

Appeal No.: T/2017/83

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

**IN AN APPEAL FROM THE DECISION OF:
SIMON EVANS, TRAFFIC COMMISSIONER FOR THE NORTH WEST OF
ENGLAND
DATED 24 NOVEMBER 2017**

Before:

**Judith Farbey QC, Judge of the Upper Tribunal
Leslie Milliken, Specialist Member of the Upper Tribunal
David Rawsthorn, Specialist Member of the Upper Tribunal**

**Appellant: (1) PHILIP RICHARD THOMSON trading as THOMSON
COACHES; (2) PHILIP RICHARD THOMSON**

Attendance: The Appellant and his daughter attended.

Heard at: Field House, 15-25 Bream's Buildings, London EC4A 1DZ

Date of hearing: 14 March 2018

Date of decision: 19 March 2018

DECISION OF THE UPPER TRIBUNAL

IT IS HEREBY ORDERED that the appeal be ALLOWED to the extent that the case is remitted to the same Traffic Commissioner for a re-hearing in relation to all issues.

SUBJECT MATTER: Traffic Commissioner's reasons for decision; fairness

CASES REFERRED TO: *Bradley Fold Travel Ltd v Traffic Commissioner for the North Western Area* [2010] EWCA Civ 695

REASONS FOR DECISION

1. This is an appeal from the decision of the Traffic Commissioner for the North West of England ('the TC') made on 24 November 2017. By that decision, the TC revoked Mr Thomson's public service vehicle operator's licence ('PSV licence') on the basis that he no longer met the requirement of good repute. The TC also disqualified Mr Thomson indefinitely from acting as a transport manager.
2. The background can be shortly stated. Mr Thomson is a sole trader who has held a PSV licence since 1998 with two vehicles authorised at present. It is a condition of the licence that his vehicles should be kept when not in use at an operating centre specified on the licence and should not be parked away from those centres. The licence specified three operating centres. Following complaints from members of the public about where Mr Thomson had parked his vehicles, the Office of the Traffic Commissioner ('OTC') wrote to him saying that the TC was considering the revocation of his licence on the grounds that he was using an unauthorised operating centre. Mr Thomson signed an undertaking not to park away from specified operating centres but the TC was not content with it and decided to hold a public inquiry ('PI').
3. Prior to the PI, Mr Thomson provided a letter of representations to the TC and some accompanying documents. The letter, which was received by the OTC on 12 October 2017, informed the TC that he would not attend the PI due (he claimed) to circumstances beyond his control. He took issue with factual aspects of the statement of a Traffic Examiner and disputed the photographs which the Traffic Examiner produced. He explained that he had parked the vehicles in unauthorised places because of difficult personal circumstances: the floods in Carlisle in December 2015 had forced him out of his home and into temporary accommodation for a lengthy period. This had caused considerable disruption for him, both personally and professionally. He apologised to members of the public inconvenienced by his actions which were out of character.
4. Consistent with what he had said in his letter, Mr Thomson did not attend the PI. In a short written decision, the TC made a number of factual findings which led him to conclude that Mr Thomson had wilfully neglected his responsibilities, flagrantly disregarded the terms of the licence and failed to engage with the regulatory process. The TC decided that, in such circumstances, it was appropriate and proportionate to revoke the licence and to exclude Mr Thomson from the industry.
5. In his grounds of appeal, Mr Thomson makes a number of different points. However we need deal only with his submission that the TC ought to have considered his written submissions set out in the letter. Although Mr Thomson did not attend the PI, he had clearly asked that his written evidence be considered. In granting a stay of his decision, the TC accepted that he did not deal with Mr Thomson's written evidence and also that his failure to do so amounted to a material irregularity. We agree that the TC ought to have dealt with the written evidence. We are bound to set aside his decision because he did not do so.
6. It is understandable that the TC was unimpressed by Mr Thomson's decision not to attend the hearing. He was repeatedly advised in writing by the OTC that his

attendance was very important. He ignored this clear advice, thereby minimising his responsibilities to his regulator. His view (expressed by email to the OTC on 13 November 2017) was that his presence at the PI would add nothing. That view was wrong.

7. However, the TC has overlooked the entirety of Mr Thomson's written evidence. Mr Thomson has held a licence since 1998 with no previous regulatory history. He had put forward mitigating circumstances, namely that his home had been extensively damaged by flooding. He had expressed remorse to the TC. As a matter of fairness, the TC ought to have given careful consideration to these matters in order to decide whether or not they should lead to loss of repute.
8. We have therefore concluded that this is a case where the law and the facts impel us to interfere with the TC's decision in accordance with the decision in *Bradley Fold Travel Ltd v Traffic Commissioner for the North Western Area* [2010] EWCA Civ 695. We are not able to make findings of fact ourselves. It is appropriate to remit the case. As the TC who decided the case has not actually considered either the written or any oral evidence from Mr Thomson, we do not regard him as precluded from further involvement in the case which will be remitted for reconsideration before the same TC. All issues of fact and law must be decided again.
9. At the hearing in the Tribunal, we indicated to Mr Thomson that this was our view. We also warned him to attend the re-hearing. We trust that he will make appropriate arrangements and attend the new hearing in order to put his case fully.

(signed on the original)

JUDITH FARBEY QC
Judge of the Upper Tribunal
19 March 2018