



NCN: [2021] UKUT 138 (AAC)
Appeal No. T/2020/64

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

ON APPEAL from a DECISION of the TRAFFIC COMMISSIONER for the East of England

Before: M Hemingway: Judge of the Upper Tribunal
D Rawsthorn: Member of the Upper Tribunal
A Guest: Member of the Upper Tribunal

Appellant: Manzoor Hussain Shah

Reference: PF2017444

Heard At: Birmingham on 21 May 2021

DECISION OF THE UPPER TRIBUNAL

This appeal to the Upper Tribunal is allowed. The case is remitted to the Traffic Commissioner for re-determination.

Subject matter:

Financial requirements (restricted licences)

CASES REFERRED TO

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

REASONS FOR DECISION

1. This appeal to the Upper Tribunal has been brought by Mr Manzoor Hussain Shah (“the appellant”), from a decision of the Traffic Commissioner for the East of England Traffic Area (“TC”) embodied in a letter of 16 September 2020 revoking his restricted public service vehicle operator’s licence (reference PF2017444). For the reasons set out below, we have allowed this appeal to the Upper Tribunal and we have remitted so that matters may be considered, entirely afresh, by a different TC to the one on whose behalf the decision letter of 16 September 2020 was sent.

2. On 26 March 2019 the appellant was granted the above licence under relevant provisions of the Public Passenger Vehicles Act 1981. The licence authorised the use of a single vehicle. On 15 August 2019 a “desk-based assessment” was carried out by the Driver Vehicle Standards Agency (“DVSA”). Concerns were identified regarding driver defect reporting procedures, maintenance inspection records and odometer and working time records. On 18 February 2020 the Office of the Traffic Commissioner (OTC) wrote to the appellant inviting comments upon the above adverse findings and expressing concern that what is often referred to as the “*main occupation test*” was not or was no longer satisfied. The appellant was informed that the TC proposed to hold a “*preliminary hearing*” on 26 March 2020 so that these concerns could be looked at in more detail. We would observe that the use of such preliminary hearings would appear to be a helpful and pragmatic one. The letter was marked as having been sent by both first-class post and by e-mail. However, an incomplete email address appears to have been used. The copy sent by post, though, was safely received. The appellant, by way of response, provided some documentation relevant to vehicle maintenance issues and he confirmed that he proposed to attend the preliminary hearing. However, the impact of the coronavirus pandemic and the ushering in of related restrictions then began to bite and, entirely understandably, the OTC decided that the preliminary hearing would have to be cancelled. It was described as having been “*postponed*” but no new date for a reconvened preliminary hearing was ever set. The email communicating the cancellation of the hearing was, again it would seem, sent to an incomplete email address. On 21 April 2020 the OTC sent a further email and then a follow up email of 7 May 2020, requesting further documentary evidence relevant to the appellant’s financial standing and the main occupation test. As to finance, the appellant was asked to provide “*your last three month bank statements along with any overdraft facility*” and it was pointed out to him that “*these need to show an average of £3,100.00 available as an average over the three months*”. So far as we are able to tell, those emails were sent to the appellant’s correct email address, but we cannot be absolutely certain. Be that as it may, on 17 June 2020, the OTC wrote to the appellant (the letter being sent by recorded delivery and also to the appellant’s full email address) warning that the TC was considering revoking the licence on grounds relating to the main occupation test; on grounds relating to financial standing; and on grounds relating to good repute. It was also explained that the appellant was being offered, if requested, a public inquiry (“PI”) at which the question of revocation could be fully considered.

3. The appellant did not request a PI. Perhaps he should have done. But he wrote what seems to us to be a frank and honest letter explaining that part of his time had been taken up with looking after his wife (who had developed health issues) and that he had lost what he described as “*my main job in last years of 2019*”, seemingly through no fault of his own. He said it had never been his intention to utilise his restricted licence in order to carry out full time employment and that he had not undertaken work under the licence which took up more than fifteen to twenty hours of his time each week. He explained that his wife, notwithstanding her health difficulties, had made efforts to pass the transport manager’s Certificate of Professional Competence (CPC) examination but without success. That was, it seems, with a view to a possible application for a standard licence being made with her as transport manager. As to finance, the appellant asserted that he had sufficient in place “*to look after my vehicle*” and he sent some documentation in support of that proposition. That included a bank statement relating to an account he holds with Lloyds Bank which covered the period from 11 December 2019 to 5 March 2020; evidence of an overdraft limit of £2,000.00 (though for the above period the credit balance did not go below £3379.25); a bank statement relating to an account with Barclays Bank covering the period from 23 January 2020 to 21 February 2020 (the lowest balance for that period being £3,698.39); another statement relating to the same account for the period from 23 May to 22 June 2020 showing a largely similar credit balance;

a bank statement relating to an HSBC bank account covering the period from 18 May 2020 to 18 June 2020 (the lowest balance for that period being £1,293.42); and evidence of credit facilities with that bank amounting to £2,500.00.

4. On 16 September 2020 the OTC produced the letter referred to above confirming that the restricted licence had been revoked. The letter referred to the concerns which had been expressed regarding the main occupation test but it is clear from the terms of the letter that any failure to comply with that test was not the basis for the actual revocation decision. As to what was the basis for revocation, the pertinent part of the letter reads:

“As the financial evidence you submitted is not sufficient to support this operator’s licence and there was no request for a public inquiry to be held the Traffic Commissioner has revoked your operator’s licence with immediate effect in accordance with the grounds stated in our letter of 17 June 2020”.

5. The letter of 17 June 2020 expressed a concern that the appellant “*may no longer be of appropriate financial standing*” but did not say anything further about that aspect of the case.

6. The appellant appealed to the Upper Tribunal. In his grounds of appeal he asserted that he had a sound previous history of employment, that he had never been involved in any criminal activity (and no-one has suggested during the course of these proceedings that he has) and that, in effect, he simply wanted to run a small business. He contended that “*no-one responsible person met me face by face and not gave me proper guidance*” which we have taken as a suggestion that he did not receive sufficient support from the OTC. But we recognise that the OTC’s primary function is regulation rather than support. He asserted he had provided what had been requested of him and made the point that some communications had been sent to him using an incomplete email address. He reiterated what he had said in earlier correspondence about losing his previous employment. He acknowledged that he had failed to inform the OTC about that and, as we understand him, he blamed that omission upon his having other distractions as well as his having believed (wrongly as it turned out) that he would be able to find similar alternative employment relatively quickly such that his business activity under the licence would then, once again, be incidental.

7. We held an oral hearing of the appeal at Birmingham on 21 May 2021. The appellant attended with Farah Kanwal who is his wife. She took the primary role in addressing the Upper Tribunal. She provided us with some more up to date documentation concerning finance and the arrangements for the maintenance of the vehicle which had been operated under the licence. She said the appellant had been facing difficult family and other circumstances when matters had come to a head. She and the appellant had not fully understood the significance of the invitation to have matters considered at a PI. It might be that, in due course and depending on future events, an application may be made for a standard licence. We were invited to allow the appeal.

8. Prior to setting out our reasoning on the appeal it is appropriate for us to say something about the relevant law and about the approach which must be taken by the Upper Tribunal with respect to appeals such as this.

9. At one point the question of the appellant’s “*good repute*” was raised by the OTC in correspondence. Section 14ZB(a) of the Public Passenger Vehicles Act 1981 (“the 1981 Act”) requires a licence holder to be of good repute. But since the question of repute was not taken further by the OTC or the TC, since it did not play a part in the decision to revoke the licence and since, on the material before us we cannot see any proper basis for a negative outcome

with respect to repute in any event, we shall say no more about it. As to what we have called the main occupation test, section 13 of the 1981 Act sets out the restrictions which an operator must abide by to be entitled to a restricted rather than a standard public service vehicle licence. By section 13(3) of the 1981 Act the following must be satisfied:

- (a) The public service vehicle is not adapted to carry more than eight passengers; or
- (b) The public service vehicle is not adapted to carry more than sixteen passengers when used;
 - (i) Otherwise than in the course of a business of carrying passengers; or
 - (ii) By a person whose main occupation is not the operation of PSVs adapted to carry more than eight passengers.

10. We did wonder whether, in circumstances such as those which appear to be appertaining here, there might be an argument to say that if an individual running a business is a carer for a person with disabilities, and if the caring duties take up sufficient time, such might be regarded as constituting the “main occupation”, though what was said in *Mohammed Akbar t/a Choudhary Transport*: [2017] UKUT 220 (AAC) very probably points to the contrary. But in appropriate and well-evidenced cases perhaps there might be some form of argument based upon disability discrimination. But we speculate. It is not necessary for us to say anything further about the main occupation test because it was not a basis for the revocation of the licence even if it might ultimately be a factor which may be involved in any reconsideration stemming from our decision on this appeal including our decision on disposal.

11. As to finance, section 14ZB of the 1981 Act provides that an applicant for or a holder of a restricted public service vehicle operator’s licence must have “*appropriate financial standing (as determined in accordance with paragraph 2 of Schedule 3)*”. Paragraph 2 then provides that “*being of appropriate financial standing in relation to an application for, or holder of, a restricted licence consists in having available sufficient financial resources to ensure the establishment and proper administration of the business carried on, or proposed to be carried on, under the licence*”.

12. Paragraph 17(1) of Schedule 4 to the Transport Act 1985 provides:

“The Upper Tribunal are to have full jurisdiction to hear and determine on all matters (whether of law or of fact) for the purpose of the exercise of any of their functions under an enactment relating to transport”.

13. Paragraph 17(3) of that Schedule provides that 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. In *Bradley Fold Travel Ltd and Anor v Secretary of State for Transport* [2010] EWCA Civ 659, it was stated that the Upper Tribunal has the duty, on an appeal to it, to determine matters of fact and law on the basis of the material before the TC but without the benefit of seeing and hearing from witnesses. It was further stated that the burden lies on an appellant to show, in order to succeed on appeal, that the process of reasoning and the application of the relevant law requires the Upper Tribunal to adopt a different view to that taken by a TC.

14. In this case, the TC had asked for evidence of the financial situation and evidence had been provided. The relevant business entity was a small one and there was not an obvious need for funds of real significance. Indeed, acting in accordance with usual practice and procedure, evidence of £3,100.00 as an average over a three-month period had been sought. On our interpretation of the evidence which had been provided, it looks like that had been provided simply through the credit balance for the three-month period covered by the Lloyds Bank account irrespective of the overdraft limit referred to above and the credit facilities referred to above. The decision letter of 16 September 2020 does, as we have said, make clear that the revocation was made on the basis of inadequate finance. But the reasoning as to why that view was taken is not set out and the financial evidence which was provided has not been addressed. In particular, there is no explanation as to why the evidence provided was not considered to comply with the law or (if it is to be regarded as being different in any sense) what the OTC had requested. On one view it might appear that the financial evidence was simply overlooked. Certainly, there is nothing in the content of the letter itself to reassure as to that suspicion. It is sometimes the case that in appeals such as this internal memoranda and the like demonstrate both a proper consideration of the evidence and the reasoning behind a decision to revoke or to refuse a licence, even if such is not apparent from the decision letter itself. But there is nothing like that here.

15. We accept that concise reasoning, either in a decision letter or in a decision of a TC, will often suffice. But here there is no reasoning in the face of, as we say, evidence which appeared to deal with the specific concern which ultimately led to the revocation of the licence. The need for adequate reasoning, even in cases which did not involve the holding of a PI, has been expressed in a number of relatively recent decisions of the Upper Tribunal including *Wajid Bashir t/a MB Travel* [2018] UKUT 0401 (AAC) and *Sheraz Asghar* [2018] UKUT 0442 (AAC) (see in particular paragraph 16).

16. We did consider whether, notwithstanding the lack of adequate reasons for the TC's decision, we should not allow the appeal on the basis that, on the face of it, the appellant would have come up short with respect to compliance with the main occupation test. But in the face of our deciding that the sole reason given for revocation has been inadequately reasoned and indeed appears to be wrong on the evidence, we think, in fairness to the appellant, that remittal is the proper and appropriate course of action so that the matter may be reconsidered afresh in light of whatever the up to date position might prove to be. So, we set aside the decision under appeal before us and we remit on that basis and for those reasons. The TC will, no doubt, give consideration as to how to proceed and as to whether it might be appropriate to hold the sort of preliminary hearing we have referred to above and/or a PI though, of course, if the appellant requests one then one ought to be held. As to the appellant, it is our view that, whilst this is entirely a matter for him, he might wish to take some advice as to how he might now go about complying with requisite licensing requirements and, indeed, whether there might (or might not) be more merit in his pursuing some sort of fresh application for a restricted or a standard licence rather than continuing with these remitted proceedings. Professional advice is available albeit, we appreciate, at a cost.

17. This appeal to the Upper Tribunal, then, is allowed on the basis and to the extent explained above.

M R Hemingway
Judge of the Upper Tribunal
Dated: 14 June 2021