



NCN: [2020] UKUT 364 (AAC)
Appeal No. T/2020/53

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

**ON APPEAL from a DECISION of the TRAFFIC COMMISSIONER for the East of England
Traffic Area made on 14 September 2020**

Before: Mr M Hemingway: Judge of the Upper Tribunal

Appellant: K Ollett Limited

Reference: OF1100966

Considered on the papers on 17 December 2020

Subject matter:
Financial standing.

**DECISION OF THE UPPER TRIBUNAL
(ADMINISTRATIVE APPEALS CHAMBER)
ON AN APPEAL AGAINST THE TRAFFIC COMMISSIONER FOR THE EAST OF
ENGLAND**

Decision

This appeal succeeds. I set aside the decision of the Traffic Commissioner (“the TC”) embodied in a letter of 14 September 2020 and made under reference OF1100966. I refer the matter to the TC who made that decision so that he may either make a fresh decision himself or, if he considers it appropriate, direct a different TC to do so.

REASONS

1. The appellant is a limited company. I shall refer to it as “the operator”. It appears that its sole director is one Keith Ollett. On 10 March 2011 it was granted a standard international goods vehicle operator’s licence. Some regulatory concerns subsequently arose and that led to the operator being called to a public inquiry (“PI”). That took place on 5 March 2020. Mr Ollett was in attendance. The TC (in fact the Chief Traffic Commissioner) curtailed the licence so that it authorised only 5 vehicles and 9 trailers and made adverse findings concerning professional competence and financial standing. But rather than simply revoking the licence in view of those adverse findings (a course of action which would in principle have been open to him) he decided to give the operator a period of grace of 3 months, to expire on 5 June 2020. In other words, he gave a three-month window of opportunity for matters to be rectified.

2. The operator dealt with the concerns concerning professional competence through Mr Ollett attending a transport manager certificate of professional competence refresher course. As to the concerns concerning financial standing, Mr Ollett asserts that he waited for original bank statements to be sent to him and that he then posted them to the Office of the Traffic Commissioner (OTC) in the first week of July though he did not send them by recorded delivery or any other form of secure post. He observed in a subsequent e-mail to the OTC, “*there was no point in sending them registered mail as nothing is signed for in these times*”. But if he did send the bank statements to the OTC they somehow went astray. On 14 September 2020 the OTC wrote to the operator telling it that its licence had been revoked. It was made clear in the letter that it was accepted that the professional competence requirements had now been met but, as to financial standing, it was said “*To date no financial evidence seems to have been received. The operator’s licence has therefore been revoked with immediate effect*”. But the TC granted a stay of the effect of his decision, thus enabling the operator to continue in business pending an appeal to the Upper Tribunal.

3. The operator did appeal to the Upper Tribunal and that appeal was received on 2 October 2020 and was, therefore, in time. The relevant ground of appeal is that the bank statements had been sent in early July 2020 and that they showed the operator had sufficient funds readily available to it in its business account to meet the financial standing requirements. Mr Ollett, or I think a family member seeking to assist him, subsequently e-mailed copies of what appear to be online bank statements to the OTC on 18 September 2020 which was, of course, after the revocation decision had been taken. Those statements spanned the period from 2 March 2020 to 30 June 2020.

4. The key questions in this appeal are, it seems to me, whether Mr Ollett did send the bank statements to the OTC when he says he did and, if he did, what happened to them. I should say, at this stage, that the position of the OTC is that it has no record of receiving any such bank statements in July 2020.

5. I have decided to accept Mr Ollett's contention that he did send them when he says he did. On balance I further conclude it is more likely than not they they subsequently went astray having been received by the OTC (though that is not at all to be construed as an implied criticism of the OTC's administrative staff). I proceed on that basis. That is because I think it unlikely that if Mr Ollett were minded to appropriately deal with the professional competence issue he would simultaneously do nothing about the financial standing issue; because he has been consistent about his having sent the bank statements in July of 2020; because there is always some scope for documentation to go missing in busy offices however well run they are; because the disruption caused by the coronavirus pandemic might have impacted adversely and very understandably upon the OTC's ability to properly deal with all written material sent to it; and because I think if Mr Ollett was simply lying to the Upper Tribunal he would probably have claimed to have sent the bank statements within the time given by way of the period of grace (the last date of that period being 5 June 2020) rather than after time had expired.

6. In light of the above I have concluded that the TC who made the decision was unwittingly and entirely blamelessly in error through making a decision to revoke without all of the relevant material being before him. So, I set aside the decision to revoke. But rather than remaking the decision in the Upper Tribunal I have decided it is appropriate to remit. That is because a period of grace having been given and subsequent, though seemingly late evidence, having been provided, it is right that the TC (or if thought appropriate a different TC) should have the opportunity to consider whether matters have now been rectified and, if so or if not, what should follow either way.

M R Hemingway
Judge of the Upper Tribunal
17 December 2020