



NCN: [2022] UKUT 226 (AAC)  
Appeal No. UA/2021/000339-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 Traffic Area.**

Before: M Hemingway: Judge of the Upper Tribunal

**Appellant:** Harris Travel Limited  
**Reference no:** PC1129193  
**Considered on the papers:** At London  
**Date of decision:** 13 August 2022

**DECISION OF THE UPPER TRIBUNAL**

The appeal is dismissed.

**SUBJECT MATTER**

Financial standing

**CASES REFERRED TO**

*Bradley Fold Travel Ltd & Anor v Secretary of State for Transport* [2010] EWCA Civ 695.

**REASONS FOR DECISION**

1. This is the appeal of Harris Travel Limited (“the appellant”) from a decision of a Traffic Commissioner (the TC), embodied in a letter of 22 October 2021, to revoke its standard international public service vehicle operator’s licence. It appears that the appellant’s sole director is one Asif Din (Mr Din). Whilst it was indicated in the letter of 22 October 2021 that the revocation was to take effect immediately, the TC subsequently granted an application for a stay pending the result of these proceedings before the Upper Tribunal.



2. It has taken some time for this appeal to be determined. It has ultimately been determined by me, on the papers, sitting alone.

3. The appellant's appeal was received by the Upper Tribunal on 5 November 2021. On 14 January 2022, the appellant was notified that the appeal would be heard by a panel of the Upper Tribunal, on 17 February 2022. However, the appellant asked for a postponement because, it was said, Asif Din was outside the UK due to a family bereavement. No corroborative evidence was supplied. Notwithstanding the lack of corroborative evidence, the postponement request was granted. On 1 March 2022, the appellant was notified that the appeal had been relisted for a hearing, before a panel of the Upper Tribunal, and that the hearing would take place on 12 April 2022. On 25 March 2022 the appellant's former representatives notified the Upper Tribunal that they were no longer instructed. On 11 April 2022 an email was sent to the Upper Tribunal which stated that Asif Din had had a stroke and was currently in hospital. A postponement of the hearing was sought. No corroborative medical evidence was supplied. On 11 April 2022 the postponement request was granted.

4. On 25 April 2022 the Upper Tribunal issued directions seeking the views of the appellant as to how best to proceed. It was suggested that, if Mr Din remained unwell, the appeal could be determined on the papers or that, alternatively, it could be listed on a date when medical evidence suggested Mr Din would be fit to attend. The appellant was directed to provide documentary evidence confirming the current medical situation and addressing the question of when Mr Din might be fit to attend a hearing. The appellant was also directed to express a reasoned preference as to whether, given the prevailing circumstances, the appeal ought to be decided on the papers or ought to be decided following a hearing. A response was required within 21 days. No response was received. On 14 June 2022 the Upper Tribunal issued directions noting the lack of response and indicating that the appeal would be decided by a Judge of the Upper Tribunal sitting alone, following a papers consideration. The appellant was invited to supply, within 14 days, any further documentary evidence upon which it proposed to rely. No response was received.

5. I decided to determine the matter without holding a hearing because no recent interest in a hearing had been shown by or on behalf of the appellant. Further, Rule 34 of the Tribunal Procedure (Upper Tribunal) Rules 2008 permits the Upper Tribunal to make any decision without a hearing other than a decision in Immigration Judicial Review Proceedings, so long as it has regards to any view expressed by a party when deciding how to proceed (Rule 34 (2)). No such view had been expressed. I decided to determine the appeal alone because this is not an appeal where there is an obvious need for the very valuable technical expertise provided by Members of the Upper Tribunal. Further, on my reading Practice Direction: Composition of Tribunals in Relation to Matters That Fall to be Decided by the Administrative Appeals Chamber of the Upper Tribunal on or after 26 March 2014, does not require such appeals to be determined by a panel including members.

6. By way of background, the appellant was granted its licence on 10 June 2014. It and two other licence holding companies were called to a Public Inquiry (PI) which took place on 21 September 2021. Asif Din attended on behalf of the appellant. On the same date the TC who had presided over the PI decided that the appellant had been operating for a period without a transport manager and that, as a result, it had not, for that period, satisfied the standards of professional competence as contained within the Public Passenger Vehicles



Act 1981 (the Act). Further, it was decided that the appellant had failed to cooperate with the Office of the Traffic Commissioner (OTC) with respect to the provision of documentation and that there had been failings with respect to driver defect reporting requirements. The TC then turned his attention to financial standing requirements contained in the Act and said:

“All three operators failed to satisfy me that they were of appropriate financial standing because the documents that had been submitted did not comply with Statutory Document No2 issued by the Senior Traffic Commissioner. In order to rectify the present situation, I made an adverse determination under section 17 of the Act that each operator was not of appropriate financial standing and then granted each operator a period of grace until 1600 hours on 20 October 2021. By that time and date, the Office of the Traffic Commissioner at Golborne must have received for each of the 3 operators Statutory Document No2 compliant documents that cover the complete months of June, July and August 2021 and which, for that 3 month period, show an average balance being available that meets the test for appropriate financial standing. It is for Mr Din to read that Statutory Document and to provide the necessary documents on time because I warned him in clear terms that if there was not compliance then each of the non-compliant operators would have its operator’s licence revoked without any further warning or hearing.”

7. The TC went on to vary the appellant’s licence conditions by curtailing the number of vehicles it was entitled to operate under the terms of its licence.

8. Section 14ZA (2) (c) of the Act provides that an applicant for a standard operator’s licence (or a holder of such a licence) must be of appropriate financial standing “*as determined in accordance with Article 7 of Regulation 1071/2009*”. Article 7(1) of Regulation 1071/2009 makes it clear that the obligation is a continuing one. The legislative provisions provide a formula by which the amount an operator must show to be available is based upon the number of vehicles used under the relevant licence. If at any time it appears to the TC that the licence holder no longer satisfies this requirement revocation of the licence is mandatory. However, section 17(1A) of the Act provides a TC with discretion to avoid mandatory revocation by serving on the operator a notice setting out the time limit within which the situation given rise to what would otherwise be mandatory revocation must be rectified. That is what the TC did, with respect to the appellant’s failure to demonstrate financial standing at the PI in this case. The above reference to Statutory Document No 2, is a reference to Statutory Guidance issued by the Senior Traffic Commissioner under section 4C(1) of the Act for the purpose of providing information as to the way in which the Senior Traffic Commissioner believes that T’s should interpret the relevant law relating to the application of the Statutory Documents.

9. It is right to say that the appellant had provided the TC with some evidence of available finance prior to the PI of 21 September 2021. That seems to have consisted of a bank statement in the name of the appellant covering the period from 5 July 2021 to 9 September 2021 and a letter of 1 August 2021 written to the appellant by a credit company called ne-finance, confirming a financial arrangement whereby the appellant was to have, under the terms of an agreement made between the two, a credit limit of £159,000. The credit facility was said to be available for a period of 12 months. It is apparent that the TC had not found this evidence to be persuasive because the bank statements did not



demonstrate that the necessary level of finance had been reached when the available funds were averaged out over a three month period and because the letter from ne-finance contained no information as to the amount of the credit facility which had been utilised (I other words it had not been shown how much remained unused and available) and did not confirm that ne-finance was registered with the Financial Conduct Authority (FCA). The decision of the TC of 21 September 2021, though, afforded the appellant an opportunity to demonstrate, by way of evidence which would comply with requirements set out in the Statutory Guidance, that it did have appropriate financial standing.

10. On 13 October 2021 the OTC sent an e-mail to the appellant pointing out that the bank statements previously provided did not cover a three-month period (which was what the TC had wanted) and seeking further bank statements to cover the period from 11-30 June 2021 or 10-29 September 2021. It was explained that such was necessary so that an average finance availability calculation over a three-month period could be carried out. The appellant responded through Mr Din who, on 19 October 2021, sent a bank statement covering the period from 15 July 2021 to 11 October 2021. But the statement contained the wording *“Please remember this isn’t an official bank copy”*. The OTC did not simply reject the bank statement on that basis but, instead, in a clear attempt to be helpful, sent two emails further emails to the appellant, both of which were sent on 20 October 2021. One of those emails pointed out that the bank statement provided had not been authenticated by the bank and that, in any event, it appeared to demonstrate insufficient funds to meet the financial standing requirements. But it was acknowledged that an indication had been given (presumably by Mr Din), *“that further finance agreements will follow”*. The second email related to ne-finance and asked for the terms of the agreement, evidence of registration with the FCA, and evidence of how much of the permitted credit remained available. On the same date, an email was sent on behalf of ne-finance to the OTC stating that further information concerning the credit agreement would be sent the following day. However, there is no evidence of anything further having been provided by ne-finance directly to the OTC on 21 October 2021 or afterwards. , another bank statement was provided covering the period from 1 July 2021 to 9 September 2021.

11. On 22 October 2021 the decision to revoke the licence, on the basis that appropriate financial standing had not been demonstrated, was taken. In a decision letter of that date this was relevantly stated:

“Since that decision was made, the Traffic Commissioner has had regard to the following documents in correspondence in respect to Harris Travel Limited:

- Copy bank statements dated 13 September 2021, authenticated by Lloyds bank via stamp on 13 October 2021. The statements cover the periods for 5 July 2021 to 9 September 2021.
- The email to Office of the Traffic Commissioner sent to Mr Din on 13 October 2021 stating that the bank statement above did not cover a full 3 months and requested further original or authenticated bank statements so that 3 months are covered. The email reminded that the deadline remained 20 October 2021.



- Further copy bank statements printed on 13 October 2021 (received by email on 19 October 2021) covering the period 15 July 2021 to 11 October. This statement was not authenticated by Lloyds bank and, notably, a statement confirmed “The data shown on your statement is correct at the time of printing. Please remember, this isn’t an official bank copy”.
- The email correspondence between this office and Mr Din on 20 October 2021. The emails from the office of the Traffic Commissioner pointed out that the above bank statement was not authenticated, the analysis of the statement and the statement previously provided appeared to fall short of the financial requirement and that the company only appeared to have enough for 7 vehicles. The correspondence also stated that the credit line with “ne finance” was rejected as evidence of financial standing by the Deputy Traffic Commissioner at the Public Inquiry, but that it would be reconsidered by the Traffic Commissioner if the terms and conditions of the agreement along with ne finance’s registration number with the FCA were provided, along with the balance sheet for the last 3 months.
- The email from Mike Bromley of “ne finance” sent on 20 October 2020 more time to provide the requested evidence (he suggested that this would be sent across to the Office of the Traffic Commissioner later that evening or on the following morning). Mr Din confirmed that this email can be submitted to the Traffic Commissioner on behalf of Harris Travel Limited. At the time of writing no such documents have been received”.

The Traffic Commissioner has noted that the evidence submitted by Harris Travel Limited does not show financial standing from the compliant document sent in, and that the operator should have been left in no doubt by Deputy Traffic Commissioner Mr Dorrington of the expectation and the clear deadline.

The company has failed to show financial standing by the expiry of the period of grace. The Traffic Commissioner does not consider that any further extension of time is appropriate as the operator has been given sufficient opportunity and direction so far and he has not convinced any further time would realistically improve the position in any event.

I must therefore advise you that sufficient opportunity and direction so far and he has not convinced further time would realistically improve the position in any event.

I must therefore advise you that your company’s operators’ licence has been revoked with immediate effect in accordance with the grounds stated in the Public Inquiry decision letter, that the company does not meet the requirement to be of appropriate financial standing (Section 17 (1) (a) of the Act)”.





12. Mr Din, on behalf of the appellant sent some further material emanating from ne-finance to the OTC but only after the decision to revoke the licence had been made and sent. That material was in the form of two very brief written communications sent by e-finance to the appellant both of which were dated 25 October 2021 and a retrospectively authorised version of the bank statement which spanned the period from 15 July to 13 October 2021. One of those documents, seemed to indicate the credit facility had been unused throughout August, September and October 2022 whilst the other contained an assertion that mandatory registration with the FCA was not required because “*We only transact NON-REGULATED Agreements*”.

13. In addition to supplying this additional documentation, which the OTC made clear had been submitted too late, the appellant appealed. The grounds of appeal contended, in effect, that the material which had been submitted to the OTC should have been sufficient to satisfy the TC as to the financial standing requirement. It was also said that the OTC in previous dealings with the appellant had not insisted upon bank statements being authorised by the issuing bank and that the agreement with ne-finance had not previously been questioned (though the documentation concerning it suggests it was only entered into in August 2021).

14. The Upper Tribunal, in deciding an appeal such as this, is not permitted to take into consideration any circumstances which did not exist at the time of the determination which is the subject of the appeal (see paragraph 17(3) of Schedule 4 to the Transport Act 1985). Paragraph 17(1) provides “*the Upper Tribunal are to have full jurisdiction to hear and determine on all matters (whether of law or of fact) for the purposes of the exercise of any of their functions under an enactment relating to transport*”. But in *Bradley Fold Travel Ltd & Anor v Secretary of State for Transport* [2010] EWCA Civ 695, the Court of Appeal explained that the then Transport Tribunal (now the Upper Tribunal) is not required to re-hear all of the evidence but, instead, has the duty to determine matters of fact and law on the basis of the material which was before the TC but without having the benefit of hearing and seeing from witnesses. It was further explained that the appellant assumes the burden of showing that the decision which is the subject of the appeal is wrong and that, in order to succeed, an appellant must show not merely that there are grounds for preferring a different view but that there are objective grounds upon which it ought to be concluded that the different view is the right one. Put another way, an appellant, in order to succeed, must show that the process of reasoning and the application of the law requires the Upper Tribunal to take a different view.

15. Here, there has been a previous determination by a TC following a PI, at which matters had been carefully examined, to the effect that the appellant did not meet the financial standing requirements. That decision was not the subject of challenge. The appellant, through Mr Din or otherwise, has not asserted that that decision was in any sense wrongly made. Revocation would otherwise have followed at that stage, but a period of grace was given. However, the decision of 21 September 2021 made it very clear what was required in terms of financial evidence. Bank statements were required covering the complete months of June, July and August 2021 and the financial material which was to be submitted was required to comply with the requirements set out in the Statuary Guidance (see above).



16. The appellant has not complied notwithstanding his assertion in the grounds that he has. No authenticated bank statement has been provided which covers the month of June of 2021. The failure to provide bank statements covering that month, notwithstanding the clear indication that such was sought, has not been explained. Further, no authenticated bank statements which cover any continuous three-month period have been provided prior to the date of the decision under appeal. Even the retrospectively authorised bank statement provided after the decision to revoke does not quite span three months. In Statutory Document No 2: Finance, it is indicated that for the purposes of addressing a licence holder or licence applicant's average balance discernible from bank statements, statements covering a continuous three-month period ought to be provided. It is also said that either original bank statements or certified copies must be supplied. Further, the OTC undertook a preliminary calculation on the basis of what the appellant had supplied prior to the decision which demonstrated that, on average, for the period covered by the bank statements submitted prior to the date of the decision, there was a shortfall of £14,000.

17. In view of the above, the appellant has failed to show the financial standing requirement is met. That is so not only on the basis of the material before the TC which is what I must consider (see *Bradley Fold Travel*) but also on the basis of the retrospectively authorised statement.

18. I would accept that there will be occasions when financial evidence which does not comply with the requirements set out in the Statutory Guidance might, at least alongside other evidence of finance, be regarded as acceptable and reliable. But there is no reason to conclude that this is such a case. It is true that financial standing may be demonstrated in a variety of ways (*T/2017/7 Michael Hazell (No.2)*), so that the mere fact that the bank statements are unreliable does not mean, of itself, that the appellant has failed to demonstrate financial standing with respect to the period required of it or, indeed, any period. There is, of course, the finance agreement with ne-finance. As to that, the TC did not have information as to how much of the initially available amount of credit had been used nor any information concerning FCA registration. As such, he could not attach weight to the existence of the agreement. On the material before him he did not err at all in that regard. But even if I were to go against what was said in *Bradley Fold Travel*, and to consider the subsequently supplied evidence, it would not assist. The explanation as to why ne-finance is not registered with the FCA is terse and uninformative and does not, in my view, meet the TC's understandable concerns. Further, the letter of 1 August 2021 suggests that the agreement was only made on that date. Thus, the period of June and July 2021 about which the TC had required assurances, is not covered at all.

19. The appellant's protestations that points regarding the credit agreement and the authentication or otherwise of bank statements had not been raised by the OTC at an earlier stage have no force. Merely because a requirement or a need for full and complete information might have been overlooked in the past (if indeed it was), does not mean it should, as a result, continue to be overlooked in the future.

20. In the circumstances I have concluded that the process of reasoning the application of the law does not require the Upper Tribunal to take a different view. Accordingly, the appeal is dismissed.



21. There remains the matter of the stay granted by the TC. I have no up-to-date information from the appellant as to whether or not it is still trading. I have no up-to-date information concerning the health of Mr Din. As to that, I wish him well. But it is now necessary, the appeal having failed, for me to specify a date when the stay must come to an end. I suspect that Harris Travel Limited is no longer trading but, if it is, to allow an orderly period for its winding up of operations, I specify that the stay shall come to an end at 23:59 on 13 September 2022.

**M Hemingway**  
**Judge of the Upper Tribunal**  
**Authorised for issue on 13 August 2022**