

[2016] UKUT 0224 (AAC)

Appeal No. T/2015/77

**IN THE UPPER TRIBUNAL  
ADMINISTRATIVE APPEALS CHAMBER (Traffic Commissioner Appeals)**

**ON APPEAL from the DECISION of the TRAFFIC COMMISISONER FOR  
WALES (Mr N Jones)**

**Dated: 20 November 2015**

**Before:**

**Mr E. Mitchell  
Mr M. Farmer  
Mr S. James**

**Judge of the Upper Tribunal  
Member of the Upper Tribunal  
Member of the Upper Tribunal**

**Appellant:**

**Hurley G & B Ltd**

**Attendances:**

Mr Robert Hurley, director of the Appellant Company, appeared for the Appellant.

**Heard at:** Cardiff Civil Justice Centre

**Date of hearing:** 17 March 2016

**Date of decision:** 9<sup>th</sup> May 2016

**DECISION OF THE UPPER TRIBUNAL**

IT IS HEREBY ORDERED that this appeal is DISMISSED. The decision of the Traffic Commissioner taken on 20<sup>th</sup> November 2015 is not set aside.

**SUBJECT MATTER:-**

Application for restricted licence; fairness of public inquiry proceedings before a traffic commissioner.

**REASONS FOR DECISION**

**Introduction**

*The public inquiry*

1. The Appellant applied for a restricted licence under section 8 of the Goods Vehicles (Licensing of Operators) Act 1995.
2. The Traffic Commissioner for the Wales Traffic Area, Mr Nick Jones, called the Appellant to a public inquiry. The inquiry was listed for 1.30 p.m. on 29<sup>th</sup> November 2015 at Cardiff Magistrates' Court.
3. The transcript of the inquiry records:
  - no representative for the Appellant had attended by 1.30 p.m;
  - the Commissioner arranged for his clerk to make a telephone call to the Appellant's offices. The clerk was informed that Mr Robert Hurley (director) had previously notified the Office of the Traffic Commissioner (OTC) that he would not attend the inquiry;
  - the OTC had no record of such notification having been given;
  - Mr Hurley also informed the clerk that he was unaware that he needed to attend the inquiry but he did not wish to withdraw his application;
  - the clerk informed Mr Hurley that he thought the Commissioner intended to proceed in his absence but he would inform the Commissioner of the contents of their phone call.
4. The papers supplied to the Upper Tribunal by the OTC include a copy of an OTC letter dated 16<sup>th</sup> October 2015, properly addressed to the Appellant Company, which informed it of the date, time and place of the public inquiry. The attached 'brief' stated that it would be "down to the company" to provide evidence at the inquiry to meet the concerns it described. These included the written statement of a traffic examiner that (a) he had observed a haulage vehicle being used by the Appellant

Company at a time when no operator's licence was held, and (b) the driver of the vehicle had failed to stop when requested to do so by the examiner.

5. The papers also include a copy of an OTC letter to Mr Robert Hurley, addressed to the Company's offices, which, amongst other things:

- informed the company that it "must" confirm its proposed attendance at the inquiry;

- informed the company it "must" start to collect evidence "to allow the company to set out their case on the day" and it "must" bring that evidence to the inquiry;

- informed the company that it was "important that a board-level director of the company attends the Public Inquiry".

6. The Traffic Commissioner proceeded with the Public Inquiry in the absence of a representative of the Appellant Company. No one else attended the Inquiry.

### **The Traffic Commissioner's decision**

7. The Traffic Commissioner refused to grant the Appellants a restricted licence.

8. Regarding Mr Hurley's claim that he was unaware that he needed to attend the Public Inquiry, the Commissioner found "if he had read the public inquiry brief and made enquiries then he would or should have ascertained that it was very much in his interests to attend". We read this as a finding that Mr Hurley did not have a good reason for failing to attend the public inquiry.

9. The Traffic Commissioner accepted the traffic examiner's written evidence. The Commissioner's written reasons also:

- noted the driver referred to in paragraph 4 above had been convicted "for the offence of resisting or wilfully obstructing a stopping officer" but that, since the driver did not have a vocational licence, the Commissioner had no powers in relation to the driver:

- the Appellant did not promptly supply an enforcement officer with details of the identity of that driver and found Mr Hurley's written explanation for the delay – he had lost the officer's telephone number – to be a "lame" excuse;

- noted that the Commissioner had been unable, due to the Company's non-attendance, to make a finding as to whether the driver was still employed by the company and whether he had faced any disciplinary action.

10. The Traffic Commissioner observed he had not been helped by the absence of a representative from the Appellant Company at the Public Inquiry. And, in the absence of an explanation from the Appellant Company as to the why a road haulage vehicle was apparently used despite the operator having no road haulage licence, concluded that the Appellant Company had not satisfied him that it met the licence criteria. The application for a standard restricted licence was refused.

### **The appeal to the Upper Tribunal**

11. In the Appellant's grounds of appeal, Mr Hurley argued the Company did not realise attendance at the public inquiry was "compulsory" and "had it been made clear that attendance was compulsory we would have attended the enquiry". Mr Hurley requested "another opportunity" to present the Appellant's case to the Traffic Commissioner.

12. Mr Hurley attended the hearing before the Upper Tribunal. The Tribunal asked him to explain his grounds of appeal in the light of the OTC correspondence referred to above (which made it clear that someone ought to represent the Appellant at the public inquiry). Mr Hurley said the OTC correspondence had not been drawn to his attention by the Company's then officer manager. Mr Hurley emphasised how important a road haulage licence was for the Company's expansion plans (we observed at the hearing that the Company is entitled to submit a fresh licence application).

### **Conclusion**

13. The Traffic Commissioner's decision was not plainly wrong and we dismiss this appeal.

14. Section 35(1) of the Goods Vehicles (Licensing of Operators) Act 1995 confers power on a traffic commissioner to "hold such inquiries as he thinks necessary for the proper exercise of his functions under this Act".

15. Schedule 4 to the Goods Vehicles (Licensing of Operators) Regulations 1995 makes provision about the conduct of traffic commissioner public inquiries. Paragraph 3(1) of the Schedule entitles an applicant for a licence to appear at an inquiry. Paragraph 5(1) confers a general power on a traffic commissioner to "determine the procedure at an inquiry". Since the proceedings at an inquiry are

judicial in nature, this power must be exercised fairly (or, to put it another way, in accordance with the rules of natural justice).

16. Paragraph 5(7) of Schedule 4 provides that a commissioner “may proceed with an inquiry in the absence of any person entitled to appear” (subject to compliance with inquiry notification requirements). Again, this power must be exercised fairly.

17. The Traffic Commissioner’s decision to proceed with the public inquiry in the absence of a representative from the Appellant Company cannot legitimately be criticised. Before the Commissioner, the Appellant asserted ignorance of the need to attend the inquiry. However, the OTC public inquiry letters made it very clear that the Appellant should attend. The Commissioner was not wrong to proceed on the basis that proper steps had been taken to put the Appellant on notice that it needed to attend the inquiry. Flowing from that, the Commissioner’s decision to give no weight to the Appellant’s reason for failing to attend cannot be faulted.

18. Moreover, there was a clearly identified regulatory issue arising from the traffic examiner’s evidence that a road haulage vehicle had been used without the authority of an operator’s licence. The Appellant had not squarely addressed this issue in its pre-inquiry correspondence so that, even if the OTC inquiry letters are left out of account, it should have been obvious to the Appellant Company that it needed to attend the inquiry if it wanted to meet the concerns described in the call-up brief.

19. Before the Upper Tribunal, Mr Hurley argued that an incompetent office manager had not drawn the OTC’s inquiry letters to his attention. That point was not put to the Traffic Commissioner (nor was it made in the written grounds of appeal). Accordingly, the Commissioner cannot be criticised for failing to deal with the argument. Had the point been put to the Traffic Commissioner, we can only speculate as to whether it would have made any difference. We cannot say for certain that the Commissioner would nevertheless have proceeded with the inquiry (that would improperly trespass on a commissioner’s discretion to make such inquiry case management decisions as he sees fit in the circumstances of a particular case). But the point remains that the argument was not put to the Commissioner and so it provides no basis for allowing this appeal.

20. Mr Hurley did not dispute the merits of the Commissioner’s decision to refuse the application for a restricted licence. But, in any event, we see no obvious flaw in the Commissioner’s approach in the circumstances of this case.

21. For the above reasons, this appeal is dismissed.

**Mr E Mitchell, Judge of the Upper Tribunal,**

T/2015/77

**9<sup>th</sup> May 2016**