



Appeal No. NT/2018/58
NCN: [2019] UKUT 0080 (AAC)

**IN THE UPPER TRIBUNAL
ADMINISTRATIVE APPEALS CHAMBER (Transport)
TRAFFIC COMMISSIONER APPEALS**

**ON APPEAL from the DECISION issued on behalf of the HEAD of the
TRANSPORT REGULATION UNIT
Dated 7 August 2018**

Before:

Kenneth Mullan	Judge of the Upper Tribunal
Mr John Robinson	Member of the Upper Tribunal
Mr Andrew Guest	Member of the Upper Tribunal

Appellant:

Curraghoe Construction Ltd

Attendances:

For the Appellant: Mr John Lackey (Director) and Mr Patrick Kellegher (Operations Manager)

For the Respondent: None

Heard at: Tribunal Hearing Centre, Royal Courts of Justice, Belfast.

Date of hearing: 7 February 2019

Date of decision: 6 March 2019 (corrected 2 April 2019)

DECISION OF THE UPPER TRIBUNAL

IT IS HEREBY ORDERED that this appeal be DISMISSED.

SUBJECT MATTER:- Professional competence; failure to nominate a Transport Manager

CASES REFERRED TO:- NT/2013/52 & 53 Fergal Hughes v DOENI & Perry
McKee Homes Ltd v DOENI; Bradley Fold Travel
Ltd & Peter Wright v Secretary of State for
Transport [2010] EWCA Civ. 695;

REASONS FOR DECISION

1. This is an appeal from the decision issued on behalf of the Head of the Transport Regulation Unit, ("Head of the TRU") to revoke the Appellant's goods vehicles operator's licence.
2. The factual background to this appeal appears from the documents and the Head of the TRU's decision and is as follows:-
 - (i) The Appellant is the holder of a standard international goods vehicles operator's licence, authorising the use of four vehicles and four trailers from an operating centre at an address in Tyrone.
 - (ii) It was brought to the attention of the Department that the Appellant had no Transport Manager listed on the licence.
 - (iii) In correspondence dated 13 April 2018 the Appellant was advised that it had been brought to the Department's attention that there was no Transport Manager listed on the licence.
 - (iv) The Appellant was directed to make an application to add a replacement Transport Manager to the licence, to submit the original Certificate of Professional Competence (CPC) for the nominated person and complete the relevant nomination (enclosed with the correspondence) by 4 May 2018. The Appellant was also advised that if it was registered to use the online self-service system then it could apply to add a new Transport Manager and to upload the CPC electronically by the same deadline of 4 May 2018.
 - (v) The Appellant was also informed that if it was unable to nominate a qualified Transport Manager within the deadline the Department might consider granting a period of grace to permit the Appellant to find a replacement. The Appellant was notified that the Department was not obliged to grant any such period of grace and that it was unlikely to do so unless the Appellant submitted 'robust' evidence as to how the requirements would continue to be met. The Appellant was given advice as to the manner in which an application for a period of grace should be made.
 - (vi) Finally, and most significantly, the Appellant was given a statement of the content of section 24(1) of the Goods Vehicles (Licensing of Operators) Act (Northern Ireland) 2010 ('the 2010 Act'), namely that the Department must direct that a standard licence be revoked if at any time it appears that the licence-holder no longer satisfies the requirement to be professionally competent. The Appellant was given the following warning:

'PLEASE NOTE: Failure to respond to this letter by the deadline date given will result in the Department revoking the licence. The revocation of the licence would render unlawful the operation of vehicles for which an operator's licence is required.'

- (vii) The Department has submitted that the correspondence of 13 April 2018 was forwarded by recorded delivery to all known addresses.
- (viii) The Department received e-mail correspondence from Mr Patrick Kellegher on 2 May 2018. The content of the e-mail was as follows:
 - 'We have nominated ... as Transport Manager.
 - Form GV 79 will follow in the next 14 days.
 - If there is anything else you require please get in touch.
- (ix) On 9 May 2018 correspondence was forwarded to the Appellant from the Department. In this correspondence the Department noted that it had not received a reply to the correspondence of 13 April 2018 by the date specified in that correspondence. The Appellant was advised that an application could be made for a period of grace or the operator could appoint a new Transport Manager. It was noted that a reply was required by 22 May 2018 and a failure to reply would result in the commencement of revocation proceedings.
- (x) Also on 9 May 2018 e-mail correspondence was forwarded to Mr Patrick Kellegher from the Department in which it was noted that the mail correspondence of 9 May 2018, noted above, would 'cross' with the e-mail reply. Mr Kellegher was advised to 'send the TM docs as a matter of urgency.'
- (xi) On 16 May 2018 e-mail correspondence was received in the Department from Mr Kellegher in which he stated that he had attempted to make a telephone call to the Department that day and he was '... just waiting on the TM documents.'
- (xii) On 1 June 2018 e-mail correspondence was forwarded by Mr Kellegher to the Department in which he stated:
 - 'I called this afternoon, but you were out of the office.
 - I have submitted all the information.
 - Can you please give me a call on Monday to make sure everything is in order?'
- (xiii) On 6 June 2018 the Department responded to the e-mail correspondence of 16 May 2018 stating '... nothing in to date.'
- (xiv) On 14 June 2018 e-mail correspondence was forwarded by the Department to Mr Kellegher stating:

‘Further to our telephone conversation the proposed transport manager has not submitted the required documents or to the best of my knowledge been in touch.

If the correct and appropriate documents are not submitted by 24 June 2018 revocation action will be considered without further communication.’

- (xv) On 4 July 2018 correspondence was forwarded to the Appellant in the following terms:

‘I refer to the appointment of a new transport manager. The process is now over 2 months old and incomplete.

You must complete and return the enclosed TM1 correctly by 28 July 2018 or regulatory action against the licence will be undertaken without further correspondence.’

- (xvi) On the same date e-mail correspondence was forwarded to the Appellant in the following terms:

‘The attached document is required as well.

Return by 18 July or regulatory action will be undertaken.’

- (xvii) On 27 July 2018 further e-mail correspondence was forwarded to the Appellant in which it was stated ‘Emailed versions as discussed.’ On the same date, in a further e-mail to the Appellant, the Department noted that ‘... despite us agreeing the address is correct we have two or three items of returned mail. This suggests the problem is at your end.’

- (xviii) Finally, on 7 August 2018, the decision on behalf of the Head of the TRU to revoke the Appellant’s goods vehicles operator’s licence was issued.

3. In the bundle of papers which was before the Upper Tribunal, is a copy of a document which is headed ‘Licensing (G) Submission’. It is prefaced with the statement that ‘This is an OFFICIAL document and is not for disclosure to any third parties without the specific consent of the Department.’ It is clear that this document is from the Department’s internal case management system and sets out the various stages of the processing of the application leading to the decision to refuse that application.

4. In one decision making section of the document, the following entry has been made:

‘In addition to the PTR letter issued on 13 April 2018, Mr Lackey was informed by telephone on 14 June 2018 that no application to add a TM had been received; this was followed up by email on the same date.

The CPC for ... was received and attached to VOL on 2 July 2018 but no TM(NI)1orm was enclosed. A further letter was therefore issued to the company on 4 July 2018 ...

The deadline date for responses expired and no application to add a TM to the licence has been received. In addition, no vehicles are specified on the licence and it is not known whether the company has access to a vehicle.

There appears to have been some issue with the company's correspondence address but this was clarified and confirmed as correct during a further telephone call with the operator on 27 July 2018. The company has been given ample opportunity to nominate a new TM. This was discussed with them by telephone as well as in writing so even if he did not receive written communication, he was still made aware of the requirements verbally. That he submitted a CPC and an email was received from the company on 2 May 18, 2018 stating ... that ... had been appointed and a 'GV79' form would be submitted in 14 days, confirms that the company was aware of the need to add a TM to the licence.

It is an operator's responsibility to ensure that it complies with the operator licensing requirements; it is not for the department to keep chasing operators for documents or responses to communications. It was made clear in the PTR letter of 13 April 2018 that:

'Section 24(1) of the Act states that the Department shall direct that a standard licence be revoked if at any time it appears that the licence holder no longer satisfies the requirement to be professionally competent.'

and that

'Failure to respond to this letter by the deadline date given will result in the Department revoking the licence. The revocation of the licence would render unlawful the operation of vehicles for which an operator's licence is required.'

Whilst a CPC certificate was received our letter of 13 April 2018 also stated that the enclosed form was also needed to be completed.

No request for a period of grace has been received. I agree with the recommendation to revoke the licence, and given the amount of time that the company has been on notice of the potential regulatory action (almost 4 months), I recommend that it take immediate effect. There is no vehicle specified in the licence and during the telephone call on 14 June 2018 it was stated that the company 'currently' had no vehicle; this also impacts on the company's ability to meet the establishment criteria. The company's licence is due to expire on 31 August 2018. A checklist and renewal fee request was issued to the operator on 19 July 2018.

As the PTR was not issued on the basis of the establishment issue and the operator was not therefore aware that it was an issue, the licence should only be revoked on the grounds professional competence.

Legislation:

Section 24(1)(a) – The licence holder no longer satisfied the requirement to be of professional competence under the provisions of section 12A(2)(d) (as determined in accordance with regulations and Article 8 of the 2009 Regulation).’

5. In a further decision making section of the document, dated 6 August 2018, the following entry is made:

‘I agree that the operator has been given ample opportunity to rectify the situation and been reminded both by letter and telephone conversations and there appears to be a reluctance to comply. Unfortunately it has reached a point where the credibility of the licensing scheme is in question with warnings having no effect therefore proceed to revoke the licence with immediate effect.

Legislation:

Section 24(1)(a) – The licence holder no longer satisfied the requirement to be of professional competence under the provisions of section 12A(2)(d) (as determined in accordance with regulations and Article 8 of the 2009 Regulation).’

6. As was noted above, a decision letter was issued to the Appellant on 7 August 2018. The substantive part of the decision letter was as follows:

‘The Department considers that the company has failed to continue to meet the requirements for holding an operator’s licence and has decided to **revoke the company’s licence with immediate effect** under the provisions of section 24(1) of the 2010 Act on the following grounds:

- Section 24(1)(a) as the licence holder no longer satisfied the requirement to be of professional competence under the provisions of section 12A(2)(d) (as determined in accordance with regulations and Article 8 of the 2009 Regulation) in view of an apparent failure to nominate a transport manager.

...

There is a right of appeal against the Department’s decision.’

7. Subsequently correspondence dated 27 August 2018 was received in the Department from Mr Lackey in which he indicated his intention to appeal against the decision dated 7 August 2018. In this correspondence, Mr Lackey stated the following:

‘We wish to appeal this decision as we believe the information to be submitted via the online portal and when we were advised this failed, the information was submitted by post.

On 2 May 2018 I contacted ... advising him that we had appointed ... as Transport Manager.

We requested a period of grace and advised him that form GV 79 would be submitted within the following 14 days.

... then contacted your office and was advised that a paper submission was no longer acceptable and that the application must be processed through the new online portal.

On 1 June I again contacted ... but he was unavailable, so an email was sent to him to advise him that all the information had been submitted. I asked him to review it to ensure everything was in order and advise me accordingly. He contacted me on 6 June to say that he received nothing to date.

This left me in something of a quandary as ... assured me that the information had been submitted but ... could find nothing on the system.

On 24 June ... received an email to say that he had been named as a Transport Manager on Vehicle Operator Licence application ON1115043/1083953. He then contacted the office personally I was advised that only part of his submittal, the CPC had been received, but no TM(NI)1 form was enclosed.

The letter issued from your office on 4 July was never received by Curraghroe Construction office as Patrick Kellegher the operations manager was on holiday and so there was no one available to sign for it. Again, I contacted ... who expressed that there were issues with the online portal and so I requested that the necessary paperwork be sent out via post. I followed up a few days later with another email on 13 July as I had not received anything. He was not in the office, so I requested a call from him when he was back in the office on Monday.

Following another conversation with ... 27 July he then emailed over a copy of the TM(NI)1 form, this was immediately sent to ... for completion and sent into your office. I called numerous times to see if it been received but nothing has been logged to date.

I believe we have made every reasonable effort to get this resolved, but it appears we met one obstacle after another. In total we submitted the required information on three separate occasions, twice by the online portal and once via post. We've been in contact with your office on numerous occasions and have spoken to ... and other persons there, in an attempt to get this issue resolved.

I enclose another copy of the TM(NI)1 form as part of this appeal and hope that you will accept it to renew our company licence.'

8. The formal notice of appeal against the decision dated 7 August 2018 was received in the office of the Administrative Appeals Chamber ('AAC') of the Upper Tribunal on 5 September 2018. The Appellant set out grounds of appeal which were parallel to those submissions which had been set out in the correspondence of 27 August 2018.
9. E-mail correspondence was forwarded to the Department on 19 September 2018 from Patrick Kellegher in which he made an application for a stay of the decision dated 7 August 2018.
10. In correspondence dated 26 September 2018 Mr Kellegher was informed that his application for a stay of the Department's decision had been refused and a copy of the refusal determination was sent to him.
11. The appeal was first listed for oral hearing on Thursday 29 November 2018. On 26 November 2018 an application for an adjournment of the oral hearing was received in the office of the Administrative Appeals Chamber (AAC) of the Upper Tribunal in Belfast from the Appellant's representative. The basis of the application was that the representative had just been instructed in the matter, had just received the appeal bundle and that time was required to consider the content of the bundle, take further instructions and consult Counsel.
12. A determination allowing the application for an adjournment was issued by me on 28 November 2018. In that determination I stated:

'In these circumstances, I am prepared to grant an adjournment of the oral hearing. The Appellant and the Appellant's representative should note, however, that it is not in the Appellant's interests to have this matter held in abeyance. As was noted above, an application for a stay of the Respondent's decision has been refused and the Appellant's operator's licence remains revoked. Any further application for an adjournment of a hearing of this appeal will only be granted in the most exceptional of circumstances.

13. The appeal was re-listed for oral hearing on Thursday 7 February 2019. On 31 January 2019, e-mail correspondence was received in the office of the Upper Tribunal in Belfast on behalf the Appellant from Mr Kellegher. In this correspondence, he stated the following:

'Thank you for returning my call so promptly this afternoon.

I would be very grateful if you could intercede with the magistrate, to adjourn our appeal to the upper tribunal for a 3-4-week period while we prepare our case.

I received word before Christmas that a dear friend of mine who lives in Rotterdam was diagnosed with mouth cancer and was given only a month to six weeks to live.

Naturally, this was very upsetting news. Having travelled to Holland to spend some time with her before she passed, I returned to work on the 28.1.2019

I am only starting to catch up on my work load and would appreciate a little time to prepare as the operator's licence is imperative to our business plans as we move forward into 2019.

Thank you for your understanding in relation to this matter.'

14. On 1 February 2019, e-mail correspondence was received in the office of the Upper Tribunal in London from the Appellant's previously nominated representative. In this correspondence the representative stated the following:

'I refer to your earlier conversation this morning with John Beatty of our Belfast office and confirm that we have no instructions in this matter and in the circumstances, have no alternative but to apply to come off record.

We understand that no formal application is necessary and we can come off record by advising your office by e-mail.

We would be grateful if you would kindly acknowledge safe receipt of this e-mail.'

15. In a determination dated 4 February 2019, I noted Mr Kellegher's personal circumstances which he had outlined in his postponement application. I also determined that, nonetheless, it was over two months since the grant of the application for an adjournment of the oral hearing listed for 29 November 2018. Despite Mr Kellegher's personal circumstances, a period of two months was ample time for him to prepare for the oral hearing of the appeal. Further, the Appellant had nominated a professional representative to assist with its appeal. It was clear from the e-mail correspondence received from the representative on 1 February 2019 that the Appellant had made no effort to give instructions to its representative in connection with the appeal. I repeated what was set out in the determination dated 28 November 2018 granting the application for the adjournment of the appeal:

'... it is not in the Appellant's interests to have this matter held in abeyance. As was noted above, an application for a stay of the Respondent's decision has been refused and the Appellant's operator's licence remains revoked. Any further application for an adjournment of a hearing of this appeal will only be granted in the most exceptional of circumstances.'

16. Those comments remained apposite to the further application for a postponement. The Appellant's licence remained revoked. It had stated that the regaining of its operator's licence is 'imperative' to its company's

business plans for 2019. If that was the case, then progress on the company's business plans would not be advanced by a further delay in the hearing and determination of the appeal.

17. In these circumstances, I determined that the application for a postponement of the oral hearing listed for Thursday 9 February 2019 should be refused. I noted, however, that the Appellant was entitled to renew the application for an adjournment of the oral hearing, at the commencement of that hearing on Thursday 9 February 2019 with the caveat that while any such further application would be treated on its merits, there was no guarantee that it would be successful.
18. As was noted above, at the oral hearing of the appeal the Appellant was represented by Mr Kellegher and Mr Lackey. Mr Kellegher indicated that he was aware that the company's representative had come off record but that he did not wish to seek alternative representation. Further, it did not wish to make a further application for an adjournment of the appeal. At the oral hearing, Mr Kellegher, with the assistance of Mr Lackey, made submissions which were parallel to those which had been made in the correspondence of 27 August 2018 and in the notice of appeal.
19. At the oral hearing, the Respondent was not represented.

The relevant legislative provisions

20. Sections 12A 20(1)(b) and 24(1) of the 2010 Act provide:

' 12A. Requirements for standard licences

(1) The requirements of this section are set out in subsections (2) and (3).

(2) The first requirement is that the Department is satisfied that the applicant—

(a) has an effective and stable establishment in Northern Ireland (as determined in accordance with Article 5 of the 2009 Regulation);

(b) is of good repute (as determined in accordance with regulations and Article 6 of the 2009 Regulation);

(c) has appropriate financial standing (as determined in accordance with regulations and Article 7 of the 2009 Regulation); and

(d) is professionally competent (as determined in accordance with regulations and Article 8 of the 2009 Regulation).

(3) The second requirement is that the Department is satisfied that the applicant has designated a transport manager in accordance with Article 4 of the 2009 Regulation who—

(a) is of good repute (as determined in accordance with regulations and Article 6 of the 2009 Regulation);

(b) is professionally competent (as determined in accordance with regulations and Article 8 of the 2009 Regulation); and

(c) in the case of a transport manager designated under Article 4.2 of the 2009 Regulation—

(i) is not prohibited from being so designated by the Department, and

(ii) is not designated to act as transport manager for a greater number of road transport undertakings or in respect of a greater number of vehicles than the Department considers appropriate, having regard to the upper limits in Article 4.2(c) of the 2009 Regulation, or such smaller number as the Department considers appropriate in accordance with Article 4.3 of the 2009 Regulation.

20 Conditions of licences

(1) On issuing an operator's licence, or on varying such a licence under section 16, the Department may attach to the licence such conditions as it thinks fit—

(b) for requiring the holder of the licence to inform the Department of the occurrence of any event of a kind specified in the licence which affects the licence holder and which is relevant to the exercise by the Department of any power in relation to the licence

24 Revocation of standard licences

(1) The Department shall direct that a standard licence be revoked if at any time it appears to the Department that

(a) the licence-holder no longer satisfies the requirements of section 12A(2), or

(b) the transport manager designated in accordance with Article 4 of the 2009 Regulation no longer satisfies the requirements of section 12A(3).'

The proper approach to appeals to the Upper Tribunal

13. In NT/2013/52 & 53 Fergal Hughes v DOENI & Perry McKee Homes Ltd v DOENI, Upper Tribunal said the following, at paragraph 8 of its decision, on the proper approach on appeal to the Upper Tribunal:

‘There is a right of appeal to the Upper Tribunal against decisions by the Head of the TRU in the circumstances set out in s. 35 of the 2010 Act. Leave to appeal is not required. At the hearing of an appeal the Tribunal is entitled to hear and determine matters of both fact and law. However it is important to remember that the appeal is not the equivalent of a Crown Court hearing an appeal against conviction from a Magistrates Court, where the case, effectively, begins all over again. Instead an appeal hearing will take the form of a review of the

material placed before the Head of the TRU, together with a transcript of any public inquiry, which has taken place. For a detailed explanation of the role of the Tribunal when hearing this type of appeal see paragraphs 34-40 of the decision of the Court of Appeal (Civil Division) in Bradley Fold Travel Ltd & Peter Wright v Secretary of State for Transport [2010] EWCA Civ. 695. Two other points emerge from these paragraphs. First, the Appellant assumes the burden of showing that the decision under appeal is wrong. Second, in order to succeed the Appellant must show that: *“the process of reasoning and the application of the relevant law require the Tribunal to adopt a different view”*. The Tribunal sometimes uses the expression *“plainly wrong”* as a shorthand description of this test.’

14. At paragraph 4, the Upper Tribunal had stated:

‘It is apparent that many of the provisions of the 2010 Act and the Regulations made under that Act are in identical terms to provisions found in the Goods Vehicles (Licensing of Operators) Act 1995, (“the 1995 Act”), and in the Regulations made under that Act. The 1995 Act and the Regulations made under it, govern the operation of goods vehicles in Great Britain. The provisional conclusion which we draw, (because the point has not been argued), is that this was a deliberate choice on the part of the Northern Ireland Assembly to ensure that there is a common standard for the operation of goods vehicles throughout the United Kingdom. It follows that decisions on the meaning of a section in the 1995 Act or a paragraph in the Regulations, made under that Act, are highly relevant to the interpretation of an identical provision in the Northern Ireland legislation and vice versa.’

Analysis

15. We begin by noting that it was conceded by the Caseworker in the Northern Ireland Central Licensing Office (NICLO) in Leeds that there appeared to be some difficulties in receipt by the Appellant of paper post sent to it. In e-mail correspondence sent to the Appellant on 27 July 2018 it was noted by the Caseworker that ‘one or two items’ of mail from NICLO had been returned. We do regard this as a significant issue in this case for two reasons. The first is that in the ‘Licensing (G) Submission’ it was noted that ‘There appears to have been some issue with the company’s correspondence address but this was clarified and confirmed as correct during a further telephone call with the operator on 27 July 2018.’ The second reason is that every important item of correspondence and notice which was forwarded to the Appellant was also sent by e-mail. There is no suggestion that these e-mails were not received. Indeed, and to be fair to it, at the oral hearing before us Mr Kellegher conceded that it had received relevant e-mail correspondence from NICLO.
16. Mr Kellegher’s principal submission is that two attempts were made to forward the required documentation in connection with the nomination of a new Transport Manager by the use of an on-line portal and, when it

became obvious that those attempts had failed, by the submission of the documentation in paper format. There are several underlying aspects of that submission which require further exploration.

17. Mr Kellegher submitted that it had relied on the nominated Transport Manager to address the issue of the submission of the required documentation. Further, it was the Transport Manager who had informed him that it was not possible to submit copies of the documentation and the required submission route was the online portal. We did not have the benefit of hearing from the nominated Transport Manager in person and Mr Kellegher could give us no other source of evidence that documentation had to be submitted via the online portal. Much more significantly, however, if there was confusion on the part of Mr Kellegher and the Transport Manager as to the required method for submission of documentation then this could easily have been queried with the Caseworker in NICLO through the regular e-mail correspondence which was taking place. Further, it is apparent that when it became obvious that the relevant documentation had not been received, Mr Kellegher was given clear and unambiguous guidance by the Caseworker in NICLO. For example, and as was noted above, in e-mail correspondence dated 14 June 2018 from the Caseworker to Mr Kellegher it is stated that “Further to our telephone conversation the proposed transport manager has not submitted the required documents or to the best of my knowledge been in touch. If the correct and appropriate documents are not submitted by 24 June 2018 revocation action will be considered without further communication.’
18. Mr Kellegher has submitted that in e-mail correspondence of 24 June 2018, the person chosen by the Appellant as the new Transport Manager had been ‘named’ by NICLO as the Transport Manager for the company. Mr Kellegher has asserted that this is evidence that some of the documentation relevant to the formal process of nominating the Transport Manager must have got through to NICLO. Mr Kellegher did not provide us with a copy of the relevant e-mail correspondence. In any event, there is an alternative explanation based on two items of documentation. The first is the e-mail correspondence from Mr Kellegher to the Caseworker in NICLO dated 2 May 2016 in which he indicates that the Appellant had appointed a named individual as Transport Manager. The second is the receipt in NICLO of a CPC relating to that named individual. It could easily be the case that this was what led NICLO to ‘name’ that individual as a Transport Manager. That is not the same, however, as accepting that he was the appointed Transport Manager for the purpose of the relevant legislative requirements.
19. As noted above, Mr Kellegher and Mr Lackey concede that they placed great reliance on the chosen Transport Manager to attend to the requirements of formal nomination and appointment. Mr Kellegher asserted that following a conversation with the chosen Transport Manager he had sent the e-mail correspondence of 1 June 2018, set out in more detail in paragraph 2(xii) above. In the circumstances, and at

that stage, it would have been wholly reasonable for Mr Kellegher to accept the word of the nominated Transport Manager that all of the requirements had been adhered to and check that assertion with NICLO. What followed thereafter, however, should have alerted Mr Kellegher to the undisputed fact that the requirements had not been met and the ongoing significant implications for the company's operator's licence of a continuing failure to meet those requirements.

20. The sequence of e-mail exchanges between Mr Kellegher and the Caseworker in NICLO set out in paragraphs 2(xiii) to 2(xviii) is unambiguous in setting out the steps which the Appellant was required to undertake, providing practical guidance on how to carry out the necessary actions and, most significantly of all, in setting out the consequences for the licence of a failure to respond.
21. In our view Mr Kellegher has demonstrated a lack of concern to the regulatory requirements relevant to the holding of a goods vehicles operator's licence. When alerted to the requirement to nominate a new Transport Manager, after being given practical advice as to how those requirements were to be met, after being notified of the required timescale for nomination together and, most importantly, after being informed of the consequences of a failure to take action, the Appellant's response was to continue to rely on the nominated Transport Manager rather than take direct action itself to address the omissions and failures.
22. This is not a case where NICLO was corresponding with the nominated Transport Manager and where Mr Kellegher and Mr Lackey were unaware of the obvious failings. The correspondence was with Mr Kellegher himself and he could and should have responded in a more positive manner. It is clear that the reliance on the chosen Transport Manager was misplaced. As was noted above, Mr Kellegher has submitted that he had thought that everything was in order on 1 June 2018. Almost two months later, on 27 July 2018, the Caseworker in NICLO, after a lengthy exchange of e-mails, was still giving guidance to Mr Kellegher on what he was required to do. We can understand how, by 7 August 2018 the patience of NICLO had run out.
23. Accompanying the notice of appeal were a number of documents including a completed, in handwriting, Form TM(NI)1, the precise form which the Department had been seeking from the Appellant all along. Mr Kellegher asserted that this form was submitted when it became clear that the claimed submissions of the form through the online portal had not been successful. Mr Kellegher also conceded that he had learned that it was industry practice to submit paper copies of forms even when such forms are submitted online. We have noted that the copy of the Form TM(NI)1 which is before use is dated 6 August 2018 in two places although one of the dates appears to have been altered. Most significantly, there is no Departmental receipt or date stamp on the form and we cannot conclude that it was ever received in the Department. More significantly, and as was noted in paragraph 5 above, the decision-

making process to revoke took place on 7 August 2018 with the formal decision letter being sent out on the same date. It is likely, therefore, that any subsequent receipt of the completed form would have made no difference.

24. For these reasons we are satisfied that the decision issued on behalf of the Head of the TRU was not plainly wrong and is confirmed. The appeal is, accordingly, dismissed.
25. Mr Kellegher and Mr Lackey have informed us that the Appellant has engaged the services of another individual as nominated Transport Manager and that based on their experience in this case, they are now more aware of the legislative requirements relevant to holding a goods vehicles operator's licence. It is the case, however, that the practical effect of our decision is that the licence which was once held by the Appellant is now revoked. It may be that consideration is being given to making an application for a new licence which is an apposite way forward for the Appellant.



**Kenneth Mullan, Judge of the Upper Tribunal,
6 March 2019
Corrected on 2 April 2019**