



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

**Appeal No: UA-2024-000086-T
[2024] UKUT 446 (AAC)**

**IN AN APPEAL FROM THE DECISION OF:
THE TRAFFIC COMMISSIONER FOR THE EAST OF ENGLAND TRAFFIC AREA
DATED 16th JANUARY 2024**

Before:

**Elizabeth Ovey, Judge of the Upper Tribunal
Richard Fry, Specialist Member of the Upper Tribunal
Sarah Booth, Specialist Member of the Upper Tribunal**

Appellant: BA MOOVES SERVICES LIMITED

Attendance: The Appellant was represented by its director, Mr. Theodore Quist-Narteh

Heard at: The Rolls Building, 7 Rolls Building, Fetter Lane, London EC4A 1NL

Date of hearing: 18th September 2024

Date of decision: 26th September 2024

DECISION OF THE UPPER TRIBUNAL

IT IS HEREBY ORDERED that the appeal be DISMISSED.

SUBJECT MATTER: Standard licence; financial standing; revocation

CASES REFERRED TO: *R v. Soneji* [2005] UKHL 49, [2006] 1 A.C. 340; *Bradley Fold Travel Limited and Peter Wright v. Secretary of State for Transport* [2010] EWCA Civ 695; [2011] R.T.R. 13

REASONS FOR DECISION

Preliminary

1. This is an appeal by BA Mooves Services Limited (“the Company”) against the decision of the Traffic Commissioner for the East of England Traffic Area (“the TC”) given by a letter dated 16th January 2024. By that decision the TC revoked the Company’s standard operator’s licence with effect from 5th February 2024 on the ground of failure to provide evidence of financial standing.

2. The Company was represented before the Upper Tribunal by Mr. Theodore Quist-Narteh, a director, as was envisaged in the case management directions given by Judge Mitchell on 6th June 2024. We are grateful to Mr. Quist-Narteh for his explanation of the circumstances in which the question of financial circumstances arose and the points he made in support of the Company’s appeal.

The facts

3. The Company held a standard operator’s licence with one nominated vehicle. Unfortunately, in the summer of 2023 the vehicle needed substantial repairs at significant cost and was taken off the road. In order to reduce the continuing costs while the vehicle was not available for use, the Company and its transport manager agreed that he should resign. He did so and notified his resignation to the Office of the Traffic Commissioner (“the OTC”) by an email sent on 5th August 2023.

4. The notification caused the OTC to write to the Company on 9th August 2023 pointing out that it is a requirement of holding a standard licence that the operator either has a transport manager or is in a period of grace. If that requirement is not met, the relevant traffic commissioner is required by s.27 of the Goods Vehicle (Licensing of Operators) Act 1995 (“the Act”) to revoke the licence. The letter explained that the TC was therefore considering revoking the Company’s licence but went on to draw attention to the possibility of applying to the TC to grant a period of grace. Guidance on making such an application was attached.

5. In response, the Company wrote to the OTC on 10th August 2023 explaining the circumstances of the transport manager’s departure and applying for a 6 month period of grace while it appointed a new transport manager. On 17th August 2023 the OTC replied stating the TC’s willingness to grant a 3 month period of grace in the first instance if the Company agreed to an undertaking not to operate any vehicles under the licence until professional competence had been restored by the appointment of a traffic manager accepted by the OTC.

6. The bundle before us does not contain such an undertaking, but, whether or not an undertaking was in fact given, on 6th September 2023 the OTC wrote to the Company to inform it that the TC had granted the application for a period of grace, which would end on 5th December 2023. The letter included the following statements:

“During the grace period, you must ensure ongoing compliance with all other terms and conditions under which your licence was granted.”

“Before the end of your Period of Grace, you must also:

- Provide 3 months of bank statements in the Company’s name so that a financial analysis can be conducted. These must be complete statements that show all incomings and outgoings over the previous 3-month period ...”

The letter did not specifically state that the bank statements must demonstrate continued compliance with the financial standing requirement applying under s.13A(2)(c) of the Act when the grant of a licence is under consideration.

7. During the period of grace Mr. Quist-Narteh himself undertook training as a transport manager and on 2nd December 2023 he applied to be accepted as an internal transport manager for the Company. No bank statements were provided within that period.

8. On 6th December 2023 the OTC wrote to the Company stating that the Company still remained without professional competence and giving a further 7 day period of grace to provide the bank statements previously required and evidence that the Company had access to an operational vehicle to use under the licence.

9. By a letter dated 15th December 2023 the period of grace for operating without a transport manager was subsequently extended to 5th February 2024. The actions required to be taken all related to the acceptance by the TC of a new transport manager. The letter did not refer to financial standing.

10. Instead, by a second letter dated 15th December 2023 the OTC informed the Company that the evidence previously provided was not sufficient to show financial standing. The Company was therefore given 14 days to provide further evidence demonstrating sufficient financial standing. The letter included the following paragraph:

“In response to the previous financial evidence a calculator was conducted and the average balance was £814 which is a £11,686 shortfall. Please provide evidence you have access to the required amount for this licence, namely £12,500. All financial evidence provided must be in the Company’s name and must cover the most recent 3-month period.”

The letter concluded with a warning that in accordance with s.27(2) of the Act the TC was serving notice that he was considering making a direction to revoke the Company’s licence on the ground of lack of financial standing. The Company was invited to make written representations for consideration, which were to be received by 29th December 2023 and offered the opportunity to request a public inquiry, which had to be requested by 5th January 2024.

11. It appears that the Company did apply to change its licence by adding Mr. Quist-Narteh as transport manager, but on 3rd January 2024 the OTC wrote to the Company stating that the application was incomplete and requiring the Company to upload a copy of the certificate of professional competence. In the event, however, this seems to have been superseded by the revocation of the licence by the letter dated 16th January 2024 referred to in paragraph 1 above.

12. The Company did provide further financial evidence in response to the letter dated 15th December 2023, but it was not sufficient to show financial standing. The letter dated 16th January 2024 states:

“... the Company could only demonstrate access to an average of £2,917 over the previous 3-month period, with a shortfall of £9,584.”

The appeal

13. The Company, through Mr. Quist-Narteh, appealed against the decision to revoke the licence by a notice of appeal dated 27th January 2024. In the grounds of appeal Mr. Quist-Narteh explained that while the vehicle was off the road the Company had lost the contract with the company to which it provided transport services. He said that he had not comprehended the condition requiring provision of 3 months' statements to enable a financial analysis to be made. He was aware that to have an operator's licence for two trucks it was necessary to show that the operator had access to £12,500 and he had sent a statement showing over £13,000 in the bank account after transfers from his savings accounts and other investments. He explained that he had taken the £12,500 out of the Company's current account to invest to gain interest over the 3 month period rather than leaving it sitting idle. He regarded the revocation decision as unfair.

14. Accompanying the grounds of appeal was a bank statement showing all the transactions on the Company's current account from 16th December 2023 to 15th January 2024. The opening balance was £1,265.74, but substantial credits were made during that period and the closing balance was £13,051.49, having been slightly higher at one point.

15. For the sake of completeness, we note at this point that page 9 of the hearing bundle, which appears to set out other grounds of appeal, comes from another case and was mistakenly included. At the hearing Mr. Quist-Narteh confirmed that it was nothing to do with the Company.

16. In his oral submissions Mr. Quist-Narteh expanded a little on those grounds of appeal. As he pointed out, £12,500 is a lot of money to retain in a current account. That is particularly the case when the requirement to hold such a sum is intended at least in part to ensure that funds are available for necessary repairs and the vehicle in question is already off the road for expensive repairs which can be funded without recourse to the £12,500, showing that the Company had money which could be called on for repairs. He therefore invested the £12,500 while the vehicle was off the road

and not producing any income. The investments had included making a loan to his brother for the brother's business and Mr. Quist-Narteh needed time to get the money back into the Company. He had not understood that the money needed to be there at all times. He now understood that there had to be an average of £12,500 throughout.

17. Mr. Quist-Narteh also drew to our attention the fact that he had decided to do the transport manager's course and was therefore now more ready to run the business than had previously been the case.

The legal framework

18. Under section 13(2)(a) of the Act, a standard licence can only be granted if the relevant traffic commissioner is satisfied that, among other things, the applicant has appropriate financial standing as determined in accordance with paragraph 6A of Schedule 3 to the Act. Paragraph 6A reads as follows, so far as material:

“6A(1) An operator has appropriate financial standing under section 13A(2)(c) if the operator is able to demonstrate that it has at its disposal at all times capital and reserves—

(a) for goods vehicles authorised to be used under a heavy goods vehicle licence, of—

(i) £8,000 for the first heavy goods vehicle,

(ii) £4,500 for each additional heavy goods vehicle ...

(2) The operator must demonstrate appropriate financial standing—

(a) on the basis of the operator's annual accounts if certified by a qualified auditor, or

(b) by producing other evidence to the satisfaction of a traffic commissioner that the operator has, in the name of the operator, the necessary capital and reserves, such as—

(i) a bank guarantee,

(ii) a document issued by a financial institution establishing access to credit, or

(iii) any other binding document.”

19. Mr. Quist-Narteh rightly does not suggest that the relevant figure for determining financial standing is not £12,500. As paragraph 6A(2) shows, it is for the TC to decide what evidence is satisfactory for the purpose of showing the necessary capital and reserves. The Senior Traffic Commissioner has explained how traffic commissioners are to assess financial standing in Statutory Document No.2: Finance, most recently updated in January 2024. As set out in paragraph 25, the approved practice in relation

to an existing standard licence is to require recent bank statements for a period of 3 months and to calculate the average balance. As can be seen from paragraphs 6, 8, 10 and 12 above, the Company was required to provide evidence in accordance with that practice and a calculation of the average balance was made on two occasions, but on each occasion the average balance was substantially less than £12,500.

20. Where this practice is adopted, the answer to the question whether or not the operator can show financial standing depends on the mathematical calculation of the average balance. Either the balance is sufficient to show financial standing or it is not. Questions of judgment such as may arise in relation to other conditions set out in s.13A (for example, whether a person is of good repute) do not come into play.

21. Section 27(1) of the Act provides that a traffic commissioner shall direct that a standard licence is revoked if it appears to the traffic commissioner that the licence-holder no longer satisfies any of the conditions in section 13A. Section 27(2) requires that before doing so the traffic commissioner shall give notice to the licence-holder that a direction for revocation is being considered. Section 27(3) requires the notice to invite the licence-holder to make representations and to state that the representations must be received within 21 days. The most crucial feature of these provisions is that once the traffic commissioner has formed a firm view that one of the conditions in section 13A is not satisfied, the traffic commissioner has no discretion not to revoke the licence.

22. It is well established that the task of the Upper Tribunal when considering an appeal from a decision of a traffic commissioner is to review the material before the commissioner, and the Upper Tribunal will only allow an appeal if the appellant has shown that “the process of reasoning and the application of the relevant law require the tribunal to take a different view”, as explained in *Bradley Fold Travel Limited and Peter Wright v. Secretary of State for Transport* [2010] EWCA Civ 695, [2011] R.T.R. 13, at paragraphs 30-40. This is sometimes summarised as requiring the Upper Tribunal to conclude that the traffic commissioner was plainly wrong.

Discussion

23. The letter of revocation sent on 16th January 2024 makes clear that the reason for the revocation was the failure to provide evidence to show that the financial standing requirement was met. The letter also shows that before revoking the licence the TC considered the further evidence provided in response to the warning letter of 15th December 2023. It follows that section 27(1) obliged the TC to revoke the licence. The reasons why the Company did not have the necessary amount in its bank account, however understandable they may be, do not affect the fact that the average balance over the relevant period did not meet the required level. On that basis, the decision of the TC was plainly right rather than plainly wrong.

24. The only remaining possible ground of challenge is as to the contents of the letter dated 15th December 2023 itself. It was clearly expressed in a way which satisfied the requirements of section 27(2) and in most respects the contents satisfied the requirements of section 27(3). It is, however, the case that section 27(3) requires that the licence-holder should be required to provide any written representations in 21 days and the period given by the letter was only 14 days.

25. We have considered whether this non-compliance should affect our decision. We note that the period of grace was granted on the condition that before it came to an end on 5th December 2023 the Company should provide 3 months of bank statements for financial analysis and that the Company failed to do so. The letter of 6th December 2023 extended the period of grace by 7 days to enable the information to be provided. The letter of 15th December 2023 followed the provision and analysis of the information, which was found not to show financial standing.

26. Against that background, the Company was given a further period of 14 days to show financial standing and any representations were required at the same time. The Company responded with further evidence which still failed to show financial standing. As far as the bundle shows, no further written representations were made either within the 14 day period or before 5th January 2024 (21 days after the letter) or before the letter of revocation was sent. In those circumstances, we take the view that the error in the letter dated 15th December 2023 was immaterial and does not affect our decision.

27. In coming to that conclusion we have had in mind the decision of the House of Lords in *R v. Soneji* [2005] UKHL 49, [2006] 1 A.C. 340, in which Lord Steyn, after reviewing at some length the relevant authorities both in this country and in other common law jurisdictions, stated that where a question arises as to the effect of non-compliance with a statutory provision when administrative action is being taken, the emphasis ought to be on the consequences of non-compliance, and posing the question whether Parliament can fairly be taken to have intended total invalidity. This guidance has been followed in many subsequent cases covering a wide variety of subject-matter. In our view, the purpose of section 27(3) is to ensure that the recipient of a warning notice is informed of the steps which may be taken by way of response to the notice and is given a reasonable time scale within which to take those steps. We do not think Parliament can fairly be taken to have intended total invalidity to be the result of mistakenly specifying too short a time scale in one respect in circumstances where the mistake was demonstrably not material and caused no prejudice to the recipient of the notice.

Conclusion

28. For the reasons given above, we dismiss the appeal. Our decision, however, is not intended to reflect in any way on the Company or Mr. Quist-Narteh given the circumstances in which the Company ceased to be able to show financial standing. Mr. Quist-Narteh explained to us that he had not made a fresh application for a licence because the appeal was still pending. We recognise that our decision will come as a disappointment to him, but the way is now clear for him to make a further application if he wishes to do so. As he told us, he is now better prepared to run a transport business since he has obtained a certificate of professional competence as a transport manager.

E. Ovey
Judge of the Upper Tribunal

(authorised for issue on 26th September 2024)