

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

**Appeal No. UA-2023-000873-T
[2024] UKUT 292 (AAC)**

**ON APPEAL from a DECISION of a TRAFFIC COMMISSIONER for the LONDON
& SOUTH EAST TRAFFIC AREA**

Before: E Mitchell, Judge of the Upper Tribunal
S Booth, Specialist Member of the Upper Tribunal
K Pepperell, Specialist Member of the Upper Tribunal

Appellant: Samoor Services Ltd

Commissioner's ref: OK2061777

Date of decision: 9 June 2023

Representation: The Appellant in person

Heard at: Field House, Bream's Building, central London on 5
December 2023

DECISION OF THE UPPER TRIBUNAL

This appeal is dismissed.

Subject matter: restricted operator's licence.

REASONS FOR DECISION

Traffic Commissioner's decision

1. In September 2021, the Office of the Traffic Commissioner (OTC) wrote to Mr Samoor (who is the sole director of the Appellant in these proceedings):

(a) in his capacity as director of Sam 24/7 Recovery Ltd, informing him that the Traffic Commissioner had decided to hold a public inquiry before determining the company's application for a standard operator's licence under the Goods Vehicles (Licensing of Operators) Act 1995 (1995 Act);

(b) in his capacity as the holder of a standard operator's licence under the 1995 Act, informing him that the Commissioner was considering revoking his operator's licence.

2. The outcome of that public inquiry was as follows:

(a) the Traffic Commissioner revoked Mr Samoor's operator's licence. The findings relied on by the Commissioner included that Mr Samoor had "allowed the Limited Company to use his Sole Trader Licence", operated from an unauthorised operating centre for nearly a year, failed to comply with prescribed pre-application steps, operated two trailers when his licence only authorised one, failed to comply with tachograph regulatory requirements, performed inadequate roller brake testing and did not have access to appropriate vehicle maintenance facilities;

(b) Sam 24/7 Recovery Ltd's application for an operator's licence was withdrawn.

3. We also note the following observations made in the Commissioner's written reasons for her decision:

"Mr Samoor has begged me time and again today to give him a chance. I have...considered...whether I should suspend the Licence to give him the opportunity. However, in my judgment the answer must be no. This case is far too serious and therefore I need to draw a line under it...I cannot trust Mr Samoor moving forward."

4. On 1 December 2022, Samoor Services Ltd (the present Appellant) made an application to the Traffic Commissioner, on this occasion for a restricted licence under the 1995 Act. As we have mentioned, Mr Samoor is the sole director of Samoor Services Ltd.

5. On 30 January 2023, the OTC informed the Appellant that the Traffic Commissioner intended to hold a public inquiry before determining its application for an operator's licence. The OTC's letter stated that the inquiry was to "determine your fitness to hold a licence due to your previous history and to review the status of the money used to show financial standing".

6. Public inquiry hearings were held on 28 March and 8 June 2023

7. On 9 June 2023, the Traffic Commissioner refused the Appellant's application for an operator's licence. The Commissioner was not satisfied that the Appellant satisfied the requirements of sections 13B, 13C and 13D of the 1995 Act, a decision that was based on the following adverse findings:

(a) since Mr Samoor was the sole director of Samoor Services Ltd, the Commissioner was entitled to treat his conduct as that of the applicant company, including when assessing the company's fitness to hold an operator's licence (Upper Tribunal's decision in *Vision Travel International Limited* (2013/008)) (paragraph 2 of the Commissioner's reasons);

(b) the first hearing, on 28 March 2023. was adjourned because Mr Samoor had failed properly to prepare: "he failed to bring the password to join electronically (despite a timely reminder) and even when he had a paper bundle, he was disruptive and argumentative" (paragraph 3). The Commissioner's agreement to adjourn that hearing was only given after Mr Samoor's assurance that he would attend the next hearing properly prepared, and he was told that he was required to bring the case papers with him to that hearing (paragraph 4);

(c) Mr Samoor attended the hearing on 8 June 2023, but only with the papers that he brought to the previous hearing which was "identical to the unsatisfactory situation at the start of 28 March 2023" and "Mr Samoor expected the clerk to simply produce to him another copy of the bundle" (paragraph 4);

(d) Mr Samoor told the Commissioner that his lawyer had wrongly retained his case papers prior to the second hearing but that was disproven by the only invoice produced for legal services. The invoice was dated 12 days before the first hearing and there was no evidence to support Mr Samoor's assertion that he consulted his lawyer after that hearing. Upon the Commissioner arranging for the lawyer to be contacted to explain the retention of Mr Samoor's papers, he "changed his evidence" and "now said that a friend of his had the papers". The friend was supposed to attend with Mr Samoor on 8 June 2023 but let him down. However, no one had notified the OTC that anyone would attend the hearing with Mr Samoor. The Commissioner found that "Mr Samoor was incapable of giving me a straight answer to a straight question, getting it right first time" (paragraph 5);

(e) Mr Samoor demonstrated by "his words and behaviours on 28 March 2023 and 8 June 2023 that he cannot be trusted." (paragraph 6)

(f) Mr Samoor's approach to compliance had not improved since the 2021 public inquiry. The documentation provided did not support his oral assertions of improvement: he was using the same maintenance contractor about whom concern was expressed in 2021, and driver defect sheets and PMI records remained unsatisfactory (paragraph 7);

(g) "Whilst on paper Mr Samoor meets financial resources, I remain to be satisfied that the funds are genuinely available" given his evidence of financial difficulties (paragraph 7).

8. While the Traffic Commissioner stated that she was not satisfied that the requirements of sections 13B, 13C and 13D were met, her reasons did not expressly link her adverse findings with the requirements of those sections. However, it seems to us that the Commissioner was not satisfied that the requirements of section 13C would be met (satisfactory arrangements and facilities for vehicle maintenance) nor that that the requirements of section 13D would be met (finances), in the light of the findings in paragraph 7 of the Commissioner's reasons. The Commissioner's findings might also suggest that, more generally, she was not satisfied that any of the requirements of section 13C and 13D would be met given her finding that Mr Samoor could not be trusted to run a compliant operation.

Legal framework

9. Section 13(2) of the Goods Vehicles (Licensing of Operators) Act 1995 provides that, on an application for a restricted operator’s licence, the Traffic Commissioner must consider whether the requirements of sections 13B and 13C are satisfied and, if the commissioner thinks fit, whether the requirements of section 13D are satisfied.

10. Section 13(5) of the 1995 Act provides as follow:

“(5) If the traffic commissioner determines that any of the requirements that the commissioner has taken into consideration in accordance with subsection...(2) are not satisfied, the commissioner must refuse the application.”

11. Section 13B of the 1995 Act refers to an applicant being unfit by reason of certain notifiable activities and convictions.

12. Section 13C of the 1995 Act requires (amongst other things) satisfactory arrangements for compliance with drivers’ hours rules and to prevent overloading, and satisfactory arrangements and facilities for maintaining vehicles in a fit and serviceable condition.

13. Section 13D of the 1995 Act requires that the provision of facilities and arrangements for vehicle maintenance are not prejudiced by the applicant having insufficient financial resources.

Grounds of appeal

14. The Appellant’s written grounds of appeal recite portions of the Traffic Commissioner’s reasons for refusing to grant an operator’s licence, followed by this statement:

“I wish to appeal this decision on the grounds that I would like to prove that I am capable of running my business according to the terms and conditions as set out by the Traffic Commissioner and that I can be compliant as requested.”

15. At the hearing of this appeal, Mr Samoor communicated with the Upper Tribunal panel through an Arabic language interpreter. The interpreter confirmed that he had no difficulty understanding Mr Samoor’s Arabic, and Mr Samoor, through the interpreter, confirmed the same.

16. At the hearing, the Upper Tribunal explained to Mr Samoor that, since this was an appeal against the Traffic Commissioner’s decision, his task, as representative for Samoor Services Ltd, was to persuade the Upper Tribunal that the decision involved some relevant error of law or fact. To assist Mr Samoor in this task, the judge read

out relevant parts of the Commissioner's reasons, which were translated by the interpreter, and invited Mr Samoor's comments:

(a) paragraph (3) of the Commissioner's reasons - the Commissioner's description of events at the public inquiry hearing on 28 March 2023 was "accurate 100%";

(b) paragraph (4) – before the second hearing, Mr Samoor provided the OTC bundle to his proposed transport manager who was supposed to meet him on the morning of the hearing and bring the bundle. However, the transport manager did not turn up so that the bundle's absence was "out of my control". The panel asked Mr Samoor whether he explained this to the Commissioner. His response was vague. Mr Samoor told us that he apologised to the Commissioner, but she informed him that a bundle could not be made available on the day of the hearing;

(3) paragraph 5 – Mr Samoor did not dispute what was written in this paragraph but said that it was his lawyer who had sent the OTC bundle to the proposed transport manager. He went on to say that he had done all that was asked of him by Traffic Commissioners, and his vehicles were in perfect condition with a 100% MOT pass rate. Mr Samoor put his trust in a transport manager but had learnt his lesson. He was now helping himself and was willing to do whatever was required of him to run his business, he pays his taxes, respects the law and has never claimed benefits;

(4) paragraphs 6 and 7 – in the past three months, Mr Samoor arranged repair of a faulty engine and had evidence to prove it. He needs a licence because, without one, cannot expand or secure contracts.

17. When asked, towards the end of the hearing, if he had anything to add, Mr Samoor repeated that he was willing to comply with any licence conditions so long as he was permitted to carry on in business.

Conclusions

18. We are not persuaded by the Appellant's arguments and dismiss this appeal. It was the Appellant's responsibility to come to both public inquiry hearings properly prepared and the Traffic Commissioner was entitled to draw an adverse inference from the way in which the Appellant prepared for both hearings. The Appellant told us that his proposed transport manager retained the OTC bundle but, from our reading of the transcript of the second hearing, the transport manager was the same person as the 'friend' whom the Commissioner was told had retained the papers (see page 9 of the hearing transcript). Since the friend and the proposed transport manager were one and the same, the argument that the transport manager was at fault, rather than

Mr Samoor, was therefore dealt with by the Commissioner. The Appellant argues that he has complied with all requirements imposed by Traffic Commissioners but that contradicts the present Commissioner's findings, and the correctness of those findings is not seriously disputed. Finally, evidence about MOT pass rates, or vehicle maintenance, that was not before the Commissioner cannot demonstrate any error of fact or law in the Commissioner's decision.

19. Mr Samoor promised, before us, that he would do whatever was required in order to secure an operator's licence. However, an appeal to the Upper Tribunal against a Traffic Commissioner's decision is not a fresh consideration of the regulatory issue that was before the Commissioner. For this reason, we cannot, in deciding this appeal, take into account commitments now given by Mr Samoor as to his future intentions.

20. Finally, we apologise for the delay in giving this decision. Initially, due to an administrative oversight this case was not marked on the Upper Tribunal's case management system as ready for decision. And, subsequently, the judge was absent from duties while recovering from serious injuries sustained in an accident.

**Authorised for issue by the
Upper Tribunal panel on 5
September 2024**

Section 37(1), Goods Vehicles
(Licensing of Operators) Act
1995.