



Mrs Gwendoline Joyce Greenwood and Mr David Greenwood (in partnership)
[2023] UKUT 229 (AAC)

**IN THE UPPER TRIBUNAL
ADMINISTRATIVE APPEALS CHAMBER
(TRAFFIC COMMISSIONER APPEALS) [2022] UKUT (AAC)**

Appeal No. UA-2023-000078-T

ON APPEAL from A DECISION of the TRAFFIC COMMISSIONER for the North West of England Traffic Area

Before: Zachary Citron: Judge of the Upper Tribunal
Dr Phebe Mann: Member of the Upper Tribunal
Richard Fry: Member of the Upper Tribunal

Appellant: Mrs Gwendoline Joyce Greenwood and Mr David Greenwood
(in partnership)

Representation

For the appellant: David Greenwood (a partner in the appellant)

Heard: remotely by telephone

On: 6 September 2023

Date of decision: 13 September 2023

DECISION OF THE UPPER TRIBUNAL

The appeal is dismissed.

Subject matter

Refusal of application for licence

Cases referred to

Bradley Fold Travel Ltd & anor v Secretary of State for Transport [2010] EWCA Civ 695.
Ian Phillips (trading as T and R Phillips Haulage) [2016] UKUT 156 (AAC)

REASONS FOR THE DECISION

The decision appealed against

1. The appellant appealed to the Upper Tribunal against a decision of the Traffic Commissioner (the “**TC**”) in a letter (the “**decision letter**”) dated 6 January 2023 refusing its application for a standard operator’s licence under the Goods Vehicles (Licensing of Operators) Act 1995. (In what follows, (unless the context otherwise indicates) references to “sections” or “s” are to sections of that Act.)
2. The decision letter said that the application had been refused under s13(5) and that the appellant had failed to demonstrate, from the information submitted, that it met all requirements for the licence. In particular, the financial information provided was not “acceptable” as it was bank statements for the “previous partnership”; based on the partnership deed provided, that partnership no longer existed; therefore, the appellant had failed to demonstrate that it met the requirements of s13D (requiring sufficient financial resources for maintaining vehicles in a fit and serviceable condition).
3. By way of explanation of these statutory references:
 - (a) under s13(5), the TC must refuse an application for a standard licence if the TC determines that any of the requirements that the TC has taken into consideration in accordance with s13(1) are not satisfied;
 - (b) under s13(1)(b), on an application for a standard licence, the TC must consider, if the TC thinks fit, whether the requirement of s13D is satisfied (there is an identical provision on an application for a restricted licence, under s13(2)(b));
 - (c) the requirement of s13D is that the provision of the facilities and arrangements for maintaining vehicles in a fit and serviceable condition (under s13C(4)) is not prejudiced by reason of the applicant’s having insufficient financial resources for that purpose.

Background facts per documentation before the Upper Tribunal

4. The appellant’s online application to the TC for a licence, received on 1 November 2022, was for a standard national licence, in respect of a single vehicle, and was made by a partnership of Mrs Gwendoline Joyce Greenwood (“**Mrs Greenwood**”) and (her son) Mr David Greenwood (“**Mr Greenwood**”).
5. Mrs Greenwood is in her 80s and Mr Greenwood is in his 60s. They live on a hill farm in Cumbria.
6. The Office of the Traffic Commissioner (“**OTC**”), in a letter to the appellant dated 8 November 2022, said that its application was incomplete and it must provide more information (which was listed in an annex to the letter), by 22 November 2022. The further information included financial information in the name of Mrs Greenwood and Mr Greenwood, showing that they had ready access to sufficient resources to support the application; OTC said that the type and size of licence applied for required £3,100

to have been available during a 28 day period; it said the submitted bank statements were unacceptable as they “also” had the name of Mr Colin Greenwood (Mrs Greenwood’s husband and Mr Greenwood’s father, who had passed away in July 2022); OTC asked for proof of “the change of name” or a bank statement with the up to date name.

7. OTC again wrote to the appellant, in a letter dated 28 November 2022, saying that its application remained incomplete; that it must send the additional documentation listed in an annex to the letter (which included the same financial information as in its 8 November 2022 letter)
8. During November 2022, the appellant sent OTC copies of bank statements for “Messrs CR & GJ Greenwood & Son” (the trading name of Mr Colin Greenwood, Mrs Greenwood and Mr Greenwood).
9. Susan McConkey (Mrs Greenwood’s daughter; Mr Greenwood’s sister) attempted to reach OTC by telephone on 15 December 2022 (see paragraph 12(c) below for evidence that a telephone conversation between Ms McConkey and OTC did take place on that day).
10. Mr Greenwood wrote to OTC in a letter dated 26 December 2022 saying, amongst other things, that he only required a “restricted” licence.
11. Mr Greenwood again wrote to OTC in a letter dated 19 January 2023, apologising for not getting his bank details to OTC in time, and saying he had just received them from the bank. He said he did not know why this had taken so long; the postal strike had not helped; he did not have internet banking on relied on family to help him (and they did not live close).
12. OTC’s internal records indicated that
 - (a) an operator’s licence had been held by the partnership that had traded as “CR & GJ Greenwood & Son” (comprised of Mr Colin Greenwood, Mrs Greenwood and Mr Greenwood)
 - (b) following the passing of Mr Colin Greenwood, a “change of entity letter” was issued by OTC on 20 October 2022; it appears to be this that prompted the appellant to apply for a new licence in early November 2022
 - (c) Ms Sharkey from OTC spoke with Mrs Greenwood’s daughter on 15 December 2022 by telephone; Ms Sharkey explained that once a partner died, the partnership was dissolved; by the end of the conversation, Mrs Greenwood’s daughter understood that bank statements would need to submitted in the names of one or both of the applicant partners
 - (d) s13A(2)(c) (financial standing) was relevant to the TC’s decision to refuse the application

- (e) a copy of the partnership deed (for the partnership that had traded as “CR & GJ Greenwood & Son”) had been provided to OTC and it confirmed that the partnership terminated on the death of one partner.

Grounds of appeal

13. In the appeal form, Mr Greenwood said that

- (a) the application for an operator’s licence came about following the death of his father
- (b) primarily he wanted the licence for the welfare of his animals; he lived on a hill farm; in order to transport them safely e.g. to better grazing land or auction; as he was the primary carer for his elderly mother, he wanted to be away from the farm as little as possible
- (c) the “initial” application was refused because of the incorrect bank details that were sent to [Mr Greenwood] and that he forwarded to OTC; he then had to wait for the bank to send the correct information; and there was then the postal strike, so this information did not arrive in time; he had since sent the correct information
- (d) he asked for consideration of the appeal and “a continuation of our licence”.

14. At the hearing, Mr Greenwood said that he had had intended to apply for a “restricted” licence.

Jurisdiction of the Upper Tribunal

- 15. An applicant for an operator’s licence may appeal to the Upper Tribunal against refusal of the application: s37(1).
- 16. The Upper Tribunal has jurisdiction to hear and determine all matters whether of fact or law for the purpose of the exercise of its functions under an enactment relating to transport. It has the power to make such order as it thinks fit or, in a case where it considers it appropriate, to remit the matter to a TC for rehearing and determination.
- 17. 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.
- 18. The task for the Upper Tribunal on an appeal is to conclude whether or not, on objective grounds, a different view from that taken by the TC is the right one or (meaning the same thing) whether reason and the law impel the Upper Tribunal to take a different view (*Bradley Fold Travel and anor v Secretary of State for Transport* [2010] EWCA Civ 695 at [40]).

The Upper Tribunal’s factual findings

19. On the evidence before us, we find as follows:

- (a) the application whose refusal is being appealed in this case was made by a partnership of Mrs Greenwood and Mr Greenwood
 - (b) that application was for a standard licence; we make no finding as to whether Mr Greenwood intended otherwise (at the time it was made) because, whatever his intention, it cannot alter the fact that the application *actually made*, was for a standard, not a restricted, licence (and, in any case, s13D applies to applications for restricted licences as much as to applications for standard licences)
 - (c) the appellant did not provide financial evidence for either or both partners, by 12 December 2022, the deadline set by the TC (or indeed by 6 January 2023, the date of the TC’s decision under appeal). We find that the 12 December 2022 deadline was a reasonable one, in the circumstances. Nor is this a case where the appellant earnestly tried to meet the 12 December 2022 deadline, but was frustrated by events beyond its control; we find that it was only sometime after 15 December 2022 (when Susan McConkey, on behalf of the appellant, had a telephone conversation with Ms Sharkey of OTC) that the appellant appears to have started to make concerted efforts to obtain the required financial information (and, in the event, such information was not received, and forwarded on to OTC, until over a month later).
20. We also find that the senior TC’s statutory document number 2 (Finance) states on page 21 with regard to partnerships: “All financial documents should be in the same name(s) as one or both of the applicants or licence holders.” That document is issued (as guidance to TCs) under s4C of the Public Passenger Vehicles Act 1981.

Reasoning for the Upper Tribunal’s conclusions

- 21. This is an unfortunate case involving not-so-young individuals living deep in a rural part of the country; and who had fairly recently suffered a bereavement of a close relative. The TC could have been more understanding of their circumstances. Fundamentally, however, the appellant failed to provide information required for its application within the (ample) time given by the TC to provide it, *or even to request an extension of time* prior to the deadline. We are satisfied that the information requested by the TC was reasonably required, given that the “old” partnership had dissolved.
- 22. Given the above, TC’s decision to refuse the application cannot, in our view, be said to be plainly wrong. It follows that, under the law as it stands, the Upper Tribunal has no power to disturb it.
- 23. We note, by way of postscript, that, as was decided by the Upper Tribunal in *Ian Phillips (trading as T and R Phillips Haulage)* [2016] UKUT 156 (AAC), the TC could have made a regulation 31(3) (of the Goods Vehicles (Licencing of Operators) Regulations 1995) direction not to treat the “old” partnership’s licence as terminated when Mr Colin Greenwood died but rather suspended it and then made a further direction (under regulation 31(4)) to treat the appellant partnership as if it were the

holder of that licence (as it is carrying on the business) – such direction could have lasted for 12 months, or, in special circumstances, 18 months. But the law puts the power to make such directions squarely in the hands of the TC; s37 gives no right of appeal to the Upper Tribunal for an ‘omission’ by the TC to make such directions.

Zachary Citron
Judge of the Upper Tribunal

Dr Phebe Mann
Member of the Upper Tribunal

Richard Fry
Member of the Upper Tribunal

Authorised for issue on 13 September 2023