



Neutral Citation Number: [2026] UKUT 66 (AAC)
Appeal No. UA-2024-000673-T

**IN THE UPPER TRIBUNAL
ADMINISTRATIVE APPEALS CHAMBER**

**IN AN APPEAL FROM THE DECISION OF:
THE TRAFFIC COMMISSIONER FOR THE WEST MIDLANDS
DATED 30th APRIL 2024**

LIONS LOGISTICS LIMITED

Appellant

- v -

COMPAS75 LIMITED

Respondent

**Before: Upper Tribunal Judge Ovey
Ms. Sarah Booth (specialist member)
Mr. Ian Lockett (specialist member)**

**Hearing date: 26th September 2025
Mode of hearing: In person**

**Representation:
Appellant: Mr. Mark Davies (counsel)
Respondent: Mr. Ben Williams (counsel)**

SUMMARY OF DECISION

100. Transport – Traffic Commissioner and DoE (NI) Appeals
100.20 Other

The Upper Tribunal decided that the Traffic Commissioner had been entitled to take the view that the Appellant was a person who had an interest for the purposes of s.36 of the Goods Vehicles (Licensing of Operators) Act 1995 in the Traffic Commissioner's decision whether or not to grant a variation application made by the Respondent but that there was no breach of a procedural requirement enabling the Traffic Commissioner to set aside the decision on an application under s.36 for review.

The Appellant had complained to the Office of the Traffic Commissioner and to the Driver and Vehicle Standards Agency (“the DVSA”) that for a substantial period of time the Respondent used an unauthorised operating centre. The DVSA investigated but took no further action in the light of an application by the Respondent to vary its licence by adding the relevant premises. The Applicant wrote to the Traffic Commissioner (“the TC”) asking him to take into account the Applicant’s representations, including representations about the operating centre. The TC decided to grant the variation application, while at the same time sending a strong formal warning to the Respondent about the unauthorised use. When the Applicant became aware of the decision on the variation application, it applied to the TC for a review of his decision under s.36 of the Goods Vehicles (Licensing of Operators) Act 1995. The TC decided that the Applicant was a person who had an interest in the decision for the purposes of s.36(2) but was not a person able to make a statutory objection going to repute and had not sought to make statutory representations on environmental matters. The TC further concluded that there was no failure to comply with a procedural requirement for the purposes of s.36(1).

The Appellant appealed, contending that the TC could act on information relating to matters going to repute and had failed to give proper consideration to the extensive breaches of the requirements relating to operating centres, thereby failing to comply with a procedural requirement. The Appellant argued that the TC ought to have called the Respondent to a public inquiry where the unauthorised use could be considered fully. The Respondent was made a party to the appeal and opposed it, arguing that the Appellant did not fall within s.36(2) and there had been no failure to comply with a procedural requirement.

The Upper Tribunal decided that:

- (i) s.36(2) gave the TC power to decide who was a person who had an interest in the decision, that the power was a discretionary power exercisable by the TC in the course of exercising general regulatory responsibilities and that the interest must relate to promoting good decision-making by the TC and be a specific interest greater than the interest of either members of the public generally or of all those involved in the transport industry;
- (ii) it was open to the TC to decide that the Appellant was a person who had an interest in the decision, although the Upper Tribunal reached that conclusion by a different route;
- (iii) there was no failure to comply with a “procedural requirement imposed by or under any enactment”, an expression which means a requirement expressly imposed by the legislation. That is also the view expressed in *West Midlands Machinery Services Ltd.* T/2021/045. [2021] UKUT 267 (AAC).

The Upper Tribunal also took the view that if there had been a procedural requirement to give proper consideration to the representations made by the Appellant, the Appellant would not have succeeded in showing non-compliance. The representations made were capable of going to good repute, but the Upper Tribunal did not have all

the documentation before the TC and was not in a position to say that the TC had not had the information necessary to make a proper decision or that, having regard to the terms of Annex 4 to Statutory Document 10 and applying the test in *Bradley Fold Travel Limited and Peter Wright v. Secretary of State for Transport* [2010] EWCA Civ 695, [2011] R.T.R. 13, his decision was plainly wrong.

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 that the appeal is dismissed.

REASONS FOR DECISION

Introduction

1. This is an appeal by Lions Logistics Limited (“the Appellant”) against the decision of the Traffic Commissioner for the West Midlands Traffic Area (“the TC”) communicated to the Appellant by a letter dated 30th April 2024 referring to the decision itself as “a recent decision”. By that decision (“the Review Decision”) the TC refused a request by the Appellant to review a decision to grant an application by Compas75 Limited (“the Respondent”) to vary its licence to allow it to operate 6 vehicles and 20 trailers from premises at Halford’s Lane, Smethwick B66 1BU (“the Variation Decision”). The request was to carry out a review under s.36(1) of the Goods Vehicles (Licensing of Operators) Act 1995 (“the 1995 Act”) and the TC’s conclusion was that he had no power to conduct such a review since he had not identified any procedural irregularity which might have had a bearing on the Variation Decision.
2. In coming to that conclusion the TC further expressed the view that the Variation Decision was made in line with the legislation and the relevant statutory guidance.
3. The decision letter informed the Appellant that it had a right to appeal against the Review Decision and, following correspondence with Upper Tribunal staff, the Appellant did so by a form UT12 dated 30th May 2024. This raised the possibility that if the Review Decision had been made before the date of the letter communicating it, the appeal was being brought late. It is clear that the Appellant believed that there had been another formal decision and had hoped to obtain a copy of it before bringing its appeal. The form UT12 therefore did not set out the Appellant’s full grounds for challenging the Review Decision. In the event it appeared that there had been no other formal decision, but following case management directions by Judge Mitchell on 13th September and 5th December 2024 and the submission by the Appellant of a comprehensive document explaining its challenge to the Review Decision, the appeal was, if necessary, admitted out of time.

4. Judge Mitchell's directions of 5th December 2024 also made provision for notifying the Respondent of the appeal and giving it the opportunity of applying to be joined. It made such an application and by further directions given by Judge Mitchell on 17th January 2025 was duly joined as the Respondent. Not surprisingly, the Respondent wished, in effect, to support the Review Decision, since a successful appeal would or might lead to reconsideration of the Variation Decision.
5. The result is that, very unusually, we have heard argument on both sides of this appeal and have been greatly assisted by the submissions of Mr. Davies for the Appellant and Mr. Williams for the Respondent.

Factual background

6. On 15th September 2023 the Office of the Traffic Commissioner (West Midlands) ("the OTC") published an edition of *Applications and Decisions* (publication number 3065) which included publication of an application by the Respondent to vary its operator's licence OD2038888 so as to (i) authorise it to operate from a new operating centre, the Halford's Lane premises ("the OC"), (ii) to increase its authorisation to six vehicles and 20 trailers and (iii) to upgrade the licence from standard national to standard international. The publication stated that the objection deadline date was 6th October 2023. The application had previously been advertised in a local newspaper on 10th September 2023.
7. On 6th October 2023 Mrs. Beverley Bell of Beverley Bell Consulting Ltd., on behalf of the Appellant, sent a letter by email to the OTC asking the TC to take into account the representations made in the letter. The letter contained the following assertions and allegations:
 - a. From a date which is not clear but possibly March or April 2021 until the end of December 2021 the Appellant itself operated from the OC, its landlord being a Mr. Rav Khangure, the director of a number of companies including ICS Transport Limited ("ICS"), which was then in liquidation. During that period the Respondent provided sub-contracting services to the Appellant;
 - b. During the period 2019 to 2020 the Respondent's director Mr. Andrzej Kompanowski had provided sub-contracting services to Mr. Khangure or his companies and Mr. Khangure and Mr. Kompanowski were "known associates". The start date of the Respondent's own operator's licence is given on p.64 of the bundle as 9th April 2021;
 - c. While the Appellant was operating from the OC, the Respondent's vehicles were routinely parked there during the week and at weekends when not in use. The Appellant repeatedly warned the Respondent that its vehicles should not be parked at the OC and it should not be used as an operating centre (the operating centre on its licence being Stretford Court, Stretford, Leominster HR6 9DG), but those warnings were ignored. The Respondent wrote to the then Traffic Commissioner for the

West Midlands Area on 14th June 2022 complaining of this breach of the regulatory system, stating that to the Respondent's knowledge, derived from collecting goods from the OC, it was still continuing;

- d. The Appellant had to leave the OC at the end of December 2021 because its agreed parking space was arbitrarily reduced by Mr. Khangure. Mr. Khangure took that action in a malicious attempt to disrupt the Appellant's business after his attempts to take control of the Appellant failed. Litigation has resulted;
 - e. The close relationship between Mr. Khangure and Mr. Kompanowski continued and the Respondent was effectively a front company for Mr. Khangure, the operator's licence for ICS having been revoked. Mr. Khangure, ICS, the Respondent and Mr. Kompanowski had conspired to defraud the Appellants;
 - f. In spite of the information given by the Appellant to the traffic commissioner and the Driver and Vehicle Standards Agency ("the DVSA"), no action had been taken in respect of the unlawful use of the OC, which had continued for over two and a half years. The situation was "further compounded by the process in that [the Appellant] cannot make a valid objection to [the Respondent's] variation".
8. The letter was apparently accompanied by a document containing aerial images from Google Earth on 14th March 2022 showing that the Respondent had parked its vehicles at the OC and indeed showing that the Respondent was operating four trailers although the licence specified a maximum of three. That document does not appear in our bundle.
9. It is not entirely easy to understand how the matter progressed, but some light is shed by a letter dated 14th December 2023 from the DVSA to Paulette Hamilton M.P., who had written on behalf of her constituent Mr. Raj Singh of the Respondent. It seems that the letter of 14th June 2022 was passed to the DVSA, that the Respondent then sent three further communications to the DVSA and that on 17th November 2022 Mrs. Bell was informed that the matter was being investigated. On 16th August 2023 Mrs. Bell asked for an update and there was an exchange about the correct email address to use. The DVSA letter concludes with an assurance that such matters are taken seriously and investigated as appropriate and the statement:
- "Following communications with the operator, they have confirmed that they will cease the unauthorised parking with immediate effect. If this proves not to be the case, Mr. Singh can report any further instances ..."
10. Of course, by the time that letter was written the Respondent had already applied for a variation and it seems that Mrs. Bell's letter of 6th October 2023 led to the creation by the OTC of a "case" to consider the variation application (see p.64 of the bundle). Checks were made at Companies House to see if there were links verifying the allegation that the Respondent was a front for a Khangure company

but nothing was found to support the allegation. As respects the use of the OC, the documentation records:

“It is noted that this matter has been investigated by the DVSA and resulted in [no further action] as the operator placed the current variation application.”

On 4th March 2024 it was recommended that the application be granted but that a warning letter be issued in respect of the original unauthorised use of the OC. The recommendation was accepted by the TC on 6th March 2024.

11. A warning letter was duly sent to the Respondent on 6th March 2024. The warning was described as a “strong warning” and, at the direction of the TC, included the following:

“As the Traffic Commissioner I have been made aware that you were using an unauthorised operating centre. Let me be clear, any use of an unauthorised operating centre is a criminal offence contrary to section 7 of the Goods Vehicles (Licensing of Operators) Act 1995 as amended. There can be no excuse as this is brought to your attention at Note 6 on your operator’s licence. If any such activity is brought to my attention again I will call you to a public inquiry and I will ask DVSA to consider prosecution in the criminal courts.”

12. The March 2024 edition of *Applications and Decisions* (publication number 3091), dated 15th March 2024, contained the information that the variation application had been granted. The Appellant then made its application under section 36 of the 1995 Act for a review of the Variation Decision, supporting the application by a lengthy and very detailed submission which alleged procedural irregularities, errors of fact, errors of law and other matters. It also gives a more detailed chronology of the events up to December 2023.
13. The review application led to a further internal submission made on 19th April 2024 which contains the following:

“Whilst the original submission does not state it, the representation did not meet the requirements of Section 12(4) and (5), and nor was it an attempt to raise what would be considered valid grounds.

Unfortunately the representor was not advised of an absence of status as a valid representor, and did not receive information about the decision at the time it was made. The company were subsequently advised of the decision, following a complaint to the OTC, and were provided with written reasons including what the traffic commissioner was able to consider in the case, and why.”

14. We summarise the remainder of the submission, which was prepared by Mr. Leech, as follows:

- a. It was suggested that the Appellant was “a person who appears to [the TC] have an interest in the decision” within the meaning of s.36(2) and so could properly request a review;
 - b. The proposed ground for review put forward by the Appellant was identified as a contention that the warning given to the Respondent was inadequate and there should have been a public inquiry, but in Mr. Leech’s view the course taken seemed consistent with Annex 4 of Statutory Document no. 10, “The Principles of Decision Making and the Concept of Proportionality”. Further, the contention was arguably outside the scope of s.36, which permits a review where the relevant traffic commissioner is satisfied that a procedural requirement imposed by or under any enactment has not been complied with;
 - c. The only error Mr. Leech could see was that the Variation Decision did not deal with the question whether the Appellant’s representation satisfied the requirements of s.12 and the Appellant was not advised at the time of the Variation Decision and the reasons for it or how its representation had been treated. That error, however, might be considered more to be an administrative matter than a breach of a procedural requirement imposed by statute. In any event, it would have no material effect on the outcome of the variation application;
 - d. Mr. Leech therefore recommended that the decision should be that the requirements of s.36(1) were not met, so there should be no review, and the Appellant should be advised of its right of appeal under s.37(6).
15. Having considered Mr. Leech’s submission, on 22nd April 2024 the TC recorded an internal decision accepting the recommendation made and giving as his reasons:
- a. That he adopted Mr. Leech’s reasons for his recommendation;
 - b. Whether or not the Appellant had standing to request a review, the only matters which could have been raised were environmental matters, those being the only matters in respect of which s.12 permits representations to be made. The unlawful use of the OC was not an environmental matter;
 - c. Mrs. Bell’s letter dated 6th October 2023 was out of time. The advertisement was dated 10th September 2023 and representations had to be made within 21 days of that date;
 - d. There was no material procedural irregularity to trigger a review;
 - e. The unlawful use of the OC was investigated and on the basis that a variation application had been made, the TC decided in the exercise of his discretion to grant it and to issue a very clear formal warning. His exercise of discretion could only be challenged if he was plainly wrong, which he was not.

16. We think that strictly speaking that internal decision was the Review Decision, which was therefore properly described as a “recent decision” in the decision letter dated 30th April 2024, but in view of the case management directions referred to in paragraph 3 above, nothing turns on that.
17. Our bundle also contains some lengthy email chains generated during the period January 2024 to July 2024 which demonstrate the determined efforts of the Appellant to obtain answers to a number of questions relating to the whole situation. We have read all the documentation, but it does not elucidate further the issues as they have been formulated and discussed in the parties’ respective skeleton arguments. As to factual matters, we note the following:
 - a. Investigations are carried out by the DVSA, not the OTC. The TC received a submission from the DVSA about the Respondent’s use of the OC on 15th November 2023;
 - b. The Appellant has made a formal complaint that the DVSA has failed to enforce regulatory standards;
 - c. Relations between the Appellant and the DVSA were not helped when the DVSA decided, in April 2024, to conduct an investigation into the Appellant itself. (An explanation for this can be found at p.253 of the bundle).

Legal framework

18. We now turn to the legal framework governing this matter. The relevant primary legislation is to be found in the 1995 Act, which, as currently in force, contains the following provisions:
 - “7.(1) A person may not use a place in a traffic area as an operating centre for heavy goods vehicles authorised to be used under a heavy goods vehicle licence issued to him in respect of that traffic area unless that place is specified as an operating centre of his on that licence.
 - (2) Any person who contravenes subsection (1) is guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the standard scale.
 - (3) In this Act “operating centre”, in relation to any heavy goods vehicle, means the base or centre at which the vehicle is normally kept, and references to an operating centre of the holder of a heavy goods vehicle licence are references to any place which is an operating centre for heavy goods vehicles used under that licence.

...

 - 10.(1) A traffic commissioner shall publish in the prescribed manner notice of any application for an operator’s licence which is received.

- (2) The notice shall state –
- (a) the time within which, and
 - (b) the manner in which,

any objection to, or representations against, the grant of the application is or are to be made under section 12 (that is to say, the time and manner prescribed under subsection (6) or, as the case may be (7), of that section).

11.(1) ...a traffic commissioner who is dealing with an application for a heavy goods vehicle licence shall refuse the application without considering the merits unless he is satisfied that subsection (2) has been complied with in respect of each locality affected by the application.

(2) This subsection has been complied with in respect of a locality affected by an application for a heavy goods vehicle licence if, within the period beginning 21 days before the date on which the application is made and ending 21 days after that date, notice of the application in such form and containing such information as may be prescribed has been published in one or more local newspapers circulating in the locality.

...

12.(1) Any of the persons mentioned in subsection (2) may make an objection to the grant of an application for an operator's licence on the ground –

- (a) that any of the requirements of sections 13A to 13D are not satisfied in the case of the application; or
- (b) in the case of a heavy goods vehicle licence, that any place in the traffic area concerned which, if the licence is issued, will be an operating centre of the holder of the licence will be unsuitable on environmental grounds for use as such.

(2) The persons who may make such an objection are –

- (a) a prescribed trade union or association;
- (b) a chief officer of police;
- (c) a local authority; and
- (d) a planning authority.

...

(4) Where an application for a heavy goods vehicle licence is made, any person who is the owner or occupier of land in the vicinity of any place in the traffic area concerned which, if the licence is issued, will be an operating centre of the holder of the licence may make representations against the grant of the application on the ground that that place will be unsuitable on environmental grounds for use as such.

(5) A person may not make representations under subsection (4) unless any adverse effects on environmental conditions arising from the use of the place in question as an operating centre of the holder of the licence would be capable of prejudicially affecting the use or enjoyment of the land mentioned in that subsection.

(6) Any objection under subsection (1)(a) shall be made –

- (a) within the prescribed time; and
- (b) in the prescribed manner.

(7) Any objection under subsection 1(b) or representations under subsection (4) shall be made –

- (a) within the prescribed time after the making of the application to which they relate; and
- (b) in the prescribed manner.

...

13.(1) On an application for a standard licence a traffic commissioner must consider –

- (a) whether the requirements of sections 13A and 13C are satisfied ...

...

(4) In considering whether any of the requirements of sections 13A to 13D are satisfied, the traffic commissioner must have regard to any objection duly made under section 12(1)(a) in respect of the application.

(5) If the traffic commissioner determines that any of the requirements that the commissioner has taken into consideration in accordance with subsection (1) or (2) are not satisfied, the commissioner must refuse the application.

(6) In any other case the commissioner must grant the application, unless either of the following provisions applies –

- (a) section 14(2) (power to refuse application on environmental grounds);

(b) section 45(2) (power to refuse to proceed until fee is paid).

13A.(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 –

...

(b) is of good repute ...

...

13C. ...

(5) A heavy goods vehicle licence must specify at least one place in the traffic area concerned as an operating centre of the licence-holder ...

...

17.(1) Subject to section 18, on the application of the holder of an operator's licence, a traffic commissioner may vary the licence by directing -

(a) that additional motor vehicles be specified in the licence or that any maximum number specified in it under section 6 be increased;

...

(g) in the case of a heavy goods vehicle licence, that a new place in the same traffic area be specified in the licence as an operating centre of the licence-holder, or that any place cease to be so specified;

...

(k) in the case of a standard licence, that it cover both international and national transport operations instead of national transport operations only, or vice versa.

...

(3) Except in the cases mentioned in subsection (4), a traffic commissioner shall publish notice of any application for the variation under this section of an operator's licence and shall do so in the manner prescribed for the publication of notices under section 10(1).

...

(5) Where notice of an application is published under subsection (3), the following provisions, namely –

...

- (b) section 12(1)(a) ...
- (c) sections 13 to 13D; ...

...

shall, with any necessary modifications and subject to section 19, apply in relation to that application as they apply in relation to an application for an operator's licence of which notice is published under section 10(1).

18.(1) ... a traffic commissioner who is dealing with an application for a heavy goods vehicle licence shall refuse the application for any of the directions mentioned in subsection (2) without considering the merits unless he is satisfied that subsection (3) has been complied with in respect of each locality affected by the application.

(2) The directions referred to in subsection (1) are –

- (a) any direction ... that a maximum number of heavy goods vehicles specified in a licence ... be increased;

...

- (b) any direction ... that a new place be specified in a licence as an operating centre of the licence-holder;

...

(3) This subsection has been complied with in respect of a locality affected by an application if, within the period beginning 21 days before the date on which the application is made and ending 21 days after that date, notice of the application in such form and containing such information as may be prescribed has been published in one or more local newspapers circulating in the locality.

...

19.(1) This section applies where notice of an application for the variation of a heavy goods vehicle licence has been published under section 17(3).

...

(4) Where the application is for a place in the traffic area concerned to be specified in the licence as an operating centre of the licence-holder –

- (a) any of the persons mentioned in section 12(2) may object to the grant of the application on the ground that place will be unsuitable on environmental grounds for use as an operating centre of the licence-holder; and
- (b) subject to subsection (5), any person who is the owner or occupier of any land in the vicinity of that place may make representations against the grant of the application on that ground.

(5) A person may not make representations under subsection ... (4)(b) unless any adverse effects on environmental conditions resulting from the use of the operating centre or place in question would be capable of prejudicially affecting the use or enjoyment of the land there mentioned.

(6) If any person duly objects or makes representations under subsection (4) against an application for a place in the traffic area concerned to be specified in the licence as an operating centre of the licence-holder, a traffic commissioner may refuse the application –

- (a) on the ground that the parking of heavy goods vehicles used under the licence at or in the vicinity of that place would cause adverse effects on environmental conditions in the vicinity of that place;
- (b) subject to subsection (7), on the ground that that place would be unsuitable on environmental grounds other than the ground mentioned in paragraph (a) above for use as an operating centre of the licence-holder.

...

26.(1) Subject to the following provisions of this section and the provisions of section 29, a traffic commissioner may direct that an operator's licence be revoked, suspended or curtailed ... on any of the following grounds –

- (a) in the case of a heavy goods vehicle licence, that a place in the traffic area to which the licence relates has, at a time when it was not specified in the licence as an operating centre of the licence-holder, been used as an operating centre for heavy goods vehicles authorised to be used under the licence;

...

(4) Where the existence of any of the grounds mentioned in subsection (1) is brought to the notice of a traffic commissioner in the case of the holder of any operator's licence, the commissioner shall consider whether or not to give a direction under this section in respect of that licence.

...

29.(1) A traffic commissioner shall not –

- (a) give a direction under section 26(1) ... in respect of any licence;

...

without first holding an inquiry if the holder of the licence ... requests that an inquiry be held.

...

35.(1) A traffic commissioner may hold such inquiries as he thinks necessary for the proper exercise of his functions under this Act ...

...

36.(1) Subject to subsection (2), a traffic commissioner may review and, if he thinks fit, vary or revoke any decision of his, or of another traffic commissioner, to grant or refuse –

- (a) an application for an operator's licence; or
- (b) an application for the variation of such a licence in a case where section 17(3) required notice of the application to be published,

if he is satisfied that a procedural requirement imposed by or under any enactment has not been complied with in relation to the decision.

(2) A traffic commissioner may under subsection (1) review a decision only –

- (a) if, within such period after the taking of the decision as may be prescribed, he or another traffic commissioner has given to the applicant or (as the case may be) the licence-holder notice of intention to review the decision;
- (b) if, within that period, a person who appears to him to have an interest in the decision has requested that the decision be reviewed by a traffic commissioner; or

- (c) (where neither paragraph (a) nor paragraph (b) applies), if he considers there to be exceptional circumstances that justify the review.

...

37. ,,,

(5) A person who has duly made an objection to an application for, or for a variation of, an operator's licence may appeal to the Upper Tribunal against the grant of the application.

(6) A person who –

- (a) within the prescribed period has made an application for a review under section 36, and
- (b) has been certified by a traffic commissioner as a person such as is mentioned in subsection (2)(b) of that section,

may appeal to the Upper Tribunal against the refusal of the application.”

19. The primary legislation is supplemented by the Goods Vehicles (Licensing of Operators) Regulations 1995, S.I. 1995 No. 2869. Reg. 12 provides that objections under section 12(1), including section 12(1) as applied by sections 17(5) and 19(2), must be made within the period of 21 days beginning immediately after the date of advertisement and ending 21 days after the date on which notice of the relevant application is published. Representations under s.12(4) or s.19(2) must be made within the period of 21 days beginning with the date of advertisement. (Curiously, there is no express provision relating objections or representations under s.19(4).) Reg. 13 provides that a traffic commissioner shall consider every objection and representation duly made in considering whether or not to hold an inquiry as provided in section 35. The Regulations then continue:

“22.(1) ... where a traffic commissioner grants or refuses an application, he shall send a written statement of his reasons to –

- (a) the applicant;
- (b) every objector; and
- (c) every person who has made a representation in accordance with sections 12(4) ... or 19(4) and asked a traffic commissioner for such a statement.

...

Reg.34. The period prescribed for the purposes of section 36(2) is two months.

...

Schedule 4, paragraph 3(1) The following persons shall be entitled to appear at an inquiry relating to an application namely -

- (a) the applicant;
- (b) a person who has duly made an objection to the application; and
- (c) a person who has duly made representations in respect of the application.

...

(5) Any other person may appear at an inquiry at the discretion of the traffic commissioner.”

20. It is also important in the present case to have in mind a number of the Statutory Documents issued by the Senior Traffic Commissioner. Under s.4C of the Public Passenger Vehicles Act:

“(1) The senior traffic commissioner may give to the traffic commissioners –

- (a) guidance, or
- (b) general directions,

as to the exercise of their functions under any enactment...

(2) The guidance that may be given under subsection (1)(a) above includes guidance as to –

- (a) the meaning and operation of any enactment relevant to the functions of traffic commissioners;
- (b) the circumstances in which, and the manner in which, a traffic commissioner should exercise any power to impose any sanction or penalty;
- (c) matters which a traffic commissioner should not take into account when exercising any particular function.”

S.4(4) of the 1981 Act requires traffic commissioners to have regard to any guidance given by the senior traffic commissioner and s.1(2) of the 1995 Act contains a similar provision in relation to the exercise of functions under that Act.

21. For the purposes of this appeal, as explained further below, we have been referred to the following Statutory Documents:

Statutory Document No. 0: Introduction to Operator Licensing
Statutory Document No. 1: Good Repute and Fitness
Statutory Document No. 4: Operating Centres, Stable Establishments and Addresses for Service
Statutory Document No. 9: Case Management
Statutory Document No. 10: The Principles of Decision Making and the Concept of Proportionality
Statutory Document No. 12: Appeals.

The TC's decision and our powers

22. As explained in paragraph 16 above, the relevant decision of the TC in the present case was the internal decision of 22nd April 2024 which we summarised in paragraph 15 above.
23. The powers of the Upper Tribunal on an appeal are set out in paragraph 17 of Schedule 4 to the Transport Act 1985, which reads as follows, so far as material:

“17.(1) The First-tier Tribunal and the Upper Tribunal are to have full jurisdiction to hear and determine all matters (whether of law or of fact) for the purpose of the exercise of any of their functions under an enactment relating to transport. In the case of the Upper Tribunal, this is subject to sub-paragraph (3).

(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.

(3) The Upper Tribunal may not on any such appeal take into consideration any circumstances which did not exist at the time of the determination which is the subject of the appeal.”

24. The general rule 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 Appellant in its skeleton argument accepts that this is the correct test.

The grounds of appeal and the parties’ submissions

The Appellant’s case

25. The Appellant’s grounds of appeal as set out in its form UT12 were formulated before it became apparent that there was no formal decision beyond that contained in the internal decision of 22nd April 2024, which the Appellant had not then seen. The grounds did, however, clearly raise issues relating to the adequacy with which the TC had taken into account the admitted illegal use of the Halford’s Lane premises as an OC, the need to uphold the law and the maintenance of fair competition in the transport industry.
26. In his skeleton argument Mr. Davies helpfully put his submissions into three categories: submissions as to the general structure of the legislation and the TC’s functions and powers; submissions as to the matters alleged to amount to procedural errors as a result of which the Variation Decision ought to have been reviewed; and submissions as to the basis on which it was contended that the TC was plainly wrong in refusing the request for a review. We summarise those various submissions as follows.
27. As respects the general structure of the legislation, Mr. Davies submitted that:
- a. the requirement to specify an operating centre is of considerable importance, as demonstrated by the criminal offence created by s.7 of the 1995 Act of using an operating centre which is not specified;
 - b. the use of a new operating centre is a material change which must be notified and a failure to do so goes to repute;
 - c. the statutory restrictions in ss.12 and 19 as to who may object to an application and on what grounds representations may be made are not an absolute bar preventing a traffic commissioner from considering other material in deciding whether to convene a public inquiry. A commissioner has a broad discretion in relation to inquiries;
 - d. the licensing system aims to ensure road safety and fair competition and licences are granted on trust that operators will comply with the requirements;

- e. when considering whether regulatory action is required, a commissioner should reflect on deterrent aspects both to the individual and the wider industry and this should involve identifying the relevant factors, assessing each of them and ascribing weight to that factor;
 - f. when dealing with an application a commissioner exercises a gatekeeper function and the role is an inquisitorial one.
28. In making those submissions Mr. Davies drew heavily on several of the Senior Traffic Commissioner's Statutory Documents. We shall return to them later.
29. The procedural errors Mr. Davies identified were:
- a. there was insufficient evidence in the summary of the unauthorised use of the OC to enable the TC to take a proper decision on the appropriate action. Specifically there was no information as to the length of time for which the unauthorised use continued, why it happened, whether there was any wider impact and what steps the Respondent had taken to improve its knowledge and to implement satisfactory arrangements;
 - b. there was no process of identification, assessment and ascribing of weight to the issues identified;
 - c. there was no consideration of the potential need to call the Respondent to a public inquiry despite the commission of a criminal offence and the impact that finding might have on the trust the system is founded on.
30. Mr. Davies submitted that the TC was plainly wrong because:
- a. he was mistaken in his assessment of who can apply for a review under s.36(2)(b);
 - b. he was mistaken in concluding that the letter of 6th October 2023 was out of time;
 - c. although he may have been correct to agree that traffic commissioners do not have any power of investigation, the TC failed to reflect on the inquisitorial nature of the role and the value of meeting an operator first-hand and hearing evidence.
31. In his oral submissions Mr. Davies explained that the grounds of appeal had been settled without the benefit of legal advice but that the central submission was that there had been an unlawful use of the OC and the Appellant wanted the law to be upheld. There had been a lack of proper inquiry and that was something which could be complained about. He pointed out that the Appellant had originally written to the TC's predecessor complaining about use of the OC on 26th May 2022. He drew attention to the seriousness of unauthorised use of an OC, demonstrated by the fact that it constitutes a criminal offence, and referred to para. 2 of Statutory Document No. 4 on operating centres. He also took us to the requirement in s.13C to specify at least one place as an operating centre and the

provision in para. 33 of Statutory Document No. 0 that all licences are subject to conditions to notify the traffic commissioner of relevant changes which might impact the core requirements, such as the requirement in s.13C to specify an operating centre.

32. In addition Mr. Davies took us to Statutory Document No. 1 and the discussion of good repute at para. 12. He cited Appeal 2005/411 *Franz Maas (UK) Limited* as authority for the proposition that a change of operating centre has to be notified and failure to comply can go to repute.
33. In support of the submissions in his skeleton that the aim of the regulatory system is to secure road safety and fair competition and that licences are granted on trust, Mr. Davies referred us to para. 31 of Statutory Document No.4. In response to a question about the relationship between specification of an operating centre on the one hand and road safety and fair competition on the other he referred to *Arnold Transport & Sons Limited*, Appeal No. NT/2013/82, [2014] UKUT 0162 (AAC), para. 19 of which refers to the risk that if regulatory obligations are ignored other operators will conclude that there is an advantage to be gained by doing so and will themselves be tempted to cut corners in order to remain in business, leading to the consequence that those operators most likely to comply with the regulatory system would be most likely to be put out of business. Mr. Davies submitted that there were any number of reasons why use of an unauthorised operating centre might affect competition and Mr. Williams agreed.
34. As to a traffic commissioner's obligation to consider deterrence both in relation to the individual and more widely, Mr. Davies took us to para. 48 of Statutory Document No. 0, which cites Appeal No. T/2013/47 *Dundee Plant Company Limited*, endorsing what was said in *Arnold Transport*, and para. 82, which sets out the need for identification, assessment and weighing of the relevant factors. The need for a balancing exercise applies when the decision is made on the papers and not only where there is an inquiry.
35. As to a traffic commissioner's gatekeeper function, Mr. Davies took us to para. 28 of Statutory Document No. 10, where a distinction is drawn between the gatekeeper function which is to be performed when an application is made and the functions which arise after a licence has been granted. He submitted that the gatekeeper approach applies not only to an application for a new licence but also to an application to vary an existing licence. Both types of function are engaged when an application is made at the same time as regulatory action potentially has to be taken. Mr. Davies also drew our attention to para. 5 of Statutory Document No. 9, referring to the inquisitorial nature of a traffic commissioner's role, and submitted that it requires some examination of the facts.
36. In the light of that general context, Mr. Davies turned to the present case. He accepted that s.12(4), providing for representations on environmental grounds, was not engaged and that the Appellant was not a person falling within s.12(2) who had a statutory right to object on wider grounds, which include the ground of repute. His submission was that to say that a commissioner could not consider intelligence received would be defeatist, very surprising and offensive to common sense. A commissioner could react to intelligence by contacting the DVSA or

writing to the operator. The exercise of functions includes the exercise of powers and in this case the TC had power under s.35 to hold a public inquiry and to allow the Appellant to appear.

37. Mr. Davies then turned to examine the way in which the TC had dealt with the appellant's application for a review, noting that it had been made within the period of two months prescribed for the purposes of s.36(2). He began by considering the Variation Decision and pointed out that the internal documentation shows that "the case" was created "to consider a variation application" following the receipt of correspondence "which may be intel[ligence]". As he pointed out, it was noted that:

"ECMS case 3139-0-1 was created due to the use of an unauthorised O/C the case was later closed as N[o] F[urther] A[ction] as the operator responded and submitted an application to rectify the matter."

The internal submission then continued:

"Other issues

There has been correspondence received which appears to be a representation/objection from Beverley Bell's consultancy on behalf of their client Lions Logistics Ltd.

Please see attached the letter along with further evidence the company has submitted. Part of the letter refers to potential unauthorised use of the operating centre.

It is noted that this matter has been investigated by the DVSA and resulted in NFA as the operator placed the current variation application.

There has been an allegation that Compas75 LTD is a possible front ..."

The submission did not identify as an issue the complaint in the letter dated 6th October 2023 that the Respondent had been operating with four trailers whereas the licence only authorised three. The relevant legislation was said to be s.13(6) of the 1995 Act, as applied by s.17(5)(c), and s.26(1)(a). The recommendation was that the variation application be granted and a warning letter be sent in respect of the initial unauthorised use.

38. Mr. Davies pointed out that the submission missed a lot of detail, including the length of time for which the OC had been used without authorisation, why it was so used, the role of the directors or transport manager of the Respondent and why the use of the OC was not notified, in addition to the question of use of four trailers. He referred to para. 47 of Statutory Document No. 10, drawing attention to the need to consider factors which are not limited to the impact on the operator but extend to the rights of others (such as local residents where an operator uses a site as an operating centre without authority), and to Annex 3, making the point that while it is understood that an applicant who submits an application after a vehicle encounter may wish to legalise the position, it is likely that their fitness to

hold a licence will be called into question and they will need to demonstrate the steps they have taken since the incident to equip themselves with the range of knowledge to implement satisfactory arrangements. He said that the submission contained nothing of what was envisaged there.

39. Mr. Davies also drew attention to para. 74 of Statutory Document No. 9, making the point that the decision whether or not to call an applicant or operator to a public inquiry was a matter for the traffic commissioner's discretion, although assisted by the case submissions prepared by OTC staff. He submitted that the TC had not posed questions in response to fill in the gaps and drew attention to the importance attached to maintaining trust, both the trust of traffic commissioners in operators and the trust of operators in each other, as stated in paragraphs 25 and 48 of Statutory Document No. 10. He argued that the variation application had been given perfunctory treatment and trust had been undermined in the present case.
40. Mr. Davies then took us to the Review Decision and effectively repeated the submissions in the skeleton argument in support of his contention that the decision was plainly wrong. He referred again to the emphasis laid on the importance of trust in *Arnold* at para. 12. He identified the procedural requirements for the purposes of s.36(1) as being the requirements involved in treating the variation application properly.
41. In response to questions from the tribunal, Mr. Davies submitted that both the Variation Decision and the Review Decision could be treated as within the scope of the appeal and referred to the *Maas* case, in which there had also been an application for a review under s.36. He submitted that the strong formal warning was not a sufficient response and described the reliance on Annex 4 of Statutory Document No. 10 as ex post facto rationalisation. His position was that we should remit the matter to a different traffic commissioner to consider whether to convene a public inquiry.

The Respondent's case

42. The Respondent's skeleton argument was naturally framed by reference to the grounds of appeal and did not (and could not) directly address the more focused submissions in the Appellant's skeleton argument. It nevertheless put forward the following relevant contentions, in summary:
 - a. the Appellant's case is in substance a case of general disagreement with the TC's decision. No clear procedural irregularity has been identified;
 - b. the TC clearly took into account the unlawful use of the OC and responded to it by issuing a strong warning;
 - c. there is no evidence of any failure to consider representations correctly;
 - d. the Appellant has not pointed to any evidence which it asserts was not considered or was unreasonably discounted.

43. Mr. Williams began his oral submissions with a general submission that the appeal was not a properly made appeal but was an attempt at judicial review through the back door. It was an appeal against the failure of the TC to exercise his discretion to hold a public inquiry, which would have been very difficult to bring in the High Court as a matter of judicial review. The Appellant was trying to slot such a case into an appeal about the Variation Decision, not the Review Decision.
44. Turning to s.12, Mr. Williams submitted that it has two strands: who has standing to make an objection to or representations against the grant of a licence; and what is the proper subject matter of an objection or representation. S.12(4) enables certain persons to make representations on environmental grounds. Matters relating to repute may only be made by persons falling within s.12(2). Mr. Williams accepted that the gatekeeper function which a commissioner has under s.12 applies also to variations. He drew attention to the discretion a commissioner has under s.12(8) to accept objections or representations out of time and stressed that the legislation as a whole gives a commissioner wide discretionary powers. Those entitled to make objections or representations under s.19 are the same classes as those entitled to make objections or representations under s.12.
45. Mr. Williams submitted that the material from the Appellant which was before the TC was not an objection within s.12 or s.19 but was a complaint which the TC had the power to receive. He did not suggest that it was not material to which the TC could pay attention. S.35 co-exists with ss.12 and 19. Although it gives the traffic commissioner a broad discretion, in the present case the Appellant was saying that the TC ought to have directed a public inquiry and its complaint was not about the application to vary. The Appellant was not within the statutory scheme.
46. As to s.36, Mr. Williams submitted that it provides a discretionary power to review. It is an internal mechanism for reconsideration if the commissioner is satisfied that “a procedural requirement imposed by or under” any legislation has not been complied with. He contended that Mr. Davies in effect submitted that that phrase includes the public law requirements applicable in a judicial review case. The expression “a person who appears to him to have an interest” in s.36(2)(b) is not qualified, but Mr. Williams would say that it must be a legitimate interest, such as the interest of someone entitled to object or make representations under s.12 or an environmental group. When the question is asked what is the interest here, Mr. Davies says it is an interest in fair competition, but in fact, given the history of the relationship between the parties, it is a private concern being dressed up as a principled approach. The interest must be found in the legitimacy of the objection, which must be more than a sour grapes submission. In response to a question from the tribunal, Mr. Williams submitted that the question was how someone such as the Appellant could move from not being within s.12 or s.19 to falling within s.36(2)(b), although he accepted that such a person could attend a public inquiry at the discretion of the commissioner. In summary, it was Mr. Williams’ case that the Appellant did not fall within s.36(2)(b) and the TC had been wrong to say that the Appellant had a right of appeal. To grant the Appellant a right of appeal under s.37(6) would be to drive a coach and horses through the regime.

47. In any event, Mr. Williams did not accept that s.36(1) was satisfied. The Appellant was not seeking review of the decision to grant the variation application on the ground of procedural error, but review of the decision not to take further regulatory action. The TC had considered the unlawful use of the OC and the power to hold a public inquiry and the Appellant simply did not agree with the outcome. The Appellant's recourse was to challenge the decision not to hold an inquiry. If the Appellant did not have standing to bring judicial review proceedings, it could nevertheless complain. S.36 did not bring into play pure public law requirements as Mr. Davies had contended. Mr. Davies' case was that there was insufficiency of reasoning. Mr. Williams contended that the decision was "Meek compliant", a reference to the decision of the Court of Appeal in *Meek v. City of Birmingham District Council* EAT/58/86 which gave guidance as to what constituted a "statement of reasons" in the context of employment claims.
48. In conclusion, Mr. Williams summarised his case as being that the Appellant was seeking judicial review by the back door and that the appeal was only triggered by the decision to grant the variation application, not the decision on holding a public inquiry. His client regarded it as clear that the appeal was connected with the county court proceedings on foot between the parties.

The Appellant's submissions in reply

49. In his reply Mr. Davies disputed that judicial review was an available remedy, both because of the question of standing and because the right of appeal under s.37(6) was an alternative remedy. As to the existence of that right, he referred to the OTC's decision letter dated 30th April 2024, which stated that the Appellant had such a right, and the case management directions of Judge Mitchell dated 9th September 2024, which referred to that right. He contended that the appeal was a challenge to both aspects of the Review Decision, i.e., the substantive decision and the application for review. He repeated that s.36(2)(b) was not limited to those who had the right to object or make representations, as had been accepted, and drew attention to the length of time since the Appellant's first complaint and the breadth of the TC's discretion. He submitted that it is a procedural requirement that the decision must communicate sufficient reasons, meaning a summary of the reasons sufficient to enable an appeal to be brought. Mr. Davies also drew our attention to Annex 5 of Statutory Document No. 10, which outlines the procedure in relation to cases which might appear to require the convening of a public inquiry but may in fact be dealt with by an alternative disposal. The issue of a formal warning is one potential outcome of such a course.

Analysis

50. We begin with the question whether the Appellant was "a person who appears to [the TC] to have an interest in the decision" within the meaning of s.36(2)(b). Our starting point is that the types of decision which may be reviewed under s.36(1) are decisions to grant or refuse an application for an operator's licence or for the variation of such a licence where notice of the application was required to be published. There does not appear to be any authority on the meaning of the

phrase either in the 1995 Act or in the comparable provision in s.49A of the Public Passenger Vehicles Act 1981. It seems to us, however, that it must certainly include the applicant in the case of an application for a new licence, the operator in the case of an application for a variation and any person who made an objection or representation in accordance with s.12 or s.19. The difficult question is whether it has any wider scope and, if so, what that scope is.

51. In approaching that question we observe that s.36(2)(b) does not require that a relevant person does in fact have an interest in the decision, but rather that it should appear to the commissioner that the person has an interest. That is consistent with the provisions of s.37(6)(b), under which the commissioner must certify that the person falls within s.36(2)(b) if a right of appeal is to be available. If Parliament had intended the right to apply for a review to be confined to applicants, operators and statutory objectors or representors, it could easily have said so expressly. That was the course taken in reg. 22 of the Goods Vehicles (Licensing of Operators) Regulations, specifying who must receive a written statement of reasons for the decision on an application. The provisions for a commissioner to consider whether a person has an interest and, where appropriate, to certify that the person falls within s.36(2)(b) appear to us to point strongly against any argument that the right is by implication confined to applicants, operators and statutory objectors or representors. We also note that decisions on applications are required by reg. 21 to be published and so may come to the attention of a wider range of persons than those who receive the statement of reasons. We bear in mind the submissions we have heard as to the wide range of discretion conferred on traffic commissioners under the 1995 Act and come to the conclusion that, as both counsel agreed, s.36(2)(b) does have a wider scope.
52. In considering the question what that wider scope is, and specifically whether the Appellant is within it, we further bear in mind that although it is for the commissioner to decide whether a person has an interest in the decision, in reaching that decision the commissioner is exercising the power in the course of exercising general regulatory responsibilities in relation to the transport industry. We do not need in this case to determine the limits of the commissioner's power, but we take the view that the interest must relate to promoting good decision-making by the commissioner in the exercise of those responsibilities and must be a specific interest greater than the interest of either members of the public generally or of all those involved in the transport industry. So, for example, if an operator applies for a variation, any other operator may have an interest in principle in having the application considered taking into account matters of public safety and fair competition, but we do not think that Parliament can have intended that a commissioner could properly conclude that such an interest is sufficient. Parliament has chosen to confine the right to make objections on grounds such as relate to the limited class falling within s.12(2) and has given members of that class a right of appeal under s.37(5). It would be inconsistent with that policy to treat all operators as having an interest in a particular decision and so as entitled to ask for a review. Rather, the commissioner should consider whether the person claiming an interest has an interest in the particular decision because it has a particular impact on that person, probably on fair competition or environmental grounds. This comes close to Mr. Williams' concept of a

“legitimate interest” and has some similarity to the approach taken in considering the question whether or not an applicant for judicial review has standing to make the application.-making by the commissioner

53. In the present case Mr. Leech’s submission to the TC envisaged that the Appellant fell within s.26(2)(b) because it had opposed the grant of the variation application, irrespective of the grounds of opposition. As we understand the internal decision, the TC accepted that approach but declined to review the Variation Decision on the grounds set out in paragraph 15 above. The decision letter does not deal expressly with the question whether or not the requirements of s.26(2)(b) were satisfied, but from the fact that the Appellant was informed that it had a right to appeal, it is to be inferred that the TC had formed the necessary view.
54. We have some difficulty with the approach taken by the TC since, as we have already noted, the Appellant had no statutory right to make objections or representations under s.12 or s.19. Moreover, the letter dated 6th October 2023 itself acknowledged that the Appellant could not make “a valid objection” on the grounds being raised, which in substance went to repute. The letter asked the TC to consider the “representations” being made, but clearly those representations were not based on environmental grounds, those being the only grounds which, as the TC correctly said, could be advanced by a statutory representor. As we have said, we think that s.36(2)(b) offers a possible way forward to someone who is not an applicant, an operator or a statutory objector or representor, but we do not go as far as to say that the fact of a person’s having made non-statutory representations is in itself necessarily a sufficient basis to enable the relevant commissioner to form the view that the person has an interest in the decision. We therefore have to consider whether the TC was plainly wrong in deciding that the Appellant did appear to have an interest in the decision.
55. With some hesitation, we have come to the view that the decision of the TC on that point was not plainly wrong, although we do not accept all of the TC’s reasoning. It seems to be based on the understanding that the Appellant was claiming to fall within s.12 and the issues were whether the arguments put forward by the Appellant were valid grounds when advanced by a statutory representor and whether there was a relevant procedural error. That is very understandable, given the terms of the letter dated 6th October 2023, but in our view a person cannot properly be found to appear to have an interest in the decision on the basis of a claim to have a right to make statutory representations when there is no evidence that the person owns or occupies land in the vicinity of the proposed operating centre and the representations in fact made are not those statutorily permitted. It is to be remembered, however, that the application was to vary the licence not only by the authorisation of a new operating centre but also by increasing the vehicle and trailer authorisation and upgrading the licence. The representations made by the Appellant included an allegation of fronting in circumstances in which the Respondent was alleged to be fronting for companies in which the Appellant’s landlord was interested and it was further alleged that the landlord had effectively forced the Appellant to leave the OC and litigation had followed. When the allegations are taken together, there appears to be the possibility of an argument that the Appellant was raising issues as to repute which

had had a particular impact on its own business, although clearly the TC was not concerned with claims for arrears of rent or unpaid invoices for services provided. The Variation Decision did indeed involve consideration of the fronting allegation as well as the unauthorised use of the OC. We therefore conclude that it was open to the TC to decide that it appeared to him that the Appellant was a person interested in the decision within the meaning of s.36(2)(b), even if his approach to reaching that conclusion was different from ours in that the TC did not consider whether, irrespective of s.12, the Appellant appeared to be a person with an interest in the decision.

56. For completeness, we should make clear that we do not take the view that the TC could not properly have reached the opposite conclusion. The application for review, like the hearing before us, focused primarily on the unauthorised use of the OC and the procedural errors which were said to have been made in that connection. The Appellant's complaints about the unauthorised use of the OC were made after it had had to leave the OC because of the conduct of its landlord and seem to have been part of a battle carried on on a number of fronts between the Appellant and the Respondent. There is no suggestion that the Appellant raised complaints about unauthorised use with the traffic commissioner or the DVSA in the period April 2021 to the end of 2021, although it is said that the Appellant warned the Respondent against unauthorised use. We think that the TC could properly have concluded, in considering whether the Appellant was a person interested in the decision, that the Appellant and the Respondent were in some way in competition with each other, but the unauthorised use of the OC did not give the Respondent a commercial advantage and was simply being used by the Appellant as a stick to beat the Respondent with.
57. Be that as it may, the TC has power to review a decision only if he is satisfied that a procedural requirement imposed by or under any enactment has not been complied with in relation to the decision. Statutory Document No. 12 says this about that provision:

“4. Section 36 of the Goods Vehicles (Licensing of Operators) Act 1995 allows a traffic commissioner to review and, as he/she thinks fit, vary or revoke any decision to grant or refuse an application for an operator's licence, or a variation application, if the traffic commissioner is satisfied that a procedural requirement has not been complied with [note 5]. The Upper Tribunal considered that fairness of approach would not fall within this definition but it is limited to the procedural requirements as laid down in legislation, such as the sending of notice of the time of any public inquiry [note 6].”

In footnote 5 it is said that “An approach equivalent to the ‘slip rule’ in other jurisdictions was approved in *Susan Tattersall* T/2012/047, [2012] UKUT 408 (AAC) and footnote 6 refers to *West Midlands Machinery Services Ltd.* T/2021/045, [2021] UKUT 267 (AAC).

58. The *Susan Tattersall* case is briefly reported and is not entirely easy to follow. It appears that the appellant's application for a licence was refused and when she appealed against the refusal it emerged that there had been “procedural

irregularities” in the Office of the Traffic Commissioner (“the OTC”) as a result of which the decision had been made without all the information being available to the deputy traffic commissioner. The traffic commissioner drew attention to the irregularities and suggested that a further public inquiry should be held. The Upper Tribunal regarded that as an obviously sensible course, but was not willing to leave the appeal unaddressed. The appellant did not respond to an invitation to withdraw her appeal or to correspondence from the OTC seeking to find a date for the new public inquiry. In those circumstances, the appeal was dealt with without a hearing and the case was remitted to be heard at a further public inquiry. The procedural irregularities are not identified and there is no express reference to s.36. It may well be that the course proposed by the traffic commissioner involved setting aside the original decision under s.36 but that was procedurally problematic because of the outstanding appeal. The expression “slip rule” is not used in the decision, however, and in the absence of some indication of what the errors were, other than that when the decision was made the deputy traffic commissioner did not have all the relevant information, we do not find the case of assistance.

59. By contrast, *West Midlands Machinery Services* contains the following passage:

“8. ... We note, insofar as anyone might think this to have relevance to our own deliberations on the appeal, that section 36 permits a TC to review a decision where “a procedural requirement imposed by or under any enactment has not been complied with in relation to the decision” (see section 36(1)) and that a review can only be triggered by a number of circumstances including that “a person who appears to have an interest in the decision” (see section 36(2)(b)) has requested a review. We would accept that since the review request was made on behalf of the Operator (effectively Nicola Greenfield) it had been made by (or on behalf of) a person who has an interest in the decision. But we do not think the claimed failure to afford a right of reply is the sort of “procedural requirement” envisaged at section 36(1). Rather, what was before the TC was a contention as to the lawfulness or fairness of his approach (and so a challenge to his judgement) rather than an assertion a specific procedural requirement as laid down in legislation, such as by way of example the sending of notice of the time of any PI, had not been complied with.”

That was a case in which the appellant was the operator and had requested a review before bringing the appeal. The Upper Tribunal’s reading of the review decision was that the commissioner had in fact reviewed the decision but decided not to change it, so the comments made as to the meaning of “procedural requirement” were not necessary to the decision. The facts were that fronting was alleged and reliance was placed on the fact that the new company had the same mobile phone number as the old company. Evidence was given at the public inquiry that the sim card had been purchased for the new company. After the inquiry the company emailed a copy of the alleged receipt for the purchase of the card to the traffic commissioner. In his decision the commissioner expressed doubts about the authenticity of the receipt and found that the phone number had been passed from the first company to the second. The contention had been that

the traffic commissioner had failed to comply with a procedural requirement in failing to allow the appellant the opportunity to address his doubts about the authenticity of the receipt, that being the right of reply referred to in the passage cited.

60. In our view, the words “imposed by or under any enactment” direct attention to the express words of the legislation. Mr. Davies did not refer us to any specific requirement in the primary or delegated legislation which he said had not been complied with. In this connection, we note for completeness that the material referred to in the various Statutory Documents was part of the guidance rather than the directions section, with the exception of the reference to paragraph 74 of Statutory Document No. 9, which requires decisions whether or not to call an operator to a public inquiry to be made by a traffic commissioner. The Annexes to which we referred also appear to us to constitute guidance rather than imposing procedural requirements. To the extent that there are relevant procedural requirements in the legislation, in our view they are: the requirement in ss. 10 and 17 to publish applications; the requirement in ss.11, 17 and 19 to refuse applications which have not been duly advertised; the requirements in s.13 that a traffic commissioner should take specified matters into account, having regard to any objection under s.12(1)(a), and depending on the resulting determination should proceed to refuse or to grant the licence; the requirement in s.29 not to revoke a licence under s.26 without holding a public inquiry if an inquiry is requested by the holder of the licence; the requirement in reg. 13 to consider objections and representations duly made in considering whether to hold a public inquiry (which we read as applying to objections and representations made pursuant to and in accordance with the Act and the Regulations); and the notification requirements in reg. 22. It was not suggested that there was a failure to comply with any of those provisions.
61. Mr. Davies did complain specifically of a failure to provide a statement of reasons sufficient to enable the Appellant to decide whether or not to appeal. The Appellant was not, however, a person who made a representation in accordance with any of s.12(4), 19(2) and 19(4) and so was not statutorily entitled to a statement of reasons. It might have been good administrative practice when the letter of 6th October 2023 was received to make clear that the representations made could not be treated as representations within s.12(4)¹ and it might further have been good administrative practice, particularly in the light of the history, to inform the Appellant of the Variation Decision and to give the reasons for it, but there was no procedural requirement to do so and still less was there a requirement to give a statement of reasons in relation to the Variation Decision which would have been sufficient to enable the Appellant to decide whether or not to appeal against that decision. The Appellant had no right to appeal against that decision under s.37.

¹ The primary ground for concluding that the representations did not fall within s.12(4) is that they were not made on environmental grounds, but we agree with the TC that the letter was outside the time limit for representations given by reg. 12, although not outside the time limit for statutory objections. As we have said, the letter itself acknowledged that the Appellant was not able to make statutory objections.

62. Even in the absence of other guidance in case law, we should therefore have come to the conclusion that, as the TC decided, there was no failure to comply with a procedural requirement. Reasons for the Review Decision itself were of course given in the letter dated 30th April 2024. We are reinforced in our view by the decision of the Upper Tribunal in *West Midlands Machinery Services*, which takes a similar approach to what is meant by a procedural requirement under the legislation.
63. It necessarily follows that in our view the Review Decision was not plainly wrong. Rather, it was right.
64. In case we are wrong on that point, and in view of the extensive argument we heard on the footing that there was a procedural requirement to give proper consideration to the representations made by the Appellant, we turn to consider whether the Appellant would have succeeded in showing non-compliance. It is to this aspect of the case that much of the citation of the various Statutory Documents is directed. We accept that the passages to which we were taken give guidance as to the approach to be taken by traffic commissioners and are generally relevant in a broad sense, a point which we do not understand to be contentious. We further accept that persistent breach of the law by unauthorised use of an operating centre is capable of going to repute, as is implied by the reference to being called to a public inquiry in the formal warning letter. The effect of s.13, as applied by s.17, was that in order to determine the variation application the TC had to consider whether the requirements of s.13A relating to good repute were satisfied and logically could not proceed to a decision while good repute was in issue. We therefore accept that dealing properly with the variation application required consideration of how to deal with the unauthorised use of the OC, which to some extent at least, was established, unlike the allegations of fronting, in respect of which investigations had been carried out but had not produced any evidence in support.
65. The difficulty which then emerges is that when the Variation Decision was made the TC had access to additional documentation which is not in our bundle. P.66 of our bundle lists the following:

Lions Logistics – OTC Authority – Signed.pdf
Compas74 Ltd. (*sic*) – Letter to OTC – 06 10 2023.pdf
Additional information Compas75.pdf
C75 Trailers.pdf
Compas 75 Intel Email.docx

It is at least possible that the last document in that list is the submission of 15th November 2023 from the DVSA referred to in paragraph 17a above. In any event, it seems clear that the submission was made and followed from an investigation carried out by the DVSA into the unauthorised use. It is also far from clear what the third document in that list was.

66. In those circumstances, we do not have access to all the documentation which was available to the TC when making the Variation Decision. Specifically, we do not know the results of the DVSA investigation and whether or not it confirmed

unlawful use of the OC to the extent alleged by the Appellant. It may be that the TC was in fact aware of much of the information which Mr. Davies says was lacking. We note that one of the documents related to trailers, which is an issue Mr. Davies submitted was not dealt with.² This is a difficulty which arises because the Appellant was not a person entitled to a statement of reasons for the Variation Decision and the basis for the Variation Decision therefore has to some extent to be inferred from an internal record not primarily intended for the present purpose. We therefore cannot be satisfied that the TC did not have available the information necessary to make a proper decision.

67. In so far as the decision itself is challenged, we do have the assistance of the view expressed in the Review Decision that the TC was entitled to determine that on the balancing of negative and positive events in accordance with Annex 4 to Statutory Document No. 10 the level of seriousness was low and a warning was proportionate. We bear in mind Mr. Davies' comments about post-event rationalisation and can see the possibility, so we approach Annex 4 with some caution. The position appears to be, however, that no previous compliance issues have been recorded and the Operator Compliance Risk Score is green, meaning, in broad terms, that the Respondent is perceived by the DVSA as low risk in terms of matters such as roadworthiness of vehicles, compliance with drivers' hours and tachograph regulations and loading of vehicles. That in turn means that it is likely to do well on the balancing of positives and negatives envisaged by Annex 4. It also suggests that although, on the basis of the Appellant's allegations, there has been a persistent failure in compliance, there has been no "inadequate response" or previous public inquiry history, as would be required to put the conduct into the category "Severe to serious" as a starting point. Assuming that the continued unlawful use of the OC was deliberate, there is no evidence of clear commercial advantage which would put the conduct into the category "Severe". Nor is there evidence of another negative feature which would take the Respondent into the "Serious to moderate" category. The Annex 4 table does therefore seem to point to categorisation as "Serious to low", for which a formal warning is a starting point.
68. We have some sympathy with the Appellant's perception that this is an inadequate response to a deliberate failure in compliance which on one view lasted close to three years and which involved the commission of a criminal offence throughout that period. We are conscious, however, that not all the facts are known to us and that the TC has much greater day-to-day experience as respects regulatory action on this ground. In particular, we are not in a position to assess whether the regulatory outcome of a formal warning in this case is consistent with other similar cases. We certainly could not say that the decision was plainly wrong.
69. It follows that even if, contrary to our conclusion, the procedural requirement for which the Appellant contends could in principle bring the case within s.36, we would not determine that there was the failure in compliance which would be

² We recognise that there appears to be no evidence of learning to equip the Respondent to comply in the future as referred to in Annex 3 to Statutory Document No. 10 (see para. 38 above), but that specifically related to conduct after a vehicle encounter and does not appear to us to have much bearing in the present context.

necessary. Nor would we determine that the process followed was so flawed that, even if there was a procedural failure, the TC was plainly wrong in deciding not to exercise the discretionary power given by s.36 to vary or revoke his decision.

Conclusion

70. For those reasons, the appeal is dismissed.
71. The Respondent's skeleton argument concludes with the submission that the appeal should be dismissed with costs. Costs in the Upper Tribunal are governed by Rule 10 of the Tribunal Procedure (Upper Tribunal) Rules 2008, S.I. 2008 No. 2698, which, in a case such as the present, has the effect that we could only make an order against the Appellant if we considered that the Appellant had acted unreasonably in bringing or conducting the appeal. We are not minded to make such an order on our own initiative. It is a matter for the Respondent whether, having regard to the measure of success that the Appellant has enjoyed on the issues raised by the appeal, it wishes to make a formal application in accordance with the provisions of Rule 10.
72. Finally, we apologise to the parties for some delay in producing this decision. The principal cause was the other commitments of the judge, but a technological glitch the existence of which was not originally appreciated also played its part.

Elizabeth Ovey, Judge of the Upper Tribunal
Sarah Booth, Specialist Member
Ian Lockett, Specialist Member

Authorised by the Judge for issue on 10th February 2026