

Neutral Citation Number: Applied for

Appeal No. T/2016/44

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

**ON APPEAL from the DECISION of
Nick Jones, Traffic Commissioner
for the West Midlands dated 4 August 2016**

Before:

Her Honour Judge J Beech, Judge of the Upper Tribunal
George Inch, Member of the Upper Tribunal
John Robinson, Member of the Upper Tribunal

Appellant:

SANA AZIZ

Attendances:

For the Appellant: The Appellant appeared and was represented by Bill Bowling of the National Limousine & Chauffeur Association

Heard at: Field House, 15-25 Bream's Buildings, London, EC4A 1DZ

Date of hearing: 6 December 2016

Date of decision: 20 December 2016

DECISION OF THE UPPER TRIBUNAL

IT IS HEREBY ORDERED that the appeal be DISMISSED

SUBJECT MATTER:- Application for restricted PSV licence; whether the Appellant proposed operation was a "front" for other family members; whether the requirements of good repute were satisfied (s. 14ZC(1)(b) of the 1981 Act).

CASES REFERRED TO:- Bradley Fold Travel Ltd & 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 Traffic Commissioner for the West Midlands (“TC”) made on 4 August 2016 when he refused the Appellant’s application (“Ms Aziz”) for a restricted PSV operator’s licence.

Background

2. The factual background to the appeal appears from the documents and the TC’s oral decision. The family of Ms Aziz is involved in the operation of limousines. A2Z Limos 4 U Limited (“the company”) is a company which is operated by the father of Ms Aziz. It presently has two limousines in its possession which require an operator’s licence to be operated lawfully (having nine to sixteen seats). The company does not hold such a licence. The vehicles are currently leased out to other operators with PSV licences. The company operates from 57 Milk Street, Digbeth Birmingham. The premises are owned by Ms Aziz’ brother, Bilal, who was also a director of the company. It is unclear whether he continues to be a director. Bilal and her other brother Iqbal, also operate vintage cars and Lincoln limousines from the same premises. Those vehicles are licensed by the local authority, being vehicles which do not fall within the PSV regime, having eight seats or fewer.
3. Either at the end of 2009 or the beginning of 2010 (it is unclear from the papers), a limousine being operated by the company was found to be operating without an operator’s licence. It was carrying ten teenagers on a journey which fell within the EU regulations. The vehicle did not have a Certificate of Initial Fitness (“COIF”), it was uninsured, it did not have a MOT certificate and was not fitted with a tachograph. Iqbal was the driver. It was asserted by Iqbal and Bilal that the vehicle was operating under a dry hiring agreement (a device designed to circumvent the need for an operator’s licence) and in support of that assertion, paperwork was produced with a forged signature appended to it. It was subsequently accepted by both brothers that the signature was forged.
4. On 27 July 2010, the company was convicted of the following offences:
 - a) Using a vehicle as a PSV when there was no tachograph recording equipment fitted;

- b) Using a vehicle as a PSV when the driver failed to keep a record of the journey;
- c) Using a vehicle as a PSV when the company did not hold a valid operator's licence;
- d) Using a PSV when the vehicle had not been issued with a Certificate of Initial Fitness;
- e) Using a vehicle as a PSV without insurance.

The company was fined a total of £10,200 with £600 costs.

5. On the same day, Iqbal was convicted of the following offences:
- a) Driving a vehicle as a PSV where there was no tachograph recording equipment fitted;
 - b) Driving a vehicle as a PSV and failing to keep a record;
 - c) Aiding and abetting the use of a PSV when there was no operator's licence.

Iqbal was fined £250 with £300 costs.

6. On the same day, Bilal was convicted of conspiring to pervert the course of justice by using a false instrument and was sentenced to 20 weeks imprisonment, suspended for two years with 200 hours of community service.
7. In the latter part of 2010, the company applied for a restricted operator's licence authorising two limousines operating from 57 Milk Street. A public inquiry was scheduled for 20 December 2010. However, on 17 December 2010, Bilal, on behalf of the company formally withdrew the application. In about the beginning of 2011, Iqbal applied for a restricted operator's licence authorising one limousine, operating from 57 Milk Street. When making the application, Iqbal made a false declaration that he did not have any convictions. A public inquiry took place on 11 July 2011 which culminated in a written decision in which the TC found that:

“The applicant is unreliable and untrustworthy. I carry very little weight as to what he said in evidence, as he says what suits his purpose at the time. He was consistently untruthful with the Traffic Examiner Tracey Love. I have concerns that if Iqbal Aziz was granted any operator's licence that he would not comply with the rules that apply.

The explanation given to me relating to non-disclosure of convictions is not credible and I do not accept the explanation .. Iqbal Aziz sought to mislead me.

I do not accept that applicant's suggestion that his reference to dry hiring was a spur of the moment response to being stopped; it is not consistent with the evidence on file.

I am aware that there are many good operators of limousines who spend a lot of money making their vehicles compliant and also adhering to the strict rules in relation to drivers' hours and records.

I am also conscious that there are rogue operators who pay little or no heed to the law and operate limousines with both a significant competitive advantage and at a real risk to road users and passengers. The vehicles without COIFs are not merely illegal; they are inherently dangerous. The cost of making an unsafe limousine safe and compliant with a COIF is often a figure approaching £20,000.

Iqbal Aziz has no place in the operator licensing system. I have been asked to give him a second chance, but I do not see a place .. for dishonest rogues who persistently lie to VOSA staff and attempt to mislead me. ... Keeping him out of the passenger transport industry will assist both the travelling public and compliant operators. ..”

8. By an application received on 19 January 2016, Ms Aziz applied for a restricted operator's licence authorising one limousine operating from 57 Milk Street. The application and subsequent responses to further questions resulted in the TC determining that a public inquiry should be held. The call up letter raised in particular, the issue of whether the proposed licence was to be a “front” for Ms Aziz's family members whose previous applications had either been refused or withdrawn. Relevant documentation concerning those previous applications was attached to the call up letter, including a schedule of convictions.
9. At the hearing before the TC, Ms Aziz was represented by Mr Bowling of the National Limousine & Chauffer Association. The TC made it clear from the outset that he was concerned about the issue of “fronting” arising out of Ms Aziz's application. Mr Bowling began by submitting that in responses to pre-inquiry questions, Ms Aziz had been “open and honest” about her relationship with her brothers. However, she was not fully “*au fait*” with the extent of her brothers convictions but she had stated “clearly and unequivocally” that there would be a “cleaver in business between the family connections and work”. The only common denominator was her father's ownership of the operating centre. She was the only member of the family without a business interest of her own although she worked full time as an internal auditor for a bank. That background meant that she was well aware of the constraints and requirements of “laying audit trails and of keeping proper records”. Ms Aziz had identified a demand in the Asian community for sixteen seat Hummers for use as wedding transport and for other events.

10. Ms Aziz then gave evidence. She told the TC that she had been an internal auditor for a bank for eight years. She was “now” more aware about her brothers’ involvement with limousines but she did not have an in depth knowledge. The TC then read out sections of his decision concerning Iqbal’s failed application. Ms Aziz stated that she was keen to keep her business separate from that of her brothers and was very independent even though she lives in the same house as them, along with her father. The TC was concerned about why Ms Aziz wanted to set up in business as a limousine operator when, as an intelligent and articulate woman with a “good job”, there were so many other business opportunities she could have chosen. Ms Aziz attempted to assure the TC that she had chosen limousine operation because she had seen how the market operated and it was something she could easily undertake. Her brothers would not have anything to do with the vehicles and she would not employ them as PSV drivers. She did not know the rules of drivers’ hours and tachographs but she planned to study for a drivers CPC. She was however able to answer some questions put to her by the TC about drivers’ hours. She understood that she had to satisfy the TC that her application was not a “front” for her brothers and father and she accepted that there were rogue traders within the industry, including her brothers. But she did not know what they had done. Alarm bells did ring when she read the TC’s decision concerning Iqbal’s application but their operating history was “their personal matter”. The limousine business was a good and profitable one which suited her circumstances being mostly weekend work and she wanted to operate “the right way”. She denied that she would be using one of the company’s vehicles on her licence. She accepted that she had not researched how she was going to safeguard the business although she was happy to give an undertaking that her brothers would not drive. Despite the fact that the company and her brothers operate from Milk Street, she had not considered nominating an alternative operating centre because the rent terms were very advantageous to her.
11. In his closing remarks, Mr Bowling repeated that the business plan was to operate Hummer vehicles and that there would be a clear division between the operation of Ms Aziz and those of her family. He had discussed with Ms Aziz issues such as “tachograph training”. His main concern was that the “sins of the father should not be attached to Miss Aziz”. He was in no doubt that the application was a genuine one.
12. In his oral decision, the TC accepted that Ms Aziz was intelligent, articulate and had standing in the local community and that she had a well remunerated job which required a high degree of skill. The issue with her application arose out of his gate keeping role within the PSV industry. Whilst the “sins” of her family should not be held against her, the TC was concerned that Ms Aziz had chosen the limousine business without undertaking the relevant research. He had substantial concerns as to the involvement of her family in the proposed operation and the fact that she continued to live with her father and two brothers

who are all in the limousine business. The suggestion that Ms Aziz's operation would be separate from that of the company's or her brothers' was not supported by any tangible evidence. If Ms Aziz's proposed business was genuinely independent from that of her family, then the TC would have expected evidence that she had undertaken a lot more research. In the circumstances, the TC could not be satisfied about Ms Aziz's good repute.

Upper Tribunal Appeal

13. Mr Bowling submitted an appeal on behalf of Ms Aziz. Whilst there were four grounds of appeal, they all made the same complaint, namely, that the TC's view of Ms Aziz's application was influenced by the previous conduct of her family members and that consequently, he had pre-determined her application prior to the hearing taking place and that he had wrongly made an adverse finding against her good repute.
14. At the hearing of the appeal, Mr Bowling repeated the above. He said that Ms Aziz was upset by the TC finding that she lacked good repute. He should have accepted that she was independent of her family despite living in the same house as them and they would not influence her operational decisions. She was well able to establish and maintain an audit trail which would demonstrate that her proposed business would be separate from the other family limousine businesses operating from the same operating centre. Mr Bowling complained that Ms Aziz was not given any proper opportunity to put forward the type of audit trail that she would institute or indeed set out her case, as the TC kept interrupting her. It was accepted that Ms Aziz did not know how it came to be that the family company and her brothers were convicted of serious criminal offences relating to the operation of a limousine and it was further accepted that the call up letter had highlighted the need for her to address the concerns of the TC that her application was "a front".

The Tribunal's decision

15. Dealing first with the submission that Ms Aziz was not given sufficient opportunity by the TC to set out her case, we are not satisfied that this was so. The TC did interrupt her when she was giving evidence but that was understandable against the background of an applicant who had failed to ask any meaningful questions of her family about the unlawful operation of a limousine and the resulting convictions despite the fact that she lives in the same house as the rest of her family and the call up letter raised the issue in no uncertain terms. The TC rightly had concerns about fronting and all that Ms Aziz could do was make bare assertions that her operation would be separate from those of her father, Bilal and Iqbal. Towards the end of hearing, the TC asked Mr Bowling whether he had any further questions of Ms Aziz to which Mr

Bowling replied “no” and then prior to delivering his oral decision the TC asked Mr Bowling whether there was anything else he wanted to say, to which he replied “no”. We are satisfied that Ms Aziz and Mr Bowling were given adequate opportunities to state her case before the TC.

16. So to the main issue in this appeal, we are not satisfied that the TC’s approach to Ms Aziz’s application indicated a pre-determination of the issues. It is plain that he was impressed with Ms Aziz as an individual but he was also rightly concerned about her failure to properly demonstrate that there was any “clear blue water” between her application and the family businesses. It should have been abundantly clear to Ms Aziz that she had to do something more than merely rely upon her standing as a bank auditor whilst at the same time asserting that, despite the fact that she was going to operate the proposed vehicle from the same premises as the businesses operated by her father and brother, she would be entirely independent from them. The Tribunal was struck by the fact that Ms Aziz failed to make any proper enquiry of her father and brothers as to how it came to be that an unlicensed limousine was operating without a COIF, insurance, MOT and tachograph whilst transporting a party of teenagers and further, how it came to be that a document produced to the DVSA in an attempt to persuade the DVSA that the vehicle was operating under a dry hiring agreement, came to have a forged signature appended to it. Her failure to make those enquiries demonstrates that Ms Aziz had failed to appreciate the required obligations and responsibilities of being a PSV operator and in turn had failed to establish that she was of good repute. Neither the law or the facts of this case impel the Tribunal to find that the decision of the TC was wrong as per the test in *Bradley Fold Travel Ltd & Peter Wright v Secretary of State for Transport (2010) EWCA Civ. 695*.
17. The appeal is dismissed.



Her Honour Judge J Beech
20 December 2016