

**IN THE UPPER TRIBUNAL
ADMINISTRATIVE APPEALS CHAMBER**

T/2016/024

Appellant: Michael HAZELL

On Appeal From: Traffic Commissioner for the West of England

Reference: PH1140601

Public Inquiry Date: 4th and 26th April 2016

Venue: Bristol

Decision Date: 27th April 2016

Appeal to Upper Tribunal: 26th May 2016

Upper Tribunal Hearing: 6th September 2016

**DECISION OF THE UPPER TRIBUNAL
ON AN APPEAL AGAINST THE TRAFFIC COMMISSIONER**

**Upper Tribunal Judge H. Levenson
Upper Tribunal Member G. Inch
Upper Tribunal Member M Farmer**

*100.15 (Traffic Commissioner Appeals: Public Service Vehicles: Discretionary
Conditions Attached to Grant of Licence).*

T/2016/024

**DECISION OF THE UPPER TRIBUNAL
(ADMINISTRATIVE APPEALS CHAMBER)
ON AN APPEAL AGAINST THE TRAFFIC COMMISSIONER FOR THE
WEST OF ENGLAND**

Decision

1. **This appeal succeeds in part.** We vary the decision of the Traffic Commissioner (“the Commissioner”) given on 26th and 27th April 2016 under reference **PH1140601**. We amend condition 3(b) in the Commissioner’s decision letter of 27th April 2016 by inserting the words “and credit card” after the word “bank” but confirm the decision and condition 3(a) in relation to Tony Hazell.

Hearing

2. We held an oral hearing of the appeal at Field House (London) on 6th September 2016. The appellant, Mr Michael Hazell, had intended to be present but was unable to attend “due to a family emergency”. We considered the matter on the basis of the papers. There were no other parties to the appeal.

The Relevant Provisions

3. So far as is relevant the Public Passengers Vehicle Act 1981 (as amended) provides as follows (references are to section numbers):

14(1) On an application for a standard licence a traffic commissioner must consider whether the requirements of sections 14ZA and 14ZC are satisfied.

14ZA (1) The requirements of this section are set out in subsections (2) and (3).

(2) The first requirement is that the traffic commissioner is satisfied that the applicant –

...

(c) has appropriate financial standing (as determined in accordance with Article 7 of the 2009 Regulation).

...

14ZC The requirement of this section is that the traffic commissioner is satisfied –

(a) that there will be adequate facilities or arrangements for maintaining in a fit and serviceable condition the vehicles proposed to be used under the licence; and

(b) that there will be adequate arrangements for securing compliance with the requirements of the law relating to the driving and operation of those vehicles.

16(3) A traffic commissioner may attach to a PSV operator's licence (whether at the time when the licence is granted or at any later time) such conditions or additional conditions as [he thinks fit] for restricting or regulating the use of vehicles under the licence, being conditions of any prescribed description.

4. Section 17(3) of the Transport Act 1985 (as amended) provides as follows:

17(3) The Upper Tribunal may not on any such appeal [against a determination of a traffic commissioner] take into consideration any circumstances which did not exist at the time of the determination which is the subject of the appeal.

Background

5. The appellant, Michael Hazell (referred to below as Michael), was born on 14th October 1982 and is the son of Anthony ("Tony") Hazell (referred to below as Tony). He obtained a PSV driving licence in 2001 and graduated in 2005 with a good degree in leisure and tourism. He has obtained various CPC and similar qualifications.

6. In 1984 Tony commenced operating coaches trading as Carmel Coaches and was the nominated transport manager on his PSV licence which ultimately had an authorisation of 30 vehicles. On 21st January 2010 the business was incorporated as Carmel Coaches Ltd. Tony and Michael were both directors of the limited company. On 29th June 2010 the company applied for a standard international PSV licence authorising 36 vehicles to be operated from three different centres. Tony was to be a full time transport manager based at a centre with 23 vehicles and Michael was to be a full time transport manager based at a centre with 10 vehicles. Michael was also the transport manager in respect of an operator's licence of his own with three discs (granted in 2006), trading as Hirethisbus.com and operated in conjunction with Carmel Coaches Ltd. He was also the nominated transport manager for a retired operator who drove part time for Carmel Coaches Ltd but was not then operating any vehicles. On 10th May 2011 the company was granted a licence on the above basis but with 40 discs. The next couple of years saw a range of maintenance problems and prohibitions and a very high MoT test failure rate and Tony and Michael were both issued with warnings. There were also problems with Carmel vehicles being used by Hirethisbus and not being available for inspection.

7. This all led to the convening of a public inquiry on 20th March and 6th May 2014. Counsel for Tony and Michael accepted that the company had breached its licence undertakings "in a substantial fashion". Further prohibitions and problems occurred in between the two hearings. On 5th June 2014 the Traffic Commissioner for the West of England revoked the operator's licences of Carmel Coaches Ltd and of Michael trading as Hirethisbus.Com and imposed disqualifications for 18 months in respect of holding a licence or acting as transport manager. The outcome orders were upheld by the Upper Tribunal on appeal on 17th October 2014 in [2014] UKUT 0470 (AAC),

subject to an order that the revocations and disqualifications were to come into effect on 14th November 2014.

8. On 14th August 2015 Michael applied as a sole trader for a standard international PPV operator's licence for one single decker vehicle with 17 or more passenger seats. He would also be the transport manager. In a covering letter he acknowledged that this was still within the disqualification period and that any licence could not be granted during that period. However he anticipated that a public inquiry would be held and that by the time this happened and a decision could be made, the period of disqualification would have expired (which would happen on 14th May 2016 – although this date was a matter of some dispute). He also indicated that “My majority source of financing will be met through credit card”. However, the “primary source” would be his bank account. The average balance required was £6650. Meanwhile, on 29th January 2016 (page 137 of the main bundle) Michael applied for variation of the disqualification.

9. At some stage Michael also applied for a licence in respect of 11 vehicles to be operated by a partnership of himself and Hazellways Limited but we have not seen the documentation in respect of that application.

10. There was a preliminary hearing on 21st January 2016 at which the Commissioner decided that a full public inquiry was required and following which it appears that the disqualification of Michael as a sole trader/director was cancelled (there is said to be a letter of 12th February 2016 but it is not in our papers). In the event the public enquiry took place in Bristol on 4th and 26th April 2016. During the latter hearing Michael indicated that he would like his father to do some driving for him and the Commissioner indicated concern about Michael confusing different entities.

11. The Commissioner also expressed concern at the relatively small amount in Michael's bank account. Michael indicated that this could be increased “reasonably quickly” and that some money in the partnership accounts had been loaned by Carmel Coaches Ltd. There was some discussion about how Michael would react if the Commissioner were to say that Tony could take no part in the (sole trader) business, including management, administration, control and driving. The Commissioner then suggested certain conditions to be attached to the licence and Michael indicated that there was nothing with which he was uncomfortable.

12. The Commissioner's formal decision was given by letter of 27th April 2016. Subject to various matters which are not involved in these Upper Tribunal proceedings, the Commissioner granted the licence requested subject to two conditions:

- (a) Tony Hazell shall take no part in the business whatsoever.
- (b) The Operator shall lodge August, September and October 2016 original bank statements by no later than 17 November 2016 at the Office of the Traffic Commissioners ... demonstrating financial standing is met.

13. On 26th May 2016 Michael appealed to the Upper Tribunal against the imposition of the above two conditions. The matter was listed for 6th September 2016 but Michael was unable to attend and the tribunal considered the matter in his absence.

The tribunal was concerned that the Commissioner had given no explicit reasons for the imposition of the two conditions and on 9th September 2016 gave the Commissioner 21 days to provide reasons for the imposition of the conditions, after which Michael would have 21 days to respond. Final responses were received on 11th October 2016 and the matter was considered further by the Upper Tribunal.

The Involvement of Tony

14. In relation to the involvement of Tony, the Commissioner described this as “one of a suite of measures I put in place to assist [Michael] successfully demonstrating to me that ‘there is clear blue water’ between him and what happened in the past”. Michael had demonstrated uncertainty as to what “clear blue water would look like. For example, Carmel Coaches Limited (of which Tony and Michael both remained directors) is the owner of the proposed operating centre, an employee of Carmel Coaches Limited was going to deal with the maintenance of Michael’s vehicle, and some of the investment funding for the new partnership was coming from Carmel Coaches Limited although “There was no formal paperwork available at the date of the hearing to assist me in better understanding that arrangement”.

15. Michael’s principal argument is that by accepting the maintenance arrangements the Commissioner had already sanctioned a breach of this condition, and the line between what is acceptable and what is not acceptable is blurred. Details of the partnership finance had not been requested for the purposes of the present application. Tony could engage in a non-management role and could discharge and fulfil the role of a transport manager by delegation without being the nominated transport manager. Michael only has a single vehicle and he does “understand perfectly well the concept of ‘clear blue water’”. What he is unclear about is the “prescribed method of application”. Other issues raised by Michael concern developments which postdate the Commissioner’s decision and of which we can take no account.

16. In our view, Tony acting as some kind of delegated transport manager would have no legal standing and, in relation to the current application, would clearly contravene the condition imposed. There is no blurring or ambiguity. It is not illogical for Tony to act as an external maintenance contractor because that is an arm’s length relationship and does not amount to taking part in the business. This condition imposed by the Commissioner is designed to help secure the regulatory independence of the different entities within a complex series of relationships, and we uphold it.

The Finance Condition

17. The Commissioner has now explained why a finance condition was imposed at all, and this is relatively uncontroversial. Michael objects that the wording of the condition excludes any dependence on credit card funding. If credit card funding is available, whilst not ideal, we see no reason why this cannot be taken into account and therefore allow the appeal to the extent indicated in paragraph 1 above. We are aware that the timetable directed by the Commissioner is now past, but in case of any continuing or subsequent issue we formally amend the condition.

H. Levenson
Judge of the Upper Tribunal

G. Inch
Member of the Upper Tribunal

M Farmer
Member of the Upper Tribunal

2nd December 2016