



NCN: [2022] UKUT 00352 (AAC)
Appeal No. UA-2022-001228-T

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

**ON APPEAL from a DECISION of the TRAFFIC COMMISSIONER for LONDON
and the SOUTH EAST**

Before: M Hemingway: Judge of the Upper Tribunal
M Smith: Member of the Upper Tribunal
R Fry: Member of the Upper Tribunal

Appellant: Nadeem Iqbal Butt t/a Communitywide Travel Services

Reference No: PK1103516

Representation:

For the appellant: No attendance

Heard at: Birmingham

Date of Hearing: 16 December 2022

Date of Decision: 20 December 2022

DECISION OF THE UPPER TRIBUNAL

This appeal is dismissed.

Subject matter: Revocation

Cases referred to:

Bradley Fold Travel Ltd & 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 Nadeem Iqbal Butt (“the appellant”) from a decision of the Traffic Commissioner (“the TC”) embodied in a letter of 5 August 2022 to revoke his restricted public service vehicle operator’s licence.

2. The licence had been granted on 10 January 2021. The appellant had been trading under the name Communitywide Travel Services. The licence authorised the use of two vehicles from two different specified operating centres. He appears to have been operating in the London area. His licence was coming up for renewal and so, on 10 December 2021, the Office of the Traffic Commissioner (“OTC”) wrote to him requiring him to complete and return a checklist and to provide financial information relevant to his eligibility to continue to hold a licence. The letter was sent to the last address the appellant had given to the OTC for the purposes of contact. The letter clearly warned the appellant of the need to respond by 31 December 2021 and it was indicated that, if he did not, adverse regulatory consequences would follow. Faced with a lack of any immediate reply the OTC, very promptly and without waiting for that deadline to expire, sent a reminder to the appellant on 17 December 2021. But neither the original letter nor the reminder elicited any response.

3. There was then a quite lengthy period of time during which little happened, before the OTC, on 11 May 2022, sent what has been referred to as a “*surrender letter*” to the appellant. The appellant was invited to say whether he wished his licence to continue or whether he wished to surrender it. Consistent with what had gone before, he did not make any immediate response. On 12 July 2022, in light of that and the previous failures to respond, the OTC sent to the appellant what has been referred to as a “*mind to revoke letter*”. It said that, in view of the fact that the appellant could no longer be contacted then, absent any request for a public inquiry being received by 26 July 2022, the licence would be revoked. Reference was made to Section 17(3)(e) of the Public Passenger Vehicles Act 1981 (“the Act”). The appellant, on this occasion, did respond. He completed the surrender form indicating he did not wish to surrender the licence. He explained that, in January 2018 a vehicle (presumably one which he had been operating under the licence) had been stolen from him; that he had, on 10 February 2018, moved address and was now living in Birmingham; that he had not utilised the licence since the theft of the vehicle; but that he was now planning to “*restart*” his business. He completed the checklist and provided some bank statements.

4. In completing the checklist the appellant provided information regarding his financial resources. But also, under the heading “*List of partners/directors*”, he named one Naeem Iqbal, as well as naming himself. Since the appellant had obtained his licence as a sole trader, that caused the OTC concern because it appeared to indicate a change of entity (a partnership) such that a new licence application would be required. On 2 August 2022 the OTC sent an e-mail to the appellant raising its concern regarding the apparent new entity. The appellant responded by e-mail to say he had not realised having a business partner would cause any difficulties and asserting that he would now wish to continue in business as a sole- trader.

5. The case was considered internally by OTC staff, as is apparent from copies of internal memoranda which have been produced for the purposes of this appeal. On 3 August 2022 an OTC staff member made a written recommendation to the TC that the licence be revoked on the basis of a change in circumstances since the licence had been granted, with reference to Section 17(3)(e) of the Act. A further basis for revocation, that of loss of repute with reference to Section 14ZB(a) of the Act, was also put forward. It was said in support of the recommendation that there had been an initial lack of contact from the appellant, that he not responded timeously to the “*surrender letter*”, that he had failed to timeously inform the OTC of his change of address, that he had given inconsistent information about the nature of the entity holding the licence, that his completed checklist appeared to show he was using different operating centres to those specified on the licence, and that it was not apparent that he had been trading at all latterly.

6. On 3 August 2022 the TC indicated (as evidenced in an internal memo) her agreement with the proposed course of action. She observed that the appellant had responded to the OTC’s correspondence “*grossly out of time*”, that his indications as to the nature of the entity now holding the licence (sole trader or partnership) had been inconsistent. and that he had not asked for a public inquiry. She indicated that she had decided the licence was to be revoked with effect from 4 August 2022. She added that any future application for a licence made by the appellant or Naeem Iqbal was to be referred to a TC rather than dealt with under delegated authority.

7. On 5 August 2022 the OTC wrote to the appellant to inform him that the licence had been revoked with effect from 4 August 2022. The letter was very brief. The salient part refers back to the letter of 12 July 2022 and then reads; “*In the absence of a response to this letter or a request for a public inquiry to be held the Traffic Commissioner has revoked your operator’s licence with effect 04/08/2022 in accordance with the grounds stated in our letter*”. The references to “*this letter*” and “*our letter*” are clearly references to the letter of 12 July 2022. But the appellant did respond to the letter of 12 July (though not to other correspondence sent by the OTC). We read the letter of 5 August 2022 as asserting that, in the circumstances, the response to the earlier letter was inadequate. We would also note, at this stage, that although it was clearly indicated in the internal memoranda referred to above that the decision to revoke was to be based on loss of repute as well as a change in circumstances, no mention of repute was made in either letter.

8. The appellant lodged an appeal to the Upper Tribunal on 24 August 2022. In his grounds of appeal, he confirmed he had moved from London (the place he had lived when he obtained the licence) to Birmingham. He said he would not have named a business partner when completing the checklist had he known doing so would cause problems and that he would “*would like to still be considered a sole trader*”. He referred to the theft of his vehicle. He suggested he might not have received emails from the OTC because they “*will have gone to my work account*”. He explained he would use his own driveway to part two business vehicles.

9. As to legislation which has relevance to this appeal, Section 14ZB(a) of the Act requires an applicant for or a holder of a licence to be “*of good repute*” as determined in accordance with paragraph 1 of Schedule 3”. We have not felt it necessary to set out the content of Schedule 3. Section 17 provides for revocation of a licence (such being discretionary rather than mandatory) where “*there has been since the licence was granted a or varied a material*

change in any of the circumstances of the holder of the licence which were relevant to the grant or variation of the licence” (section 17(3)(e).

10. The appeal was listed to be heard at Birmingham (a venue suitable for the appellant) on 16 December 2022. Written notice of the time, date and place of hearing was sent. On 11 December 2022 the appellant informed the Upper Tribunal, in writing, that he would not be in attendance because “*I have been very ill recently but do not have anyone to represent on my behalf either*”. He added, “*I would appreciate it if the decision could be made in my absence*”. In those circumstances, having noted the lack of medical evidence as to unfitness to attend a hearing and having attached weight to the appellant’s own wish for the appeal to be decided in his absence, and having reached the view it would be just and in accordance with the overriding objective as enshrined in rule 2 of the Tribunal Procedure (Upper Tribunal) Rules 2008 to do so, we resolved to determine the appeal on the basis of the documentation before us.

11. As to the approach we must take with respect to an appeal such as this, paragraph 17 of Schedule 4 to the Transport Act 1985 (as amended) provides that 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 their functions under an enactment relating to transport*”. However, it was explained by the Court of Appeal in *Bradley Fold Travel Ltd & Anor v Secretary of State for Transport* [2010] EWCA Civ 695 that the Transport Tribunal (now the Upper Tribunal) will not be required to rehear all the evidence by conducting what would, in effect, be a new first instance hearing. Rather, it has the duty to hear and determine matters of fact and law on the basis of the material before the TC but without having the benefit of seeing and hearing from witnesses. The appellant assumes the burden of showing that the decision appealed against was wrong. In order to succeed an appellant must show that the process of reasoning and the application of the relevant law requires the adopting of a different view. Further, paragraph 17(3) of the same Schedule provides that in deciding an appeal 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.

12. As to disposal, the Upper Tribunal has power, if allowing an appeal, to make such order as it thinks fit or to remit the matter back to the TC for rehearing if it considers such a course to be appropriate.

13. As to our analysis, we have first considered what the basis of the decision to revoke was. We are satisfied, from the content of the internal memoranda referred to above, that it was intended to revoke the licence on the twin bases of loss of repute and a change in circumstances. But the former never found its way into the decision letter of 5 August 2022. Nor did it find its way into the letter of 12 July 2022 either. We do accept that certain of the matters raised in the letter of 12 July 2022 (the failure to inform of a change of address, the failure to respond to correspondence, and the failure to timeously indicate whether it was intended to surrender the licence or not, in addition to other concerns identified elsewhere such as the failure to inform as to an apparent cessation of trading, the theft of a vehicle, and the change of operating centre), would have potential relevance to an evaluation of repute. We accept it is permissible (though we think it not necessarily good practice) to incorporate different documents into a decision letter by reference. But here as we have made clear the incorporation of the letter of 12 July 2022 did not assist anyway because of the lack of reference to repute in that letter. We cannot, in these circumstances, characterise the decision as being one to refuse on the part basis of repute. We understand that was the intention, but

such has not been properly communicated or achieved. That means we must, in deciding this appeal, proceed on the basis that the sole reason for the revocation decision was the change of circumstances.

14. As to that, there have clearly been numerous changes which are highlighted above. Of those, changes to the address of the appellant, his contact details, his trading situation, his use or otherwise of vehicles specified in the licence, and the location of any operating centre would, in our view, fall within the category of changes relevant to the grant of the licence. That affords a proper basis for the decision to revoke. The OTC did not explain, in either of the letters referred to above, why it was that it had been decided to exercise discretion in favour of revocation. That should have been done but we accept that the appellant's somewhat cavalier attitude in failing to report numerous fundamental changes meant the outcome was inevitable. All of that being so, we have concluded that it has not been shown that the process of reasoning and the application of the relevant law requires us to reach a different conclusion to that reached by the TC.

15. This appeal to the Upper Tribunal is dismissed.

M Hemingway
Judge of the Upper Tribunal

R Fry
Member of the Upper Tribunal

M Smith
Member of the Upper Tribunal

Authorised for issue on 20 December 2022