

**Appeal No. T/2016/16**

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

**ON APPEAL from the DECISION of  
Sarah Bell, Traffic Commissioner  
for the West of England dated 23 February 2016**

**Before:**

**Her Honour Judge J Beech**, Judge of the Upper Tribunal  
**Leslie Milliken**, Member of the Upper Tribunal  
**John Robinson**, Member of the Upper Tribunal

**Appellant:**

SHAID KHALIQ trading as Alpha Cars

**Attendances:**

For the Appellant: Mark Dinning, an employee of Mr Khaliq

**Heard at:** Field House, 15-25 Bream's Buildings, London, EC4A 1DZ

**Date of hearing:** 23 August 2016

**Date of decision:** 30 August 2016

**DECISION OF THE UPPER TRIBUNAL**

IT IS HEREBY ORDERED that the appeal be DISMISSED

**SUBJECT MATTER:-** Application for restricted PSV licence; whether Appellant satisfies the main occupation requirements contained in s.13(3)(b) of the 1981 Act.

**CASES REFERRED TO:-** Bradley Fold Travel Ltd & Peter Wright v Secretary of State for Transport (2010) EWCA Civ. 695

## **REASONS FOR DECISION**

1. This is an appeal from the decision of the Traffic Commissioner for the West of England (“TC”) made on 23 February 2016 when she refused the Appellant’s application (“Mr Khaliq”) for a restricted PSV operator’s licence under ss.13(3)(b) and 14ZC(1)(b) of the Public Passenger Vehicles Act 1981 (“the Act”).

### Background

2. The factual background to the appeal appears from the documents and the TC’s written note of her decision. By an incomplete application received on 12 November 2015, Mr Khaliq trading as Alpha Cars applied for a restricted PSV operator’s licence authorising one sixteen seat minibus. His nominated operating centre was the forecourt of his home in Basingstoke. His main occupation was described as being the proprietor of Alpha Cars. The application informed the TC that the restricted licence would be in addition to the work currently undertaken by his large local taxi company. Mr Khaliq drove for approximately 15 hours per week and the vehicle would be used to enhance the work undertaken by seven, eight seat vehicles already operated by the firm. In section 15 of the application form, Mr Khaliq recorded that he had 50 vehicles with less than 9 seats and all of those would continue to operate under a private hire licence granted by Basingstoke and Deane Borough Council.
3. On 4 December 2015, the Office of the Traffic Commissioner (“OTC”) wrote to Mr Khaliq requesting the following information to be received no later than 18 December 2015:
  - a) Photographic evidence of the operating centre;
  - b) Financial evidence demonstrating ready access to £3,100 during the previous 28 days;
  - c) In relation to Mr Khaliq’s main occupation: financial evidence of his main income including his previous year’s accounts and tax return in his name; the proposed number of hours and days the vehicle was to be operated; the type of work which Mr Khaliq intended to carry out with the vehicle; confirmation of who would drive the vehicle, giving a specific breakdown of the allocated hours if more than one driver was to drive the vehicle.

The only evidence submitted in response to this letter was a photograph of the forecourt of Mr Khaliq’s home address showing a minibus parked on it.

4. On 7 January 2016, the OTC wrote to Mr Khaliq asking for the outstanding information and giving him a deadline of 13 January 2016. No response was received by the case worker dealing with the application by that date although it transpires that further information had been delivered by Mr Khaliq by way of “special delivery” on that day. It would appear that the information did not reach the case worker until about 19 January 2016. As a result, on 13 January 2016, a submission was prepared for the TC’s consideration. She was advised that Mr Khaliq had failed to provide evidence of sufficient funds to operate the vehicle and it was noted that in 2012, Mr Khaliq had been unsuccessful with a previous application in the name of Shaid Khaliq trading as Khaliq Enterprize. That application had been refused because Mr Khaliq had declared that he would be using the vehicle which was the subject of that application for 20 hours per week whilst his employment in his main occupation was only for 20 hours per week. The case worker in this present application recommended that as a result of Mr Khaliq’s failure to respond to correspondence and emails (save for the provision of the photograph of the operating centre), his application should be refused without an offer of a public inquiry under paragraph 6 of the Public Service Vehicles (Operators Licences) Regulations 1995 (“the 1995 Regulations”) upon the basis that his conduct had been “frivolous”. This recommendation was supported by Mr Betts, a team leader within the OTC as Mr Khaliq had apparently not provided any financial evidence as required under s.14 ZB(b) of the Act, nor sufficient details of his main occupation as required under s.13(3)(b) of the Act and he had not satisfied the requirement that he would be compliant with the law as required under s.14 ZC(1)(b) of the Act. The TC agreed with the recommendations on 18 January 2016.
5. On 19 January 2016, the case worker re-visited her submission to the TC as a result of receiving the additional information provided by Mr Khaliq on 13 January 2016. Financial standing was satisfied by a bank statement. The letter from Mr Khaliq informed the OTC that:

- “1. *Financial evidence of my main occupation is required. My accountant will be forwarding overnight. ..*
2. *As yet we have not started to tender for contract work using a PSV nor purchased one yet.*
3. *Initially we will tender for school contracts runs if the operator licence is granted. Therefore hours and days would be limited.*
4. *Driver training/tests to be completed before commencement.”*

The case worker took the view that Mr Khaliq’s application remained incomplete because he had not provided sufficient information/evidence in relation to his main occupation to enable the TC to come to an informed decision. However, as Mr Khaliq had in fact replied to the letter of 7 January 2016, she thought that the TC might have felt that the previous recommendation under paragraph 6 of the 1995 Regulations was not appropriate. The case worker therefore recommended that the application be refused with the offer of a public

inquiry under s.13(3(b) of the Act. However, the recommendation by Mr Betts that followed this review remained the same despite the provision of financial evidence and the TC agreed with his recommendation and a refusal letter setting out the sections of the Act which Mr Khaliq had failed to satisfy was sent to him on 23 February 2016.

6. On 23 March 2016, Mr Khaliq appealed the decision. It then became apparent to the case worker within the OTC that Mr Khaliq's accountant had in fact sent documentation to the OTC which had been received on 15 January 2016. A review of that documentation, the original recommendations and the decision then took place on 13 April 2016. Ahmad Accountancy and Taxation Services had sent the following letter:

*"We are the Accountants of the above named gentleman, acting on his behalf in connection with his tax affairs.  
We can confirm that Mr Shaid Hamed Khaliq is self-employed as a taxi driver and also has a 50% share in a partnership operating a taxi leasing business, trading as "KHALIQ ENTERPRISE CARS" as from 5 April 2008. Please note our client also has income from property.  
His tax affairs are dealt with at HM Revenue & Customs, Self Assessment .."*

Attached was a copy of Mr Khaliq's self assessment tax return for the year end 5 April 2014.

7. The Senior Team Leader who reviewed the documentation concluded that it did not provide sufficient evidence for the TC to determine whether the main occupation requirement had been met. The letter from the accountant stated that Mr Khaliq was a self employed taxi driver and that he had a 50% share in a partnership operating a taxi leasing business. However, the main occupation requirement was to be determined by reference to the business which had applied for the licence which was Mr Khaliq trading as Alpha Cars and as a result the partnership could not be taken into account even if financial information had been provided in relation to that enterprise. It was further noted that Mr Khaliq had income from property but there was no financial evidence relating to that. The figures on the tax return, even if they were all relevant to the issue of main occupation, did not demonstrate that if Mr Khaliq were to obtain a school contract using the vehicle, that his main income would not come from operation of the vehicle. The information did not therefore demonstrate that Mr Khaliq satisfied the main occupation criteria and the recommendation to the TC was that the previous decision should stand and that the papers for Mr Khaliq's appeal should be forwarded to the Tribunal.
8. The TC considered the submission in detail. She was rightly concerned by the failure of the system to ensure that the submitted documentation was put before the relevant case worker in a timely

fashion. However, she could not fault the analysis of the evidence which had been undertaken and confirmed that Mr Khaliq's application remained refused.

### Upper Tribunal Appeal

9. Prior to the hearing of this appeal, Mr Khaliq wrote to inform the Tribunal that as a result of having to leave the country to "pay his respects", he was unable to attend the appeal hearing but requested that Mark Dinning, one of his employee's could attend in his place. The Tribunal agreed.
10. The ground of appeal was that all of the financial information requested had been provided to the CLU along with an explanation of Mr Khaliq's occupation and business interests and that as a result, the application should have been granted. Mr Dinning added detail to the grounds of appeal which of course constituted new evidence. We heard Mr Dinning's submissions because we were concerned by the paucity of information set out in the tax return that had been provided to the TC and the level of income declared in it. Mr Dinning told us that Mr Khaliq has three clear business interests. Firstly, he is a taxi operator, owning Alpha Cars (not referred to by the accountant). He employs 24 members of staff over three offices and he has 115 self employed drivers working for him. Secondly, he is also in partnership with his wife in a taxi leasing business, owning 50 vehicles at the time of the application. Thirdly, he owns several properties which provided him with a rental income. In addition, he is a Sergeant in the Logistics Corps of the Territorial Army, receiving an income from that. Mr Dinning stated that the TC had wrongly assumed that Mr Khaliq was to be the driver of the vehicle when in fact it was going to be "sub-leased" to another driver although Alpha Cars would operate the vehicle.

### The Tribunal's decision

11. Dealing first with the assertion that the TC had wrongly assumed that Mr Khaliq would be the driver of the vehicle, we are satisfied that there is nothing in this point. We have asked ourselves the question: why did Mr Khaliq give his home address as the operating centre and a photograph of the forecourt of his home with a minibus parked on it if he was not putting himself forward as the main driver of the vehicle? In the absence of any proper explanation as to how it was proposed that the vehicle was to be operated, the only conclusion that the TC could come to was that Mr Khaliq was going to be the main driver.
12. Turning then to the main occupation requirement and the financial evidence submitted in support of the assertion that Mr Khaliq's main occupation would be something other than the operator of the vehicle, neither the tax return nor the covering letter are of any assistance. The return itself is in Mr Khaliq's name and does not relate to him trading as

Alpha Cars. It simply has two headings: pay from all employments (which we have been told relates to income from the Territorial Army) and profit from self-employment. There is no reference to the sources of the income or to the nature of his business or partnership interests. We asked Mr Dinning why Mr Khaliq's declared income is so low bearing in mind his various business interests. We were told that he invests most of his income in the acquisition of cars to be used by the partnership in its leasing business and in the acquisition of properties to add to his rental portfolio. Mr Dinning was not a position to explain why the business investments of Mr Khaliq in his name were not set out on the tax return submitted to the TC as those investments would have been paid for out of gross income. If there was in existence other information which had been submitted to HMRC, that too should have been disclosed. It is impossible to say from the information on this document or the letter from the accountant, what income Mr Khaliq receives from Alpha Cars. We are satisfied that the TC's decision that Mr Khaliq had failed to provide sufficient evidence of the main occupation requirement was plainly right.

13. Finally, we turn to the proposed business plan in relation to the vehicle and the submission that it was to be "sub-leased" to a driver. Without details of the proposed sub-lease, there is an issue as to whether the restricted licence should be held by Mr Khaliq trading as Alpha Cars or the sub-lessee. Mr Khaliq needs to obtain appropriate advice about his business model.
14. In all of the circumstances, we are satisfied that the TC's decision cannot be faulted. Neither the law nor the facts of this case impel us to come to a different view to that of the TC as per the test in *Bradley Fold Travel Ltd & Peter Wright v Secretary of State for Transport (2010) EWCA Civ. 695*.
15. The appeal is dismissed.

**Her Honour Judge J Beech  
30 August 2016**