



**IN THE UPPER TRIBUNAL
ADMINISTRATIVE APPEALS CHAMBER**

**NCN: [2021] UKUT 0312 (AAC)
Appeal No. T/2021/52**

Appellant:

IAN JAMES BLACKMUR trading as IJB TRANSPORT

DECISION OF THE UPPER TRIBUNAL

**Her Honour Judge Beech, Judge of the Upper Tribunal
Stuart James, Specialist Member
Andrew Guest, Specialist Member**

Decision date: 13th December 2021

ON APPEAL FROM:

**Tribunal: Miles Dorrington, Deputy Traffic Commissioner for the East
of England**
Tribunal Case No: OF1109134
Tribunal Venue: Field House, 15-25 Bream's Buildings, London, EC4A 1DZ
Date: 7th December 2021

This front sheet is for the convenience of the parties and does not form part of the decision



NCN: [2021] UKUT 0312 (AAC)
Appeal No. T/2021/52

**IN THE UPPER TRIBUNAL
ADMINISTRATIVE APPEALS CHAMBER**

On appeal from the Decision of Miles Dorrington, Deputy Traffic Commissioner for the East of England dated 2nd June 2021

Ian James Blackmur trading as IJB Transport

Appellant

Before: Upper Tribunal Judge Her Honour Judge Beech
Specialist Member of the Upper Tribunal Stuart James
Specialist Member of the Upper Tribunal Andrew Guest

Hearing date: 7th December 2021

Representation:

Appellant: Mr Blackmur attended and was represented by John Routledge,
Accountant of Shackletons

DECISION

The appeal is DISMISSED

Subject Matter: Period of Grace for six months to establish financial standing. Failure to do so within that period. Whether it is permissible for an operator to wait until the period of grace has elapsed before providing the necessary evidence.

Cases referred to: 2012/030 MGM Haulage & Recycling Ltd; T/2011/68 Truckit 247 Limited; Bradley Fold Travel & Peter Wright v Secretary of State for Transport (2010) EWCA Civ.695.

REASONS FOR DECISION

1. This is an appeal from the decision of the Deputy Traffic Commissioner for the East of England ("DTC") dated 22nd June 2021 when he revoked the

Appellant's standard national operator's licence under section 27(1)(a) of the Goods Vehicles (Licensing of Operators) Act 1995 ("the 1995 Act"), the Appellant ("Mr Blackmur") having failed to provide any evidence of financial standing within a period of grace granted to him for that purpose.

2. The background to this appeal can be found in the appeal bundle, a decision of DTC Davis dated 18th December 2020 and the revocation decision letter dated 22nd June 2021 and is as follows. Mr Blackmur was a sole trader with a licence authorisation of one vehicle. His nominated transport manager was Mr Porter.
3. Mr Blackmur and Mr Porter were called to a public inquiry which was held on 25th September 2020 for DTC Davis to consider a wide range of regulatory issues including financial standing. On that date, Mr Blackmur was represented by Mr Routledge; Mr Porter did not attend reporting that his car had broken down. The DTC considered finances. At that stage, whilst financial standing was met, the documents had been supplied in a piecemeal fashion and the DTC determined that the issue should be revisited during the adjourned hearing which took place on 9th December 2020.
4. On 9th December 2020, the DTC made adverse findings with regard to the prohibition history and fixed penalties, the failure to adhere to the rules on drivers' hours and records, the failure to keep the vehicle fit and serviceable, the use of the vehicle without tax and insurance and she found a material change with regard to finances and repute. The requirement of financial standing was not met and the DTC determined having considered Mr Routledge's submissions that a period of grace ("PoG") could be granted for a period of six months. During this period and upon the basis of the representations made, finance should have reached £12,000. The DTC accepted an undertaking in the following terms:

"PoG for 6 months to "allow the Operator to make provisions of "setting aside" an amount of £1,000 per calendar month to satisfy the requirement and still maintain the solvency of his business. The PoG will expire at 23.45 hours on 09 June 2021. All bank statements are to be in the name of the Operator. At present the account is in joint names and this is not acceptable".

The DTC determined that documents provided must be originals and if copies, must be certified as true. She advised that *"a failure to meet the financial undertaking which I have relied upon, will result in a return to PI for breach of undertaking and a failure to meet the mandatory requirement of financial standing"*.

5. As a result of the above undertaking, the DTC felt able to step back from revocation of the licence. She found that the repute of Mr Blackmur and Mr Porter was tarnished and she suspended the licence for a period of two weeks. She also made the following directions:
 - TM to complete TM Refresher course to be completed by the end of April 2021. Certificate to be sent to the OTC within seven days of completion of the course.
 - Operator to complete three day (and not less) introduction to Road Transport Operation. Course to be completed by the end of April

2021. Certificate to be sent to the OTC within seven days of completion of the course.

6. On 10th May 2021, Ms King from the OTC emailed Mr Blackmur reminding him of the two requirements set out in paragraph 6 above and noting that the certificates had not been received by the OTC. Mr Blackmur did not respond. On 18th May 2021, Ms King sent a letter to Mr Blackmur by recorded delivery requesting evidence of compliance with the directions. That elicited an email response with a CPC refresher course certificate dated 22nd March 2021 and in the name of Mr Porter attached to it. The email advised that the three day Road Transport Operation courses had been suspended during COVID although the RHA was intending to adapt a three day course for Mr Blackmur. There was no indication as to when the course may be available. On 27th May 2021, Ms King wrote to Mr Blackmur again warning him that the Traffic Commissioner was minded to suspend his licence and call him to a public inquiry if representations were not received within seven days. That resulted in an email response dated 4th June 2021 which attached an email from the RHA confirming that Mr Blackmur had booked onto a three day course commencing 21st June 2021. A booking form was attached. With regard to finance, Mr Blackmur's email advised:

"I have my bank statements ready, I am just waiting for my 6th statement to be sent to me".

7. On 11th June 2021, Ms King sent a letter to Mr Blackmur by email and recorded delivery advising Mr Blackmur that the OTC had not received any financial evidence from him. The letter went on:

"Please may you send bank statement from January 2021 - May 2021 in the name of the operator immediately. As set out in the decision letter the bank statements must be originals or certified as true

Please respond to this letter within seven days".

Mr Blackmur did not respond to either the email or the letter. Consequently, the matter was referred to DTC Dorrington who determined that pursuant to s.27(1)(a) of the 1995 Act, Mr Blackmur's licence should be revoked and he was informed of this decision by a letter dated 22nd June 2021 (again sent by email and recorded delivery).

8. On 25th June 2021, the OTC received from Mr Blackmur an RHA training certificate and the outstanding bank statements. They had been posted on 24th June 2021. By an email dated 29th June 2021, Ms King acknowledged receipt of the documents but informed Mr Blackmur that as his licence had been revoked, she could not take account of the evidence submitted. This was confirmed by letter dated 30th June 2021.
9. Mr Blackmur asked for the decision revoking his licence to be reviewed. He asked the DTC to consider the fact that he had surrendered his licence disc over the Christmas period as directed and that he had completed the three day training course. The critical element of the PoG was that it expired on 9th June 2021 and was silent as to the date of delivery of the bank statements although he was aware that such delivery must be as soon as possible

following the expiry of the PoG. The issue was that his bank statements ran from the 29th of one month to the 28th of the next month which meant that the bank statement covering the period to 9th June would not be available until 28th June 2021. He was in a position to send the last statement to the OTC. Mr Blackmur considered that these were exceptional circumstances justifying a review of the revocation decision.

10. A review of the decision was undertaken by the Traffic Commissioner (“TC”). In a letter dated 13th July 2021, Mr Blackmur was notified that the TC had found no basis to review the decision. In doing so, he referred to the established principle set out in the appeal decision of 2012/030 MGM Haulage & Recycling Ltd that an operator can be taken to be aware of the various guidance documents issued on behalf of the OTC and therefore the responsibility lay with the operator to comply with the terms of the PofG.

The appeal

11. By way of an Appellant’s Notice filed on 2nd August 2021, Mr Routledge submitted grounds of appeal on behalf of Mr Blackmur for which permission was required to appeal out of time which upon application was granted. The grounds can be summarised in the following way:
 - a) The wording of the PofG should be read to include transactions to the 9th June 2021. Copy bank statements had been available at the public inquiry and they clearly showed that Mr Blackmur’s bank statements ran from 29th of one month to the 28th of the following month. In order to provide bank statements to the 9th June 2021, a certified copy of that statement would have been required whereas the full, original bank statement could be produced in a short period of time after 9th June 2021;
 - b) The direction was silent as to the date of delivery of the documents. Whilst it would be unreasonable to deliver the documents after a significant period of time, the documents in this case were delivered 21 days after the expiry of the PoG (although we note that they were delivered 16 days after 9th June 2021). This was a reasonable period of time, especially given the current COVID restrictions;
 - c) The rejection of the bank statements was prejudicial to Mr Blackmur because he satisfied the financial standing requirements at that time.
12. At the hearing of this appeal, Mr Blackmur appeared with Mr Routledge who described himself in the Notice of Appeal as “*Accountant/Litigator*”. He accepted that he was not legally qualified and that Mr Blackmur required permission for him to be represented by Mr Routledge. In view of the fact that Mr Routledge had represented Mr Blackmur before the DTC, we granted Mr Blackmur’s application.
13. Mr Routledge repeated the contents of the grounds of appeal. He relied upon the Upper Tribunal decision of T/2011/68 Truckit 247 Limited in support of his submission that evidence of financial standing could be supplied after the PoG had expired. He submitted that to determine that the financial evidence had to be provided within the PoG amounted to a penalty, particularly when Mr Blackmur had complied with all of the other requirements. He further submitted that whilst the OTC had chased Mr Blackmur for evidence of compliance with the other requirements, they had failed to take the opportunity

in that correspondence to set out what was required of Mr Blackmur with regard to the PofG and to inform him that the financial evidence was required prior to 9th June 2021.

14. Mr Routledge submitted that the time Mr Blackmur had taken to submit the financial evidence was not unreasonable bearing in mind his understanding of what was meant by the PoG. He submitted that Mr Blackmur was in a position to comply with all of the regulatory requirements of his licence and he asked for “mercy”.

Discussion

15. By virtue of s.13A(2)(c) of the 1995 Act, a holder of a standard licence must satisfy the requirement of appropriate financial standing at all times. It is a continuing obligation and in this case Mr Blackmur needed to show that he had the sum of £8,000 readily available to him.

16. If it appears to a traffic commissioner that an operator no longer satisfies the financial standing requirement, he **shall**, by virtue of s.27(1)(a) of the 1995 Act, revoke the operator’s licence. Before doing so, he must give the operator notice that he is considering giving such a direction (s.27(2)) and that notice may set a time limit, in accordance with Article 13.1 of Regulation (EC) No. 1071/2009, to give an operator an opportunity to rectify the situation (s.13(3A)). That notice was given during the public inquiry. By virtue of Article 13.1(c), the maximum time limit for rectifying financial standing is six months. The wording of s.13(3B) of the 1995 Act is important:

“If the licence-holder rectifies the situation within the time limit set under subsection (3A), the traffic commissioner must not make the direction under subsection (1)”.

The combined effect of the above legislative provisions is that the operator must satisfy the traffic commissioner of the requirements within the PofG. There is no extension of time in order to supply the necessary evidence. That should have been done before the 9th June 2021. The start and finish dates on Mr Blackmur’s bank statements were irrelevant. If that was unclear at the end of the public inquiry (the Tribunal not having the benefit of a transcript of the hearing), it would have been clear from the letter sent by Ms King on 11th June 2021, asking for the bank statements for the period January to May 2021. That is what was expected. It is of note that these bank statements were in Mr Blackmur’s possession by the 4th June 2021 as he refers to the same in his email to Ms King. However, he still did not file them when prompted to do so by Ms King.

17. Once a PofG has expired without the operator complying with its terms, a traffic commissioner **shall** revoke the licence when the matter is referred to him. The fact that Ms King wrote to Mr Blackmur on 11th June 2021 giving him seven days to provide bank statements does not detract from the above. The OTC may have been throwing Mr Blackmur a life-line before the matter was referred to the traffic commissioner for the inevitable order of revocation.

18. Mr Routledge's interpretation of the relevant legislation is misconceived. Likewise, his reliance upon the Upper Tribunal decision of Truckit (supra) as it is not a case involving a PoG.
19. In all the circumstances we are not satisfied that the DTC's decision was plainly wrong in any respect (indeed he was plainly right) and neither the facts or the law applicable in this case should impel the Tribunal to allow this appeal as per the test in Bradley Fold Travel & Peter Wright v Secretary of State for Transport (2010) EWCA Civ.695. The appeal is dismissed.
20. The Tribunal has already advised Mr Blackmur that if he wishes to continue operating, he must make a new application for an operator's licence along with a request for an interim licence.



**Her Honour Judge Beech
Judge of the Upper Tribunal
13th December 2021**