



IN THE UPPER TRIBUNAL

Appeal No. UA-2021-000504-T

UA-2021-000553-T

[2022] UKUT 00147 (AAC)

ADMINISTRATIVE APPEALS CHAMBER

(TRAFFIC COMMISSIONER APPEALS)

ON APPEAL from a DECISION of the TRAFFIC COMMISSIONER for WALES

Decision dated: 23 November 2021

Appeal dated: 9 December 2021

Before: Judge Rupert Jones: Judge of the Upper Tribunal
Mr S James: Member of the Upper Tribunal
Dr P Mann: Member of the Upper Tribunal

Appellants: (1) Andrew Hopkins and (2) Tonna Luxury Coaches Ltd

References: PG1112247 and PG0005717

Attendances: Iwan Jeffreys, solicitor from T. Llewellyn Jones solicitors

Heard at: Panel sitting at Field House, London with Mr Jeffreys attending remotely by CVP video technology

Date of Upper Tribunal Hearing: 25 April 2022

Date of Decision: 30 May 2022

DECISION OF THE UPPER TRIBUNAL

The appeal against the Traffic Commissioner’s decision dated 23 November 2021 is dismissed. The decision to revoke Operators Licences PG1112247 and PG0005717 is confirmed.

Subject matter:

Service of ‘minded to revoke’ letter; Revocation of Public Service Vehicle Operator’s Licence: Section 17(1)(a)&(1)(b) Public Passenger Vehicles Act 1981 – revocation under section 14ZA(2) on the basis that the licence holder no longer satisfied the requirement to have an effective and stable establishment in Great Britain, to be of good repute, have appropriate



financial standing and be professionally competent – revocation under section 14ZA(3) on the basis that the transport manager no longer satisfied the statutory requirements.

REASONS FOR DECISION

The Appeal

1. The Appellants (Mr Hopkins, as a director, and the company, Tonna Luxury Coaches Limited) appeal the decision of the Traffic Commissioner ('TC') dated 23 November 2021 to revoke the two Public Service Vehicle operator's licences held by the company and Mr Hopkins personally under section 17 of the Public Passenger Vehicles Act 1981 ('the Act'). There are therefore two related appeals which have been joined and heard together.

The TC's decision

2. The reasons for the revocation decisions were set out in the TC's decision notice letters dated 23 November 2021 to Mr Hopkins and the directors of the company which were in substance in identical terms as follows:

'I refer to our letter dated 29 October 2021 notifying you that the Traffic Commissioner was considering revoking [the Company's / your] standard public service vehicle operator's licence.

In the absence of a response to this letter or a request for a public inquiry to be held, the Traffic Commissioner has revoked your operator's licence with effect from 23 November 2021 under

Section 17 (1) of the Act on the following grounds:

- Section 17 (1) (a) of the Act, that the licence-holder no longer satisfies the requirements of Section 14ZA (2) of the Act, namely that the operator has an effective and stable establishment in Great Britain, is of good repute, has appropriate financial standing, is professionally competent
 - Section 17 (1) (b) of the Act, that the transport manager no longer satisfies the requirements of Section 14ZA (3), namely that they are of good repute, professionally competent, is not prohibited from being a transport manager and is not designated to act as a transport manager for a greater number of road transport undertakings or in respect of a greater number of vehicles as the traffic commissioner considers appropriate.'
3. The decision letters referred to the prior 'minded to revoke' letters dated 29 October 2021 issued by the office of the TC. Both the decision letter and minded to revoke letters were sent by First class post and recorded delivery to both Mr Hopkins and the directors of the company at the two different addresses as on record: (1)Tennis



Village Garage, Heol-Y-Glo, Tonna, Neath; and (2) Apartment 14, Aurora, Trawler Road, Maritime Quarter, Swansea. Therefore, on each date, four letters were sent by the Office of the Traffic Commissioner to Mr Hopkins and the same number to the directors of the company.

4. The 'minded to revoke' letters began:
'The Traffic commissioner has been informed by the Driver and Vehicle Standards Agency (DVSA) that you appear never to have operated this licence with evidence of no specified vehicles, no vehicles presented for MOT and the operating centre being deserted. [Emphasis Added]
...
In view of the evidence the traffic commissioner considers that you no longer satisfy the requirement to have a stable establishment, demonstrate good repute, financial standing and professional competence.'
5. The letters of 29 October 2021 gave the Appellants the opportunity to make written representations in response to the proposed revocation of the licence by 19 November 2021 and to request a public inquiry by 19 November 2021. The letters stated that that if no request for a public inquiry was received by 19 November 2021 then the relevant operator's licence would be revoked.
6. No response was received before the revocation decision letters of 23 November 2021 were issued.

The Grounds of Appeal

7. The Appellants' grounds of appeal were set out in the notice of appeal dated 9 December 2021 as follows:

'The Appellant did not receive the letter of the 29th October 2021 notifying him and Tonna Luxury Coaches Limited that they were considering revoking their standard public service vehicle operators licence.

The first notification that Mr Hopkins and Tonna Luxury Coaches Limited had that their licences had been revoked was after receiving the letter of the 23rd November 2021. As such they did not have an opportunity to make representations before the decision was made.

We enclose copy letter forwarded to Mr Dafydd Humphreys at the office of the Traffic Commissioner Wales on the 7th December 2021 as it was understood permission to appeal was required. The Appellant wishes to appeal the decision to revoke the respective licences on the basis set out in the letter of the 7th December 2021 attached as they wish to voluntarily surrender the licences. Tonna Luxury



Coaches has been operating since the 1940's and value their reputation and confirm that they are prepared to voluntarily surrender the licence rather than have the same revoked.

The grounds of the appeal are based on the fact that they did not receive the prior notification and were not able to respond to the same. In the circumstances we respectfully request that the appeal is allowed in relation to the decision to revoke Operators Licence PG0005717 and PG1112247.'

The Hearing and the Appellants' submissions

8. Mr Jeffreys appeared for the Appellants at the hearing on 25 April 2022. He participated through CVP video technology at his request. Neither Mr Hopkins nor the officers of the company attended.
9. He submitted that the basis of the appeal was as set out in the grounds of appeal - that the minded to revoke letters dated 29 October 2021 were not received by Mr Hopkins nor the company.
10. He submitted that the directors of the company were effectively retiring and the licences were revoked following no response to the minded to revoke letters and that the whole basis of the appeal was to remove the decision to revoke as it would affect their record and reputation when they always intended to voluntarily surrender those licences in any event. They did not want their character blemished.
11. He accepted that Mr Hopkins was not present, had been aware of the hearing and was the only person who could give evidence to say the Appellants did not receive any of the minded to revoke letters dated 29 October 2021 sent to the operator company and to Mr Hopkins. Mr Jeffreys had advised Mr Hopkins to make himself available for the hearing.
12. Mr Jeffreys said that he had spoken to Mrs Crosby of the Traffic Commissioner's office and was corresponding with David Humphreys from the office of the TC and had not been able to get a reply to his letter dated 8 December 2021. Having spoken to Ms Crosby on the morning of the hearing of 1 April 2022 he was told that Mr Humphreys had left the job 3 weeks before and Mr Jeffreys had been trying to contact him on his telephone numbers. She also explained that no one would be attending the hearing from the office of the TC (OTC). She had stated that the OTC had no objection to the appeal but they maintained they had followed the correct procedures.
13. He maintained that the first letter of 29 October 2021 was not received and the first notice the Appellants received was the second letter notifying them of revocation Thereafter they then wrote to the Traffic Commissioner on receipt of that and made



a prompt application for voluntary surrender and an appeal to the Tribunal in a timely manner.

14. At the invitation of the Tribunal he asked for time in order to contact the OTC to invite them to withdraw the revocation decision on the basis that the Appellants would voluntarily surrender their licences.

The Law

15. Applications for the grant and variation of Public Service Vehicle (PSV) licences can be only granted by the TC if various conditions are satisfied under section 14ZA of the Act. If these conditions are no longer satisfied, then the licence must be revoked under section 17 of the Act. The sections provide relevantly as follows:

14ZA.Requirements for standard licences

- (1)The requirements of this section are set out in subsections (2) and (3).
- (2)The first requirement is that the traffic commissioner is satisfied that the applicant—
- (a)has an effective and stable establishment in Great Britain (as determined in accordance with Article 5 of the 2009 Regulation),
 - (b)is of good repute (as determined in accordance with paragraph 1 of Schedule 3),
 - (c)has appropriate financial standing (as determined in accordance with Article 7 of the 2009 Regulation), and
 - (d)is professionally competent (as determined in accordance with paragraphs 3, 4 and 6 of Schedule 3).
- (3)The second requirement is that the traffic commissioner is satisfied that the applicant has designated a transport manager in accordance with Article 4 of the 2009 Regulation who—
- (a)is of good repute (as determined in accordance with paragraph 1 of Schedule 3),
 - (b)is professionally competent (as determined in accordance with paragraph 6 of Schedule 3), and
 - (c)in the case of a transport manager designated under Article 4.2 of the 2009 Regulation—
 - (i)is not prohibited from being so designated by a traffic commissioner, and
 - (ii)is not designated to act as transport manager for a greater number of road transport operators or in respect of a greater number of vehicles than the traffic commissioner considers appropriate, having regard to the upper limits in Article 4.2(c) of the 2009 Regulation, or such smaller number as the commissioner considers appropriate (see Article 4.3 of the 2009 Regulation).

17Revocation, suspension etc. of licences.

- (1)[**F2A** 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).

.....



The Upper Tribunal's jurisdiction

16. Paragraph 17 of Schedule 4 to the Transport Act 1985 provides:

(1) The Upper Tribunal are to have full jurisdiction to hear and determine all matters (whether of law or of fact) for the purpose of the exercise of any of their functions under an enactment relating to transport”.

(2) On an appeal from any determination of a traffic commissioner other than an excluded determination, the Upper Tribunal is to have power-

(a) to make such order as it thinks fit; or

b) to remit the matter to—

(i) the traffic commissioner who made the decision against which the appeal is brought; or

(ii) as the case may be, such other traffic commissioner as may be required by the senior traffic commissioner to deal with the appeal,

for rehearing and determination by the commissioner in any case where the tribunal considers it appropriate;

and any such order is binding on the commissioner.

(3) The Upper Tribunal may not on any such appeal take into consideration any circumstances which did not exist at the time of the determination which is the subject of the appeal.

17. The Upper Tribunal’s jurisdiction was examined by the Court of Appeal in *Bradley Fold Travel Ltd and Anor v Secretary of State for Transport* [2010] EWCA Civ 695. The court applied *Subesh and ors v Secretary of State for the Home Department* [2004] EWCA Civ 56, where Woolf LJ held:

“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.”

18. The Tribunal is not required to rehear all the evidence by conducting what would, in effect, be a new first instance hearing. Instead it has the duty to hear and determine matters of both fact and law on the basis of the material before the Traffic Commissioner but without having the benefit of seeing and hearing the witnesses.

19. The Appellant ‘assumes the burden’ of showing that the decision appealed from is ‘plainly wrong’ or at least ‘wrong’.

20. In order to succeed the Appellant must show not merely that there are grounds for *preferring* a different view but that there are objective grounds upon which the Tribunal ought to conclude that the different view is the right one. Put another way



it is not enough that the Tribunal might *prefer* a different view; the Appellant must show that the process of reasoning and the application of the relevant law *require* the Tribunal to adopt a different view.

21. That is the approach which we have followed in deciding this appeal.

Our Decision

22. We are satisfied on the balance of probabilities that the four minded to revoke letters were sent by the OTC to the Appellants on 29 October 2021 – one each for company and director - to each of the two addresses as were registered for them by first class and recorded delivery post. The OTC has proved that the letters were sent.

23. We are also satisfied on the balance of probabilities that they were received by the Appellants – the post was not returned and the Appellants accepted they received the later letters sent to the same addresses by the same method dated 23 November 2021. No evidence was given on behalf of the Appellants in writing or orally (including a lack of evidence from Mr Hopkins) to suggest that it was more likely than not that the letters were not received – they relied purely on Mr Jeffreys’ submissions. Mr Jeffreys did not have instructions about what had gone wrong but suggested that had the Appellants received the first letters, they would then have surrendered their licences voluntarily.

24. Mr Jeffreys revealed a third address during the hearing - 7 Parkfield, a business address – as being Mr Hopkin’s address at the relevant time of the letters of 29 October and 23 November 2021. He stated that Mr Hopkins no longer owns the maritime quarter address and the other address at Tonna was deserted. However, even if either Appellant had moved address, they had not informed the TC of this and no change of address had been registered with the OTC as required.

25. We are therefore satisfied that the Appellants were properly notified of the minded to revoke letters and given sufficient notice to make representations and call for a public inquiry. To the extent that they had changed address this would only reveal that they failed to inform the OTC as they should have done – it was their responsibility.

26. At the hearing Mr Jeffreys also advised the Tribunal incorrectly that the company’s business had been sold however on making further enquiries he discovered that this was not correct as the sale had not yet been completed and he corrected the misstatement by an email sent after the hearing later that day. In addition, he confirmed that the Operators Licences and Discs were returned to the Traffic Commissioner on the 24th March 2022 on a voluntarily retirement basis.



27. We are also satisfied that the grounds for revocation as set out in OTC's letters are right – there is nothing to suggest the grounds for revocation are wrong in fact nor law and no evidence was lodged or submissions made by the Appellants to the contrary. There is no reason to interfere with the TC's revocation decisions – there is nothing to suggest that the grounds for revocation are wrong on their own merits.
28. The Upper Tribunal held off issuing this decision for 4 weeks following the hearing to allow time for Mr Jeffreys to ask the OTC to reconsider their revocation decisions, permit the voluntary surrender of the licences and withdraw the revocation. This he did by letter dated 28 April 2022. However, the OTC informed Mr Jeffreys in subsequent correspondence dated 5 May 2022 that it was not going to withdraw the revocation decisions now there was an appeal before the Tribunal. The OTC was entitled to deal with the matter in this way.

Conclusion

29. The Appellants' appeals must be dismissed and the revocation decisions confirmed.

Judge Rupert Jones
Judge of the Upper Tribunal

Authorised for release

Dated: 30 May 2022