



NCN: [2021] UKUT 159 (AAC)
Appeal No. T/2021/02(V)

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

**ON APPEAL from the DECISION of the TRAFFIC COMMISSIONER FOR WALES
(Ms Victoria Davies)**

Dated: 24 November 2020

Appellant: Mr Huw Jones t/a Tacsí Amlwch

**C.G.Ward, Judge of the Upper Tribunal
Mr. L. Milliken, Member of the Upper Tribunal
Mr S. James, Member of the Upper Tribunal**

DECISION OF THE UPPER TRIBUNAL
Decision date: 2 July 2021

The appeal is dismissed.

Subject Matter:

Public Service Vehicles- Restricted Operator's Licence – Financial Standing

Cases referred to:

None

REASONS FOR DECISION

Introduction

1. This is an appeal from a decision of the Traffic Commissioner for Wales taken on 24 November 2020 and communicated by letter of the same date.

Events leading to the Decision

2. In August 2020 the appellant applied for a restricted licence, initially for two vehicles, but subsequently reduced to one. A process, details of which it is not necessary to set out, then followed of the Traffic Commissioner's office indicating

what evidence it required in respect of financial standing and the appellant responding.

The Decision

3. On 24 November 2020 the Traffic Commissioner took a decision that

“The financial level indicated for a restricted licence in the table at pg 11 of Stat Doc 2¹ is not met by the applicant. I am not satisfied that the applicant has appropriate financial standing, as required by s14ZB(b) of the 1981 PPVA and must therefore refuse this application on those grounds.”

4. She further noted that

“The applicant has responded promptly to requests for further information and that it has been provided in a fairly complete form. This application fails due to lack of financial standing, not because of a lack of information about other matters.”

The Upper Tribunal Proceedings

5. The appeal was heard by the Upper Tribunal by Cloud Video Platform on 10 June 2020. The bundle consisted of 96 pages (p96 being blank). The applicant had difficulties joining the hearing but was assisted by the clerk and was then able to do so. Save that one panel member was unable to appear on screen for technical reasons (but was able fully to participate by sound alone), the hearing then passed unremarkably from a technical viewpoint.

Relevant legislative provisions

6. Section 14 (2) of the Public Passenger Vehicles Act 1981 (“the Act”) provides:

“On an application for a restricted licence a traffic commissioner must consider whether the requirements of sections 14ZB and 14ZC are satisfied.”

7. Section 14ZB provides that:

“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).”

8. Para. 2 of sch 3 provides

“(1) Being of appropriate financial standing in relation to an application for, or holder of, a restricted licence consists in having available sufficient financial resources to ensure the establishment and proper administration of the business carried on, or proposed to be carried on, under the licence.”

¹ i.e. Statutory Document No.2 issued by the Senior Traffic Commissioner pursuant to section 4C of the Public Passenger Vehicles Act 1981

9. At the time of the traffic commissioner's decision the amounts required were provided for pursuant to Regulation (EC) 1071/2009 and amounted to £3,100 for the first vehicle. The appellant had originally applied for a second vehicle; the total amount required for two vehicles would have been £4,800.

The Grounds of Appeal

10. The appellant's grounds were as follows:

- a. at the time of application, funds were low due to the Covid-19 lockdown, and because the application had been made during school holidays and because he had been spending heavily on a new operating centre
- b. at the time of his appeal to the Upper Tribunal, things were "getting back to normal" as shown by his December 2020 bank statement
- c. he also wished to rely on two private accounts
- d. he had not known that credit card facilities could be taken into account and enclosed statements
- e. as a small businessman employing others and delivering various services to the public he had been harshly treated
- f. he had a good compliance record in his main business.

The available evidence

11. When he had originally applied (for two vehicles) the balances in evidence averaged £3,455 and so fell short of the £4,800 required. In consequence, the appellant reduced his application to one vehicle.

12. Following a request from the Office of the Traffic Commissioner, the appellant sent in a bank statement in respect of his business covering the period 1 October to 12 November but this showed an average balance of £2,276 for the period 16 October to 12 November, while the average balance for October was £2,950. These therefore (relatively narrowly) fell below the amount required for a single vehicle.

13. It is unfortunate that at the time of his original application the appellant had enough financial resources for one vehicle but not the two he was applying for, but by the time the matter fell to be decided, because of the difficult trading conditions and other expenditure the amount had fallen below what was required even for 1 vehicle. However, what is needed is evidence that an operator is consistently able to have enough money available for the requirement to be satisfied and the traffic commissioner's conclusion that financial standing was lacking was justified.

14. The appellant had supplied with his application to the Upper Tribunal a summary of balances on his personal and business accounts at a date in December 2020 which was no earlier than 10 December. This evidence post-dated the decision under appeal and so could not be taken into account by the Upper Tribunal. In any event, it was not a statement and merely recorded a balance at the time the bank's online service was interrogated, so was a mere snapshot.

The remaining Grounds of Appeal

15. Whilst there is a degree of discretion about how financial standing can be proved, it is mandatory that it can be shown. Consequently, neither the fact that the appellant provides jobs and a service which is useful to the public in his area, nor temporarily adverse trading conditions, nor the need to spend money on other aspects of his business entitle the Upper Tribunal to relax the rigour of the financial standing rules.

16. It is open to the appellant to reapply for the licence if he sees fit.

C.G.Ward
Judge of the Upper Tribunal

Mr L Milliken
Member the Upper Tribunal

Mr S James
Member of the Upper Tribunal

Signed on the original on 2 July 2021