

Neutral Citation Number: [2018] UKUT 0133 (AAC)

Appeal No. T/2018/11

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

**IN AN APPEAL FROM THE DECISION OF
Sarah Bell, Traffic Commissioner for
LONDON AND THE SOUTH EAST dated 19 February 2018**

Before:

**Her Hon. Judge J Beech, Judge of the Upper Tribunal
Michael Farmer, Specialist Member of the Upper Tribunal
David Rawsthorn, Specialist Member of the Upper
Tribunal**

Appellant:

SKYRIDER LIMITED

Attendance:

For the Appellant: Mr Tim Nesbitt QC instructed by AMB Solicitors. Przemyslaw Zalecki
in attendance

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

Date of hearing: 10 April 2018

Date of decision: 17 April 2018

DECISION OF THE UPPER TRIBUNAL

IT IS HEREBY ORDERED that the appeal be DISMISSED and that the order of revocation come into effect at 23.59 on 8 May 2018

SUBJECT MATTER:- Revocation of licence following a public inquiry and a period of grace given to regularise the licence and in particular, to nominate a transport manager and establish financial standing; whether the Traffic Commissioner should have exercised her discretionary powers under s.35 of the Goods Vehicles (Licensing of Operators) Act 1995 to hold a further public inquiry following expiry of the period of grace when she was of the view that the operator had not nominated a suitable transport manager.

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 London and the South East (“the TC”) made on 19 February 2018 when she revoked the Appellant’s operator’s licence under sections 26(1)(h) and 27(1)(a) of the Goods Vehicles (Licensing of Operators) Act 1995 (“the 1995 Act”) having determined that the Appellant had failed to nominate a “new” Transport Manager as required within a period of grace granted at the conclusion of a public inquiry held on 15 August 2017. The revocation was ordered to take effect at 23.45 on 8 March 2018. On 19 March 2018, the Upper Tribunal granted a stay of the revocation order until the conclusion of this appeal and expedited the appeal process by ordering that the appeal be heard on 10 April 2018.

The Background

2. The background to the appeal can be found within the papers. In March 2014, two operators were called to a public inquiry: Rubbish Express Limited whose director was Przemyslaw Zalecki (“PZ”) and Rubbish Express Haulage Limited whose director was Agnieszka Zalecki (PZ’s wife). The licence of Rubbish Express Limited was revoked because it had gone into liquidation and had failed to fulfill a licence undertaking. The licence of Rubbish Express Haulage Limited was also revoked and Agnieszka Zalecki was disqualified for an indefinite period.
3. In mid-2015, the Appellant (“Skyrider”) made an application for a licence which was considered at a public inquiry because of possible links to Rubbish Express Limited and Rubbish Express Haulage Limited. The sole director of Skyrider was Grzegorz Zalecki, father of PZ and the nominated transport manager was Elzbieta Jasuik. The application was refused after a public inquiry on 1 September 2015 because of concerns that there were insufficient safeguards in place to ensure a compliant operation.
4. A second application for a licence made by Skyrider was considered at a public inquiry on 1 April 2016. Grzegorz Zalecki remained the sole director and Ms Jasuik remained the nominated transport manager. The application was granted with the following condition and undertakings:
 1. PZ was to have no role or day to day involvement in the transport side of the operation.
 2. An independent audit of the operator’s systems for maintenance and drivers’ hours and the effectiveness with which those systems were implemented would be carried out by the RHA, FTA or other suitable independent body, no earlier than 9 months and no later than 12 months

from the date of the public inquiry. The required audit was to cover at the very least the applicable elements in the attached annex (not within the appeal bundle). A copy of the audit report, together with the operator's detailed proposals for implementing the report's recommendations, was to be sent to the traffic area office in Eastbourne within 14 days of the date the operator receives it from the auditor.

3. Ms Jasiuk was to resign her role as transport manager for Tola Khled, OK1142588.
5. On 1 January 2017, Grzegorz Zalecki resigned as the sole director of the company and was replaced by Gabriela Zalecka, PZ's sister. The TC was not notified of the change in directors.
6. On 23 January 2017, the Central Licencing Office ("CLO") received a GV81 variation application from Skyrider requesting that condition 1 above (relating to the non-involvement of PZ) be removed from the licence. Three days later (26 January 2017) Ms Jasiuk resigned as transport manager. On 8 March 2017, the OTC wrote to Skyrider advising that they needed to nominate a new transport manager and on 30 March 2017, a TM1 form and CPC certificates were submitted for the nomination of PZ as transport manager who intended to work 15 hours per week as transport manager for the company as well as 30 hours per week on marketing for the company.
7. In the meanwhile, the Office of the Traffic Commissioner ("OTC") received an email from Kingdom Workshop Limited advising that they were the maintenance provider for Skyrider and that they were terminating the contract with immediate effect due to "*non-payments of work and maintenance carried out on their vehicles*". This caused consideration to be given to the company's recent licence history and it was noted that in March 2017 PZ had changed the maintenance contractor on line from Kingdom Workshop to C & M Services. He had also removed a vehicle from the licence and had registered the variation application set out in paragraph 6 above. It was concluded that PZ may have been performing a role within the transport operation of the company in breach of condition 1. It was further noted that "*the other undertakings had not been fulfilled and no audit was produced*" (item 2 in paragraph 4 above).
8. On 6 July 2017, Skyrider was called to a public inquiry. The call up letter raised the following issues:
 - a) There had been a breach of the condition that PZ would not play any role or have any day to day involvement in the transport side of the operation;
 - b) Changes in the named directors had not been notified within 28 days;
 - c) The audit (item 2 in paragraph 4 above) had not been undertaken;
 - d) There had been a material change in the circumstances of the operator;
 - e) As a result of the notification from Kingdom Workshop about non-payment of maintenance work, there was concern that Skyrider may not have been of appropriate financial standing. An average of £29,600 was required to be demonstrated;

- f) Further, as a result of Skyrider using Kingdom Workshop as its maintenance contractor, there was concern as to whether the company was in fact “fronting” for Joseph Michael Kennedy whose application for a licence on behalf of J & K Environmental Services Limited had been refused;
- g) The requirements of professional competence may not have been met since 26 January 2017 and no period of grace had been requested or granted;
- h) The nomination of PZ as transport manager needed to be considered along with the application to remove condition 1 from the licence.

A list of documentation which the company was required to produce at the public inquiry was set out in the letter and Skyrider was required to submit evidence of financial standing to the OTC by 8 August 2017.

- 9. Unfortunately, the call up letter was not included in the appeal bundle although a copy was obtained the day before the appeal was considered. None of the evidence which was attached to the letter was included within the appeal bundle. We are satisfied that some if not all of that documentation should have been included and we are surprised that neither the case worker nor the TC considered them to be relevant documents in the circumstances of this case.
- 10. The public inquiry took place on 15 August 2017. PZ was in attendance along with his sister and sole director of Skyrider, Gabriela Zalecka (“Ms Zalecka”). The company was represented by Mr Philip Brown, solicitor. Neither the case worker in this case nor the TC, when compiling the appeal bundle, considered that a transcript of that hearing was a relevant document in this appeal, a decision which again, we find surprising in the circumstances of this case. Consideration was given to whether we should adjourn this expedited appeal hearing so that a transcript could be requested. However, as no issue was taken with the TC’s ultimate findings as set out in the decision letter, we determined that we could properly continue with the appeal. We should state however, that this is not a decision that we took lightly and in future we would expect to find a transcript of the public inquiry which led to a period of grace being given which then becomes an issue in an appeal by reason of alleged non-compliance with it.
- 11. It is accepted by Mr Brown and PZ that at the conclusion of the public inquiry, the TC delivered an oral decision which was in line with the subsequent decision letter which was sent to the company and it is further accepted that Ms Zalecka was fully aware of the period of grace and the issues which required rectification within it. Those concessions are fortunate bearing in mind that the decision letter was not sent to the company until 18 September 2017 three days after the period of grace had expired.
- 12. The reasons set out in the decision letter are as follows:

“5. The Operator has admitted a breach of the condition in relation to Mr Zalecki since January 2017. I find as a fact on evidence that the condition

has been breached since at least the summer of 2016. Miss Zalecka and Mr Zalecki described a long period of Mr Zalecki going to and from Poland and taking messages and translating between his Father and other (sic) involved in the business. This is exactly the suggested system that led to the first application by Skyrider being refused.

6. There have been drivers' hours offences and one driver was driving a vehicle in a dangerous condition whilst on his mobile phone. Further, 2 drivers were sent to work double-manned which was unusual for this type of business and they were given no specific direction in relation to their tachograph cards. Mr Zalecki also instructed a driver to leave a landfill site with ABS light on upon the basis that he "still had brakes". There are issues with the maintenance system and in particular that the vehicles are not the subject of a brake-testing regime which meets the Guide to Maintaining Roadworthiness version 2014. For these reasons, I did not find Mr Zalecki a credible or compelling witness.

7. However, I did find the Sole Director, Miss Zalecka a credible witness. I am satisfied that she put misplaced trust in her brother and in the short period where she has been the Director, she was also coping with the sad terminal illness and then death of her Father. Indeed the main reason that I have not revoked this Licence is the approach of the Director in doing her best during these tragic circumstances. In light of the history I do not afford the same benevolence on her brother, Mr Zalecki.

8. That being said I mark the record that this Operator came very closing to losing its good repute and the history of this Operator is such that, whilst each case stands on its merits at the time, I cannot exclude the possibility that the Licence may be revoked and the individuals disqualified if there are further matters of non-compliance".

The TC's decision based upon the above was as follows:

"1. Pursuant to adverse findings under Section 26(1)(a) (unauthorised use of an operating centre), (b) (breach of conditions), (c) (convictions and/or prohibitions), (ca) (fixed penalty notices), (f) (breach of undertakings), (h) (material change) of the Goods Vehicles (Licensing of Operators) Act 1995 and under Section 27(1)(a) of the said Act – Professional Competence, I suspend Operator Licence No. OK1142443 Skyrider Limited from 23.59 hrs on 25 August 2017 until 23.59 hrs on 10 September 2017. Thereafter the Operator's Licence is curtailed to an authorisation of 4 vehicles and 4 trailers (we note that there is no information within the appeal bundle as to how many vehicles and trailers the company was permitted to operate prior to the curtailment).

- 2. I grant the Operator's application to remove the condition on the Licence in relation to Przemyslaw Zalecki.*
- 3. I refuse the application to nominate Przemyslaw Zalecki as the new Transport Manager.*

4. *The Operator is granted a period of grace of 28 days, namely until close of business on 13 September 2017 to undertake the following:-*

- (i) *Nominate a new Transport Manager to the Central Licensing Office in Leeds in the prescribed manner.*
- (ii) *Produce additional evidence of financial standing such that the requirement amount is demonstrated as available over a 3-month period on average.*
- (iii) *Apply to the Central Licensing Office in Leeds in the prescribed manner (to include a copy of the advertisement) for a new operating centre."*

13. The following actions were taken by Skyrider following the public inquiry and within the period of grace:

- a) On 24 August 2017, the company placed an advertisement in a local newspaper advertising an application to add Willesden Freight Terminal as an operating centre for six vehicles and six trailers. Within the appeal papers there is also the first page of an application to vary the licence to add this address as an additional operating centre and there is also a copy of the operator's licence listing the additional operating centre but for four vehicles and four trailers demonstrating that the application was granted;
- b) On 11 September 2017, by special delivery, the company delivered to the CLO a document entitled "Transport manager form" signed by Ms Jasiuk. It confirmed that Ms Jasiuk was prepared to be nominated as an external transport manager (again) and that she would work for 12 hours each week for the company. She disclosed that she was also a transport manager for another licence (OK1139517) working for 2 hours each week and she was also an Account Assistant. In the section requiring details of hours and days worked in that capacity, she wrote "*Part time*". As for her CPC qualifications, the form indicated that they were attached as a jpeg but as the form was a hard copy received by special delivery, no CPC documentation was delivered with it and in any event the original documentation was required.

14. As already noted, the decision letter was then sent on 18 September 2017 after the expiry of the period of grace. The letter concluded:

"No evidence has been received in regard to section 4. Please provide the listed evidence by 26 September 2017".

It is generally agreed that this paragraph is most unclear but we accept Mr Nesbitt's submission that in all likelihood, the above paragraph related to the submission of further evidence of financial standing.

15. The decision letter was responded to by Mr Brown by way of email dated 27 September 2017 which read:

"We have been instructed by our client company that a new transport manager has been nominated and that an application has been made for a new operating centre. We are instructed to invite the Traffic Commissioner to

grant an interim direction in respect of this application as soon as the statutory objection period has passed.

With regard to finance, we are instructed that sufficient monies have been transferred into the appropriate company bank account. Our client proposes to send three months' evidence of appropriate financial standing at the end of the three month period following the transfer of funds".

It is clear from Mr Brown's email that as at 27 September 2017, the company had failed to provide the necessary evidence of financial standing by either 13 September or 26 September 2017.

16. On 18 November 2017, (the delay has not been explained), a case worker within the OTC wrote to Ms Zalecka concerning Ms Jasiuk's nomination as transport manager. The letter read:

"You have requested Elzbieta Jasiuk to be added onto this licence has (sic) transport manager however there was no TM1 form or certificate submitted with the application. Therefore, please complete and return enclosed TM1 form and send in the original certificate in professional competence.

Please ensure the above information is received in this office no later than 2 December 2017".

17. In response to the letter, the same application which had been received by the OT on 11 September 2017 was re-submitted by recorded delivery on 27 November 2017 along with Ms Jasiuk's CPC qualification. The OTC did not then respond until 8 January 2018 (the delay has not been explained) when a case worker wrote to Ms Zalecka requiring the following information:

"Ms Jasiuk failed to declare a link to revoked licence OK1139517. Please have Ms Jasiuk provide a written explanation as to why this licence was not declared. Please also have Ms Jasiuk provide her comments on her link to the revoked licence.

Please have Ms Jasiuk confirm how many hours per week and on which days she works as an account assistant.

A response to the above is required by no later than 22/01/18"

We observe at this stage that Ms Jasiuk had in fact declared a connection with licence OK1139517 although as an existing operator's licence rather than as a revoked one. However, an answer was clearly required as to why she had stated that she was working two hours a week for a licence which had been revoked and of course how many hours she was working as an Account Assistant.

18. On 17 January 2018, Ms Jasiuk sent an email in the following terms:

"I confirm that I work as account assistant 10 hours a week, most of the time it is Monday, Wednesday and Friday.

Regarding the revoked licence – I would not consider myself involved with this licence (it was restricted) as I was only proposed transport manager when operator asked to upgrade to standard.

I did not work for the licence. Revoking was base (sic) on no compliance by the operator for the period much earlier than even proposed me as the transport manager.

I am providing those information as I have other applications for transport manager.

I would like to withdraw my application for transport manager for this licence (OK1142443). The reason for that is – I can not any longer hold my time for this licence".

19. PZ then emailed the OTC case worker on 25 January 2018:

"I did try and call you two days ago but I was told by your colleague Reece that you are away until Friday.

After over 6 months of waiting to be add to our licence now Ms Jasiuk doesn't want to wait any longer be TM any more.

I would like to ask you to grand (sic) time of grace of 12 weeks until 23rd April 2018 to be able find replacement TM who is suitably qualified".

Before this request was considered, Skyrider submitted an application to add a third operating centre to its licence at Unisys GMH Site, Harrow Road. A compliant advertisement was attached which had appeared in the Brent & Kilburn Times on 11 January 2018.

20. The matter was then referred to the TC. The submission highlighted that Skyrider did not have a transport manager and the period of grace had expired. Further, there was no evidence that financial evidence had been submitted within the period of grace. The submission recommended that the operator's licence and the variation application should be considered at a further public inquiry. The TC disagreed:

"I fail to understand how this has not been referred back to me once the (period of Grace) passed and the application remained incomplete. The risks associated are obvious. Please can CLO and OTC (Senior Team Leaders) report back to me on this aspect.

The delay is not helpful but my decision was communicated on the day and the director has failed to ensure promises made were met. The operator has now had more than 28 days since the letter and the mandatory and continuing requirement of professional competence remains to be addressed. I refer to the Upper Tribunal stay decision 2016/071 Albany Waste and the comprehensive summary of the law on Periods of Grace in the appeal

2015/40 Tasci i Gwynedd Ltd (which refers to the equivalent provision in the Public Passenger Vehicles Act 1981).

The TC then quoted extensively from paragraphs 64 to 72 of that decision and concluded:

“No further hearing is required. The Period of Grace is at an end and the mandatory requirement is still not met. The Licence is revoked with effect from 23.45 on Thursday 8 March 2018. The additional period is only to allow an orderly wind down of the business”.

A letter of revocation was sent to Skyrider on 19 February 2018, which cited sections 26(1)(h) and 27(1)(a) of the 1995 Act as the grounds for revocation although it did not include the TC’s reasons as set out above.

21. By an email timed and dated 4 March 2018, the company appealed and requested a stay. The grounds of appeal can be summarised as follows:

1. The TC was wrong in law in failing to give Skyrider an opportunity to request a public inquiry under section 29 of the 1995 Act;
2. She failed to take account of the fact that the company had nominated a transport manager on 8 September 2017, within the period of grace;
3. The TC failed to have regard to the email of PZ following Ms Jasuik withdrawing her nomination as transport manager which referred to the delay of six months in adding Ms Jasuik to the licence and that she did not want to wait any longer.
4. The TC did not give any reasons for her decision and in not giving the company an opportunity to make representations or request a public inquiry, the operator was refused its right to a fair hearing as required by Article 6 of the European Convention of Human Rights and the rules of natural justice.

22. The application for a stay was not put before the TC until the afternoon of 8 March 2018 and as a result, she extended the date of revocation to 17.00 on 13 March 2018 so that she could consider the application. She noted that the decision letter had not included the reasons she had given for revoking the licence and attached the case submission to her stay decision. In refusing the application she noted:

“Not only did the Operator fail to deal with the Transport Manager nomination; it also failed to lodge any additional evidence of financial standing”.

The Appeal

23. At the hearing of this appeal, Mr Nesbitt QC appeared for the Appellant. Sitting behind him was PZ. The Tribunal was informed that Ms Zalecka was

unable to attend the hearing because of a bad back. Prior to the hearing, Mr Nesbitt had filed a skeleton argument for which we were grateful.

24. Mr Nesbitt began by reminding us of the relevant regulatory provisions relating to the mandatory requirements that operators be professionally competent (and of appropriate financial standing) which are to be found in Article 3 of Regulation (EC) No. 1071/2009 (“the Regulations”) and s.13A of the 1995 Act and also the relevant provisions relating to periods of grace which are to be found in Article 13(1) of the Regulations and ss.27(3) and (3A) of the 1995 Act.
25. It was accepted that the period of grace granted on 15 August 2017 was the result of the TC having found that the statutory requirements of professional competence (and financial standing) were not met by the company. However, despite the shortcomings of the company, it had retained (just) its good reputé and PZ had been permitted to have a role in the company. Mr Nesbitt submitted that following the public inquiry, the company was “*doing its best*” to comply with the TC’s order, not only by nominating Ms Jasiuk but also by retaining the services of a “well-known transport solicitor”. The fact that the nomination completed by Ms Jasiuk did not provide necessary information was not a reason to conclude that her nomination had not been in the “prescribed manner” or that it was not otherwise valid. It was a bone fide attempt to nominate a transport manager who did not have any “recording” against her character. Then when the decision letter of 18 September 2017 was received which appeared to state the TC’s order of 15 August 2017 had not been complied with, Mr Brown responded on 27 September 2017 in the terms set out in paragraph 15 above. That email was not responded to. There was then an inexplicable delay until 18 November 2017 when the OTC advised the company that it had not submitted either a TM1 form or an original CPC certificate. That too was responded to promptly on 27 November 2017 albeit by the resubmission of the same inadequately completed form and the original CPC certificate. A further inexplicable delay occurred before the last letter from the OTC sent on 8 January 2018 asking for the information that was missing on the transport manager form. Once the OTC had received Ms Jasiuk’s email containing the information set out in paragraph 18 above followed by the email application by PZ for a further period of grace of three months on 25 January 2018, the TC, in fairness, should have exercised her discretion under s.35 of 1995 Act and called the company in to another public inquiry. He accepted that questions were bound to be asked of the company about its regulatory compliance had the TC exercised her discretion but it was only fair that the company be given an opportunity to attend a further hearing.
26. We asked Mr Nesbitt to obtain instructions from PZ as to whether the statement of fact at the conclusion of the TC’s stay refusal that the company had not submitted evidence of financial standing to the OTC was correct. His instructions were “*there is nothing that Mr Zalecki could point to, to demonstrate that the TC’s statement was incorrect*”. He further advised that there was no one exercising the functions of a transport manager within the company as at the date of the hearing.

Discussion

27. This was a bad case with adverse findings made as to:

- a) the continuing involvement of PZ in the operation in breach of a condition;
- b) the use of an unauthorised operating centre;
- c) breaches in rules on drivers' hours and records;
- d) maintenance issues;
- e) the failure to notify the TC of a change in directors;
- f) the absence of financial standing; and
- g) the absence of professional competence since January 2017,

It is clear that at the conclusion of the public inquiry held on 15 August 2017, the only reason why the TC stood back from revoking the operator's licence was because Ms Zalecka, as sole director, made a favourable impression upon her. The TC nevertheless made it clear that further non-compliance with the regulatory requirements would result in the revocation of the licence and we are satisfied that failure to comply with the order of the TC as to what steps should be taken within the period of grace, equates to non-compliance.

28. The company did not appeal the outcome of the public inquiry and in particular, did not appeal the period of grace in principle or the length of it; neither did it apply during the period of grace, for an extension of time. It was for the company to comply with it.
29. With regard to professional competence, we agree with Mr Nesbitt that the company did nominate Ms Jasiuk within the period of grace although it was an incomplete nomination as a result of Ms Jasiuk failing to file her original CPC certificate with the nomination and as a result of her failing to provide information about her other employment which was obviously necessary to determine whether she was a "suitable" transport manager for the licence for example, because she had sufficient working time available to her in order to undertake her transport manager responsibilities on the Skyrider licence.
30. The fact that it was an incomplete application was not fatal to it. Following the expiry of the period of grace, two letters were sent by the OTC requiring further documentation and information from Ms Jasiuk and it follows that had she not withdrawn her application on 17 January 2018, consideration of her nomination would have continued although some further searching questions would have been asked of her. The withdrawal of her nomination brought it to an end without there being an alternative nomination before the TC for consideration along with an explanation of the position. A compliant operator would have ensured that the TC was kept fully in the picture. Rather, PZ sent a short email eight days later, asking for a further period of grace of 12 weeks without putting forward any proposals as to how professional competence was to be satisfied in the intervening period.
31. We do not agree that the delay in processing the nomination of Ms Jasiuk can be wholly placed at the doors of the OTC/CLO bearing in mind the incomplete

nature of the form submitted by the company/Ms Jasiuk and the absence of an original CPC qualification. But even if we are wrong about that, we are not satisfied that in the circumstances of this case, justice and fairness dictated that the TC should have exercised her discretion under s.35 of the Act and ordered a further public inquiry as a result of the delay. There was nothing before her that would indicate that such a hearing was justified. The period of grace had expired and the nomination had been withdrawn. It seems to us, that for a further period of grace to have been granted, the application should have been made prior to the withdrawal of the nomination and even if that had taken place, a period of grace could only have been granted to 13 February 2017 (the last day of the six month period commencing 15 August 2017). At the very least, when PZ wrote his email on 25 January 2018 requesting a 12 week period of grace, he should have put some positive proposals forward as to how professional competence was to be provided in some way in the absence of a nomination. Such a positive step might have assisted the company, but it is doubtful. Mr Nesbitt repeatedly asked the Tribunal to take account of the fact that English is not the first language of either Ms Jasiuk or PZ (or indeed Ms Zalecka) and that as a result, some leeway should be given in respect of their approach to documentation and regulation. However, both Ms Jasiuk and PZ are UK CPC holders and must therefore have sufficient command of the English language to pass difficult examinations and the company has of course, retained the expertise of Mr Brown.

32. It follows that we are not satisfied that the TC's approach to the issue of professional competence, the period of grace and the revocation of the licence was plainly wrong. We do however note, that not only was professional competence lacking from January 2017, but the company had failed to provide evidence of financial standing within the period of grace. It was inevitable in the circumstances, that the licence would be revoked. It was clear that Mr Brown was all too aware that the requirement to file evidence of financial standing had not been met as his email of 27 September 2017 sets out his client's alternative proposal that such evidence would be filed covering a three month period from the date that sufficient funds had been placed into a bank account (such date being unspecified). Despite the fact that this proposal did not receive a response from the OTC, if the company had been serious about establishing financial standing, such evidence would or should have been filed by 27 December 2017. It was not. We are surprised and mystified by the TC's failure to revoke the licence on the dual grounds of lack of professional competence and financial standing when it was clearly appropriate to do so.
33. To conclude, we are satisfied that this is a case where neither the law nor the facts impel us to interfere with the TC's decision as per the Court of Appeal decision in Bradley Fold Travel Ltd & Peter Wright v Secretary of State for Transport (2010) EWCA Civ. 695. The appeal is dismissed and the order of revocation is to come into effect at 23.55 on (3 weeks).

Judge Beech

Her Honour Judge Beech
17 April 2018