



**IN THE UPPER TRIBUNAL
ADMINISTRATIVE APPEALS CHAMBER**

**Appeal No UA-2023-000731-T
[2024] UKUT 420 (AAC)**

**ON APPEAL FROM THE TRAFFIC COMMISSIONER FOR THE WALES
TRAFFIC AREA**

Dated: 9 December 2024

Before:

**The Rt Hon Sir Gary Hickinbottom
Ms Leanne Curle-Maddock
Mr David Rawsthorn**

**Judge of the Upper Tribunal
Member of the Upper Tribunal
Member of the Upper Tribunal**

Appellant: Digaway Limited

Heard at: Cardiff (Cardiff Civil Justice Centre)

Attendance

For the Appellant: Daniel Jenkins (Director) for the Appellant Company

Date of hearing: 9 December 2024

Date of decision: 9 December 2024

**DECISION OF THE ADMINISTRATIVE APPEALS CHAMBER
OF THE UPPER TRIBUNAL**

The appeal is dismissed.

Subject Matter

Revocation of a restricted operator's licence for change of circumstances.

Cases referred to

Subesh v Secretary of State for the Home Department [2004] EWCA Civ 56

Bradley Fold Travel Limited v Secretary of State for Transport [2010] EWCA Civ 695

Introduction

1. This is an appeal from the decision of Ms Victoria Davies, the Traffic Commissioner for the Wales Traffic Area (“the Commissioner”) dated 27 December 2023 to revoke the Appellant’s restricted goods vehicle operator’s licence under section 26(1)(h) of the Good Vehicles (Licensing of Operators) Act 1995 (“the Act”).
2. We held an oral hearing of the appeal on 9 December 2024. At the end of the hearing, we unanimously dismissed the appeal; and said that written reasons would be handed down later. These are the written reasons for our decision, which are also agreed by us all.

Relevant Legislation

3. By section 13D of the Act, it is a requirement of a restricted licence that “the provision of facilities and arrangements for maintaining the vehicles in a fit and serviceable condition... is not prejudiced by reason of the applicant’s having insufficient financial resources for that purpose”.
4. By section 26(1)(h) of the Act, a traffic commissioner may revoke a restricted licence on the ground that, since the licence was issued, there has been a material change in the circumstances of the licence-holder that were relevant to the issue or variation of the licence. One such change of circumstance may be that the applicant can no longer show that it has sufficient financial resources to maintain the relevant vehicles in a fit and serviceable condition.

Background

5. The Appellant, Digaway Limited, is a company incorporated on 6 February 2019 of which Daniel Jenkins (“Mr Jenkins”) has at all material times been the sole director and person with significant control. The Appellant is, for all relevant intents and purposes, Mr Jenkins in corporate form.
6. From 21 December 2020, the Appellant held a restricted goods vehicle operator’s licence authorising three vehicles in respect of its business of renting and leasing of construction machinery and equipment. The licence was notably used in relation to the hiring out of skips.
7. In October 2023, Mr Jenkins was convicted of inflicting grievous bodily harm and criminal damage following an incident during which he

dumped earth on the driveway of a customer with whom he had a dispute about payment for skip hire and, when the customer remonstrated with him, assaulted him. Mr Jenkins was sentenced to 26 months' imprisonment, from which he was released from custody on 7 May 2024. He was anxious to stress to us, and we accept, that he spent about eight months' in prison before early release.

8. However, whilst he appears to have made some arrangements in respect of his excavation equipment hire business, it seems that Mr Jenkins did not make any arrangements for the management of that part of his business that involved transport operations (notably skip hire) whilst he was in prison. Indeed, whilst it seems that he arranged for some skips to be collected by another company, as recorded in the Commissioner's decision dated 13 November 2024 refusing a stay, Mr Jenkins neither added another director to the Appellant company nor arranged for that part of the business to be managed or operated by others during the period of his imprisonment. The address for the Appellant company given to the Commissioner remained as his home address in Bargoed. As we understand it, no one lived there, and no one checked on the post etc, during his absence in prison. Furthermore, no one checked the emails Mr Jenkins received at the email address he used for his work.
9. Furthermore, as we understand it, the company was in default of filing its accounts (the last filed accounts were up to 28 February 2021) and its confirmation statement (last filed on 5 February 2022). Companies House notified Mr Jenkins as director of the Appellant company that it proposed to strike off the company. That proposal is still active.
10. On 12 October 2023, having been informed of the conviction and sentence, and the proposal to strike off the company, the Commissioner wrote to "The Director" of the Appellant company, informing him that she was considering making a direction under section 26(1) of the Act to revoke the operator's licence because there had been a material change of circumstances of the licence-holder, namely that the company may no longer be of the required fitness nor have the required financial resources to hold a restricted operators' licence. That notice was properly sent to the address in Bargoed, but Mr Jenkins did not himself receive it because he was in prison and no one was there to pick it up. No response having been received, on 27 December 2023, the Commissioner made a direction under section 26 and the Appellant's operator's licence was thus revoked.
11. The Appellant appealed to this tribunal out-of-time. On 27 June 2024, Judge Mitchell extended time to appeal. On 13 November 2024, the Commissioner refused the Appellant's application to stay the revocation of the licence.

The Appeal

12. This tribunal can only interfere with a decision of a traffic commissioner on appeal if satisfied that the decision was “wrong”, as explained by the Court of Appeal in Bradley Fold Travel Limited v Secretary of State for Transport [2010] EWCA Civ 695. The court adopted what was said by Laws LJ in Subesh v Secretary of State for the Home Department [2004] EWCA Civ 56 at [44]:

“.... The first instance decision is taken to be correct until the contrary is shown.... An appellant, if he is to succeed, must persuade the appeal court or tribunal not merely that a different view of the facts from that taken below is reasonable and possible, but that there are objective grounds upon which the court ought to conclude that a different view is the right one.... The true distinction is between the case where the appeal court might prefer a different view (perhaps on marginal grounds) and one where it concludes that the process of reasoning, and the application of the relevant law, require it to adopt a different view. The burden which an appellant assumes is to show that the case falls within this latter category.”

13. Mr Jenkins submitted to us that he considered it was unfair that he had lost his operator’s licence in the circumstances we have described. He said that he felt hard done by because, from prison, he was unable to communicate freely with the outside world, and he was unaware of the correspondence from the Commissioner that led to the revocation of the licence. Whilst he accepts that the Commissioner had no financial information about the Appellant company that may have persuaded her that it had sufficient financial resources to ensure the maintenance of the relevant vehicles in a fit and serviceable condition, he said that he would now be able to provide such information if he were asked for it. He emphasised that, to date, no one had asked him for such information.
14. However, we do not consider that any of this (in which we include everything that Mr Jenkins has put before us) suggests that the Commissioner’s decision to revoke the licence was arguably wrong.
15. Holding an operator’s licence brings with it obligations, including the obligation to make arrangements to ensure that any communications from the Commissioner are dealt with promptly. Whilst we have some sympathy with Mr Jenkins’s difficulties in communicating from prison, as the sole director and person with control of that part of his business which included transport operations, he ought to have made arrangements for the management and operation of that business whilst he was in prison. Whilst he told us that he did not expect an immediate

custodial sentence, that was a clear and obvious risk; and, as the sole director and manager of the licence-holder company, he ought to have taken steps to ensure that the relevant operations were managed and operated in his absence. He was told, in the letter of 12 October 2023, that he needed to take urgent action in respect of showing that the company had the required financial resources, otherwise the licence would be revoked. He did not take that action, and it is not to the point that he did not personally see the letter because he was in prison. The letter was sent to the correct address, i.e. the address which Mr Jenkins had previously given the Commissioner as his postal address. It was up to Mr Jenkins to ensure that, whilst he was in prison, communications sent to that address (and those sent to his email address also given to the Commissioner) were monitored and, if necessary, acted upon in his absence. Although it would now in any event be too late, we also note that, even now, the relevant financial information has not been provided, either to us or, it seems, to Companies House where the application to strike out the company appears still to be pending.

Conclusion

16. For those reasons, we consider the Commissioner's decision was not arguably wrong; indeed, on the evidence before her, we consider that it was right. That is the basis upon which we dismissed the appeal at the end of the oral hearing.

17. If Mr Jenkins considers that he now satisfies the criteria for a restricted operator's licence, then the appropriate course would be for him to make a fresh application for such a licence. It would, of course, be a matter for the Commissioner as to whether the criteria for such a licence are satisfied.

**The Rt Hon Sir Gary Hickinbottom
Judge of the Upper Tribunal
Authorised for issue on 9 December 2024**