



Appeal No. T/2015/79

**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: 14th December 2015

Before:

**Mr E. Mitchell
Mr A. Guest
Mr S. James**

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

Appellant:

Mr John Allan

Attendances:

Mr Allan represented himself

Heard at: George House, 126 George Street, Edinburgh
Date of hearing: 26th May 2016 (with supplementary written submissions)
Date of decision: 18th October 2016

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DECISION OF THE UPPER TRIBUNAL

IT IS HEREBY ORDERED that this appeal is dismissed.

SUBJECT MATTER:-

Application for public passenger vehicle operator's licence; conduct of public inquiries

CASES REFERRED TO:-

Bradley Fold Travel Ltd & Anor v Secretary of State for Transport [2010] EWCA Civ 695, [2011] RTR 13.

REASONS FOR DECISION

Background

1. On 25th June 2015, Mr Allan applied, as a sole trader, to the Traffic Commissioner for the Scottish Traffic Area ("the Commissioner") for a restricted public service vehicle operator's licence. This application was made shortly after the withdrawal of a similar application made by a company of which he was a director ((JA Travel Scotia Ltd). Ms Angela Luke the co-director of that company.
2. Mr Allan's application gave his home address as his proposed operating centre at which he intended to keep a single minibus although, subsequently, he informed the Commissioner that he had obtained commercial premises. Mr Allan also wrote that he worked as a taxi driver for 15 hours per week although, in response to DVSA inquiries, he said he only worked as a taxi driver for 6-8 hours a week.
3. The DVSA case summary said this about Ms Luke:

"Angela Luke...seems to be involved with the current application and has been the main contact. She is also the owner/operator of some of the vehicles mentioned in the responses concerning this application and account holder of the financial evidence submitted. It is therefore still unclear if the current application has been made in the correct entity".

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4. By letter of 29th October 2015, the Office of the Traffic Commissioner (OTC) informed Mr Allan that the Commissioner was not satisfied, on the basis of his written application, that his application met the relevant regulatory requirements. Mr Allan requested that a public inquiry be held before his application was decided.

5. The letter of 29th October 2015 drew Mr Allan's attention to the OTC guide to public inquiries and the Senior Traffic Commissioner's statutory guidance and directions on public inquiry proceedings.

6. The public inquiry papers show that both Mr Allan and Ms Luke liaised with the OTC over the progress of his application. For example, on 31st July 2015 she supplied the OTC with financial evidence in support of the application and also wrote "we no longer require an extension of time".

7. However, Ms Luke was not treated as Mr Allan's representative. On 25th August 2015, in response to Ms Luke's request for a progress report, an OTC official informed her a letter had been sent to Mr Allan (stating the Commissioner was minded to refuse his application) inviting him, not Ms Luke, to contact the official if he wished to discuss the matter. And on 25th August 2015 an official informed Ms Luke that she could not accept her emailed request for a public inquiry. Following this, Mr Allan himself made a written request for a public inquiry on 31st August 2015.

8. On 6th November 2015 Mr Allan wrote to the OTC about his application, stating:

"My partner Angela Luke does not and had never wanted to have anything to do with the Operator's Licence and only agreed to be a joint applicant with me as the first advice given was that it would be better to do a joint application as the bank account was in joint names, this was resolved by completing a Statutory Declaration at the solicitors. Angela was acting as my contact for any and all things in relation to the Licence as I asked her to do so on my behalf".

9. Despite that letter, Mr Allan did not request, before the public inquiry, that Ms Luke be permitted to speak on his behalf at the inquiry hearing.

10. The transcript of the public inquiry, held on 3rd December 2015, lists three persons in attendance: the Commissioner, Mr Allan and a clerk. The transcript shows that the Commissioner said significantly more during the inquiry than did Mr Allan and, as she was entitled to do, actively managed the proceedings. On p.25 of the 26 page transcript the Commissioner said "Anyway, that is me having asked as many questions as I think I can usefully ask of you". Mr Allan responded "Right. No problem. Right. Okay".

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Legal framework

11. Section 12(1) of the Public Passenger Vehicles Act 1981 prohibits a public service vehicle from being used on a road to carry passengers for hire or reward except under a PSV operators' licence (hereafter, references to sections are to sections of the 1981 Act) Section 13(1) creates two classes of PSV operators' licence, standard and restricted. By section 13(3), a restricted licence authorises:

(a) use of public service vehicles not adapted to carry more than eight passengers; and

(b) use of public service vehicles not adapted to carry more than sixteen passengers but only if a further requirement is met. That requirement can be met in one of two ways. Firstly, where a vehicle is not used in the course of a business of carrying passengers (not relevant in this case). Secondly, where a vehicle is used by "a person whose main occupation is not the operation of public service vehicles adapted to carry more than eight passengers".

12. Under section 14ZB, the requirements for restricted licences are that the applicant is "of good repute" and has "appropriate financial standing" (the content of those requirements are specified in Schedule 3 to the 1981 Act). Under section 14ZC, certain requirements apply to both restricted and standard licences. The traffic commissioner must be satisfied there are adequate facilities or arrangements for vehicle maintenance, and adequate arrangements for securing compliance with the law about driving and operating public service vehicles.

13. Regulation 6 of the Public Service Vehicles (Operator' Licences) Regulations 1995 provides:

"A traffic commissioner shall not refuse an application for a licence...without giving to the applicant an opportunity to state his case at an inquiry save where the application or the applicant's conduct in relation to it is frivolous or unreasonable".

14. The Senior Traffic Commissioner's statutory guidance on case management deals with representation at public inquiries. In relation to representatives, it states:

"37...a traffic commissioner has a wide discretion as to the manner in which s/he conducts a hearing. Any person entitled or permitted to appear may do so on his or her own behalf or can be represented by counsel...and/or a solicitor..."

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38. Other potential representatives such as transport consultants can only appear with the permission of the traffic commissioner. Whilst traffic commissioners generally allow unqualified advocates to appear before them this is always at the discretion of the presiding traffic commissioner..."

The Traffic Commissioner's decision

15. On 14th December 2015, the Commissioner refused Mr Allan's application. She found that Mr Allan could not give a clear explanation of what the proposed licence would be used for, had done little by way of business planning, had failed to appreciate the significance of the 'principal occupation' test and she was apprehensive that PSV work might become Mr Allan's principal occupation given how little taxi work he had done recently. The Commissioner also expressed concern that, were a licence granted, Mr Allan might allow someone else, specifically Ms Luke, to use it. Due to the "naivety, misunderstandings, the lack of clarity", the Commissioner was not satisfied proper arrangements were in place for compliance with the law about driving and operating public service vehicles.

16. In fact, the Commissioner made strong adverse findings. Her reasons state Mr Allan was "hopelessly vague as to what he would charge", while he was candid about his ignorance of the licensing regime "it should not fall to the Traffic Commissioner's public inquiry to spell out such basics" and "I do not think I have met an applicant who by the stage of a Public Inquiry was so lacking in understanding".

Proceedings before the Upper Tribunal

17. We shall summarise Mr Allan's extensive grounds of appeal which he drafted himself and were, to a large extent, a re-run of his reasons why he thought he should be granted an operator's licence:

(a) by the date of the public inquiry, he had arranged commercial premises for his proposed business (the Commissioner in fact took this into account);

(b) he was working reduced hours as a taxi driver due to a temporary back problem but it remained his principal occupation. The Commissioner was wrong to suspect PSV work might become his principal occupation;

(c) the Commissioner wrongly found that a Billy McMaster operated taxis for which he had been granted a licence. Mr McMaster was simply a partner in a company that operated a booking office and Ms Luke arranged operating the cars;

(d) in response to the Commissioner's finding that his business plans were hopelessly vague, he said he had decided on a pricing structure. He thought applying for a PSV

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licence was similar to the process for applying for a taxi licence in that, once obtained, he could “learn on the job”;

(e) Mr Allan explained at length how he and Ms Luke had shared out responsibility for his taxis while he was incapacitated with a back injury;

(f) in response to the Commissioner’s finding that she could not recall hearing from an applicant who was “so lacking in understanding and could not give a clear picture of what the licence would be used for and...the principal occupation test”, he said he had explained the type of work he hoped to do;

(g) in response to the Commissioner’s concern that, were a licence granted, Mr Allan would allow someone else to operate a PSV business under cover of the licence, this was strongly refuted. The only reason Ms Luke had done some of his taxi work was because he was unable to do it himself due to his back injury and, in any event, she had not “taken over” the licences and was recorded on them as “day to day manager”. At the hearing before ourselves he produced a licence to that effect although it was dated 28th April 2016. Ms Luke was only involved in the earlier limited company application because Mr Allan was wrongly advised by the OTC that this was necessary because the business funds would be held in their joint bank account. Ms Luke was a successful business person in her own right and, had she wanted an operator’s licence, would have applied for one;

(h) in response to the Commissioner’s finding that he lacked knowledge of the regulatory regime, he pointed out that he learnt about drivers’ hours and tachographs on a CPC (Certificate of Professional Competence) course;

(i) the Commissioner did not give him enough credit for the steps he had taken to learn about PSV licencing after withdrawal of the first application.

18. A further argument was put at the hearing before ourselves which was that the Commissioner had refused to let Ms Luke speak on Mr Allan’s behalf at the public inquiry.

19. We decided to seek the Commissioner’s observations on this allegation and her response was supplied to Mr Allan. The Commissioner wrote that she recalled Ms Luke attending the hearing as an observer but she was seated in the public seats not at the front table with Mr Allan and “at no time did he ask if Ms Luke could speak for him or give evidence”.

20. In response, Mr Allan maintained the transcript omitted parts of the discussion at the inquiry and that what Ms Luke had actually done was put her hand up to indicate she wanted to speak. We have decided not to make arrangements to listen to the

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recording of the public inquiry. We consider it highly unlikely that the transcript was inaccurate and, in any event, a recording would not reveal whether or not Ms Luke raised her hand to speak.

Conclusions

21. We dismiss the appeal. Neither the Commissioner's findings, nor her decision, can be considered plainly wrong which is the test applied by the Upper Tribunal in this type of appeal (*Bradley Fold Travel Ltd & Anor v Secretary of State for Transport* [2010] EWCA Civ 695, [2011] RTR 13). Indeed, many of the findings concerning Mr Allan's ignorance of the licensing regime are not seriously challenged.

22. Various challenges are made to the Commissioner's finding that she was concerned about the involvement of Ms Luke in the proposed business, how he had shared out responsibility for his taxi business with others and the possibility of Mr Allan's principal occupation becoming PSV work. However, the Commissioner's findings had a proper basis in the evidence. They were not plainly wrong. In any event, on our reading the Commissioner's findings in this respect were simply one aspect of her more general finding that Mr Allan had little idea of what his legal responsibilities would be if became a PSV operator, not that he wilfully intended to use a licence improperly.

23. We also reject the argument that, at the hearing, the Commissioner refused to let Ms Luke speak on Mr Allan's behalf. The allegation was not made in a detailed letter that Mr Allan sent to the OTC shortly after the hearing even though he referred to himself being tongue-tied at the inquiry hearing. It was also not made in Mr Allan's grounds of appeal. The transcript provides no support for the allegation nor does the Traffic Commissioner's letter in which she comments on the allegation. Furthermore, despite having been directed by the OTC to the Senior Traffic Commissioner's public inquiry guidance before this inquiry, Mr Allan did not request that anyone represent him at the hearing.



Mr E. Mitchell, Judge of the Upper Tribunal,
18 October 2016
(signed on original)