



**IN THE UPPER TRIBUNAL
ADMINISTRATIVE APPEALS CHAMBER**

**Appeal No. UA-2024-000078-T
[2025] UKUT 021 (AAC)**

**ON APPEAL from A DECISION of the TRAFFIC COMMISSIONER for the East of
England Traffic Area:**

Norfolk Farm Produce Limited

Appellant

Before: Upper Tribunal Judge Citron, Ms Pepperell and Mr Roantree

Hearing date: 20 November 2024

Hearing venue: Field House, Breems Buildings, London EC4

Representation:

Appellant: Nicholas Yeo of counsel, instructed by Leathes Prior Solicitors

SUMMARY OF DECISION

Goods Vehicles (Licensing of Operators) Act 1995; appellant's operator's licence was revoked by the Traffic Commissioner under section 27 by reason the appellant's nominated transport managers not satisfying the statutory requirements. Held (by a majority): the Traffic Commissioner's direction to revoke was wrong because there had been material procedural unfairness: the Traffic Commissioner knew that a transport manager nominated by the appellant had a forthcoming public inquiry at which his good reputation was to be considered; the appellant did not know this; the Traffic Commissioner did not tell the appellant this and also set the final 'time limit' (for expiration of the "period of grace") a few days before the transport manager's public inquiry, making it inevitable that the Traffic Commissioner would have material information at the date of its decision (the outcome of the public inquiry) which had not been available to the appellant prior to the time limit; and the Traffic Commissioner then made its direction to revoke on the basis of the outcome of that public inquiry (being the disqualification of that transport manager). Revocation direction of the Traffic Commissioner set aside; no further order by the Upper Tribunal, as the Traffic Commissioner's revocation direction had been "stayed" and, in the interim, the appellant appeared to have put forward an alternative transport manager who satisfied the statutory requirements.

Please note the Summary of Decision is included for the convenience of readers. It does not form part of the decision. The Decision and Reasons of the Upper Tribunal follow.

DECISION

The decision of the Upper Tribunal is to allow the appeal. We order that the direction of the Traffic Commissioner to revoke Norfolk Farm Produce Limited's operator's licence, conveyed in a letter of 22 December 2023, be **SET ASIDE**.

Subject matter

Revocation of licences

Time limits for rectifying the situation ("periods of grace")

Procedural fairness

Cases referred to

Bradley Fold Travel Ltd & anor v Secretary of State for Transport [2010] EWCA Civ 695

LWB Ltd [2011] UKUT 358 (AAC)

Egertons Recovery Group Ltd [2022] UKUT 141 (AAC)

Atbus Ltd [2019] UKUT 0032 (AAC)

R (Iran) v Secretary of State for Home Dept [2005] EWCA Civ 982

Autoworx Recovery Ltd [2024] UKUT 421 (AAC)

Ashro Shipping Ltd [2024] UKUT 425 (AAC)

REASONS FOR DECISION

1. In what follows, (unless the context otherwise indicates) references to "sections" (or "s") or "Schedules" are to sections of, or schedules to, the Goods Vehicles (Licensing of Operators) Act 1995; and, to avoid having to say "he or she", the Traffic Commissioner (the "TC") will be referred to as "it".

The revocation direction appealed against

2. The appellant appealed to the Upper Tribunal against a direction of the TC revoking the appellant's operator's licence and notified to the appellant in a letter dated 22 December 2023 (TC's case number OF0079657). That letter

a.

noted that, per a letter from the Office of the TC (“**OTC**”) of 24 November 2023, the appellant had been given until 8 December 2023 to complete its applications nominating Thomas Bell and James Christian Shilling as transport managers, or to nominate an alternative transport manager; and told that this was the final deadline for the appellant to restore its professional competence;

b. noted that the appellant’s response dated 6 December 2023 included the required information in support of Mr Shilling’s application, but not in support of Mr Bell’s, suggesting that the appellant was not pursuing the latter application;

c. stated that the appellant’s application to nominate Mr Shilling as transport manager had been refused owing to his disqualification as a transport manager with effect from 15 January 2024;

d. stated that, in light of the above, the TC was not satisfied that the appellant met the requirements of Schedule 3; the extended period of grace had expired; as a result, the TC had revoked the appellant’s operator’s licence with effect from 9 January 2024 pursuant to s27(1) on the grounds that it appeared to the TC that the appellant no longer satisfied one or more of the requirements of s13A. The letter cited the first and second requirements in s13A (s13A(2) and (3)), which include a requirement of good repute (s13A(2)(b)) and a requirement that the appellant designate a suitable number of individuals (each, a “transport manager”) who satisfy the requirements in paragraph 14A(1) and (3) of Schedule 3 (s13A(3)(b)). (In this decision, for convenience, we shall refer to such transport managers as “**Schedule 3 compliant transport managers**”).

3. On 13 February 2024, the Upper Tribunal issued a direction “staying” the TC’s revocation direction until the appellant’s appeal to the Upper Tribunal was disposed of,.

Jurisdiction of the Upper Tribunal

4. The holder of an operator’s licence may appeal to the Upper Tribunal against a revocation direction given under section 27(1), in respect of the licence: s37(2).

5.

The Upper Tribunal has jurisdiction to hear and determine all matters whether of fact or law for the purpose of the exercise of its functions under an enactment relating to transport. It has the power to make such order as it thinks fit or, in a case where it considers it appropriate, to remit the matter to a TC for rehearing and determination.

6. The Upper Tribunal may not take into consideration any circumstances which did not exist at the time of the determination which is the subject of the appeal.
7. The task for the Upper Tribunal on an appeal is to conclude whether or not, on objective grounds, a different view from that taken by the TC is the right one or (meaning the same thing) whether reason and the law impel the Upper Tribunal to take a different view (*Bradley Fold Travel and anor v Secretary of State for Transport* [2010] EWCA Civ 695 at [40]).

The Upper Tribunal proceedings in this case

8. We had before us a bundle of 203 pages (which included a bundle of 144 pages prepared by OTC), a written skeleton argument of the appellant, a chronology prepared by the appellant, and 73 pages of additional evidence from the appellant.
9. The additional evidence included a letter of 8 March 2024 from the appellant's solicitors to OTC, referring to the stay granted by the Upper Tribunal, and stating that the appellant wished to add a transport manager to its licence, Steven Braim; attached were a copy of a completed form from TM1, a statement by Mr Braim about how he would be continuing to manage his hours, and qualification and refresher training certificates from 2009 and 2021. There was also a printout dated 26 March 2024 from the OTC's system, indicating that an online application had been made in respect of Mr Braim.
10. We are grateful to Mr Yeo for his submissions on the appeal and his clearly and carefully presented documentary material.
11. Mr Yeo also sent the Upper Tribunal, at the same time as his skeleton argument, written "submissions relating to stay". We note the following:
 - a. the issue of "stay" was not before the Upper Tribunal in the hearing of the appeal itself; nor did the case management directions require or envisage submissions on that issue; however,

b.

in granting a stay at an earlier stage in the proceedings, Upper Tribunal Judge Mitchell had given as one of the reasons, that the Upper Tribunal may wish to address doubts expressed by the TC, at the stay stage, as to the correctness of the Upper Tribunal's decision in *Ptarmigan* (and if the appellant went out of business before the appeal was heard (on account of no stay having been granted), leading to withdrawal of the appeal, that opportunity would be lost); and the appellant had interpreted that as meaning that issues relating to stay would or could be considered in the Upper Tribunal's appeal decision.

Our view is that because the pre-hearing case management of this appeal has not envisaged a hearing of the "stay" issues at the appeal stage (by, for example, inviting observations from the TC), it would not be fair and just for us to give our views on those issues. We therefore decline to do so.

Background about the appellant

12. The appellant's business is the production, storage and distribution of its own farm produce, in particular potatoes, rhubarb and carrots; and the storage and distribution of farm produce, in particular potatoes, sugar and grain, for third party customers. The appellant remains a family business. As part of its distribution process, the appellant runs a fleet of lorries, employing five drivers and two workshop members of staff.
13. The appellant obtained its operator's licence in 1993.

Events leading up to the TC's direction to revoke

14. On 25 March 2023, the appellant's transport manager, who had been in post since 2015, unfortunately died, after a short illness. OTC was informed on 28 March 2023.
15. On 1 April 2023 OTC wrote to the appellant under the heading, "Loss of transport manager". The opening paragraph stated in bold type that failure to address the concerns raised in the letter would result in the TC revoking the licence; it said that this applied even if the appellant had already submitted an application to nominate a new transport manager which had not yet been granted by the TC. The letter cited s27(1) and stated that it appeared to the TC that the second requirement in s13A was no longer satisfied (designating a suitable number of Schedule 3 compliant transport managers). It said that the letter was notification

under s27(2) that the TC was considering giving a revocation direction under s27(1). It said that the appellant could make written representations to the TC, by 22 April 2023. It said that s29(1) allowed the appellant to request a public inquiry, in order to offer further evidence as to why the licence should not be revoked. It said that the representations could include an application to add a replacement transport manager to the licence. It said that the TC may consider granting a period of grace to enable the appellant to find a replacement or whilst its nomination of a new transport manager was being considered – but the appellant had to ask.

16. On 18 April 2023 the appellant wrote to OTC asking for a period of grace to allow the appellant to complete its plan over the next six months. That plan involved the appellant's longstanding general manager, Mr Hornigold, attending a course in May 2023 to qualify as a transport manager; and the appellant seeking to employ a suitable candidate in the next few weeks whilst Mr Hornigold completed the course. Once Mr Hornigold passed the course, he would take over the day to day responsibilities and develop the role through CPD on a continuous basis.
17. On 15 May 2023 OTC wrote to the appellant giving a period of grace until 12 August 2023.
18. On 20 July 2023 the appellant wrote to OTC saying that Mr Hornigold had failed part of the course for qualifying as a transport manager. It said that he was booked to re-sit the exam on 2 October 2023. The appellant asked OTC to grant "the full 9 months grace period" to allow him to retake the exam and receive the results. It said that they had been conducting interviews with prospective candidates to fill the position, regardless of Mr Hornigold's results, and would have someone in place before the end of September.
19. On 24 July 2023 OTC wrote to the appellant saying that the period of grace would now end on 12 November 2023.
20. On or around 30 October 2023, the appellant submitted an application to add Mr Bell as a transport manager. OTC wrote to the appellant on 31 October 2023 saying that the application was incomplete (including that Mr Bell had attained his relevant certificate more than 10 years ago).
21. On 9 November 2023, the appellant submitted an application to add Mr Shilling as transport manager.

22.

On 24 November 2023, OTC wrote to the appellant, referring to its application to nominate Mr Bell and Mr Shilling as transport managers; the letter said that the TC had declined to accept the nominations, as both required additional information/documents. The letter said that the appellant's extended period of grace had expired on 12 November; it said that "this may be the final deadline the traffic commissioner will grant you to restore your professional competence". It said that the information had to be provided by 8 December 2023. The letter said that the issue with regard to Mr Bell was that his certificate was more than 10 years old. It said that he needed to provide details of any professional development undertaken, or the appellant needed to offer an undertaking for Mr Bell to attend training within three months. The letter said that the issues with regard to Mr Shilling were (i) the proposed working hours for him were less than OTC recommended (ii) he had other responsibilities which might impact his availability; under this heading, the letter also said that Mr Shilling had ongoing issues due to his involvement with a previous licence; in the following line, it said Mr Shilling was involved with another licence with adverse history (iii) OTC needed more information about the arrangement between the appellant and Mr Shilling. The letter said that what the appellant had to do as regards Mr Shilling was (1) for him to confirm that he would be dedicating a minimum number of hours to reflect the licence's vehicle authorisation (2) for him to provide a document explaining how he would meet the requirements of the role, to ensure continuous and effective management of the appellant's and any other licence he was specified on and (3) upload the contract for services signed by Mr Shilling and the appellant.

23. OTC's letter of 22 December 2023 stated that the appellant's response to OTC's 24 November 2023 letter, dated 6 December 2023, included the required information in support of Mr Shilling's application (but not Mr Bell's). One of the documents uploaded to OTC by the appellant on 6 December 2023 was a one-page document signed by Mr Shilling on 4 December 2023, which states, under the heading "Statement of Fact": "It is known to Traffic Commissioner regarding issues with previous company that I was external transport manager. This being Coast Transport Limited. There was almost no knowledge of what was happening within the business, as the director kept everyone at arm's length, and decided to deal with issues themselves. As a result, I am now undertaking a transport manager refresher (2 day) from Thursday 7th – Friday 8th December, with National Compliance Training. Meeting with Traffic Commissioner on Monday 11th December."

24.

An internal OTC memo from 14 November 2023, created by a member of staff, includes that Mr Shilling had ongoing compliance issues, including a pending public inquiry due to be held on 11 December 2023; it was called specifically due to Mr Shilling's reluctance to attend a 'PH' that was set for October 2023; the memo said that good repute was in question in the inquiry on 11 December.

25. An internal OTC memo from later the same day, created by the OTC decision-maker, includes the observation that the second application, to add Mr Shilling, was more problematic (than the application for Mr Bell), as not only would the TC require additional evidence in relation to how he intends to maintain continuous and effective control, but in addition he was due to attend a transport manager only public inquiry (on 11 December) and his repute remains in question. The internal memo indicates that the decision-maker envisaged a final extension of 14 days to complete the applications in their entirety or nominate a suitable alternative.
26. An internal OTC memo from 19 December 2023 says, amongst other things, that Mr Shilling apparently chose not to attend the public inquiry on 11 December; and the deputy TC disqualified him to take effect on 15 January 2024.

Events subsequent to the TC's direction to revoke

27. The appellant's solicitors wrote to the TC on 4 January 2024 seeking reconsideration of the TC's direction to revoke. This represented that the appellant did not appreciate (and had not been told by Mr Shilling) that Mr Shilling's "meeting" with the TC on 11 December 2023 (as Mr Shilling described it in the document he signed on 4 December 2023) was in fact a public inquiry at which his good repute was at issue.
28. The letter said that the appellant had taken steps to identify a suitable alternative candidate for transport manager, Mr Braim, who was available and qualified; in the alternative, it asked for a public inquiry.
29. OTC responded on 5 January 2024, refusing the appellant's requests, other than extending the date on which revocation would take effect, to 22 January 2024.

The appellant's case in brief

30. The appellant's grounds of appeal were:

a.

the TC paid insufficient regard to relevant matters which militated against revocation in this case (such as prior conduct, the reason why there was no transport manager, and conduct since the loss of the transport manager);

b. the decision to revoke was unlawful because the declared ground of revocation was not known to law; (this was because the TC's letter of 22 December 2024 referred to a failure *by the appellant itself* to be professionally competent (tracking section 13A(3)(a)), rather than a failure to *designate one or more Schedule 3 compliant transport managers* (and so track s13A(3)(b)) (emphasis in italic and bold by us);

c. the decision to revoke was unlawful because there was no effective opportunity to make written representations because:

i. revocation took place on a different ground to that of which notice had been given (the reason given in the 22 December 2024 letter was the appellant's own lack of professional competence (as opposed to the failure to designate suitable transport managers – see b. above));

ii. the TC failed in his duty to seek written representations at the time of the decision to revoke (due to the long gap between the TC's letter inviting representations as required under s27(3) (1 April 2023) and the making of the decision to revoke (over eight months later), natural justice required that the appellant be given an opportunity to comment on the reasons the efforts to rectify the situation had failed, and any culpability in that regard);

d. the TC was wrong to revoke without first granting the holder a further period of grace (up to the maximum nine months permitted by law);

e. it was unlawful to revoke without first holding a public inquiry (natural justice compelled the holding of a public inquiry in this case);

f. it was unlawful to revoke without giving sufficient reasons;

g. it was unlawful to revoke because it was a disproportionate to do so.

31. The appellant submitted that if the appeal were allowed, the Upper Tribunal should simply quash the revocation direction (and make no further order); this was on the basis that

- a.
Mr Braim had been acting as the appellant's transport manager since January 2024;
- b. Mr Braim clearly met the criteria in Schedule 3;
- c. Mr Braim's application (to be appointed as a transport manager for the appellant) has been pending since April (2024); and
- d. the appellant's good compliance record has continued.

Was the TC's direction to revoke wrong?

32. The statutory scheme relevant to the events set out above is that of sections 27 and 29: the TC is required by statute to direct revocation of a licence where, amongst other things, the licence-holder no longer has a Schedule 3 compliant transport manager; the statute itself sets out certain procedural requirements, such as the giving of notice by the TC, with its grounds; a 21-day period for the licence holder to make representations, which the TC must consider; a power of the TC to set a time limit (not to exceed, in this case, 9 months after the giving of notice by the TC) for the licence holder to rectify the situation, with a prohibition on the TC making the direction if the licence holder rectifies the situation within the time limit (the period up to the end of the time limit is known as a "period of grace"); and the right of the licence holder to require that the TC first hold an inquiry (known as a "public inquiry").
33. In this case, a period of grace was granted, albeit in increments – ultimately, the time limit set by the TC was 8 December 2023 – and the way in which the appellant was trying to "rectify the situation" was to designate one or more Schedule 3 compliant transport managers. In a nutshell, the TC's reasoning for directing revocation was that, by the time limit, no Schedule 3 compliant transport manager had been designated. That was because, in simple terms, the appellant had not, following the TC's letter of 24 November 2023, pursued the nomination of Mr Bell – and the TC had decided that Mr Shilling, the appellant's other candidate, did not meet the Schedule 3 requirements owing to his imminent disqualification as a transport manager.
34. We note case law that shows that the onus was on the appellant to persuade the TC that its transport manager candidates were Schedule 3 compliant:
 - a. "The starting point for consideration of this issue is that in the case of an applicant for an operator's licence, who nominates a

transport manager, or the nomination of a new transport manager by an existing operator, it is for the applicant or operator to satisfy the Traffic Commissioner that the person concerned can fulfil the role of transport manager.” *LWB Ltd* [2011] UKUT 358 (AAC) (under the Public Passenger Vehicles Act 1981) at [15];

- b. “We reject the proposition that an operator can simply designate a new transport manager and acquire professional competence from that moment without reference to a TC (the something else to be done). Operators will not be professionally competent unless the proposed transport manager is formally nominated and a TC is satisfied of all the required matters whether at the outset when an application for a licence is applied for or when the operator is proposing to replace or add a transport manager or has lost professional competence and is given a period of grace to rectify the position within the period given ...” *Egertons Recovery Group Ltd* [2022] UKUT 141 (AAC) at [37];
- c. “It is for the operator to determine within the period allowed whether to request a public inquiry or make representations (including the nomination of a new transport manager) and/or request a period of grace”. *Egertons* at [39].

The decision of the majority of the panel

- 35. As we have been unable to reach a unanimous decision, what follows in this sub-section is the reasoning of the majority of the panel (Judge Citron and Ms Pepperell) – which, under regulation 8 of the First-tier Tribunal and Upper Tribunal (Composition of Tribunal) Order 2008, is the decision of the Upper Tribunal. In the following sub-section, the views of the minority (Mr Roantree) are summarised.
- 36. The strand of the appellant’s case which the majority has found persuasive is that which points to unfairness in the procedure which culminated in the TC directing revocation because Mr Shilling was not a Schedule 3 compliant transport manager. There are two aspects to the procedure followed by the TC, following the appellant’s nomination of Mr Shilling in mid-November 2023, that

appear to the majority of the panel unfair, both linked to the fact that the TC knew that Mr Shilling had a public inquiry on 11 December 2023 at which his good repute was to be considered:

- a. first, that the TC did not share this important information with the appellant (or confirm that the appellant was aware of it) at any time prior to the time limit set by the TC; and
- b. second, that the TC set a time limit that fell three days before Mr Shilling's public inquiry was due to be held.

37. The reason the first aspect above is, in the majority's view, procedurally unfair is based on the following factual findings, which we make unanimously

- a. the fact that, prior to the time limit, the appellant did not know this important information; in making this finding, we note that in the letter to the appellant of 24 November 2023, OTC stated that Mr Shilling had ongoing issues due to his involvement with a previous licence with adverse history – however, this omits the important details of the forthcoming public inquiry at which Mr Shilling's good repute was at issue; we also note Mr Shilling's statement in his 4 December 2023 document that he had a meeting with the TC on 11 December 2023 – this too omits important details; and we accept the appellant's evidence that it did not know that what Mr Shilling had on that date was a public inquiry in which his good repute was at issue;
- b. the fact that the outcome of Mr Shilling's public inquiry was determinative of the TC's decision to direct revocation; and
- c. our finding, based on all the circumstances of the case and the statutory framework as described above, that if the appellant had known this information prior to the time limit, it would have taken steps that could well have changed the outcome, including one or more of the following:
 - i. withdrawing Mr Shilling's nomination and instead pursuing that of Mr Bell by providing what was required in that regard in the TC's letter of 24 November 2023;
 - ii. requiring that the TC hold a public inquiry;

iii.

requesting that the TC extend the period of grace (the maximum 9 month period would have been until the beginning of January 2024).

38. In the view of the majority of the panel, the procedural unfairness in the context of the findings above is essentially that the TC's decision was made on the basis of information that it had, but the appellant did not; and that, had the appellant had the information, it is reasonable to suppose that the outcome would have been different (because the appellant would have nominated a Schedule 3 compliant transport manager by the time limit, or by the time of the holding of a public inquiry).
39. In the majority's view, the second aspect of procedural unfairness identified at paragraph 36 above – the TC's setting the time limit three days before Mr Shilling's public inquiry – stands in addition to the first. In other words, even if the appellant had, in fact, known, prior to the time limit, about Mr Shilling's forthcoming public inquiry, it would still have been procedurally unfair to set the time limit at three days prior to that inquiry. This is because, even though, prior to the time limit, the appellant knew about Mr Shilling's public inquiry, it did not know (and could not possibly have known) its outcome; and the outcome was determinative of the TC's revocation direction. The procedural unfairness is that the time limit set made it inevitable that the TC would have information before it, when deciding whether to direct revocation, that the appellant did not have (and could not have had) prior to the time limit. To put it in positive terms: given the importance of the outcome of Mr Shilling's public inquiry to the TC's decision as to whether to direct revocation, procedural fairness required that the appellant be given chance to react to it (including by one of the steps at paragraph 37c above), prior to the making of any decision by the TC; this could have been achieved by setting a later time limit (to the extent allowed by law) and/or holding a public inquiry.
40. In that regard, we note the Upper Tribunal's decision in *Atbus Ltd* [2019] UKUT 0032 (AAC) where, in a complex factual matrix that engaged the same statutory framework as this case, it was held (at [34]) that "the circumstances and matters of fairness dictated that a PI ought to have been held".
41. As to whether the procedural unfairness we have identified engages our jurisdiction, we believe it does: we have jurisdiction to hear an appeal against the TC's revocation direction; and, in the words of *R (Iran) v Secretary of State for Home Dept* [2005] EWCA Civ 982 at [9], "committing or permitting a procedural or other irregularity capable of making a material difference to the

outcome or fairness of the proceedings” is a legal error; indeed, it is well established in appeals of this kind that breaches of the rules of natural justice in the procedure adopted by the TC render the TC’s decision wrong and susceptible to set-aside. Here, the unfairness (in the view of the majority) in the procedure leading to the revocation direction (and which was material to the making of that direction) means that the direction itself was in error of law.

42. It follows from the above that the TC’s decision was, in the view of the majority (and therefore of the Upper Tribunal), legally flawed and so wrong, and falls to be set aside.

Summary view of the minority of the panel

43. The view of the minority, in summary, is that, viewed in context, the TC’s decision to revoke the appellant’s licence did not involve material procedural unfairness. The contextual facts on which the minority places particular weight are:
- a. the fact that on 20 July 2023 the appellant told OTC that it was conducting interviews and would have a transport manager in place before the end of September
 - b. the fact that OTC had consistently urged the appellant to take action and that the result of failure to take action within the time limit would be revocation of the appellant’s licence
 - c. the fact that, despite this, the appellant’s nominations of Mr Bell and Mr Shilling were made very close to the expiry of the period of grace granted
 - d. the fact that the appellant did not explain to OTC why Mr Bell’s nomination was not pursued, following OTC’s letter of 24 November 2023
 - e. the fact that (as stated in the appellant’s grounds of appeal) Mr Shilling had worked for the appellant between 2009 and 2017.
44. The minority takes the view that, even though the TC had, and relied on, information that the appellant did not, that was not procedurally unfair, as it was for the licence-holder to discover, by its own diligence, relevant information about its nominated transport managers, including, in this case, the information about Mr Shilling known to OTC.

Disposal

45. Having decided to allow the appeal and set aside the revocation direction for error of law, we have considered whether to make any further order. We note that because a stay was granted in this case, our allowing the appeal and setting aside the revocation direction continues, rather than alters, the status quo. On the evidence before us, the appellant has made reasonable endeavours to designate Mr Braim as its transport manager. We agree with the appellant's submission that it is unnecessary for us to make any further orders, as it will now be for the TC to respond, if it has not done so already, to that nomination. We are aware that in *Autoworx Recovery Ltd* [2024] UKUT 421 (AAC) and *Ashro Shipping Ltd* [2024] UKUT 425 (AAC) (published on 18 December 2024 and 8 January 2025 respectively i.e. subsequent to the hearing of this appeal), the Upper Tribunal, in factual matrices engaging the same statutory framework as this case, did make orders upon allowing the appeal; but it seems to us that was the result of the different facts in those cases, including that there had been no stay of the TC's revocation directions in those cases.
46. In the light of the above, it is unnecessary for us to consider the appellant's other arguments and grounds. We would however make clear that we did not accept the argument that the revocation direction was in error of law by reason of the 22 December 2023 letter seemingly referring to a failure to satisfy s13A(3)(a) (because it referred to the appellant itself not being professionally competent), when that provision could not apply, given that the appellant was not an individual; in our view, it was obvious from the context that the provision being invoked was s13A(3)(b) (which applies to companies, and cross refers to the requirements of Schedule 3, which include the professional competence of *the designated transport managers*). The letter expressed itself clumsily; but that does not in our view amount to a material legal error, as the context made clear what was meant.

Zachary Citron
Judge of the Upper Tribunal

Kerry Pepperell
Gary Roantree
Members of the Upper Tribunal

Authorised by the Judge for issue on 20 January 2025