



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

Appeal No. UA/2021/000339-T

**ON APPEAL from a DECISION of the DEPUTY TRAFFIC COMMISSIONER for
the North West of England Traffic Area.**

Appellant: Harris Travel Limited

**Deputy Traffic Commissioner
Decision dated:** 22 October 2021

**Appeal to Upper Tribunal
dated:** 22 October 2021 (received 5 November 2021)

Reference no: PC1129193

Date of Upper Tribunal Hearing: 23 November 2022

Form of Hearing: CVP video technology

Before: Judge Rupert Jones: Judge of the Upper Tribunal
Ms Sarah Booth: Member of the Upper Tribunal
Mr Gary Roantree: Member of the Upper Tribunal

DECISION OF THE UPPER TRIBUNAL

The appeal is dismissed. The revocation of the Appellant's operator's licence is to take effect two calendar months from the date that this decision is issued (sent) to the Appellant.

SUBJECT MATTER

Financial standing; Revocation.



REASONS FOR DECISION

1. This is the appeal of Harris Travel Limited (“the Appellant”) from a decision of a Deputy Traffic Commissioner (the ‘DTC’), contained in a letter dated 22 October 2021, to revoke its standard public service vehicle operator’s licence. Whilst it was stated in the letter of 22 October 2021 that the revocation was to take effect immediately, on 25 October 2021 the TC subsequently granted an application for a stay pending the result of the appeal before the Upper Tribunal.

2. Judge Hemingway originally determined the appeal on the papers, sitting alone on 13 August 2022. However, he later set aside his decision on 21 September 2022 for the reasons set out in that decision and in his earlier directions dated 5 September 2022.

3. Therefore, there was a complete re-hearing of the appeal which took place remotely before the Tribunal on 23 November 2022 by CVP internet enabled video technology (which form of hearing was chosen by the Appellant).

4. The Appellant’s sole director, Mr Asif Din (Mr Din), appeared and participated in the hearing on behalf of the Appellant. There were technological difficulties with him joining the hearing by mobile telephone such that there was no visual connection. Mr Din was only able to participate orally through the audio connection so that the Tribunal could not see him nor he us.

5. Nonetheless, Mr Din stated that he was happy to proceed in this manner and we were satisfied he was able to participate fully and that he could receive a fair hearing. The audio connection was clear and audible throughout and Mr Din confirmed that he could hear and understand proceedings throughout. He answered the Tribunal’s questions and made full submissions without difficulty. His oral representations were in addition to the written evidence and representations he previously submitted to the Tribunal. We are extremely grateful to him for the clear way in which he presented his case.

The background

Public Inquiry of 21 September 2021

6. By way of background, the Appellant was granted its operator’s licence on 10 June 2014. It and two other licence holding companies were called to a Public Inquiry (PI) before the DTC which took place on 21 September 2021 by video technology (Microsoft Teams). Mr Asif Din attended the PI on behalf of the Appellant together with Mr Saad, the proposed transport manager. There was a full transcript of that hearing provided to the Upper Tribunal which contained the evidence and submissions made and the oral ruling of the DTC at its conclusion.

7. There followed the written decision of the same date from the DTC who had presided over the PI. The DTC decided that the Appellant had been operating for a period without a

transport manager and that, as a result, it had not, for that period, satisfied the standards of professional competence as contained within the Public Passenger Vehicles Act 1981 (the Act). Further, it was decided that the Appellant had failed to cooperate with the Office of the Traffic Commissioner (OTC) with respect to the provision of documentation and that there had been failings with respect to driver defect reporting requirements.

8. In his written decision letter dated 21 September 2021, the DTC then turned his attention to financial standing requirements contained in the Act. He made adverse findings as to the Appellant's lack of appropriate financial standing and gave notice that there would be a period of grace until 20 October 2021 for specified documents to be provided by Mr Din:

"1. Having read all of the papers and having heard from Mr Din, Director, and Mr Saad the proposed transport manager I made the following principle [sic] findings on the balance of probabilities.....

(a)...

...

(i) All three operators failed to satisfy me that they were of appropriate financial standing because the documents that had been submitted did not comply with Statutory Document No2 issued by the Senior Traffic Commissioner. In order to rectify the present situation, **I made an adverse determination under section 17 of the Act that each operator was not of appropriate financial standing and then granted each operator a period of grace until 1600 hours on 20 October 2021. By that time and date, the Office of the Traffic Commissioner at Golborne must have received for each of the 3 operators Statutory Document No2 compliant documents that cover the complete months of June, July and August 2021 and which, for that 3 month period, show an average balance being available that meets the test for appropriate financial standing.** It is for Mr Din to read that Statutory Document and to provide the necessary documents on time because I warned him in clear terms that if there was not compliance then each of the non-compliant operators would have its operator's licence revoked without any further warning or hearing."

[Emphasis Added]

9. Section 14ZA (2) (c) of the Act provides that an applicant for a standard operator's licence (or a holder of such a licence) must be of appropriate financial standing "*as determined in accordance with Article 7 of Regulation 1071/2009*". Article 7(1) of Regulation 1071/2009 makes it clear that the obligation is a continuing one. The legislative provisions provide a formula by which the amount an operator must show to be available is based upon the number of vehicles used under the relevant licence. If at any time it appears to the TC that the licence holder no longer satisfies this requirement revocation of the licence is mandatory. However, section 17(1A) of the Act provides a TC with discretion to avoid mandatory revocation by serving on the operator a notice setting out the time limit within which the situation giving rise to what would otherwise be mandatory revocation must be rectified. That is what the DTC did, with respect to the appellant's failure to demonstrate financial standing at the PI in this case.

10. The above reference to Statutory Document No 2, is a reference to Statutory Guidance issued by the Senior Traffic Commissioner under section 4C(1) of the Act for the purpose of providing information as to the way in which the Senior Traffic Commissioner believes that TCs should interpret the relevant law relating to the application of the Statutory Documents.

11. In the decision letter dated 21 September 2021 the DTC went on to vary the Appellant's licence conditions by curtailing the number of vehicles (from 15 to 11) it was entitled to operate under the terms of its licence (see paragraph 3, third bullet point of the letter). The DTC also stated at paragraph 6, 'The good repute of each of the three operators is marked as very badly tarnished but not lost.' At paragraph 8 he stated – 'this is the last chance that any of the three operators before me will be given.'

Documents provided to the DTC prior to the PI regarding financial standing

12. It is right to say that the Appellant had provided the DTC with some evidence of available finance prior to the PI of 21 September 2021. This consisted of a bank statement in the name of the appellant covering the period from 5 July 2021 to 9 September 2021 and a letter of 1 August 2021 written to the Appellant by a credit company called nefinance, confirming a financial arrangement whereby the appellant was to have, under the terms of an agreement made between the two, a credit limit of £159,000. The credit facility was said to be available for a period of 12 months.

13. It is apparent that the TC had not found this evidence to be persuasive because the bank statements did not demonstrate that the necessary level of finance had been reached when the available funds were averaged out over a three month period and because the letter from nefinance contained no information as to the amount of the credit facility which had been utilised (in other words it had not been shown how much remained unused and available) and did not confirm that nefinance was registered with the Financial Conduct Authority (FCA). The decision of the DTC of 21 September 2021, afforded the Appellant a further opportunity to demonstrate, by way of evidence which would comply with requirements set out in the Statutory Guidance, that it did have appropriate financial standing.

Events subsequent to the PI – compliance with the notice to provide documents re financial standing

14. On 13 October 2021 the Appellant re-sent the bank statements for 1 July to 9 September 2021 (which had originally been sent on 14 September 2021 prior to the PI) to the OTC. On 13 October 2021 the OTC sent an e-mail to the Appellant pointing out that the bank statements previously provided did not cover a three-month period (which was what the DTC had directed, namely June, July and August 2021) and seeking further bank statements to cover the period from 11-30 June 2021 or 10-29 September 2021. It was explained that such was necessary so that an average finance availability calculation over a three-month period could be carried out.

15. The Appellant responded through Mr Din who, on 19 October 2021, sent a bank statement covering the period from 15 July 2021 to 11 October 2021 (not quite a full three-month period and not covering June nor the first half of July). Further the bank statement contained the wording "*Please remember this isn't an official bank copy*".

16. The OTC did not simply reject the bank statement on that basis but sent two further emails to the Appellant, both of which were sent on 20 October 2021. One of those emails pointed out that the bank statement provided had not been authenticated by the bank and that, in any event, it appeared to demonstrate insufficient funds to meet the financial standing requirements. But it was acknowledged that an indication had been given (presumably by Mr Din), "*that further finance agreements will follow*". The second email

related to nefinance and asked for the terms of the agreement, evidence of registration with the FCA, and evidence of how much of the permitted credit remained available.

17. On the same date, 20 October 2021 an email was sent on behalf of Ne-finance to the OTC stating that further information concerning the credit agreement would be sent the following day. However, there is no evidence of anything further having been provided by nefinance directly to the OTC on 21 October 2021 or afterwards. Instead, another bank statement was provided covering the period from 1 July 2021 to 9 September 2021.

Revocation decision of 22 October 2021 – failure to demonstrate appropriate financial standing

18. On 22 October 2021 the decision to revoke the licence, on the basis that appropriate financial standing had not been demonstrated, was taken. In a decision letter of that date the TC relevantly stated:

“Since that decision was made, the Traffic Commissioner has had regard to the following documents in correspondence in respect to Harris Travel Limited:

- Copy bank statements dated 13 September 2021, authenticated by Lloyds bank via stamp on 13 October 2021. The statements cover the periods for 5 July 2021 to 9 September 2021.
- The email [from] Office of the Traffic Commissioner sent to Mr Din on 13 October 2021 stating that the bank statement above did not cover a full 3 months and requested further original or authenticated bank statements so that 3 months are covered. The email reminded that the deadline remained 20 October 2021.
- Further copy bank statements printed on 13 October 2021 (received by email on 19 October 2021) covering the period 15 July 2021 to 11 October. This statement was not authenticated by Lloyds bank and, notably, a statement confirmed “The data shown on your statement is correct at the time of printing. Please remember, this isn’t an official bank copy”.
- The email correspondence between this office and Mr Din on 20 October 2021. The emails from the office of the Traffic Commissioner pointed out that the above bank statement was not authenticated, the analysis of the statement and the statement previously provided appeared to fall short of the financial requirement and that the company only appeared to have enough for 7 vehicles. The correspondence also stated that the credit line with “nefinance” was rejected as evidence of financial standing by the Deputy Traffic Commissioner at the Public Inquiry, but that it would be reconsidered by the Traffic Commissioner if the terms and conditions of the agreement along with ne finance’s registration number with the FCA were provided, along with the balance sheet for the last 3 months.
- The email from Mike Bromley of “nefinance” sent on 20 October 2020 more time to provide the requested evidence (he

suggested that this would be sent across to the Office of the Traffic Commissioner later that evening or on the following morning). Mr Din confirmed that this email can be submitted to the Traffic Commissioner on behalf of Harris Travel Limited. At the time of writing no such documents have been received”.

The Traffic Commissioner has noted that the evidence submitted by Harris Travel Limited does not show financial standing from the compliant document sent in, and that the operator should have been left in no doubt by Deputy Traffic Commissioner Mr Dorrington of the expectation and the clear deadline.

The company has failed to show financial standing by the expiry of the period of grace. The Traffic Commissioner does not consider that any further extension of time is appropriate as the operator has been given sufficient opportunity and direction so far and he has not convinced any further time would realistically improve the position in any event.

I must therefore advise you that your company’s operators’ licence has been revoked with immediate effect in accordance with the grounds stated in the Public Inquiry decision letter, that the company does not meet the requirement to be of appropriate financial standing (Section 17 (1) (a) of the Act”.

Events subsequent to revocation

19. Mr Din, on behalf of the Appellant sent some further material emanating from nefinance to the OTC but only after the decision to revoke the licence had been made and sent. That material was in the form of two very brief written communications sent by nefinance to the Appellant both of which were dated 25 October 2021 which the OTC made clear had been submitted too late. One of those documents, seemed to indicate the credit facility had been unused throughout August, September and October 2022 whilst the other contained an assertion that mandatory registration with the FCA was not required because “*We only transact NON-REGULATED Agreements*”. Mr Din also sent a retrospectively authenticated version of the bank statement which spanned the period from 15 July to 13 October 2021 (stamped by the bank as authenticated on 10 November 2021).

The Appellant’s appeal to the Upper Tribunal

20. On 22 October 2021, in addition to supplying the additional documentation, the Appellant appealed to the Upper Tribunal against the TC’s revocation decision.

21. The grounds of appeal contended, in effect, that the material which had been submitted to the OTC should have been sufficient to satisfy the TC as to the financial standing requirement. It was also said that the OTC in previous dealings with the appellant had not insisted upon bank statements being authorised, stamped or authenticated by the issuing bank and that the agreement with nefinance had not previously been questioned (though the documentation concerning it suggests it was only entered into in August 2021).

The Law

22. Applications for the grant and variation of Public Service Vehicle (PSV) licences can be only granted by the TC if various conditions are satisfied under section 14ZA of the Public Passenger Vehicles Act 1981. If these conditions are no longer satisfied, then the licence must be revoked (mandatory revocation) under section 17(1)(a) of the Act. Sections 14ZA and 17(1) provide relevantly as follows:

14ZA.Requirements for standard licences

- (1) The requirements of this section are set out in subsections (2) and (3).
- (2) The first requirement is that the traffic commissioner is satisfied that the applicant—
- (a) has an effective and stable establishment in Great Britain (as determined in accordance with Article 5 of the 2009 Regulation),
 - (b) is of good repute (as determined in accordance with paragraph 1 of Schedule 3),
 - (c) has appropriate financial standing (as determined in accordance with Article 7 of the 2009 Regulation), and
 - (d) is professionally competent (as determined in accordance with paragraphs 3, 4 and 6 of Schedule 3).
- (3) The second requirement is that the traffic commissioner is satisfied that the applicant has designated a transport manager in accordance with Article 4 of the 2009 Regulation who—
- (a) is of good repute (as determined in accordance with paragraph 1 of Schedule 3),
 - (b) is professionally competent (as determined in accordance with paragraph 6 of Schedule 3), and
 - (c) in the case of a transport manager designated under Article 4.2 of the 2009 Regulation—
 - (i) is not prohibited from being so designated by a traffic commissioner, and
 - (ii) is not designated to act as transport manager for a greater number of road transport operators or in respect of a greater number of vehicles than the traffic commissioner considers appropriate, having regard to the upper limits in Article 4.2(c) of the 2009 Regulation, or such smaller number as the commissioner considers appropriate (see Article 4.3 of the 2009 Regulation).

17Revocation, suspension etc. of licences.

- (1) A traffic commissioner must revoke a standard licence if it appears to the commissioner at any time that—
- (a) the holder no longer satisfies the requirements of section 14ZA(2), or
 - (b) the transport manager designated in accordance with Article 4 of the 2009 Regulation no longer satisfies the requirements of section 14ZA(3).

.....

23. The burden of proof during a PI requires the Traffic Commissioner to be satisfied of the grounds for revocation as noted by Rix LJ in *Muck It Ltd and Others v. Secretary of State for Transport* (2005) EWCA Civ 1124:

“69. Turning back to sections 26 and 27 of the 1995 Act, I would conclude that for revocation to be possible under the former or mandatory under the latter, it is the commissioner who must be satisfied of the ground of revocation, and not the licence holder who must satisfy him to the contrary. That seems to me to be the natural way to regard both the language of those sections, and the situations contemplated in them. The context is that of a licence holder and the possible revocation of his licence. Revocation can only be done on some specified ground (section 26) or

because one or other of the three fundamental requirements is no longer satisfied (section 27). Under section 26(4), the commissioner can only act if “the existence of” a ground comes to his notice. It is counter-intuitive to think of a licence holder being required to negative the existence of a ground raised against him. So with section 27. The commissioner must revoke if “it appears to him” that the licence holder is no longer of good repute or of appropriate financial standing or professionally competent. That seems to me to mean that the commissioner must be satisfied that the requirements are no longer fulfilled. If it had been intended to place the same burden on the licence holder as had been placed on the original applicant, then the same language as that found in section 13 would have been used.”

The Tribunal’s jurisdiction on appeal

24. Paragraph 17 of Schedule 4 to the Transport Act 1985 provides:

(1) The Upper Tribunal are to have full jurisdiction to hear and determine 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”.

(2) On an appeal from any determination of a traffic commissioner other than an excluded determination, the Upper Tribunal is to have power-

(a) to make such order as it thinks fit; or

b) to remit the matter to—

(i) the traffic commissioner who made the decision against which the appeal is brought; or

(ii) as the case may be, such other traffic commissioner as may be required by the senior traffic commissioner to deal with the appeal,

for rehearing and determination by the commissioner in any case where the tribunal considers it appropriate;

and any such order is binding on the commissioner.

(3) 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.

25. Paragraph 17(1) of Schedule 4 to the Transport Act 1985 thus provides that “*the Upper Tribunal are to have full jurisdiction to hear and determine all matters (whether of law or of fact) for the purposes of the exercise of any of their functions under an enactment relating to transport*”.

26. Nonetheless, in *Bradley Fold Travel Ltd & Anor v Secretary of State for Transport* [2010] EWCA Civ 695, the Court of Appeal explained that the then Transport Tribunal (now the Upper Tribunal) is not required to re-hear all of the evidence but, instead, has the duty to determine matters of fact and law on the basis of the material which was before the TC but without having the benefit of hearing and seeing from witnesses. The court applied *Subesh and ors v Secretary of State for the Home Department* [2004] EWCA Civ 56, where Woolf LJ held:

“44...The first instance decision is taken to be correct until the contrary is shown...An Appellant, if he is to succeed, must persuade the appeal court or tribunal not merely that a different view of the facts from that taken below is reasonable and possible, but that there are objective grounds upon which the court ought to conclude that a different view is the right one...The true distinction is between the case where the appeal court might

prefer a different view (perhaps on marginal grounds) and one where it concludes that the process of reasoning, and the application of the relevant law, require it to adopt a different view. The burden which an Appellant assumes is to show that the case falls within this latter category.”

27. The Court of Appeal therefore explained that an appellant assumes the burden of showing that the decision which is the subject of the appeal is ‘wrong’ (what used to be categorised as ‘plainly wrong’), in order to succeed. An appellant must show not merely that there are grounds for preferring a different view but that there are objective grounds upon which it ought to be concluded that the different view is the right one. Put another way, an appellant, in order to succeed, must show that the process of reasoning and the application of the law requires the Upper Tribunal to take a different view.
28. The Upper Tribunal, in deciding an appeal such as this, is not permitted to take into consideration any circumstances which did not exist at the time of the determination which is the subject of the appeal (see paragraph 17(3) of Schedule 4 to the Transport Act 1985). Therefore, we should not have regards to events that post-date the revocation decision of 22 October 2021 in deciding whether the TC’s decision is wrong.

The Appellant’s submissions

29. Mr Din made various arguments in support of the Appellant’s appeal.
30. Regarding financial standing, he submitted that at the previous PI, the company had relied on bank statements that were not stamped nor authenticated by the bank but were accepted by an earlier TC. Mr Din submitted that the company had obtained the bank statements on 13 October 2021 and provided the three months bank statements (from 15 July to 11 October 2021) to the TC by 19 October 2021 in compliance with the timeframe required.
31. Mr Din accepted that he had not provided authenticated bank statements but was only told by the OTC on 20 October 2021 that the originals provided were not acceptable. He had approached the bank on 8 November 2021 and had been able to obtain authenticated statements shortly thereafter. He went to the bank to obtain authenticated (stamped) versions which he then provided to the OTC on the same day – 10 November 2021. In fact, while the bank statements are stamped with the date 10 November 2021, he sent them to the OTC by email on the following day, 11 November 2021.
32. Mr Din submitted that the Appellant was financially viable and had sufficient funds – this was demonstrated by the three months statements (which demonstrated the Appellant had over £56,000 in its bank account as of 11 October 2021). He also submitted that the nefinance document also demonstrates the company had access to additional funds which it could draw down whenever needed allowing it to borrow from the finance company and pay back in staged payments. This facility was available to it.

33. He accepted there was a mistake in that the Appellant did not provide June 2021 bank statements but ‘there was not much going on’ that month. He simply printed off the bank statements from July 2021 onwards – the ones they were working on
34. Mr Din argued that the Appellant was an ongoing business with multiple contracts including for the council. It employed over 20 employees and it should not lose its licence for lack of a stamp on the bank statements. He stated that he had recently had a stroke but was back running the business and would like the Tribunal to restore the licence and give the firm a chance to continue to operate. There was a lot of finance outstanding on the vehicles, there would be a number of drivers and other employees put out of a job if the revocation were upheld and he would become bankrupt and unemployed. His livelihood and jobs depended on the revocation of the licence being overturned.
35. Although Mr Din did not put it in these simple terms, in effect he submitted that: a) the Appellant had complied with the DTC’s requirements of 21 September 2021 in substance and had appropriate financial standing; and b) it was disproportionate to revoke its licence.

Discussion and analysis

36. We are not satisfied that the Appellant has demonstrated that the DTC’s decision of 22 October 2021 to revoke its operator’s licence was wrong. We are not satisfied that the Appellant did in fact comply with substance of the TC’s requirements of 21 September 2021 nor demonstrate it had appropriate financial standing. We are not satisfied that it was disproportionate to revoke the licence.

Failure to demonstrate compliance with the TC’s direction of 21 September 2021 and to demonstrate appropriate financial standing by 20 October 2021

37. There was a determination by a TC following a PI on 21 September 2021, at which matters had been carefully examined, to the effect that the Appellant did not meet the financial standing requirements. That decision was not the subject of challenge.
38. The Appellant, through Mr Din or otherwise, has not asserted that this decision was in any sense wrongly made. Revocation would otherwise have followed at that stage, but a period of grace was given by the DTC.
39. Nonetheless, the decision of 21 September 2021 made it very clear what was required from the Appellant in terms of financial evidence and that it was a last chance. Bank statements were required covering the complete months of June, July and August 2021 and the financial material which was to be submitted was required to comply with the requirements set out in the Statutory Guidance (see above) which required the statements to be authenticated. These bank statements were to be submitted by 20 October 2021 at the very latest.
40. Despite Mr Din’s submissions and his assertion in the written grounds and oral arguments, the Appellant did not comply with the DTC’s requirements. The failures

to comply with the DTC's directions were not simply minor failures of form or procedure but failures of genuine substance.

41. No authenticated nor ordinary bank statement has been provided which covers the month of June of 2021. The failure to provide bank statements covering that month, notwithstanding the clear indication that such was sought, has now been explained. However, the explanation is unsatisfactory – Mr Din appeared to accept that there would have been insufficient funds in the bank account during this month – ‘there was nothing going on’ or alternatively that he supplied the bank statements ‘they were working on’. This gives further support to the TC’s finding that the Appellant did not demonstrate appropriate financial standing in this period.
42. Further, no authenticated bank statements which cover any continuous three-month period have been provided prior to the date of the decision under appeal. Even the bank statement provided on 19 October 2021, retrospectively authorised and provided on 10 November 2021 after the decision to revoke, does not quite span three months (it is for 15 July 2021 to 11 October 2021). In Statutory Document No 2: Finance, it is indicated that for the purposes of addressing a licence holder or licence applicant’s average balance discernible from bank statements, statements covering a continuous three-month period ought to be provided. It is also said that either original bank statements or certified copies must be supplied.
43. Further, the OTC undertook a preliminary calculation on the basis of bank statements the Appellant had supplied prior to the revocation decision which demonstrated that, on average, for the period covered by the bank statements submitted prior to the date of the decision, there was a shortfall in the Appellant’s finances of at least £14,000.
44. Based on the bank statement provided prior to the PI (from 1 July 2021 to 9 September 2021) there was an average balance in the account of £23,950 when it should have been £71,000 for 15 vehicles (as authorised until 21 September 2021). Further the bank balances provided show an opening balance of £14,000 on 1 July 2021 rising to £57,000 on 9 September 2021. However, this was based on the injection of substantial funds from other bank accounts in the name of Harris Travel Ltd. There was a significant fluctuation of funds.
45. Based on the bank statements dated 15 July 2021 to 11 October 2021 (which were provided on 19 October /10 November 2021) there was an average balance in the account of £38,720. This was substantially short of the required current authorisation of £53,000. This is why the TC referred to the Applicant only having sufficient for 7 vehicles rather than 11 vehicles (as authorised from 21 September 2021) in the decision notice dated 22 October 2021. Further the bank balances provided show an opening balance of around £23,000 on 15 July 2021 rising to £59,600. on 11 October 2021. Again, this was based on the injection of substantial funds from other bank accounts in the name of Harris Travel and there was a significant fluctuation of funds.
46. In view of the above, the Appellant has failed to demonstrate that the TC was wrong to decide that the appropriate financial standing requirement was not satisfied. That is so not only on the basis of the material before the TC which is what we must

consider (see *Bradley Fold Travel*) but also on the basis of the retrospectively authorised statement subsequently produced. It has also failed to demonstrate it complied with the TC's direction and requirements in its notice of 21 September 2021. It does not have a good reason for its failure to comply.

Proportionality

47. We start from the position that there were genuine and repeated failures to demonstrate appropriate financial standing by the Appellant and significant and repeated failures to comply with the TC's directions dated 21 September 2021. We are satisfied that these were all matters of substance and that the Appellant had benefited from a final opportunity and a period of grace until 20 October 2021.
48. We have balanced this against Mr Din's submission as to the effect of a revocation decision upon the Appellant company. We are prepared to accept that the loss of the operator's licence will have a significant effect upon the Appellant. However, we note that the Appellant has filed no documentary nor independent evidence to establish the suggestion by Mr Din that if the Appellant's licence is revoked, he will go bankrupt or that over twenty employees will lose their jobs. The Appellant has not even supplied independent nor documentary evidence of how many people are employed by it and in what roles (or that the Appellant company would need to be wound up because it has no other operation or business other than that pursuant to its licence). Therefore, the effect of the revocation decision does not carry sufficient weight in the balance.
49. In any event, it is outweighed by the failure to comply with the mandatory requirement of holding appropriate financial standing under the Act and the statutory purpose for the requirement of having available finance, namely that the holder of an operator's licence has the financial resources available to ensure that its vehicles are safe to use on public roads, its passengers (PSV) and other road users are not put at risk by them and that it can compete fairly with other operators, within the constraints of the regulatory regime.
50. We would accept that there will be occasions when financial evidence which does not comply with the requirements set out in the Statutory Guidance might, at least alongside other evidence of finance, be regarded as acceptable and reliable. But there is no reason to conclude that this is such a case. It is true that financial standing may be demonstrated in a variety of ways (*T/2017/7 Michael Hazell (No.2)*), so that the mere fact that the bank statements are unreliable does not mean, of itself, that the Appellant has failed to demonstrate financial standing with respect to the period required of it or, indeed, any period.
51. We take into account the finance agreement with nefinance. As to that, the DTC did not have information as to how much of the initially available amount of credit had been used nor any information concerning FCA registration. As such, he could not attach weight to the existence of the agreement. On the material before him he did not err at all in that regard.
52. Even if we were to ignore what was said in *Bradley Fold Travel*, and to consider the subsequently supplied evidence, it would not assist. The explanation as to why

nefinance is not registered with the FCA is terse and uninformative and does not, in our view, meet the DTC's understandable concerns. Further, the letter of 1 August 2021 suggests that the agreement was only made on that date. Thus, the period of June and July 2021 about which the DTC had required assurances, is not covered at all.

53. The Appellant's submissions that the credit agreement and the authentication or otherwise of bank statements had not been raised by the OTC at an earlier stage have no force. Merely because a requirement or a need for full and complete information might have been overlooked in the past (if indeed it was), does not mean it should, as a result, continue to be overlooked in the future.

Conclusion

54. We are not satisfied that the TC's revocation decision has been demonstrated to be wrong. The TC's process of reasoning the application of the law does not require the Upper Tribunal to take a different view of the Appellant's lack of financial standing and the consequent sanction. Accordingly, the appeal is dismissed.

The ending of the stay

55. On 25 October 2021, the TC granted the Appellant a stay of the revocation decision so that it has had the benefit of being able to operate under the licence for over a year since the original revocation decision was made. However, the appeal has now failed. We must therefore specify a date when the stay must come to an end to allow an orderly period for the Appellant to end its operations under the licence. We are satisfied that a period of two months is reasonable and sufficient. We therefore specify that the stay shall come to an end and revocation take effect on the day ending two calendar months following the issue (the sending) of this decision to the Appellant (and subject to any fresh application being made and fresh licence granted in the interim).

Judge Rupert Jones
Judge of the Upper Tribunal
Authorised for issue on 24 November 2022