



NCN: [2022] UKUT 288 (AAC)
Appeal No. UA-2022-000361-T

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

**ON APPEAL from a DECISION of the TRAFFIC COMMISSIONER for the NORTH
WEST of ENGLAND**

Before: M Hemingway: Judge of the Upper Tribunal
A Guest: Member of the Upper Tribunal
G Roantree: Member of the Upper Tribunal

Appellant: Mohammed Assan Momin

Reference No: PC2050663

Representation:

For the appellant: In person

Heard at: Bradford

Date of Hearing: 28 October 2022

Date of Decision: 2 November 2022

DECISION OF THE UPPER TRIBUNAL

This appeal is dismissed.

Subject matter:

Restricted licences and the main occupation test
Adequacy of reasons in decision letters

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 Mohammed Assan Momin (“the appellant”) and is directed towards a decision of the Traffic Commissioner (“the TC”) embodied in a letter of 3 March 2022 refusing to grant his application for a restricted passenger service vehicle operator’s licence.

2. The appeal was heard at Bradford on 28 October 2022. The appellant attended the hearing and represented himself. He acknowledged some failings on his part with respect to the information he had provided to the Office of the Traffic Commissioner (“OTC”) in support of his application but suggested, in effect, that he had learnt from the process and he asked us to allow his appeal.

3. It is worth saying something about the legislation we have had to consider. Section 13 of the Public Passenger Vehicles Act 1981 (“the Act”) provides that a restricted public service vehicle operator’s licence authorises the use of public service vehicles “... *by a person whose main occupation is not the operation of public service vehicles adapted to carry more than eight passengers*”. We shall refer to that condition as “*the main occupation test*”. Section 14ZB of the Act requires a TC to be satisfied, prior to granting such a restricted licence, that the applicant is of good repute and has appropriate financial standing. Section 14ZC requires a TC to be satisfied that there will be adequate arrangements for securing compliance with the requirements of the law relating to the driving and operation of vehicles to be used under the terms of the licence. Regulation 6 of the Public Service Vehicles (Operators’ Licences) Regulations 1995 provides: “*a traffic commissioner shall not refuse an application for a licence or grant it other than as requested without giving to the applicant an opportunity to state his case at an inquiry save where the application or the applicant’s conduct in relation to it is frivolous or unreasonable*”.

4. It is also worth setting out something of the history. Mr Momin works as an operator answering calls at a taxi firm. He was also doing so at the time he sought his licence. He works 30 hours per week and, according to wage slips he provided at the time of his licence application or shortly afterwards, he earns approximately £1,400 per month after deductions. His application was prompted by a desire on his part to become a sole trader in the business of transporting passengers for profit.

5. The application was made on 5 December 2021. The appellant, provided, amongst other information, details of his above employment. He said that he hoped, if given a licence, to operate his proposed business at weekends, that he would commence trading with only one vehicle, but that he hoped, in time, to go on to have a fleet of vehicles and to employ drivers. He disclosed a number of criminal convictions, the most recent being for a refusal to provide a specimen for analysis in 2011. None of the convictions had led to incarceration.

6. On 22 December 2021 the OTC wrote to the appellant seeking further information and documentation. Importantly for the purposes of this appeal, it was explained to him that in order to obtain the type of licence he was seeking, he would have to show that his proposed

operation of a public service vehicle business would not constitute his main source of income (that being a reference to the main occupation test), and he was asked to provide quite extensive information, backed up by documentation where appropriate, as to his current earnings, his proposed earnings from the business and the nature and extent of his likely involvement in the business. The appellant replied, though it is fair to say the additional information he provided was largely uninformative and lacking in detail, particularly with respect to the proposed business. On 24 January 2022 the OTC wrote to him again seeking further details, largely in relation to the way in which it was proposed to operate the business. The appellant did, it is apparent to us, make a genuine attempt to answer the OTC's questions, but again what was said lacked detail.

7. Matters were considered internally by the OTC as is evidenced by written memoranda disclosed for the purposes of this appeal. It is apparent from the content of the memoranda that, on 22 February 2022, a member of the OTC's staff carried out an initial assessment and, whilst taking the view that requirements relating to finance and to the proposed operating centre had been met, thought the appellant ought not to be offered the opportunity to attend a public inquiry ("PI") and that the application ought to be refused on the papers on the sole basis that the appellant had not shown that the proposed business would not constitute his main occupation. On 3 March 2022 a different (presumably more senior) member of the OTC's staff agreed with that recommendation. The recommendation was then put before the TC who, on 3 March 2022 wrote or noted "*I am refusing this application on the grounds that the applicant has failed to satisfy me that he meets the main occupation criteria. The failure to respond fully to OTC correspondence about the matter also means that I cannot be satisfied that the appellant can be trusted to be compliant if I granted a licence, hence I record the application is refused on grounds of good repute as well. I agree the application has been so poorly submitted that it should be treated as frivolous as there is a high probability it would fail I apply Regulation 6 and the refusal should not be accompanied by the offer of a public inquiry.*"

8. The decision letter of 3 March 2022 was then despatched. However, it has to be said that there is something of a mismatch between what is said in the internal memoranda and what found its way into the decision letter. There are also in our view, irrespective of that mismatch, some concerns about the quality of the decision letter.

9. In looking at the TC's note when read in conjunction with the terms of the recommendation made by the OTC's staff members, it seems clear that the intention was to refuse the application under the main occupation test and on the grounds of repute but on no other bases. The letter did indicate that the application was being refused under the main occupation test but did not indicate refusal on the grounds of repute. It did, however, indicate two additional bases for refusal being financial standing (though satisfaction of this criteria had not previously been placed in issue and had been accepted as satisfied in the OTC staff memoranda) and a failure to put adequate arrangements in place for the securing of compliance with the requirements of the law relating to the driving and operation of vehicles. The decision letter does not, on our reading, contain an explanation as to why the application was being refused on the latter two bases or indeed the main occupation test basis other than to indicate a failure to "*provide satisfactory information*" in response to two letters seeking such information. The letter does refer to the decision not to offer a PI which is said to have been taken due to there being "*a high probability of the failure of the application*".

10. The appellant appealed to the Upper Tribunal. In his written grounds of appeal, he focused (appropriately in our view) on the issues concerning the main occupation test. He explained that he had done his best to answer the various requests for information which had been sent to him; he said an estimated figure he had provided for the likely earnings he would derive from the proposed business had been gross not net (with the seeming suggestion the TC might have wrongly thought otherwise); that his actual income from the business would be very significantly lower than previous indications he had given; and that although he had at one stage suggested he would seek a “*school contract*” for the business, he had realised he would not be able to obtain such a contract for at least one year.

11. At the hearing the appellant said that, whilst he had indicated anticipated earnings of £25,000 per annum during the course of the application process, he now thought his net earnings, making allowances for business expenses, would be in the region of £3,000 per annum. He told us he lacked experience of making licence applications and so had rushed things and concentrated on simply answering specific questions put by the OTC rather than giving an overview as to the intended business. He had not taken professional advice in order to make and pursue his application because of the cost. He had been confused. Whilst there may have been inconsistency in what he had said to the OTC that had been because “*I didn’t know which way to go*”. He said if he had been offered the chance to attend a PI (once it had been explained to him what one was) he would have taken it.

12. As to the approach we must take with respect to an appeal such as this, paragraph 17 of Schedule 4 to the Transport Act 1985 (as amended) provides that the Upper Tribunal “*are to have full jurisdiction to hear and determine all matters whether of law or of fact for the purpose of the exercise of their functions under an enactment relating to transport*”. However, it was explained by the Court of Appeal in *Bradley Fold Travel Ltd & Anor v Secretary of State for Transport* [2010] EWCA Civ 695 that the Transport Tribunal (now the Upper Tribunal) will not be required to rehear all the evidence by conducting what would, in effect, be a new first instance hearing. Rather, it has the duty to hear and determine matters of fact and law on the basis of the material before the TC (though see below) but without having the benefit of seeing and hearing from witnesses. The appellant assumes the burden of showing that the decision appealed against was wrong. In order to succeed an appellant must show that the process of reasoning and the application of the relevant law requires the adopting of a different view. As to factual matters or matters of judgement it is necessary to show that the decision of the TC was plainly wrong. Further, paragraph 17(3) of the same Schedule provides that in deciding an appeal 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.

13. As to disposal, the Upper Tribunal has power, if allowing an appeal, to make such order as it thinks fit or to remit the matter back to the TC for rehearing if it considers such a course to be appropriate.

14. We have looked at the question of whether the decision to decline to offer a PI was lawfully open to the TC or was otherwise plainly wrong. The relevant test has been set out above. It is right to say that the appellant did not, in his grounds of appeal, complain about there not being an offer of a PI but he did, as we say, indicate that had he been offered one he would have availed himself of it.

15. We do not think the appellant's conduct can rationally be characterised as frivolous or unreasonable. We accept he could be criticised for failing to look into matters more fully or for failing to acquire some knowledge of the main occupation test, perhaps through research or the seeking of professional advice, prior to making his application. But what comes across to us from the papers, and we are fortified in our view as to this having heard him, is a degree of naivety and a quite comprehensive lack of awareness of licensing requirements rather than, for example, a stubbornness in pursuing an application he knew was bound to fail or an intention to simply and pointlessly create unnecessary work for the OTC. When he was asked questions in letters sent to him by the OTC, he answered them and did so in the time given. His answers were wholly insufficient to secure him his licence, but we are satisfied he attempted to answer as best he could. There was nothing frivolous or unreasonable in his conduct. As to the application itself, we do not see that the making of it was unreasonable. He was entitled to make the application he did make, and he was pursuing it with genuine intent. Was the application frivolous? The TC and the OTC appeared to take the view that it was, because the prospects of success, on the material provided, were very low. But the term "*frivolous*" is a strong one and we do not think the mere fact that an application is weak means it may necessarily be so categorised though we accept the pursuing of a very weak application in the face of letters from the OTC drawing attention to such weaknesses might be. But in the end, we have not found it necessary to decide whether the application in this case was frivolous (though we are satisfied it was not unreasonable and that the appellant's conduct was not frivolous or unreasonable) because we are satisfied any error as to that on the part of the TC was not material. We shall return to this and explain that conclusion a little later in this decision.

16. We have next asked ourselves whether the refusal on the grounds of financial standing and the refusal on the ground relating to the requirements of the law regarding the driving and operation of vehicles can be sustained. In truth, we think these bases for refusal might well have been included in the decision letter by mistake. We say that because those grounds were not obviously placed in issue during the application process, and it was specifically accepted by the OTC staff in the memoranda referred to above that the financial standing criteria had been met. Further, the TC had in his memo, specified refusal on the bases of the main occupation test and repute but not those other grounds. Had the decision letter relied only upon financial standing and the appropriateness of the arrangements with respect to the vehicles we would have felt compelled to allow the appeal. That is because it appears to us that financial standing was met; because we are unsure as to the basis for the refusal on the appropriate arrangements issue; and because the decision letter fails to explain to any meaningful extent the reasoning relied upon.

17. We now turn to the main occupation test which is really the crux of this appeal. Whilst we do not think the appellant's conduct may fairly be characterised as frivolous or unreasonable, we do think the TC was entitled to have substantial concerns as to the quality of evidence and information he had provided with respect to the proposed new business, what he was likely to derive from it in terms of earnings and what his involvement in it would be. In truth, his application with respect to these matters was, if we can put it this way "*all over the place*". He had, in his application form, seemed to suggest extensive plans for rapid expansion which were not obviously consistent with the proposition that his existing employment with a taxi firm would be or was intended to be his main employment. He suggested, in his application form, that he would work in the proposed business only at weekends. In his first response to the OTC, he said he was unsure as to which days of the week he would work. In his second response to the OTC, he said he would work 3-4 hours per day from Monday to Friday. He

said in pursuing his application he would seek school contract work but has later indicated that, at least initially, he would not. In his first response to the OTC, he intimated he would employ drivers in the proposed business. In his second response to the OTC, he said he would be the only driver. He provided, as part of the application process, an estimate of income from the proposed business of £25,000 per annum. He has now resiled from that but did not, in any event, provide evidence as to what earnings he might be able to derive from it.

18. In view of the above, we are comfortably satisfied that the TC did not err in concluding the appellant had failed to show satisfaction of the main occupation test. The evidence he provided was vague, insubstantial and with respect to certain key points contradictory. We are troubled by the lack of meaningful reasoning in the text of the letter and would stress that adequate reasons must be provided in decision letters because an appellant is entitled to know why he has failed and because it is only once the basis for failure is understood that a properly informed decision as to whether to appeal and if so on what basis may be taken. But we have drawn back from allowing the appeal simply in consequence of inadequate reasoning because we are satisfied, in the circumstances of this case, that the existing documentation, the OTC's letters, and the overall context led to the appellant understanding why his application had been refused, and such an understanding was evident at the appeal hearing. Nonetheless, we stress the importance of a properly reasoned decision letter being produced in all cases. As to the question of the refusal to offer a PI, we accept the appellant's assertion to us that he would have attended one but we think, had he done so, the overall picture suggests that the information he would have then provided at it would have been beset with the same problems we have identified above such that the holding of one could not have impacted the outcome.

19. There is one further point we would wish to make. It does appear, from the reasons we have set out above, that the TC was minded and indeed had the intention to refuse the application (in addition to the main occupation issue) on the basis of repute. It seems, according to the content of the internal memoranda, that was because of the view he had taken that the appellant could not be trusted to be compliant with regulatory requirements in consequence of his failure to "*fully respond to OTC correspondence*". As it turns out and as we have said, the concern about repute did not find its way into the decision letter and so did not form a part of the decision under appeal before us even if its omission was simply an error. Thus, we do not really need to say anything about it. But we would point out that there is nothing before us to suggest the appellant's failings in that regard were attributable to anything other than naivety and inexperience, that we detect no indications of dishonesty, that he did actually offer answers to all of the questions put to him, and that he did so within the time given. Further, his responses were polite. Putting all of that together we think the indication that the application should have been refused on the grounds of repute was, at best, at the extreme end of harsh. But as we say, the application was not actually refused on the basis of repute.

20. We uphold the TC's decision on the main occupation test and that means we must dismiss this appeal. But we do not discount the possibility that if the appellant is able to get his act together and make a more thought through and better evidenced application at some point in the future, he might succeed in obtaining a licence be that a restricted or a standard licence. But that will be a matter for a TC to decide in the event of such an application being made.

21. The appeal is dismissed.

M Hemingway
Judge of the Upper Tribunal

A Guest
Member of the Upper Tribunal

G Roantree
Member of the Upper Tribunal

Authorised for issue on 2 November 2022