “not satisfied that tangible evidence has been provided” – it is clear enough from the context (i.e. the previous correspondence, and OTC's internal communications) that the decision was based on paragraph [7] of the Upper Tribunal's decision in *McKee (Operator) & McKee (Transport Manager)* [2014] UKUT 0254 (AAC), which read as follows:

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. In this case, the Traffic Commissioner said, in terms, that her decision was not based upon the sequestration, about which she made no adverse finding, but upon the total absence of any financial evidence. ...

20. We note that in *McKee*, where the issue was the licence-holder's financial standing, there had been a “complete failure by the operator to produce any financial evidence of any sort”, “no attempt to show to the Traffic Commissioner how the operator would establish financial standing” and “no suggestion ... that the required evidence of available finance could be produced quickly” (all taken from paragraph [6] of that decision).

21. As the Upper Tribunal decided in *Ashro Shipping Ltd* [2024] UKUT 425 (AAC) at paragraph [18], reasons (and, impliedly, adequate reasons) must be given for a decision refusing a period of grace, where (as here) it is an integral part of the decision to revoke:

While there is no right of appeal against a Commissioner's refusal to grant a period of grace, cases arise in which the refusal to grant a period of grace is an integral part of the decision to revoke an operator's licence. In such cases, we consider that the Traffic Commissioner's obligation to provide sufficient reasons for a licence revocation decision cannot be discharged unless some explanation is given for the refusal to grant a period of grace. ...

22. In our view, it is not at all clear what aspect of the reasoning in *McKee*, at paragraph [7], was being relied on in by the TC in this case; the position in this case, as relevant, can be summarised as follows:

- a. the issue in this case for "rectification" during a period of grace, was the appointment of a transport manager for the appellant;
- b. the appellant's previous transport manager had been removed on 7 October 2024 i.e. immediately before OTC's letter saying it was minded to revoke the licence, and a matter of a few weeks before the correspondence in which the appellant was seeking a period of grace;
- c. in its 8 October 2024 letter, the appellant had stated that it had been approached by two transport managers, and had contact with other candidates; it indicated that it wanted to "vet" and "verify" these candidates;
- d. in its 7 November 2024 letter (i.e. one month later), the appellant stated that it had (already) conducted two interviews, but was approaching the matter very cautiously; this was in response to a specific question posed by OTC in its 5 November letter, *Had interviews been held with prospective candidates, and if so, what was the outcome?*

If we compare the above to the rationale of the Upper Tribunal in *McKee* at paragraph [7], we observe:

- i. based on the evidence provided by the appellant in its letters, this was not a case of "mere hope and aspiration" (as regards rectifying the situation during the period of grace): the appellant had conducted two interviews within a month of removing its

former transport manager; it had indicated that it wanted to approach matters carefully, and so was not rushing to a decision on who to appoint;

- ii. for similar reasons, the present case is not one of “total absence” of evidence relevant to rectifying the situation, as was the position in *McKee*;
- iii. we are left with two hypotheses about why the TC felt that paragraph [7] of *McKee* justified its refusal of a period of grace:
 1. the TC might have considered that the appellant’s evidence was not persuasive, perhaps because the TC did not think the appellant was credible, or perhaps because the TC considered that when *McKee* at paragraph [7] referred to “tangible” evidence, it meant only documentary evidence was acceptable (a view with which we would not be inclined to agree, as the persuasiveness of different kinds of evidence is something to be considered fairly, and in the round, in each case). The fact that we are forced to speculate about the TC’s reasoning, indicates to us that, as a matter of natural justice, the TC’s decision was not adequately explained; and this is an error of law; or
 2. perhaps the TC *did* accept the appellant’s evidence, but nevertheless came to the view that that evidence did not indicate “reasonable prospects for a good outcome”. Again, if this was the case, then, in our view, the TC’s reasoning was not adequately explained: if the TC accepted that the appellant had conducted two interviews within a month of losing its transport manager, and was asking for a six month period of grace in order to give it time to make a careful appointment, why were there not reasonable prospects for a good outcome? Put differently, in what sense would granting the period of grace have been “just putting off the evil day”?

23. This legal error means that the revocation falls to be set aside.

Disposal

24. 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).

**Zachary Citron
Judge of the Upper Tribunal**

**David Rawsthorn
Ian Lockett
Members of the Upper Tribunal**

Authorised by the Judge for issue on 14 August 2025