



**Appeal No.: NT/2019/65  
NCN: [2020] UKUT 98 (AAC)**

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

**IN AN APPEAL FROM THE DECISION OF:  
THE TRANSPORT REGULATION UNIT OF THE DEPARTMENT FOR  
INFRASTRUCTURE  
DATED 23<sup>rd</sup> AUGUST 2019**

**Before:**

**Elizabeth Ovey, Judge of the Upper Tribunal  
George Inch, Specialist Member of the Upper Tribunal  
Andrew Guest, Specialist Member of the Upper Tribunal**

**Appellants: Jim Monaghan & Partners**

**Attendance: Mr. Jim Monaghan appeared in person.**

**Heard at: Royal Courts of Justice, Belfast BT1 3JF**

**Date of hearing: 20<sup>th</sup> February 2020**

**Date of decision: 19<sup>th</sup> March 2020**

**DECISION OF THE UPPER TRIBUNAL**

IT IS HEREBY ORDERED that the appeal be dismissed.

**SUBJECT MATTER:** Revocation: failure to reply to correspondence and possible use of unauthorised operating centre

**CASES REFERRED TO:** *Bradley Fold Travel Ltd & Peter Wright v. Secretary of State for Transport* [2010] EWCA Civ 695; *Hughes v. Department of the Environment in Northern Ireland* [2013] UKUT 0618 (AAC)

## **REASONS FOR DECISION**

### **Summary**

1. This is an appeal by Jim Monaghan & Partners against the decision of the Department for Infrastructure (“the Department”) communicated by a letter dated 23<sup>rd</sup> August 2019 stating that the licence held by the partnership had been revoked on the ground that the licence holder was deemed no longer fit to hold a licence in view of an apparent failure to respond to correspondence from the Department and as there appeared to be a material change in the licence holder’s circumstances in that the partnership might be using a site not authorised as an operating centre on the licence.

2. The grounds of appeal do not directly address the Department’s reasons for revoking the licence but rather complain that the partnership was being required to pay fees to make a further application although the need for the application was caused by the mistakes of the Department.

3. Having looked carefully at the papers before us and having heard Mr. Monaghan on behalf of the partnership, we conclude that the original cause of the difficulties lies in mistakes made by the partnership rather than the Department. The request for payment was properly made, although understandably unwelcome to the partnership. There was some lack of response from the partnership and it became clear that the partnership was indeed using a site not authorised as an operating centre. In those circumstances, we dismiss the appeal. We add, however, that in our view there was a misunderstanding between the Department and Mr. Monaghan as a result of which the Department formed the impression that Mr. Monaghan intended to operate a vehicle illegally. We accept Mr. Monaghan’s evidence that that was not the case and any future application for a licence should be considered accordingly. Our reasons for our conclusion follow.

### **The facts**

4. On 11<sup>th</sup> August 2014 a restricted goods vehicle licence no. ON1132062 authorising one vehicle was issued to Jim Monaghan & Partners trading as Jim Monaghan Car Sales. The specified operating centre was 61A Annacloy Road. The licence included a number of notes, of which the following is material:

“6. The licence holder cannot change or add an operating centre without having first applied for, and been granted, authority to do so. Failure to obtain authority to use a place as an operating centre may result in a fine on summary conviction and disciplinary action being taken against the licence.”

5. The licence also included as a general condition the following:

“The licence holder shall, within 28 days of their occurrence, inform the Transport Regulation Unit of any:

...

**CHANGES** in the ownership of the business including partnership arrangements. Company changes in shareholding need not be notified unless they cause a change in the control of the Company.

...”

6. The review date for the licence was 11<sup>th</sup> August 2019. On 28<sup>th</sup> June 2019 the Department wrote to the partnership requesting the continuation fee of £449 to cover the period until 31<sup>st</sup> July 2024 and asking the partnership to read a checklist of the details held and to “indicate any changes that have taken place, or where the information is incorrect”. The checklist showed the partners in the partnership as Jim Monaghan, Olive Monaghan and Sharon Monaghan and the operating centre as 61A Annacloy Road. Immediately above the listed operating centre are the words, in bold, “Please check and confirm or amend the details.” There is also a separate section of the checklist in which the licence holder is asked to give details of any operating centres not specified on the licence. The checklist sets out a number of conditions and undertakings, including one that an unauthorised operating centre is not used and one that the Department would be notified within 28 days of changes such as a change to partnership status.

7. The checklist was signed by Mr. Monaghan on 28<sup>th</sup> June 2019 immediately under a declaration that the information in the form, amended, where necessary, by him, was correct and reaffirming his compliance with all the conditions and undertakings recorded on his licence.

8. Mr. Monaghan had in fact amended the checklist in two respects. First, he had deleted Sharon Monaghan as a partner. Secondly, he had added 73 Annacloy Road immediately below the entry of 61A Annacloy Road as the operating centre, although he had not deleted 61A Annacloy Road. We accept that he acted entirely honestly in doing so, and indeed was responding to the repeated invitations to use the checklist to make corrections.

9. On 2<sup>nd</sup> July 2019 the licence was reissued to Jim Monaghan and Olive Monaghan trading as Jim Monaghan Car Sales: p.26 of the bundle. It showed the operating centre as 61A Annacloy Road. On the same day the Department wrote to Jim Monaghan and Olive Monaghan stating that information on the checklist indicated that changes had occurred which necessitated an application to vary the licence by changing the operating centre address. The process for applying digitally was explained and it was stated that there was an application fee of £254. If an interim licence was required to permit lawful operation in the meantime, the fee was £68. The partnership was asked to return the documentation by no later than 16<sup>th</sup> July 2019.

10. No response was received to the letter. The internal Department documents at pp.3-4 of the bundle show that the Department was uncertain whether the partnership had changed its operating centre or was using an additional one. It was decided that in view of the lack of response to the previous letter, a letter proposing to revoke the licence should be sent.

11. The Department therefore wrote to Jim Monaghan and Olive Monaghan on 25<sup>th</sup> July 2019 stating that it was considering making a direction under section 23(1) of the Goods Vehicles (Licensing of Operators) Act (Northern Ireland) 2010 on the ground that there had been a material change in circumstances, namely that the licence holder no longer appeared to be fit to hold a licence in view of an apparent failure to respond to correspondence from the Department and that it might be using a site not authorised as an operating centre.

12. The internal notes at p.8 of the bundle state that the letter was sent to all addresses by recorded delivery and by e-mail. P.35 of the bundle is a Royal Mail record of delivery on 27<sup>th</sup> July 2019 of a specified item apparently signed for by J. Monaghan. Mr. Monaghan told us at the hearing that he had not received the letter dated 25<sup>th</sup> July 2019 and that the signature at p.35 was not his. Although the Royal Mail record contains a tracking number, we have not seen anything which matches it to the letter dated 25<sup>th</sup> July 2019 and the signature is not of a kind which enables us to draw any conclusions.

13. We do not think it is necessary to make any findings on this point or to seek further evidence, because there appears to have been successful communication by e-mail. We have seen a print of an e-mail sent to what looks like the partnership's e-mail address on 25<sup>th</sup> July 2019 and apparently attaching a copy of the letter of that date (p.34). We have also seen a further e-mail sent to Mr. Monaghan at the same address on 29<sup>th</sup> July 2019 (p.36) which refers to a telephone conversation which a representative of the Department had had with him. A second copy of the e-mail of 29<sup>th</sup> July 2019, printed as received, appears at p.55. It raised a further point about the apparent change in the partnership from Jim, Olive and Sharon Monaghan to Jim and Olive Monaghan alone and appears clearly to have prompted a further telephone call from Mr. Monaghan on 30<sup>th</sup> July 2019. The tenor of the call is recorded at p.8 of the bundle and the call itself is referred to in a letter addressed to Jim Monaghan & Partners dated 30<sup>th</sup> July 2019. We therefore conclude that whether or not the partnership received the letter dated 25<sup>th</sup> July 2019 from Royal Mail, it did receive the letter in some form and was aware of the proposal to revoke.

14. It is unfortunately the case that by this stage the position had become somewhat complicated. There was the initial point about the operating centre, which it was said required a variation of the licence. The new point was more fundamental and arose from the fact that in English law a partnership is not a legal entity like a company, which for legal purposes is a person distinct from the individual directors and shareholders. A trading partnership is simply a number of individuals carrying on business together in accordance with the terms of their agreement with a view to profit. A consequence is that if one of the individuals ceases to be a partner, the partnership agreement will come to an end unless it was a term of the original agreement that the partnership should continue even if one of the partners ceased to be a partner. Without such a term, even if the remaining partners think they are simply continuing the old partnership, legally speaking it is a new partnership. In terms of goods vehicle licensing, the effect is that the partnership to which the licence was granted no longer exists and the new partnership needs to apply for a new licence.

15. In the case of Jim Monaghan & Partners, the fact that Sharon Monaghan's name was crossed out on the checklist implied that she was no longer a partner. The

Department had therefore made a mistake in not establishing the position before re-issuing the licence and potentially made a mistake by re-issuing the licence naming Jim Monaghan and Olive Monaghan alone. The purpose of the e-mail of 29<sup>th</sup> July 2019 was to find out whether or not the original partnership had been dissolved and to offer help with applying for a new licence if that was the case.

16. The telephone call from Mr. Monaghan in response to that e-mail is recorded in the following terms on p.8:

“Mr. Monaghan called. He was not happy about needing to apply for a new licence so I explained the legislation, how to apply and what was needed. I also explained that if he wanted to submit a new application we could refund the renewal fee and to email Sarah if that was the case. He said he couldn’t be bothered with the hassle and was going to operate anyway.”

17. The letter dated 30<sup>th</sup> July 2019 expressed regret that Mr. Monaghan had had difficulties in understanding the licensing system and requirements and that the licence record was inadvertently updated to remove Sharon Monaghan. It was explained that Sharon had been added back because the three person partnership was the entity holding the licence and a new licence document was enclosed, still specifying 61A Annacloy Road as the operating centre: see p.51. The letter went on to explain that an application could be made for a licence in the name of the new partnership and if such an application was made by 7<sup>th</sup> August 2019 the fee already paid for the licence in the name of the old partnership could be refunded. Mr. Monaghan was again informed of the possibility of applying for an interim licence at a cost of £68 and he was reminded of the letter proposing to revoke the licence which had already been sent. It was pointed out that no refund would be possible if the licence had been revoked.

18. No further response was received from the partnership to either the letter of 25<sup>th</sup> July 2019 or the letter of 30<sup>th</sup> July 2019 or the e-mail of 29<sup>th</sup> July 2019. The Department’s internal documents at p.6 record:

“This is an extremely disappointing response from the operator as we expect the operator to work with and engage with the Department particularly when it was to his own benefit. It is further disappointing that he chooses not to apply for a new licence and intends to work illegally.

However as he has failed to apply for a new licence, the old partnership would appear to be no longer in existence, the partnership was reminded of the deadline date for responding to [the letter dated 25<sup>th</sup> July 2019] and the consequences of revoking the licence in the letter of 30 July 2019.

Therefore as no response has been received therefore I am content that the licence is revoked 28 days from the date of notification. This will allow time for the partnership to apply for a new licence if it wishes to operate legally.”

19. Following that internal decision, the partnership was notified of the revocation of the licence by the letter dated 23<sup>rd</sup> August 2019. The notification letter referred to the letters of 25<sup>th</sup> and 30<sup>th</sup> July and continued:

“As no response has been received, the Department considers that the partnership has failed to continue to meet the requirements for holding an operator’s licence and has decided to **revoke the licence with effect from Monday 23 September 2019** under the provisions of Section 23 of the 2010 Act on the following grounds:

- Section 23(1)(g) that since the licence was issued or varied there has been a material change in any of the circumstances of the licence-holder that were relevant to the issue or variation of the licence; namely that the licence holder has been deemed no longer fit to hold a licence in view of an apparent failure to respond to correspondence from the Department, and as there appears to have been a material change in that the licence holder may be using a site that is not authorised as an operating centre on the licence.”

20. No further application for a licence was made by the entity trading as Jim Monaghan Car Sales, but the partnership did appeal against the revocation of the licence by a notice of appeal dated 16<sup>th</sup> September 2019.

### **The appeal**

21. The partnership in fact first approached the Upper Tribunal through a letter dated 10<sup>th</sup> September 2019 written by Sharon Monaghan. It reads:

“I’m writing to inform you of a licence that we were told to apply for and pay a fee of over £400.00. We did what was asked of us and gave as much information as requested honestly. Our licence was granted (copy of licence attached).

Since then we have received a letter stating that there was an error on their behalf and we needed to rectify it. Unfortunately, it was down to wording and we were not sure on what we should have done to put it right. They then asked for more money while amendments were to be made even though the fault was down to them. Unfortunately, we had no idea on how to rectify this situation but were just asked for more money until the licence was sorted.

Since then we have received a letter revoking our licence and keeping our money. They said if we want another licence we have to pay the full amount again.

We are a small family run business and rely on our Lorry to maintain that business and feel that the information that we provided was honest but mistakes were made on their behalf therefore costing us more money time and effort only to revoke our licence. The reasons they are using are all in regards to paper work that is very hard to understand whilst filling out

and we don't receive training for this unlike the Department for Infrastructure who actually should have known better than to issue the licence only to take it off you and ask us to pay again because of an error they made.

I feel stuck as to what to do, we can't afford to keep throwing hundreds of pounds at a licence only to have it revoke and to be told to reapply. Just feel like we have been treated unfairly and we have tried to comply with everything you have asked.

Is there any way in which you can help?"

22. In response the Upper Tribunal provided the partnership with an appeal form which was duly completed. The grounds of appeal are as follows:

"I would like the Department for Infrastructure to refund our money or give us a chance to reapply without having to pay all those fees again as it is as much their fault for not noticing any mistakes in the wording. They issued, then revoked.

We are car sales and recovery. Do we actually need this licence?"

23. The notice of appeal also states:

"We honestly never received the letter asking us to re-apply within a certain time." (p.45)

and

"We were sent a letter stating that we had to re-submit due to errors after licence was granted. We never received such letter and it wasn't sent recorded delivery." (p.49)

## **Discussion**

24. The legislative background to the case is as follows.

25. Under section 1 of the 2010 Act, a licence is required, broadly speaking, for the use of a goods vehicle over a certain size for the purposes of trade or business. Section 1(2)(d) exempts from that requirement vehicles of any class specified in regulations. Paragraph 24 of Schedule 1 to the Goods Vehicles (Licensing of Operators) (Exemption) Regulations (Northern Ireland) 2012, S.I. 2012 No. 256, exempts, in summary, a vehicle which is constructed or adapted primarily for use for lifting, towing and transporting a disabled vehicle when being used for recovery or removal purposes.

26. Section 23 of the Act provides:

"(1) Subject to the following provisions of this section and the provisions of section 26, the Department may direct that an operator's licence be revoked, suspended or curtailed (within the meaning given in subsection (9)) for any reasonable cause including any of the following—

(a) ...

...

(g) that since the licence was issued or varied there has been a material change in any of the circumstances of the licence-holder that were relevant to the issue or variation of the licence;

(h) ...”

27. Section 26 obliges the Department to inform the operator if it is considering revoking a licence under section 23 and to give the operator the opportunity of making representations and requesting a public inquiry.

28. It is well established that the task of the Upper Tribunal when hearing a traffic appeal is to consider whether the decision appealed against is plainly wrong. That is the test applied in Great Britain following the decision of the Court of Appeal in *Bradley Fold Travel Ltd & Peter Wright v. Secretary of State for Transport* [2010] EWCA Civ 695 and affirmed in Northern Ireland in *Hughes v. Department of the Environment in Northern Ireland* [2013] UKUT 0618 (AAC). The burden of showing that the decision is plainly wrong is on the appellant.

29. We remind ourselves that the power to revoke under section 23 is a discretionary power, by contrast with section 24 which provides for mandatory revocation in certain circumstances. Before the power can be exercised, the Department must be satisfied not only that one of the circumstances specified in section 23(1) exists but also that it constitutes reasonable cause for the revocation of the licence.

30. We note that the letter dated 25<sup>th</sup> July 2019 proposed to revoke the licence on the ground of a material change of circumstances consisting of:

- (1) the fact that the licence-holder no longer appeared to be fit to hold a licence, in view of an apparent failure to respond to communications from the Department
- (2) the fact that the licence holder might be using a site that was not authorised as an operating centre on the licence.

The letter complied with the requirements of section 26 of the Act and the decision itself was made on the basis identified in the letter.

31. We therefore have to decide whether the Department was plainly wrong in exercising its discretion to revoke the licence on the grounds that the licence-holder was no longer fit to hold a licence, in view of its apparent failure to respond to communications, and that it might be using a site which was not authorised as an operating centre.

32. The Department plainly had every reason to suppose that the partnership had either changed its operating centre or was operating from a second operating centre. In either case the partnership was in breach of note 6 set out in paragraph 4 above. It is clear from the letter dated 2<sup>nd</sup> July 2019 that that would not have been fatal to the licence if the partnership had responded by making the appropriate application for variation, but it never did so.



33. We note at this point that the grounds of appeal appear to state that it was the letter of 2<sup>nd</sup> July 2019 which was not received, although Mr. Monaghan was firm at the hearing that it was the letter of 25<sup>th</sup> July 2019 which was not received. As to the letter of 2<sup>nd</sup> July 2019, unfortunately the internal documents do not shed light on whether or not this letter was sent recorded delivery, although we note that it was sent to the correspondence address shown on the checklist. Overall, we think there is scope for Mr. Monaghan to have become confused about letters which were or were not received. Although we have not found that the letter of 25<sup>th</sup> July 2019 was not received, that does not imply any rejection of Mr. Monaghan's credibility.

34. Nevertheless, we think it is clear that Mr. Monaghan was aware that there were problems both with the operating centre specified on the licence and with the identity of the partners and that he felt too aggrieved by what he regarded as the technical nature of what the Department was telling him and at the consequent request for fees to respond appropriately. We have sympathy with a small family firm which finds itself unexpectedly having to pay significant fees, but it was the partnership's responsibility to tell the Department of the change of operating centre and that was not a difficult technical point. We agree that the partnership issue was much more technical, but the condition set out in paragraph 5 above is also straightforward, even if the underlying legal issue is not. Further, the Department explained that a refund of fees could be made if an application in the name of the new partnership was made by a specified date. While we accept that it was unfortunate that the partnership point was not spotted before the licence was re-issued in the names of Jim Monaghan and Olive Monaghan, the original mistake was the partnership's, not the Department's.

35. We have no doubt that in making its decision the Department took into account its understanding, set out at p.9, of Mr. Monaghan's assertion in the telephone call of 30<sup>th</sup> July 2019 that he could not be bothered to make an application and he would "operate anyway". The note of the telephone conversation does not itself use the word "illegally". At the hearing before us, Mr. Monaghan explained that the lorry used in the partnership business was largely, although not exclusively, used for recovery and to that extent the use fell within the exemption in paragraph 24 of Schedule 1 to the 2012 Regulations. What he had meant to convey to the Department was that he would carry on using the lorry, but for exclusively recovery purposes. We accept that he did not intend to say that he would use the lorry in breach of the statutory requirements. In this respect there was a misunderstanding.

36. We have considered whether the misunderstanding was sufficient to make the decision plainly wrong. We do not think it was. Mr. Monaghan's failure to take action of any kind after 30<sup>th</sup> July 2019 seems to us sufficient, in the circumstances, to constitute a reasonable cause for revoking the licence on the grounds specified. He had been warned, and had been told how to address the situation, but did not do so.

37. We add, in support of that conclusion, that Mr. Monaghan very straightforwardly told us that the partnership had been at the new operating centre for three years and that he had learned a lot about the licensing regime as a result of the revocation of the licence. We understand that there are other calls on the time of someone operating a small business and oversights, such as the failure to notify changes, can be and often are overlooked if the appropriate corrective steps are taken, but that does require a degree of co-operation between the licence holder and the Department. The Department was correct in its view that at the material time the

partnership was not co-operating. It seems to us that Mr. Monaghan now has a much better understanding of the requirements of the licensing regime, even if he thinks they bear hardly on small businesses.

38. We also add, as a practical point, that Mr. Monaghan explained to us that his daughter Sharon was originally made a partner on the advice of the accountant and then subsequently removed and made an employee when it appeared that the fluctuating nature of her income as a partner made it hard for her to get a mortgage. He also explained that there was no formal partnership deed. We make no criticism of what was done, but the legal effect is that the partnership to which the licence was originally granted no longer existed. It would in any event be necessary for the current partners to obtain a new licence if they wish to be able to use the lorry for purposes other than recovery purposes. Mr. Monaghan told us that he is thinking about the best way forward for his business in the light of the licensing requirements.

39. For those reasons, we dismiss the appeal. It is nevertheless appropriate to record our acceptance that the partnership did its best to complete the checklist correctly and that Mr. Monaghan did not intend to convey to the Department that he intended to operate his lorry illegally.

(signed on the original)

**E. Ovey**  
**Judge of the Upper Tribunal**  
**19<sup>th</sup> March 2020**