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DECISION OF THE TRAFFIC COMMISSIONER FOR THE NORTH WEST OF ENGLAND

In the matter of the
Public Passenger Vehicles Act 1981 (the 1981 Act)

JUNAID HUSSAIN AJAZ
T/A PRESTIGE MINIBUS SERVICE
(PC2014854)

Public Inquiry at Golborne on
19 December 2018

Decision

This application for a Restricted Public Service Vehicle operator's licence is refused, since I am not satisfied that the applicant has discharged his responsibility to meet the requirements set out in Section 13 (3) (b) of the Act.

Background:

1. Junaid Hussain Ajaz, trading as Prestige Minibus Service (PC2014854) is an applicant for a new Restricted Public Service Vehicle operator's licence for 1 vehicle, made on 23 June 2018.

The calling-in to Public Inquiry:

2. His application was called in before me at Public Inquiry at Golborne because of concerns about whether he met the "main occupation" requirement, financial standing and the requirement to have in place satisfactory arrangements to comply with the relevant law.

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The evidence and its consideration:

3. I heard evidence from the applicant, Junaid Hussain Ajaz, who was represented by Bill Bowling of the National Limousine and Chauffeur Association (NLCA).
4. The application was based upon a plan that the grant of a restricted licence was likely to lead to the making of a substantive application for a Standard National licence in due course, if things went well. In that regard, Mr Ajaz had made an application to take a course of qualification towards the Transport Manager CPC examination. He had obtained informed advice as a result of his NLCA membership, there would be external drivers' hours' analysis and an analysis of licence compliance was offered through NLCA in six months. In addition, Mr Ajaz said he understood and would comply with the suite of undertakings proposed and which were typically added to these licences.
5. I heard evidence about the plans to carry out airport transfer, and group travel and "party" work, but specifically that there was no intention to carry out local authority contract work.
6. The focus of my questioning was upon the likelihood (or not) that the main occupation requirement of such licence would be met.
7. My assessment of what I heard has been complicated by the recent decision by Mr Ajaz (about 6 weeks previously) to change the nature of his claimed "main occupation". The application had been submitted in June 2018, whilst he then worked as a black cab driver in Manchester, working for 30 hours per week.
8. It transpired from the evidence, after Mr Ajaz offered a correction of his initial testimony, that this was itself a new self-employment, since his accountant-prepared accounts showed for the financial year to 5 April 2018, a role was a Private Hire Vehicle (PHV) driver from which he had derived a profit of £ {REDACTED}, on a turnover of £ {REDACTED}. Net profit as a proportion of total takings was therefore about {REDACTED} %.
9. There was no evidence produced at all to confirm the extent of the income and expenditure from the now discontinued black cab work.
10. Mr Ajaz had ceased his black cab driving and had for the month or so preceding the Inquiry worked once again in the PHV sector but this time as an "Uber" driver. He told me that early indications were positive (as compared to the black cab market, which had dried up) and I was shown a screenshot of his income for the most recent full week. This showed a figure of £ {REDACTED}, from which Uber had already deducted their share.
11. A projection of expected PSV income prepared by his accountant was available in the brief. It referred to an estimate of PSV total income of £ {REDACTED} per annum based the planned 10 hours per week. The estimate then listed expenditure to be deducted to provide a net profit of only £ {REDACTED} over 12 months.

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12. These figures however, also contradicted Mr Ajaz's narrative in his letter of 3 September 2018, which referred to £ {REDACTED} of net profit but this time based on gross takings of £ {REDACTED} per annum. When this discrepancy was put to him, Mr Ajaz struggled to provide a coherent explanation, except that the figures represented at best only estimates.

13. Net profit as a proportion of total takings was calculated at only {REDACTED} % based on the sums in paragraph 10, which is considerably less than was being achieved for the earlier PHV work.

The law:

14. I have considered the evidence I heard in the case and reminded myself of the requirement in Section 13 (3) (b) of the Act, which deals with the main occupation requirement.

The law is set out as follows:

13 (3) A restricted licence authorises the use of (...) of

(a) [..]

(b) Public service vehicles not adapted to carry more than sixteen passengers when used –

(i) [..]

(ii) by a person whose main occupation is not the operation of public service vehicles adapted to carry more than eight passengers.

Findings:

15. I am not satisfied on the balance of probabilities that the applicant has shown me that the requirement that PSV work will not be his main occupation.

16. I reach that conclusion since:

- The applicant has not produced convincing evidence of his current income as a PHV driver (despite the indication in the calling-in letter that such should be provided), which provides a reliable indication of earnings which can be compared to the projections for PSV income;
- The applicant's assessment of income likely to be generated from proposed PSV work contains anomalies, and I find myself unable to rely upon it;
- I note from such data as is before me that the applicant estimates PSV work to be chargeable at £ {REDACTED} per hour. However, I note from his final accounts for 2017-18 demonstrated an average charge-out rate based on £

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{REDACTED} per annum (that is £ {REDACTED} per week over 50 weeks). This equates only to a rate of £ {REDACTED} per hour (for 30 hours per week). I am not satisfied with such starkly different rates for work to be done (but with expenditure that is much less variable) that continuing to carry out PHV work over PSV work would be an attractive prospect;

- The potential for much larger sums to be earned from PSV work, if these sums are accurate, is such that there would be an immediate risk that it would represent his main occupation.

17. In these circumstances I am obliged to conclude that I must refuse the application, as I do not believe that the test in Section 13 (3) (b) will be met.

18. I offer the following guidance to Mr Ajaz, if he should wish to renew his application for a licence. That is:

- That it would be vital to support any application made with up to date details of income and expenditure in respect of the Uber role including evidence of returns produced by that company in payment of fares after the deduction of commission;
- Estimates of income and expenditure for PSV work should be credible and explicable in terms e.g. of variances, when set alongside those for the PHV work currently undertaken;
- Final (or if need be interim) accountant-prepared financial reports for the year 2018 - 2019.



Simon Evans
Traffic Commissioner
for the North West of England
20 December 2018.