



Mr A. Magill
[2023] UKUT 131 (AAC)
Appeal No. UA-2022-001592-NT

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

**ON APPEAL from the DECISION of the Transport Regulation Unit within the
DEPARTMENT FOR INFRASTRUCTURE, for Northern Ireland**

Before: L J Clough: Judge of the Upper Tribunal
Mr D. Rawsthorn: Member of the Upper Tribunal
Ms K. Pepperell: Member of the Upper Tribunal

Appellant: Mr A. Magill

Respondent: Transport Regulation Unit, Department for Infrastructure

Reference No: ON1119561

Heard at: Tribunal Hearing Centre, Royal Courts of Justice, Belfast

On: 28 February 2023

Date of Decision under appeal: 2 November 2022

Date of Decision: 6 June 2023

DECISION OF THE UPPER TRIBUNAL

THE APPEAL IS ALLOWED.

The matter is remitted to the Transport Regulation Unit for hearing before a Public Inquiry.

Subject matter:

Revocation of Operator's Licence. Loss of good repute.

Cases referred to

Fergal Hughes v DOENI & Perry McKee Homes Ltd v DOENI [2013] UKUT 618 AAC, NT/2013/52 & 53; *Bradley Fold Travel Ltd & Anor v Secretary of State for Transport* [2010] EWCA Civ 695; *Clarke v Edinburgh & District Tramways Co Ltd* [1919] UKHL 303; (1919) SC (HL) 35; 56 SLR 303

REASONS FOR DECISION

1. This is an appeal to the Upper Tribunal brought by Mr A. Magill (hereafter “the Appellant”), against a decision of the Transport Regulation Unit (hereafter “the TRU”) within the Department for Infrastructure for Northern Ireland (hereafter “the DfI”) to revoke the Appellant’s Goods Vehicle Operator’s Licence, with effect from the date of decision, 2 November 2022.

2. The Appeal was heard on 28 February 2023 at the Tribunal Hearing Centre in the Royal Courts of Justice, Belfast. Mr Magill was in attendance at the hearing but was not represented. The Respondent was not represented.

The facts

3. The Appellant applied for and was granted a Restricted Goods Vehicle Operator’s Licence, which came into operation from 11 April 2013. The licence authorised the use of two vehicles (no trailers) with the operating centre authorised at 31 Sallybush Road, Newtownabbey. The licence was subject to the standard conditions and undertakings, which were set out in the licence document. In particular, the licence stated that the licence holder must inform the Transport Regulation Unit of any “convictions and penalties accrued by the operator, transport manager, operator’s directors, managers etc” within 28 days of their occurrence”. The licence successfully went through the five yearly renewal process in early 2018 with no amendments being made.

4. The TRU wrote to the Appellant on 8 November 2019 advising that they had been notified by Department of Environment, Agriculture and Rural Affairs (hereafter “DEARA”), in March 2019, that he had appeared before Belfast Magistrates’ Court on 14 November 2017, where he was convicted of six waste offences under the Waste and Contaminated Land (Northern Ireland) Order 1997 (hereafter “the WCLO 1997”). The TRU were aware that on 1 March 2019, as a result of the convictions, the Planning Appeal Commission (hereafter “PAC”) had revoked his registration as a carrier of controlled waste (licence number ROC 5106). The Appellant was asked to provide details of the offences (the background and why they had occurred) and to explain why they were not declared to

the TRU as required under the conditions of his Operator's Licence. He was asked to respond by 22 November 2019.

5. The Appellant responded by email on 21 November 2019 stating that he was not aware that he had to notify the TRU about these convictions as they related to land and not to vehicles or driving. He explained that there had been waste materials on the site of his home address, which was also his operating centre address, since the late 1980s for which he had planning permission in place for the material. He explained that DEARA had asked him to remove the waste materials but in light of the planning permission, he had not done so. He requested leniency from the TRU when being dealt with for this matter.

6. On 23 March 2022, the TRU wrote to the Appellant, apologising for the delay in replying, and reiterating that they were aware that the Appellant's licence to carry controlled waste had been revoked on 1 March 2019 as the PAC had concluded, "it is undesirable for the appellant to continue to be authorised to transport controlled waste". The TRU stated:

"[t]he Department should have followed up to notify you that the convictions were such that it was necessary for consideration to be given to revocation of your goods vehicle operator's licence. Due to the passage of time, the Head of the Transport Regulation Unit has stood back from making an order of revocation at this stage."

(page 42 of the bundle)

The TRU indicated that they were concerned that due to a lack of changes to his Operator's Licence since the revocation of his waste carrier licence registration, the Appellant was continuing transporting waste regardless. The Appellant was asked to confirm whether he continued to carry goods for hire or reward for his business, and in particular whether he still carried waste. He was also asked to provide the registration details for all vehicles in his possession over 3.5T in weight, and which were used for carriage of goods. He was asked to confirm whether he still had the two vehicles listed on his operator's licence in his possession (vehicle registrations K217 AOM and R952 OGT), and if so, for what purpose. He was additionally asked to confirm if he still required an operator's licence. This information was to be sent to the TRU before 16 April 2022 or the TRU may take action which could include revocation of his operator's licence. The Appellant did not respond.

7. On 2 September 2022, the TRU wrote once again to the Appellant highlighting that no response had been received to their letter of 23 March 2022, and stating that they proposed to revoke his operator’s licence under s.23(1) of the Goods Vehicles (Licencing of Operator’s) Act (Northern Ireland) 2010 (hereafter “the 2010 Act”), which permits the revocation of an operator’s licence for “for any reasonable cause”. In particular, they cited s.23(1)(g) as their ground for proposing to revoke the licence as:

“... since the licence was issued or varied there has been a material change in any of the circumstances of the licence-holder that were relevant to the issue or variation of the licence; namely that the licence holder is no longer fit to hold a licence as required by Section 12B as a result of your lack of engagement with the Department.”

(page 45 of the appeal bundle)

Furthermore, the TRU cited additional change in circumstances giving them grounds under s.23(1)(g):

“namely that the licence holder is no longer fit to hold a licence as required by Section 12B as [he appears] to continue carrying waste despite the Planning Appeal Commission revoking [his] carrier’s licence.”

(page 45 of the appeal bundle)

It was reasoned that, “in view of the evidence, the Department considers that [the Appellant] no longer [satisfies] the requirement to be of good repute” to hold an operator’s licence” (see decision letter at page 45 of the appeal bundle).

8. The TRU sought representations from the Appellant on their proposal to revoke his Operator’s Licence and offered him the opportunity to request a Public Inquiry to provide further evidence on the matter. It was stated that if no representations and/or request for a Public Inquiry was received by 23 September 2022, the Appellant’s Operator’s Licence would be revoked and he would be required to return it, along with related licence discs, by 30 September 2022. No response was received.

9. On 2 November 2022, the TRU wrote to the Appellant stating that in light of the lack of response to their letter of 2 September 2022, they had decided to revoke his Operator's Licence with effect from the same date, on the "material change of circumstances" ground under s.23(1)(g), stating that:

"[t]he licence holder is no longer fit to hold a licence as [he appears] to continue carrying waste despite the revocation of [his] carrier's licence, and that [he] no longer appear[s] to satisfy the requirement to be not unfit to hold an operator's licence on account of [his] lack of engagement with the Department."

(page 48 of the bundle)

10. It was reasoned by a decision maker within the Transport Regulation Unit, who reviewed the details of the Appellant's case, that the offences notified by DEARA fell into the category of notifiable convictions as set out in Schedule 3 of the Goods Vehicles (Licencing of Operator's) Regulations (Northern Ireland) 2012 (hereafter "the 2012 Regulations"). This provides that a notifiable conviction is "any conviction or penalty incurred by a relevant person pursuant to an offence committed under the law of any part of the United Kingdom." He also reasoned that the offences were of a serious nature having resulted in numerous fines, and that the TRU was concerned that the convictions were directly linked to the business for which he had an Operator's Licence.

11. He concluded that:

"there has been a material change to the circumstances of the licence holder which was relevant to the issue of the licence – namely that the licence holder is no longer fit to hold a licence as you appear to continue carrying waste despite the revocation of your carriers licence, and that you no longer appear to satisfy the requirement not to be unfit to hold an operator's licence on account of your lack of engagement with the Department."

(page 49-50 of the bundle)

As a result the Decision Maker in the TRU directed that the Appellant's Operator's Licence be revoked with immediate effect under s.23(1)(g) of the 2010 Act.

The Appeal:

12. The Appellant lodged an appeal with the Upper Tribunal on an official appeal form signed and dated on 1 December 2022. The Appellant cited the following grounds:

“The Dept states that I appear to continue to carry waste despite my carriers licence being revoked and that I'm not fit to hold an operator's licence on account of my lack of engagement with the Dept. These allegations are totally false and without foundation as my vehicle has been SORN off the road for at least the past 4 years. Also the Dept. acknowledged that I provided a response in relation to my carrier's licence being revoked. I also consider the following PAC relevant to my appeal [cites three PAC decisions]. On a technicality your letter states “you no longer appear to satisfy the requirement to be no unfit” so I am now fit to hold an operator's licence?”

(page 57/60 of the appeal bundle)

13. The Appellant gave evidence at his appeal hearing on 28 February 2023, confirming the position contained within his email to the TRU on 21 November 2019. He confirmed that he had waste material stored at his operating centre address, this being a property that he had inherited from his father, with the waste material contained upon it at the time of inheritance. He had attempted to secure permission to retain the waste material by way of a Certificate of Lawfulness of Existing Use or Development (later issued on 22 January 2013) and which is a pre-requisite to possession of a Waste Management Licence to deposit, treat, keep or dispose of controlled waste. He obtained full planning permission on 29 January 2018 for infilling with the waste material in order to lay the grounds for pasture on land near to 31 Sallybush Road by way of a waste management licence, but this had not happened, and the convictions ensued. He did not believe he had to declare the waste related convictions as they did not relate to vehicles or driving matters which he thought to be most relevant to the holding of an Operator's Licence. He stated that he had

only one of the two vehicles that were originally on his Operator's Licence, namely vehicle K217 AOM, and that it had been declared off the road by way of SORN, for over four years. He stated he had informed the TRU of this when renewing his licence in 2018. He denied use of the vehicle to carry goods for hire or reward and denied the use of the vehicle to carry waste. He agreed that he had not responded to the letters of the TRU dated 23 March 2022 and 2 September 2022, as he felt that the initial letter from them was enough of an indication that he was going to lose his licence regardless of anything he tried to say. However, he sought to appeal the revocation decision before the Upper Tribunal as he felt the reasons were unfair.

The appeal decision

14. As to the approach which the Upper Tribunal must take on an appeal such as this, it was stated, in the case of *Fergal Hughes v DOENI & Perry McKee Homes Ltd v DOENI* [2013] UKUT 618 AAC, NT/2013/52 & 53, at paragraph 8:

“There is a right of appeal to the Upper Tribunal against decisions by the Head of the TRU in the circumstances set out in s. 35 of the 2010 Act. Leave to appeal is not required. At the hearing of an appeal the Tribunal is entitled to hear and determine matters of both fact and law. However, it is important to remember that the appeal is not the equivalent of a Crown Court hearing or an appeal against conviction from a Magistrates Court, where the case, effectively, begins all over again. Instead, an appeal hearing will take the form of a review of the material placed before the Head of the TRU, together with a transcript of any public inquiry, which has taken place. For a detailed explanation of the role of the Tribunal when hearing this type of appeal see paragraphs 34-40 of the decision of the Court of Appeal (Civil Division) in Bradley Fold Travel Ltd & Peter Wright v Secretary of State for Transport [2010] EWCA Civ. 695. Two other points emerge from these paragraphs. First, the Appellant assumes the burden of showing that the decision under appeal is wrong. Second, in order to succeed the Appellant must show that: “the process of reasoning and the application of the relevant law require the Tribunal to adopt a different

view”. The Tribunal sometimes uses the expression “plainly wrong” as a shorthand description of this test.’

15. At paragraph 4, the Upper Tribunal stated:

“It is apparent that many of the provisions of the 2010 Act and the Regulations made under that Act are in identical terms to provisions found in the Goods Vehicles (Licensing of Operators) Act 1995, (“the 1995 Act”), and in the Regulations made under that Act. The 1995 Act and the Regulations made under it, govern the operation of goods vehicles in Great Britain. The provisional conclusion which we draw, (because the point has not been argued), is that this was a deliberate choice on the part of the Northern Ireland Assembly to ensure that there is a common standard for the operation of goods vehicles throughout the United Kingdom. It follows that decisions on the meaning of a section in the 1995 Act or a paragraph in the Regulations, made under that Act, are highly relevant to the interpretation of an identical provision in the Northern Ireland legislation and vice versa.”

16. The task of the Upper Tribunal, therefore, when considering an appeal from a decision of the TRU in Northern Ireland, is to review the material which was before it. 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” (*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). In essence therefore the approach of the Upper Tribunal is as stated by Lord Shaw of Dunfermline in *Clarke v Edinburgh & District Tramways Co Ltd* 1919 SC (HL) 35, 36-37, that an appellate court should only intervene if it is satisfied that the judge (in this case, the decision of the Transport Regulation Unit) was “plainly wrong”.

The Law

17. Section 23(1) of the 2010 Act, under which the TRU revoked the Appellant’s Operator’s Licence, states as follows:

“Revocation, suspension and curtailment of operators' licences

23—(1) Subject to the following provisions of this section and the provisions of section 26, the Department may direct that an operator's licence be revoked, suspended or curtailed (within the meaning given in subsection (9)) for any reasonable cause including any of the following—

(a) in the case of a heavy goods vehicle licence, that a place has, at a time when it was not specified in the licence as an operating centre of the licence-holder, been used as an operating centre for heavy goods vehicles authorised to be used under the licence;

(b) that the licence-holder has contravened any condition attached to the licence;

(c) that during the 5 years ending with the date on which the direction is given there has occurred a prescribed event affecting information required to be given to the Department under section 7 or 8;

(d) that the licence-holder made, or procured to be made, for the purposes of—

(i) the licence-holder's application for the licence,

(ii) an application for the variation of the licence, or

(iii) a request for a direction under paragraph 1 or 3 of Schedule 1,

a statement of fact that, whether to the licence-holder's knowledge or not, was false, or a statement of expectation that has not been fulfilled;

(e) that any undertaking recorded in the licence has not been fulfilled;

(f) that the licence-holder, being an individual, has been adjudged bankrupt or has become the subject of a bankruptcy restrictions order or a debt relief order has been made in respect of him or he has become the subject of a debt relief restrictions order or, being a company, has gone into liquidation, other than voluntary liquidation for the purposes of reconstruction;

(g) that since the licence was issued or varied there has been a material change in any of the circumstances of the licence-holder that were relevant to the issue or variation of the licence;

(h) that the licence is liable to revocation, suspension or curtailment by virtue of a direction under section 25(3).”

In the decision, reference was also made to the requirements for a restricted licence as set out in s.12B of the 2010 Act, which states:

“Requirements for restricted licences

12B. *The requirement of this section is that the applicant is not unfit to hold an operator’s licence by reason of—*

- (a) any matter of which particulars are required to be given under section 7; or*
- (b) any event required to be notified in accordance with section 8(1).”*

Section 7 outlines the application for an Operator’s Licence, and the particulars that are required to be given, as follows:

“Application for operators’ licences

7—(1) *An application for an operator's licence shall be made to the Department.*

(2) *A person may not at any time hold more than one operator's licence.*

(3) *An application for an operator's licence shall be made in such form, and include such declarations and information, as may be prescribed.*

(4) *Without prejudice to subsection (3), regulations under that subsection shall require the applicant to provide prescribed particulars as to—*

(a) the motor vehicles proposed to be used under the licence;

(b) any trailers proposed to be used under the licence;

(c) in the case of an application for a heavy goods vehicle licence, each place which will be an operating centre of the applicant if the licence is issued.

(5) *The Department may require an applicant to furnish, in such form as the Department may require, such further information as the Department may consider necessary for dealing with the application.*

(6) *If a person fails without reasonable excuse to furnish information when required to do so under subsection (5), the Department may decline to proceed further with the application and refuse to grant the licence.”*

Section 8(1) of the 2010 Act states:

“Notification of events subsequent to the making of an application

8—(1) *A person who has made an application for an operator's licence shall notify the Department if, in the interval between the making of the application and the date*

on which it is disposed of, there occurs any prescribed event affecting any information given to the Department under section 7.”

Discussion

18. It is an agreed fact that the Appellant has held a Goods Vehicle Operator’s Licence since 11 April 2013, and he has been a registered carrier of controlled waste since 8 May 2013. His operating centre for the purpose of the Operator’s Licence was at 31 Sallybush Road, a property where waste material was stored. With reference to the convictions reported by DEARA (details outlined on page 27 of the appeal bundle), it is a fact that on 13 August 2013, shortly after his Operator’s Licence was granted, the Appellant was convicted of keeping controlled waste without a waste management licence contrary to Article 4(1)(b) and Article 4(6) of the WCLO 1997, the offences having taken place on dates between 25 August 2011 and 21 October 2011. On 14 November 2017, he was convicted of five further offences relating to keeping and treating controlled waste without a waste management licence on the dates of 12 December 2014, 21 May 2015 and 18 November 2018. He was also convicted of failing to comply with a direction under Article 27(2) of the WCLO 1997 relating to the same offences. From analysis of these dates, it is clear that the Appellant was keeping controlled waste contrary to the provisions within the WCLO 1997 prior to the issue of his Operator’s Licence and prior to his registration to carry controlled waste. He was convicted of these infringements a matter of months after the issue of the two authorisations. He continued to retain controlled waste during the years following the authorisations, as the later convictions relate to offences during 2014, 2015 and 2018. The Appellant did not report the WCLO 1997 convictions to the DVA. One of the standard conditions, which was clearly stated on the Appellant’s Operator’s Licence, is that “[t]he licence holder shall, within 28 days of their occurrence, inform the Transport Regulation Unit of any.... Convictions and penalties accrued by the operator, transport manager, operator’s directors, manager etc” (see page 15 of the bundle). By failing to report the convictions, the Appellant is in breach of this condition of his Operator’s Licence which was in force at the date of decision. The Appellant’s Operator’s Licence remained in place for a number of years post-conviction in November 2017. There have been no offending incidents in November 2015.

19. The TRU, in their letter of 2 November 2022 (at page 48 of the appeal bundle), decided to revoke the Appellant's Operator's Licence under s.23(1)(g) of the 2010 Act which outlines one example of a "reasonable cause" to revoke a licence as being a material change in any of the circumstances of the licence holder that were relevant to the issue or variation of the licence. The TRU explains that the change of circumstances are two-fold. Firstly, that the Appellant lost his good repute, a condition which must be in place to obtain an Operator's Licence, as he failed to engage with the Department when they wrote to him to deal with the convictions. Secondly, the TRU states that he lost his good repute as the evidence suggests he is still carrying controlled waste despite the revocation of his waste carrier registration in March 2019. We shall deal with these in turn.

Failure to engage with the Department

20. When considering the correspondence in this matter, we note that the Appellant responded to the first letter from the TRU dated 8 November 2019, when they stated that DEARA had informed them of the offences. As requested by the TRU, the Appellant responded on 21 November 2019, within the time limit set, and he explained his position. The TRU did not reply to that correspondence until two years and four months had passed. It is noted that the Appellant did not respond to the TRU's letter of 23 March 2022. Some time passed before this was followed up, on 2 September 2022, with a "propose to revoke" letter citing his lack of engagement as a reason for their proposal to revoke. While we agree that he had failed to engage with the TRU in relation to the initial letter, it is also the case that the TRU failed to engage with him for over two years, thus leaving this matter outstanding for a significant period of time. It is disproportionate to cite the failure to respond to one letter as a "failure to engage with the Department", in circumstances where the department have by their own admission allowed a significant time to pass. While it was inappropriate for the Appellant to "bury his head in the sand" and continue not to engage thereafter, such a "lack of engagement" in these circumstances cannot be considered a fair reason for the Appellant to have lost his good repute. We find that the TRU was "plainly wrong" to cite "failure to engage with the Department" as a reason to justify the Appellant's loss of good repute.

Continuing to carry waste

21. The TRU also stated that the evidence was such that he appeared to be continuing to carry on the transport of controlled waste despite the revocation of his waste carrier's registration. They reached this conclusion on the sole basis that he had made no changes to his Operator's Licence since the waste licence revocation. We note that there is no photographic or other evidence demonstrating that the Appellant was carrying controlled waste. There are no statements from neighbours or other parties giving evidence that the Appellant was carrying controlled waste. The fact that he had not made changes to his Operator's Licence at the point of renewal would not satisfy any court or Tribunal on the balance of probabilities, for example, that he was continuing to carry controlled waste. In fact, it appears that the TRU have made a very strong assumption that he is carrying controlled waste with absolutely no evidence at all. The Appellant made it clear in his grounds of appeal that his one goods vehicle remaining on his Operator's Licence had been declared off the road by way of a SORN notice, for the previous four years. The Respondent has brought no evidence and has made no submission to contradict this claim. Hence the evidence points to the conclusion that he is not using his Operator's Licence at all, never mind to carry controlled waste. We therefore find that the TRU was "plainly wrong" to conclude that the evidence pointed towards the suggestion that the Appellant was continuing to carry controlled waste despite the revocation of his waste carrier's registration, and therefore cannot rely on this to determine that he has lost his good repute.

Conclusion

22. Overall, we find the reasoning of the TRU in their decision to revoke the Appellant's Operator's Licence fatally flawed. It is disproportionate to use the failure to respond to one letter as grounds to say he failed to engage with the Department and thus lost his good repute, especially when the Department failed to engage with him for over two years in respect of this matter. Further, there is insufficient evidence to draw a conclusion that he was continuing to carry controlled waste without a waste carrier's registration in place and hence it cannot be said that he has lost his good repute on this basis either. There were other grounds within s.23 that may have been stronger to rely upon in making the decision to

revoke the Appellant’s licence. Looking strictly at the decision making of the TRU on this occasion, the decision was “plainly wrong”, and the appeal is therefore allowed.

23. In allowing this appeal, we remit the matter back to the TRU for a Public Inquiry to take place in order to make a fair determination in this matter. We trust that the Appellant will utilise this opportunity to fully engage with the Department, regardless of what he may consider the potential outcome to be, in order that he has a fair and proportionate decision made in this matter.

Ms L J Clough
Judge of the Upper Tribunal

Mr D Rawsthorn
Member of the Upper Tribunal

Ms K Pepperell
Member of the Upper Tribunal

Authorised for issue on 6 June
2023