



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

**Appeal No. UA-2022-001528-T  
[2023] UKUT 98 (AAC)**

**ON APPEAL from a DECISION of the TRAFFIC COMMISSIONER  
(North-East of England)**

**Before:** M Hemingway: Judge of the Upper Tribunal  
S Booth: Member of the Upper Tribunal  
G Roantree: Member of the Upper Tribunal

**Appellant:** Philip Drake

**Reference No:** OB0215409

**Representation:**

**For the appellant:** In Person

**Heard at:** Leeds

**Date of Hearing:** 24 March 2023

**Date of Decision:** 17 April 2023

**DECISION OF THE UPPER TRIBUNAL**

This appeal is dismissed.

**Subject matter: Financial resources**

**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 Philip Drake (the appellant). He is a builder and a sole trader. He was, until he fell foul of the regulatory regime, the holder of a restricted goods vehicle operator's licence authorising the use of a single vehicle. He says he has held a licence since 1992. The appeal is directed towards a decision of the Traffic Commissioner (TC) of 2 September 2022 to revoke his licence. The appeal was received by the Upper Tribunal on 13 November 2022 (later than the permitted time), but we extend time to admit it because the period of delay was not significant and because we think it in the interests of justice for the appeal to be heard and decided.

2. The appellant's existing licence became due for renewal. On 31 May 2022 the Office of the Traffic Commissioner (OTC) wrote to him informing him of the need to complete a checklist, provide specified information about his business finances and to pay a prescribed fee for renewal purposes. The letter warned him he would need to do all of that by 30 June 2022 otherwise his licence would be terminated.

3. The appellant partially completed the checklist. But he did not provide the financial information sought and, in particular, did not provide his average credit balance over the previous three months as asked. Instead, he simply wrote "*Self-financing. Never had overdraft*". On 22 June 2022 the OTC again wrote to the appellant, having received his original response, and repeated its request for specific financial information. Again, the appellant did not answer the specific questions asked of him. This time he wrote "*Self-Financing. Never loaned or overdrafted. If another letter sent, same reply*". The final sentence of that response appears to be an indication of ongoing reluctance to answer the OTC's specific questions and a positive indication that he will not do so. A decision could probably have been taken, at that point, to terminate or revoke the licence. But the OTC wrote to the appellant on 5 July 2022, and so after the deadline previously given, explaining that he would now be required to demonstrate that he continued "*to meet the requirement to be of appropriate financial standing*" and that he was to do so by forwarding original bank or building society statements covering the last three months, along with proof of any overdraft facility in place. The letter did not specify what level of available funds he was required to demonstrate. No reply was received and so, on 2 August 2022, the OTC wrote to the appellant once again. The letter is marked as having been sent "*by Email and Recorded Delivery*". It also seems a copy was sent to two different addresses used by the appellant. The letter tells the appellant that the TC is considering revocation of the licence on the basis of a change of circumstances since the last grant, such change being that "*financial resources may no longer be available*". Reliance was also placed on the failure on the part of the appellant to answer questions put to him. But there was no response. On 2 September 2022 the OTC wrote to the appellant (the letter was again marked "*by Email and Recorded Delivery*") telling him his licence had been revoked. It was explained that it had been revoked under section 26(1)(h) of the Goods Vehicles (Licensing of Operators) Act 1995 (the Act) due to a

change of circumstances. The letter went on to specify what the author thought were two changes of circumstances expressed to be “*Financial resources may no longer be available*” and “*failure to provide financial resources and failure to respond to correspondence from the Office of the Traffic Commissioner*”. We wonder whether the latter can properly be characterised as a change in circumstances though perhaps it could be if what is really being said is that the appellant was previously cooperative with the regulatory process but has now become uncooperative.

4. The appellant responded to the revocation of his licence. We are not clear how he heard of it because he does seem to assert that he did not receive the letter of 2 September 2022 (see below). It is possible, we suppose, that he learned of it through a telephone conversation with a member of the OTC’s staff, but we have not seen a record of such a telephone conversation. Be that as it may, he sent an undated letter (which appears at page 42 of the Upper Tribunal appeal bundle) but which must have been written and sent after the letter of 2 September 2023. We say that because it makes reference to “*a letter sent on 5<sup>th</sup> September*” which the appellant claims in his letter, he never received. We think the letter of 2 September and the one said to have been sent on 5 September must be one and the same. The letter sent by the appellant to the OTC bears a receipt stamp (when it was received by the OTC) of 7 October 2022. In the letter the appellant reasserted his contention that “*my finances are sufficient to run my wagon*” and he supplied statements from the Nationwide Building Society for the period from 6 July 2022 to 27 September 2022. The statements showed a fluctuating credit balance ranging between £1,002.47 to £4,852.47. There is no indication one way or the other in the statements or elsewhere as to any overdraft facility. The OTC then wrote to the appellant on 18 October 2022 stating that following a financial calculation based upon the content of the statements, “*it is evident that you do not meet the requirement for a Restricted Licence*” and that the decision to revoke would not be reviewed. The appellant was informed of his right of appeal to the Upper Tribunal, as he had also been when he was sent the letter of 2 September 2022. The appellant appealed.

5. It is, at this stage, worth setting out and explaining some of the content of the relevant legislation. As to the need for an Operator to have a certain level of finance, Section 13A of the Act requires the holder of a standard licence (and we remind ourselves that the appellant had a restricted licence) to be able to demonstrate “*appropriate financial standing as determined in accordance with paragraphs 1 to 5 of Schedule 3*”. Essentially, there is a formula under which a calculation has to be made based upon the number of vehicles and trailers being utilised under the licence. Put simply, the holder of a licence under which one vehicle is authorised but with no trailers, would have to show available financial standing in the sum of £3,100. Under Section 13(2)(b) a TC may “*if he thinks fit*”, consider whether the requirement in 13D (see below) is met. Under 13C(4), which sets out some requirements applicable to both standard and restricted licences, “*There must be satisfactory facilities and arrangements for maintaining the vehicles used under the licence in a fit and serviceable condition*”. Under 13D, which again applies to both standard and restricted licences, there is a requirement that “*the provision of the facilities and arrangements for maintaining the vehicles in a fit and serviceable condition...is not prejudiced by reason of the applicant’s having insufficient financial resources for that purpose*”. Section 26(1)(h) permits revocation where “*since the licence was issued or varied there has been a material change in any of the*

*circumstances of the licence-holder that were relevant to the issue or variation of the licence”.*

6. In his grounds of appeal the appellant said that he had tried to sort matters out with the OTC but to no avail. He explained he had experienced difficulty in contacting the relevant OTC caseworker who had been dealing with his case. He said his vehicle had always been “*maintained to a very high standard*” and that he had had no regulatory difficulties (other than this one) since 1992. He asserted that the basis for the decision to revoke had not been explained to him. He seemed to contend he had not received some of the letters said to have been sent to him by the OTC.

7. The hearing of the appeal took place before us, at Leeds, on 24 March 2023. The appellant attended and represented himself. He was accompanied by his wife. It was a pleasure to meet both of them. The appellant reiterated that he had not received some of the letters said to have been sent to him. He had always been in a position to maintain his vehicle. He was proud of it and of its condition. If he needed money, he would be able to get it from family. He has a large family. This would have been his final licence. He showed us the originals of some photographs of his vehicle, copies of which had been sent with his appeal. External photographs cannot confirm the full state of repair of a vehicle, but it is right to say the external condition of the vehicle appeared pristine. The appellant invited us to apply common-sense in deciding his appeal.

8. 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*”. But it was explained by the Court of Appeal in *Bradley Fold Travel Ltd and 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 all 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. Put another way, with respect to matters of fact and discretion, the appellant must show the TC to have been plainly wrong. 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.

9. We have considered what the position might be regarding the claimed non-receipt of correspondence sent by the OTC. It seems clear that the appellant must have received the letters of 31 May 2022, and 22 June 2022, since he had responded to them. He does not appear to assert he did not receive the letter of 5 July 2022 even though he did not reply to it. All of those letters were sent to the specific address which the OTC has on record as his address for correspondence. There is then the letter of 2 August 2022. The appellant does

assert he did not receive this one. It was sent, as we say by recorded delivery, to the same address as the earlier letters had been sent. A copy was also sent to another address which appears to have been sometimes used by the appellant. There is some documentation before us produced by the Royal Mail Track and Trace Service. That seems to indicate that one of the letters sent on 2 August 2022 (the one sent to the same address as the earlier letters) was “*returned to sender*” after two attempts to deliver it had been made. There is no evidence concerning the other copy. As to a copy also being sent by e-mail, the appellant told us at the hearing that he does have an e-mail address, but he did not think he had passed it to the OTC. He uses e-mail only very sparingly. We note that there is no indication in the documents contained in the Upper Tribunal appeal bundle, that the OTC does have the appellant’s e-mail address and no indication of the e-mail address to which the letters of 2 August 2022 and 2 September 2022 were e-mailed to. There is no evidence concerning Track and Trace, regarding the letter of 2 September 2022 which the appellant also says he did not receive.

10. We are satisfied that the OTC sent all of the above letters to the address it has on record as the appellant’s address for correspondence purposes. We are satisfied that that address must have been given to the OTC by the appellant for correspondence purposes. We are satisfied that the appellant has not subsequently told the OTC that it should no longer use that address. There is no record of any such notification and anyway, we think if the appellant had told the OTC not to use that address, he would have told us he had done so. We are not satisfied that copies were sent via e-mail because the e-mail address they were supposedly sent to has not been specified. It is possible, we suppose, that the OTC had used a standard letter which mentions e-mail, without amending it. We are satisfied that attempts were made to deliver the letter of 2 August 2022 to the appellant at the address the OTC has for the purpose of corresponding with him. That is what the Track and Trace evidence shows. Whilst we note the appellant says he has no recollection of any attempt to deliver it, we think the Track and Trace evidence is persuasive and that the appellant must have misremembered. We are satisfied that a copy of the letter was also sent to a different address, but we cannot know whether it ever found its way to the appellant or not. But we accept the OTC did what could have been expected of it in sending the letter to the appellant at the correspondence address he had given to it. As we see it, once such an address has been given, it is for the holder of a licence to ensure correspondence relating to the licence and sent by the OTC may be properly received. As to the letter of 2 September 2022, there is evidence it was sent to the above correspondence address. It is indicated, on the face of the letter that it was sent by recorded delivery. We accept it was properly sent by recorded delivery because the letter of 2 August 2022 obviously was and because it would be appropriate to send a letter revoking a licence by such a means. We have concluded, therefore, that the appellant derives no assistance, in this appeal, from the contentions that he did not receive correspondence.

11. We now move on to examine the reasoning of the OTC and the TC in deciding to revoke. We have set out, above, the law relating to finance. The purpose behind the relevant legal provisions is to ensure sufficient resources are available to ensure the establishment and proper administration of the business and to ensure vehicles used in the business are properly maintained.

12. The OTC and ultimately the TC, applied the requirement which relates to financial standing to the appellant. As we have pointed out, the financial standing requirement in Section 13A of the Act relates to those who hold a standard licence. But Section 13D applies to those, like the appellant, who hold restricted licences. The requirement in 13D may only be applied by a TC if he thinks it fit to do so (see above). It seems to us quite clear that the TC did apply the 13D requirement before concluding there had been a change of circumstances to the effect that the appellant now lacked sufficient financial resources. Although the word “*may*”, was used in the revocation letter of 2 September 2022, we think the TC must have been deciding the financial resources test was not met rather than merely deciding it might not have been met and we proceed on that basis whilst noting what was possibly rather loose usage of language. A question for us, though, is whether it can be said the TC exercised discretion to apply the 13D test before actually applying it. There is nothing in any of the letters sent by the OTC, including the revocation letter, which expressly states such discretion was exercised. Nor are we able to see anything which is clearly and directly to that effect in the internal memoranda which is contained within the Upper Tribunal bundle, and which reveals something of the thinking behind the decision of the TC to revoke. That said, the letters of 2 August 2022 and 2 September 2022 talk of “*financial resources*” rather than “*financial standing*” and that language is appropriate with respect to the Section 13D test. So, it may readily be inferred in this case that the TC had decided in the exercise of his discretion to apply that test even if that was not made as clear as perhaps it ought to have been.

13. Having exercised discretion to apply the test in Section 13D, we are satisfied the TC was not plainly wrong to use the formula which is used with respect to standard licences in deciding whether or not the provision of the facilities and arrangements for maintaining the vehicles in a fit and serviceable condition would be prejudiced by reason of insufficient resources. Again though, we wonder whether the reasoning as to why that was done should have been set out. But we are unable to say that the TC in deciding to apply the 13D test or in deciding to apply the standard licence formula as to the amount of finance required, was plainly wrong.

14. That really is the end of the matter. The appellant did provide building society statements showing a level of available finance but those were provided after the decision to revoke had been made. The TC cannot be faulted for not considering material not before him when he made the decision under appeal. Additionally and in any event, the statements did not evidence the availability of an average of £3,100 over a three month period so it would not have benefitted the appellant even if he had submitted them prior to the revocation decision. The appellant complained before us that he had not been told how the calculation which the OTC had carried out after the revocation decision had been made. We understand his concern but, of course, as we have made clear, that calculation had no bearing on the revocation decision itself. It came after it. But had the calculation been essential to the revocation decision, we would have expected the basis for it to have been communicated and we might have considered the reasoning on revocation to have been inadequate had it not been. So the appellant can look it up, should he wish to, we would point out that the basis for calculations as to finance when bank statements or similar have been provided, is set out at Annex E of Statutory Document 2: Finance issued by the Senior Traffic Commissioner.

15. In short, we have identified some failings in the way the decision to revoke the licence has been explained but we are not persuaded that the decision was made in error of law or that it was otherwise plainly wrong. Accordingly, we must dismiss the appeal.

16. We would like to add something. The appellant told us, at the hearing, that he now had a greater level of finance than had been available to him around the time when the decision to revoke was taken and the appeal lodged. That being so, he may now wish to consider making a fresh application for a new restricted licence. But that is a matter for him.

**M Hemingway**  
**Judge of the Upper Tribunal**

**G Roantree**  
**Member of the Upper Tribunal**

**S Booth**  
**Member of the Upper Tribunal**

**Authorised for issue on 17 April 2023**