



Neutral Citation Number: [2026] UKUT 190 (AAC)
Appeal No. UA-2025-001110-T

**IN THE UPPER TRIBUNAL
ADMINISTRATIVE APPEALS CHAMBER**

**(1) KJB Scaffolding Limited
(2) Mr Kane Towers**

Appellants

Before: Upper Tribunal Judge Citron and Upper Tribunal Members
Booth and Barker

Hearing date: 25 February 2025
Hearing venue: Field House, Breems Buildings, London EC4

Representation:
Appellants: by Mr Towers

On appeal from:
Decision maker: Deputy Traffic Commissioner for South Eastern and Metropolitan
Area (John Baker)
Ref: OK2064073
Date of decision: 29 July 2025

SUMMARY OF DECISION

**100 Transport – Traffic Commissioner Appeals
100.6 – Financial standing
100.9 – Public inquiries**

The Traffic Commissioner exercised statutory powers to revoke the first appellant's restricted licence, and disqualify the second appellant, the company director, for one year, based on findings of serious non-compliance with the regulatory regime for heavy goods vehicles. The appellants appealed that decision on grounds of procedural unfairness and disproportionality, and also challenged a number of the Traffic Commissioner's factual findings. The Upper Tribunal finds that the grounds of procedural unfairness and disproportionality are not made out – and that none of the Traffic Commissioner's material factual findings could be said to be plainly wrong (and so fall within the remit of the Upper Tribunal to disturb). The appeal was therefore dismissed.

[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 **dismiss** the appeal.

The Upper Tribunal also **orders** that the matters directed by the Deputy Traffic Commissioner in the decision of 29 July 2025 referred to above (being, the revocation of KJB Scaffolding Limited’s licence, and the disqualification of Mr Kane Towers for one year), shall take effect at 00.15 on the date falling one calendar month after the date on which this decision is issued by the Upper Tribunal.

Subject matter

Revocation of goods vehicles operator’s licence
Procedural fairness at public inquiry
Proportionality of decisions

Cases referred to

Bradley Fold Travel Ltd & anor v Secretary of State for Transport [2010] EWCA Civ 695
2009/225 Priority Freight
2002/2017 Bryan Haulage (No. 2)

REASONS FOR DECISION

The decision appealed against

1. The decision (the “**TC’s decision**”) of the deputy Traffic Commissioner (the “**TC**”) appealed against, as referenced above,
 - a. found breach of section 26(1)(a), (b), (e) and (f) of the Goods Vehicles (Licensing of Operators) Act 1995 (in what follows (unless the context otherwise indicates), references to “**sections**” or “**s**” are to sections of that Act, and references to “Schedules” are to its schedules)

(to explain these statutory references: s26(1) provides that a TC may direct that an operator’s licence be revoked on a number of grounds:

(a) is 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;

(b) is that the licence-holder has contravened any condition attached to the licence;

(e) is that the licence-holder made, or procured to be made, for the purposes of its application for the licence, a statement of fact that, whether to its knowledge or not, was false, or a statement of expectation that has not been fulfilled;

(f) is that any undertaking recorded in the licence has not been fulfilled)

- b. found that the first appellant (the “**company**”) no longer met the requirement under s13D (this being a requirement that that the provision of the facilities and arrangements for maintaining the vehicles in a fit and serviceable condition not be prejudiced by reason of the company's having insufficient financial resources for that purpose)
 - c. revoked the company's licence with effect from 00.15 hours on 1 September 2025 pursuant to s26; and
 - d. disqualified the second appellant, Mr Towers, as a sole trader, partner in a business, or director of a company, from holding or obtaining an operator licence for a period of one year from 1 September 2025, pursuant to s28 (which provides that where a TC directs that an operator's licence be revoked under s26(1), and the holder is a company, the TC may order that a director of that company be disqualified from holding or obtaining an operator's licence).
2. The TC's decision followed a public inquiry held on 22 July 2025 at Eastbourne.
 3. The TC's decision recorded that
 - a. the company was the holder of a restricted licence, granted on 12 April 2023, authorising two vehicles; and Mr Towers was the sole director of the company.
 - b. on 11 March 2025, a Driver and Vehicle Standards Agency Vehicle Examiner (the “**DVSA examiner**”) conducted a maintenance investigation in relation to the company. His report recorded unsatisfactory findings in respect of the inspection/maintenance records,

driver defect reporting, inspection and maintenance facilities, vehicle emissions, wheel and tyre management, load security and responsible person assessment.

- c. on 25 March 2025 the company responded to the findings of the DVSA examiner's maintenance investigation and applied to authorise a new operating centre; this resulted in an interim direction (by the TC) approving that site for a period of six months.
- d. the TC decided to call the case to public inquiry and a call up letter, included case management directions, was issued on 10 June 2025.

4. In the section headed *Findings and Decision*, the TC's decision

- a. found the following instances of non-compliance on the part of the company:
 - i. an unauthorised operating centre was used for over a year
 - ii. a change of maintenance provider had occurred without notification
 - iii. a vehicle had been used for a substantial period without being authorised on the licence
 - iv. PMI (preventative maintenance inspection) periods had been exceeded
 - v. faults found when vehicles were inspected showed that driver walk round checks were not being properly carried out
 - vi. the fact that one vehicle had to be MOT-tested four times before a pass was recorded, and the other had a long list of faults repaired before MOT, add to a picture of a maintenance regime well below the expected standard
 - vii. found that Mr Towers had been disqualified (from driving) for six months and had not notified the TC of the conviction
 - viii. the company failed to submit the maintenance-related documentation in advance of the public inquiry
 - ix. the company failed to send in material relevant to driver management;

- b. on the positive side, the TC's decision found that
 - i. Mr Towers
 - 1. put together folders of compliance documentation, following the visit, in March 2025, of the DVSA examiner to conduct a maintenance investigation
 - 2. had engaged the services of more suitable maintenance provider and commenced rolling road brake testing as a regular occurrence; and
 - ii. money had been spent on repairs and maintenance of the authorised vehicles;
- c. concluded that the case was in the serious to severe category;
- d. decided that the company could not be trusted to operate compliantly, going forward; there had been a serious failure to meet the undertakings agreed when the licence was granted; improvements made in advance of the public inquiry were very limited; the action taken by the company had been 'too little too late'; the failings were not confined to 'record keeping';
- e. concluded that Mr Towers would be more inclined to do what he thinks is best for him and his business, which may not, on some occasions, be what the regulations require;
- f. concluded that the company deserved to be put out of business;
- g. found that the level of finance presented by the company led to the conclusion that was insufficient, and this was likely to prejudice the proper maintenance of the vehicles; money might be spent on repairs, if necessary, to keep the business going; but regular inspections would be given a lower priority.

The Upper Tribunal proceedings

- 5. In a decision issued on 30 August 2025, the Upper Tribunal set aside its earlier refusal of a stay, and then granted a stay.
- 6. The Secretary of State for Transport applied to be added as a respondent to the appeal, and was so added, on 27 October 2025; but on 23 January 2026 the

Secretary of State for Transport gave notice of withdrawal of their case, having concluded that there were no exceptional reasons that might justify their participation in this appeal; on 10 February 2026, the Upper Tribunal consented to the Secretary of State for Transport's withdrawal.

7. On 20 February 2026, less than three working days before the Upper Tribunal hearing, the Upper Tribunal received an email from the Traffic Commissioner Corporate Office asking that the TC be added as a party to the proceedings, and that the hearing of the appeal be postponed. These applications were refused, in a decision issued by the Upper Tribunal on 23 February 2026 (the next working day).
8. Mr Towers attended the Upper Tribunal hearing on behalf of the Appellants. As he was not legally represented, he provided both evidence and submissions. We thank him for his participation in the hearing.
9. We had an Upper Tribunal bundle of 589 paginated pages. It included the Appellants' appeal documentation (including their restated grounds of appeal), interlocutory directions and decisions of the Upper Tribunal, and nearly 500 pages of documents provided by the TC's Office to the Upper Tribunal, including:
 - a. at Section A, the brief for the TC, including the call-up letter and all documents enclosed with it
 - b. at Section B, correspondence between the call-up letter and the public inquiry
 - c. at Section D, a transcript of the public inquiry.

The Appellants' (restated) grounds of appeal

10. Four grounds of appeal were set out in the Appellants' restated appeal form:
 - a. Ground 1, "misapplication of financial standing rules"
 - b. Ground 2, "procedural unfairness"
 - c. Ground 3, "disproportionate sanction"
 - d. Ground 4, "findings not supported by evidence".

Jurisdiction of the Upper Tribunal

11. The holder of an operator's licence may appeal to the Upper Tribunal against any direction given under s26(1) in respect of the licence (s37(2)); and a person in respect of whom an order has been made under section 28 may appeal to the Upper Tribunal against that order (s37(4)).
12. 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.
13. 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.
14. 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]).

Discussion

15. References in what follows to numbers in square brackets are to the numbered paragraphs of the TC's decision, unless otherwise stated (so, for example, "[1]" means paragraph 1 of the TC's decision).

Ground 1

16. In ground 1, the Appellants say that the TC's decision "misapplied" "financial standing rules" and "erred" in concluding that the company did not satisfy "financial standing"; the Appellants said that £5,000 "would now be kept in another account".
17. More specifically, the Appellants argued that "bank statements of £1,886.00 and maintenance invoices of £8,738.74 (divided by three = £2,912.66) produce £4,798.66 ...". The argument seems to be aimed at the reasoning in [17], which states:

The Senior Traffic Commissioner has indicated that a sum of £3100 for a first vehicle and £1700 for each additional vehicle should be available to the holder of restricted licence

to meet the test of sufficient financial resources. In this cases, therefore, £4800 is the suggested amount required;

and at [18], where the TC's decision found an average of £1,866 available to the company during the period March-May 2025.

The Appellants' argument therefore is essentially that the TC's decision did not "count" what the Appellants describe as "maintenance invoices" of £8,738.74 i.e. according to the Appellants, money spent by the company on maintenance during this period; instead, the TC's decision, in assessing the sufficiency of the company's financial resources, paid regard only to the company's net cash balance.

18. In our opinion, it cannot be said to be plainly wrong of the TC's decision to take a net cash-focused approach to assessing the sufficiency of the company's financial resources (together with an assessment of the company's access to cash on credit, which was considered at [19]); indeed, it mirrors what is said in the relevant Senior TC's guidance (*Finance*) at [41]: *One of the most reliable indications of money being available is cash or a facility being held in a bank account of the licence holder over a period of time*. Moreover, the law does not permit us to take into consideration what may have been done after the date of the TC's decision (in terms of keeping £5,000 in a separate account). It follows that this ground of appeal fails.

Ground 2

19. Ground 2 is a procedural unfairness ground. The Appellants' complaint is that certain documents which Mr Towers attached to an email to the TC's Office and to the DVSA examiner on 29 June 2025 (in compliance with a direction of the TC to provide evidence no less than 21 days before the public inquiry), was not received by the TC, or by the DVSA examiner; the Appellants say they were not made aware of this prior to the public inquiry; the allegation is that it was procedurally unfair for the public inquiry to have proceeded, in those circumstances – the Appellants say the public inquiry should have been adjourned to a later date (presumably, to give the TC and the DVSA examiner time to review those documents). The documents at pages 37 to 61 of the Upper Tribunal bundle are those that the Appellants say were not received by the TC or the DVSA examiner.
20. The issue is dealt with in TC's decision, as follows:

5. On the 29 June 2025 Mr Towers sent an e mail with what appeared to be links to documents attached. A member of staff explained that these links could not be opened and advised Mr Towers that compliance related documents should, in any event be sent to [the DVSA examiner]. An exchange of emails also took place in relation to what appeared a shortfall in the level of financial standing available.

6. On the 21 July 2025 a note from [the DVSA examiner] was received which stated that Mr Towers had failed to provide him with any documentation relating to vehicle maintenance including copies of preventative maintenance inspection records. He also said that he had a telephone conversation with Mr Towers on the 23 June when he had told him that he should provide the documentation as directed by the Traffic Commissioner in the call up letter. He said that there were no documents or folders attached to emails which he was unable to open.

The Public Inquiry

7. Mr Towers attended the public inquiry and was unrepresented. When he was being checked in by the hearing clerk he said that he had several folders with him containing compliance related documentation. Whilst he had been told categorically that all documentation should be sent in advance of hearing I decided to look at these folders bearing in mind the content of the earlier message from [the DVSA examiner].

8. The folders contained copies of documents including emissions, wheel/ tyre management and vehicle off road policies although there was no evidence of those policies being used. In addition there was one PMI sheet for vehicle [the second vehicle] dated 14 March 2025 as well as a "Pre MOT inspection dated 14 July 2025. The folder for [the first vehicle] contained a PMI sheet from 2024 and a copy of an MOT certificate issued on the 6 May 2025. This was also recorded by [the DVSA examiner]'s test report for that vehicle which showed the vehicle had failed a test on the 17 March 2025, had a test abandoned on the 7 April, failed a test again on the 01 May before passing on the 06 May. The reasons for failure were set out in the report. The various documents from the folders were extracted and sent to [the DVSA examiner] for consideration.

21. The Appellants' grounds of appeal are reasonably clear that, on their case, the documents which Mr Towers brought to the public inquiry in "folders" (i.e. in hard copy), were not the entirety of the documents Mr Towers provided by email to the TC's Office and the DVSA examiner on 29 June 2025. At the Upper Tribunal hearing, Mr Towers' evidence on this point was more ambiguous (at times, he seemed to be saying that he *had* brought to the public inquiry, everything he had emailed on 29 June 2025). However, looking at the documentation in the public inquiry bundle, and comparing it to the documents sent by Mr Towers to the

Upper Tribunal on 21 August 2025 as part of this appeal (and set out at pages 37 to 61 of the Upper Tribunal bundle), it seems clear that the documents Mr Towers brought in hard copy to the public inquiry, and which the TC's decision summarises at [8] (quoted above) and refers to again at [11] and [12], did not include all the documents which he sent to the Upper Tribunal on 21 August 2025 as part of this appeal (and set out at pages 37 to 61 of the Upper Tribunal bundle). To illustrate this, we now list, in short summary, the documents, at pages 37 to 61 of the Upper Tribunal bundle, and show in bold the only one of those documents which was given to the TC and to the DVSA examiner on the day of the public inquiry (there was another document given in hard copy on the day of the public inquiry, a "pre MOT PMI" dated 20 June 2025 ("date in") and 14 July 2025 ("date out"), but this was not amongst the documents sent by Mr Towers to the Upper Tribunal as part of this appeal):

- a. 'Safety Inspection – Motor Vehicles' documents of Logistics UK, in respect of inspection dates on **14 March 2025 (second vehicle)**, 21 May 2024 (first vehicle), 10 March 2025 (second vehicle), 1 July 2024 (second vehicle), 31 January 2025 (first vehicle), 16 August 2024 (first vehicle), 28 February 2024 (first vehicle), 8 November 2024 (first vehicle) and 19 December 2024 (second vehicle);
 - b. Invoices (dated 20 April 2025)
 - c. Paid invoices, paid on 10 July 2025 (£2,744), 15 July 2025 (£1,634), and 31 July 2025 (£1,459), issued by L&D Commercials Ltd
 - d. Goods Vehicle Inspection and Rectification Reports, by Avery Autos Ltd, for the first vehicle, dated 28 August 2023 and 8 June 2023
 - e. Vehicle safety inspection document with 9 June 2025 tacho calibration date.
22. It is difficult for us to say with certainty whether or not the above documents were in the attachments to Mr Towers' email to the TC's Office and the DVSA examiner of 29 June 2025. However, for the purposes of the analysis which follows, we shall assume, favourably to the Appellants, that they were – and we will therefore refer to them as the "**Attached Documents**".
23. In order to determine this ground of appeal, we must set out some further background about the case management of the public inquiry that took place on 22 July 2025:

- a. Direction 3A of the case management directions of the TC, sent with the call-up letter of 10 June 2025, required the company to send to the TC's Office, at least 21 days before the hearing, "any documents required for the hearing". It then set out certain documents the company was expected to have, to evidence its compliance with licence requirements (being evidence of the company's systems for managing drivers, to include a list of five kinds of checks and reports, for the last three months). Direction 3C required the company to send the following documents to the DVSA examiner
 - i. maintenance records for the last 3 months
 - ii. the "Forward Planner".
- b. The covering email from the TC's Office to Mr Towers, dated 10 June 2025, stated that Mr Towers should bring a copy of the call-up letter, the "brief", and **"any evidence you submit in advance"**, with him to the public inquiry (the words bolded here, and in the following paragraph, are highlighted by us, as we shall refer to them in the analysis that follows).
- c. As the TC's decision records at [5], a casework manager in the TC's Office responded to Mr Towers' 29 June 2025 email, on 30 June 2025. What the casework manager said to Mr Towers in that email was as follows:

Regarding [Mr Towers' 29 June] email, unfortunately I cannot open the links, as it is the Office of the Traffic Commissioner's Policy not to open sharing documents links. If these documents are only required for [the DVSA examiner] to analyse, I do not need a copy as [the DVSA examiner] will send a report regarding them to us, **however if they are documents requested to be sent to the Traffic Commissioner, please can you arrange for them to be sent in a different format.**

- d. On the morning of the day before the public inquiry, 21 July 2025, the TC's Office sent Mr Towers the DVSA examiner's findings, based on the information he had received (which did not include the Attached Documents). Mr Towers responded as follows:

I have emailed [the DVSA examiner] all that has been required but the email address is wrong. I emailed the same time I emailed to [the TC's Office].

I was going to bring all docs with me tomorrow at the public inquiry.

24. What appears to have happened here is, therefore (and relying in particular on words we have emphasised in the previous paragraphs), as follows:
- a. despite being told by the TC's Office, on 30 June 2025, to re-send any of the Attached Documents intended for the TC in a different format, Mr Towers did not do so;
 - b. it was clear to Mr Towers, on the day before the public inquiry, that the DVSA examiner had not received the Attached Documents;
 - c. the TC's Office had told Mr Towers to bring a copy of any evidence he had submitted in advance – and so, the Attached Documents – to the public inquiry. Indeed, Mr Towers' email to the TC's Office, on the day before the public inquiry, indicated that he intended to do so. We acknowledge Mr Towers' point that the TC's office told him not to rely on evidence brought in on the day of the public inquiry *for the first time*, so emphasising the importance of complying with directions to provide evidence *in advance* of the public inquiry; but this is consistent with the TC's office also telling him, as it clearly did, to bring with him to the public inquiry, *copies* of any evidence he had provided to the TC's office in advance;
 - d. shortly after the opening of the public inquiry itself, the TC read, and provided a copy to the DVSA examiner, those of the Attached Documents which Mr Towers did bring to the public inquiry.
25. We see no procedural unfairness here: we understand the Appellants' frustration that the documents Mr Towers sought to provide, the Attached Documents, did not get through to the TC's Office on 29 June 2025; but it seems clear to us that the TC, and the TC's Office, took steps to enable those documents to be fairly put before the TC: they told Mr Towers to provide the Attached Documents by other means; and they were prepared to consider the copies of the Attached Documents that Mr Towers brought with him to the public inquiry (as, once again, he had been asked to do by the TC's Office). It is also clear that Mr Towers understood the position, on the day before the public inquiry, and, reflecting this, told the TC's Office, in writing, that he would be bringing in copies of the evidence on which he wished to rely.
26. As the Appellants had a fair opportunity to put before the TC the evidence they wished to, this ground of appeal fails.

27. For completeness, and because the Appellants are not legally represented, we have considered a different path of argument from the one pursued in this ground, namely, that there was no procedural unfairness in the TC not taking into account the Attached Documents; but the Upper Tribunal should “admit” those documents and, if it did, it would come to the view that the TC’s decision was plainly wrong. In our view, such an argument fails in both its components: first, it would not be fair and just for the Upper Tribunal to “admit” the Attached Documents, as we consider that, with reasonable diligence, the Appellants could have successfully produced these documents to the TC (see the points at paragraphs 24a, b and c above: the Appellants could have re-sent them to the TC, as they were requested to do, or could have brought them in hard copy to the public inquiry as, again, they were asked to do with respect to any documents they submitted in advance); and even if we had admitted the Attached Documents in these Upper Tribunal proceedings, they would not have persuaded us that the TC’s decision was plainly wrong – if one looks at the instances of non-compliance found by the TC (see paragraph 4a above), only one of the nine in the list (iv: ‘PMI periods had been exceeded’) might potentially have been affected by the Attached Documents; in all the circumstances, this would not, in our view, have rendered the TC’s decision plainly wrong.

Ground 3

28. Ground 3 was that it was disproportionate of the TC to revoke the company’s licence; a lesser measure, such as an undertaking or a warning, would have addressed any regulatory concern while supporting the business and its employees. The Appellants are right that the TC’s powers under s26 must be exercised in a proportionate manner; but we agree with the TC’s categorisation of the company’s non-compliance, as per the factual findings in the TC’s decision (see summary at paragraph 4a above), as serious to severe; those instances of the company’s non-compliance were not minor or marginal matters, but rather matters at the heart of the regulatory regime for heavy goods vehicles.
29. The TC’s decision was not, therefore, plainly wrong to find that the company could not be trusted to operate compliantly, going forward; and it seems to us that the TC’s decision here was asking itself the question set out in 2009/225 *Priority Freight* at [9] (and so a question fundamental to whether a licence revocation is proportionate): how likely was it that the company would, in future, operate in compliance with the licensing regime. As was said in that case, if the evidence demonstrates that it is unlikely that the company would so operate, “that will, of course, tend to support a conclusion that the [company] ought to be put out of business” (this being the question posed in 2002/2017 *Bryan Haulage (No. 2)* at

[11]); and, in this case, that was, indeed, the conclusion reached in the TC's decision (it was expressed as "deserved to" rather than "ought to", but we do not see this as a material error).

30. In short, we do not agree that it was disproportionate, given the TC's decision's factual findings, for the TC to have exercised their s26 powers in this case; and so this ground of appeal fails.

Ground 4

31. Ground 4 is that the TC's decision's key findings were not supported by evidence; the more particular allegations included:

- a. "the maintenance invoices were dismissed": this is essentially a restatement of ground 1, which we have dealt with above. It also contains an element of ground 2, in that the Attached Documents contained more such invoices, than did the bundle for the public inquiry; and we have dealt with ground 2 above, as well.
- b. "The PMIs were ignored": to the extent this concerns preventative maintenance inspections which were evidenced in the Attached Documents, but not in the public inquiry bundle, this is a restatement of ground 2, which we have dealt with above; otherwise, the allegation that the TC's decision ignored such inspections cannot be sustained, given the careful reference to them at [11] and [12] in particular.
- c. In respect of Mr Towers' driving disqualification – about which the TC's decision made a finding (see paragraph 4a vii above) to the effect that Mr Towers had not notified the TC's Office of this – the Appellants say that they had received a letter from the TC's Office stating that no further action was to be taken against either of the Appellants; they say that the TC's decision ignored this. Although we were not shown a copy of the letter the Appellants refer to, even if we accept what they say at face value, it does not seem to us to affect the accuracy of the TC's decision's finding (that Mr Towers did not notify the TC's Office). We do not therefore accept the allegation that this finding was plainly wrong.

32. It follows that this ground is not made out.

Conclusion

33. None of the grounds of appeal reveal any material legal error in the TC's decision or that the TC's decision contains a finding or conclusion that is plainly wrong. It

follows that the appeal falls to be dismissed. We have ordered that the TC's decisions are to take place one month after the date on which this decision is issued, to allow for an orderly wind down of the business.

**Zachary Citron
Judge of the Upper Tribunal**

**Sarah Booth
Craig Barker
Members of the Upper Tribunal**

Authorised by the Judge for issue on 12 May 2026