



NCN: [2021] UKUT 177 (AAC)  
Appeal No. T/2021/07

**IN THE UPPER TRIBUNAL  
ADMINISTRATIVE APPEALS CHAMBER**

On appeal from the Decision of Miles Dorrington, Deputy Traffic Commissioner for the East of England dated 18<sup>th</sup> December 2020

**Gigrigs Backline Transport Limited**

Appellant

**Before:** Upper Tribunal Judge Her Honour Judge Beech  
Specialist Member of the Upper Tribunal Stuart James  
Specialist Member of the Upper Tribunal Andrew Guest

Hearing date: 13<sup>th</sup> July 2021

**Representation:**

Appellant: Roger Field, Director of the Appellant company

**DECISION**

**The appeal is DISMISSED**

**Subject Matter:** Revocation of operator's licence for lack of professional competence; failure of operator to respond to correspondence

**Cases referred to:** Bradley Fold Travel & Peter Wright v Secretary of State for Transport (2010) EWCA Civ.695.

**REASONS FOR DECISION**

1. This is an appeal from the decision of the Deputy Traffic Commissioner for the East of England ("DTC") dated 18<sup>th</sup> December 2020 when he revoked the Appellant's standard international operator's licence under section 27(1) of the

Goods Vehicles (Licensing of Operators) Act 1995 (“the 1995 Act”) upon finding that the Appellant no longer satisfied the requirement to be professionally competent.

2. The background to this appeal can be found in the appeal bundle and decision letter dated 18<sup>th</sup> December 2020 and is as follows. On 8<sup>th</sup> April 2019, the Appellant was granted a standard international operator’s licence authorising one vehicle and one trailer with the same number in possession. The sole director of the operator was Roger Field and the last nominated transport manager was Jeremy Thorburn. The operating centre was at Oakley Coach Builders, High Cross, Ware.
3. On the 18<sup>th</sup> November 2020, Mr Thorburn emailed the Office of the Traffic Commissioner (“OTC”) requesting that his name be removed from the Appellant’s licence as he had found a full-time transport management position. He gave the name of the company concerned. This resulted in a letter being sent to Mr Field’s email address as well as every known address for the Appellant, by first class post and recorded delivery. One recorded delivery letter was signed for in the name of “Field” and another by “Oakley” on 21<sup>st</sup> November 2020.
4. The letter, which was written by David Taylor, a caseworker in the OTC, informed the Appellant and Mr Field that it had come to the traffic commissioner’s attention that there was no transport manager specified on the Appellant’s licence nor a period of grace in place and that accordingly, the Appellant was no longer professionally competent. The letter went on:

*“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 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 11/12/2020 for the traffic commissioner’s consideration.*

*Your representations may include an application to add a replacement transport manager to your licence. You can do this by using the online facility (website address given).*

*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**”.*

***However, it is important that even if you apply to nominate a transport manager using the online facility you must still respond to this letter by the date specified.** You are also required to give an explanation as to why you failed to comply with the condition to notify the traffic commissioner of the change in your professional competence. ....*

*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. ....*

*A failure to respond to this letter by 11/12/20 will result in the traffic commissioner revoking this licence. The revocation of the licence would render unlawful the operation of vehicles for which an operator's licence is required".*

The letter included the OTC's correspondence address, Mr Taylor's direct telephone number and his OTC email address. Mr Field did not contact Mr Taylor by any of the means set out in the letter nor did he nominate an alternative transport manager or ask for a period of grace or ask for a public inquiry.

5. On the 15<sup>th</sup> December 2020, the matter was referred to DTC Dorrington with a recommendation that the Appellant's operator's licence be revoked with which he agreed providing that a final check take place for emails, including junk folders and paper correspondence from the Appellant. On the 18<sup>th</sup> December 2020, the letter notifying the Appellant of the DTC's decision to revoke its operator's licence was issued.

#### The appeal

6. By way of an Appellant's Notice dated 4<sup>th</sup> January 2021, Mr Field submitted grounds of appeal which can be summarised in the following way:
  - a) The Appellant provided transport to the music and live entertainment industry. Since February 2020, there had been no work available;
  - b) His transport manager left the company giving no notice and at a time when Mr Field had lost one family member to Covid;
  - c) Mr Field did contact David Taylor to notify him that Mr Field would be sitting the transport manager CPC examinations although there were no courses currently available because of Covid;
  - d) The Appellant was unable to pay a transport manager and so he sold his one vehicle and removed it from the operator's licence to save running costs;
  - e) In December 2020, Mr Field lost a second family member to Covid and he tested positive on 19<sup>th</sup> December 2020. He was suffering from ill health and "fear" until 31<sup>st</sup> December 2020 and was not in a position "*mentally*" to reply to the letters he had received;
  - f) Mr Field had spent many years building up the company's business and the revocation of the Appellant's licence would throw away all of his hard work;
  - g) As a director of a company, Mr Field did not qualify for Government assistance and had been forced to take out a Bounce Back loan to survive and to invest in the future success of his business. The Appellant needed an operator's licence.
7. At the hearing of this appeal, Mr Field attended and represented the Appellant. He informed the Tribunal that because of the loss of work, he had removed his vehicle from the Appellant's operator's licence and had entered it into an on-line auction in October 2020. It was sold in December 2020. His intention had

been to buy a larger vehicle once the entertainment industry opened up again and he now had work from the beginning of August. He needed a large goods vehicle.

8. He was not aware that Mr Thorburn had contacted the OTC or that he may no longer be his transport manager until he received Mr Taylor's letter of 20<sup>th</sup> November 2020. He then contacted Mr Thorburn who told him that he was considering stepping down as his transport manager and that he would inform Mr Field of his decision. As a result, Mr Field still believed that the company had a transport manager. He averred that he had in fact contacted Mr Taylor by email and produced the message he sent which is dated 30<sup>th</sup> November 2020 and which was addressed to the email address for: OLCS-Notifications. It reads:

*"Hello Mr Taylor,*

*I recently received a message from my transport manager that he had taken on other duties with another company in which he was responsible for 35 vehicles and so removed himself as my TM. At present my industry is shut down and my vehicle is off the road and has been for the majority of the past year with no site on when it will resume (sic). I intend on taking the management course myself when the courses are resumed. In the meantime I will try and find a new TM."*

Mr Field did not produce the response he had received to this email and he could not recall what it said. We noted that the email address used by Mr Field was not an address that was included in Mr Taylor's letter. The Tribunal required Mr Field to produce the reply, which he did after the appeal hearing and the OTC also furnished a copy. The author was "Mark" from "Operator Licensing Self Service" who responded on 30 November 2020, advising Mr Field that he should contact his caseworker, David Taylor, providing the latter's email address. It is clear that Mr Field did not follow this advice.

9. Mr Field averred that by the time he had sent his own email to the operator licensing self-service email address, he was under the impression that the Appellant's licence had already been revoked and he had not realised that he could apply for a period of grace. His personal life was very difficult at the time. There had been two Covid deaths in his family; he and his son had tested positive for COVID and were required to isolate until 24<sup>th</sup> December 2020; his mother was living on her own and Mr Field had moved in with her for a time. He had contacted an agency to help him recruit another transport manager but once candidates were aware that the company's licence had been revoked, they were not interested. He had enquired about CPC courses himself and had been advised to wait until October 2021 because of changes in the rules as a result of Brexit. Mr Field acknowledged that the DTC's decision was not wrong on the evidence before him, he just was not aware of the human element of the company's position.
10. Mr Field informed the Tribunal that he now had work commencing 2<sup>nd</sup> August 2021 and into December 2021 and that if the Appellant's appeal was unsuccessful, this work would be lost to competitors and he would not get it back, even if he were to apply for a new licence, which would take an

inordinate amount of time. He asked that we allow his appeal and give him an opportunity to continue with his business and to sit his CPC examinations.

11. After the appeal hearing was over, Mr Field also sent to the Tribunal an email with a blank application form to attend a CPC transport manager course between 21 September and 1 October 2021 with an examination scheduled for 5 October 2021 along with some recent email correspondence (9 July and 13 July 2021) with an organisation called “Driver CPC 4U”. He averred that whilst he intended to attend the above course, he also intended to appoint a new transport manager in the interim. He also gave details of the type of new vehicle he intended to acquire and operate under the licence.

### Discussion

12. The combined effect of section 13A and paragraph 8 of Schedule 3 of the 1995 Act is that the holder of a standard licence must satisfy the requirement of being professionally competent and in the case of a company, that requirement is met by the engagement of a transport manager. Section 27(1) of the 1995 Act is clear in its terms. A traffic commissioner **shall** direct that a standard licence be revoked if at any time it appears to him that the licence holder no longer satisfies that requirement. In short, the holder of a standard licence must have either a nominated transport manager or a period of grace granted by a traffic commissioner under section 27(3A) of the 1995 Act.
13. The letter of 20<sup>th</sup> November 2021 had been properly issued by Mr Taylor as a result of Mr Thorburn’s request to be removed from the Appellant’s licence. It could not have been clearer in its terms about what the Appellant was required to do. Mr Field accepted that he received the letter, not only by post but also by email which was delivered on 20<sup>th</sup> November 2020. Whilst we sympathise with all those who have lost loved ones during the COVID pandemic and who have also tested positive for the virus, Mr Field failed to explain to the Tribunal either adequately or at all why it was that he did not make any attempt to respond to the letter of 20<sup>th</sup> November 2021. It is of note that the email he did send to an email address which was not indicated in the letter of the 20<sup>th</sup> November 2020, did not address the issues he was required to address. Indeed, he made no reference to the letter of 20<sup>th</sup> November 2020 at all. Moreover, we do not accept Mr Field’s submissions made to the Tribunal that by that date, he thought the licence had already been revoked. If it had been, there would have been no point in Mr Field sending the email in terms that he did.
14. Mr Field rightly accepted that the DTC’s decision to revoke the Appellant’s licence could not be criticised and that is right. Mr Field failed to correspond with the OTC and in particular, Mr Taylor, in order to address the important issue of professional competence in a timely and appropriate fashion and even failed to ask for a period of grace, an option that was clearly flagged up in the letter of 20<sup>th</sup> November 2021 and which was plainly open for the TC to grant pursuant to s.27(3A) of the 1995 Act.
15. Mr Field urged the Tribunal to take account of the upturn in business which he now wishes to exploit and the evidence that he has enquired about a CPC

course for which he has obtained an application form. Paragraph 17(3) of Schedule 4 of the Transport Act 1985 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.”*

As a result of this provision, the Tribunal cannot take account of the new circumstances that Mr Field now wishes to rely upon.

16. In all the circumstances we are not satisfied that the DTC’s decision was plainly wrong in any respect and neither the facts or the law applicable in this case should impel the Tribunal to allow this appeal as per the test in *Bradley Fold Travel & Peter Wright v Secretary of State for Transport (2010) EWCA Civ.695*. The appeal is dismissed.
17. The Tribunal has already advised Mr Field that if he wishes to continue operating, he must secure the services of a transport manager and make a new application for an operator’s licence along with a request for an interim licence.



**HHJ Beech**

**Judge of the Upper Tribunal**

16 July 2021