



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

**Appeal No. T/2018/36
NCN: [2018] UKUT 401 (AAC)**

ON APPEAL from the DECISION of the TRAFFIC COMMISSIONER notified on 8 June 2018.

Before: Mr M R Hemingway: Judge of the Upper Tribunal
Mr G Inch: Member of the Upper Tribunal
Mr M Farmer: Member of the Upper Tribunal

Appellant: Wajid Bashir t/a MB Travel
Reference: PD2011790

Attendances:

For the Appellant: No appearance

Heard at: Field House, Breams Buildings, London EC4A 1DZ

Date of Upper Tribunal Hearing: 25 October 2018

Date of Decision: 26 November 2018

DECISION OF THE UPPER TRIBUNAL

The appeal is dismissed.

Subject matter:

Whether the appellant satisfies the primary occupation requirements contained in section 13(3)(b) of the Public Passenger Vehicles Act 1981.

Cases referred to:

None

REASONS FOR DECISION

Introduction

1. This is an appeal to the Upper Tribunal from a decision of the Traffic Commissioner made on 6 June 2018 and communicated on 8 June 2018 refusing to grant an application made by Mr Wajid Bashir, trading as MB Travel, for a restricted public service vehicle operator's licence. The application was refused under section 14ZC (1)(b) and section 13(3)(b) of the Public Passenger Vehicles Act 1981 ("the 1981 Act").

The background

2. Mr Bashir has employment as an office clerk. He made his application for a restricted licence on 21 March 2018. His intention, he says, was to continue his employment as an office clerk but to operate a business using one vehicle (which he had not yet obtained) to transport children to and from school. In applying he indicated that he did not think he would be engaged for more than eighteen hours each week in the proposed business. All of that was relevant because of the content of section 13(3)(b)(ii) of the 1981 Act which makes it plain that the holder of a restricted licence must have a main occupation which is not the operation of public service vehicles adapted to carry more than eight passengers. In other words, restricted licences of that sort are intended for operators or proposed operators who want to run such a business as a side-line. Persons not satisfying the section 13(3)(b)(ii) main occupation test are required to apply for a standard licence which has more rigorous requirements with respect to its obtaining and its subsequent operation.

3. The Office of the Traffic Commissioner (OTC) wrote to Mr Bashir, on 27 March 2018 requesting further information. Not being wholly satisfied with his response to that request, the OTC made a further request on 10 April 2018. It is clear from the nature of those requests that it had two primary concerns about the application. First of all, given that Mr Bashir was proposing to keep his business vehicle, when acquired, on the driveway at the front of his house, it was doubted whether he would be able to safely enter and exit that driveway bearing in mind, in particular, its proximity to a T junction. It was also doubted whether in fact, if he were to obtain a restricted licence and trade as indicated, his employment as a clerk would remain, either in terms of hours worked or income generated, his main occupation. The latter concern engaged section 13(3)(b) of the 1981 Act as already referred to. The former concern engaged section 14ZC(1)(b) of the 1981 Act which requires there to be adequate arrangements for securing compliance with the requirements of the law relating to the driving and operation of vehicles used in the business.

4. By way of response to the further enquiries that had been put to him, Mr Bashir submitted a number of photographs which he argued was sufficient to illustrate that there would be no safety or other concerns with respect to the appropriateness of his keeping his business vehicle on his driveway. He provided some payslips and a form P60 concerning his employment as a clerk and indicated that he was paid the statutory minimum wage. He said that he thought his business fulfilling school contracts would only occupy him for "around 10 to 15 hours a week".

The Traffic Commissioners Decision

5. The decision, as indicated, was taken on 6 June 2018. It was then communicated by letter of 8 June 2018. It is clear from documentation which has been produced for the purposes of this appeal to the Upper Tribunal (and which presumably would never have come to the attention of Mr Bashir had he not appealed) that the application received consideration by two different members of the Traffic Commissioner's support staff and that both considered it appropriate to refuse the application and made such a recommendation to the Traffic Commissioner. There was some divergence in their views, however, because the first staff member to look at the application thought that the arrangements for the parking of the vehicle on the driveway were satisfactory whilst the second one did not. The first support staff member also thought Mr Bashir ought to be offered a Public Inquiry (PI) prior to any final decision being taken whereas the second one did not. But both agreed that it had not been shown that the main occupation test had been met. The Traffic Commissioner concluded that the application should be refused without the offer of a PI. The written material evidencing these recommendations does assist in understanding the thought processes involved in the decision to refuse the application and the decision to do so without the offer of a PI. But in our view, it cannot really be said that those thought processes were clearly evidenced in the letter which was then sent to Mr Bashir on 8 June 2018. The salient part of that letter reads as follows:

"I refer to your application for a New Restricted operator's licence application

I must now advise you that the Traffic Commissioner has refused your application as you have failed to meet the requirements set out below:

Section 14ZC(1)(b) of PPV Act 1981 - Arrangements for driving/ operation of vehicles.
Section 13(3)(b) of PPV Act 1981 – Main occupation
Regulation 6 of Public Service Vehicles (Operator licenses) Regulations 1995".

6. The rest of the letter is simply given over to a short explanation of Mr Bashir's right of appeal to the Upper Tribunal.

The proceedings before the Upper Tribunal

7. Mr Bashir decided to exercise his right of appeal to the Upper Tribunal. It appears, from his written grounds of appeal, that he had understood that one of the reasons why his application had been refused was that it was thought that he had not demonstrated compliance with what we have called the main occupation test. But it is less clear that he understood that another reason for refusal related to the safety concerns as mentioned above, though we accept that given the nature of the enquiries previously made of him, if he had looked up the legislation referred to he would probably have been able to work it out. As to his occupation it appears that he was suggesting to the Upper Tribunal that his work as a clerk would remain his "main employment" and would also remain his primary source of income. He explained that he was unhappy with the decision and said it had caused him to feel stressed. The appeal was listed for an oral hearing.

8. Mr Bashir did not attend the oral hearing. In the circumstances we decided the appeal on the basis of the written material in front of us.

Our reasoning

9. The Traffic Commissioner decided not to offer Mr Bashir a PI. Regulation 6 of the Public Service Vehicles (Operators Licences Regulations 1995) provides as follows:

- “6. A Traffic Commissioner shall not refuse an application for a licence, or grant it other than requested without giving to the applicant an opportunity to state his case at an inquiry save where the application or the applicant’s conduct in relation to it is frivolous or unreasonable”.

Mr Bashir has not, in appealing to the Upper Tribunal, sought to argue that the Traffic Commissioner was wrong to refuse to hold a PI. There is nothing to suggest that he had ever asked for one. Perhaps, if he had attended before us, he might have asked to amend his grounds to include such a challenge but he did not attend. We do not regard the matter as being before us on this appeal. But the letter of 8 June 2018 did not explain why it was that it had been decided to refuse his application without the offer of a PI. It is true that regulation 6 appeared in a short list of what was considered to be the relevant legal provisions. But in our view, whilst these comments are not essential to this decision of the Upper Tribunal, in circumstances where a decision is taken not to hold a PI an applicant ought, ordinarily at least, to be given a reasoned explanation as to why not. It may be that any such explanation could often be permissibly brief (depending on the circumstances) but whilst not purporting to decide the point in this decision, we would have thought sufficient ought to be said about why it has been decided that the application or the applicant’s conduct is or has been frivolous or unreasonable such as to enable him to consider whether that aspect is something he/she would wish to seek to challenge before the Upper Tribunal.

10. Turning then to the main occupation issue, again the letter itself did not disclose anything meaningful concerning the Traffic Commissioner’s reasoning. That too is, in our view, a little unhelpful. As it happens and as we have said already, Mr Bashir was able to discern, presumably as a result of the reference to the relevant legislative provision and the tenor of previous correspondence, that this issue was one of the reasons why his application had been refused. Further, he has had sight of the memoranda to which we have referred concerning the recommendations made by the Traffic Commissioner’s support staff. He will have been able to discern, from that, that the Traffic Commissioner’s concern was that he had provided insufficient evidence to demonstrate that the main occupation test was met. He has put nothing further to the Upper Tribunal, by way of argument, about this.

11. Mr Bashir was, presumably, intending to transport children to and from school, pursuant to school contracts, five days a week. If a potential contractor was unwilling or unable to do that it is difficult to see how a contract could be obtained. There would be a need, presumably, and nothing has been said by Mr Bashir to the contrary, for the children to be taken to school at the start of the school day and then taken home at the end of the school day. There was no explanation before the Traffic Commissioner as to how that might fit around the hours of work in what was said to constitute his main occupation. His earnings in that claimed main occupation were limited and it is entirely plausible that a person with contracts for taking children to and from school on a regular basis would generate profits after appropriate deductions which would exceed, perhaps significantly exceed, the sort of earnings he was

receiving as an employee. Mr Bashir did not address that concern at any time during the course of his application or in his responses to the further enquiries made of him. Against that background the Traffic Commissioner's decision on the point is unsurprising. Neither the law nor the facts of this case impel us to come to a different view. So, this appeal to the Upper Tribunal fails.

12. Our having concluded that the decision of the Traffic Commissioner was sound with respect to the main occupation test it is not necessary for us to give any consideration to the safety issue and the possible application of section 14ZC(1)(b) of the 1981 Act. But we would, by way of non-essential observation, make the point that, as with the decision not to hold a PI, the reasoning of the Traffic Commissioner was not communicated in the letter of 8 June 2018. In general terms we do not think it sufficient for the OTC, as has happened here, to purport to explain a decision to an unsuccessful applicant by way of nothing more than a short list of legal provisions considered to be relevant. The bare provision of such a list does nothing (at least without a degree of perhaps informed guesswork) to demonstrate to an applicant why it is that his/her application has been refused. That, in turn, affords little assistance with respect to putting such an unsuccessful applicant in an informed position to decide whether or not it might be worth pursuing an appeal to the Upper Tribunal or to decide how to formulate appropriate grounds of appeal. We well understand that the OTC has a very difficult task and has to work within constraints and under considerable pressure. But, nevertheless, it is an absolutely basic requirement that an applicant who fails is told (albeit perhaps in succinct terms) why he/she has done so. These matters do not assist this appellant in this case but we would express the hope that our comments might be taken on board.

Signed

**M R Hemingway
Judge of the Upper Tribunal**

Dated

26 November 2018