



NCN:[2021] UKUT 234 (AAC)
Case No. T/2020/62(A)

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

**ON APPEAL from the DECISION of the DEPUTY TRAFFIC COMMISSIONER FOR
THE WESTERN TRAFFIC AREA**

Dated: 11 October 2020

Before:

C.G.Ward	Judge of the Upper Tribunal
Mr.S.James	Member of the Upper Tribunal
Mr.D.Rawsthorn	Member of the Upper Tribunal

Appellant: Christchurch Travel Ltd

Attendance:

For the Appellant: Mr N Spencer, director

Heard: Remotely, by conference call (BT MeetMe)
Date of Hearing: 26 August 2021
Date of Decision: 15 September 2021

DECISION OF THE UPPER TRIBUNAL

The appeal is dismissed.

Subject Matter

Evidence; Traffic Commissioners' procedure; Public Service Vehicles; licence lending; loss of repute; lack of professional competence; non-fulfilment of undertakings; material change in circumstances.

Cases referred to:

T/2015/10 *Cornwall Busways*

REASONS FOR DECISION

1. This is an appeal from the decision of the Deputy Traffic Commissioner (“DTC”) for the Western Traffic Area given on 11 October 2020 following a Public Inquiry. The Inquiry had also addressed an application by a different company for an operator’s licence. That application was refused and no appeal has been made to the Upper Tribunal against that refusal.

2. In relation to the operator, in summary the Public Service Vehicle operator’s licence was revoked with immediate effect:

- (a) under s.17(1) of the Public Passenger Vehicles Act 1981 on the grounds that the DTC was no longer satisfied that the operator was of good repute or satisfied the requirement of professional competence;
- (b) under s.17(3)(aa) for failure to comply with an undertaking recorded in the licence because of a lack of proper arrangements to ensure that the rules on drivers’ hours and tachograph records were met; and
- (c) under s.17(3)(e) on the ground of a material change of circumstances since the licence was granted by reason of
 - (i) the informal arrangements with the Transport Manager which did not satisfy the requirement for professional competence and the failure of the transport manager to have continuous and effective control of the operator’s transport activity
 - (ii) the use by others of vehicles owned by the operator and displaying the licence issued to it in circumstances where those others are required to have an operator’s licence in their own name and
 - (iii) the failure to keep proper business and financial records.

3. No action was taken against the Transport Manager, who provided assurances that he would not act as a transport manager for any operator in the future and, at the age of 77, has now retired. The DTC found no evidence of deliberate wrongdoing on his part and was content to accept his retirement without formally considering any regulatory action.

4. Mr Spencer is the owner and sole director of the operator. He gave an undertaking that he would not (either himself or through any legal entity connected with him) hold, or apply for, any operator’s licence any time in the future. In those circumstances, the DTC concluded that there was no need to make a disqualification order under section 28 of the Transport Act 1985.

5. Thus, it was only the operator’s appeal against revocation that was before us. It was pursued by Mr Spencer notwithstanding the terms of his undertaking above, stating that he wished to have the opportunity to surrender the licence rather than it be revoked. How the appeal could assist him in any material way was not altogether clear.

6. The hearing before us was conducted by telephone. No technical difficulties were experienced and Mr Spencer confirmed at the end that he was content with the hearing which had taken place. At the hearing, it became clear that while he would have preferred to surrender the licence than it be revoked, his primary concern was

the finding by the DTC that he was “in a relationship with a [Ms Jenkins] of the same address as him.” This he denies and is evidently concerned that it should have been suggested.

7. An appeal can only be against a decision, not against a particular finding within it. Mr Spencer does not suggest that the DTC’s decision was “plainly wrong” by reason of the finding he asserts to be erroneous.

8. An appeal to the Upper Tribunal in transport matters is not subject to a requirement to obtain permission. Mr Spencer has gone to the trouble of making his appeal and participating in the remote hearing. We therefore do look briefly at the evidential basis for the finding and consider what, if any, effect it had on the DTC’s decision.

9. The evidential basis (if it can be called that) is concerning. It consisted of a one-line statement on page 66¹ of our bundle that Ms Jenkins’s home address and Mr Spencer’s are the same. It appears on a single typed page which appears between a DVSA Desk based assessment and a DVSA Traffic Examiner visit report but there is no indication that it forms part of either and the pagination of the two DVSA documents suggests that it does not. The document is unsigned and bears no indication at all of the identity of the compiler. However, from para 7 of the DTC’s decision, it appears that she understood that it represented unnamed DVSA officers raising their concerns about the possibility of licence lending arising from what were described as “apparent links” of the operator (and so, Mr Spencer) with, among others, Ms Jenkins. No indication is given of the source of the view expressed that the address is shared. Whilst certain other details on the sheet concerning Ms Jenkins and other people in the various businesses involved can be found elsewhere in the evidence in the form of an earlier decision by the same DTC concerning another company relevant to the present case, there is no suggestion there that Mr Spencer and Ms Jenkins shared an address; indeed, Mr Spencer does not figure in the earlier decision at all. Two addresses for Ms Jenkins are in evidence in the present case, both from Companies House records, and neither is the address of Mr Spencer, nor is there any evidence that either has ever been his address.

10. Mr Spencer attended the public inquiry without legal or other representation. No point was taken about the “shared address” reference on page 66. Given the other matters in play at the public inquiry, it is unsurprising that he should have been focussing on aspects more obviously relevant to them.

11. Had he taken the point, or had had the advantage of a representative to do so, it is clear from para 9 above that it would not have been difficult to make out a case contrary to the DTC’s findings on the shared address/relationship point. The DTC would have needed to tackle head-on in her reasons what weight she was proposing to attribute to page 66 despite the manifest shortcomings to which we have referred

¹ There appears to be one more page in the Upper Tribunal’s bundle than in the bundle which was available to the DTC and to participants in the public inquiry, including Mr Spencer. Nonetheless, we are satisfied from para 25 of the DTC’s decision where she adopts the DVSA reports, with a one page gap in their pagination at page 65, that her page 65 equates to page 66 before us and thus that our page 66 was in the bundle at the public inquiry.

in para 9 and why she preferred to rely on that rather than the Companies House records for Ms Jenkins's address.

12. However, the point was not taken. The DTC had no reason to know that the point was disputed. She was entitled to focus her decision on the matters which were in issue, which required her to make careful findings from conflicting evidence concerning business transactions entered into by the operator with another company. We therefore cannot conclude that the decision was wrong in law, nor, since we consider that her decision was amply justified on the basis of her findings regarding the business transactions, do we consider that it was rendered plainly wrong, even though we consider its findings on the "shared address/relationship" point at best to be distinctly contrary to the weight of evidence.

13. We conclude with the observation that while some operators may have the advantage of expert representation when they are called to public inquiry and indeed before the Upper Tribunal, many do not. It is in our view unreasonable unnecessarily to force litigants in person to display advanced forensic ability to pick apart a document of uncertain provenance and containing unsubstantiated allegations which is included within a public inquiry bundle and the compiler of the document ought to have been clearly identified and the source for the view expressed on the shared address/relationship issue stated. Such a discipline may have led to a realisation that on this point the stated position was, as Mr Spencer submits, mistaken.

14. Finally and for completeness we note that it was fully open to the DTC to refuse to accept the surrender of an operator's licence where the application to surrender is made at a time when the TC was "considering taking action under s. 17(1) or (2) of the 1981 Act" see T/2015/10 *Cornwall Busways Ltd* (paras 6 & 7).

C.G.Ward
Judge of the Upper Tribunal

Mr.S.James
Member of the Upper Tribunal

Mr D.Rawsthorn
Member of the Upper Tribunal

Date: 15 September 2021