



Appeal No. NT/2020/22
NCN: [2020] UKUT 326 (AAC)

**IN THE UPPER TRIBUNAL
ADMINISTRATIVE APPEALS CHAMBER (Transport)
TRAFFIC COMMISSIONER APPEALS**

**ON APPEAL from the DECISION of the HEAD of the TRANSPORT REGULATION
UNIT**

Dated 4 March 2020

Before:

Kenneth Mullan	Judge of the Upper Tribunal
Mr Leslie Milliken	Member of the Upper Tribunal
Mr Andrew Guest	Member of the Upper Tribunal

Appellant:

Phelim Teggart

Attendances:

For the Appellant: The appellant did not participate in the remote oral hearing but was represented by Mr McNamee who did

For the Respondent: None

Type of hearing: Remote oral hearing via Sightlink

Date of hearing: 23 September 2020

Date of decision: 23 November 2020

DECISION OF THE UPPER TRIBUNAL

IT IS HEREBY ORDERED that this appeal be DISMISSED.

SUBJECT MATTER:-

CASES REFERRED TO:- NT/2013/52 & 53 Fergal Hughes v DOENI & Perry
McKee Homes Ltd v DOENI; Bradley Fold Travel Ltd &
Peter Wright v Secretary of State for Transport [2010]
EWCA Civ. 695; NCF (Leicester) Ltd

REASONS FOR DECISION

1. This is an appeal from the decision of the Head of the Transport Regulation Unit ('TRU') to revoke the Appellant's goods vehicles operator's licence.
2. The factual background to this appeal appears from the documents and the Head of the TRU's decision and is as follows:-
 - (i) The Appellant is the holder of a Standard International goods vehicles operator's licence which authorises the use of one vehicle from an operating centre in Newry, Co Down, Northern Ireland.
 - (ii) At the time of the application for the licence, the financial standing requirements for one vehicle on a Standard International Licence was £7,950. As part of the application process the operator did not submit calculable finance over a period of 28 days, but did provide evidence of financial standing for a period of one week in December 2018.
 - (iii) The Department's practice guidance provides that "If the applicant has a new business and thus does not have statements for the 28 day period, an opening balance meeting the requirement may be accepted, with an explanation regarding the source of funds but it is likely that the Head/Deputy Head of TRU will require the operator to submit further financial evidence within a specified period after the date of grant (likely to be 6 to 12 months)."
 - (iv) On 14 December 2018 the Department wrote to the Appellant noting previous correspondence which had been sent to him requesting additional documentation in support of his then extant application for a goods vehicle operator's licence. The correspondence of 14 December 2018 reminded the Appellant that the requested information remained outstanding and asked the Appellant to sign and return a declaration that the information would be forwarded.
 - (v) On 3rd January 2019 the Department received a declaration, signed by the Appellant on 24 December 2018, agreeing to submitting the financial documentation requested, namely:

"28 days' worth of original bank statements and other financial details (such as overdraft facility agreements or credit card statements) that show the licence holder has access to the required financial facilities and funds."
 - (vi) The Department wrote to the Appellant on 15 February 2019 indicating that his application for a goods vehicle operator's licence had been granted and confirming that he was "bound by financial agreement to produce evidentially acceptable finance for the month of April 2019 by 30 May 2019".
 - (vii) The licence became effective from 17 February 2019.
 - (viii) The relevant financial information had not been received by 30 May 2019. Accordingly a letter was sent by the Department, dated 2 July 2019, reminding the operator that he had failed to produce the evidence. This letter also stated "If it is not submitted as required in full and acceptable form by 16 July 2019 revocation proceedings may be undertaken without further communication."

- (ix) On 9 July 2019 a copy of a bank statement dated 1st April 2019 to 2nd July 2019 was received in the department. The account to which the statement related was in the name of "Teggert International. As such, despite the finances shown being sufficient, the Department was not satisfied that those funds were available to the Appellant in accordance with the requirements for standard licences under Section 12A(2)(c) of the Goods Vehicle (Licensing of Operators) Act (NI) 2010.
- (x) In correspondence dated 2 July 2019 the Department informed the Appellant that the banking evidence which had been produced was 'not in the correct title of the licence holder. The Appellant was requested to provide a letter from the bank 'identifying the statement ... in the title of Teggert International as being held by you Phelim Teggart'. The Appellant was given until 7 August 2019 to provide a response.
- (xi) There was no response to the Department's correspondence of 2 July 2019. Further correspondence was sent to the Appellant on 14 October 2019 in which he was reminded that he had not provided any corroborating documentation from his bank. He was advised that if such documentation was not received by 31 October 2019 consideration would be given to commencing regulatory action.
- (xii) There was no reply to the letter of 14 October 2019. By way of further correspondence dated 6 December 2019, the Appellant was reminded of the correspondence of 2 July and 14 October 2019 and was advised that the Department was giving consideration to making a direction to revoke his operator's licence. The proposed grounds for revocation were set out and the Appellant was given the opportunity to rectify the omissions to provide the relevant documentation, to provide explanations for the anomaly in the spelling of his name on the bank statement provided and to make representations. Finally, the Appellant was informed that if no response to the correspondence was received by 30 December 2019 his licence would be revoked.
- (xiii) No reply was received by 30 December 2019. Correspondence was received from the Appellant on 10 January 2020 in which he stated the following:

'I am writing to you today, to provide you with a bank statement from my business account, proving I have enough funds to keep my Haulage licence. I'd also like to apologise for the delay with the statements, as there were a few hiccups along the way to obtaining them. Santander was being very difficult in this process as it's not the first time I have inquired about this matter. The matter being my Second name being spelt wrong and my business account not having my first name on it.

Santander originally told me that I cannot just change the name on my business account with having to go through their business team over the phone and explain to them why I wanted it changed, after believing the matter was resolved I waited for my bank statements to arrive by post (my local branch would not print them) to find they did not change the name on the account, this has happened on two different occasions but I have finally gotten it changed after having to write to Santander's Business team explaining this situation.

It was my own fault for not pursuing Santander on these matters as I could have had all of this organised already but between going to work

and being away from home for 4-5 days every week and also trying to run a small business on my own it honestly slipped my mind, knowing that isn't an excuse for not providing these statements beforehand I sincerely hope you accept my apology and that I will be as compliant as I possibly can in the future.'

- (xiv) The bank statement which the Appellant forwarded with the correspondence received on 10 January 2020 had an account name of 'Teggart International' but with the name 'T/A Phelim Teggart International' in the address to which it had been sent.
 - (xv) The Department wrote to the Appellant on 23 January 2020 informing him that while there were sufficient funds in the 'Teggart International' account the Department required 'proof of the account holder ... as you hold the licence as a sole trader and the monies must be held by you.' The Appellant was asked to provide a letter from the bank stating that the account was held by him in the title of 'Phelim Teggart'. He was also asked to provide a copy of his birth certificate. The Appellant was advised that a reply was required by 6 February 2020 or revocation proceedings would continue.
 - (xvi) There was no reply to the Department's letter of 23 January 2020. On 4 March 2020 the Department wrote to the Appellant advising him that a decision had been made to revoke his operator's licence with effect from 2 April 2020. The grounds for revocation were as follows:

'Section 23(1)(g) that since the licence was issued or varied there has been a material change in any of the circumstances of the licence-holder that were relevant to the issue or variation of the licence; namely that the licence holder does not have sufficient financial resources for maintaining vehicles in a fit and serviceable condition.

Section 24(1)(a) as the licence holder no longer appears to satisfy the requirement to be of the appropriate financial standing under the provisions of section 12A(2)(c) (as determined in accordance with regulations and Article 7 of the 2009 Regulation) in view of an apparent failure to provide appropriate evidence.'
 - (xvii) The Department also directed that 'repute has been tarnished but not lost therefore you may apply for a new operator's licence if required.
 - (xviii) On 13 March 2020 the Department received a copy of an appeal to the Upper Tribunal and a request for a stay of the decision dated 4 March 2020. On the same date the application for the stay was granted by the Head of the Transport Regulation Unit.
3. The Appellant set out the following grounds of appeal:

'This licence has been revoked on the basis that the licence holder does not have sufficient financial resources and no longer satisfies the requirement of appropriate financial standing.

As best can be gleaned from the letter of 4 March 2020 it appears that a determination has been made on supposedly scrutiny of the bank statements provided by the operator that he does not have sufficient funds to meet these two statutory requirements.

It is impossible to understand how the Department could reach such a decision given that the have been provided with bank statements for account number ..., sort code ..., which, at all times shows more than sufficient funds

to meet the financial requirement. We append to this application copies of the Santander bank statements which we understand were provided by the Operator to the Department.

Further we have copied onto the January-February statement a copy of the Operator's driving licence and a copy of the business card in the Operator's name which accompanies this account. Given the evidence provided to the Department the finding of lack of financial standing or resource is clearly incorrect.

And further we say that the revocation of the licence on the grounds of financial standing or sufficiency of financial resources is clearly not justifiable and constitutes such an egregious conclusion from the evidence before the Department that it constitutes an error of law.'

4. Attached to the notice of appeal were copies of bank statements in the names of 'T/A Phelim Teggart International' and 'Teggart International'. Photocopies of the Appellant's driving licence and a business Visa card in the name of the Appellant were also provided.
5. At the remote oral hearing of the appeal, Mr McNamee expanded on the submissions which he had made in the notice of appeal. He noted that it was not for the Appellant to prove any particular aspect of the licence requirement, including the financial standing requirement. He asserted that when the issue of the name on the bank account was raised with him, the Appellant had endeavoured to resolve the issue but that it encountered difficulties with the bank's failure to respond in a timely and appropriate manner. He submitted that the evidence showed that the Appellant had access to sufficient funds to meet the financial standing criterion and that the bank statements which had been submitted related to him. He stated that the Appellant had adopted the 'International' title as a 'trading style'. Finally, Mr McNamee submitted that the Appellant had been in regular touch with the Department by telephone and email. Mr McNamee was given the opportunity to provide copies of the emails to which he had referred. There has been no further post-hearing communication from Mr McNamee.

The relevant legislative provisions

6. Section 1 of the Goods Vehicles (Licensing of Operators) Act (Northern Ireland) 2010, as amended ('the 2010 Act'), provides:

'1. Operators' licences

(1) Subject to subsection (2) and section 3, a person shall not use a goods vehicle on a road for the carriage of goods—

(a) for hire or reward, or

(b) for or in connection with any trade or business carried on by that person,

except under a licence issued under this Act; and in this Act such a licence is referred to as an "operator's licence".'

7. Subsections 2 and 3 of section 1 are not relevant in this case.
8. Section 12A(1) and (2)(c) of the 2010 Act provides:

'12A. Requirements for standard licences

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

(2) The first requirement is that the Department is satisfied that the applicant—

...
...

(c) has appropriate financial standing (as determined in accordance with regulations and Article 7 of the 2009 Regulation);'

9. Section 24(1)(a) of the 2010 Act provides:

'24. Revocation of standard licences

(1) The Department shall direct that a standard licence be revoked if at any time it appears to the Department that

(a) the licence-holder no longer satisfies the requirements of section 12A(2)'

General principles on the operation of the Act and Regulations

10. At paragraphs 10 to 13 of the decision in NT/2013/82 Arnold Transport & Sons Ltd v DOENI, the Upper Tribunal set out the following general principles in the operation of the legislative provisions in Great Britain and Northern Ireland:

'Some General Principles

10. An operator's licence can only be granted if the applicant satisfies the Department that the relevant requirements, set out in s. 12 of the 2010 Act as amended, have been met. [The expression Department is used in the legislation but for the purposes of the decisions required to be taken under the legislation it is the Head of the TRU who takes them]. The relevant requirements are now set out in Paragraph 17(5) of the Goods Vehicles (Qualifications of Operators) Regulations (Northern Ireland) 2012, ("the Qualifications Regulations), which substitutes a new s.12 and adds ss. 12A-12E to the 2010 Act. The Qualifications Regulations also contain important provisions in relation to Good Repute, Professional Competence and Transport Managers.

11. The grant of an operator's licence does not mean that an operator can then proceed on the basis that the requirements that must be met in order to obtain a licence can thereafter be disregarded. In our view it is clear both from the terms of the 2010 Act and from Regulation 1071/2009 that these are continuing obligations, which an operator is expected to meet throughout the life of the licence. It is implicit in the terms of s. 23, which gives the Department power to revoke, suspend or curtail an operator's licence, that this can take place at any time and for any reasonable cause, including matters covered by the requirements of s. 12 as amended. It is

explicit in s. 24, which provides that a standard licence shall be revoked if at any time it appears that the licence-holder is no longer (i) of good repute, (ii) of appropriate financial standing or, (iii) professionally competent. The underlining, in each case is ours. First, we wish to stress that once it appears that the licence-holder is no longer of good repute, or of appropriate financial standing or professionally competent the licence must be revoked because the Act makes it clear that there is no room for any exercise of discretion. Second, the use of the expression 'at any time' makes the continuing nature of the obligations crystal clear.

12. The Tribunal has stated on many occasions that operator's licensing is based on trust. Since it is impossible to police every operator and every vehicle at all times the Department in Northern Ireland, (and Traffic Commissioners in GB), must feel able to trust operators to comply with all relevant parts of the operator's licensing regime. In addition other operators must be able to trust their competitors to comply, otherwise they will no longer compete on a level playing field. In our view this reflects the general public interest in ensuring that Heavy Goods Vehicles are properly maintained and safely driven. Unfair competition is against the public interest because it encourages operators to cut corners in order to remain in business. Cutting corners all too easily leads to compromising safe operation.

13. It is important that operators understand that if their actions cast doubt on whether they can be trusted to comply with the regulatory regime they are likely to be called to a Public Inquiry at which their fitness to hold an operator's licence will be called into question. It will become clear, in due course, that fitness to hold an operator's licence is an essential element of good repute. It is also important for operators to understand that the Head of the TRU is clearly alive to the old saying that: "*actions speak louder than words*", (see paragraph 2(xxix) above). We agree that this is a helpful and appropriate approach. The attitude of an operator when something goes wrong can be very instructive. Some recognise the problem at once and take immediate and effective steps to put matters right. Others only recognise the problem when it is set out in a call-up letter and begin to put matters right in the period before the Public Inquiry takes place. A third group leave it even later and come to the Public Inquiry with promises of action in the future. A fourth group bury their heads in the sand and wait to be told what to do during the Public Inquiry. It will be for the Head of the TRU to assess the position on the facts of each individual case. However it seems clear that prompt and effective action is likely to be given greater weight than untested promises to put matters right in the future.'

The proper approach on appeal to the Upper Tribunal

11. In NT/2013/52 & 53 Fergal Hughes v DOENI & Perry McKee Homes Ltd v DOENI, the Upper Tribunal said the following, at paragraph 8 of its decision, on the proper approach on appeal to the Upper Tribunal:

'There is a right of appeal to the Upper Tribunal against decisions by the Head of the TRU in the circumstances set out in s. 35 of the 2010 Act.

Leave to appeal is not required. At the hearing of an appeal the Tribunal is entitled to hear and determine matters of both fact and law. However it is important to remember that the appeal is not the equivalent of a Crown Court hearing an appeal against conviction from a Magistrates Court, where the case, effectively, begins all over again. Instead an appeal hearing will take the form of a review of the material placed before the Head of the TRU, together with a transcript of any public inquiry, which has taken place. For a detailed explanation of the role of the Tribunal when hearing this type of appeal see paragraphs 34-40 of the decision of the Court of Appeal (Civil Division) in Bradley Fold Travel Ltd & Peter Wright v Secretary of State for Transport [2010] EWCA Civ. 695. Two other points emerge from these paragraphs. First, the Appellant assumes the burden of showing that the decision under appeal is wrong. Second, in order to succeed the Appellant must show that: *“the process of reasoning and the application of the relevant law require the Tribunal to adopt a different view”*. The Tribunal sometimes uses the expression *“plainly wrong”* as a shorthand description of this test.’

At paragraph 4, the Upper Tribunal had stated:

‘It is apparent that many of the provisions of the 2010 Act and the Regulations made under that Act are in identical terms to provisions found in the Goods Vehicles (Licensing of Operators) Act 1995, (“the 1995 Act”), and in the Regulations made under that Act. The 1995 Act and the Regulations made under it, govern the operation of goods vehicles in Great Britain. The provisional conclusion which we draw, (because the point has not been argued), is that this was a deliberate choice on the part of the Northern Ireland Assembly to ensure that there is a common standard for the operation of goods vehicles throughout the United Kingdom. It follows that decisions on the meaning of a section in the 1995 Act or a paragraph in the Regulations, made under that Act, are highly relevant to the interpretation of an identical provision in the Northern Ireland legislation and vice versa.’

The importance of the operator’s name to the section 12A(2)(c) financial standing requirement

12. In NCF (LEICESTER) Ltd. ([2012] UKUT 271(AAC)), the Upper Tribunal said the following, at paragraphs 11 to 17:
 10. Being of appropriate financial standing has always been considered to be a continuing requirement. In other words it is a requirement that the operator must satisfy for the duration of the licence. In our view this is now made crystal clear in Article 7(1) of Regulation (EC) No 1071/2009 of the European Parliament and of the Council, (“Regulation 1071/2009”), which provides: “In order to satisfy the requirement laid down in Article 3(1)(c), an undertaking shall at all times be able to meet its financial obligations in the course of the annual accounting year”.
 11. The purpose of the requirement to be of appropriate financial standing is spelt out, in general terms, in recital 10 to Regulation 1071/2009, which provides: “It is necessary for road transport undertakings to have a minimum financial standing to ensure their proper launching and administration”. In our view ‘administration’, for the purposes of this Regulation, means the organisation and running of a haulage business which holds an operator’s licence. In particular the requirement is

intended to ensure that vehicles can be operated safely because the operator can afford to maintain them promptly and properly.

12. In our view four points flow from these considerations.
13. First, the requirement to be of appropriate financial standing cannot be satisfied by evidence which simply provides a 'snapshot' of the operator's financial position. The requirement will not be satisfied by showing that on a particular day or during a particular month enough money was available. Instead what is needed is evidence that the operator is consistently able to have enough money available for the requirement to be satisfied.
14. Second, an operator is not required to have the specified amount available, 365 days per year, throughout every year that the licence is in existence. The requirement is there to ensure, amongst other things, that vehicles are promptly and properly maintained and in particular to enable an operator to have emergency repairs carried out, promptly and properly, in addition to normal scheduled maintenance. This is likely to mean that the amount of money available will fluctuate, depending on the size of the bills that have to be paid at any one time. What the Traffic Commissioner will want to consider is the speed with which the amount of money available recovers to a level at, or above, the amount needed to satisfy the requirement to be of appropriate financial standing. This is why Traffic Commissioners ask for financial evidence covering a period, normally of three months, and then consider the average figure over the whole period.
15. Third, the requirement to be of appropriate financial standing can only be met by assets which are available, or can be made available, to pay bills as and when they fall due. When deciding whether or not it is appropriate to take a particular asset into account when considering whether or not the requirement is met it is important to bear this purpose in mind. For example bank accounts may or may not require notice before money can be withdrawn. The Guidance Notes issued by the Senior Traffic Commissioner indicate that one month, or 30 days, is an appropriate cut-off point. We support this approach. If the money can be used within 30 days or less then it is likely to be available to pay bills as and when they fall due. If a longer period is needed before it can be used it is unlikely to be available to pay bills as and when they fall due. In the case of an overdraft or credit card the amount available will not be the full amount of the overdraft or the credit card limit, instead it will be the amount which can still be drawn or used. Traffic Commissioners will want to see evidence showing the amount of money regularly available and within what period that money can be used.
16. Fourth, **the requirement can only be met by assets, in whatever form, which are owned by the operator. Bank accounts, for example, must be in the name of the operator.** Overdrafts and credit cards must also be in the name of the operator. Similar considerations apply to any other form of asset advanced as a way of proving appropriate financial standing. **Operators must understand that Traffic Commissioners will only be prepared to take into account assets that are shown to belong to the operator.** The only exceptions are Statutory Declarations, which do not apply where the operator is a limited company and Invoice Finance agreements.'

Analysis

13. We begin by repeating what was said at paragraph 2(ii) above namely:

‘As part of the application process the operator did not submit calculable finance over a period of 28 days, but did provide evidence of financial standing for a period of one week in December 2018.’

14. Copies of the evidence which the Appellant did provide as part of the application process are in the appeal bundle. There is a statement covering the period from 1 November 2018 to 3 December 2018 for a Credit Union account in the name of Phelim Teggart. There is also a statement covering the period from 17 to 22 December 2018 for a Santander bank account in the name of Phelim Kevin Teggart. It is clear, therefore, that at the time of the application the Appellant had bank accounts in his own name.
15. Thereafter, though, the Appellant, of his volition, decided to open or re-name his Santander account to reflect what his representative submits was a ‘trading style’. The purpose of the addition of the word ‘International’ was clearly designed to enhance the image of the business. To that extent, therefore, the Appellant has been the author of his own misfortune.
16. We cannot also ignore the fact that the Appellant failed to respond to two requests to provide evidence that he met the financial standing requirement. When he did respond the Department alerted him to the fact that the name on the bank account statement did not reflect the name on the operator’s licence. Thereafter he was given three opportunities to rectify matters. It was only when the Department warned the Appellant that he was at risk of losing his operator’s licence that he did respond by providing a further statement relating to his Santander bank account. While this revealed there was a resolution of the spelling of his name, the account name did not reflect that on the operator’s licence. Once again, the Department provided the Appellant with another chance to provide the necessary evidence. There was no response from the Appellant. All of this points to a lax attitude on the part of the Appellant to the important regulatory aspects to holding an operator’s licence.
17. The principles set out by the Upper Tribunal in paragraphs 11 to 17 of NCF (LEICESTER) Ltd are unambiguous. They emphasise the importance of the financial standing requirement and the measures required of an operator to meet it. Applying those principles to the instant case, it is obvious that the financial evidence supplied by the Appellant, by way of statements from a bank account, was not in the name of the operator. That is something which the Department could not ignore. When the Appellant was given the opportunity to rectify the matter he responded in a disorganised manner. The Department could not, therefore, be satisfied that the Appellant satisfied the financial standing requirement. Under section 24(10) of the 2010 Act revocation was inevitable.

18. The decision of the Head of the Transport Regulation Unit was not plainly wrong. The appeal is, accordingly, dismissed.
19. We are of the view that the Appellant should be given an appropriate time for an orderly winding-up of the business. Accordingly, the revocation will take effect from 11.59 p.m. on 31 December 2020.

A handwritten signature in black ink, reading "Kenneth Mullan". The signature is written in a cursive style and is placed on a light grey rectangular background.

**Kenneth Mullan, Judge of the Upper Tribunal,
25 November 2020**