

**Appeal No. T/2015/59**

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

**ON APPEAL from the DECISION of the TRAFFIC COMMISSIONER FOR  
THE SCOTTISH TRAFFIC AREA (Ms J Aitken)**

**Dated: 4<sup>th</sup> September 2015**

**Before:**

<b>Mr E. Mitchell</b>	<b>Judge of the Upper Tribunal</b>
<b>Mr A. Guest</b>	<b>Member of the Upper Tribunal</b>
<b>Mr S. James</b>	<b>Member of the Upper Tribunal</b>

**Appellant: Mr Graham Pender**

**Heard at:** George House, 126 George Street, Edinburgh  
**Date of hearing:** 26<sup>th</sup> May 2016  
**Date of decision:** 11<sup>th</sup> July 2016

**DECISION OF THE UPPER TRIBUNAL**

IT IS HEREBY ORDERED that this appeal is dismissed.

**SUBJECT MATTER:-**

Public passenger vehicle licence; good repute of operator and transport manager; disqualification orders;

**REASONS FOR DECISION**

1. On 4<sup>th</sup> September 2015, the Traffic Commissioner for Scotland, following a public inquiry at which the operator and Mr Pender were represented by a solicitor, made the following decisions:

(a) under section 17 of the Public Passenger Vehicles Act 1981, the Commissioner revoked the public passenger vehicle licence granted to Chaffeurline Coaches Ltd under that Act;

(b) under section 28(1) of the Transport Act 1985, the Commissioner ordered that Chaffeurline Coaches Ltd be disqualified from holding or obtaining a public passenger vehicle licence for a period of three years;

(c) under section 28(4) of the Transport Act 1985, the Commissioner ordered that Mr Graham Pender, being a director of Chaffeurline Coaches Ltd, be disqualified from holding or obtaining a public passenger vehicle licence for a period of three years;

(d) under Schedule 3(7B) to the Public Passenger Vehicles Act 1981, the Commissioner ordered that Mr Graham Pender be disqualified from acting as a transport manager for three years;

(e) under section 14ZA of the Public Passenger Vehicles Act 1981, the Commissioner refused Chaffeurline UK Ltd's application for an operator's licence under that Act.

2. All of the Traffic Commissioner's decisions had immediate effect.

3. An appeal was made to the Upper Tribunal but only against the Traffic Commissioner's order that Mr Pender be disqualified from acting as a transport manager for three years.

4. The grounds of appeal were as follows:

(a) while the Traffic Commissioner said she had disregarded certain anonymous allegations, "it is not accepted by the Appellant the Traffic Commissioner thereafter scrupulously did not allude to these emails and letters during the Inquiry";

(b) to disqualify Mr Pender from acting as transport manager for three years was “excessive”. It was based on flawed findings that Mr Pender “had no respect for operator licensing” and there was “a problem” with his attitude.

5. The grounds were not subsequently expanded, neither in writing nor, since Mr Pender did not attend, at the hearing before the Upper Tribunal. In other words, no attempt has been made to explain how the Commissioner ‘alluded’ to the anonymous allegations during the hearing, how she made flawed findings about Mr Pender’s respect for the licensing system and why a three year period of disqualification was excessive.

6. Mr Pender did not attend the hearing of his appeal before the Upper Tribunal, nor did he arrange for a representative to attend. There has been no explanation for his absence, before or since. The Upper Tribunal heard the appeal in Mr Pender’s absence, being satisfied that Mr Pender had been notified of the hearing and concluding it was in the interests of justice to proceed (rule 38 of the Tribunal Procedure (Upper Tribunal) Rules 2008). In the absence of any explanation for Mr Pender’s non-attendance there was no good reason not to proceed.

7. We dismiss this appeal.

8. The first ground of appeal is a vague and unexplained assertion that the Traffic Commissioner took into account evidence that she said she had excluded. It has no merit.

9. The second ground is based on the argument that the Traffic Commissioner wrongly found that Mr Pender had no respect for the operator licensing system. But we are not told the basis for that argument. Our attention has not been drawn to any supposed flaw in the Commissioner’s primary findings of fact. We have not, for example, been presented with any argument that the Commissioner overlooked evidence of a good regulatory track record over the years. This ground also has no merit.

10. Finally, there is the argument that a three year disqualification period was excessive. Again, we have not been presented with any argument why. It has not, for example, been argued that the Commissioner overlooked evidence to show, or failed to deal with the argument that, Mr Pender had turned over a new leaf in his attitude towards regulatory compliance so as to render a three year disqualification unjustified. Again, this ground of appeal has no merit.

11. This appeal is dismissed and the Traffic Commissioner’s decision stands.

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**Mr E. Mitchell, Judge of the Upper Tribunal,  
11 July 2016  
(signed on original)**