

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

**Appeal No. UA-2023-000884-T
[2024] UKUT 298 (AAC)**

**ON APPEAL from a DECISION of a TRAFFIC COMMISSIONER for the EAST OF
ENGLAND TRAFFIC AREA**

Before: Upper Tribunal Judge Mitchell
Upper Tribunal Specialist Member Booth
Upper Tribunal Specialist Member Pepperell

Appellant: Safir Shafi (t/a ALLTRAVEL MINIBUSES)

Commissioner's ref: PF2026428

Date of decision: 8 June 2023

Representation: The Appellant in person

Heard at: Field House, Bream's Buildings, Central London, on 5
December 2023

DECISION OF THE UPPER TRIBUNAL

This appeal is dismissed.

Subject matter: Revocation of operator's licence

Case law referred to: *Bradley Fold Travel Ltd & Peter Wright –v- Secretary of State for Transport* [2010] EWCA Civ 695

DECISION: This appeal is DISMISSED. The decision of the Traffic Commissioner (ref. PF2026428) involved no error of fact or law.

REASONS FOR DECISION

Traffic Commissioner's decision

1. The Appellant operator held a standard international operator's licence, granted under the Public Passenger Vehicles Act 1981 (PPVA 1981) in March 2020. The Appellant was the responsible transport manager under that licence.

2. The Appellant had previously held an operator's licence under the PPVA 1981, granted in 2008. A second public inquiry into that licence was held in 2017 following which the Traffic Commissioner revoked the licence and, in doing so, found as follows:

“the operator is not capable of managing compliance under the operating licence and has repeatedly failed to take appropriate steps despite the previous intervention of the deputy traffic commissioner and then subsequently by [the DVSA] vehicle examiner and traffic examiner. Even at the date of the public inquiry he was ill-equipped.”

3. In June 2022, the operator was issued with a S-marked prohibition after a vehicle (as the Commissioner described it) “lost both wheels from the nearside rear axle, while in passenger service”. A DVSA examiner subsequently visited the operator's operating centre and the regulatory concerns identified by the examiner caused the Commissioner to call the operator to a public inquiry to consider a proposal to revoke the operator's licence.

4. Following the public inquiry, the Commissioner made a number of adverse findings against the operator, including:

(a) the operator had failed to carry out preventative maintenance inspections every six weeks;

(b) both of the operator's vehicles failed their MOTs and, in the case of the vehicle whose wheels detached while in service, “it should have been long visible to operator and driver that the wheels were in danger of detachment”;

(c) the operator had failed to comply with regulatory requirements relating to drivers' hours and tachographs, and "despite having had his previous licence revoked in 2017 for failure to keep proper tachograph records, Mr Shafi is still failing to conduct downloads at the required intervals and has not been analysing data";

(d) the operator failed to notify two speeding convictions;

(e) the operator failed to deal with compliance shortcomings identified by a DVSA desk-based assessment in April 2021, including absence of a wheel torque register and a VOR register, and "it is indicative of Mr Shafi's lack of care for detail that, even though DVSA drew his attention to the fact that PMIs should be recording tread depths and tyre pressures, today they are still not recording tyre pressures and Mr Shafi has not noticed this";

(f) despite the operator having said he would deal with the shortcomings identified in April 2021, matters had got worse: "a vehicle lost two wheels a year later" and "even at this public inquiry, almost another year after that wheel loss incident, he still does not have a torque register and is using a spanner (rather than a calibrated torque wrench) to tighten wheel nuts".

5. The Commissioner also identified certain positive features that went to the Appellant's credit. He had begun roller brake testing and "is prepared to acquire equipment for automatic remote tachograph downloading and to appoint one maintenance provider to both identify and rectify defects".

6. However, the Commissioner determined that "the negatives still heavily outweigh the positives" and "the only concrete improvement which has actually happened is the roller brake testing". The Commissioner answered the *Priority Freight* (2009/225) question – how likely is it that this operator will comply in the future? – with 'highly unlikely'. The present public inquiry dealt with compliance failings of a similar type to those identified by the DVSA's 2021 assessment, which Mr Shafi had promised to address, and, after the wheel loss incident, he "had not seen fit to establish a torque register or acquire a calibrated torque wrench". The *Bryan Haulage No.2* (2002/217) question – does this operator deserve to go out of business? – was answered affirmatively given "Mr Shafi's failure over an extended time period to make the necessary improvements to compliance".

7. The Commissioner proceeded to make the following decisions:

- (a) under sections 17(1)(a) and (b), and (3)(aa) of the PPVA 1981, the Commissioner revoked the operator's licence;
- (b) having determined that a disqualification order was justified because Mr Shafi "has clearly not learnt lessons from the revocation of his previous licence in 2017", acting under section 28 of the Transport Act 1985, the Commissioner ordered that he be disqualified from holding or obtaining an operator's licence under the PPVA 1981 for a period of two years;
- (c) having determined that Mr Shafi had lost his good repute as transport manager, under paragraph (2) of Schedule 3 to the PPVA 1981, the Commissioner imposed a disqualification order preventing him from acting as a transport manager for two years.

Legislative framework

8. Section 17(1) of the Public Passenger Vehicles Act 1981 (PPVA 1981) provides as follows:

"(1) A traffic commissioner must revoke a standard licence if it appears to the commissioner at any time that –

- (a) the holder no longer satisfies the requirements of section 14ZA(2), or
- (b) the transport manager designated in accordance with Article 4 of the 2009 Regulation no longer satisfies the requirements of section 14ZA(3).

(2) Without prejudice to subsection (1) above, a traffic commissioner may, on any of the grounds specified in subsection (3) below, at any time –

- (a) revoke a PSV operator's licence...

(3) The grounds for action under subsection (2) above are –

...(aa) that any undertaking recorded in the licence has not been fulfilled..."

9. The requirements of section 14ZA(2) include that an applicant for an operator's licence must be of good repute and professionally competent, and section 14ZA(3) requires a designated transport manager to be of good repute and professionally competent (matters of good repute and professional competence are to be determined in accordance with Schedule 3 to the Act).

10. Section 28(1) of the Transport Act 1985 permits a Traffic Commissioner, where he revokes a PSV operator's licence, to order the former licence holder to be disqualified, indefinitely or for a specified period, from holding or obtaining a PSV operator's licence.

11. If a Traffic Commissioner determines that a transport manager is not of good repute or professionally competent, paragraph 7B(2) of Schedule 3 to the PPVA 1981 requires the Commissioner to order the person to be disqualified, either indefinitely or for a specified period, from acting as a transport manager.

Grounds of appeal

12. The Appellant's notice of appeal to the Upper Tribunal argues that the Traffic Commissioner:

(1) failed to take into account:

(a) his personal circumstances, namely his illness (he contracted Covid-19) and his father's death;

(b) the fact that he had entered into a maintenance contract with a Mercedes vehicle specialist at a cost of £65 per month;

(c) the very serious implications for the Appellant's household income of revoking his operator's licence;

(2) should have accepted, as an alternative to revoking his operator's licence, his offers to undertake further training and employ a separate transport manager.

13. The Appellant repeated these arguments at the hearing of this appeal, and he also told us how much time and effort he had devoted to developing his transport business and that he would be devastated if he were unable to continue operating in the transport sector. The Appellant also promised us that he was now in a position to run a compliant operation.

Why the Upper Tribunal dismisses this appeal

14. The Appellant does not seriously dispute any of the Traffic Commissioner's adverse findings of fact. We cannot find that the Commissioner's regulatory response to those findings was plainly wrong (*Bradley Fold Travel Ltd & Peter Wright v Secretary of State for Transport* [2010] EWCA Civ 695), and we are satisfied that the sanctions imposed by the Commissioner were a proportionate response to this operator's regulatory failings. This is because the Commissioner's findings describe a longstanding failure, despite a number of regulatory interventions including revocation of a previous operator's licence, to run a compliant public passenger vehicle business culminating in an extremely serious incident which could easily have resulted in serious injury to passengers and other road users.

15. The Commissioner did not overlook the Appellant's, actual and intended, attempts to improve compliance with regulatory requirements. Those attempts did not persuade the Commissioner that this operator could be trusted to run a compliant operation but that is not the same thing as overlooking this aspect of the Appellant's case.

16. Regarding the Appellant's personal circumstances, we do not wish to sound heartless, but personal difficulties cannot, of themselves, justify dilution of the regulatory requirements for public passenger vehicles. If the Commissioner did not take the Appellant's personal circumstances into account, that was not a material error of fact or law in the circumstances of this case.

17. For the above reasons, we dismiss this appeal.

18. Finally, the judge apologises for the delay in giving this decision caused by his absence from work, and subsequent, limited duties while recovering from serious injuries sustained in an accident.

Mr E Mitchell

**Authorised for issue by the
Upper Tribunal panel on 4
September 2024**

Section 50(4), Public
Passenger Vehicles Act 1981.