

Appeal No. T/2016/73

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

**IN AN APPEAL FROM THE DECISION OF
Kevin Rooney, TRAFFIC COMMISSIONER for the
NORTH EAST OF ENGLAND TRAFFIC AREA dated 6 February 2017**

Before:

**Her Hon. Judge J Beech, Judge of the Upper Tribunal
George Inch, Specialist Member of the Upper Tribunal
Stuart James, Specialist Member of the Upper Tribunal**

Appellant:

PAULINE MARION HUKIN trading as RED FOX TRAVEL

Attendances:

For the Appellant: The Appellant appeared in person

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

Date of hearing: 23 May 2017

Date of decision: 31 May 2017

DECISION OF THE UPPER TRIBUNAL

IT IS HEREBY ORDERED that the appeal be ALLOWED and the matter be remitted for consideration at public inquiry

SUBJECT MATTER:- Whether the main occupation requirement for the holding of a restricted PSV licence was met; whether the operator should have been offered an opportunity to be heard at a public inquiry

CASES REFERRED TO:- T/2017/02 Mohammed Akbar trading as Choudhury Transport; 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 North East of England Traffic Area (“the TC”) made on 6 February 2017 when he revoked Mrs Hukin’s restricted PSV licence authorising one vehicle with immediate effect, such decision being made following a review of the licence under s.49A(2)(c) of the Public Passenger Vehicles Act 1981(exceptional circumstances) although the decision letter cited s.17 of the 1981 Act rather than s.49A(2)(c).

Background

2. The factual background to this appeal appears in the appeal bundle. In June 2006, Mrs Hukin was granted a restricted PSV licence authorising two vehicles. Unfortunately, her original application form has been destroyed by the central licensing office (“CLO”) as a matter of course. However, it would appear that at the time of her application, Mrs Hukin gave her main occupation as “*minibus private hire*” as that is the main occupation recorded on the DVSA’s Operator Licence Business System (“OLBS”). During the course of the appeal, Mrs Hukin denied that the application form required her to give details of her main occupation although when questioned, she did not demur from the proposition that she had used the term “*minibus private hire*” to describe her main occupation and later accepted that she did not have an occupation at the time of her application other than minibus hire. She maintained to the Tribunal, that that phrase she had used was that used by all applicants at the material time. Further, she accepted that when she made the application, she was a pensioner. Such status, cannot on any view, be considered to be a main occupation (see *T2017/02 Mohammed Akbar trading as Choudhury Transport*). It is plain and obvious that at the time of her application, Mrs Hukin did not satisfy the requirement that she had a main occupation other than the operation of the vehicles under the restricted licence and that had her application been properly scrutinised by the relevant staff it would not have been granted.
3. In April 2011, Mrs Hukin returned the five yearly operator licence check list. Whilst that document does not appear in the appeal bundle, the subsequent check list completed by Mrs Hukin in April 2016 does and it is clear that there is no specific question within the document about whether the main occupation criteria continued to be complied with in respect of restricted licence holders. It follows that it is unlikely that the 2011 check list would have included such an enquiry. In our view, the check list document should require confirmation of main occupation.
4. When Mrs Hukin completed the five yearly operator licence check list in April 2016, it became apparent that she was no longer using the two operating centres nominated on her licence, but rather a parking space outside her home. She had not previously notified the TC of this change which was of long standing. She also applied for a reduction in her disc authorisation from two to one. Mrs Hukin was advised that she must apply to vary her nominated operating centre, which she did and whilst enquiries were being made about the suitability of the parking space, a letter was

sent by Ms Diane Craven of the CLO on 21 September 2016, requesting further information and concluding with this paragraph:

“Finally, it is noted that you hold a restricted operator’s licence and wish to reduce your authorisation to one vehicle. As the Traffic Commissioner needs to be satisfied that the requirement of main occupation will not be affected by the change, please provide confirmation of your main occupation. This should include details of your role, the number of hours you work per week in your position and whether your role involves driving. If your current role does include driving duties please detail how many hours on average you drive per week. Please confirm whether there will be any changes to your current working pattern if the increase in authorisation is granted. Evidence of your current employment and earnings must be provided (sic) in the form of your last three months wage slips and form P60 for the year ended 5 April 2016 or, if you are self employed, your tax return for the last year. Can you also give an indication as to your income from your PSV operation for the year ended 5 April 2017?”

We note that this is clearly the wrong paragraph to use for an operator who is requesting a reduction in her disc authorisation rather than increase. However, it was appropriate to make an enquiry as to whether the main occupation requirement continued to be satisfied.

5. On 11 October 2016, Ms Craven made the following telephone attendance note:

“Following a lengthy conversation with both Mr and Mrs Hukin it has been established that Mrs Hukin is retired and the PSV Operation is her main occupation and has been during the life time of the licence. (It is noted that the main occupation is given as “Private Hire Minibus”). Therefore, she does not meet the main occupation criteria. They will now put everything in writing and the matter will be referred to the TC asap. I told them to stop operating PSV until the TC has made a decision”.

Mrs Hukin did not *“put everything in writing”* but simply submitted a letter from The Pension Service dated 20 February 2016 which notified her of an increase in her basic state pension and graduated retirement benefit. There was no covering letter with it.

6. On 19 October 2016, Mrs Hukin telephoned the CLO and spoke to Lee Betts, Team Leader. His record of the conversation reads as follows:

“Mrs Hukin phoned requesting to have a copy of the original application form. I advised the originals are destroyed and I would not have the original form. I asked why it was required and she seemed hesitant, and then stated it was for “our” records. I tried to probe Mrs Hukin further to see if I could assist and she wanted to know what her main occupation was when applied. I did ask why she did not know, but I did not get an answer, instead a gentleman I assume Mr Hukin, was in the background saying not to go further and to end the call. Mrs Hukin again was hesitant and said “don’t worry, it doesn’t matter and ended the call”.

Mr Betts then looked through the case notes. He added to the computerised notes:

“Having read previous case notes, the telephone call I had with Mrs Hukin now seems more clear, but also a concern that a) the main occupation criteria may now not be met b) Mr Hukin may be in charge of the licence ..”

7. On 2 November 2016, Mr Hukin called the CLO chasing the TC’s decision. He spoke to Ms Craven who recorded:

“He stated that HE felt the whole situation was ludicrous because HE was not questioned as to main occupation and therefore due to an error on VOSA’s part Mrs Hukin has been running the PSV.

Mr Hukin also demanded to know under who’s authority had I told Mrs Hukin that she must discontinue operating PSV until the TC made a decision. I tried to explain that this was me following previous instruction from my team leader, Lee Betts. Please note: this was not made clear in my previous case note. I also advised him that we work on behalf of the TC.”

Mr Hukin became more aggressive and demanded to speak to someone senior as he had a vehicle on finance that was not paying its way. I therefore passed the call to Lee Betts”.

Mr Betts made the following notes on 3 November 2011:

“She (Mrs Hukin) advised that a complaint will be made about the comments made by Dianne Craven. It appears money has been lost whilst not using the vehicle and Mrs Hukin has approached her MP. It must be noted that I did hear DC on the telephone call and she advised it would be best not to use the vehicle given the material change but in my opinion DC did not instruct or force the operator not to use the vehicle. I did advise Mrs Hukin on the telephone call yesterday that the TC has not revoked the licence at this time and it is still a valid licence. I have instructed DC to submit this case to the TC and I will be sending the submission.

Mr Hukin queried Section 19 permits and again I gave general advice but confirmed who could apply for a Section 19 and the fact the holder could not carry members of the general public”.

8. Ms Craven referred Mrs Hukin’s variation application to her team leader, Mr Betts and to the TC on 2 November 2016. She recommended that the variation application be granted (operating centre and reduction in discs) but she was concerned about the main occupation criteria. She noted that Mrs Hukin did not understand the relevance of main occupation as her main source of income was from a pension. Ms Craven further noted that she had not received any correspondence from Mrs Hukin on the issue save for the letter from the Pension Service. Having summarised the telephone records, Ms Craven recommended that Mrs Hukin be given a period of nine weeks to apply for a standard licence and that if she failed to submit such an application, then PTR (propose to revoke) action be commenced against the licence under Section 17(3)(e) – material change (failure to advise change to o/c’s and main occupation). Mr Betts also made a recommendation to the TC: it appeared that the licence had been granted in 2006 without consideration of the main occupation criteria; he sympathised with Mrs Hukin; however, the licence should be terminated or revoked; he advised Mrs Hukin

of the possibility of termination in some way; she had been advised to cease operating although she was subsequently advised that the licence remained valid; he was minded to allow Mrs Hukin a period of time to apply for a standard licence; he agreed that the variation application should be granted.

9. The TC made his decision on 9 November 2016:

“I agree that this licence needs to be brought to a managed end as it cannot be held if the main occupation criterion is not met. I therefore agree the recommendation that the operator be given 9 weeks to make a satisfactory application for a standard licence. By satisfactory, I mean that all necessary documents are included, that financial standing is demonstrated as met and that there is a credible TM with evidence of qualification.

Given that the licence was granted in error, I am content to waive the application fee in this instance.

Variation for new o/c is agreed.

Once complete, new app can be granted without referral but with a condition limiting vehicles to 16 seats at that operating centre.”

10. On 14 November 2016, Ms Craven wrote to Mrs Hukin informing her that the variation application had been granted and further stating:

Separately, the Traffic Commissioner has considered the main occupation criteria. As you are unable to meet the main occupation criterion the licence be closed down (sic) ..”

Mrs Hukin was informed that the TC had agreed to give her an opportunity to apply for a standard licence without an application fee being payable and that such an application was to be submitted no later than 16 January 2017. Mrs Hukin responded on 21 November 2016, informing Ms Craven that she would be appealing to the Upper Tribunal and that in the interim she requested a stay. Ms Craven was given seven days to respond, failing which Mrs Hukin would proceed with her appeal. It would appear that there was no response to this letter and on 6 December 2016, the Upper Tribunal received Mrs Hukin’s first notice of appeal which included a request for a stay.

11. On 12 December 2016, Mrs Hukin sent an email to Ms Craven in the following terms:

*“Just thought you ought to know for future reference. There are NO Transport Managers in this part of the world. Nearest ones are in the South and they cost £400 per month!.
Thank you!!”*

Then on 14 December 2016, Mr Hukin telephoned and spoke to Mr Betts. He confirmed that they could not find a transport manager in the area and asked questions as to when Mrs Hukin could re-apply for a licence should she pass the CPC exams. Mr Betts gave general advice about the matter. Mr Hukin queried Section 19 permits and he was given general advice and in particular, that the holder of such permits could not carry members of the general public. Mrs Hukin then telephoned and spoke to Mr Betts. She confirmed that she was unable to find a

transport manager. She queried whether the TC would allow her to continue operating. Mr Betts gave general advice about the legislation and the criteria required for a restricted and standard licences. She queried section 19 permits for a walking group and Mr Betts gave her advice. Mrs Hukin stated a number of times that she would have to sell her business and vehicle and that she would be losing a large amount of money and that she “*would have to go on benefits*”. She said she had lost £1500 as a result of being advised to stop operating vehicles.

12. On 22 December 2016, Ms Craven wrote to Mrs Hukin reminding her of the deadline of 16 January 2017 for making an application for a standard licence. In response, Mrs Hukin indicated that she was “*fully aware of everything*” and that she would not be applying for a standard licence: “*You have done well!! ... Please don’t contact me again*”. On 16 January 2017, Mrs Hukin returned her operator’s disc stating that she “*would no longer be requiring an operator’s licence with your organisation ..*”. She informed Ms Craven that she would not be entering into any further correspondence with her and she annotated the licence disc with the words “*you need sacking*”.
13. When either the CLO or the Traffic Commissioner’s Office are notified of an appeal, in the normal course of events, the decision which is being appealed is reviewed. And so it was that the matter was put before the TC again with a recommendation that in view of Mrs Hukin’s failure to apply for a standard licence by 16 January 2017, the licence be revoked with immediate effect under s.17(3)(b) (contravention of any condition attached to the licence and in this case, failure to inform the TC of changes within 28 days). The TC’s decision dated 19 January 2017 was as follows:

“It is unfortunate that Mrs Hukin has not taken the opportunity to apply for a standard national licence. It is clear from the evidence before me that primary occupation was not considered at licence grant. Pursuant to Section 49A(1)(c) of the PPV Act, I find that a procedural requirement has not been complied with in relation to the decision to grant the licence. The passage of time, the complete failure at the time to check the primary occupation requirement and the fact that a licence continues without meeting the requirement of Section 14ZB of the Act cause me to find exceptional circumstances under Section 49A(2)(c). I am therefore reviewing the previous decision to grant the licence.

It is clear that Mrs Hukin has no primary occupation. In reviewing the application, I have assessed the ability to meet the statutory requirements. Mrs Hukin has previously satisfied all the statutory requirements bar primary occupation. I do not seek to re-open a previous assessment of the other statutory requirements which were considered most recently in summer 2016 when the 5 year checklist was returned.

*The Central Licensing Office wrote to Mrs Hukin on 21 September 2016, putting her on notice of the apparent failure to meet the primary occupation criteria. Mrs Hukin has provided evidence of pension income only. There are several case notes detailing conversation with Mrs Hukin and it is clear that she is retired other than for her minibus work. I do not consider being retired as an occupation. My decision on the application is therefore that it is refused. The licence is terminated with immediate effect. I have considered whether to offer a public inquiry. This is not a case where there is **another** occupation and it is a matter of fact to be determined*

*which is the primary occupation. There is **no** alternative occupation. There is no further determination to make. A public inquiry in the circumstances would be frivolous and is not offered.*

In summary, due to procedural irregularities, I have reviewed the decision to grant the licence. My decision is to refuse that application. Licence PB 1058574 is now terminated.

I note that an appeal has already been lodged. Given that I had not made a formal decision other than indicate that the situation needed to be regularised, I find that odd. I have not seen the grounds of appeal nor a stay request, other than an email dated 21 November from Mrs Hukin saying that an appeal would be made. In any event, I am not aware of any road safety issues so, if a properly constituted appeal is, or has been made, and subsequent stay request (sic), I am content to grant it. I would, though, recommend that Mrs Hukin use the time to make a standard national application.”

14. In the interim, Smith Bower Clarke, “Road Transport Lawyers”, were authorised to act for Mrs Hukin. On 27 January 2017, Simon Clarke wrote to the OTC, informing that his initial enquiries had revealed that Mrs Hukin’s licence was not in fact revoked and requesting return of the licence disc. Further, in the event that the TC was intending to revoke the licence, then a public inquiry was requested on behalf of Mrs Hukin. Mr Clarke came off the record shortly after the letter was sent.
15. By a letter dated 6 February 2017, Mrs Hukin was reminded of the contents of the letter of 14 November 2016 and that the licence “*is to be closed down*”. The date for submitting a complete application for a standard licence had passed and as a result, her licence was “*terminated*” on “*that date*” under the provisions of Section 17 of the above Act (the specific provisions were not specified).

The Appeal

16. Mrs Hukin re-submitted her notice of appeal on 1 March 2017. Her grounds can be summarised as follows:
 - i. Having been granted a restricted licence, she had complied with all of the requirements. Further, the five yearly checklists did not ask for details of her main occupation;
 - ii. During the course of a conversation in September 2016, she had been told to stop operating immediately because her operation was “*illegal*”. She did so although in a later conversation she was told that she could operate. Then she received the letter of 14 November 2016 informing Mrs Hukin that she had to apply for a standard licence and that she had been given nine weeks to do so. The fact that she did not receive a revocation letter once the nine weeks had elapsed, confused her. In the interim, she had lost “*hundreds of pounds*” in the period September to 6 February 2017;
 - iii. Her main occupation is that of carer for her husband and daughter, who are both disabled. She ran the minibus as a “*sideline*” to contribute to the family’s finances. The minibus did not “*bring in as much as I am paid by the family to*

look after them". She claimed that since 2012, she had provided care for five hours a day to her husband "*who is almost totally disabled*" and her daughter who has Aspergers Syndrome. Mrs Hukin provided a copy of her husband's Parking Card for Disabled People, issued by North Yorkshire and expiring on 10 December 2016 and a letter from the DWP dated 24 January 2014 which contained information about her daughter's entitlement to the lower rate mobility component of the disability living allowance, a benefit which has since been replaced by personal independence payments. She contended that she had informed the staff at the CLO from the outset that she was a carer and continued to do so during the many conversations she had on the telephone with them. She had been repeatedly told that being a carer did not count as a main occupation;

- iv. Mrs Hukin objected to being advised that she must apply for a standard licence. It was not her fault that she had been granted a licence in error. She had never been asked for details of her main occupation. In any event, she could not afford to employ a transport manager at £300 to £400 per month and in any event it was virtually impossible to find one in her area. She had been treated with "*gross unfairness*".
17. In her oral submissions to the Tribunal, Mrs Hukin repeated her grounds of appeal. In addition to her written grounds, she maintained:
- i. That there was not a transport manager in the country who would act as a transport manager for an operator with one vehicle. When it was suggested to her that her statement was not correct, she limited her remarks to the North East of England;
 - ii. She was the driver of the vehicle and it was incorrect to suggest that her husband was the operator. He was not aggressive towards the CLU staff, he was simply sticking up for Mrs Hukin;
 - iii. When she had repeatedly told the CLO staff that she was a carer, she had been accused of not understanding the situation. When asked what her position was about the telephone records not mentioning any reference to Mrs Hukin claiming to be a carer rather than a pensioner, she maintained initially that the records had been deliberately falsified to omit her main occupation. When it was put to her that this was a very serious allegation, she accepted that she could not be sure what she had said and when she had said it and that for "*whatever reason*" her caring role was not mentioned in the records. The CLO staff did all they could do to "*disparage and dissuade her*". She was in fact paid a carer's allowance;
 - iv. She maintained that she had not only submitted the letter from the Pension Service to the CLO but also a photocopy of her husband's parking card and the letter from the DWP although she accepted that they were not within the CLO records.

The Upper Tribunal's Determination

18. It is now common ground that Mrs Hukin did not have a main occupation other than minibus operation when she applied for her licence and that she should not have been granted the licence in 2006. Ironically, if she had complied with the terms of her licence and had applied for a variation in her nominated operating centre when she started to use it a number of years ago, then in all likelihood, she would have continued to operate "*under the radar*" and the issue of main occupation would not have come to the attention of the CLO. However, having come to the attention of the CLO, the TC was duty bound to attempt to regularise the position. It may very well be that in view of the error made by the CLO in granting the licence in the first place, that had Mrs Hukin provided adequate and reliable evidence of a main occupation when she was required to do so by the letter dated 29 September 2016, then the restricted licence would have continued. She did not provide such evidence, only submitting evidence of her pension entitlement. The TC was correct in rejecting pensioner status as a main occupation. We find Mrs Hukin's assertions that she had from the outset, informed the CLO staff that her main occupation was that of carer as being inherently unlikely. Mrs Hukin is unable to establish that she provided to the CLO the documentary evidence that she now relies upon to support her case that her main occupation was and is that of carer and none of the telephone records or the submissions made to the TC make any mention of Mrs Hukin being a carer. An allegation that at least two members of the CLO staff have either deliberately or negligently failed to accurately record the telephone conversations is a very serious one and bare assertions are not sufficient. In short, we do not accept that either Mr or Mrs Hukin informed the CLO staff that her main occupation was that of carer. It is of note that when Mrs Hukin did write to the CLO, it was not to complain about the rejection of her repeated assertion that she had a main occupation as a carer but rather that she could not either find or afford a transport manager which is a prerequisite for applying for a standard licence. We therefore reject Mrs Hukin's ground of appeal that her restricted licence should have been permitted to continue upon that basis. We also go on to find that even if Mrs Hukin had provided the disc and the letter to the CLO, they would not have been sufficient for the CLO to conclude that Mrs Hukin had a main occupation as a carer.
19. We also reject her assertion that she was unable to operate her vehicle for a period of four months because she was instructed not to, resulting in the loss of £1,500 (that figure being one mentioned in the telephone record of 10 December 2016). Whilst there is no doubt that she was advised not to operate on 11 October 2016 (rather than in September 2016 as she alleged), she was told that she could continue to operate on 2 November 2016. The period during which Mrs Hukin did not operate was therefore no more than three weeks. If Mrs Hukin lost £1,500 during that period, then that appears to confirm that Mrs Hukin's main occupation was that of minibus operator.
20. Our concerns about this case arise out of the approach taken by the CLO and the TC to the difficult issue of a licence of ten years standing which had been obtained without any deception or inappropriate conduct on the part of the licence holder. The first letter alerting Mrs Hukin to the TC's decision that her licence could not continue was that of 14 November 2016. It makes no mention of the statutory provision under which the decision is being made and it does not use the appropriate statutory language, rather, referring to the licence being "*closed down*". The letter goes on to give Mrs Hukin nine weeks to apply for a standard licence but does not state what

will happen if Mrs Hukin does not apply for a standard licence by the set date. In the normal course of events, a “propose to revoke” letter is sent when an issue arises with a licence. If the decision is being made under s.17 of the 1981 Act then s.17(4) gives the operator an opportunity to ask for a public inquiry. That opportunity is normally spelt out in a propose to revoke letter. In the event that the TC was considering s.49A(2) of the 1981 Act (see below), it is only fair and proper that the operator is informed of the process and statutory basis for the review and whilst there is no statutory provision giving an operator the right to a public inquiry in respect of a review, there will not be many cases where an existing operator would not be entitled to a hearing as a matter of fairness. The letter of 14 November 2016 was inadequate in that it did not inform Mrs Hukin as to which statutory provisions were being invoked and did not inform her of her right to a public inquiry if the statutory provision was s.17. We note that the final decision letter dated 6 February 2017 did in fact cite s.17 as the provision under which the “*termination*” was being ordered.

21. The decision of the TC was ultimately made under s.49A(2)(c) of the 1981 Act. That section gives the TC the power to review, and if he thinks fit, revoke a licence previously issued. He may only do so if he is satisfied that a procedural requirement imposed by the 1981 Act has not been complied with. He may only review a decision if he has given the operator notice of his intention within two months of the original decision being reviewed or if a person who appears to have an interest in the decision, requests a review within two months of the decision (see paragraph 18 of the Public Service Vehicles (Operators’ Licensing) Regulations 1995) or where these conditions are not met, there are exceptional circumstances that justify the review (s.49A(2)(c)). The exceptional circumstances found by the TC were the passage of time and the fact that the licence had continued without meeting the requirement of main occupation. We make no finding as to whether those factors, when taken together, are capable of constituting exceptional circumstances, as all cases will be fact specific but we do find that to make the decision to review in the circumstances of this case, without giving Mrs Hukin the opportunity of being heard at a public inquiry, was unfair and plainly wrong. Having held a licence for ten years, she was entitled to put her case, however weak it was, before the TC, at a public inquiry.
22. The remainder of the TC’s determination is equally unsatisfactory. It refers to “*an application*” which he goes on to refuse although Mrs Hukin did not have any outstanding applications, the variation application having been granted. The TC then goes on to consider whether to offer a public inquiry to Mrs Hukin but concludes that in the circumstances, a public inquiry would be “*frivolous*” and is not offered. We are satisfied that having made reference to a non-existent application, the TC then went on to consider his powers to refuse a public inquiry in relation to applications for licences under Regulation 6 of the Public Service Vehicles (Operators’ Licensing) Regulations 1995, which reads as follows:

“A Traffic Commissioner shall not refuse an application for a licence, or grant it other than as requested without giving the applicant an opportunity to state his case at a public inquiry save where the application or the applicant’s conduct in relation to it is frivolous or unreasonable”.

It is clear that the TC decided against offering Mrs Hukin a public inquiry because he had in his mind the discretion under Regulation 6 which has no application to existing licences. In any event, Mrs Hukin's conduct against the background of this case could not be considered to be "*frivolous*" however weak her position was in relation to main occupation. She had a right to be heard. In the circumstances, we are satisfied that Mrs Hukin's position should be heard at a public inquiry.

23. During the course of the future public inquiry, Mrs Hukin will, no doubt, maintain that her main occupation is that of carer. It may assist if we refer to the recent Tribunal authority of *T/2017/02 Mohammed Akbar trading as Choudhury Transport* and in particular paragraph 14:

"Dealing first with the issue of main occupation, the definition of the term "occupation" to be found in the Oxford English Dictionary is in our view, a helpful and instructive starting point:

"The state of having one's time or attention occupied; what a person is engaged in; employment, business; work; toil. .. A particular action or course of action in which a person is engaged, especially habitually; a particular job or profession; a particular pursuit or activity".

That definition must then be considered in the context of Section 13 of the Public Service Vehicle Act 1981 which sets out the restrictions which an operator must fulfil and continue to fulfil, to be entitled to a restricted rather than a standard PSV licence. By s.13(3) of the 1981 Act the following restrictions must be satisfied:

- (a) The PSV is not adapted to carry more than eight passengers; or*
- (b) The PSV is not adapted to carry more than sixteen passengers when used:-*
 - (i) Otherwise in the course of a business of carrying passengers; or*
 - (ii) By a person whose main occupation is not the operation of PSVs adapted to carry more than eight passengers.*

It is clear from those restrictions that Parliament did not intend for restricted PSV licence operators to use their licences to operate vehicles on a commercial basis as their main business, employment or work activity. In order to assess whether a PSV operation is the "main occupation" of an operator, it is obvious that the hours dedicated to the PSV licence along with the income generated from it must be considered together and alongside the hours dedicated and income generated from other "occupations" the operator claims to have. It will of course be for the operator to satisfy the Traffic Commissioner that any particular activity other than PSV operation is an "occupation" from which income is generated and that overall, the PSV operation is not the "main occupation". For future guidance, we do not consider that activities such as the pursuit of a hobby, charitable work or other activities which do not generate an income can fall within the definition of "occupation". Neither do we consider that the receipt of investment or other income which does not require

the operator to dedicate anything more than a minimal amount of time to it, can be considered to be an “occupation”. Each case will of course be fact sensitive.

24. In view of Mrs Hukin’s contention that her main occupation is one of carer, we consider that further guidance is required. Bare assertion will not do. Clear evidence of employment or self employment will be required. Wage slips, accounts, bank statements, tax returns, P60’s are all examples of evidence which the operator or applicant for a licence will need to produce in order to establish that a particular activity is not only an occupation but their main occupation. In this case, clear evidence of the type mentioned will be required to establish that care is provided for financial reward and on a formal basis rather than care given gratuitously to members of the family out of familial love and duty. Evidence of the type similar to that already mentioned will also be required to show the level of income received and the time spent operating vehicles under the licence. The TC will then be required to undertake an assessment of the evidence and make findings of fact. Mrs Hukin will be required to produce probative evidence to support her contention.
25. To conclude, we are satisfied that the TC’s decision to proceed to “*terminate*” Mrs Hukin’s licence without giving her an opportunity to have a public inquiry was plainly wrong and as a result, we are satisfied that the appeal be allowed and the case remitted for hearing at a public inquiry. We are satisfied that the test in *Bradley Fold Travel Ltd & Peter Wright v Secretary of State for Transport (2010) EWCA Civ. 695* is met. The appeal is allowed.



Her Honour Judge Beech
31 May 2017