



Appeal No.: T/2018/49
NCN: [2019] UKUT 0076 (AAC)

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

**IN AN APPEAL FROM THE DECISION OF:
TIM BLACKMORE, TRAFFIC COMMISSIONER FOR THE NORTH EAST
OF ENGLAND TRAFFIC AREA
DATED 19th JULY 2018**

**Before: Elizabeth Ovey, Judge of the Upper Tribunal
Andrew Guest, Specialist Member of the Upper Tribunal
David Rawsthorn, Specialist Member of the Upper Tribunal**

Appellant: KULDIP CHAHAL t/a TOON PARTY BUS

Attendance: No attendance

**Heard at: Field House, 15-25 Breems Buildings, London EC4A 1DZ
Date of hearing: 11th December 2018
Date of decision: 5th March 2019**

DECISION OF THE UPPER TRIBUNAL

IT IS HEREBY ORDERED that the appeal be DISMISSED.

SUBJECT MATTER: Restricted licence; main occupation condition; refusal without offer of public inquiry

CASES REFERRED TO: *Bradley Fold Travel Limited and Peter Wright v. Secretary of State for Transport* [2010] EWCA Civ 695, [2011] R.T.R. 13; *T/2016/69 Chigwell Taxi Company Limited* [2017] UKUT 170 (AAC); *T/2016/55 Raymond Kyle Heard, t/a Kyle's Executive Travel* [2017] UKUT 185 (AAC) *T/2017/2 Mohammed Akbar t/a Choudhury Transport* [2017] UKUT 220 (AAC); *T/2016/73 Pauline Marion Hukin t/a Red Fox Travel* [2017] UKUT 226 (AAC)

REASONS FOR DECISION

1. This is an appeal by Mr. Kuldip Chahal (“Mr. Chahal”) against the decision of the Traffic Commissioner for the North East of England Traffic Area (“the TC”) set out in a letter dated 19th July 2018. By his decision the TC refused Mr. Chahal’s application for a restricted public service vehicle operator’s licence. The history leading up to that decision was as follows.

2. On 19th April 2018 Mr. Chahal applied for a restricted licence together with Miss Melissa Armstrong. They stated that they were in partnership and were trading under the name Toon Party Bus and the nature of their business was stag and hen parties. They were proposing to operate a vehicle with more than 9 seats. In answer to the request for details of their business or main occupation, Miss Armstrong said that she was self-employed at Weekenders bands, promoting nightlife in Newcastle city centre, and worked 20 hours a week. Mr. Chahal said he was the landlord of commercial and residential properties and on average worked 30 hours a week but was on call as he owned property and a hotel. Both of them anticipated working a further 10 to 20 hours a week if the licence was granted.

3. The application was accompanied by evidence of financial standing and the question of financial standing has never been an issue.

4. The Office of the Traffic Commissioner (“the OTC”) acknowledged receipt of the application by a letter dated 20th April 2018 in which the next stage in the process was explained and the question was asked whether the licence holder, subject to grant, would be Miss Armstrong or Mr. Chahal. There appears to have been some telephone discussion with the OTC about this and the outcome was that on 23rd April 2018 Mr. Chahal provided a letter stating that he would prefer the application to be solely in his name and asking for the application to be amended.

5. On 25th April 2018 the OTC wrote to Mr. Chahal asking for supporting information and documentation. This included:

- (1) material relating to his main occupation, namely: a copy of his latest self-assessment tax return disclosing his taxable income (preferably to 5th April 2018) along with a copy of his latest accounts; an estimate or actual of his income from that source for the period 6th April 2018 to 5th April 2019; full details of the hours and days he worked; and, if he drove in his main occupation, full details of the hours and days he drove;
- (2) material relating to the proposed public service vehicle operation, namely: what his intentions were in the operation of public service vehicles; what his role would be in the operation; an estimate of his income from that source for the period ended 5th April 2019; and, if known, who would drive the vehicles (with a copy of the driving licence);
- (3) material relating to the proposed operating centre, namely: two or three photographs and a site plan; and confirmation that there were sufficient

parking spaces for the vehicle's exclusive use at all times and whether you could enter and exit the proposed site in forward gear.

6. Mr. Chahal responded as follows by an e-mail sent on 9th May 2018 from Miss Armstrong's account:

"Furthermore to my application you will find attached the required details you have requested. My accounts are only up until 31st March 2017 beginning the 5th April 2016, as my year ending is slightly longer and some of my businesses have now turned into limited companies meaning my first accounts won't be produced for 18 months from the start date of trading. As for the property accounts, they will be produced within the next 6 weeks. The accounts I've sent are sole trader accounts, the sole traders being myself and my mother.

My main occupation is dealing in the properties which takes roughly 30 hours of my time per week. The rest of my businesses are ran with managers, meaning I will have spare time to deal with the bus in person and my role within the operations of the PSV will be the manager.

Subject to the grant of this application, I intend to use the PSV to offer my hotel guests an alternative way to travel to and from the hotel. This will be an optional extra which can be booked directly, or through the stag and hen companies that I currently work with. In addition to, I would like to use the PSV to take bookings for weddings, proms and birthday parties etc. I have attached a cash flow forecast for the party bus to show estimated figures for the forthcoming year.

In regards to the operating centre, I have attached photographs of the Clifton Mount hotel car park and I can confirm that there are sufficient parking spaces available for the PSV at all times. Additionally, the vehicle is able to enter and exit the operations centre in forward gear.

At the present time, I do not have a driver for the PSV but when looking for one in the future, I understand that it is my responsibility to ensure that all drivers of the vehicle, hold a category D entitlement on their driving licence and that they will work to the drivers rules and regulations within the WTD."

7. The documentation which accompanied this letter included:

- (1) a document entitled "Financial report" which was a set of unaudited financial statements for Mr. K. Singh and Mrs. R.K. Chahal trading as The Hotel for the year ended 31st January 2016, prepared by an entity called Accounts Direct;
- (2) a document headed "Mr. K. Singh and Mrs. R. Kaur – property income" which was a single sheet income and expenditure account for the year ended 5th April 2016;
- (3) a cash flow forecast which seems to point to a net profit of about £20,000 in the year July 2018 to June 2019.

8. The OTC replied acknowledging receipt of the photographs and plan of the operating centre, asking for confirmation that the parking space would be for the exclusive use of the PSV at all times, and asking for full details such as measurements, signage and white lines of how daily walk round checks could be carried out. On the question of main occupation, the letter said:

“Based on your email reply I note that you have not demonstrated what you consider your main occupation. Please reconsider this and clarify what your main occupation (or principal form of income) is. You must also provide evidence such as payslips, tax returns and accounts.”

9. On 21st May 2018 Mr. Chahal sent a further e-mail from Miss Armstrong’s account attaching a location plan of the site and what he described as his financial report. On 22nd May 2018 Mr. Chahal sent an e-mail from the account of Andy Singh at Clifton Mount Hotel authorising “my partner Miss Melissa Armstrong” to deal on his behalf with any discussions or matters relating to the operator’s licence he had applied for. On 24th May 2018 Miss Armstrong sent a message referring to a conversation the previous day with the OTC and stating that Mr. Chahal’s main occupation was a commercial and residential landlord. The financial report referred to by Mr. Chahal seems to have consisted of a further copy of the document referred to in paragraph 7(1) above and of additional pages relating to the property income and expenditure account referred to in paragraph 7(2) above showing that that account was an unaudited account also prepared by Accounts Direct.

10. A document entitled “Licensing (PSV) Submission” was then prepared internally by the OTC (“the Licensing Submission”). Although it is headed “This is an OFFICIAL document and is not for disclosure to any third parties without the specific consent of the Traffic Commissioner”, it is included in our bundle and we take it to have been duly disclosed. It began by stating that the application was being brought to the TC’s attention because Mr. Chahal had failed to demonstrate how he met the main occupation criteria.

11. The information put before the TC included the fact that Clifton Mount Hotel Limited was incorporated on 1st August 2017, the directors being Resham Kaur and Kuldip Singh. It was assumed that Clifton Mount Hotel was “The Hotel” referred to in the financial statements which had been provided. Concern was also expressed that the hotel car park was not suitable for the purpose of use as an operating centre because there were safety concerns for other users of the car park. The case worker recommended that the application be refused with the offer of a public inquiry, the grounds of refusal being that the applicant did not satisfy the main occupation condition in section 13(3)(b) of the Public Passenger Vehicles Act 1981 or the requirement in section 14ZC(1)(b) that there be adequate arrangements for securing compliance with the law relating to the driving and operation of vehicles to be used under the licence.

12. The document passed through a further internal stage before it reached the TC. The view expressed at that stage was that the operating centre was suitable but the basic requirement to provide satisfactory evidence of the applicant’s main occupation had not been met. It was therefore recommended that the application be refused without the offer of a public inquiry in reliance on “reg. 6”, which we understand to be a reference

to reg. 6 of the Public Service Vehicles (Operators' Licences) Regulations 1995, S.I. 1995 No. 2908. That regulation authorises a traffic commissioner to refuse an application without offering a public inquiry where the application or the applicant's conduct is frivolous or unreasonable.

13. The TC responded to the recommendation by directing that Mr. Chahal should be given a last chance to provide evidence and that he should be told that unless the evidence showed his main occupation and current breakdown of primary earnings alongside that of the secondary mini-bus operation the application would be refused in reliance on reg. 6.

14. The OTC therefore wrote again to Mr. Chahal on 7th June 2018 stating that he had a final opportunity of 7 days to provide the information requested and that if he did not do so the application would be refused without the offer of a public inquiry. The letter set out the terms of reg. 6 (mistakenly called "section 6"). The information requested was as follows:

"1. You must provide full details and evidence of what you consider your main occupation. This should include evidence such as a copy of your latest tax return. (Please note that you must have one (*sic*) clear and distinct employment/form of income, and not lump several different ventures together e.g. hotelier and property developer.)

2. Provide full details of the hours/days when you carry out your main occupation."

15. Mr. Chahal replied as follows by letter dated 11th June 2018:

"My main occupation is a landlord and I have enclosed an up to date set of accounts showing my income from the commercial and residential properties I rent out. This takes up roughly 18 hours of my time per week where I spread it over three days.

Monday 08.00-14.00: Maintenance on properties

Tuesday 08.00-14.00: Paperwork for the properties

Thursday 08.00-14.00: Collecting rent and maintenance on the properties

Other than this, I intended to use my free time in managing the PSV operator's licence should I be successful in being granted one. With my past experience in running a successful business and using the help of others that currently hold similar licences, my intentions are to grow this venture into a successful side-line business, whilst also creating employment for others.

I have also enclosed evidence of my occupation by including tenancy agreements between myself and my tenants for properties shown in my accounts."

16. The accounts produced were a further set of unaudited accounts for Mr. K. Singh and Mrs. R. Kaur prepared by Accounts Direct and showing property income for the year ended 5th April 2018. Two assured shorthold tenancy agreements were

produced, although they appear to be incomplete, since they refer to “letting provisions”, of which there are none.

17. The Licensing Submission also includes the record of how the matter was then dealt with in the OTC. The case worker concluded that Mr. Chahal had again failed to demonstrate how he met the main occupation condition and recommended that the application be refused without a public inquiry. That was agreed at the next stage, with the comment that the application had no chance of success given the information supplied. The TC agreed.

18. On 19th July 2018 the OTC case worker wrote to Mr. Chahal refusing the application. The material parts of the letter read:

“I would now advise you that the Traffic Commissioner has reconsidered your application, but has refused it under Regulation 6 (which gives the right for a Traffic Commissioner to refuse your application without the offer of a public inquiry should your application be deemed as frivolous).

The Traffic Commissioner has refused your application as he cannot be satisfied that you meet the criteria to hold a Restricted PSV operator licence, under sections 13 and 14 of [the Public Passenger Vehicles Act 1981], specifically:

Section 13(3)(b) – Main occupation

Section 14ZC(1)(b) – Arrangements for driving/operation of vehicles.”

Mr. Chahal was informed of his right to appeal.

19. Mr. Chahal then wrote to the Upper Tribunal appealing against the decision of the TC. He explained that he had been trading for 16 years and had built a very stable company which employed up to 30 people on a weekly basis; that by obtaining the licence he intended to employ further people; and that the family had a close relationship with the local councils and local police who could all provide references. He enclosed a letter dated 16th August 2018 from a taxation consultant, Mr. Marsden, stating that Mr. Singh was employed full time as a director of The Clifton Mount Hotel Limited and the Newcastle Hotel Limited. There is also information about a proposed telematics service provider.

20. The appeal was at one stage struck out because no reply was received to correspondence sent to Mr. Chahal, but was subsequently reinstated when it appeared from an e-mail sent by Mr. Chahal that the correspondence had not been received. The explanation suggested was that a large package would not have fitted in the letter box. Mr. Chahal added:

“I hope you can understand the frustration I am experiencing I have bought a bus since April spending thousands of pounds on this to put an application to be refused on minor points which I have clarify in the appeal letter with proof from my accountant. I am simply trying to open a business which would create jobs and generate an income for my family, I already work closely with Newcastle City Council and they also believe this would be an excellent idea and would reduce up to four taxis at one time entering the city and it would all be recorded

so we know who was in the bus and [who] was driving the bus ensuring the safety of everyone.

I hope this appeal can be heard in my absence ...”

21. The appeal was listed to be heard on 11th December 2018. Although Mr. Chahal had referred to its being heard in his absence, it was formally called in case he had subsequently attended, but he was not present. We therefore proceeded to determine the case in his absence.

22. Section 13(3) of the Public Passenger Vehicles Act 1981 provides:

“A restricted licence authorises the use (whether on national or international operations) of—

- (a) public service vehicles not adapted to carry more than eight passengers; and
- (b) public service vehicles not adapted to carry more than sixteen passengers when used—
 - (i) otherwise than in the course of a business of carrying passengers; or
 - (ii) by a person whose main occupation is not the operation of public service vehicles adapted to carry more than eight passengers.”

23. There is no doubt that Mr. Chahal wishes to operate a public service vehicle carrying more than eight but not more than sixteen passengers in the course of a business. The question is whether the vehicle will be used by a person whose main occupation is not the operation of public service vehicles adapted to carry more than eight passengers. This is what is called the “main occupation” condition.

24. The main occupation condition has been considered in two recent cases which illustrate how it is to be understood and the evidence which will assist in determining whether it is satisfied. First, in *T/2017/2 Mohammed Akbar t/a Choudhury Transport* [2017] UKUT 220 (AAC) the Upper Tribunal set out the relevant part of section 13(3) and then continued at paragraph 14:

“It is clear from those restrictions that Parliament did not intend for restricted PSV licence operators to use their licences to operate vehicles on a commercial basis as their main business, employment or work activity. In order to assess whether a PSV operation is the “main occupation” of an operator, it is obvious that the hours dedicated to the PSV licence along with the income generated from it must be considered together and alongside the hours dedicated and income generated from other “occupations” the operator claims to have. It will of course be for the operator to satisfy the Traffic Commissioner that any particular activity other than PSV operation is an “occupation” from which income is generated and that overall, the PSV operation is not the “main

occupation”. For future guidance, we do not consider that activities such as the pursuit of a hobby, charitable work or other activities which do not generate an income can fall within the definition of “occupation”. Neither do we consider that the receipt of investment or other income which does not require the operator to dedicate anything more than a minimal amount of time to it, can be considered to be an “occupation”. Each case will of course be fact sensitive.”

25. In *T/2016/73 Pauline Marion Hukin t/a Red Fox Travel* [2017] UKUT 226 (AAC), which was decided after *Choudhury Transport*, the Upper Tribunal said at paragraph 24:

“In view of Mrs Hukin’s contention that her main occupation is one of carer, we consider that further guidance is required. Bare assertion will not do. Clear evidence of employment or self-employment will be required. Wage slips, accounts, bank statements, tax returns, P60’s are all examples of evidence which the operator or applicant for a licence will need to produce in order to establish that a particular activity is not only an occupation but their main occupation. In this case, clear evidence of the type mentioned will be required to establish that care is provided for financial reward and on a formal basis rather than care given gratuitously to members of the family out of familial love and duty. Evidence of the type similar to that already mentioned will also be required to show the level of income received and the time spent operating vehicles under the licence. The TC will then be required to undertake an assessment of the evidence and make findings of fact.”

26. In the present case there was a dearth of information directed to the position of Mr. Chahal of a kind which would enable the TC to consider the time intended to be spent on, and the income to be derived by Mr. Chahal from, the proposed Toon Party Bus operation as against the time spent by him on and the income derived by him from other activities.

27. As respects Toon Party Bus, there was a cash flow forecast which, if borne out, showed a net annual profit of about £20,000, but with no indication whether Miss Armstrong remained an active partner in the business and would receive some part, and if so, how much, of the net profit. The forecast is also of little help in showing the number of hours intended to be worked. According to the application, both of them were contemplating spending 10 to 20 hours a week on the business. It also appears, however, that Mr. Chahal was proposing to manage the business but also to employ a driver, either at the outset or at a later date when the business had grown. This leaves the overall size of the party bus operation very unclear.

28. As respects Mr. Chahal’s main occupation, his contention at the time the TC’s decision was made was that it was the occupation of a residential and commercial landlord. Somewhat unhelpfully, the supporting financial documentation was in the names of a Mr. Singh and Mrs. Kaur, or Mrs. Kaur Chahal, but we accept that Mr. Chahal is the Mr. Singh referred to and Mrs. Kaur is his mother. The property accounts produced were originally more than two years old and appeared to show a business conducted in partnership between Mr. Chahal and his mother. They did not show what level of income Mr. Chahal received from the business. Even when recent accounts

were produced, they still appeared to be partnership accounts and did not show Mr. Chahal's income.

29. When asked to give details of the hours worked, Mr. Chahal said that he spent 18 hours a week on his main occupation as a landlord. In terms of time spent, therefore, he seems to have envisaged that when the Toon Party Bus business developed, he would, or at least might, be spending more hours a week on that business than on his claimed main occupation. It is not obvious that the activities identified in relation to his main occupation would in fact take 18 hours each week, especially since they include rent collection and the sample tenancy agreements provided refer to rent as payable monthly and by cleared funds, which suggests (as one would expect) some form of bank transfer.

30. Mr. Chahal originally said in the application that on average he worked for 30 hours a week but referred to being on call as he owned property and a hotel. It is therefore unclear whether he works additional regular hours in the hotel business. He has also said that his businesses, or some of them, were run by managers. The financial information which he produced relating to the hotel appeared to show that this was also a business carried on in partnership with his mother, a business which appears since to have been incorporated. There is no evidence of the income he currently derives from the hotel. Further confusion has now been created by the letter from Mr. Marsden stating that Mr. Chahal is employed full time as a director of two hotel businesses, but we note that that information was not in front of the TC when the decision was made. We also note, however, that the Toon Party Bus business was intended to be operated at least in part as an adjunct to the hotel business, offering an additional facility to guests at the hotel. Nevertheless it seems that it was a service for which hotel guests would pay, rather than a courtesy service.

31. As we have set out above, Mr. Chahal was asked three times to provide evidence such as his tax returns. He did not do so. What he produced was evidence of partnership income which was authorised to be produced to HMRC with no indication of his individual income. He produced no payslips or P60s, although he had become a director of hotel companies. It is simply not possible to know what Mr. Chahal's annual income is or was in the recent past from the activities identified as his main occupation or to be satisfied as to the hours actually spent on those activities.

32. Section 12(4) of the 1981 Act requires an applicant for an operator's licence to give the relevant traffic commissioner such information as he may reasonably require for disposing of the application. The information required by the TC in this case was in accordance with the Statutory Guidance on Small PSV Operations at paragraphs 34 to 39. It seems to us that Mr. Chahal failed to comply with this obligation and that on the basis of the information which had been produced the TC acted properly in refusing the application because he was not in a position to determine that the main occupation condition had been satisfied. The task of the Upper Tribunal, on hearing an appeal from a traffic commissioner, is to review the material before the traffic commissioner, and the Upper Tribunal will only allow an appeal if the appellant has shown that "the process of reasoning and the application of the relevant law require the tribunal to take a different view", as explained in *Bradley Fold Travel Limited and Peter Wright v. Secretary of State for Transport* [2010] EWCA Civ 695, [2011] R.T.R. 13, at paragraphs 30-40. Mr. Chahal certainly does not clear that hurdle.

33. We do, however, have some concerns about the way reg. 6 of the 1995 Regulations was used in this case. This is a topic which was considered in *T/2016/69 Chigwell Taxi Company Limited* [2017] UKUT 170 (AAC), where a very similar course was followed. The Upper Tribunal there considered the decision appealed against as a composite decision consisting of the decision to exercise the reg. 6 power not to offer a public hearing and the decision to refuse the application. It also expressed reservations about the facts that:

- (1) the full reasoning was not communicated to the appellant in written form (because it was contained, so far as appeared, in a confidential licensing submission);
- (2) no written document containing the traffic commissioner's own signature and evidencing the decision was ever produced.

34. The Statutory Guidance on Small PSV Operations refers to the use of reg. 6 at paragraph 30, stating that it can be used where an application is incomplete. This proposition is based on *T/2016/55 Raymond Kyle Heard, t/a Kyle's Executive Travel* [2017] UKUT 185 (AAC), in which the Upper Tribunal adopted the approach that an application might be frivolous if examination of the facts demonstrated a high probability of failure. That is a test which one would expect to be satisfied if the application is incomplete. The Upper Tribunal also stated that there was only so much that a traffic commissioner could reasonably be expected to do to help applicants. The Licensing Submission shows that the TC in the present case proceeded on the basis that the information provided was incomplete or inadequate. It follows from our conclusion in paragraph 32 that if it is necessary to consider the use of reg. 6 as the subject matter of a separate decision, the TC was certainly not plainly wrong in deciding to use it.

35. It is, however, to be noted that the Statutory Guidance also refers to *Chigwell* for the proposition that the reasoning upon which it has been decided that an application is frivolous should be disclosed. As far as we can see, that did not happen in the present case until the appeal was brought. We agree with the reservations expressed in *Chigwell* as set out in paragraph 33 above.

36. The potential difficulties arising from the absence of a written document setting out the traffic commissioner's reasoning and evidencing a decision by the traffic commissioner are illustrated by this case. In addition to the reliance placed on the failure to satisfy the main occupation condition, the letter dated 19th July 2018 from the OTC states that the TC cannot be satisfied that Mr. Chahal meets the requirements of section 14ZC(1)(b) as respects "arrangements for driving/operation of vehicles". It is not possible to discern, even from the Licensing Submission, why this has been added. Although the case worker originally had concerns about the operating centre on the ground it was also used as a car park for guests, this issue was not raised with Mr. Chahal in the letter dated 7th June 2018 and does not seem to have been of concern to the TC at any point. Mr. Chahal nevertheless understandably felt obliged to try to address the issue in his letter dated 14th August 2018 and had to do so without knowing what the real issue was. It follows that if he had made a new application having corrected the lack of information in relation to his main occupation, he might have run

into difficulties relating to the operating centre because he did not understand where the concern lay.

37. This does not affect the fact that the application was incomplete, and so does not affect our decision, but it is clearly a potential problem which might have been avoided if the TC himself had set out his reasoning in a written document.

38. Finally, we wish to make clear to Mr. Chahal that our decision does not involve any adverse implications as to himself or his family, their relationships with the local councils and the local police or his ability to operate a successful business. It may indeed be, as he says, that his proposed business would have benefits in terms of employment, reduction of traffic and safety. It appears to us that he might be well advised to seek professional advice on the question whether this is a case in which a restricted licence is appropriate and if so on the evidence he will need to produce to the TC to satisfy the statutory requirements.

39. In conclusion, we regret the delay in producing this decision, which resulted from Judge Ovey's other professional commitments.

(signed on the original)

E. Ovey
Judge of the Upper Tribunal
5th March 2019