



NCN: [2022] UKUT 00354 (AAC)
Appeal No. UA-2022-000705-T

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

**ON APPEAL from a DECISION of the TRAFFIC COMMISSIONER for the WEST
MIDLANDS**

Before: M Hemingway: Judge of the Upper Tribunal
M Smith: Member of the Upper Tribunal
R Fry: Member of the Upper Tribunal

Appellant: Paul Jarvis

Reference No: OD2054984

Representation:

For the appellant: Paul Jarvis in person

Heard at: Birmingham

Date of Hearing: 16 December 2022

Date of Decision: 21 December 2022

DECISION OF THE UPPER TRIBUNAL

This appeal is allowed. The decision of the Traffic Commissioner for the West Midlands Traffic Area, refusing an application for a standard goods vehicle operator's licence, communicated by letter of 7 May 2022 is set aside. The case is remitted for reconsideration by a different Traffic Commissioner.

Subject matter: disclosure of adverse matters when seeking a licence

Cases referred to:

Bradley Fold Travel Ltd & Anor v Secretary of State for Transport [2010] EWCA Civ 695.



REASONS FOR DECISION

1. This appeal to the Upper Tribunal has been brought by Paul Jarvis (“the appellant”) from a decision of the Traffic Commissioner (“the TC”) embodied in a letter of 7 May 2022, refusing to grant his application for a standard national goods vehicles operator’s licence.

2. We considered the appeal at an oral hearing which took place at the Birmingham Civil Justice Centre on 16 December 2022. The appellant attended and represented himself. He had assistance from his son, Jack Thompson.

3. By way of background, the appellant is a sole trader, and he trades under the name Crane It. His full business and regulatory record is not before us in written form, but he told us that he had been in the business and had been operating under the terms of a licence, until encountering some difficulties in 2021 (see below), for a period of about thirty years. But that licence was revoked, seemingly in November of 2021, and the appellant received a period of disqualification. We have not been provided with a copy of the decisions concerning revocation or disqualification (there is likely to be a single composite written decision), but the appellant told us those decisions had been made following a public inquiry which he had attended and at which he had been legally represented. He also told us, frankly it seemed, that he had not sought to appeal those decisions to the Upper Tribunal because his representative had not thought the prospects of success to be strong. The appellant explained to us that he felt the decision to revoke his licence had been harsh.

4. The appellant made a fresh application for a licence. The date of application was 30 March 2022. The application was acknowledged by the Office of the Traffic Commissioner (“OTC”) by letter of 31 March 2022. The appellant in completing his application form, was required to answer a number of questions regarding previous adverse regulatory history. One such question, under the heading “*Revoked, suspended or curtailed licences*” read as follows; “*Has anybody named in this application (including partners, Directors or Transport Managers) ever had a goods or public service vehicle operator’s licence revoked, suspended or curtailed by any EU licensing authority?*”. The appellant answered no to that question. But in response to other questions which immediately followed, he said he had previously attended a public inquiry, he disclosed the reference number of his previous licence, and he disclosed the fact of the disqualification.

5. As well as acknowledging receipt of the application the OTC, in its letter of 31 March 2022, indicated that it regarded the application as being incomplete. It sought further evidence as to various matters. It suggested the appellant had failed to disclose that he had previously had a licence revoked and it asked for an explanation as to that failure. It also asked the appellant what steps he had taken since revocation to improve his ability to ensure regulatory compliance, and it asked how he had been managing his transport needs since revocation. The latter query was, presumably, put to the appellant because the OTC wished to be reassured that he had not used any vehicles in the business, since revocation, in a way which would have required a licence to be in force.

6. The appellant provided further documentary evidence in support of his application. But on 14 April 2022, the OTC wrote him once again. The same questions regarding the failure to disclose the previous revocation, steps taken to ensure future compliance and the way in which the transport needs had been met since revocation, were put once again. In addition, the appellant was asked to provide some additional financial evidence.

7. There is no doubt that the appellant provided the financial evidence and information which the OTC had sought in the letter of 14 April 2022. There are copies included in the bundle which the OTC has provided to the Upper Tribunal for the purposes of the appeal. But the appellant asserts that he also sent (as we understand it at the same time) a typed sheet of paper (a copy of which he has produced when lodging this appeal) in which he explained with respect to improving his ability to ensure compliance that he had attended a transport managers course, had employed someone to keep his record keeping up to date and had taken out a maintenance contract with an external provider, and that he had the services of Jack Thompson who is a qualified transport manager. As to his transport needs since revocation, it is explained in the same typed sheet, that he has been using smaller vehicles than had previously been the case and is paying contractors to deliver his materials, as temporary measures, until a licence is once again obtained. He did not mention in that typed sheet, the failure to disclose the revocation. The appellant has provided documentation with his appeal which appears to show that he did, on 21 April 2022, send a package by recorded delivery and which was delivered to the OTC on 22 April 2022. The documentation does not, though, go so far as to positively demonstrate what was contained in the package.

8. The case was considered internally within the OTC as is shown by copies of internal memoranda produced by the OTC for the purposes of this appeal. The view was reached that the appellant had failed to disclose the fact of the revocation and had failed to answer the related questions referred to above. It was decided to refuse the application on the basis that, in those circumstances, he had failed to show good repute. Such was communicated in the letter of 7 May 2022.

9. The appellant lodged his appeal to the Upper Tribunal on 24 August 2022. In his grounds of appeal he asserted, in effect, that he had provided all of the evidence, information and explanations which the OTC had sought. He specifically indicated that the typed sheet had been sent in the communication that had been received on 22 April 2022 and which he said had been sent by him on 21 April 2022. He also indicated that he had e-mailed a copy of the typed sheet to the OTC. As to disclosure, he asserted he had answered yes to one question concerning revocation and that he had answered no to another which, he thought, “*referred to the EU licensing authority*”.

10. As to legislation which has relevance to this appeal, Section 13A(2)(b) of the Goods Vehicles (Licensing of Operators) Act 1995 requires a licence applicant and the holder of a licence to be of good repute.

11. At the hearing of the appeal, the appellant maintained he had made appropriate disclosure and had provided everything the OTC had required. As to the specific question regarding revocation to which he had replied no, the appellant said that he had thought that question to relate to revocation taken by overseas European authorities given that the United Kingdom had left the EU prior to the date of revocation. He had not sought to deceive. He had attempted to clarify various matters with the OTC, but they had not been helpful. He had indicated that he had had a licence revoked.

12. As to the approach we must take with respect to an appeal such as this, paragraph 17 of Schedule 4 to the Transport Act 1985 (as amended) provides that the Upper Tribunal “*are to have full jurisdiction to hear and determine all matters whether of law or of fact for the purpose of the exercise of their functions under an enactment relating to transport*”. However, it was explained by the Court of Appeal in *Bradley Fold Travel Ltd & Anor v Secretary of State for Transport* [2010] EWCA Civ 695 that the Transport Tribunal (now the Upper Tribunal) will not be required to rehear all the evidence by conducting what would, in effect, be a new first instance hearing. Rather, it has the duty to hear and determine matters of fact and law on the basis of the material before the TC but without having the benefit of seeing and hearing from witnesses. The appellant assumes the burden of showing that the decision appealed against was wrong. In order to succeed an appellant must show that the process of reasoning and the application of the relevant law requires the adopting of a different view. Further, paragraph 17(3) of the same Schedule provides that in deciding an appeal the Upper Tribunal may not take into consideration any circumstances which did not exist at the time of the determination which is the subject of the appeal.

13. As to disposal, the Upper Tribunal has power, if allowing an appeal, to make such order as it thinks fit or to remit the matter back to the TC for rehearing if it considers such a course to be appropriate.

14. As to our analysis, we remind ourselves that the United Kingdom formally left the European Union on 31 December 2020. It seems to us, therefore, that technically, the appellant was correct to say that he had not had a licence revoked by an EU licensing authority. The question on the relevant form may need updating. But the question to which the appellant had answered no was, in fact, the only question on the form concerning revocation. That sits unhappily with his assertion that he had also actually answered yes to a question asking if he had had a licence revoked. But having heard from him we acknowledge that he may well have conflated the question concerning revocation with the one concerning disqualification. The real issue it seems to us is whether the appellant in answering no to a question directed towards revocation was, notwithstanding the technicalities, being dishonest.

15. As to dishonesty, we note that the documentation before us and the reasoning contained in the decision letter of 7 May 2022 does not address the significance of the appellant having disclosed the previous public inquiry and the associated decision concerning disqualification. The fact that he had made such disclosure would seem to support the proposition that he had not sought to deceive with respect to the revocation issue and that he had answered no to that question not only accurately (given the terms of the question and the timing of the UK leaving the EU) but honestly. We say that because we think there is force in the argument that if the appellant was dishonestly seeking to hide the fact that he had had a licence revoked, he would not have mentioned the associated disqualification nor the public inquiry which had led to the revocation. We conclude, therefore, that the decision to refuse the licence application did not include a full and proper evaluation of the key question of whether the appellant had or had not been dishonest in completing and submitting the application form.

16. There is then the question of whether or not the appellant provided (or at least attempted to provide) information which had been legitimately sought from him concerning efforts to increase the likelihood of future regulatory compliance and the way in which he had been meeting his transport needs since revocation.

17. The key issue here is whether the appellant did provide the explanations set out in the single typed sheet he has placed before us in support of his appeal and, if so, whether such was simply overlooked by the OTC and the TC. There are reasons to think the appellant might well have provided the information he says he did. Firstly, he has produced documentation in support of his appeal which seems to show he sent a package, via recorded delivery to the OTC on 21 April 2022 and which was received by the OTC the following day. He says, of course, that the sheet containing his explanations regarding the above was contained in that package. Secondly, since he was sending bank statements and other information in support of the application in response to the letter of 14 April 2022, it would seem odd that he would not, at the same time (since he wanted a licence otherwise he would not have applied in the first place) respond to the questions the OTC had put to him. There does not seem to be any reason why he would seek to avoid answering those questions since he had answers to give. There is also his oral evidence to the effect that he did send the sheet. And he says not only did he send it by post, but he e-mailed it too. We note he had come to the appeal hearing armed with what was said to be a copy of an e-mail sent to the OTC with an attachment.

18. On the other hand, the papers provided by the OTC do not contain the sheet. That is odd because they do contain other documentation which appears to have been sent in the package. Similarly, there is no copy of an e-mail enclosing the sheet, in the papers produced by the OTC. It is possible that the appellant mistakenly failed to put the sheet in the package and it is possible that, for some reason, the e-mail went astray or was otherwise not received.

19. What is clear, whatever the position as to what was or was not sent to the OTC, is that the appellant had something useful to say about the way in which he had sought to place himself in a better position to comply in the future and that such was not considered by the OTC when it made the decision under appeal.

20. There is then the issue of the circumstances surrounding the previous revocation. We have heard, at the hearing of the appeal, what the appellant has to say about that. He clearly feels he was hard done by. But we have not seen any written material concerning the PI and we have not seen the written reasons for the decision to revoke and the decision to disqualify. The TC did not consider the circumstances surrounding those decisions, presumably, because it was thought that the alleged failure to disclose revocation was sufficient, of itself, to justify the decision it made. It also appears that the OTC and the TC had assumed that not only had there been a failure to disclose but that it had been a dishonest failure. But if it was wrong about that, the previous history does become potentially relevant.

21. Putting all of that together, we have concluded that the decision of the TC to revoke the licence for the reasons given, is unsustainable. The decision does not take account of the fact that the appellant appears, technically, to have answered the sole question about revocation accurately. It does not contain any proper evaluation as to the question of whether the appellant (whether his answer was accurate or not) had dishonest intent when completing the application form in circumstances where we feel there are strong indicators to suggest he did not. We are not sure (and do not feel on the material before us we can say with certainty) whether the information concerning likely future compliance and the meeting of the transport needs reached the OTC or not, but we are satisfied that there is information of relevance as to that which the appellant has provided or which, otherwise, ought to be considered. We also think there may be a need, so that there may be a properly holistic evaluation of repute, for there to be a consideration of the material relevant to the revocation and disqualification.

22. We set aside the decision of the TC because of the material failure to consider the question of dishonest intent. We have decided that remittal is the proper course. That is because we think a much more holistic consideration than has taken place so far, and which will encompass the various considerations we have identified above, is needed. We do not feel we have sufficient before us to substitute our own decision for that of the TC which is why we have chosen remittal.

23. The above means the application will be considered afresh by a TC. We direct that task should be undertaken by a different TC to the one who took or authorised the decision to refuse the licence application. That is, of course, in accordance with normal practice. We would express the view that, unless the TC feels the application may be granted without the need for one (a possibility we would not discount) the application ought to be considered at a public inquiry.

24. This appeal to the Upper Tribunal then, is allowed on the bases and to the extent explained above.

M Hemingway
Judge of the Upper Tribunal

R Fry
Member of the Upper Tribunal

M Smith
Member of the Upper Tribunal

Authorised for issue on 21 December 2022