



Neutral Citation Number:

Appeal No. T/2015/62

IN THE UPPER TRIBUNAL  
ADMINISTRATIVE APPEALS CHAMBER  
TRAFFIC COMMISSIONER APPEALS

ON APPEAL FROM THE DECISION OF Miss J N Aitken  
TRAFFIC COMMISSIONER for Scotland

Dated: 4 September 2015

Before: A Gamble, Judge of the Upper Tribunal  
S James, Member of the Upper Tribunal  
M Farmer, Member of the Upper Tribunal

Appellants: A S ADAMS LTD

Attendances: Mr A Adams, Director of A S Adams Ltd  
For the Appellant:

Heard at: George House, 126 George Street, Edinburgh EH2 4HH  
Date of hearing: 13 January 2016  
Date of decision: 16 March 2016

DECISION OF THE UPPER TRIBUNAL

The appeal is dismissed. The decision of the Traffic Commissioner for Scotland dated 4 September 2015 is confirmed.

SUBJECT MATTER:- Repute, Family Connections

CASES REFERRED TO:- Heavy Haulage (Scotland) Ltd (T/2015/6)



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## REASONS FOR DECISION

1. This is an appeal by A S Adams Ltd, a private limited company incorporated on 11 April 2013, whose sole director and shareholder is Mr Andrew Adams, Mr Adams, against the decision of the Traffic Commissioner for Scotland dated 4 September 2015. Mr Adams is a young man who is now aged twenty nine. By her decision the Traffic Commissioner refused the application by the company for a Standard International Goods Vehicle Operators Licence with authority for one vehicle and one trailer. She reached that decision because, as she puts it in paragraph 52 of her decision, she was "not satisfied as to the repute of the appellant company and its director" under section 13A(2)(b) of the Goods Vehicles (Licensing of Operators) Act 1995 and paragraphs 1 – 5 of schedule 3 to that Act.
  2. The Traffic Commissioner took the decision under appeal after a Public Inquiry which she conducted on 1 September 2015.
  3. The hearing before us took place on 13 January 2016. Mr Adams attended. He was unrepresented. As well as giving evidence himself and making representations to us, he adduced evidence from his father, Mr Alistair Adams.
  4. Since the hearing it has come to the notice of the presiding judge that Mr Adams is a social acquaintance of his daughter. So far as he is aware, the judge had never met Mr Adams prior to the hearing. He knows nothing about his business affairs apart from what is contained in the file compiled for this appeal. In these circumstances the judge does not consider that any question of recusal on his part arises.
  5. It is not in dispute that Mr Adams was convicted of three contraventions of the Construction and Use Regulations at Lanark Sheriff Court on 12 March 2014. Mr Adams' evidence to the Traffic Commissioner in regard to that matter is summarised thus in paragraph 9 of her decision:
    - "9. He gave an explanation of the construction and use conviction of 12 March 2014 – he had been driving his father's vehicle which he rarely drove. They were stopped by the Police and a roadside examination of the vehicle found the front side light and the rear side lights were not operating. He and his father immediately replaced these. The number plate was slightly damaged, but the replacement was clearly visible from the windscreen as they had just acquired it and were en route to replace it. He pled guilty."
- In paragraph 13 of her decision the Traffic Commissioner records that the above convictions resulted in a total fine of £340. These convictions also led to a Driver Conduct Hearing before the Traffic Commissioner on 12 May 2014. After that hearing she decided as she explains also in paragraph 13 of her decision, "To suspend (Mr Adams) large goods vehicle driver licence entitlement for two weeks with effect from 12 May 2014."
6. It is also not in dispute that a previous driver conduct hearing before the Traffic Commissioner relating both to Mr Adams and to his father, Mr Alistair Adams, had taken place on 16 April 2013. That resulted so far as Mr Adams was concerned with the issue on 7 September 2013 of a warning by the Traffic Commissioner "as to his conduct as the holder of a large goods vehicle driving licence entitlement". That warning was based on an episode when, according to the Traffic Commissioner, under his father's instructions Mr Adams "did not obey (a) VOSA Stopping Officer".

Because she took the view that the episode in question had taken place under his father's influence she restricted the sanction imposed on Mr Adams to the warning just described. The Traffic Commissioner explicitly incorporated the whole of her decision of 7 September 2013 relating both to Mr Adams and to his father into her decision under appeal to us.

7. Correctly the Traffic Commissioner took account of the matters narrated in paragraphs 5 – 6 above in reaching her decision. She specifically refers to Mr Adams' construction and use contravention convictions, his suspension and his warning in paragraph 42 of her decision. She goes on to cite the Driver Conduct Hearings of 2013 and 2014 in paragraph 49 of her decision. However, it is clear from the terms of paragraph 42 of her decision that the convictions, the suspension and the warning would not have led on their own to the Traffic Commissioner holding that she was not satisfied on the repute of Mr Adams or the appellant company which he owns and controls.

8. The basis of the Traffic Commissioner's decision was rather the history of regulatory infringements on the part of Mr Adams' parents and what she considered to be the continuing links between Mr Adams and his father and mother and their businesses.

9. The Traffic Commissioner lays out the regulatory record of Mr Adams' parents in detail in paragraphs 19 – 23 of her decision as follows:

“19. For completeness I now list the decisions relative to his parents. On 11 September 1997 the then Traffic Commissioner, revoked the goods vehicle operator's licence held by Mrs Vari Adams trading as Adams Haulage Contractors.

20. On 21 January 1998 there was a Public Inquiry relative to applications by Mrs V Adams trading as Adams Haulage OM36305 and Mr A Adams trading as Adams Haulage OM36236 and Commissioner Mr M W Betts issued a written decision, dated 30 January 1998, which must be referred to for its terms and is held repeated herein *brevitatis causa*. I quote from paragraphs 41 and 42 of that decision. “41. When I revoked Mrs Adams' licence last year I intentionally did not disqualify her from holding an operator's licence in the future. Neither could I at the time have disqualified Mr Adams since he had no formal appointment within the licence except as a driver. But I had hoped, after the complaints over the years about unauthorised parking, that the revocation of the licence might bring the Adams to their senses and that they might consider a fresh start. Sadly they have not done so and their activities have really continued as before. They have submitted 2 applications in the hope of getting one licence, a fact in itself which does not seem to me to be a very professional approach but rather one to get around the requirements rather than come up with an honest and straightforward business approach. 42. At the last Inquiry I furthermore commented “You have ignored every warning, you have tried to brazen things out, you have sat there today displaying what came over to me as a cocky and arrogant attitude, and you don't give a d(---) for anyone else ..... you have tried to run rings around the rules that were introduced to protect the living environment of local residents”. I regret that these comments still appear to me to hold good. Mr Adams is not unintelligent, but his attitude continues to be confrontational”.

21. Mr Betts proceeded to make findings that Mrs Adams was not of good repute, of appropriate financial standing and that the then operating centre under consideration was not suitable. He also found that Mr Alistair Adams was not of good repute or appropriate financial standing.
22. On 3 February 2006 I granted an operator's licence to Mrs Vari Adams given assurances of future compliance. Mrs Adams was again at a Public Inquiry, this time on 2 September 2008 at which Deputy Traffic Commissioner Mr McFarlane gave her a warning as to maintenance. At a further Public Inquiry Deputy Traffic Commissioner, Mr McFarlane, issued a written decision on 20 October 2009 in which he found that Mrs Adams was no longer of good repute or professional competence. He disqualified Mrs Adams from holding or obtaining an operator's licence indefinitely. He commented at paragraph 62: "The very real difficulty for Mrs Adams is the conduct of Mr Adams in the context of operator licensing. She has been unable to exercise any control over him. By the same token, he has not demonstrated any respect for the responsibilities and duties devolving on Mrs Adams, as named licence holder. She has allowed the situation to develop whereby to all intents and purposes she has become the licence holder in name only". At paragraphs 80 and 81 he made adverse comments about Mr Alistair Adams' attitude to the law that he considered himself to be above the law. He revoked Mr Alistair Adams' LGV licence.
23. At the hearing on 16 July 2015, I heard Mr Alistair Adams' application for the return of detained vehicle B6498HK and I issued a written decision, dated 19 July 2015, which can be referred to for its terms and is held repeated herein *brevitatis causa*. (He has appealed that decision to the Upper Tribunal but absent a decision I am proceeding on the basis of what I found in that case.)"

As a footnote to the above paragraphs from the Traffic Commissioner's decision we should add that the appeal relating to the impounding case was heard before us on the same day in which we heard the appeal in this case. By a decision dated 9 March 2016 we confirmed the Traffic Commissioner's decision on the impounding issue.

10. We consider that the key substantive paragraphs of the Traffic Commissioner's decision are paragraphs 42 – 43 and then paragraph 46. These paragraphs read as follows:

- "42. Had there been no link between Andrew Adams and his parents, on the face of it, this would have seemed a very straightforward application by a 28 year old young man who had been driving full time in a range of duties and who had diligently saved up to have financial standing for an operator's licence, who had studied for the transport manager CPC exam and had passed it and who had secured a maintenance contractor and permission to park one vehicle and one trailer on industrial land. He had one conviction for 3 charges under the Construction and Use Regulations, a Traffic Commissioner suspension of 2 weeks and a previous warning from the Traffic

Commissioner. He has been ADR trained and, in the past, trained to do some air freight work. He can be personable.

43. However, in operator licensing as in life in general, context is everything. Mr Andrew Adams is not anybody. Rather he is the son of two people who have caused great concern to Traffic Commissioners and their Deputies over a very long period of time. The extensive information available in past decisions, copied in the Public Inquiry brief, show that way back in 1997 Mr and Mrs Adams were of great concern to the then Traffic Commissioner and for a range of matters. Quite simply, whilst they were given chances over the years, not least by me when I granted a licence in February 2006 to Mrs Adams trading as Euroboat Transport, they have shown themselves to be defiant and non compliant, not only in their behaviours and conduct, but also in their attitude. My most recent encounter with that was the impounding hearing at Edinburgh on 16 July 2015.

46. What are the similarities between him and his parents' business? There is the same location; he lives at the same long standing address used by his parents over the years; he proposes to use the same yard used by them over the years. He proposes to be in exactly the same line of business – that is buying and selling and repairing boats and moving boats and other loads, including to the continent and Ireland as well as throughout Great Britain. He intends to move caravans and deal in caravans. This is not an application unconnected to the movement of boats and caravans whether nationally or internationally, whether for others or whether as part of a business of the sale of boats and caravans. His parents' business was described as his inheritance in the past. His parents do not have a GB operator's licence and recently they were thwarted by DVSA detaining one of their vehicles and by my refusing the return of the vehicle to them. The evidence in that case which came from Mr Adams senior showed that Mr Adams senior very much still has a presence in Scotland. As disclosed in that impounding decision his parents had to move their operator's licence establishment and driving licensing from Great Britain, then to Ireland and then to Bulgaria where the evidence in the impounding case was that they did not have a settled address in Bulgaria, but only a correspondence address. Otherwise, they used hotel or short term locations."

11. We consider that the Traffic Commissioner did not err in law in having regard to Mr Adams' family relationships and the regulatory history of his parents and the businesses which they ran. In that regard we refer to paragraphs 18, 21 and 22 of the decision of the Upper Tribunal in *Heavy Haulage (Scotland) Limited* (T2015/16). Those paragraphs read as follows:

"18. In the instant case, we are wholly satisfied that the Traffic Commissioner did what she was obliged to do under the relevant legislative provisions. In paragraph 23 of her decision she reminded herself that each case turns on its own individual facts and that she has to '... make a judgement of those to come forth for an operator's licence.' She also noted her Schedule 3, paragraph 1(b) power to have regard to any information in her possession relating to fitness to hold a licence when determining whether an individual is of good repute. Accordingly she was entitled to have regard to the information

in her possession concerning the relationship between the Appellant company and previous holders of operators' licence in the family of the company's sole director. She would, in our view, also have been entitled to exercise the section 8(4) power to require the Appellant to give her any further information about the familial relationship. She has not, as has been submitted, pre-judged the issues which were before her.

21. We do not accept that the Traffic Commissioner was not entitled to take into account the information which she held about the familial relationships. In *2009/264 AR Brown*, a case with parallels distinct to the present, the Tribunal stated, at paragraph 4:

“When referring to para.1(1), Schedule 3 of the Act Mr Whiteford referred us only to the wording of sub-para.(b). He did not dwell on the opening words ‘have regard to all the relevant evidence and in particular to ...’ The relevant evidence included the family background, which the Traffic Commissioner fully reviewed. She had to make an assessment of whether the Appellant would be independent of his family if granted an operator's licence and in so doing she had to take all matters into account, including his demeanour as a witness”.

22. Further, we do not accept a submission that the family connections could not go to the fitness or repute of the Appellant company – see *2009/264 AR Brown* above. In addition, in *2006/235 Crown Cold Store & Distribution Limited*, the Tribunal accepted and upheld the assessment of the evidence of the Deputy Traffic Commissioner, in a decision involving revocation on the ground of loss of repute, which evidence had included evidence of family relationships and continued involvement of the disqualified father in the business of his daughter. In *2001/57 Christopher Kilpatrick t/a 4 Seasons Coach Hire*, the Tribunal was reviewing a decision of the Deputy Traffic Commissioner which had refused an application for a goods vehicle operator's licence. The Tribunal noted, at paragraphs 2(ii) to 3:

(ii) The public inquiry took place before the Deputy Traffic Commissioner on 26 September 2001. The Appellant gave evidence and explained that he had recently been made redundant from work in an electronics factory. He intended to put his energies into a coach business, with assistance from his father. One of his father's friends, Mr Donaldson, was to be the transport manager of the business. The Deputy Traffic Commissioner asked the Appellant about the details of the arrangements with Mr Donaldson and also about his ability to fulfil the undertakings made on the application form.

(iii) The Deputy Traffic Commissioner gave an oral decision. He set out the detail of the evidence and the Appellant's inability to answer many of the questions. He referred to the interaction between father and son ... The Deputy Traffic Commissioner concluded that the Appellant did not meet the requirements for good repute and professional competence.

3. On hearing of the appeal the Appellant was represented by Mr Burke. He submitted that the Deputy Traffic Commissioner's decision was unreasonable because the Appellant could not gain good repute without experience and that he ought to be permitted to start up in order to gain such experience: he was entitled to rely upon others. We have to say that we disagree. We have considered all the evidence and the Appellant's present unsuitability to be an operator leaps from the page. He could not have fulfilled the undertakings given in the application because it is clear from the evidence that he does not fully understand them. We would have come to the same conclusion as the Deputy Traffic Commissioner.'

We note that the Traffic Commissioner refers to the above authority in paragraph 45 of her decision. We are satisfied that in that paragraph the Traffic Commissioner correctly directed herself in law.

12. Turning to the merits of the Traffic Commissioner's decision, we heard oral evidence from Mr Adams and his father, as we narrate in paragraph 3 above. We found Mr Adams to be a candid and truthful witness. We accept that there is no formal connection between the appellant company and Mr Adams' parents. We also accept that there have been significant disagreements between Mr Adams and his father on matters of business although we did not press him on the details of these. We also accept that Mr Adams works as an agency driver and is regularly employed in that capacity by different clients. He has only occasionally driven for his father e.g. seven days in 2015. Further, we accept his evidence that the "S" in the appellant company's name refers to "Stuart", both Mr Adams' and his father's middle name. That clears up the suggestion that it refers to his father's middle name as alluded to in paragraph 47 of the Traffic Commissioner's decision. However we found that the key point in Mr Adams' evidence (a point we accepted because it was clearly evidence against interest) was his frank assertion that if he were granted a goods vehicle operators licence he would operate in the same niche market, the haulage of boats and caravans as his parents had operated in the past. He made it clear to us that he would not attempt to engage in other aspects of the haulage business for example, container work or refrigerated transport. He went on to protest, no doubt sincerely, that there would be no cooperation or collaboration between his business and any business operated by his parents. Indeed he went so far as to suggest that "in a sense (he) would be competing with his dad". Realistically that seemed to us a very sanguine hope which is unlikely to be realised at least in the near future. We make that assessment although Mr Alistair Adams told us in his oral evidence that any business he might operate in the future (on an operator's licence from an unspecified European Union country other than the United Kingdom) would have no operational connection with Mr Adams' business. In reaching our assessment that there would, on balance of probabilities, be some continuing connection between the business of the appellant company and the business of Mr Alistair Adams we place more emphasis on evidence from Mr Alistair Adams which we accepted that he would help Mr Adams in his business and that he thought Mr Adams if he were granted a goods vehicle operators licence could help him out with cabotage problems in the event that he received an operator's licence from another European Union country. Taking all of the evidence into account, we find, on balance of probabilities, that there would inevitably remain a degree of business connection between Mr Adams and his father if Mr Adams were to be granted a goods vehicle operators licence.



13. Mr Adams presented to us two very positive references which praise his honesty, reliability and work ethic. We have taken these into account in reaching our decision.

14. However, given our finding that some business connection would inevitably exist between Mr Adams and his parents and their business, we are not satisfied that the Traffic Commissioner's decision was plainly wrong. That is the applicable test in an appeal from a Traffic Commissioner's decision to the Upper Tribunal. It is a strict one. Further Mr Adams has the onus of showing that it has been met. He has not done so. It is neither here nor there how any of us would have decided the case had we been sitting as a Traffic Commissioner. The exacting test which applies on appeal has not been fulfilled. Accordingly we dismiss the appeal and confirm the Traffic Commissioner's decision.

15. Before leaving the case, however, we would remind Mr Adams that our decision does not preclude a fresh application by him or his company in the future for a Goods Vehicle Operators Licence if his or his father's circumstances change.

(Signed)  
A J GAMBLE  
Judge of the Upper Tribunal  
Date: 16 March 2016