NCN: [2021] UKUT 127 (AAC)

IN THE UPPER TRIBUNAL **Appeal No. T/2021/04**
ADMINISTRATIVE APPEALS CHAMBER
(TRAFFIC COMMISSIONER APPEALS)

ON APPEAL from a DECISION of the TRAFFIC COMMISSIONER

Before: M R Hemingway, Judge of the Upper Tribunal

Appellant: Christopher Johnson

Reference: **PK2026435**

Decided on papers: **27 May 2021**

DECISION OF THE UPPER TRIBUNAL

The appeal is dismissed.

Subject matter:

Licensing requirements for Public Service Vehicle Operators

Cases referred to:

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

REASONS FOR DECISION

Introduction

1. This is an appeal to the Upper Tribunal, brought by Christopher Johnson ("the appellant") from a decision of a Deputy Traffic Commissioner ("the DTC") of 27 June 2020 refusing a licence under section 12 of the Transport Act 1985.

2. Most appeals from decisions made by Traffic Commissioners or Deputy Traffic Commissioners are decided by a panel of the Upper Tribunal comprising a Judge and two (or

sometimes one) Specialist Members. Further, most such appeals are considered at an oral hearing. I have, however, decided this appeal alone and on the papers. I shall explain why.

3. The appellant, in his grounds of appeal, expressed the view that given the difficulties caused by the coronavirus pandemic, it would be "*prudent*" for his appeal to be decided without a hearing. Nevertheless, on 23 March 2021 I set out, in directions, the available options with respect to the holding of a hearing and invited the appellant to express a preference. In particular, it was explained in those directions that the Upper Tribunal could hold a traditional face-to-face hearing of the appeal, a video link hearing, or a telephone hearing, as well as undertaking a consideration of the appeal on the papers. The appellant was also invited to express a preference as to whether his case ought to be decided by a Judge sitting alone or by a panel of the Upper Tribunal. The appellant responded promptly and expressed a preference for his appeal to be decided on the papers by a Judge sitting alone.

4. Rule 34 of the Tribunal Procedure (Upper Tribunal) Rules 2008 ("the Rules") permits the Upper Tribunal to make any decision (which logically must include a decision on an appeal from a decision of a Traffic Commissioner or Deputy Traffic Commissioner) without a hearing other than a decision in immigration judicial review proceedings, so long as it has regard to any view expressed by a party when deciding how to proceed (rule 34(2)). Further, paragraph 4 of Amended General Pilot Practice Direction: Contingency Arrangements in the First-tier Tribunal and the Upper Tribunal of 14 September 2020 creates a presumption against a hearing where the relevant Rules of Procedure (as here) permit a decision without a hearing and where not holding one would be in accordance with the overriding objective (rule 2 of the Rules) and would also be in accordance with the party's rights under the European Convention on Human Rights. In this case, the appellant has clearly consented to his appeal being decided on the papers and without a hearing of any sort, indeed that is what he has actually sought. The appellant's arguments have been sufficiently set out in the documentation in front of me. In light of the above I am satisfied that I am not required to hold a hearing, that my not doing so will not offend the rights of the appellant under the ECHR and that not doing so is in accordance with the overriding objective. Put more simply, I am satisfied it is fair to decide this appeal on the papers.

5. As to my deciding the appeal alone, there is nothing in the Rules which requires the appeal to be decided by a Panel. On my reading Practice Direction: Composition of Tribunals in Relation to Matters That Fall to be Decided by the Administrative Appeals Chamber of the Upper Tribunal on or after 26 March 2014, does not require that either and indeed the default position is that a hearing will be before a Judge sitting alone (see paragraph 3). The real issue in this appeal is one concerning the interpretation of the law. As such, it does not seem to me that there is, in this particular case, given the nature of the arguments which have been raised, a need for the often extremely valuable specialist input which Members of the Upper Tribunal provide. So, I have resolved to decide the appeal alone.

The legislative framework

6. Section 12 of the Transport Act 1985 relevantly provides:

> **12.- Use of taxis or hire cars in providing local services.**
> (1) Where the holder of a taxi licence or a private hire vehicle licence –
> (a) applies to a traffic commissioner for a restricted PSV operator's licence to be granted to him under Part II of the 1981 Act; and

> (b) states in his application that he proposes to use one or more licenced taxis or licenced hire cars to provide a local service:
> section 14 of the 1981 Act (conditions to be met before grant of PSV operator's licence) shall not apply and the commissioner shall grant the application…

7. It is not necessary for me to set out the content of section 14 of the Transport Act 1985. But section 13 defines "*taxi licence*" as "a licence under section 6 of the Metropolitan Public Carriage Act 1869. Section 6 relevantly provides as follows:

> **6 – Grant of hackney carriage licenses.**
> (1) Transport for London shall have the function of licensing to ply for hire within the limits of this Act hackney carriages, to be distinguished in such manner as may be prescribed.

8. Section 8 of the Metropolitan Carriage Act 1869, insofar as it may be relevant, provides:

> **8 – Hackney carriage to be driven by licensed drivers.**
> (1) Transport for London shall have the function of licensing persons to be drivers of hackney carriages.

The background

9. The appellant makes his living from driving a taxi. In a previous decision of the Upper Tribunal it was said that he is what is usually referred to as a "London Taxi Driver" who is "licensed by Transport for London" to ply for hire within a defined area. On 14 March 2017 he was issued by Transport for London with a licence which was to be in force from 24 April 2017 to 23 April 2020. It has presumably been subsequently renewed. A copy of that licence is contained in papers provided by the office of the Traffic Commissioner (OTC). It names the appellant and it indicates that he is "*Licensed to ply for hire in **All London***". The appellant hires his vehicle from a company which owns taxis and hires them out to London Taxi Drivers.

10. On 24 August 2019 the appellant applied to the Office of the Traffic Commissioner ("OTC") for a restricted Public Service Vehicle Operator's License under section 12(1) of the Transport Act 1985. He indicated that he proposed to use the vehicle, under the terms of the Licence if granted, to run a fixed fare passenger service from Bishop's Stortford, via Epping, to Bishopsgate. He also proposed to provide additional services in the event of there being problems with the running of trains in London. The application generated a degree of email traffic between the OTC and the appellant but, on 3 December 2019, a decision letter refusing the application was issued. Although not entirely clear at the time of issuing, it does seem that the content of the letter was approved by and the decision was actually made by (rather than on behalf of) a Traffic Commissioner ("TC"). The core of the TC's decision of 3 December 2019 was to the effect that the appellant did not have "*locus standi*" to apply as he does not hold a private hire licence or a taxi licence". It was also said that, even if he did have locus standi his proposed business model was "*contrary to law*". Pausing there, I do not really see the point in using a Latin phrase in a decision letter or similar document where what is being communicated can be said with the same force and clarity by using a plain English phrase. I am sure that the appellant in this case does know what is meant by locus standi. But some other appellants might not. The decision letter could have said that the appellant lacked the legal right to apply or the legal standing to apply. Whilst I am hopefully not labouring the

point too much, it seems to me that clear and straightforward language (without any Latin unless it is absolutely necessary) is to be preferred.

11. The Upper Tribunal considered the appeal on 26 May 2020. It allowed the appeal and remitted so that the application could be considered afresh by a different TC or DTC. The Upper Tribunal Judge who allowed the appeal and remitted was concerned at the lack of any proper explanation as to how the decision had been reached. He relevantly observed:

> "It is regrettable that there was no clear coherent statement of facts to support the decision made by the Commissioner. That might have prevented this decision having been made in error of law and the Senior Traffic Commissioner might wish to consider the practices operated in this type of case".

12. The decision was, indeed, re-considered by a DTC who, as noted above, also refused the licence application. The DTC's reasoning is contained in written reasons of 27 June 2020. The relevant reasoning is as follows:

> "6. It is agreed that Mr Johnson does not hold a private hire licence. The primary question in this case is whether he holds a "taxi licence" as required in Section 12 of the 1985 Act. In the appeal decision the Tribunal Judge stated, "the appellant clearly had the requisite taxi licence specified in section 12(1) of the 1985 Act"
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> 7. Section 13(3) of the 1985 Act applies to section 10 to 12 of the 1985 Act and defines the term "taxi licence" as meaning a licence under section 6 of the Metropolitan Public Carriage Act 1869 (and other statutory provisions not relevant to this application).
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> 8. Section 6 of the Metropolitan Public Carriage Act 1869 is headed "Grant of hackney carriage licences" and gives Transport for London (TfL) the function of licensing hackney carriages plying for hire.
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> 9. Section 8 of the Metropolitan Public Carriage Act 1869 is headed "Hackney carriage to be driven by licensed drivers" and gives TfL the function of licensing persons to be drivers of hackney carriages.
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> 10. The other issue referred to in the original determination and the appeal decision is the plan put forward by the applicant relating to the local services he was intending to operate if granted a licence. In the appeal decision the Tribunal Judge stated "section 12(1)(b) of the 1985 Act only requires an applicant to propose to use one or more licensed taxis to provide a local service. There is no requirement to commit to a particular route at this stage."
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> 11. Section 12 of the 1985 Act allows a special restricted licence to be granted for "local services" and this term is defined by Section 1 of the Act. The definition includes a provision excluding services where there is more than 15 miles, measured in a straight line between the take up and set down points of the journey or more than 15 miles between either of those points and another point in the journey.
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> 12. There is a requirement to register with the relevant Traffic Commissioner the details of a local service under the Public Service Vehicles (Registration of Local Services) Regulations 1986 and once registered notice has to be given with prescribed timescales of any changes to the local services. Exceptions to

the timescales are outlined in the regulations and applications for "short notice exemption" are made to the Traffic Commissioners.

13. Mr Johnson provided details of the service he hoped to provide, including a regular service between Bishops Stortford and Bishopsgate, London, via Epping High Street. He also said that he wanted to run additional services when "there were problems with the trains to London". The distance between the stopping points was queried in correspondence. It was also pointed out that the "train replacement service" would be unlikely to fit in the regime of registered services' unless the prescribed periods of notice could be met.

Findings

14. As set out in paragraphs 6-9 above a special restricted licence under the 1985 Act can be granted to a person who already holds a taxi licence and in this case this means a licence issued under Section 6 of the Metropolitan Public Carriage Act 1869. Mr Johnson does not hold such a licence as he is a licensed driver whose licence has been issued in pursuance of Section 8 of the 1869 Act. There are two separate licensing regimes under those sections of the Act – one dealing with licensed vehicles (section 6) and the other licensed drivers (Section 8).

15. In support of this finding I have noted in the bundle of documents submitted to the Upper Tribunal there is a copy of the "taxi licence" held by Mr Johnson which, does not show the section of 1869 Act it is granted under, but does say it is a licence authorising him "to act as a taxi driver in London". I have also noted that within the correspondence there is an exchange between Mr Johnson and Ms Harney in the Central Licensing Office where this distinction is pointed out and Mr Johnson accepts that he does not hold the taxi licence for the vehicle. It appears the "Section 6 licence" is held by the company from whom Mr Johnson leases the taxi.

16. Whilst Mr Johnson accepts that he does not hold a licence for the vehicle he does claim in the correspondence that he is "the legal owner of the hackney carriage for the time he rents it from Central London Car & Taxi Hire Limited". I do not agree with Mr Johnson on this point. He is not the legal owner of the vehicle when he is hiring it, and in any event, it is having a licence under Section 6 of the 1869 Act which is the primary requirement and I am satisfied that he does not hold such a licence.

17. Mr Johnson also stated in correspondence that to make a distinction between a licence holder in relation to the vehicle and a licensed driver is discriminatory and potentially in breach of the "2010 Equalities Act" Even if this is the case (which I do not find) it would not be relevant to my decision. Traffic Commissioners are required to implement the law as implemented by parliament. The law as it stans is quite clear and gives no element of discretion – either the person is the holder of a licence under Section 6 of the 1869 Act or they are not".

The grounds of appeal to the Upper Tribunal

13. The appellant says that, having received the DTC's decision, he promptly appealed to the Upper Tribunal and sent his appeal, by recorded delivery, on 13 July 2020. However, the Upper Tribunal does not appear to have received his appeal at that time. The appellant did not

chase matters up until January 2021 because he thought the delay was likely to be attributable to the coronavirus pandemic. He says that, when he discovered that his original appeal had not been received, he submitted a further appeal. That appeal was received by the Upper Tribunal on 18 January 2021. So, the appeal was received later than the permitted time. However, I extended that time under rule 5(3)(a) of the Rules because I accepted that the appellant had attempted to submit his appeal on time; because I thought it plausible given the undoubted disruption to various administrative processes caused by the coronavirus pandemic that the original appeal had somehow gone astray; and because I thought it in the interests of justice that the appeal be considered.

14. The appellant's contention on the appeal is a narrow one. He relies upon a November 2011 document entitled "*Public Service Vehicle Operator Licensing Guide for Operators*" which was issued by the Vehicle and Operator Services Agency, which was an executive agency sponsored by the Department of Transport and which was replaced, on 31 March 2014, by the Driver and Vehicle Standards Agency. He quotes from a small part of the text which appears in section 1, a section which is entitled "Do I need a licence?" The part he relies upon reads as follows:

> "The operator is deemed to be the driver if he/she owns the vehicle and, in any other case, the person for whom the driver works (whether under a contract of employment or any other description of contract personally to do work". Where a vehicle is the subject of an agreement for hire, hire-purchase, conditional sale or loan, the owner is the person in possession of the vehicle under that agreement".

15. It is implicit in his grounds that the appellant regards the guidance as amounting to an authoritative statement of what the law provides. He argues that since the guidance indicates that a person in possession of a vehicle under a hire agreement is deemed to be the owner of that vehicle, and since a licence under section 6 of the Metropolitan Public Carriage Act 1869 is held by the company who has hired the vehicle to him, there is no legal requirement for him to have his own licence under section 6 of that Act. He asserts that the DTC erred in law in concluding otherwise.

The role of the Upper Tribunal on appeal from a decision of a Traffic Commissioner

16. Paragraph 17(1) of Schedule 4 to the Transport Act 1985 provides:

> "…the Upper Tribunal are to have full jurisdiction to hear and determine all matters (whether of law or of fact) for the purposes of the exercise of any of their functions under an enactment relating to transport".

17. The Court of Appeal examined the Upper Tribunal's jurisdiction in Bradley Fold Travel Ltd and Anor v Secretary of State for Transport [2010] EWCA Civ 659. It was said that the burden which an appellant assumes is to show that the process of reasoning and the application of the relevant law requires the Upper Tribunal to adopt a different view to that taken at first instance.

My reasoning on the appeal

18. The appellant does not dispute the DTC's finding that the "*section 6 licence is held by the company from whom he leases the taxi*." He does not dispute the DTC's conclusion that

the licence he does hold has been issued under section 8 of the same Act. I am satisfied the DTC made no error of law or fact in so deciding.

19. The DTC's key reasoning, and the part of his reasoning which is challenged, is that which is set out at paragraph 16 of the written reasons. The appellant argues that the DTC was wrong in concluding that he was required to hold a section 6 licence in circumstances where he is deemed to be the owner of the vehicle and where the company hiring the vehicle to him itself holds a section 6 licence. At least, that is what the argument appears to be. But the key, it seems to me, is the wording of the relevant primary legislation. Section 12(1) provides that a restricted PSV operator's licence is to be granted to an applicant under Part II of the Public Passenger Vehicles Act 1981 where the application is made "*by the holder of a taxi licence*". Thus, there is a requirement in primary legislation that to be given a licence under section 12 of the Transport Act 1985 (which is what the appellant seeks) the applicant has to hold a "*taxi licence*". It is the appellant who is the applicant not the company who has hired a vehicle to him. The term "*taxi licence*", as set out above, is defined under section 13 of the Transport Act 1985 as being a licence issued under section 6 of the Metropolitan Public Carriage Act 1869. There is no dispute about the fact that the appellant does not hold such a licence.

20. To my mind it simply follows from the above that the DTC analysed the relevant law correctly and that there was no entitlement on the part of the appellant to the licence he was seeking. It follows that the DTC did not err in law as the appellant contends.

21. In light of the above, this appeal to the Upper Tribunal has to be and is dismissed.

M R Hemingway
Judge of the Upper Tribunal
27 May 2021