



**IN THE UPPER TRIBUNAL
ADMINISTRATIVE APPEALS CHAMBER**

**Appeal No UA-2024-000782-T
[2024] UKUT 419 (AAC)**

**ON APPEAL FROM THE TRAFFIC COMMISSIONER FOR THE WALES
TRAFFIC AREA**

Dated: 10 December 2024

Before:

**The Rt Hon Sir Gary Hickinbottom
Ms Leanne Curle-Maddock
Mr David Rawsthorn**

**Judge of the Upper Tribunal
Member of the Upper Tribunal
Member of the Upper Tribunal**

Appellant: DMD Cardiff Limited

Heard at: Cardiff (Cardiff Civil Justice Centre)

Attendance

For the Appellant: Steven Lyle (Director) for the Appellant Company

Date of hearing: 9 December 2024

Date of decision: 10 December 2024

**DECISION OF THE ADMINISTRATIVE APPEALS CHAMBER
OF THE UPPER TRIBUNAL**

**The appeal is dismissed, that dismissal to take effect at 4pm on 7
January 2025.**

Subject Matter

Revocation of a public service vehicle operator's licence.

Cases referred to

Subesh v Secretary of State for the Home Department [2004] EWCA Civ 56

Bradley Fold Travel Limited v Secretary of State for Transport [2010] EWCA
Civ 695

Introduction

1. This is an appeal from the decision of Ms Victoria Davies, the Traffic Commissioner for the Wales Traffic Area (“the Commissioner”) dated 13 June 2024 to revoke the Appellant’s standard public service vehicle operator’s licence under section 17(1) of the Public Passenger Vehicles Act 1981 (“the Act”).
2. We held an oral hearing of the appeal on 9 December 2024. At the end of the hearing, we unanimously dismissed the appeal and directed that that decision should not take effect until 4pm on 7 January 2025; and said that written reasons would be handed down later. These are the written reasons for our decision, which are also agreed by us all.

Relevant Legislation

3. By section 14ZA(2)(d) of the Act, it is a requirement of a standard public service vehicle operator’s licence that “the applicant... is professionally competent”. By section 14ZA(3), it is a further requirement that the traffic commissioner is satisfied that the applicant has designated a transport manager who is professionally competent in accordance with paragraph 6 of Schedule 3 of the Act. If the commissioner is satisfied that all relevant requirements are met, then they are bound to grant a licence (section 14(3)).
4. Where it appears to the commissioner that the requirements of sections 14ZA(2) and/or (3) are no longer satisfied, they must revoke the licence (section 17(1) of the Act); although, before doing so, they may serve a notice setting a time limit for the licence-holder to rectify the situation (“period of grace”). By the retained article 13 of Regulation (EC) No 1071/2009 and regulation 5 of the Road Transport Operator Regulations 2011, that period cannot exceed six months. Paragraph 80 of the Senior Traffic Commissioner Statutory Document No 3 (Transport Managers) (issued under section 4C of the Act) makes clear that:

“... Operators should understand that if, upon expiry of a period of grace, professional competence has still not been demonstrated... then the operator’s licence will have to be revoked.”

Background

5. The Appellant, DMD Cardiff Limited is a company incorporated on 28 October 2019 of which Steven Lyle (“Mr Lyle”) has at all material times

been the sole director and person with significant control. The Appellant is, for all relevant intents and purposes, Mr Lyle in corporate form.

6. The Appellant held a standard public service vehicle operator's licence in respect of its passenger transport business.
7. On 31 January 2024, its Transport Manager gave notice to the Appellant that he would resign as from 29 February 2024. The following day, he gave notice to the Commissioner.
8. On 1 March 2024, the Commissioner gave notice to the Appellant that she considered that the Appellant no longer satisfied the requirements of section 14ZA and that the Appellant should appoint a new transport manager or seek a period of grace to do so within 14 days.
9. The Appellant responded on 8 March 2024 seeking a period of grace which, on 19 March 2024, the Commissioner granted to 1 June 2024. That grant made clear that, by that date, the Appellant would have to have satisfied the Commissioner that a suitable transport manager had been appointed and that the licence would be revoked if they failed to do so.
10. On 17 April 2024, the Appellant applied to the Commissioner for confirmation that Christopher Bowden met all requirements as External Transport Manager.
11. On 16 May 2024, the Commissioner wrote to the Appellant informing them that the application was incomplete, and that further specified information had to be provided by 30 May 2024 failing which the operator's licence would be revoked. The following information was identified as missing: (i) a signed transport manager declaration, (ii) the new transport manager's full original Certificate of Competence in Passenger Transport, (iii) details of the arrangements between the Appellant and the new transport manager, and (iv) a detailed account from the new transport manager as to how they would meet the requirements of the role given their other responsibilities that might impact on their availability. The letter made clear that, if a request for a further extension of time was to be made, it had to be "submitted well in advance" and include further information about the steps taken to provide the further information and when it might be provided. It also made clear that any period of grace could not be more than six months in total. The Appellant did not respond to that letter.
12. On 13 June 2024, the Commissioner revoked the Appellant's licence. It is against that revocation that the Appellant now appeals.

13. It is not clear whether the Commissioner has granted the Appellant a stay of the revocation of the licence. Mr Lyle told us that he received an email from the Commissioner's Office confirming that the Appellant could continue its public service vehicle operations pending this appeal. However, that email was not produced at the hearing. Indeed, there is no evidence before us (other than Mr Lyle's oral assertion) that the Commissioner granted any stay or other form of permission to continue public service vehicle operations pending this appeal. We return to that issue below (paragraph 21).

The Appeal

14. This tribunal can only interfere with a decision of a Traffic Commissioner on appeal if satisfied that the decision was "wrong", as explained by the Court of Appeal in Bradley Fold Travel Limited v Secretary of State for Transport [2010] EWCA Civ 695. The court adopted what was said by Laws LJ in Subesh v Secretary of State for the Home Department [2004] EWCA Civ 56 at [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."

15. Mr Lyle submitted to us that he considered it was unfair that he had had the operator's licence revoked in the circumstances we have described. He stressed the challenges for any new, small business, including the challenge of finding and keeping a transport manager for a small business involving public service vehicles. He said that he had found the completion of the application form for the replacement transport manager difficult, and requiring considerable engagement with the Commissioner's Office. He felt hard done by because (he said) he had lost the vital operator's licence – upon which the whole business was entirely dependent – simply because a signature had been omitted from one of the forms.

16. However, we do not consider that any of Mr Lyle's submissions (in which we include everything that Mr Lyle has put before us) suggests that the Commissioner's decision to revoke the licence was arguably wrong.
17. Given that the information required for assessment of the proposed new transport manager was not provided to the Commissioner within the three month period of grace, the Commissioner's decision that she was not satisfied that the Appellant had a transport manager who was professionally competent in accordance with the statutory criteria – and, hence, that the Appellant was professionally competent – is unimpeachable. In those circumstances, the Commissioner was required by statute (section 17 of the Act) to revoke the licence. The Appellant made no application for an extension of the period of grace; and the six month period has now long since elapsed. Having been regularly revoked, there is no provision by which that revocation can be undone.
18. Whilst we have some sympathy with Mr Lyle who has been attempting to set up a small business in a substantially regulated sector, an operator's licence is part of the regulation of an important area of public activity; and it has obligations attached. Reflecting the statutory guidance quoted at paragraph 4 above, it was made clear by the Commissioner in the letter of 16 May 2024 that, if the specifically requested information was not provided by the end of the period of grace (1 June 2024), then the operator's licence would be revoked. That information was not provided by that time, or indeed before the revocation letter on 13 June 2024. The licence revocation in default had therefore been well posted. Mr Lyle did not take heed of the warnings as he should have done.
19. For those reasons, we consider the Commissioner's decision was not plainly wrong; indeed, on the evidence before her, we consider that it was plainly right. The failure to provide the required application information in time is sufficient to determine this appeal is determinative. That is the basis upon which we dismissed the appeal at the end of the oral hearing.
20. In the light of the uncertainty as to whether the Commissioner has granted a stay of the revocation pending this appeal, we delayed the dismissal of the appeal coming into effect until 4pm on 7 January 2025, for this reason. If the Commissioner has granted a stay on the licence revocation (or some other form of permission to continue to operate a public service vehicle business), then that stay or permission will continue until 7 January 2025, thereby giving Mr Lyle and the Appellant company reasonable time to wind up its business insofar as it involves the operation of public service vehicles in an orderly manner. It is not open to us otherwise to grant a stay. On the other hand, if the Commissioner has not granted any stay or lawful permission, then our

order does not alter that status quo. The letter of 13 June 2024 advises the Appellant of some of the potential consequences of running such a business without a licence, stay or other lawful permission; and, at the close of the hearing, we advised Mr Lyle and the Appellant to seek legal advice before continuing their operations in these circumstances. We reiterate that advice here.

The Rt Hon Sir Gary Hickinbottom
Judge of the Upper Tribunal
Authorised for issue on 10 December 2024