



NCN: [2023] UKUT 30 (AAC)  
Appeal No. UA-2022-001525-NT

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

**ON APPEAL from the DECISION of the HEAD of the TRANSPORT REGULATION  
UNIT**

**Dated 15 November 2022**

**Before:**

<b>Kenneth Mullan</b>	<b>Judge of the Upper Tribunal</b>
<b>Mr David Rawsthorn</b>	<b>Member of the Upper Tribunal</b>
<b>Dr Phebe Mann</b>	<b>Member of the Upper Tribunal</b>

**Appellant:**

**Deborah Marie Toner T/A DDT Haulage**

**Attendances:**

For the Appellant: Mr McNamee

For the Respondent: Ms Jones

**Type of hearing:** Oral hearing

**Date of hearing:** 27 January 2023

**Date of decision:** 30 January 2023

**DECISION OF THE UPPER TRIBUNAL**

IT IS HEREBY ORDERED that this appeal be ALLOWED.

**SUBJECT MATTER:-** Standard international licence; application to add a Transport Manager

**CASES REFERRED TO:-** NT/2013/82 Arnold Transport & Sons Ltd v DOENI;  
NT/2013/52 & 53 Fergal Hughes v DOENI & Perry  
McKee Homes Ltd v DOENI [2013] UKUT 618 AAC,  
NT 2013/52 & 53; 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 Head of the Transport Regulation Unit ('TRU') to refuse the Appellant's application to add a Transport Manager to her goods vehicle operator's licence.
2. The TRU is part of the Department for Infrastructure ('the Department')

### Background

3. The factual background to this appeal appears from the documents and the Head of the TRU's decision and is as follows:-
  - (i) The Appellant is the holder of a standard international goods vehicle operator's licence authorising 4 vehicles and 10 trailers.
  - (ii) On 9 August 2022 an application to add a Transport Manager to the licence was received in the Department.
  - (iii) On 14 September 2022 the Department wrote to the appellant asking for an explanation concerning two infringements detected on a vehicle on 29 June 2022, how they had happened, what action had been taken to prevent a recurrence and why the Appellant had failed to notify the Department within the 28 day guideline.
  - (iv) On 15 November 2022 the Department made a decision to refuse the application to add a Transport Manager to the application.
  - (v) An appeal against the revocation decision was subsequently received in the office of the Administrative Appeals Chamber (AAC) of the Upper Tribunal.

### The oral hearing of the appeal

4. The appeal was listed for oral hearing on 27 January 2023. The Department had made an application to be joined as a party to the appeal and was represented by Ms Jones of Counsel. The Appellant was represented by Mr McNamee.

### Relevant legislative provisions

5. Sections 2(1)-(4), 12(2)-5), 12A, 12C, 12D, 12E and 17 of the Goods Vehicles (Licensing of Operators) Act (Northern Ireland) 2010 ('the 2010 Act') provide:
  2. "**Standard**" and "**restricted**" licences
    - (1) An operator's licence may be either a standard licence or a restricted licence.
    - (2) A standard licence is an operator's licence under which a goods vehicle may be used on a road for the carriage of goods—
      - (a) for hire or reward, or
      - (b) for or in connection with any trade or business carried on by the holder of the licence.
    - (3) A restricted licence is an operator's licence under which a goods vehicle may be used on a road for the carriage of goods for or in connection with any trade or business carried on by the holder of the licence, other than that of carrying goods for hire or reward.

- (4) Notwithstanding subsections (2) and (3), a company may use a goods vehicle on a road for the carriage of goods for hire or reward under a restricted licence instead of a standard licence if (but only if) the goods concerned are the property of a company which is—
- (a) a subsidiary of the first company,
  - (b) a holding company for the first company, or
  - (c) a subsidiary of a company which is a holding company both for that subsidiary and for the first company.
- (d) if the Department thinks fit, whether the requirement of section 12D is satisfied.

**12. Determination of applications for operators' licences**

- (1) On an application for a restricted licence the Department must consider—
- whether the requirements of sections 12B and 12C are satisfied; and
  - if the Department thinks fit, whether the requirement of section 12D is satisfied.
- (2) Subsections (1) and (2) are subject to sections 10 (publication of application) and 47(2) (payment of application fee).
- (3) In considering whether any of the requirements of sections 12A to 12D are satisfied, the Department must have regard to any objection duly made under section 11(1)(a) in respect of the application.
- (4) If the Department determines that any of the requirements that it has taken into consideration in accordance with subsection (1) or (2) are not satisfied, it must refuse the application.

**Determination of applications**

**Requirements for standard licences**

12A.—(1) The requirements of this section are set out in subsections (2) and (3).

(2) The first requirement is that the Department is satisfied that the applicant—

- (a) has an effective and stable establishment in Northern Ireland (as determined in such manner as may be prescribed);
  - (b) is of good repute (as determined in such manner as may be prescribed)
- and
- (c) has appropriate financial standing (as determined in such manner as may be prescribed );

...

(d) .....

(3) The second requirement is that the Department is satisfied that the applicant

...

- (a) is an individual who—
  - (i) is professionally competent (as determined in such manner as may be prescribed) and
  - (ii) has designated a suitable number of individuals (which may include the applicant) who satisfy such requirements as may be prescribed, or
- (b) if the applicant is not an individual, or is an individual who is not professionally competent, has designated a suitable number of individuals who satisfy such other requirements as may be prescribed.
- (c) .....
- (4) For the purposes of subsection (3), a number of designated individuals is suitable if the Department is satisfied it is proportionate to the maximum numbers of motor vehicles and trailers that may be used by the applicant in accordance with section 5 if the standard licence is issued.
- (5) In this Act, “transport manager” means an individual designated under subsection (3)(a)(ii) or (b).

**12C Requirements for standard and restricted licences**

- (1) The requirements of this section are that it must be possible (taking into account the Department's powers under section 14(3) to issue a licence in terms that differ from those applied for) to issue a licence in relation to which subsections (2) to (6) will apply.
- (2) There must be satisfactory arrangements for securing that the following are complied with in the case of vehicles used under the licence—
  - (a) Article 56 of the Road Traffic (Northern Ireland) Order 1981 (drivers' hours); and
  - (b) the applicable Community rules, within the meaning of Article 2 of that Order.
- (3) There must be satisfactory arrangements for securing that vehicles used under the licence are not overloaded.
- (4) There must be satisfactory facilities and arrangements for maintaining the vehicles used under the licence in a fit and serviceable condition.
- (5) The licence must specify at least one place in Northern Ireland as an operating centre of the licence-holder, and each place so specified must be available and suitable for use as an operating centre of the licence-holder (disregarding any respect in which it may be unsuitable on environmental grounds).
- (6) The capacity of the place specified as an operating centre (if there is only one) or both or all of the places so specified taken together (if there is more than one) must be sufficient to provide an operating centre for all the vehicles used under the licence.
- (7) In considering whether the requirements of subsections (2) to (6) are satisfied, the Department may take into account any undertakings given by the applicant (or procured by the applicant to be given) for the purposes of the application, and may assume that those undertakings will be fulfilled.

- (8) In considering whether subsection (5) will apply in relation to a licence, the Department may take into account any conditions that could be attached to the licence under section 20(1)(a) (conditions of licences) and may assume that any conditions so attached will not be contravened.
- (9) In considering whether subsection (5) or (6) will apply in relation to a licence, the Department may take into account whether any proposed operating centre of the applicant would be used—
- (a) as an operating centre of the holders of other operators' licences as well as an operating centre of the applicant; or
  - (b) by the applicant or by other persons for purposes other than keeping vehicles used under the licence.

#### **12D. Further requirement for standard and restricted licences**

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

#### **17.— Publication of notice of applications for variation in any locality affected**

(1) Subject to subsection (4), the Department shall refuse an application for any of the directions mentioned in subsection (2) without considering the merits unless it is satisfied that subsection (3) has been complied with in respect of each locality affected by the application.

(2) The directions referred to in subsection (1) are—

- (a) any direction under section 16(1)(a) that a maximum number specified in a licence under section 5 be increased;
- (b) any direction under section 16(1)(c) or (e);
- (c) any direction under section 16(1)(g) that a new place be specified in a licence as an operating centre of the licence-holder; and
- (d) any direction under section 16(1)(h) or (i) which might result in a material change in the use of any operating centre of the licence-holder.

(3) This subsection has been complied with in respect of a locality affected by an application if, within the period beginning 21 days before the date on which the application is made and ending 21 days after that date, notice of the application in such form and containing such information as may be prescribed has been published in one or more local newspapers circulating in the locality.

(4) The Department is not required by this section to refuse an application if—

- (a) it is satisfied as mentioned in subsection (1), except that the form or contents of the notice of application as published in any newspaper did not comply with the prescribed requirements; and
- (b) it is satisfied that no person's interests are likely to have been prejudiced by the failure to comply with those requirements.

(5) For the purposes of this section a locality is affected by an application for the variation of an operator's licence if—

(a) it contains any place that will be an operating centre of the licence-holder if the application is granted; or

(b) it contains an existing operating centre of the licence-holder and—

(i) the granting of the application would or could result in an increase in the number of vehicles, or the number of vehicles above a certain weight, that have that centre as their operating centre; or

(ii) any undertaking recorded in, or condition attached to, the licence that the application seeks to have varied or removed relates to that centre.

6. Paragraphs 1 and 2 of Schedule 2 to the Goods Vehicles (Licensing of Operators) Regulations (Northern Ireland) 2012 (the '2012 Regulations') provide:

'1. The information to be given in the notice of application is—

(a) name of applicant;

(b) trading name, if any;

(c) address for receipt of correspondence;

(d) whether the application is in respect of a new licence, or the variation of a licence;

(e) the place or places proposed to be used as an operating centre or centres (including, if available, the postal address or addresses);

(f) the number of motor vehicles and trailers proposed to be kept at each operating centre or centres;

(g) the number of motor vehicles and trailers now kept, if different; and

(h) in respect of an existing licence, details of any proposed changes to or removal of existing conditions or undertakings affecting an operating centre.

2. Every notice shall contain the following wording—

"Owners or occupiers of land (including buildings) near the operating centre(s) who believe that their use or enjoyment of that land would be affected, should make written representations to the Department stating their reasons, within 21 days of this notice. Representors must at the same time send a copy of their representations to the applicant at the address given at the top of this notice. A Guide to making representations is available from the Department"

Article 3 and 5(b) of Regulation (EC) No 1071/2009 provides:

*Article 3*

Requirements for engagement in the occupation of road transport operator

1. Undertakings engaged in the occupation of road transport operator shall:

(a) have an effective and stable establishment in a Member State;

(b) be of good repute;

(c) have appropriate financial standing; and

(d) have the requisite professional competence.

2. Member States may decide to impose additional requirements, which shall be proportionate and non-discriminatory, to be satisfied by undertakings in order to engage in the occupation of road transport operator.

#### *Article 5*

In order to satisfy the requirement laid down in Article 3(1)(a), an undertaking shall, in the Member State concerned:

...

- (b) once an authorisation is granted, have at its disposal one or more vehicles which are registered or otherwise put into circulation in conformity with the legislation of that Member State, whether those vehicles are wholly owned or, for example, held under a hire-purchase agreement or a hire or leasing contract;

### **General principles on the operation of the Act and Regulations**

- 7. At paragraphs 10 to 13 of the decision in NT/2013/82 Arnold Transport & Sons Ltd v DOENI, the Upper Tribunal set out the following general principles in the operation of the legislative provisions in Great Britain and Northern Ireland:

#### 'Some General Principles

10. An operator's licence can only be granted if the applicant satisfies the Department that the relevant requirements, set out in s. 12 of the 2010 Act as amended, have been met. [The expression Department is used in the legislation but for the purposes of the decisions required to be taken under the legislation it is the Head of the TRU who takes them]. The relevant requirements are now set out in Paragraph 17(5) of the Goods Vehicles (Qualifications of Operators) Regulations (Northern Ireland) 2012, ("the Qualifications Regulations), which substitutes a new s.12 and adds ss. 12A-12E to the 2010 Act. The Qualifications Regulations also contain important provisions in relation to Good Repute, Professional Competence and Transport Managers.

11. The grant of an operator's licence does not mean that an operator can then proceed on the basis that the requirements that must be met in order to obtain a licence can thereafter be disregarded. In our view it is clear both from the terms of the 2010 Act and from Regulation 1071/2009 that these are continuing obligations, which an operator is expected to meet throughout the life of the licence. It is implicit in the terms of s. 23, which gives the Department power to revoke, suspend or curtail an operator's licence, that this can take place at any time and for any reasonable cause, including matters covered by the requirements of s. 12 as amended. It is explicit in s. 24, which provides that a standard licence shall be revoked if at any time it appears that the licence-holder is no longer (i) of good repute, (ii) of appropriate financial standing or, (iii) professionally competent. The underlining, in each case is ours. First, we wish to stress that once it appears that the licence-holder is no longer of good repute, or of appropriate financial standing or professionally competent the licence must be revoked because the Act makes it clear that there is no room for any

exercise of discretion. Second, the use of the expression 'at any time' makes the continuing nature of the obligations crystal clear.

12. The Tribunal has stated on many occasions that operator's licensing is based on trust. Since it is impossible to police every operator and every vehicle at all times the Department in Northern Ireland, (and Traffic Commissioners in GB), must feel able to trust operators to comply with all relevant parts of the operator's licensing regime. In addition other operators must be able to trust their competitors to comply, otherwise they will no longer compete on a level playing field. In our view this reflects the general public interest in ensuring that Heavy Goods Vehicles are properly maintained and safely driven. Unfair competition is against the public interest because it encourages operators to cut corners in order to remain in business. Cutting corners all too easily leads to compromising safe operation.
13. It is important that operators understand that if their actions cast doubt on whether they can be trusted to comply with the regulatory regime they are likely to be called to a Public Inquiry at which their fitness to hold an operator's licence will be called into question. It will become clear, in due course, that fitness to hold an operator's licence is an essential element of good repute. It is also important for operators to understand that the Head of the TRU is clearly alive to the old saying that: "*actions speak louder than words*", (see paragraph 2(xxix) above). We agree that this is a helpful and appropriate approach. The attitude of an operator when something goes wrong can be very instructive. Some recognise the problem at once and take immediate and effective steps to put matters right. Others only recognise the problem when it is set out in a call-up letter and begin to put matters right in the period before the Public Inquiry takes place. A third group leave it even later and come to the Public Inquiry with promises of action in the future. A fourth group bury their heads in the sand and wait to be told what to do during the Public Inquiry. It will be for the Head of the TRU to assess the position on the facts of each individual case. However it seems clear that prompt and effective action is likely to be given greater weight than untested promises to put matters right in the future.'

### **The proper approach on appeal to the Upper Tribunal**

8. In NT/2013/52 & 53 Fergal Hughes v DOENI & Perry McKee Homes Ltd v DOENI, the Upper Tribunal said the following, at paragraph 8 of its decision, on the proper approach on appeal to the Upper Tribunal:

'There is a right of appeal to the Upper Tribunal against decisions by the Head of the TRU in the circumstances set out in s. 35 of the 2010 Act. Leave to appeal is not required. At the hearing of an appeal the Tribunal is entitled to hear and determine matters of both fact and law. However it is important to remember that the appeal is not the equivalent of a Crown Court hearing an appeal against conviction from a Magistrates Court, where the case, effectively, begins all over again. Instead an appeal hearing will take the form of a review of the material placed before the Head of the TRU, together with a transcript of any public inquiry, which has taken place. For a detailed explanation of the role of the Tribunal when hearing this type of



appeal see paragraphs 34-40 of the decision of the Court of Appeal (Civil Division) in Bradley Fold Travel Ltd & Peter Wright v Secretary of State for Transport [2010] EWCA Civ. 695. Two other points emerge from these paragraphs. First, the Appellant assumes the burden of showing that the decision under appeal is wrong. Second, in order to succeed the Appellant must show that: *“the process of reasoning and the application of the relevant law require the Tribunal to adopt a different view”*. The Tribunal sometimes uses the expression *“plainly wrong”* as a shorthand description of this test.’

At paragraph 4, the Upper Tribunal had stated:

‘It is apparent that many of the provisions of the 2010 Act and the Regulations made under that Act are in identical terms to provisions found in the Goods Vehicles (Licensing of Operators) Act 1995, (“the 1995 Act”), and in the Regulations made under that Act. The 1995 Act and the Regulations made under it, govern the operation of goods vehicles in Great Britain. The provisional conclusion which we draw, (because the point has not been argued), is that this was a deliberate choice on the part of the Northern Ireland Assembly to ensure that there is a common standard for the operation of goods vehicles throughout the United Kingdom. It follows that decisions on the meaning of a section in the 1995 Act or a paragraph in the Regulations, made under that Act, are highly relevant to the interpretation of an identical provision in the Northern Ireland legislation and vice versa.’

## **Analysis**

9. We can deal with this appeal in short order. In the decision notice forwarded to the Appellant on 15 November 2022, the Department set out the following reasoning for refusing the application to add a Transport Manager:

‘The request has been refused by the Head of the Transport Regulation Unit and the reasons are set out below:

The Administrative Appeals Chamber of the Upper Tribunal has today, 15 November 2022, issued case management direction for the Department to expedite the determination of the extant application to add a Transport Manager to the licence.

I have taken the opportunity today to review this case and note that a TM(NI)1 form was submitted by the operator, dated 10 July 2022, and received by the Department on 09 August 2022. This was a request to add Mrs Deborah Marie Toner as an Internal Transport Manager.

Subsequent to the receipt of this nomination, the Department received notice from the Driver and Vehicle Standards Agency (GB) of two Most Serious Infringements allegedly incurred by this operator at an encounter dated 29 June 2022. In line with standard procedure, the Department wrote to the operator (by way of letter dated 14 September 2022) seeking an explanation for these MSIs, with a response to be received on or before 03 October 2022. As no response has been received the caseworker had not yet escalated the nomination for a final determination.

On receipt of the aforementioned case management direction I have taken the opportunity to now review this nomination in order to make a determination.

I reference the communications relating to the MSIs to give context to the apparent delay in dealing with the nomination. Without giving any further consideration to those alleged MSIs, or the apparent failure of the operator to respond by the set deadline, I note simply that this nomination is to add Mrs Deborah Marie Toner as an **Internal** Transport Manager. This is at odds with the undertaking previously set by the Upper Tribunal, by way of a consent order, that

*The operator is required to employ an **external** Transport Manager who is not Mr Damian Toner. As required by the legislation, the name of the proposed Transport Manager is to be forwarded to the Head of the TRU for his approval by 31 January 2022.*

The emphasis on *external* here is my own. The nomination is contrary to the established undertaking. Consequently, the nominated transport manager is prohibited for being designated as transport manager **therefore failing to satisfy the requirement of Section 12A(3)(c) of the 2010 Act.**

The request to nominate Mrs Deborah Marie Toner as Transport Manager is therefore refused.'

10. The legal basis for the refusal is stated to be that the requirement in section 12A(3)(c) of the 2010 Act is not satisfied. Section 12A(3)(c) of the 2010 was omitted by regulation 1(b) and 9 of the Goods Vehicles (Licensing of Operators) Amendment Regulations 2022 (S.I. 2022/727), with effect from 1 July 2022. Accordingly, section 12A(3)(c) could not be used as the basis for the refusal decision of 15 November 2022. It is axiomatic, therefore, that the decision of 15 November 2022 is plainly wrong. At the oral hearing of the appeal, Ms Jones accepted that conclusion.
11. In these circumstances, the appeal is allowed, and the decision of 15 November 2022 is set aside. We remit the extant application to add a Transport Manager to the Department for reconsideration.



**Kenneth Mullan, Judge of the Upper Tribunal,  
30 January 2023**