



**IN THE UPPER TRIBUNAL
ADMINISTRATIVE APPEALS CHAMBER**

Appeal No. UA-2021-000565-T

On appeal from the Decision of Victoria Davies, Traffic Commissioner for Wales dated 13th December 2021

Clayton Francis Jones trading as Street Buses

Appellant

Before: Her Honour Judge Beech Upper Tribunal Judge
Specialist Member of the Upper Tribunal Andrew Guest
Specialist Member of the Upper Tribunal Sarah Booth

Hearing date: 12th July 2022

Representation:

Appellant: The Appellant did not attend and requested that we determine his appeal in his absence

DECISION

The appeal is DISMISSED

Subject Matter: The giving of an undertaking as a prerequisite to the grant of an operator's licence

Cases referred to: Bradley Fold Travel & 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 Wales ("TC") dated 13th December 2021 when she granted the Appellant's application for a standard national PSV licence for 8 vehicles under s.14 of the Public Service Vehicles Act 1981 ("the Act") subject to him giving the following undertaking:

“The operator will arrange an independent audit to be carried out by the RHA, Logistics UK or other suitable independent body, by 13 September 2022. The audit will assess the systems for complying with maintenance and drivers (sic) hours requirements, and the effectiveness with which those systems are implemented. The audit should cover at least the applicable elements in the attached annex. A copy of the audit report, together with the operator’s detailed proposals for implementing the report’s recommendations, must be sent to the Swyddfa Comisiynydd Traffig Cymru/Office of the Traffic Commissioner for Wales at Caernarfon within 14 days of the date the operator receives it from the auditor”.

Background

2. The background to this appeal can be found in the appeal bundle and is as follows. The Appellant (“Mr Jones”) has a long history of PSV operation either as an Operator, Transport Manager or as a Consultant. To illustrate the point, Mr Jones was involved in the following Transport Tribunal/Upper Tribunal appeals:

- 2003/254 Alison Jones trading as Shamrock Coaches (Mr Jones provided management services)
- 2004/330 RH & DT Edwards Limited (Mr Jones was a Consultant and gave evidence for the company)
- 2005/301 & 2005/327 RH & DT Edwards Limited and Clayton Jones trading as Wales & Marches Bus Company (Mr Jones was transport manager for both licences and was a sole trader operating the latter)
- 2006/482 Alison Jones trading as Shamrock Coaches (Mr Jones provided management services and gave evidence for his wife and himself)
- 2008/470 Heart of Wales Bus and Coach Limited (Mr Jones was the managing director and the transport manager)
- T/2011/28 Heart of Wales Bus & Coach Company Limited & Clayton Francis Jones (Mr Jones was the sole director and transport manager)

Mr Jones has not been directly involved in the operation of PSV vehicles since December 2012 when the licence of Heart of Wales Bus & Coach Limited trading as St David’s Travel was surrendered although Mr Jones did make an application for a PSV licence in his own name in May 2013 which was eventually refused on the papers on 7th May 2015 upon the basis that Mr Jones’ conduct with regard to the application was deemed to be frivolous and unreasonable under Regulation 6 of the Public Service Vehicles (Operators’ Licences) Regulations 1995.

3. By an application uploaded on 13th July 2021, Mr Jones applied for a standard national PSV licence authorising eight vehicles. He applied as a sole trader trading as Street Buses. He was also the nominated transport manager.
4. The application attracted a statutory objection from the Rhondda Cynon Taf Borough Council (“RCT”). However, the TC determined that all of the matters

of concern raised in the RCT letter related to Mr Jones' operation of or involvement with the entities set out in paragraph 2 above and all such matters which pre-dated the last Upper Tribunal decision (T/2011/28) would not form part of the evidence before her. The letter calling Mr Jones to the public inquiry conveyed the TC's decision and her reasons.

5. The public inquiry took place on 7th December 2021. Mr Jones attended and represented himself. He had submitted two skeleton arguments which were difficult to follow; they confused the roles of the TC and RCT; the points made were largely irrelevant to the issue of whether Mr Jones should be granted a PSV licence. He also filed two lever arch files of documents (which we do not appear to have). Mr Waters of RCT attended as an observer only although he was able to confirm that RCT had granted Mr Jones a private hire vehicle licence ("PHV") in September 2021.
6. Whilst Mr Jones was keen to ventilate a number of irrelevant issues during the course of the hearing, including the RCT objection letter and the practical difficulties he said he was encountering in progressing towards the operation of private hire vehicles, the TC refused to give Mr Jones an opportunity to do so.
7. The TC at the outset confirmed that she was satisfied with financial standing. She then guided Mr Jones through his evidence which went to the statutory requirements set out in s.14ZA&C of the Act. With regard to maintenance, the TC noted that there was little by way of information in Mr Jones' hearing bundle regarding that issue. In particular, there was no maintenance contract, only a letter from the proposed maintenance provider confirming that the company would be responsible for the first use checks of all Mr Jones' vehicles and would also be responsible for all of the maintenance inspections. A wall chart would be provided to Mr Jones showing six weekly preventative maintenance inspections with a full brake test on each inspection. Mr Jones explained that the provider was long established with modern facilities, including a new rolling road. The Head Fitter appeared "*very confident*" and Mr Jones had known the Managing Director for fifteen years. The provider was "*quite capable of doing the work*". Mr Jones had provided to them a copy of the daily check sheet and inspection sheet. He did not want to sign a contract with a provider without knowing whether he was going to be granted a licence (the TC explained the practice of providing a sample contract). He confirmed that the provider had a covered pit and headlight alignment equipment and that the company was also an MOT provider and would be used by him to undertake pre-MOT inspections although he would expect Mercedes Benz to undertake any remedial work as all the vehicles he proposed to operate would be new with three year warranties. Mr Jones had not asked the company what their first time MOT pass rate was. However, all of the staff were appropriately qualified, and the provider was only two miles away from the operating centre. At the conclusion of the hearing, the TC made it clear that she was not going to "*issue*" her decision that day. We take that to mean that she was reserving her decision.
8. By an email dated 8th December 2021, the Office of the Traffic Commissioner ("OTC") informed Mr Jones that the TC had considered his evidence and submissions and the steps he had taken to update his knowledge. The email continued:

“Due to past compliance and application history and length of time out of the industry the Traffic Commissioner wishes to request your agreement to an undertaking to have an independent systems compliance audit in 9 months time.”

The proposed undertaking was in the same terms as that set out in paragraph 1 above. Mr Jones was requested to respond by 15th December 2021.

9. By an email dated 8th December 2021, Mr Jones responded as follows:

“In view of the attached confirmation of grant of operator licence following yesterday’s hearing I have confirmed the actions of the T.C. with a caveat the outstanding issues which failed to receive full debate and consideration may be referred to the transport tribunal as best practice.

I’ve thanked the T.C. for her consideration and decision which now allows me the opportunity to ensure the transport needs of the public and safety are my first priority ..”

The email was followed by another on 9th December 2021 in which Mr Jones confirmed that he had agreed to the giving of the undertaking.

10. On 13th December 2021, the TC published her written decision. Her reasons for granting the decision were as follows:

“5. On the basis of the evidence presented to me, I consider that the applicant is in a position to run his operation compliantly. Mr Jones has taken steps to update his knowledge, including attendance at a transport manager refresher training course and at several driver CPC training modules. He acknowledged that he learned a lot during that process and that things had moved on since he last operated.

6. It will, of course, be for Mr Jones to demonstrate that he can work with the regulator upon grant of this licence. Due to his past compliance and application history and length of time out of the industry, in correspondence following the hearing, I requested his agreement to an undertaking to have an independent systems compliance audit in 9 months’ time. Mr Jones agreed to that undertaking in the terms set out at page 1 of this Decision.

7. Accordingly, I find that the requirements of sections 14ZA and 14ZC of the Act are satisfied and grant this application with the audit undertaking agreed to by Mr Jones and as specified on page 1 of this Decision.”

The Appeal

11. By a Notice of Appeal received on 23rd December 2021, Mr Jones appealed the decision of the TC. In section A entitled “Type of Case”, Mr Jones stated:

“I wish to appeal the conduct of the hearing as this was unsatisfactory and the undertakings attached to the licence which we believe to be extreme.

Also the number of vehicle licences is incorrect historically as vehicles registration in England and Shamrock coaches licences were not included to give the total picture”.

12. In Section F entitled “Grounds of Appeal”, Mr Jones contended that “the hearing became a farce” and set out six grounds which are difficult to decipher

and are without adequate or any explanation as to why they amount to valid grounds of appeal. We summarise them as follows:

1. Under public law, Mr Jones believes that he should have been given an opportunity to answer the letter from the RCT in full, in addition to having produced a skeleton argument and having responded directly to the letter. What was the point of the public inquiry?
2. Mr Jones provided to the TC, two A4 binders of information and a skeleton argument. Not much of the latter was mentioned or questioned. Whilst the undertaking sought by the TC after the hearing was not *“particularly onerous”*, it may indicate that it followed a *“meticulous public inquiry. Nothing could be further from the truth ..”*. The request from the OTC for an undertaking less than 48 hours after the hearing *“cannot be best practice”* and indicated that the TC had not taken account of the details provided by Mr Jones in his *“legal statement”*. Furthermore, the issue of eight seats was left to the discretion of the TC, an issue which Mr Jones had actively been involved with throughout the process. The TC said she did not recall the issue within the papers but it was there. *“Due diligence should have ensured that this matter be cleared up”*.
3. The name of a potential driver who holds a PHV licence has been given to the RCT but this has not been progressed. Mr Waters of RCT attended the hearing but did not give evidence. Why was he there? Others should have been including others from the RCT and Nick Jones, the retired Traffic Commissioner for Wales.
4. *“The issue of relevant conditions relates to fixed penalty notices without explaining the reasons why. This does not appear in the Senior Traffic Commissioners Report in any event and clarity is required”*.
5. *“To finalise matters the information regarding good repute, stable establishment and addresses have been noted as they were previously as were finalised prior to the inquiry”*.
6. *“Information about vehicles. Items A&B are simple common sense as pointed out in our documentation. To conclude item 7 refers to any material change of my circumstances. These are I find both the Traffic Commissioner and RCT to be dysfunctional in their correspondence e.g. director who attended did not even note this understudy had left RCT 6 months previously. The Traffic Commissioner failed initially to advise of new circumstances in registering a new interest in our letter of 10/6/21 there was over a month delay. They also sent documentation for the hearing which a HGV licence not PCV. The fact is that the Traffic Area Office could not provide an accurate map for the office in Pontypridd”*. (Mr Jones does not identify items A&B or item 7).

Mr Jones concluded that he wished these issues to be aired. He had accepted all conditions on the licence but he sought an indication that these are not required in law and that the actions of the TC in cherry picking correspondence was irrational and contrary to law.

13. By case management directions dated 13th December 2021, Upper Tribunal Judge Hemmingway advised Mr Jones that the basis of his appeal was unclear; the Upper Tribunal would not carry out a general review of the public

inquiry unless it was relevant to the outcome; Mr Jones appeared to be complaining about having given an undertaking to the TC, which are or should be freely given; there was no right of appeal against the recording of an undertaking on a licence. Mr Jones was asked to explain in writing why he was challenging the undertaking which he had given. Mr Jones' response can be summarised as follows:

1. a) due diligence – correspondence prior to the public inquiry was not considered in full, in particular between the RCT and Mr Jones;
 - b) original complaint documentation from RCT was answered in full but there was no opportunity to deal with it because of decision of the TC limiting the evidence to be heard;
 - c) it will become abundantly clear from the transcript that justice was not employed.
2. The RCT correspondence was supplied to damage Mr Jones' reputation.
3. The reason for the appeal was that the issue of an undertaking was not raised during the hearing but after the event. It was a *fait accompli*.
4. The Act makes no reference to the imposition of "*conditions*" post a decision taken following a hearing. The undertaking was not freely given.

Mr Jones concluded by stating that he had worked on the premise that he would be questioned for five hours rather than an hour including breaks and there had been a lack of attention to the "*8 seater licence contained within our proposed logistics*" which was never addressed.

14. The appeal hearing was listed for 12th July 2022. On 11th July, Mr Jones wrote to the Tribunal stating that he was unable to attend the hearing because of on-going health problems. He nevertheless requested that the Tribunal consider nine points set out in the letter which did not add to those already made by him in his Grounds of Appeal save that he asserted that the TC had refused to "*take on board*" the number of vehicles licences and depots Mr Jones had previously had in the South East of England and he further asserted that he was still awaiting confirmation from the TC regarding the use of private hire vehicles on route services and that this was ignored despite Mr Jones emphasising the same during the hearing.

Discussion

15. The undertaking: Appeal *2008/470 Heart of Wales Bus and Coach Limited* concerned a company in which Mr Jones was the Managing Director and Transport Manager. Upon an application to increase its vehicle authorisation from one to twelve, the TC, following a hearing and in a reserved decision, granted the variation subject to an undertaking being given that the company's maintenance systems would be audited on a six-monthly basis. The TC's reasoning for requiring such an undertaking was that he had concerns about unfair competition and road safety. Mr Jones' appeal against the requirement that he give that undertaking was dismissed. It follows that Mr Jones is no stranger to the concept of undertakings being requested as a prerequisite to the granting of an application after a hearing had taken place.

16. It is an established principle that TCs can request undertakings on a range of issues about which they have concern. Quite apart from undertakings relating to maintenance and systems compliance, other undertakings may include such matters as the provision of bank statements for a stated period following the grant of the licence. In this case, the TC took into consideration before requesting the undertaking, that Mr Jones had a long regulatory history and that he had not been involved in the operation of PSVs since 2012. Those considerations were perfectly proper ones and justified the request for an undertaking, which on any view, was not particularly onerous and was entirely proportionate. It matters not whether the request for an undertaking was made during the course of a hearing or after the TC had risen to consider her decision. Mr Jones' assertion that the request for an undertaking was made after the decision to grant a licence had been made is inaccurate.
17. Undertakings are freely given. If an applicant refuses to give such an undertaking, then it is open for them to either request that the public inquiry be reconvened or appeal the TC's decision that an undertaking is either unlawfully requested or unnecessary on the facts and out with the ambit of the wide discretion that TCs have. Such a request is not a *fait accompli*. But once the undertaking is given, as in this case, there can be no valid appeal upon the basis that it should not have been required at all. For these reasons, there is no merit in Mr Jones' complaints about the TC's decision to request the undertaking, which was then duly given.
18. Issues raised about eight-seater vehicles: Mr Jones made an application for a standard national licence authorising eight vehicles. In his application he confirmed that he would be operating vehicles with nine or more passenger seats. He further confirmed that if he wished to operate vehicles with eight passenger seats or fewer under the PSV licence, he required the written agreement of the TC who may require "*certain undertakings*" to be given. The reason for this requirement arises from the definition of Public Service Vehicle set out in s.1 of the Act.
19. There is no evidence before us of an application made by Mr Jones to the TC for her agreement that he be permitted to operate one or more eight-seater vehicles under a PSV licence although there are many emails sent by Mr Jones to both the OTC and RCT making reference to an electric eight-seater private hire vehicle and to the failure of both the RCT and the OTC to give advice about the operation of an eight-seater vehicle. The requests for advice themselves are not within the bundle and such a request does not amount to an application to the TC for permission to operate one or more eight-seater vehicles.
20. There are also references to a failure on the part of the OTC and RCT in providing advice on the issue in Mr Jones' first skeleton argument. The operation of an eight-seater vehicle was also touched upon briefly in the public inquiry. The TC asked Mr Jones about his PHV licence: "*So, you've been granted that licence but you're not yet operating those buses, is that right? To which Mr Jones responded "Absolutely because you won't let me. If you read your own brief, it says you won't let me. Page 1, last line at the bottom of the page"*. The TC understandably did not understand the reference. Mr Jones then tried to find the relevant document but could not, despite a short adjournment. He then moved onto documents he described as invoices for

the vehicles he had ordered. Later on in the hearing, when the TC asked again why Mr Jones was not operating two small buses under his PHV licence, he agreed that the reason was that he was still in discussions with RCT and he did not know whether he had a driver to drive them (also the fault of RCT).

21. The only references we can find to a prohibition against operating vehicles with eight or fewer seats under a PSV licence are in the application form and in the Applicant/Licence Details which appear at page 23 of the appeal bundle and which repeats the prohibition set out in the application form. It would appear that Mr Jones has interpreted the prohibition to be an absolute one rather than subject to a formal application being made for written permission. If Mr Jones wishes to operate an eight-seat vehicle under his PSV licence, he should make the application. We are satisfied that Mr Jones' complaints concerning the failure of the TC to address the issues raised in paragraphs 12.2, 13 and 14 above are without merit.
22. Conduct of the public inquiry and evidence considered: Mr Jones' criticisms of the way in which the public inquiry was conducted by the TC are wholly misconceived. It was for the TC to determine how the public inquiry was to proceed, the relevance of evidence to be heard and how that evidence was to be received. It was not for Mr Jones to dictate to the TC (as he attempted to do) either how the hearing was to be conducted or the evidence and witnesses to be called by the TC. Whilst Mr Jones was keen to use the hearing as a forum for him to air his complaints and grievances against RCT both with regard to the statutory objection letter (despite the TC's ruling on the document) and how his application for his PHV licence was dealt with along with the subsequent grant of that licence, the complaints were irrelevant. The TC had properly exercised her case management functions in determining how the public inquiry was to be conducted. The TC had a difficult task in keeping Mr Jones' evidence and submissions confined to the relevant issues arising out of an application for a PSV licence and her conduct of the hearing was commendable. It follows that Mr Jones' complaints set out in paragraphs 12.2.1, 13(1) and 13.2 above are totally without merit.
23. Irrelevant issues raised on appeal: All of the remaining complaints made by Mr Jones are irrelevant and/or nonsensical. By way of example, Mr Jones' complaint about the quality of the directions plan sent out by the OTC. It is beyond us how this could conceivably amount to a ground of appeal. Another example are his complaints about a driver not being approved by RCT which is irrelevant to the issue of whether Mr Jones satisfied s.14ZA&C of the Act. We are not going to go through them all.

Conclusion

24. There is no merit in this appeal whatsoever. It is now for Mr Jones to comply with the undertaking he has given if he has not already done so. The final paragraph of his letter received by the Tribunal on 11th July 2022, thanked the Tribunal for our time and understanding and concluded: "**with a small fleet, my knowledge and experience 'simply the best, better than all the rest'**". We trust that the audit, which is due by 13th September 2021, will indeed demonstrate that the description that Mr Jones applies to himself is apt.

25. In all the circumstances we are not satisfied that the TC's decision was plainly wrong in any respect and neither the facts nor the law applicable in this case should impel the Tribunal to allow this appeal as per the test in Bradley Fold Travel & Peter Wright v Secretary of State for Transport (2010) EWCA Civ.695. The appeal is dismissed.

A handwritten signature in black ink, appearing to read 'Judge Beech', written in a cursive style.

Her Honour Judge Beech
Judge of the Upper Tribunal
18th July 2022