



**IN THE UPPER TRIBUNAL
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ADMINISTRATIVE APPEALS CHAMBER**

**Appeal No. UA-2024-000172-
[2024] UKUT 172 (AAC)**

On appeal from the Deputy Traffic Commissioner for the Eastern Area

**SS Green Transport Ltd
(OF2068736)**

Appellant

Before: Upper Tribunal Judge Ward, Mr R. Fry and Mr G. Roantree

Hearing date: 11 June 2024

Representation:

Appellant: Ms Sarah Saleem, Director

DECISION

The decision of the Upper Tribunal is to dismiss the appeal.

REASONS FOR DECISION

1. The appellant appeals against a decision dated 19 January 2024, given following a Public Inquiry, which refused its application dated 26 September 2023 for a standard international goods vehicle operator's licence for 5 vehicles and 5 trailers. The refusal was made pursuant to s.13A(2)(b) of the Goods Vehicles (Licensing of Operators) Act 1995 i.e. on the ground that the Deputy Traffic Commissioner (Mr Denton) (hereafter "the DTC") was not satisfied of the prospective operator's good repute.

2. Some background is required. The sole director and shareholder of the appellant is Sarah Saleem, now aged 20. She is the daughter of Mohammad Saleem, who is the director of Global Transport Leics Ltd (mentioned further below). Mr Saleem has at least 75% of the shares and voting rights in Global Transport Leics Ltd and the right to appoint and remove directors. The appellant changed to its current name on 4 September 2023, having previously been called the similarly-named Global Transport Leicester Ltd. The change of name had followed shortly after a public inquiry held on 31 August 2023, which had (a) refused an application for an operator's licence by the appellant under its previous name and (b) had revoked the licence of Global Transport Leics Ltd and disqualified Mohammad Saleem indefinitely from acting as a transport manager.

3. One of the concerns of the Traffic Commissioner (Mr Turfitt) was that the application by Global Transport Leicester Ltd (as the appellant then was) could be an intended front for continued operations by Global Transport Leics Ltd. As was said in 2011/34 *Utopia Traction Ltd*:

“In the context of vehicle operator’s licensing ‘fronting’ means that a person, partnership or company, which does not have an operator’s licence, uses the operator’s licence held by another entity to conceal the fact that they are behaving in a way which requires them to have an operator’s licence of their own. In other words it deprives the Traffic Commissioner of the right to control an ‘operator’, when Parliament has said that such an entity should be within his or her jurisdiction”.

4. In view of the short period between the decision of 31 August and the application of 26 September, the application was set down for a public inquiry on 18 January 2024. The inquiry also considered a new application by Global Transport Leics Ltd but the decision in relation to the latter company is not before us.

5. The DTC, referring to the Senior Traffic Commissioner’s Statutory Guidance Document No 1, concluded that he was not satisfied that there would be “clear blue water” between the appellant and Global Transport Leics Ltd.” The requirement for “clear blue water” is also to be found in the Upper Tribunal’s decision in T/2016/44 *Sana Aziz*.

6. His reasons for so concluding were the complete absence of any business plan for the appellant and the complete failure to think through the projected costs and income of the business, taken together with a number of other factors. Those other factors were that most of the start up funding for the appellant had been provided by Global Transport Leics Ltd as a loan; the correspondence addresses, proposed operating centre and the proposed maintenance provider were all the same for both companies; the two companies intended to operate in the same segment of the market; and they shared the same transport consultants.

7. An oral hearing of the appeal was held at Birmingham Civil and Family Justice Centre on 11 June 2024. The panel had to consider whether the DTC’s decision was “plainly wrong” (*Bradley Fold Travel Ltd and Peter Wright v Secretary of State for Transport* [2010] EWCA Civ 695).

8. Ms Saleem’s position was in essence that they were two separate companies and that decisions with regard to operating centre, transport manager were taken for bona fide commercial reasons and out of her desire to build a career.

9. In response to questions from the panel, she accepted that no indication had been given that she would follow any business segment different from that of her father’s business – she proposed to start in general haulage, as that was an appropriate starting point – and accepted that at the earlier public inquiry Backhouse Jones, then acting for her, had indicated in correspondence that had been before Traffic Commissioner Turfitt that the companies would operate in a similar line of work, though the appellant was said to have its own potential contracts unconnected to the operation of Global Transport Leics Limited. Although she had made much in her written grounds of the fact that the two companies had different transport consultants, she accepted that both individuals were from the same consultancy business. When asked if she could understand why the DTC had placed weight on the absence of a business plan, her answer addressed only the difficulty which she perceived in

compiling one at the outset of the business. When asked if she knew what a Profit and Loss account was, her answer was to ask if it was something required by Companies House or a statement for a bank account. She accepted that her application for 5 vehicles and trailers was for the same number as her father's business had applied for. She had chosen that number as a reduction from the 7 she previously sought (and for which she had had financial resources) because it was a number she felt she would be better able to manage. Although she was now proposing to start with just one vehicle, applying for 5 would allow her to develop the business as it grew. Ms Saleem herself was the proposed transport manager; two others had previously been proposed but both had withdrawn because they "did not want to have to deal with the Traffic Commissioner."

10. We consider that the DTC was undoubtedly right to be concerned by the absence of any kind of business plan. While acknowledging that figures may change over time and that there may be uncertainties over what contracts could be obtained and what income they might produce, some kind of business plan would in our view be essential to the start-up of a genuinely independent business. That is so for many reasons, but they include how to plan to generate the income needed to repay the loan from her father, as was stated to be the intention. If (contrary to our view) there was any doubt as to the weight ascribed to this factor by the DTC, the correctness of the DTC's view is reinforced by Ms Saleem's lack of knowledge of what a Profit and Loss account is.

11. The DTC's decision was reached by reference to a number of factors. While Ms Saleem comments on each of them, it is the picture painted by them taken together which is crucial. Thus, use of the same operating centre and maintenance company as her father's company might not of itself be determinative and might in some situations be chosen for bona fide commercial reasons, but other explanations are also possible, such as to make it easier for her father to be involved behind the scenes at a venue that was familiar to him and with business associates with whom he was comfortable. The same is true of being involved in the same market segment, which could be a rational commercial choice or an opportunity for her father to attempt to use his previous business contacts to advantage through Ms Saleem's company. The similarity in the number of vehicles and trailers applied for by the two companies is striking and the panel is not persuaded by Ms Saleem's explanation and, as evidently did the DTC, concludes that the similarity may not be coincidental. Her reliance on the start-up money having been provided as a loan and not as a gift does not materially assist her as it is clear that the proposed arrangements for repayment are flexible (see the evidence to the first Public Inquiry recorded at p81) and Ms Saleem's evidence at the Public Inquiry (p282) and it is unclear that, given the family connection, they would ever be enforced or enforceable at all.

12. The fact, repeatedly relied upon by Ms Saleem before the DTC and before us, that the two companies are distinct legal entities does not address the concern that one company (hers) may be used as a front for the operation of another (her father's).

13. It is concerning that the application for the licence was made so soon after the previous public inquiry had resulted in Mr Saleem's disqualification and loss of repute. It is also concerning that the previous name of the appellant operator, Global Transport Leicester Ltd, was such as to be readily mistakeable for the name of Mr Saleem's company, Global Transport Leics Ltd, when "Leics" is a commonly-used

abbreviation for “Leicestershire” and potentially may be used informally for “Leicester” also.

14. What Ms Saleem categorises (and complains about) as “assumptions” are, in the panel’s view, legitimate inferences from the facts found. The DTC’s decision was far from plainly wrong – in our view it was correct in what appears to be a clear case of fronting. Fronting is serious because it involves deception and because it is conduct which can seriously undermine the effectiveness of the regulatory regime (see T2012/71 *Silvertree Transport Ltd*). While Ms Saleem stresses her desire to forge her own path, refusing her company an operator’s licence was a proportionate response, given the combination of factors appearing from the evidence before the DTC. The Traffic Commissioners have responsibility for ensuring safety and fair competition and the risk that Mr Saleem, despite the sanctions that had been imposed upon him, could in practice continue to operate through his daughter’s company and thereby escape the Traffic Commissioners’ regulatory regime justifies the decision taken.

C.G.Ward

Judge of the Upper Tribunal

Mr R.Fry

Member of the Upper Tribunal

Mr G.Roantree

Member of the Upper Tribunal

Authorised for issue on 12 June 2024