

**IN THE UPPER TRIBUNAL
ADMINISTRATIVE APPEALS CHAMBER**

**NCN: [2018] UKUT 0144 (AAC)
T/2018/009**

Appellant: Enviro Kleen (Scotland) Limited
On Appeal From: Traffic Commissioner for Scotland
Reference: OM 1126638
Decision Letter Date: 13th December 2017

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

Upper Tribunal Judge H. Levenson

100.6 (Traffic Commissioner Appeals: Financial Standing: Clarity of Instructions).

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(ADMINISTRATIVE APPEALS CHAMBER)
ON AN APPEAL AGAINST THE TRAFFIC COMMISSIONER FOR
SCOTLAND**

Decision

1. **This appeal succeeds.** I set aside the decision of the Traffic Commissioner for Scotland (“the Commissioner”) notified in a letter of 13th December 2017 under reference **OM 1126638**, as having been made in error of law. I refer the matter to the Commissioner to clarify the information required from the appellant and to make a fresh decision once the applicant has had a proper opportunity to provide that information.
2. As this appeal concerns a matter of law rather than transport industry expertise, I have considered this matter without the assistance of specialist members. I have made a decision on the basis of the papers alone, the appellant’s Director having indicated reluctance to attend a hearing.

Background and Reasons

3. This appeal relates to the (restricted) Goods Vehicle Operators Licence held by the appellant since 14th February 2014 in connection with its business of waste disposal and authorising the use of 5 vehicles. On 3rd October 2017 it applied to vary the licence by the addition of a further vehicle. As is normal, it was required to have appropriate financial standing. On 3rd October 2017 the Office of the Traffic Commissioner for Scotland (OTC) requested financial evidence to show ready access to sufficient resources and a specified sum “to have been available during a 28 day period, the last date of which must not be more than 2 months from the date of the receipt of the application”. It was asked to forward original bank or building society statements “covering the period”. It seems that there was no reply to this request.
4. On 30th October 2017 the OTC sent a reminder, asking for the information by 13th November 2017. On or about 6th November 2017 the appellant sent in a bank business account summary for the period 4th September 2017 to 2nd October 2017 showing opening and closing balances for that period well in excess of the amount required, and showing the total of credits and debits during that period. According to the OTC this statement was a copy rather than an original document.
5. The OTC submission to the Commissioner stated that the financial statement “did not cover a full 28 day period, but only showed a summary of the account displaying a closing balance” and that “The bank statement is a summary sheet covering the 4th September to 2nd October 2017 and only shows a closing balance and no transactions”. Of course, this was not accurate because the summary also showed the opening balance and a total of the credits and debits during the period. The recommendation to the Commissioner was that the application be refused and on 13th December 2017 the Commissioner accepted this recommendation. Notification to that effect was issued to the appellant in a letter of the same day, “given your failure either

to supply the required supporting document or offer any explanation as to why you were unable to do so”..

6. The appellant appealed to the Upper Tribunal against that decision on the basis that the necessary information had been supplied. Its director seems to have thought that what has been referred to above as a “summary” met the requirements. In my view that understanding was not unreasonable.

7. I do not dispute the right of the Commissioner to require production of every page of a bank statement and/or a document showing every transaction, or to see original rather than copy documents. However to refuse an application on the basis of failure to supply information, the request for which has not been adequately itemised, is a breach of the rules of fair procedure and natural justice such as to amount to an error of law. If the Commissioner requires sight of every page of a bank statement and/or a document showing every transaction, than that should be clearly spelt out. In an appropriate case it might also be necessary to specify what counts as an original and what counts as a copy, given that even “original” statements are in one sense copies of the bank’s own paper or virtual ledger or accounts.

H. Levenson
Judge of the Upper Tribunal
28th March 2018