



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

**Appeal No. UA-2024-001338-T
[2024] UKUT 421 (AAC)**

**ON APPEAL from a DECISION of the TRAFFIC COMMISSIONER for the WALES
TRAFFIC AREA taken on 6 September 2024**

Before: E Mitchell, Judge of the Upper Tribunal
R Fry, Specialist Member of the Upper Tribunal
K Pepperell, Specialist Member of the Upper Tribunal

Appellant: Autoworx Recovery Ltd

Commissioner's ref: OH2039823

Date of Commissioner's decision: 6 September 2024

Heard at: Field House, Bream's Buildings, central London on 3
December 2024

Representation: For the Appellant, Mr Bulpitt (director of the Appellant
company). Mr Bulpitt participated in the hearing remotely
using the *Cloud Video Platform* application.

Date of decision: 11 December 2024

DECISION OF THE UPPER TRIBUNAL

This appeal is ALLOWED. The Traffic Commissioner's decision of 6 September 2024, directing revocation of operator's licence no. OH2039823, was made in error of law. Under section 37(2) of the Goods Vehicles (Licensing of Operators) Act 1995, the Upper Tribunal sets aside the Commissioner's direction.

ORDER OF THE UPPER TRIBUNAL

In exercise of the Upper Tribunal's power under paragraph 17(2) of Schedule 3 to the Transport Act 1985 to make such order as it sees fit on an appeal against a decision of the Traffic Commissioner, we order as follows:

- (1) our setting aside of the Traffic Commissioner's direction to revoke the operator's licence means that, for the time being, that licence is restored to the operator;
- (2) paragraph (1) above shall not affect the power of a Traffic Commissioner to direct revocation of the operator's licence following expiry of the deadline referred to in paragraph (4)(b) below;
- (3) the PTR (Proposal to Revoke) letter issued by the Office of the Traffic Commissioner on 26 July 2024 is to be treated as if it were a notice issued under section 27(2) of the Goods Vehicles (Licensing of Operators) Act 1995 on the same day that this decision of the Upper Tribunal is issued;
- (4) The PTR letter referred to in paragraph (3) above is to have effect subject to the following modifications:
 - (a) the words "Any written representations must be made to this office by **16/08/2024** for the traffic commissioner's consideration" are deleted;
 - (b) those deleted words are replaced with the following:

"Any written representations must be made to this office, no later than 21 days after the date on which the decision of the Upper Tribunal in case UA-2024-001338-T is issued, for the traffic commissioner's consideration".

Subject matter: Revocation of standard operator's licence / period of grace / public inquiries

Case law referred to: *McKee (Operator) & McKee (Transport Manager)* [2014] UKUT 0254 (AAC)

REASONS FOR DECISION

1. In these reasons:

- "1995 Act" means the Goods Vehicles (Licensing of Operators) Act 1995;
- "operator" means the Appellant company;
- "OTC" means the Office of the Traffic Commissioner.

The Traffic Commissioner's decision-making

2. On 18 July 2024, the OTC received a letter, dated 16 July 2024, written by the operator's one-time transport manager, Emma Rhodes. The letter stated that Emma Rhodes resigned her position as transport manager on 1 March 2024 and attached a letter of that date which informed the OTC that she had resigned as the operator's transport manager in order to concentrate on her duties as transport manager for another operator.

3. The OTC's case file discloses that they have no record of having received Emma Rhodes' letter dated 1 March 2024. The operator's director, Mr Bulpitt, also denies having received that letter. We also note that, according to the OTC case file, there had been no response to correspondence sent to Emma Rhodes, in her capacity as the operator's transport manager, about a proposed Desk Based Assessment for the operator.

4. Emma Rhodes' letter of 16 July 2024 stated that one of the reasons why she resigned as the operator's transport manager was because "I was not given access to [the operator's] records". We note that that reason was absent from the letter dated 1 March 2024.

5. The OTC wrote to the operator by letter dated 26 July 2024. Having summarised the law about the requirement for an operator to have a transport manager, the letter went on:

“...the traffic commissioner is considering the revocation of your operator’s licence on the grounds detailed above...Under section 27(3) [of the 1995 Act] you are entitled to make written representations to the traffic commissioner. Section 29(1) allows you to request a public inquiry, in order to offer further evidence as to why the licence should not be revoked.

Any written representations must be made to this office by **16/08/2024** for the traffic commissioner’s consideration.

Your representations may include an application to add a replacement transport manager to your licence...

The traffic commissioner may consider granting a period of grace to enable you to find a replacement or whilst your nomination of a new transport manager is being considered, but you need to ask. The traffic commissioner is not obliged to grant a period of grace and is unlikely to do so unless there is evidence that a replacement will be recruited and that the licence requirements will be met in the meantime. An application for a period of grace must be in writing and set out what you are doing to resolve the matter. Guidance to request a period of grace whilst you recruit a new transport manager is attached at Annex B.

Annex B – Guidance for requesting a period of grace to satisfy the transport manager requirements

...There must be tangible evidence that a period of grace will be worthwhile, in other words, there are reasonable prospects that the mandatory requirement will be met before expiry of the specified period of grace .

...Please make any period of grace requests in writing and specify:

why your last transport manager has left and the circumstances.

what measures were taken to prevent loss of a suitable number of transport managers.

the period of time you seek for your period of grace

how you will cover the duties of a transport manager during the period of grace what action you are taking to meet the transport manager requirement as soon as possible...”

6. On 15 August 2024, the operator’s director, Mr Bulpitt, wrote to OTC as follows:

“...regarding the loss of Transport Manager Emma Rhodes she did not inform me she had resigned, therefore I request a period of grace, I will have the details of a new Transport Manager by Wednesday 21st August and will immediately forward.”

7. On 22 August 2024, the OTC wrote to the operator to inform it that “your response...has been considered by the Traffic Commissioner, but they are unable to grant a period of grace at this stage based on the information provided”. The letter went on to say that further information was required in order for a request for a period of grace to be considered namely information about the activities of the previous transport manager, the period of grace sought, how transport manager duties were to be ‘covered’ during a period of grace, and action being taken to “meet the transport manager requirement”. The letter also requested financial information but without explaining why. The deadline for providing the information sought was 3 September 2024.

8. On 2 September 2024, the operator’s director emailed the OTC as follows:

“Further to your email of the 22nd August when you stated you required information by 3rd September I would like to request an extension until 10th September, this is due to the fact that I have a new transport manager, Mr Gregory Hicks but he is unable to meet until Saturday 7th September as he is away until Friday.

It would be greatly appreciated if you would allow this as my whole livelihood relies on this.”

9. The OTC responded to the director’s email of 2 September 2024 on the following day, 3 September:

“I acknowledge that you are speaking to a replacement potential Transport Manager on 7 September.

However, the Traffic Commissioner still requires a response to the letter that was dated 22 August 2024.

Please provide the response to the questions posed. Within your response you can also add in that you are meeting with your potential replacement Transport Manager on Saturday 7 September, and that you will provide a further update following that meeting.”

10. The OTC emailed the director again on 4 September 2024:

“A full response is required to all questions posed in our correspondence dated 22 August 2024 by 17:00 hours on 05 September 2024.

Failure to respond by this date will result in revocation of the licence due to a lack of mandatory professional competence and no period of grace having been granted.”

11. On that same day, 4 September 2024, the director replied to OTC’s email:

“I respectfully request that you please give a period of grace till 10th September as I work away all week and not back till Saturday when I have a meeting with the new transport manager. I work solely on my own now and without my operators licence have no way of making a living.”

12. The operator emailed the OTC again on 5 September 2024:

“I have not received a response to my email of yesterday requesting a short period of grace.

Further to your questions in your letter of the 22nd August please see responses below

Emma Rhodes was taken on as Transport Manager as she was newly qualified and wanted experience.

I was unaware that she had stopped acting as Transport Manager, she has now said that she sent a letter, surely something so important should have been sent signed for this has never been received.

As previously stated I have now obtained the services of a fully qualified Transport Manager and have a meeting with him on Saturday 7th September when all necessary paperwork will be registered with yourselves.

As I work away and not back till Saturday I cannot issue bank statements till then.

I am only requesting a very short period of grace and would greatly appreciate this to be allowed.”

13. Internal OTC notes show that, on 5 September 2024, the Deputy Traffic Commissioner dealing with this case expressed the following opinion:

“I cannot see why bank statement cannot be provided now. They will almost certainly be accessible by phone. That leads me to conclude that the operator is simply trying to defer the inevitable.”

14. On 6 September 2024, the Traffic Commissioner revoked the operator’s licence. The decision letter read as follows:

“I refer to our original letter dated 26 July 2024, regarding the loss of your Transport Manager.

A letter was forwarded to your company on 22 August 2024 requesting further information be provided with regards to company finance and it is noted an extension to that deadline was requested by your company one day prior to the deadline contained in that letter.

A further email was sent to your company on 4 September 2024, requiring a full response to the questions raised in our earlier letter of 22 August 2024, a deadline was given of 17:00 hours on 5 September, that response was unacceptable to the Traffic Commissioner.

Accordingly, in accordance with the grounds set out in our letter to you upon the loss of your nominated Transport Manager dated 26 July 2024 **the Traffic Commissioner will revoke your operator’s licence with effect from 4 October 2024**, to allow an orderly run-down of the business and the potential for any new application to be submitted.”

Legal framework

15. Section 27(1)(a) of the 1995 Act requires a Traffic Commissioner to direct that a standard licence be revoked if at any time it appears to the Commissioner that the licence-holder no longer satisfies one or more of the requirements of section 13A.

16. The requirements of section 13A of the 1995 Act, insofar as relevant to the requirement for a corporate operator to designate a transport manager, are expressed as follows:

“(3) The second requirement is that the traffic commissioner is satisfied that the applicant —

...(b) if the applicant is not an individual...has designated a suitable number of individuals who satisfy the requirements set out in paragraph 14A(1) and (3) of Schedule 3...

(5) In this Act, “transport manager” means an individual designated under subsection (3)(a)(ii) or (b).”

17. Before giving a direction to revoke a standard operator’s licence, the Traffic Commissioner is required by section 27(2) of the 1995 Act to “give to [the licence-holder] notice in writing that he is considering giving such a direction”. Certain matters must be dealt with in a section 27(2) notice, such as “the grounds on which the traffic commissioner is considering giving a direction”, but the notice may also “set a time limit for the licence-holder to rectify the situation” (section 27(3A)). Such a time limit may not exceed 6 months or, in some cases, 9 months including where “more than 6 months is required to recruit a replacement transport manager” (section 27(3B)). If the licence-holder duly “rectifies the situation”, the Commissioner may not make the revocation direction (section 27(3B)).

18. In *McKee (Operator) & McKee (Transport Manager)* [2014] UKUT 0254 (AAC), the Upper Tribunal said:

“7. In our view, when considering whether or not to grant a period of grace, Traffic Commissioners will need some tangible evidence, beyond mere hope and aspiration, that granting a period of grace will be worthwhile, and that there are reasonable prospects for a good outcome. Some sort of analysis along these lines will be necessary because, amongst other reasons, Traffic Commissioners have to decide how long to grant. Moreover, as with a stay, there is no point in granting a period of grace if the likely effect is just to put off the evil day when regulatory action will have to be taken.”

19. Section 29(1) of the 1995 Act provides that a Traffic Commissioner may not give a revocation direction under section 27(1) “without first holding an inquiry if the holder of the licence...requests that an inquiry be held”. Provision about the conduct of inquiries is made by Schedule 4 to the Goods Vehicles (Licensing of Operators) Regulations 1995 (“1995 Regulations”). Paragraph 5(2) of Schedule 4 provides as follows:

“...a person entitled to appear at an inquiry...shall be entitled to give evidence, call witnesses, to cross examine witnesses and to address the traffic commissioner both on the evidence and generally on the subject matter of the proceedings.”

20. Section 37(2) of the 1995 Act confers a right of appeal to the Upper Tribunal against a revocation direction given under section 27(1). The 1995 Act does not provide for a right of appeal against a Traffic Commissioner’s refusal to set a “time limit for rectifying the situation” (a period of grace) under section 27(3A).

21. Paragraph 17(2) of Schedule 3 to the Transport Act 1985 provides as follows:

“(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.”

Grounds of appeal

22. The Appellant’s written grounds of appeal were brief, but they clearly disclosed that it felt that it had been treated unfairly by the Traffic Commissioner’s refusal to give it a little more time to secure a new transport manager.

23. At the hearing before the Upper Tribunal, the Appellant’s director, Mr Bulpitt, said that his former transport manager did not inform him in March 2024 that she had resigned. He only learnt of this in July 2024. As soon as he was aware of the transport manager’s resignation, he acted as promptly as he could to identify a replacement. Mr Bulpitt found it difficult to understand why the Traffic Commissioner would not wait just a few days longer, in early September 2024, for him to confirm arrangements with his proposed replacement transport manager. He applied for a short period of grace but his application was not even acknowledged, and he was never told why it had been refused.

Conclusions

24. As we mentioned above, the 1995 Act does not provide a right of appeal against a Traffic Commissioner’s refusal to grant a period of grace. Despite that, there are decisions, such as *McKee*, in which the Upper Tribunal has felt able to offer an opinion, albeit in quite general terms, on when a period of grace should, or should not, be granted.

25. While there is no right of appeal against a Commissioner’s refusal to grant a period of grace, cases arise in which the refusal to grant a period of grace is an integral part of the decision to revoke an operator’s licence. In such cases, we consider that the Traffic Commissioner’s obligation to provide sufficient reasons for a licence revocation decision cannot be discharged unless some explanation is given for the refusal to grant a period of grace. We are satisfied that the present case falls into this category. The absence of a transport manager was the only regulatory concern mentioned in the PTR letter and, on the operator’s case, the only impediment to it satisfying the requirement to have a transport manager was time.

26. In our judgment, the Traffic Commissioner was required, in this case, to give the operator some explanation as to why its request for a period of grace was refused. The circumstances do not speak for themselves or, to put it another way, this cannot be considered to be a case in which a request for a period of grace was bound to fail. We say that for the following reasons:

(a) the operator argued that it did not receive the former transport manager's March 2024 letter of resignation. On its own, that assertion might carry little weight but, here, OTC's records show that it also did not receive the transport manager's letter despite the manager asserting, in July 2024, that the March 2024 letter was sent to both the OTC and the operator;

(b) the OTC's letter of 22 August 2024 informed the operator that certain information was required in order for the request for a period of grace to be considered: information about the activities of the previous transport manager, the period of grace sought, how transport manager duties would be 'covered' during any period of grace and action being taken to 'meet the transport manager requirement'. While the operator's response did not deal with the activities of the former transport manager, it did identify the period sought, and explained that it had identified a replacement prospective transport manager whose expected appointment was imminent (on 10 September 2024). Apart from the failure to provide information about the previous transport manager, the operator's response was not obviously inadequate;

(c) while the operator failed to respond to the OTC's request for information about the activities of the previous transport manager, that information would have been of no relevance to the question whether the proposed replacement transport manager was satisfactory. It may have been relevant to a wider regulatory issue about whether this was an operator who could be trusted properly and effectively to co-operate and liaise with its transport manager but no finding was made to that effect in the Commissioner's revocation decision letter.

27. The Commissioner's revocation decision letter informed the operator that its licence was revoked because it no longer met the mandatory requirement to have a transport manager. The decision said nothing about why the operator's request for a period of grace had been refused. It said that the operator's response to the OTC's requests for information was "unacceptable", which may have been an attempt to explain why a period of grace was being refused, but did not elaborate on why the response was unacceptable.

28. From the OTC case file, it is apparent that the actual reason for refusing a period of grace related to the operator's failure to provide the financial information requested on 22 August 2024. The Commissioner expressed the following view on 5 September 2024:

"I cannot see why bank statement cannot be provided now. They will almost certainly be accessible by phone. That leads me to conclude that the operator is simply trying to defer the inevitable."

29. So, the operator's failure to provide financial information (bank statements), via its director's mobile phone, showed that this was an operator that was simply trying to delay the inevitable ('the inevitable' must mean revocation of its licence). This was despite (a) the operator having informed the OTC that statements would be supplied in a day or two (b) the operator was not asked whether it was able to upload "electronic copies of internet statements" (which is the term used in the Senior Traffic Commissioner's *Statutory Document 2 – Finance*) using a mobile telephone, and (c) the instruction to provide bank statements given on 22 August 2024 arguably required original bank statements to be supplied (the letter included the words, "credit card accounts...must be supported by original documents, as with bank statements"). On any reasonable view, that was a very weak basis for a finding that this was an operator that knew it was going to be put out of business, was trying to avoid the inevitable revocation of its licence and should not therefore be allowed a period of grace in which to identify a replacement transport manager.

30. In our judgment, the Traffic Commissioner erred in law because he gave insufficient reasons for deciding to revoke the operator's licence. In the circumstances, the reasons needed to say something about why a period of grace was refused. The reasons given were insufficient because they did not explain why the operator's response to the OTC's request for information was unacceptable, when that was not a matter that spoke for itself, and, to the extent that the Commissioner relied on the operator's failure to provide bank statements, so flawed as to be irrational.

31. We find that the Traffic Commissioner's decision was further flawed by virtue of the PTR letter's inaccurate, and unduly restrictive, description of an inquiry, given when that letter informed the operator of its right to request a public inquiry. The operator was informed that the purpose of an inquiry was "in order to offer further

evidence as to why the licence should not be revoked”. An inquiry is about more than that. Under the 1995 Regulations, a person entitled to attend an inquiry has the general right to “give evidence, call witnesses, to cross examine witnesses and to address the traffic commissioner”. The OTC’s misleadingly restrictive description of the purpose of a public inquiry diluted the protections afforded by Parliament to operators in the revocation decision-making process. If an inquiry is described as no more than opportunity to provide further evidence, that is bound to dissuade some operators from exercising the right. In the present case, the Commissioner’s subsequent decision (subsequent to the PTR letter) was unfair because it was built on a foundation that undermined procedural protections that Parliament has seen fit to build into the licence-revocation process. For this reason, the Commissioner’s decision involved a further error of law.

Disposal

32. This appeal succeeds. The Commissioner erred in law in giving a direction to revoke this operator’s licence. However, deciding what happens next is not so straightforward. The Commissioner’s revocation direction cannot stand but, at the same time, the Upper Tribunal should not merely set aside the revocation decision and leave it at that because, as things stand, this operator, upon restoration of its licence, would be in breach of the requirement to have a designated transport manager. For a standard licence holder, that is a mandatory ground for revocation under section 27(1) of the 1995 Act.

33. Our order disposing of this appeal, set out above, before our reasons for allowing this appeal, endeavours to put the operator back in the position in which it stood just before the OTC issued its PTR letter. That letter was flawed because it failed properly to explain the operator’s right to request a public inquiry. However, the operator is now well aware of what a public inquiry entails and so it would be artificial to expect the OTC to start the entire regulatory enforcement process afresh. Instead, we have ordered that the OTC’s PTR letter of 26 July 2024 shall have effect as if it were a PTR letter (a notice under section 27(2) of the 1995 Act) given on the day that our decision is issued.

34. Our order means that the operator should respond anew to the OTC's PTR letter dated 26 July 2024, and it has 21 days from the date on which this decision is issued to provide written representations against revocation to the OTC. The operator also has the opportunity to make a fresh request for a period of grace. For 21 days following the date on which this decision is issued, the operator's licence is restored. What happens next is in the hands of a Traffic Commissioner.

Authorised for issue by the Upper Tribunal panel on 11 December 2024.

Given under section 37(2) of the Goods Vehicles (Licensing of Operators) Act 1995.