



Precision Vehicle Logistics Ltd
[2023] UKUT 127 (AAC)

**IN THE UPPER TRIBUNAL
ADMINISTRATIVE APPEALS CHAMBER
(TRAFFIC COMMISSIONER APPEALS) [2022] UKUT (AAC)**

Appeal No. UA-2022-001405-T

ON APPEAL from A DECISION of the TRAFFIC COMMISSIONER for the West Midlands Traffic Area

Before:

Zachary Citron:	Judge of the Upper Tribunal
Sarah Booth:	Member of the Upper Tribunal
Gary Roantree:	Member of the Upper Tribunal

Appellant: Precision Vehicle Logistics Ltd

Representation

For the appellant: Marlon Taylor, director of the appellant

Heard: at Birmingham Civil & Family Justice Centre

On: 26 April 2023

Date of decision: Decision given orally at the hearing on 26 April 2023

DECISION OF THE UPPER TRIBUNAL

The appeal is dismissed.

Subject matter

Refusal of application for licence

Case referred to

Bradley Fold Travel Ltd & anor v Secretary of State for Transport [2010] EWCA Civ 695.

REASONS FOR THE DECISION

The decision appealed against

1. The appellant appealed to the Upper Tribunal against a decision of the Traffic Commissioner (the “TC”) in a letter (the “**decision letter**”) dated 29 September 2022 (the “**decision date**”) refusing its application for a standard operator’s licence under the Goods Vehicles (Licensing of Operators) Act 1995. (In what follows, references to “sections” or “s” are to sections of that Act, and references to “paragraphs” (unless the context otherwise indicates) are to paragraphs of Schedule 3 (*Qualifications for Standard Licence*) to that Act.)
2. The decision letter said that the application had been refused under s13(5) and that the appellant had failed to demonstrate, from the information submitted, that it met all requirements for the licence. In particular, the appellant had failed to satisfy the TC that it had designated a suitable number of transport managers satisfying the requirements of paragraph 14A(1) and (2) or 14A(1) and (3) as set out in s13A(3).
3. By way of explanation of these statutory references:
 - (a) under s13(5), the TC must refuse an application for a standard licence if the TC determines that any of the requirements that the TC has taken into consideration in accordance with s13(1) are not satisfied;
 - (b) under s13(1)(a), on an application for a standard licence, the TC must consider whether the requirements of s13A and 13C are satisfied;
 - (c) s13A(3) requires (where the applicant is not an individual) that the TC be satisfied that the applicant has designated a suitable number of individuals who satisfy the requirements set out in paragraph 14A(1) and (3);
 - (d) under paragraph 14A(1), a transport manager must be
 - i. a resident of the United Kingdom,
 - ii. of good repute (as determined in accordance with paragraphs 1 to 5),
 - iii. professionally competent (as determined in accordance with paragraph 13), and
 - iv. able to manage effectively and continuously the operator’s transport service.
 - (e) under paragraph 14A(3), the individual must in addition
 - i. be a party to a transport management contract linking the individual to the operator,
 - ii. be able to—

- (a) exercise the individual's responsibilities as a transport manager independently of the operator, and
 - (b) perform the tasks set out in the transport management contract solely in the interests of the operator, and
- iii. not be, subject to some exceptions, at the same time designated under—
- (a) section 13A(3)(a)(ii) or (b) in relation to any other operator's licence, or
 - (b) any corresponding law of Northern Ireland in relation to a Northern Ireland-issued licence.

Background facts per documentation before the Upper Tribunal

4. The appellant's online application to the TC for a licence, made on 22 August 2022, named "Leon Miles" as its transport manager.
5. The Office of the Traffic Commissioner ("OTC"), in a letter to the appellant dated 22 August 2022, said that its application was incomplete and it must provide more information (which was listed in an annex to the letter), by 5 September 2022. The further information included a completed online transport manager application and the nominated transport manager's original certificate(s) of qualification of professional competence in road haulage (or the reference number for an approved exemption).
6. The letter also said this:

"You can track the progress of your application online using the operator self-service system which you used to submit the application.

Most correspondence from the Licensing Team will be sent to the you by email. You can also access correspondence from your online account."

7. On 5 September 2022 Marlon Taylor, on behalf of the appellant, sent an email to notifications@vehicle-operator-licensing.service.gov.uk, citing the reference used in the earlier letter from OTC, as follows:

"Hi, I have been on hold for some time trying to contact you via telephone to offer an update on our operator's licence application.

I am told by Total Compliance that the relevant person that is required for the details I need for the application is off and should be back in tomorrow.

Once I have the details, I will update the application for you to consider.

Any questions, please contact me on the number below."

8. OTC, in a letter to the appellant dated 12 September 2022 (and marked as sent by email and recorded delivery), said that the appellant's application remained incomplete and that

it must send the information in the annex to the letter (which was identical to the annex to the OTC's earlier letter). The letter said it was a "final attempt" to resolve issues by correspondence and that the appellant must respond by 26 September 2022. It said: "If on that date the application remains incomplete, it will be refused".

Grounds of appeal and information provided by Mr Taylor at the hearing

9. In the appeal form, Mr Taylor on behalf of the appellant said that
 - (a) as shown by his email of 5 September 2022, he had tried to contact the Vehicle Operator Licencing Service (prior to his sending that email) but had been unable to get through;
 - (b) he chased 'Total Compliance' numerous times as the appellant had agreed to appoint them as its external transport manager; unfortunately, the appellant was not contacted even though it was told that the relevant person would be in touch as soon as possible;
 - (c) when the appellant finally logged on to the portal to update the transport manager information, there was a notice to inform it that the application had been rejected. This was harsh in the appellant's view as it had no knowledge of the deadline;
 - (d) the appellant was unaware that notices had been sent to the Vehicle Operating Licence portal. The service should have notified the appellant by email, to prompt it to sign in and respond to any communication received;
 - (e) the appellant's licence application was correctly submitted online; its rejection was due to the loss of communication with Total Compliance and not being aware of documents on the portal.
10. At the hearing, Mr Taylor expanded on the points above. From what he said, it seems that the appellant decided, within days of submitting the application, that it wanted to use an organisation called Total Compliance, rather than the individual named in the licence application, as its transport manager. However, as was stated in the appeal form, Total Compliance did not respond to Mr Taylor when he approached them. Mr Taylor appeared to accept that he received OTC's letter of 12 September 2022 (as it had been sent by email as well as special delivery). Mr Taylor also seemed to accept that, as at 26 September 2022 (the deadline as per OTC's letter), the appellant did not have a transport manager in place.

Jurisdiction of the Upper Tribunal

11. An applicant for an operator's licence may appeal to the Upper Tribunal against refusal of the application: s37(1).
12. The Upper Tribunal has jurisdiction to hear and determine all matters whether of fact or law for the purpose of the exercise of its functions under an enactment relating to transport. It has the power to make such order as it thinks fit or, in a case where it considers it appropriate, to remit the matter to a TC for rehearing and determination.

13. The Upper Tribunal may not take into consideration any circumstances which did not exist at the time of the determination which is the subject of the appeal.
14. The task for the Upper Tribunal on an appeal is to conclude whether or not, on objective grounds, a different view from that taken by the TC is the right one or (meaning the same thing) whether reason and the law impel the Upper Tribunal to take a different view (*Bradley Fold Travel and anor v Secretary of State for Transport* [2010] EWCA Civ 695 at [40]).

The Upper Tribunal's reasoning

15. The question for the Upper Tribunal is whether the TC's decision to refuse the appellant's application for a licence, on the ground that the requirement that the appellant designate a suitable number of individuals who satisfy the requirements set out in paragraph 14A(1) and (3) was not satisfied, was plainly wrong. The Upper Tribunal may only take into consideration circumstances as at the decision date.
16. It is clear that, as at the decision date, the appellant had not met this requirement: the name of an individual had been included in the appellant's licence application form, but nothing as to his qualifications had been provided to the TC (which was unsurprising in the circumstances, as the appellant had changed its mind, soon after submitting the application, about appointing that individual as its transport manager).
17. It follows that the TC was not plainly wrong to refuse the application; rather, the TC was required by s13(5) to do this.
18. It follows that this appeal has to be dismissed, and we gave our decision to that effect orally at the end of the hearing.
19. We note, by way of postscript, that the appellant's appeal form blamed the rejection of its licence application in part on the breakdown in communication with Total Compliance (its preferred transport manager), and in part on OTC's practice of communicating via its portal (with the result that the appellant claimed to be unaware of the 26 September 2022 deadline). Whilst we agree, assuming the accuracy of Mr Taylor's account, with the first apportionment of blame, we cannot agree with the second, given that OTC's 12 September 2022 letter (setting the deadline of 26 September 2022) was sent by email and recorded delivery.

Zachary Citron
Judge of the Upper Tribunal

Sarah Booth
Member of the Upper Tribunal

Gary Roantree
Member of the Upper Tribunal

Authorised for issue on 1 June 2023