



[2021] UKUT 168 (AAC)  
Appeal No. T/2020/72

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

**ON APPEAL from the DECISION of the TRAFFIC COMMISSIONER FOR THE  
EAST OF ENGLAND TRAFFIC AREA (Mr Richard Turfitt)**

**Dated: 7 December 2020 (notified: 11 December 2020)**

**Appellant:** Cambridge Removals & Storage Ltd

**C.G.Ward, Judge of the Upper Tribunal  
Mr. L. Milliken, Member of the Upper Tribunal  
Mr S. James, Member of the Upper Tribunal**

**DECISION OF THE UPPER TRIBUNAL**  
Decision date: 8 July 2021

**The decision of the Upper Tribunal, which is to take effect from 2359 hours on  
1 October 2021, is to dismiss the appeal.**

**Subject Matter:**

Operator's licence; revocation; period of grace; submission of incomplete application to appoint new transport manager after expiry of period of grace and determination made to issue revocation direction, but before revocation notified to operator

**Cases referred to:**

T/2011/036 *LWB Ltd*  
T/2015/040 *Tacsi Gwynedd Ltd*  
T/2020/053 *K Ollett Ltd*  
*R(Anufrijeva) v Secretary of State for the Home Department [2003] UKHL 36*

## REASONS FOR DECISION

### Introduction

1. This is an appeal from a decision of the Traffic Commissioner for the East of England Traffic Area taken on 7 December 2020 and communicated by letter dated 11 December 2020. Where abbreviations are used in this decision, DTC refers to the Deputy Traffic Commissioner and OTC to the Office of the Traffic Commissioner.

### Events leading to the Decision

2. The operator held a standard international goods vehicle operator's licence. On 30 June 2020 the existing transport manager was removed online by the sole director. A letter was received from the manager confirming his resignation from that date. An application was made for a Mr Bone to be appointed as the new transport manager, but it was withdrawn on 27 July 2020. On the same date, Mr Mole, director of the operator, wrote to the OTC requesting a period of grace of up to 4 months and indicating

“by way of offering assurances that matters of compliance are at the forefront of our business...that during the time of grace I will undertake the advice and support services of industry experts, Transport Consultancy firm OLMC.”

The letter was emailed to the OTC by OLMC.

3. On 28 July, the OTC wrote to the operator. Material parts of the letter were as follows:

“It has been brought to the attention of the Traffic Commissioner that there is currently no transport manager specified on your licence and that you therefore may no longer satisfy the requirement to be professionally competent. It is a requirement of holding an operator's licence that you either have a transport manager or a period of grace. It appears that you currently do not meet this requirement.

Professional competence is a continuing and mandatory requirement of holding a licence and is only met when a suitably qualified transport manager has been approved on a licence by the traffic commissioner....

Section 27(1) of the Act states that the traffic commissioner 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.

In view of the evidence currently available, the traffic commissioner considers that you no longer satisfy the requirement to be professionally competent. In accordance with Section 27(2) of the Act, I am serving notice that the traffic commissioner is considering the revocation of your operator's licence on the grounds detailed above. Under Section 27(3) you are entitled to make written representations to the traffic commissioner. Any written representations must

be made to this office by 18/08/2020 for the traffic commissioner's consideration.

[Details of how to apply online to add a replacement transport manager were set out]

Furthermore, section 29(1) states that you may request a public inquiry in order to offer further evidence as to why the licence should not be revoked. Any such request must be made to this office **by the date given above**.

...

The traffic commissioner may consider granting a period of grace to enable you to find a replacement and you should consider making such an application. Please note the traffic commissioner is not obliged to grant any such period and is unlikely to do so unless robust evidence of how the requirements will continue to be met is provided. An application for a period of grace must be made in writing and set out what you are doing to resolve the matter. Your application should also explain who will carry out the relevant responsibilities and provide details of their knowledge, skills and connection to the business.

..."

(emphasis in original).

4. This letter evidently crossed with the operator's of 27 July. On 29 July, Aimee Rushby of OLMC emailed the OTC saying:

"We have been sent a letter from yourself regarding the above operator, we have sent a letter requesting a grace period to David Stephenson, please see below email.

I have attached a copy of the letter that has been sent for your records."

5. On 31 July, the OTC wrote granting the period of grace. Material parts of that letter were as follows:

"Thank you for your letter dated 27/07/2020 regarding your transport manager.

Under paragraph 10 of Schedule 3 to the above Act, and in accordance with Regulation (EC) 1071/2009, the Traffic Commissioner has decided to allow your licence to remain in force until 01/12/2020 without a specified replacement transport manager. This is felt a sufficient period for you to regain your professional competence. Before this deadline you must complete a form TM1 and return it to this office with your nominated transport manager's original certificate of professional competence in road haulage operations.

On your application the traffic commissioner has made a finding that you no longer meet the requirement of professional competence so as to allow you the requested Period of Grace. The traffic commissioner has therefore complied with the requirements of section 27(2) of the above Act. The traffic commissioner is obliged to revoke the licence under the provisions of section

27(1)(a) of that Act if you fail to add a suitably qualified transport manager to [your] licence by the deadline stated above. That transport manager must have been accepted by the traffic commissioner as capable of meeting the requirements of section 13A(3).

...

As stated above if, by 01/12/2020 you remain unable to meet the requirement to be professionally competent, the traffic commissioner will revoke your licence under section 27(1)(a) of the Act.”

6. There is no evidence of any further contact at all between the operator and the OTC before 1 December and it is not suggested that there was any. On 3 December the matter was referred to the Traffic Commissioner with a recommendation for revocation under s.27(1)(a) of the 1995 Act (see below).

### The Decision

7. On 7 December, the Traffic Commissioner recorded his decision in the following terms:

“the operator was put on notice of the potential consequences when its application for a PoG was granted. The operator has failed to meet the mandatory and continuing requirement or to correspond. As a matter of fairness to other standard operators, that cannot continue. The [submission] accurately describes the process set out by the UT in the leading case of *Tacsi Gwynedd*. The licence is therefore revoked on the basis of Mr [DTC] Dorrington’s finding under section 27(1)(a).

8. On 10 December an application in form TM1 was received to add Mr Anthony J Lucas as transport manager. The application included his certificate of professional competence but was unsigned and not accompanied by any terms and conditions of employment.

9. On 11 December the Traffic Commissioner ruled

“the decision has already been made by Mr Dorrington. The operator had until the expiry of the PoG to address the mandatory and continuing requirement. It failed to do so and even now the application is incomplete. The UT decision in *Tacsi Gwynedd* sets out the legal position to be applied here. I cannot go behind Mr Dorrington’s finding and there has been no application to extend.”

10. That decision was notified by a letter emailed at 1843 on Friday 12 December. The letter first recited at length the material parts of the letter of 31 July. It continued:

“It is noted that you submitted an application on 10 December 2020 to add a transport manager onto the licence but this was received 9 days after the deadline and the Traffic Commissioner had already directed that the licence was to be revoked.

Traffic Commissioner has therefore revoked your licence with immediate effect in accordance with the grounds stated in our letter.

...

There is a right of appeal against the Traffic Commissioner's decision."  
[Particulars of how to exercise it were then set out.]

### The Stay

11. An application for a stay was refused on 17 December by DTC Dorrington but granted by Upper Tribunal Judge Hemingway on 23 December. In order to address below one of Ms Jones's submissions it is necessary to record that DTC Dorrington's note refusing the stay sets out his view that:

"An operator only becomes professionally competent when a transport manager is actually specified on the operator's licence. Merely sending in the TM(1)G form and accompanying documents is not sufficient."

He went on to explain why the form was the beginning, not the end of the process, citing 2011/036 *LWB Ltd* and 2015/040 *Tacsi Gwynedd Ltd*.

### The Upper Tribunal Proceedings

12. The appeal was heard by the Upper Tribunal by Cloud Video Platform on 10 June 2020. The bundle consisted of 109 pages plus a skeleton argument submitted by Ms Jones. Save that one panel member was unable to appear on screen for technical reasons (but was able fully to participate by sound alone), the hearing passed unremarkably from a technical viewpoint.

### Relevant legislative provisions

13. Section 13A of the Goods Vehicles (Licensing of Operators) Act 1995 ("the Act") prescribes the requirements for standard licences including, by sub-section (2)(d), that

"the traffic commissioner is satisfied that the applicant...is professionally competent (as determined in accordance with paragraphs 8 to 13 of Schedule 3)."

14. Schedule 3, para.8 provides:

"(1) The requirement of professional competence falls to be satisfied by an individual.

(2) Accordingly, where a company is required to satisfy that requirement, it does so if and so long as—

(a) it has in respect of its road transport undertaking a transport manager or managers, and such number of them as the traffic commissioner concerned may require; and

(b) that transport manager, or (as the case may be) each such manager, is—

(i) of good repute, and

(ii) professionally competent.”

15. Section 27 of the Act provides for the revocation of standard licences:

“(1) A traffic commissioner shall direct that a standard licence be revoked if at any time it appears to him that —

(a) the licence-holder no longer satisfies the requirements of section 13A(2),  
...

(2) Before giving a direction under subsection (1) in respect of a licence, a traffic commissioner shall give to its holder notice in writing that he is considering giving such a direction.

(3) A notice under subsection (2) shall state the grounds on which the traffic commissioner is considering giving a direction under subsection (1) and —

(a) shall invite the licence-holder to make written representations with respect to those grounds, and

(b) shall state that any such representations must be received by the commissioner dealing with the matter within 21 days of the date of the notice; and a traffic commissioner may not give a direction under subsection (1) without considering any representations duly made under this subsection.

(3A) A notice under subsection (2) may set a time limit, in accordance with Article 13.1 of the 2009 Regulation, for the licence-holder to rectify the situation.

(3B) If the licence-holder rectifies the situation within the time limit set under subsection (3A), the traffic commissioner must not make the direction under subsection (1).

(4) This section has effect subject to section 29 (and, in particular, nothing in subsections (3) to (3B) above shall be taken to affect a person's right under section 29(1) to require the holding of an inquiry).”

16. Section 29(1) provides so far as material:

“(1) A traffic commissioner shall not—

(a) give a direction under section ... 27(1) in respect of any licence,

...

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

17. Section 35(2) provides that:

“The holder of an operator's licence may appeal to the Upper Tribunal against any direction given under section 5(9), 26(1) or (2), 27(1), 31 or 32 in respect of the licence.”

18. Transport Act 1985, Schedule 4, para.17(3), provides:

“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.”

19. Regulation 1071/2009 of the European Union, pursuant to which relevant parts of the 1995 Act reached their form at the material time, by Article 3(1)(d) requires undertakings engaged in the occupation of road transport operator to have the requisite professional competence. Article 13 sets out a procedure for the suspension and withdrawal of authorisations as follows:

“1. Where a competent authority establishes that an undertaking runs the risk of no longer fulfilling the requirements laid down in Article 3, it shall notify the undertaking thereof. Where a competent authority establishes that one or more of those requirements is no longer satisfied, it may set one of the following time limits for the undertaking to rectify the situation:

(a) a time limit not exceeding 6 months, which may be extended by 3 months in the event of the death or physical incapacity of the transport manager, for the recruitment of a replacement transport manager where the transport manager no longer satisfies the requirement as to good repute or professional competence;

...

3. If the competent authority establishes that the undertaking no longer satisfies one or more of the requirements laid down in Article 3, it shall suspend or withdraw the authorisation to engage in the occupation of road transport operator within the time limits referred to in paragraph 1 of this Article.”

### The Grounds of Appeal

20. There are five grounds of appeal, each of which are considered below, but in an order which reflects how Ms Jones (who had not drafted the original grounds of appeal) presented and developed them at the oral hearing.

Ground 1: The Traffic Commissioner expressly acted on the basis of a revoked statutory provision, namely “paragraph 10 of Schedule 3 to the ...Act” which provided a flawed basis for the Traffic Commissioner’s approach to the case.

Ground 2: The Traffic Commissioner was in error when he asserted that the provisions of section 27(2) of the Act had been complied with when they had not.

Ground 3: The Traffic Commissioner failed to call the operator to a public inquiry or to invite the operator to request a public inquiry and therefore failed to comply with the requirements of section 29 of the Act.

Ground 4: The Traffic Commissioner failed to act reasonably and proportionately towards the operator by revoking the operator’s licence with immediate effect and

only posting the information communicating that decision on the online portal at 18:43 hours on a Friday evening.

Ground 5: By the time of the Traffic Commissioner's decision of 11 December 2020 the operator had "submitted an application on 10 December 2020 to add a transport manager onto the licence" which satisfied the requirement contained in the letter of 31 July 2020, albeit later than the date specified in that letter. The letter of 11 December 2020 contained the Traffic Commissioner's decision together with notification of the operator's "Right of Appeal" against that decision. That letter notified the operator that its licence had been revoked "with immediate effect", namely on 11 December 2020. Consequently the operator had been granted a *de facto* extension to the period of grace from 1 December to 11 December 2020 with the effect that the operator had complied with the requirement of the Period of Grace granted in the letter of 31 July 2020, as so extended, and the operator's licence should not have been revoked.

### Consideration of Grounds

21. Ms Jones accepts that there is no legal difficulty with the OTC's letter of 28 July. She submits that it was with the letter of 31 July that things began to go wrong. By deciding so soon after the letter of 28 July, the DTC's decision failed to allow the time for which s.27(2) provides to make submissions: on the chronology, Mr Mole's letter of 27 July could not have constituted a response to the OTC's letter of 28 July. Similarly, the timing of the DTC's decision had failed to allow the opportunity to request a public inquiry for which s.29(1) provides.

22. There are a number of difficulties with this submission.

23. The letter of 31 July was not itself a direction under section 27(1) (which is what section 27(3) bites upon). The structure of the section makes clear that setting a period of grace is not itself a direction under s.27(1), as a Traffic Commissioner is precluded from making such a direction where a period of grace is set and complied with. Accordingly, by the time the period of grace had expired and the decision been taken on 7 December and communicated on 11 December, the requirements of s.27(3) (representations) and section 29 (public inquiry) had amply been met. Admittedly, such a reading sits uncomfortably with the terms of the letter of 31 July that "the traffic commissioner has made a finding that you no longer meet the requirement of professional competence so as to allow you the requested Period of Grace" and has "therefore" complied with requirements of section 27(2). What constituted compliance with section 27(2) were the letters of 28 July and 31 July, taken together. The latter letter may have been infelicitously phrased but it does not detract from the reality that s.27(2) had been complied with, though not by the stated route. Ground 2 is rejected.

24. A further difficulty with this submission is the email of 29 July. Its terms indicate that it was clearly a response to the OTC's letter of 28 July; and it re-sent the letter of 27 July requesting a period of grace. We do not accept Ms Jones's submission that because the letter of 31 July does not refer to the email of 29 July by which the letter of 27 July was resubmitted, but only to the letter of 27 July itself, that precludes the Traffic Commissioner from treating the letter as resubmitted as a response to the



letter of 28 July: that would be to impose an unreasonably pedantic standard upon letters from the OTC. The request for a period of grace did not seek to dispute that the operator was not professionally competent by reason of lacking a transport manager; it implicitly accepted that by its unqualified request for a period of grace to address the matter. That both followed as a matter of law and had been drawn to the attention of operators and those advising them by para 2.2 of the Senior Traffic Commissioner's *Contingency Temporary Updates to Statutory Documents No.2,3,4,9 and 14*. The operator did not subsequently seek to make any further representations in response to the letter of 28 July, nor to challenge the DTC's decision to afford it the 4 month period of grace<sup>1</sup> it had asked for. Nor can Ms Jones say, even now, what else the operator might have said. She seeks to characterise any answer to that as "speculation"; in the view of the panel, the reality is that in view of the position the operator had adopted by requesting the period of grace, nothing remained to be said.

25. Ms Jones submits that it is implicit in s.27(3) and in the 28 July letter that no decision on professional competence would be taken until the 21 day period for representations to be made had elapsed. Even if that be the case – and in our view it is not, as the express limitation on making a direction under s.27(1) negates the room for further implication – it would be necessary to consider whether Parliament intended it to be a mandatory requirement to allow the 21 days to elapse before deciding whether to allow a period of grace, even where the operator had already made their representations. In the view of the panel, on the hypothesis that we are now considering Parliament's concern would have been to ensure that an operator had an adequate opportunity (21 days) to make their representations before the next step was decided upon. Clearly to make a decision when no representations had been received and the 21 day period had not expired would risk being unlawful. But the panel does not consider that Parliament would have intended where the operator had accepted that there was no dispute that it did not have a transport manager in post at the material time, that the Traffic Commissioner was obliged to wait until expiry of the 21 day period to grant the period of grace. It would serve no useful purpose and would have the consequence of effectively lengthening by up to 3 weeks the period of grace allowed.

26. Similarly, given that the operator had accepted the position and sought time to put it right, there was no reason for it to request a public inquiry. Again, the direction under s.27(1) was not until December, so there was no infringement of s.29(1); but if that be wrong it was for the same reasons not mandatory to wait until the period for requesting one had expired in these circumstances. Ground 3 is rejected.

27. In relation to Ground 1 it is regrettable that what is assumed to be a standard letter makes reference, in 2020, to a provision which was repealed in 2011. However, the panel considers there is no disadvantage to the operator in consequence and it led to no material error of law. The system reflected in the obsolete provision was differently structured: the Traffic Commissioner was prevented from treating the licence holder as failing to satisfy the requirement of professional competence until expiry of the grace period, whereas under the current

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<sup>1</sup> This was consistent with the starting point set by the Senior Traffic Commissioner at para 7 of the *Contingency Temporary Updates*, cited above.

law what is precluded until expiry of the grace period is the revocation of the licence. However, the difference is of form, not substance. So equally is the distinction between a period of grace “reasonably required for the appointment of a new transport manager” under the repealed law and one which sets “a time limit...for the licence-holder to rectify the situation” under s.27(3A). The letters of 27 and 31 July taken together were substantively compliant with s.27(2) and (3A) and Ground 1 is rejected.

28. Turning to matters in December i.e. Grounds 4 and 5, the decision of 7 December as recorded on the case management system is necessarily in summary form. The panel does not read the note that “the licence is therefore revoked on the basis of Mr Dorrington’s finding under section 27(1)(a)” as suggesting that Mr Dorrington’s finding (i.e. as reflected in the 31 July letter) was itself made under s.27(1)(a). The letter of 31 July does not suggest that that was so and the letter of 11 December makes clear that the direction that the licence be revoked was the Traffic Commissioner’s decision (of 7 December).

29. As noted above, the Transport Act 1985 provides that

“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.”

In this case the attempt, by submission of an unsigned Form TM1 on 10 December, to remedy the position occurred after the date of the determination but before notice of it had been given to the operator. It is accepted that

“Notice of a decision is required before it can have the character of a determination with legal effect because the individual concerned must be in a position to change the decision in the courts if he or she wishes to do so. This is not a technical rule. It is simply an application of the right of access to justice. That is a fundamental and constitutional principle of our legal system..”

per Lord Steyn in *R(Anufrijeva) v Secretary of State for the Home Department* [2003] UKHL 36 at [26].

30. The decision did not have effect until notified, therefore, but in our view the limitation created by the Transport Act 1985 is concerned to create a cut-off linked to when the determination is made, providing a form of protection against the underlying decision being undermined by changes after the decision-maker applied their mind to it and promoting administrative certainty. On this view, consideration of the post determination submission of Form TM1 would in any event be ruled out.

31. Ms Jones relies on T/2020/53 *K Ollett Ltd*. In that case, a period of grace to address (amongst other matters) financial standing expired on 5 June 2020. It was Mr Ollett’s evidence that he had sent in the relevant bank statements in the first week of July, but the OTC had no record of receiving them. Mr Ollett’s evidence was accepted by the judge. The decision records that the decision was notified on 14 September 2020. It does not say when it was taken, but it is likely to have been

shortly before that date. The fact that documents were resubmitted after the decision was communicated, relied upon by Ms Jones, was not the basis of the decision. *Olett* appears to have been a case in which, at the time of decision, material documents were not before the Traffic Commissioner, having gone astray through (as found) no fault of the operator. It was not about changing a determination between when it was made and when it was issued and can therefore be distinguished from the present case.

32. However if, contrary to our primary position, we have jurisdiction to consider it (and, though we have not heard argument on it, we are doubtful that a decision whether to revisit a direction already made falls within s.35(2) either), we do not consider that the Traffic Commissioner's decision of 11 December could be said to be "plainly wrong", even if other approaches might have been taken. He took into account inter alia the failure to address the mandatory and continuing requirement of professional competence before the end of the period of grace, that the application was incomplete and there had been no application to extend (as could have been made). Form TM1 contains a lengthy list of bullet-pointed requirements which the proposed manager is required to confirm. They are required to acknowledge their importance by confirming their understanding that should they fail to meet any of those requirements, the Traffic Commissioner can disqualify them from being a transport manager in any European Union country. That the form was incomplete by reason of being unsigned and so confirmation that these requirements would be met was lacking was plainly a highly material consideration.

33. We reject Ground 5, based on an alleged lack of proportionality. Given the terms of s.27(1) and arts.3(1)(d) and 13 of the Regulation there is no room for it to apply to the revocation of a licence when there is no transport manager in post and a period of grace has expired.

34. We also reject the notion that there had been a *de facto* extension of period of grace. The panel considers that a period of grace is what is set by s.27(3A) and art.13 of the Regulation and may be formally extended but is not capable of being extended *de facto*.

35. As an additional point, Ms Jones casts doubt on what the letter of 31 July required the operator to do within the period of grace by turning to DTC Dorrington's observations when refusing a stay, set out at [11]. Indeed, a similar theme can be found in the letter of 31 July itself: "That transport manager must have been accepted by the traffic commissioner as capable of meeting the requirements of section 13A(3)." However, the refusal of the stay of course post-dated the Traffic Commissioner's decision and more generally, there is nothing in the record of the decision of 7 December or in the letter of 11 December to suggest that an asserted need for a replacement transport manager to have been actually specified on the licence before the operator could be considered professionally competent played any part in the decision. The operator did not do (at all) what they had been directed to do by the letter of 31 July and it was not the case that the goalposts had been moved by revoking on the basis of a requirement which had not been adequately or clearly communicated to them.

36. Accordingly, we will dismiss the appeal. We are mindful that loss of the licence will impact not only on the business and those employed by it but on those customers of it who may have made house-moving arrangements, who may well be numerous given the stamp duty concession, albeit now in reduced form, until 30 September. We defer the effect of our decision until 2359 hours on 1 October 2021 to allow an orderly winding-down of the business.

**C.G.Ward**  
**Judge of the Upper Tribunal**

**Mr L Milliken**  
**Member the Upper Tribunal**

**Mr S James**  
**Member of the Upper Tribunal**

Signed on the original on 8 July 2021