

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

**Appeal No. UA-2023-000511-T
[2024] UKUT 337 (AAC)**

ON APPEAL from a DECISION of the TRAFFIC COMMISSIONER for WALES

Before: Mr E Mitchell, Judge of the Upper Tribunal
Mr S James, Specialist Member of the Upper Tribunal
Mr D Rawsthorn, Specialist Member of the Upper Tribunal

Appellant: Morgan J Ltd

Commissioner's ref: OG2063295

**Date of Commissioner's
decision:** 29 March 2023

Representation: Mr J Morgan (director of the Appellant company)

Heard at: Cardiff Civil Justice Centre on 16 October 2023

DECISION OF THE UPPER TRIBUNAL

This appeal is dismissed.

Subject matter: restricted operator's licence / financial resources / status of Senior Traffic Commissioner's directions

Caselaw referred to: *Associated Provincial Picture Houses Ltd. v Wednesbury Corporation* [1948] 1 KB 223.

DECISION

The decision of the Upper Tribunal is to refuse the appeal.

The decision of the Traffic Commissioner for the Wales Traffic Area, taken on 29 March 2023 (ref. OG2063295) involved no error of fact or law. Under section 37(1) of the Goods Vehicles (Licensing of Operators) Act 1995, the Upper Tribunal **dismisses** this appeal.

REASONS FOR DECISION

Background

1. On 29 March 2023, the Traffic Commissioner refused the Appellant's application for a restricted licence under the Goods Vehicles (Licensing of Operators) Act 1995. Mr J Morgan, who represented the Appellant before the Upper Tribunal, is a director of the Appellant company.

2. The Traffic Commissioner gave the following reasons for refusing the Appellant's application:

"The financial information provided was not acceptable because you had submitted an online application on the 08/02/2023 seeking a restricted licence with an authorisation of one vehicle.

Submitted with the application was evidence of an advertisement and a screen shot of the company's bank account which could not be accepted.

A first letter issued 09/02/2023 requesting the original bank statements covering a required 28 day period.

On the 18/02/2023 you had uploaded a bank statement to the application which only covered a 9 day period.

A final letter was then issued on the 23/02/2023 seeking statements covering the period from the 16/01/2023 to 06/02/2023 as well as giving you an option to provide the most recent 28 days.

Following no response an email was then sent to jake.morgan@snapon.com on the 09/03/2023 again requesting the bank statements.

No response has been received.

Therefore, you have failed to demonstrate that you meet the requirements of section 13D of the Act, which requires that there are sufficient financial resources for maintaining vehicles in a fit and serviceable condition.”

Regulatory framework

3. The Senior Traffic Commissioner has power to give general directions to the other Traffic Commissioners. The power is conferred by section 4C(1) of the Public Passenger vehicles Act 1981 (“the 1981 Act”) in the following terms:

“The senior traffic commissioner may give to the traffic commissioners –

- (a) guidance, or
- (b) general directions,

as to the exercise of their functions under any enactment.”

4. Section 4C(3)(b) of the 1981 Act provides that the general directions that may be given by the Senior Traffic Commissioner include directions as to:

“the information which a traffic commissioner must ask to be supplied in connection with the exercise of any particular function, and the steps which must be taken to verify the accuracy of any information so supplied.”

5. The legal effect of the Senior Traffic Commissioner’s general directions, in relation to goods vehicles licensing, is dealt with by Section 1(2) of the Goods Vehicles (Licensing of Operators) Act 1995 (“the 1995 Act”), which provides as follows:

“In the exercise of his functions under this Act a traffic commissioner shall act under the general directions of, and shall have regard to any guidance given by, the senior traffic commissioner.”

6. Section 8(4) of the 1995 Act provides that a person applying for an operator's licence must give to the Traffic Commissioner "any further information which the commissioner may reasonably require for the discharge of his duties in relation to the application". Section 8(4) also provides that the applicant "in particular shall, if required by the commissioner to do so, give to him any of the information specified in paragraph 1 of Schedule 2" to the Act. The information specified in Schedule 2 includes "particulars of the financial resources which are or are likely to be available to the applicant" (paragraph (1)(g)).

7. Any information to be given to the Traffic Commissioner under section 8 of the 1995 Act "shall be given in such form as the commissioner may require" (section 8(6)).

8. On an application for a restricted licence, the Traffic Commissioner must in all cases consider whether the requirements of section 13B and 13C of the 1995 Act are satisfied, and "if the commissioner thinks fit, whether the requirement of section 13D is satisfied" (section 13(2)).

9. If the Traffic Commissioner determines that any requirement taken into consideration in accordance with section 13(2) of the 1995 Act is not satisfied, the Commissioner must refuse the application for an operator's licence (section 13(5)).

10. The requirements of section 13C of the 1995 Act include, in subsection (4), that "there must be satisfactory facilities and arrangements for maintaining the vehicles used under the licence in a fit and serviceable condition". Section 13D relates to this requirement, and provides as follows:

"The requirement of this section is that the provision of the facilities and arrangements for maintaining the vehicles in a fit and serviceable condition (see section 13C(4)) is not prejudiced by reason of the applicant's having insufficient financial resources for that purpose."

11. Under section 37(1) of the 1995 Act, an applicant for an operator's licence may appeal to the Upper Tribunal against a Traffic Commissioner's refusal to grant the licence. Section 37(1) should be read with paragraph 17(1) of Schedule 4 to the Transport Act 1985, which provides as follows:

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

12. The Senior Traffic Commissioner has given directions to the other Commissioners about evidence that is capable of establishing that financial regulatory requirements are satisfied. At the date on which the Traffic Commissioner refused the Appellant’s application for an operator’s licence, the Senior Traffic Commissioner’s *Statutory Document No. 2 – Finance* included the following provision:

“26. The Senior Traffic Commissioner for Great Britain issues the following Directions to traffic commissioners under section 4C(1) of the Public Passenger Vehicles Act 1981 (as amended)...

33. Historically commissioners have required the submission of bank statements for a 3 month period when operators and applicants are seeking to establish availability of finance but this approach has only given a historic analysis of the operator’s financial position and has been of limited assistance to new applicants who may only be able to establish access to the required finances for a period of 1 month prior to the establishment of the business...

48. Where on application (new or variation)...bank or building society accounts are relied upon, due to difficulties with authenticating documents, original statements must be supplied for the past 28 days, the last balance of which must not be more than 2 months from the date of receipt of the application...

49. As stated above original documents need to be produced and so where internet statements are relied upon the operator/applicant will need to have them endorsed by the relevant bank. A stamp and signature from the relevant bank or building society will be accepted by traffic commissioners.”

Grounds of appeal

13. In the Appellant’s written notice of appeal, Mr Morgan wrote:

“at the time I couldn’t provide the dates that was asked of me at the time would love to given yourselfs the information that was needed but physically couldn’t provide as the bank account wasn’t open long enough to do so but did and still

does have the correct amount of money in the account for £3100...I can now I believe provide up to 3 months worth of statements.”

14. At the hearing of this appeal, Mr Morgan was candid and straightforward, and he made a positive impression on the panel. Mr Morgan did not dispute any of the findings in the Traffic Commissioner’s decision letter but thought it was unfair to have expected him to provide three months of financial information. It was impossible to do so because the Appellant company’s bank account was newly opened.

Conclusions

15. The Traffic Commissioner did not refuse the Appellant’s application for an operator’s licence because it had failed to provide financial evidence covering a period of at least three months. The Commissioner’s decision letter indicated that evidence covering a period of 28 days would have been acceptable (if supplied in the correct form).

16. The Traffic Commissioner refused the Appellant’s application for an operator’s licence because the Commissioner was not satisfied that the requirement in section 13D of the 1995 Act was met. This was for two evidential reasons. Firstly, the financial evidence initially supplied was rejected because, as a screenshot, it was not in an acceptable form. Secondly, the financial evidence subsequently provided was inadequate not in form but in substance. The bank statement provided to the Office of the Traffic Commissioner on 18 February 2023 related to a period of only nine days.

17. The Traffic Commissioner did not err in law or fact in rejecting the Appellant’s initial ‘screenshot’ financial evidence. Where information is to be given to a Commissioner on an application for an operator’s licence, section 8(6) of the 1995 Act requires it to be given in such form as the Commissioner may require. The acceptable forms of financial evidence were set out clearly in the Senior Traffic Commissioner’s *Statutory Document No.2 – Finance*. The Appellant’s financial evidence was not in an acceptable form, as the Appellant was informed by staff of the Office of the Traffic Commissioner, and the Traffic Commissioner lawfully determined that it could not be relied on by the Appellant to establish that it had sufficient financial resources for the purposes of section 13D of the 1995 Act.

18. In relation to the Traffic Commissioner's second reason – the period to which the Appellant's financial evidence (bank statement) related – there is no factual dispute. The Appellant accepts that the bank statements supplied did not cover a period of at least 28 days. This means that the Appellant can only succeed if the Traffic Commissioner, by requiring financial evidence covering a period of at least 28 days, made an error on a point of law.

19. The Commissioner's approach was consistent with that set out in *Statutory Document No. 2*. Paragraph 48 of the Document directs that "original statements must be supplied for the past 28 days". The present Traffic Commissioner was required by section 1(2) of the 1995 Act to 'act under' the Senior Traffic Commissioner's directions. The Upper Tribunal is not required to act under the Senior Traffic Commissioner's general directions, but it is required to respect the status accorded by Parliament to the Senior Traffic Commissioner's general directions. This means that, where a Traffic Commissioner determines a matter in conformity with the Senior Traffic Commissioner's general directions, it is not open to the Upper Tribunal on appeal to hold that the Commissioner's determination involved an error on a point of law unless the Senior Traffic Commissioner's directions were themselves unlawful. Any other approach would undermine Parliament's intention for Traffic Commissioners to act under general directions given by the Senior Traffic Commissioner.

20. *Statutory Document No.2* embodies the Senior Traffic Commissioner's judgement that, generally, a financial regulatory requirement will not be considered satisfied by an applicant for an operator's licence unless it can be demonstrated, by reference to an acceptable form of evidence, that the required amount of finance has been available for at least 28 days. The Senior Traffic Commissioner clearly thinks that a certain degree of proven financial stability is necessary in order to be confident that an applicant for an operator's licence will achieve the relevant regulatory ends (the purpose for which a certain amount of finance must be available), which, in a case such as the present, is the provision by an operator of facilities and arrangements to maintain its vehicles in a fit and serviceable condition. That view is not irrational; in fact, it is the opposite of irrational. Given the vicissitudes of life (and vehicles), it cannot be said with any confidence that effective facilities and arrangements for vehicle maintenance will be secured unless the operator enjoys a certain degree of financial stability. *Statutory Document No.2's* direction for financial evidence to cover at least 28 days is not irrational, using that term in its well-established legal sense

(see *Associated Provincial Picture Houses Ltd. v Wednesbury Corporation* [1948] 1 KB 223).

21. It follows from the above that, in following *Statutory Document No.2* and requiring the Appellant to provide at least 28 days of financial evidence in an acceptable form, the present Commissioner's decision involved no error on a point of law.

22. For the above reasons, and despite the positive impression made on us by Mr Morgan at the hearing, we dismiss this appeal.

23. Finally, the panel, in particular the judge, apologise for the delay in giving this decision. Initially, due to an administrative oversight this case was not marked on the Upper Tribunal's case management system as ready for decision. Subsequently, the judge was absent from duties, and then on limited duties, while recovering from serious injuries sustained in an accident. We hope that Mr Morgan has not found the wait for this decision too frustrating.

**Upper Tribunal Judge E Mitchell
Authorised for issue on
24 October 2024.**

Section 37(1), Goods Vehicles
(Licensing of Operators) Act 1995.