



NCN: [2021] UKUT 74 (AAC)
Appeal No. T/2020/68

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

ON APPEAL from the DECISION of the TRAFFIC COMMISSIONER

Before: M Hemingway: Judge of the Upper Tribunal

Appellant: Mohammad Hussain Mansha t/a Taxi 8

Reference: PM2029286

Date of Decision: 22 March 2021 (on the papers)

DECISION OF THE UPPER TRIBUNAL

This appeal to the Upper Tribunal is dismissed.

SUBJECT MATTER

Adequacy of reasons
The “main occupation” test

CASES REFERRED TO

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

REASONS FOR DECISION

1. This appeal to the Upper Tribunal has been brought by Mohammad Hussain Mansha (the appellant) from a decision of the Traffic Commissioner for Scotland (TC) embodied in a letter of 3 November 2020 to refuse his application for a restricted public service vehicle operator’s licence.

2. I have decided this appeal, on the papers, sitting alone. As to how that has come about, the appellant was sent listing and case management directions on 5 February 2021. Those directions afforded him an opportunity to express a view as to whether his appeal should be decided by a Judge of the Upper Tribunal sitting alone or by a Panel comprising a Judge and one or two Members of the Upper Tribunal. It also afforded him an opportunity to express a view as to whether there should be a hearing of his appeal, if so what form the hearing should take or whether it should be decided on the papers. The appellant did not respond. So, on 2 March 2021 the appellant was sent directions informing him that his appeal would be decided by a Judge sitting alone on the papers. He was given 14 days to send to the Upper Tribunal any written material not already sent which he wished to rely upon. But again, he did not respond.

3. The appellant has been given a chance to request a hearing and has not done so. Rule 34 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (the Rules) permits the Upper Tribunal to make a decision in a case such as this without a hearing. Paragraph 4 of Amended General Pilot Practice Direction: Contingency Arrangements in the First-Tier Tribunal and Upper Tribunal 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 and would be in accordance with the rights of the parties under the European Convention on Human Rights (ECHR). Here the issues to be decided are straightforward and I am satisfied it is fair and does not bring about a breach of anyone's rights under the ECHR for me to decide the appeal on the papers. As to deciding it alone, nothing in the Rules requires an appeal such as this to be decided by a Panel. 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 it either. The issues raised by this appeal do not call for the valuable specialist expertise which Members of the Upper Tribunal bring. So, I have resolved to decide the appeal alone.

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

- (3) 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.

5. Section 14ZC(1)(b) imposes a condition that there be adequate arrangements for securing compliance with the requirements of the law relating to the driving and operation of the vehicles which are to be used under the terms of the licence.

6. The appellant currently makes his living as a self-employed taxi driver. He sent his application for a restricted licence, with a view to his commencing a business operating public service vehicle,s to the Office of the Traffic Commissioner (OTC) on 6 July 2020. He said he proposed to operate under the terms of any licence which might be granted as a sole trader. In response to a question asking for details of his main occupation or business (see section 13(3)(b)(ii) above) he simply wrote "25 hours per week". In a letter of 21 July 2020 the OTC requested further information concerning the appellant's financial standing,

the proposed operating centre and clarification through documentary evidence concerning the nature of and his degree of involvement in his main occupation. The claimant provided an e-mailed response which included some bank statements, evidence of credit facilities, photographs showing aspects of the proposed operating centre and a set of accounts covering a one-year period relating to his taxi driving. The accounts showed a net profit of slightly in excess of £8,500 for the 12-month period ending 5 April 2019. It is clear from internal memoranda provided by the OTC to the Upper Tribunal as a consequence of this appeal being lodged, that a TC considered matters on 22 October 2020. The TC relevantly wrote *“I have reviewed with care all the documentation on the application. The applicant openly concedes that up to 40 hours a week will be spent in PSV with taxi driving being offset accordingly, maximum overall driving between both being 50 hours. It is clear that main occ is not satisfied. The application is refused. The position is hopeless to the extent that the application must be considered frivolous”*.

7. On 3 November 2020 the OTC wrote to the appellant informing him of the decision to refuse his application. Initially an incomplete version of the letter was sent but this was corrected very shortly afterwards. The salient part reads:

“Section 13(3)(b)-A restricted licence authorises the use of public service vehicles not adapted to carry more than sixteen passenger seats when used i) otherwise than in the course of a business of carrying passengers: or ii) by a person who’s main occupation is not the operation of public service vehicles adapted to carry more than eight passengers.

Section 14ZB(1)(b)-That there will be adequate arrangements for securing compliance with the requirements of the law relating to the driving and operation of those vehicles.

The refusal of this application is due to the failure to satisfy the Traffic Commissioner with the above requirements. It is noted the two standard letters highlighted above requested information relating to the requirements and criteria to hold a PSV operator licence, and you have failed either to respond to the letter or provide satisfactory information”.

8. The letter went on to add that the TC had also decided to invoke Regulation 6 of the Public Service Vehicles (Operators’ Regulations 1995 and was not, therefore, offering a Public Inquiry (PI) prior to making his decision to refuse the application. I note, at this stage, that although there is a reference to two standard letters having been sent out previously, it appears there was only one. I also note that the reference to section 14ZB was, in context, clearly an intended reference to section 14ZC. But the slight error does not matter because the relevant content of section 14ZC was accurately set out.

9. The appellant appealed to the Upper Tribunal. His simply stated grounds of appeal asserted that he had responded to the OTC’s request for more information. He has not subsequently provided any further evidence or argument.

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

“The Upper Tribunal are to have full jurisdiction to hear and determine on all matters (whether of law or of fact) for the purpose of the exercise of any of their functions under an enactment relating to transport”.

11. Paragraph 17(3) of that Schedule provides that the Upper Tribunal may not take into consideration any circumstances which did not exist at the time of the determination which is the subject of the appeal. The Upper Tribunal’s jurisdiction was examined by the Court of Appeal in *Bradley Fold Travel Ltd & Anor v Secretary of State for Transport* [2010] EWCA Civ 695. It was stated that the Upper Tribunal has the duty, on an appeal to it, to determine matters of fact and law on the basis of the material before the TC but without the benefit of seeing and hearing from witnesses. It was further stated that the burden lies on an appellant to show, in order to succeed on appeal, that the process of reasoning and the application of the relevant law requires the Upper Tribunal to adopt different view to that taken by a TC.

12. The appellant had to show, in order to secure the licence he was seeking, that the activity he intended to pursue under the terms of the licence would not amount to his main occupation. He did indicate, in his written response to the OTC’s letter of 21 July 2020, that he might work up to 40 hours per week in the business he proposed to run under the terms of the restricted licence. He offered no explanation as to how, that being so, it could be thought conceivable that such would not amount to his main occupation. That being so, I am comfortably satisfied that it cannot be said that the TC’s decision as to the main occupation test was plainly wrong. There is nothing at all to suggest that it was made in error of law. Indeed, I do not see how, on the material available, the TC could rationally have reached a different conclusion. For the same reasons I would conclude that the TC did not err and was not plainly wrong in deciding not to offer a PI. The case as put to him was hopeless.

13. The above is sufficient to dispose of this appeal. But it is nevertheless right to point out that, whilst the limited explanation given as to the negative decision (from the appellant’s perspective) on the main occupation test was adequate against the above background, it would have been helpful if the reasoning contained in the internal memoranda regarding the stated intention to work up to 40 hours in the relevant business had been communicated in the letter of 3 November 2020. That might have led to the appellant realising he had little or no prospect of winning an appeal and might, therefore, have saved him, the OTC and the Upper Tribunal some time and trouble in dealing with matters relating to the appeal. Further, the part of the decision relating to section 14ZC(1)(b) does not seem to have been explained at all except in the most general of terms. I am not able to find anything in the internal memoranda which assists here and had that been the only basis for refusal I would quite possibly have set aside the TC’s decision on the grounds of inadequacy of the communicated reasons. But none of that assists the appellant.

14. The appeal is dismissed.

M R Hemingway
Judge of the Upper Tribunal
Dated: 22 March 2021