IN THE UPPER TRIBUNAL **Appeal No. *UA-2023-001477-T***
ADMINISTRATIVE APPEALS CHAMBER **NCN: [2024] UKUT 169 (AAC)**

(TRAFFIC COMMISSIONER APPEALS)

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

Before:	Ms L. Joanne Smith: Judge of the Upper Tribunal Mr D. Rawsthorn: Member of the Upper Tribunal Mr M. Smith JP: Member of the Upper Tribunal
Appellant:	Qasim Saleem t/a MS Foods Ltd
Respondent:	Traffic Commissioner (East of England)
Reference No:	OF0228475
Decision under appeal:	9 October 2023

DECISION OF THE UPPER TRIBUNAL

THE APPEAL IS ALLOWED.

The decision to revoke the Appellant's operator's licence, dated 9 October 2023, is set aside and the matter is remitted for re-determination before a different Traffic Commissioner. In light of the decision of the Traffic Commissioner being set aside, the stay decision, dated 18 October 2023, comes to an end.

Subject matter:

Revocation of operator's licence. Loss of repute.

REASONS FOR DECISION

1. This is an appeal to the Upper Tribunal brought by Mr Qasim Saleem, the sole director ("the director") of MS Foods Ltd ("the Appellant company"), against a decision of the Traffic Commissioner for the East of England Traffic Area ("the TC"), contained in a letter dated 9 October 2023. The TC had, in that letter, outlined his decision to revoke the Appellant's operator's licence with effect from 4 October 2023, and indicated that he was considering making a disqualification order.

2. This appeal was considered on the papers, with the consent of all parties.

Background facts

3. The Appellant company held a Restricted Goods Vehicle Operator's Licence authorising 15 vehicles and 9 trailers. On 6 June 2023, The Driver and Vehicle Standards Agency (the "DVSA") issued a prohibition in respect of the Appellant company's vehicle, registration BD68 YHM, as it had been found to be overloaded. DVSA vehicle examiners attempted to make contact with the director of the Appellant company operator via email, and by letters dated 18 July 2023, 27 July 2023 and 4 August 2023. No reply was forthcoming. A telephone message was left on 8 August 2023 and again there was no response. On 18 August 2023, a representative of the Appellant company informed the vehicle examiner that the email address the DVSA held was no longer monitored or used, and an updated email address was provided.

4. The vehicle examiner then sent an email to the updated email address asking for the director of the Appellant company to contact the DVSA's Remote Enforcement Office, and to update the licence details recorded on the Vehicle Operator Licensing (VOL) system. The Office of the Traffic Commissioner (the "OTC") was also contacted and made aware of the prohibition in force for the Appellant company's vehicle. The OTC served formal notice on the Appellant company, dated 12 September 2023, informing it of the TC's

proposal to revoke the Appellant company's operator's licence. The OTC received no response to the notice, hence the matter was referred to the TC for determination. On 9 October 2023, the TC determined that the Appellant company's operator's licence was revoked, with effect from 4 October 2023. It was determined that the Appellant company was no longer fit to hold an operator's licence due to adverse findings demonstrating breaches of the conditions of the operator's licence under sections 26(1)(b), 26(1)(f) and 26(1)(h) of the Goods Vehicles (Licensing of Operators) Act 1995 ("the Act"). The TC indicated to the Appellant company that he was considering imposing a disqualification order under s. 28 of the Act, to disqualify the company or any of its directors from holding another operator's licence (either indefinitely or for a specified period) and from being the director of another company which holds an operator's licence. The TC allowed the director of the Appellant company 14 days to make representations as to this proposal to disqualify.

5. On 13 October 2023, the director responded to the TC's decision letter by email, seeking to make representations regarding the proposed disqualification under s.28, and also stating his intention to appeal the decision to revoke the Appellant company's operator's licence. He explained that his recent lack of correspondence was due to having travelled to Pakistan to be with his family, as his father had passed away on 4 September 2023. He had returned to the UK around 13 October 2023, received the decision letter and responded swiftly thereafter. The director provided the TC with copies of emails that he had sent to the DVSA, dated 12 September 2023 and 13 September 2023, which he had sent in response to the vehicle examiner's enquiries, but which had not been put before the TC in making his decision to revoke the Appellant company's operator's licence.

Permission to appeal

6. The director submitted form UT12 Application for Permission to Appeal to the Upper Tribunal dated 12 October 2023 (and received by the Upper Tribunal the following day) seeking permission to appeal the decision of the TC, on the

basis of miscommunication and misunderstandings between himself, the DVSA and the TC, part of which arose as a result of the director leaving the country following the death of his father. The director provided a log of emails indicating that he had been corresponding with the DVSA following its enquiries with him, but he had not received any reply to his correspondence. The director, on behalf of the Appellant company, requested a stay of the TC's decision to revoke its operator's licence, pending the outcome of the appeal.

7. The TC granted a stay on 18 October 2023. Within that stay decision, the TC stated, at paragraph 8:

> *"8. There is no legal provision for a Traffic Commissioner to review a revocation decision. At this stage I am unable to anticipate how the appellant might argue that I was not entitled to revoke following a failure to respond to the OTC. However, it is right to recognise that I may have adopted a more extended process, were I aware of the emails which were sent to DVSA. It is unfortunate that these were not referred to OTC at the time and there would appear to be lessons to be learned within the Agency. It is also unfortunate that the operator's staff did not fully appraise my office of the family situation."*

8. He went on to state, at paragraph 9 of the stay decision:

> *"9. In the circumstances I am satisfied that it is just to stay this decision pursuant to section 26(2) to allow for an appeal to be lodged, failing which the revocation will take effect. It will be necessary for the Office of the Traffic Commissioner is* [sic] *confirm with the Registrar that an appeal has been lodged within the prescribed period. If such appeal is received by the Upper Tribunal, I invite it to remit the matter for redetermination. A copy of this Stay decision is to be sent to the Registrar of the Upper Tribunal."*

9. The Appellant's views were sought as to determining this appeal on the papers, and with regards to the TC's proposal to remit the matter for redetermination (see the Directions Notice of Judge Mitchell dated 7 March 2024). No objections were put forward on behalf of the Appellant company.

Decision

10. The appeal was lodged in time. In light of the TC's request to remit this matter for re-determination, and in the absence of any objections to this course of action on behalf of the Appellant company, we find it to be in the interests of justice to allow this appeal and remit the case to a different TC for re-determination. The stay decision dated 18 October 2023 comes to an end in light of the decision to revoke the Appellant company's operator's licence being set aside.

Ms L Joanne Smith
Judge of the Upper Tribunal

Mr D Rawsthorn
Member of the Upper Tribunal

Mr M Smith, JP
Member of the Upper Tribunal

(Authorised for issue on)
10 June 2024