



**IN THE UPPER TRIBUNAL
ADMINISTRATIVE APPEALS CHAMBER**

**Appeal No. UA-2023-000611-T
[2024] UKUT 148 (AAC)**

(TRAFFIC COMMISSIONER APPEALS)

**ON APPEAL from a DECISION of a TRAFFIC COMMISSIONER for the NORTH
WEST of ENGLAND TRAFFIC AREA**

Before: Mr E Mitchell, Judge of the Upper Tribunal
Mr S James, Specialist Member of the Upper Tribunal
Dr P Mann, Specialist Member of the Upper Tribunal

Appellant: Anham Hussain (t/a Silver Travel)

Commissioner's ref: PC2061669

Date of decision: 26 April 2023

Representation: The Appellant in person

Heard at: Leeds Employment Tribunal, 4th Floor, City Exchange, 11
Albion Street, Leeds, on 6 October 2023.

DECISION OF THE UPPER TRIBUNAL

This appeal is dismissed.

Subject matter: main occupation rule for restricted licences; financial standing.

Case law referred to: *MGM Haulage and Recycling Ltd* (2012/030).

REASONS FOR DECISION

Traffic Commissioner's decision

1. On 4 January 2023, the Appellant applied to the Traffic Commissioner for a restricted public service vehicle (PSV) operator's licence under the Public Passenger Vehicles Act 1981 ("1981 Act"). The application sought authority to operate a single vehicle adapted to carry more than eight passengers and specified £3,100 as the required amount of finance (it is not disputed that this was the amount required in order for a restricted PSV licence holder operating a single vehicle to demonstrate financial standing). In response to the application form's questions about the 'main occupation' rules, the Appellant wrote:

"I have been an interpreter since 2009 and I do about 15-20 hours of interpreting and sometimes 30 when it's busy. Also I am a self-employed painter and decorator. I want to do the school run in the weekdays so I need an operators licence so I can balance my work whilst helping people."

2. The application enclosed a copy of the Appellant's personal bank account statement, dated 7 January 2022 (i.e. about a year before the date of the application), which showed a balance of £3,974.56.

3. On 17 January 2023, the Office of the Traffic Commissioner (OTC) informed the Appellant that his application was incomplete. The address specified on the bank statement differed from the operator's address and the Appellant was asked to explain why. The OTC also requested a range of information related to the 'main occupation' rule.

4. The Appellant's letter in response included this statement: "The reason why I am applying for the PSV licence is to completely get rid of the handyman and taxi job".

5. On 1 March 2023, the OTC wrote to the Appellant to inform him that his application remained incomplete. The OTC again requested information relevant to the main occupation rule. Their letter included the following warning:

"This letter is intended as a final attempt to resolve these issues by correspondence and you must now respond in full by no later than 15/03/2023. If on that date the application remains incomplete, it will be refused."

6. The Appellant's written response of 15 March 2023 included the following statement:

"for school run...monthly I will get £1200 and yearly I will get £10800 because there is only nine months in the academic year for the school run...For NHS, I will earn approximately 9000...I will get...£2880 a year for handyman."

7. On 24 March 2023, the OTC sent the following email to the Appellant:

"I have just carried out final checks before this application is submitted to the Traffic Commissioner for consideration, it has been noted that the savings account bank statement that you provided is dated 07 January 2022, this cannot be taken into consideration as it is not a recent bank statement. Please provide a copy of an original or verified bank statement in the name of the Sole trader applying for this PSV operator licence, the last date of which must be within two months prior to the date of this email 24/03/2023.

The bank statement should show that you have sufficient funds available in the sole trader name to meet the financial requirement for the type and size of licence applied for (£3,100).

A response to this email with the requested information should be provided to this office before the date of 27/03/2023."

8. The email of 24 March 2023 also included the following standard text:

"Please upload any application related documents through your VOL user account. Only send documents by email if you are unable to use the self-service system."

9. On 24 April 2023, the Traffic Commissioner refused the Appellant's application, giving the following reasons for doing so:

"The financial information provided was not acceptable because the bank statement was dated January 2022, a recent bank statement was requested by email on 24 March 2023 and no response was received with a bank statement that meets the requirements. Therefore, you have failed to demonstrate that you meet the requirements of Section 14ZA(2)(c) of [the 1981 Act]."

10. In response, the Appellant informed the OTC that, on 25 March 2023, he emailed them ‘screenshots’ of more recent bank statements. The Appellant was informed by an OTC official that screenshots were not acceptable and either originals or certified copies of recent bank statements were required. The OTC case file recounts that the Appellant informed an official that he “could order one that would be received within five days” but this did not materialise before the Commissioner refused the application.

11. An internal OTC memorandum advised that, if the screenshot bank statements were accepted, the Appellant would meet the financial standing requirement for the licence sought. However, the memorandum went on:

“the applicant is far from meeting the main occupation criteria, the main occupation income will be £770 after deductions, and the PSV income will be £1,200 after deductions.”

12. It appears that the Traffic Commissioner was unaware, on 24 April 2023, that the Appellant had emailed screenshots of more recent bank statements. Having been informed of that matter, the Commissioner reconsidered his decision (presumably, acting under section 49A of the 1981 Act) to refuse the Appellant’s licence application but decided that the information now before him made no difference. On 26 April 2023, the Traffic Commissioner issued a fresh decision letter which read as follows:

“The financial information provided was not acceptable because the bank statement was dated January 2022, a recent original or verified bank statement was requested by email on 24 March 2023, the financial evidence provided in response were not in a form that meets the requirements as set out in Statutory Document No.2 of the Senior Traffic Commissioner Statutory guidance.

Further to the above, from the information that has been provided the proposed income from the PSV operation would far exceed the income disclosed from other sources.

Therefore, you have failed to demonstrate that you meet the requirements of Section 14ZB(b) – Financial standing, and Section 13(3)(b) – Main occupation, of the [1981 Act].

The Traffic Commissioner's decision is that the decision to refuse will not be re-opened for the reasons given above."

The Appellant's case

13. The Appellant argues:

(1) the Traffic Commissioner mistakenly found that he failed to provide an updated bank statement. He did so, by emailing a screenshot of a recent statement, shortly after it was requested on 24 March 2023;

(2) the bank statement screenshot he provided should have been accepted as valid. It was taken from the 'official bank app' and should have been treated in the same way as an original bank statement;

(3) no one told him that a screenshot would not be acceptable, and he could not have been expected to know that it would be rejected. It was extremely unjust for the Commissioner to have maintained his refusal decision once the screenshot evidence had been brought to his attention;

(4) in assessing the Appellant's income, the Commissioner failed to have regard to his plan to do interpreting and handyman work until he qualified as a driving instructor. He was currently doing less interpreting to give him time to study but could easily earn £8000 per annum from interpreting and £5000 from handyman work which would mean that his other sources of income would surpass his projected PSV income.

Legal framework

14. Section 4(4)(a) of the 1981 Act requires a Traffic Commissioner to act under the general directions of, and have regard to any guidance given by, the Senior Traffic Commissioner. Section 4C(1) empowers the Senior Commissioner to give the Traffic Commissioners guidance or general directions on the exercise of their functions. By virtue of section 4C(3)(b), the directions that may be given include directions as "the information which a traffic commissioner must ask to be supplied in connection with the exercise of any particular function, and the steps which must be taken to verify the accuracy of any information so supplied".

15. A Traffic Commissioner is entitled to proceed on the basis that an applicant is aware of the Senior Traffic Commissioner's statutory guidance (*MGM Haulage and Recycling Ltd 2012/030*).

16. Section 12(4) of the 1981 Act provides as follows:

"(4) An application for a PSV operator's licence shall be made in such form as a traffic commissioner may require, and an applicant shall give the traffic commissioner dealing with the application such information as he...may reasonably require for disposing of the application."

17. Section 13 of the 1981 Act, headed "Classification of licences", is the basis for the 'main occupation' rule for restricted PSV operator's licences:

"(1) A PSV operator's licence may be either a standard licence or a restricted licence.

...(3) A restricted licence authorises the use (whether on national or international operations) of—

(a) public service vehicles not adapted to carry more than eight passengers; and

(b) public service vehicles not adapted to carry more than sixteen passengers when used—

(i) otherwise than in the course of a business of carrying passengers; or

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

18. Section 14(2) of the 1981 Act requires a Traffic Commissioner, on an application for a restricted licence, to consider whether the requirements of sections 14ZB and 14ZC are satisfied. If the requirements are satisfied, the Commissioner must grant the licence (section 14(3)).

19. Insofar as relevant in this case, section 14ZB of the 1981 Act provides as follows:

"The requirement of this section is that the traffic commissioner is satisfied that the applicant—

...(b) has appropriate financial standing (as determined in accordance with paragraph 2 of Schedule 3)."

20. As we have said, it is not disputed that, in order to demonstrate financial standing, this Appellant was required to have at least £3,100 available for the purposes of the proposed PSV operation.

21. Insofar as relevant in this case, section 14ZC of the 1981 Act provides as follows:

“(1) The requirement of this section is that the traffic commissioner is satisfied—
... (b) that there will be adequate arrangements for securing compliance with the requirements of the law relating to the driving and operation of those vehicles.”

22. The ‘requirements of the law relating to the driving and operation of those vehicles’ include section 13(1)(b)’s prohibition on a restricted licence holder, whose main occupation is the operation of public service vehicles adapted to carry more than eight passengers, using such vehicles. That is why an applicant for a restricted licence who fails to satisfy the main occupation rule is bound to fail.

23. The Senior Traffic Commissioner’s *Statutory Document No. 2 – Finance* includes both guidance and general directions given under section 4C of the 1981 Act. The directions include:

- “36. Historically commissioners have required the submission of bank statements for a three-month period when operators and applicants are seeking to establish availability of finance, but this approach has only given a historic analysis of the operator’s financial position and has been of limited assistance to new applicants who may only be able to establish access to the required finances for a period of one month prior to the establishment of the business.”;
- “52. Where on application...bank or building society accounts are relied upon, original statements must be supplied for the past 28 days, the last balance of which must not be more than two months from the date of receipt of the application. Applicants may therefore need to submit further statements where their application is delayed or incomplete. Where applications are made digitally, electronic copies of original documents and internet statements can be uploaded with the application, however the traffic commissioner and staff acting on their behalf reserve the right to request originals.”;
- “54... where copies have been scanned and sent the traffic commissioners and staff acting on their behalf reserve the right to request the original documents to be sent.”

- Paragraph 64 provides that “Annex 1 offers a quick reference guide to the starting point for different types of legal entity”;
- Annex 1, entitled *Sources of Financial Evidence*, specifies in relation to sole trader applicants, “Original or certified copies of any bank or building society accounts statements must be supplied for the last 28 days. Electronic copies of original documents and internet statements can be uploaded in the case of digital applications.”

Conclusions

24. We shall deal first with the Appellant’s argument that the Traffic Commissioner made a flawed determination that his proposed PSV business would amount to his main occupation (so that, under section 13(3)(b) of the 1981 Act, a restricted licence would not authorise the Appellant’s use of a vehicle adapted to carry between nine and sixteen passengers).

25. The Commissioner used the proportion of the Appellant’s anticipated income attributable to the proposed PSV business as a proxy for his main occupation. Anticipated PSV income would, on the information provided by the Appellant, provide the majority of the Appellant’s annual income and so the Commissioner reasoned that the proposed PSV business would be the Appellant’s main occupation. That did not involve any misdirection in law. In fact, on those figures, it is difficult to see how the Commissioner could properly have arrived at any other conclusion.

26. The Appellant also criticises the Commissioner’s findings as to the proportion of the Appellant’s income that would be derived from the proposed PSV business. We are satisfied that, in making these findings, the Commissioner erred neither in fact nor law. The Commissioner was perfectly entitled take the information provided by the Appellant at face value and was not required to suggest how the Appellant might rearrange his work in order to satisfy the main occupation rule nor to speculate as to the Appellant’s likely income profile in the event that he started work as a qualified driving instructor. In any event, the Appellant’s own suggestion as to how he might rearrange his work, set out in his notice of appeal, would still leave the proposed PSV business as his main source of income (£8,000 per annum from interpreting; £5,000 from handyman work; £10,800 from the proposed PSV business).

27. The above conclusion makes it strictly unnecessary for us to consider whether the Commissioner unfairly refused to consider bank account evidence in the form of

‘screenshots’. However, we doubt that we would have allowed this appeal on that basis. We do not know enough about the screenshots provided by the Appellant to assess whether they amounted to the ‘internet statements’ referred to in the Senior Traffic Commissioner’s Statutory Document No.2. But even if they did, that Document provides, at paragraph 52, that “the traffic commissioner and staff acting on their behalf reserve the right to request originals”.

28. Finally, we apologise for the delay in giving this decision. Initially, due to an administrative oversight this case was not marked on the Upper Tribunal’s case management system as ready for decision. And, subsequently, the judge was absent from duties while recovering from injuries sustained in an accident.

**Authorised for issue by the
Upper Tribunal panel on 26
May 2024**

Section 50(1), Public
Passenger Vehicles Act 1981.