



[2016] UKUT 0145 (AAC)

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

**Case No. T/2015/55**

**ON APPEAL from the DECISION of Sarah Bell  
TRAFFIC COMMISSIONER for the West of England Traffic Area.  
Decision made 28 May 2015 and outcome notified 14 August 2015.**

**Before:           Mr M R Hemingway           Judge of the Upper Tribunal  
                  Mr S James                   Member of the Upper Tribunal  
                  Mr J Robinson               Member of the Upper Tribunal**

**Appellant:     P W T Contracts Limited**

**Attendances:**

For the Appellant:           Mr James Dirks (Solicitor)

**Heard at:**                   Field House, Breams Buildings, London

**Date of Hearing:**           25 February 2016

**Date of Decision:**         17 March 2016

**DECISION OF THE UPPER TRIBUNAL**

IT IS HEREBY ORDERED that this appeal be DISMISSED.

**Subject Matter:**  
Financial Standing

**Cases referred to:**  
None

## REASONS FOR DECISION

### Background

1. The Upper Tribunal was dealing with an appeal from a decision of the Traffic Commissioner for the West of England which was notified to the appellant by letter of 14 August 2015. The decision was to refuse to grant a Standard National operator's licence to PWT Haulage Limited, the relevant licence application number being RH1137668. It was refused under section 13A(2)(c) of the Goods Vehicles (Licensing of Operators) Act 1995 (hereinafter the "1995 Act").

### Factual history

2. The factual background to this appeal appears from the documents which have come into existence as a result of this application and the decision made in respect of it. It is summarised below.

3. One Philip Whettingsteel is the sole director and nominated transport manager of PWT Contracts Limited. He has had some previous experience in the industry. Indeed, he was a director of PWT Haulage Limited, a company which was granted a licence in March 1991 and which was dissolved in 1994. It appears, however, that the relevant licence was renewed after dissolution of the company. He was the nominated transport manager on a licence which was granted to a company trading as PWT Contracts in October of 1994. He was a listed director of Nationwide Road Haulage Limited, a company which was granted a licence in May 2001 but which was revoked in December 2005 and in respect of which there are three convictions relating to compliance issues. In January 2015 an application was made by PWT Contracts Limited for a licence but this was withdrawn in March 2015 because of the failure to place a valid advertisement within the relevant statutory period. The current licence application was then made following that withdrawal.

4. With respect to the current application, Mr Whettingsteel has explained during the course of the application process that he has an agreement in place with Hope Construction Materials Limited (hereinafter simply referred to as "Hope") making provision for PWT Contracts Limited (hereinafter "PWT") to take up a five year owner-driver truckmixer contract with them with one vehicle being used solely under the agreement though, he said, he was seeking a licence for two vehicles to cover the position in case Hope were to ask PWT, at some point in the future, to operate a second vehicle under the terms of the contract. He said that under the agreement PWT would lease from Hope a truckmixer vehicle which would have an inclusive five year repair and maintenance contract direct with Mercedes, the maker of the vehicle, and that under the terms of the contract all overheads and incidental expenses, including the supply of fuel and oils, would be paid for by Hope and then recharged to PWT's account with them and deducted, on a monthly basis, from PWT's earnings. There would also be a "reserve account" held by Hope, and which was said to be in the sum of £6,000.00, its being said that if there was to be a second vehicle, then a further reserve account with a similar sum would be provided. So, what was envisaged was that PWT would only operate in the context of work from Hope.

5. In making the application, Mr Whettingsteel declared a previous history of bankruptcy and provided written confirmation that he had been discharged in September 2011. He did not declare anything regarding the history of PWT Haulage Limited, subsequently explaining that since the company had been dissolved so long ago he had not realised the relevance. He did disclose his past involvement with Nationwide Road Haulage Limited though not the revocation of that licence nor the fact that the company had gone into liquidation in 2004. He subsequently went on to explain that he had understood the licence had been surrendered rather than revoked and that, again, since the events had happened so many years ago, he had not appreciated their relevance.

6. Mr Whettingsteel provided certain information, in support of the Company's application, regarding financial standing. It was required to show access to £10,900.00, on the basis that the application was for two vehicles, (a figure which has not been the subject of any dispute) and provided evidence in the form of bank and credit card statements and a copy of some of the contractual documentation relating to Hope and Mercedes.

7. It is fair to say that there were some shortcomings with respect to the documentation provided. The bank statements were, in fact, printed from the internet, and did not include the name of the account holder nor the identity of the issuing bank nor any account number. Nor was there a copy of the actual agreement with Hope or a recent bank statement relating to the reserve account. It is worth mentioning, though, that Mr Whettingsteel had also provided a document produced by an organisation known as MBNA Limited, which indicated that he was due a "PPI" refund amounting to £12,709.13 which it was said would be paid within the next 28 days. The date of the letter from MBNA Limited was 23 February 2015. There was no document showing when the refund was actually paid to Mr Whettingsteel.

8. The various non-disclosure aspects were not seen as a significant barrier to the granting of a licence. However, the view was taken that the evidence of financial standing was insufficient. As is common, the application was initially looked at by a member of staff within the Traffic Commissioners Office. She identified the various matters of concern in a document headed "New Application Referral" and which has been included in the appeal bundle. She recommended that Mr Whettingsteel, on behalf of PWT, should be asked to provide further and better evidence concerning the financial standing aspect of the application. A Team Leader within the same Office, and on the same date, agreed with the concerns expressed and recommended to the Traffic Commissioner that the applicant should be given "a final 14 days" to provide acceptable bank statements, the full agreement with Hope and an up to date statement for the reserve account. She also recommended that if the material sought was not forthcoming the application should be "refused under Section 13A(2)(c) without the need for it to be re-submitted to the Traffic Commissioner". That is a reference to a provision of the "1995 Act". Her views as to all of this also appear on the "New Application Referral" document. Then, on 28 May 2015, the matter was placed before the Traffic Commissioner and it is recorded that she accepted the recommendation of the Team Leader. Again this is recorded on the "New Application Referral" document. The Traffic Commissioner making the decision is not named but the reference SB appears so there is good reason to think it was Traffic Commissioner Bell. So, it seems to us albeit that this was the subject of some argument before us, that on 28 May 2015 Traffic Commissioner Bell had decided the application was to be refused on the grounds of financial standing unless the required evidence was produced within 14 days of its being sought. Accordingly, on 23 June 2015 the Office of the Traffic

Commissioner wrote to Mr Whettingsteel asking for original bank statements in the name of PWT Contracts Limited for a full one month period, a complete copy of the reserve account agreement with Hope and a current statement of the reserve account. A response was sought by 7 July 2015. Mr Whettingsteel responded within the time given. He provided what he described as “a full copy of an owner driver contract with Hope Construction Materials”, pointing out that “details of a reserve account can be found in section 14”. He said that he had requested original bank statements relating to PWT Contracts Limited from his bank, his not having been able to provide them originally due to his having an on-line account, and said that such would be forwarded to the Traffic Commissioners Office once received. There is, however, no evidence to show that he ever did provide any such original bank statements even if they were obtained. As to the owner-driver contract, the copy was a standard contract which did not name PWT Contracts Limited or Mr Whettingsteel but which did contain some general information regarding the way in which a “reserve account” would work. No statement of the reserve account was provided.

9. It is apparent, from the documentation before us, that the Traffic Commissioners Office was unimpressed with Mr Whettingsteel’s response. Of course, the team leader had recommended to the Traffic Commissioner that, without appropriate evidence of financial standing, the application should be refused. As noted above, the Traffic Commissioner had accepted that recommendation and had authorised the subsequent request of financial evidence in the terms referred to above. Such had not been provided. The next thing to happen, then, was the issuing of a letter from the Office of the Traffic Commissioner, in fact from the same member of staff, Sarah Stansfield, who had made the recommendation subsequently agreed by the team leader and approved by the Traffic Commissioner, of 14 August 2015, addressed to PWT Contracts Limited, stating that the deadline for the provision of additional supporting documentation had now expired, that the response was incomplete and unsatisfactory and that, therefore, the application was refused under section 13A(2)(c) of the 1995 Act, as had been anticipated, in the event of an unsatisfactory response. Ms Stansfield was described as a “Caseworker” in the 14 August letter which was signed by her and written in the first person, with no references to the Traffic Commissioner.

### **The proceedings before the Upper Tribunal**

10. An appeal was lodged with the Upper Tribunal. Mr Whettingsteel prepared the written grounds himself. In summary, they were to the effect that he had been in the business a long time; he was to establish a reserve account supplied by Hope; he was not able to produce bank statements in the form required because he only had an on-line account; he would have sufficient resources in light of his own funds and the reserve account; communication with the Traffic Commissioner’s Office had been “very poor” and the Traffic Commissioner’s office had failed to understand the way in which an owner-driver contract works. The appeal was listed for an oral hearing. There was no indication that the appellant was to be represented but, in fact, he was. Mr James Dirks, a solicitor of “On Demand Lawyers” represented him. He made oral submissions to us and also provided us with a skeleton argument.

11. In the skeleton argument certain points were taken which had not been taken in the written grounds of appeal. That is perhaps not surprising since Mr Dirks was only instructed a very short period prior to the hearing. It might have been helpful, though, if Mr Whettingsteel had instructed him at an earlier stage so that there would then have been ample time for

Mr Dirks to place himself on record with the Upper Tribunal and to place amended grounds before it. In any event, the additional points taken in the skeleton were to the effect that there had been no valid decision taken by a Traffic Commissioner; that the Traffic Commissioner had failed to inform the appellant of the availability of a review or a public enquiry; that the Traffic Commissioner had failed to consider the possibility of granting the application subject to undertakings and that the Traffic Commissioner had failed to take into account the evidence from MBNA regarding the monies due to Mr Whettingsteel.

12. We treated the points made in the skeleton argument as amendments, by way of addition, to the grounds of appeal and permitted such amendments under rule 5(3)(c) of the Tribunal Procedure (Upper Tribunal) Rules 2008.

13. In developing his arguments, during the course of the oral hearing, Mr Dirks contended, in effect, that although the Traffic Commissioner appeared to be following statutory guidance in seeking specific evidence of financial standing there was no such requirement in the applicable legislation (he had in mind the 1995 Act) and the guidance was, he submitted, ultra-vires. It had, he argued, never been the intention of the legislature that a lack of financial resources, of itself, would prevent entry into the industry. The information provided by the appellant to the Traffic Commissioner had been sufficient to demonstrate the necessary financial standing required by primary legislation. The MBNA letter ought to have been taken into account because it constituted clear evidence of available funds. Mr Whettingsteel had not been able to provide a statement for the Hope reserve account because that account, it was intended, would only be opened upon the commencement of the trading agreement which, in turn, was dependent upon the granting of the licence. The way in which matters worked the amount in the reserve account would start at nil and build up over a period of 18 months to £6,000.00. Although the account would be in the name of Hope, the beneficial ownership would be vested in the appellant. The documentation provided by Mr Whettingsteel had been imperfect but he is not a lawyer and a certain amount of leeway should have been afforded to him.

## **Discussion**

14. An appeal to the Upper Tribunal is on a point of law (Section 11(1) of the Tribunals, Courts and Enforcement Act 2007). Accordingly, the Upper Tribunal, on an appeal to it, is concerned with the question of whether or not there is legal error in a decision of a Traffic Commissioner. The Upper Tribunal may not take account of circumstances which did not exist at the time of the Traffic Commissioner's decision.

15. We turn, first of all, to the written grounds prepared by Mr Whettingsteel. Mr Dirks confirmed to us, at the hearing, that he was relying on those grounds, in addition to his own as contained in the skeleton argument.

16. It seems to us that the bulk of what was stated in the written grounds prepared by Mr Whettingsteel amounts to mere disagreement with the decision under appeal coupled with an attempt to reargue matters of fact. The points to the effect that he had been in the business a long time, that he would have a reserve account in due course, that he would have sufficient resources with that account, that communication with the Traffic Commissioner's Office had been "poor" amounted merely to assertion. Certainly, there was nothing therein which pointed

to any error of law on the part of the Traffic Commissioner. Further, we did not detect in the documentation before us any indication that the Traffic Commissioner had failed to understand the way in which an owner-driver contract works and nor were we taken to anything, either in the written grounds or during the course of the oral hearing, which supported such a proposition. As to the contention that Mr Whettingsteel was unable to provide original bank statements simply because his is an on-line account, again we heard nothing to further that argument at the oral hearing and we think, insofar as it might be relevant, it is self-evident and obvious that such statements may be obtained upon request, as Mr Whettingsteel had effectively indicated at one point, and/or that on-line statements may be verified by some form of official stamp, declaration emanating from the relevant bank or by other means and we seen nothing to suggest any error of law in this regard. Accordingly, we now turn to the different arguments which were pursued by Mr Dirks. The first one concerns the claimed uncertainty as to whether or not there was, in fact, a valid decision made by a Traffic Commissioner.

17. Mr Dirks takes us to the “New Application Referral” document which contains, in large measure, a resume of the issues in the application. The resume is clearly prepared for the benefit of the Traffic Commissioner. It concludes with a recommendation from the team leader in these terms:

“If, however, the applicant does not provide appropriate financial evidence within 14 days then the application is refused under section 13A(2)(c) Financial standing without the need for it to be re-submitted to the Traffic Commissioner.”

18. There then follow these entries:

**“Traffic Commissioner’s decision:**

Please proceed as recommended for the reasons you give.  
SB/TC/28 5 15.”

19. Mr Dirks specific point to us, about this, was that it was not clear that the actual decision to adopt the recommendation was one taken by a Traffic Commissioner although, in his skeleton argument, he did recognise that the decision, as he put it, “appears to have been made by Traffic Commissioner, under reference SB/TC/28 5 15, who may be, Ms Bell Traffic Commissioner”. There was, he pointed out, no signature of the Traffic Commissioner on the “New Application Referral” document.

20. It is necessary to look at this matter in context. When that is done it is apparent that the background regarding the application was set out by the case worker, that the recommendation as to the nature of the decision to be taken was made by the team leader and that the documentation was, as a whole, prepared for Traffic Commissioner Bell. That, indeed, is clear from information contained at the first page of the “New Application Referral” document. It is equally clear, then, that the initials SB relate to Traffic Commissioner Bell and that the initials TC stand for Traffic Commissioner. It is clear, therefore, when the document is read as a whole and viewed in context, that it was Traffic Commissioner Bell who had made the decision concerning financial standing and who had decided that, without the provision of appropriate financial evidence within 14 days, the application was to be refused without its being re-submitted to her. Accordingly, we would reject Mr Dirks submission that the position

was unclear. We do note he also made the point that that decision did not appear to have been signed by Traffic Commissioner Bell. As we understand his argument it was not to the effect that the lack of a signature invalidated the decision but, rather, that without a signature or other clear evidence there could be no certainty that the decision had been taken by Traffic Commissioner Bell or, indeed, any other Traffic Commissioner. However, we have already dealt with the argument with respect to uncertainty. Since no clear argument was put to us that the decision was invalidated simply by lack of a signature, we do not have to decide it though, in our view, whilst it might have been better or more complete if there had been a signature, or at least, the full name of the Traffic Commissioner, the lack of such offers no legal basis for invalidation. Accordingly, we reject that ground of appeal.

21. The next ground related to the supposed failure of the Traffic Commissioner to inform the appellant that a review or a public inquiry could be sought. Certainly, there is provision for a Traffic Commissioner to undertake a review of a decision under section 36 of the 1995 Act. However, such power is only exercisable if the Traffic Commissioner is satisfied that a procedural requirement imposed by or under any enactment has not been complied with in relation to the decision. We do not see that, here, there has been any such breach. If Mr Dirks argument was to the effect that the breach triggering the availability of the review was that relating to the uncertainty as to whether a valid decision had been made we have found against him on that point. We would also make the additional point that there is nothing in section 36 to indicate that there is any form of legal duty upon the Traffic Commissioner to notify an applicant as to the availability of a review in certain limited circumstances and we were not taken to any other provisions or authorities to support an opposite proposition. We would make similar points with respect to the power to hold enquiries as contained in section 35. These arguments do not demonstrate any error of law on the part of the Traffic Commissioner.

22. As to the undertakings argument, we note the suggestion in the skeleton argument that the application could have been granted subject to undertakings such as one to produce a completed contract with Hope within 28 days and one to produce accounts for three consecutive months thereafter. However, the appellant did not seek to offer any undertakings. The Traffic Commissioner's Office had indicated in correspondence what it was seeking from him regarding additional documentary evidence and it had not been provided. In those circumstances there did not appear to be any reason to conclude that any undertaking offered would be honoured but, in any event, we were not taken to any legislative provisions or decided cases indicating that a Traffic Commissioner was obliged to specifically consider undertakings or to demonstrate, in any decision, that such had been considered and deemed inappropriate.

23. As to the point relating to the MBNA letter, and as to wider points made at the oral hearing regarding the adequacy of the evidence and the appropriateness of requiring specific evidence, we similarly find them not to be made out. In this context, whatever the guidance which Mr Dirks contended was ultra-vires might say, statute provides (see section 13(3)(b) of the 1995 Act) that in relation to a two vehicle licence the sum of £10,900.00 has to be shown to be available. Essentially, the position of the Traffic Commissioner was that the evidence which had been provided simply did not demonstrate that that statutory requirement had been met. It is true that the documentation before us does not demonstrate that the Traffic Commissioner or, for that matter, staff at the Traffic Commissioner's Office, specifically considered the significance or otherwise of the MBNA letter. However, that was a

personal letter addressed to Mr Whettingsteel stating that payment would be made to him within 28 days from 23 February 2015. He did not provide any evidence of receipt of the monies nor did he provide any evidence indicating that those monies were available to be used by PWT Contracts Limited. The evidence regarding the bank statements was wholly unpersuasive for the reasons identified in the “New Application Referral” document and in correspondence sent to Mr Whettingsteel and the documentation supplied regarding the way the reserve account would operate was in standard form and did not indicate, in terms, that it related to PWT Contracts Limited. Against that background it was clearly open to the Traffic Commissioner to conclude that the statutory requirement to evidence available funds had not been complied with. Again, therefore, we detect no error of law on the part of the Traffic Commissioner. Accordingly this appeal to the Upper Tribunal must fail.

### **Some observations**

24. We do note Mr Dirks comments to the effect that had Mr Whettingsteel taken advice at an earlier stage, prior to the refusal of the application, further and better documentation might well have been submitted and that that might have led to a different outcome with respect to that application. Perhaps that is so but there is nothing we can do about it now. The Traffic Commissioner had to consider matters on the basis of evidence submitted to her rather than evidence which she thought might have been available for submission or might have otherwise existed. For ourselves, and it will not be a matter for us, we do not detect anything here, however, which would necessarily prevent the issuing of a licence if a fresh and significantly more comprehensive application, buttressed by further and better documentary evidence of financial standing, was to be made. Perhaps that might be the appropriate future course of action.

25. Finally, by way of observation, we would recommend that Traffic Commissioners review the wording of letters sent to operators containing decisions taken by themselves, to ensure it is clear that they, the Commissioners, have taken the decisions that are the subject of these letters.

### **Conclusion**

26. This appeal to the Upper Tribunal is dismissed.

**Signed**

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

**Dated:**

**17 March 2016**