



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

Appeal No. UA-2022-000538-T

[2022] UKUT 00263 (AAC)

ON APPEAL from A DECISION of the TRAFFIC COMMISSIONER for the East of England Traffic Area

Before:	Zachary Citron:	Judge of the Upper Tribunal
	Stuart James:	Member of the Upper Tribunal
	David Rawsthorn:	Member of the Upper Tribunal

Appellant: Pamela Hibberd

Representation

For the appellant: Mr T Sasse of counsel

Heard at: Field House in London

On: 31 August 2022

Date of decision: 29 September 2022

DECISION OF THE UPPER TRIBUNAL

The appeal is allowed. We order that the decision of the Traffic Commissioner of 24 March 2022 to revoke the appellant's standard international public service vehicle operator's licence (reference PF1110327) from 24 March 2022 be set aside.

SUBJECT MATTER

Revocation of licence
Request for inquiry

CASE REFERRED TO

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

REASONS FOR THE DECISION

Introduction

1. The appellant appealed to the Upper Tribunal against a decision of the Traffic Commissioner (the “TC”) in a letter dated 24 March 2022 revoking the appellant’s standard international public service vehicle operator’s licence (reference PF1110327) from 24 March 2022.
2. The TC on 12 April 2022 refused to make a direction that his decision not have effect until the appeal was disposed of but on 11 May 2022 the Upper Tribunal (Judge Hemingway) did so direct.

TC’s power to revoke licences

3. This appeal concerns the power of a TC, under s17 Public Passenger Vehicles Act 1981, to revoke licences. (References in what follows to “section” or “s” are to sections of that Act, unless otherwise indicated.)
4. Under sub-section 17(1), a TC *must* revoke a standard licence if it appears to the TC at any time that
 - (a) the holder no longer satisfies the requirements of s14ZA(2) (which include, most relevantly here, being of good repute, having appropriate financial standing, and being professionally competent) ; or
 - (b) the designated transport manager no longer satisfies the requirements of s14ZA(3) (which include, most relevantly here, being of good repute and professionally competent).
5. Under sub-section 17(2)(a), a TC *may* at any time revoke a PSV operator’s licence on any of the grounds specified in sub-section 17(3). The relevant s17(3) grounds in this case are:
 - (a) that the holder of the licence made or procured to be made for the purposes of his application for the licence, a statement of fact which (whether to his knowledge or not) was false, or a statement of expectation which has not been fulfilled;
 - (b) that there has been a contravention of any condition attached to the licence;
 - (e) that there has been since the licence was granted or varied a material change in any of the circumstances of the holder of the licence which were relevant to the grant or variation of his licence.
6. Under sub-section 17(4), a TC shall not take any action under sub-sections (1) or (2) in respect of any licence without first holding an inquiry if the holder of the licence requests that an inquiry be held. Regulation 9 Public Service Vehicles (Operators’ Licences) Regulations 1995 provides that before exercising any of his

powers under s17(1) or (2) the TC shall give notice to the licence holder stating (amongst other things) that he is considering such action and the grounds on which that consideration is based.

Background facts

7. The appellant, trading as P&R Travel and P&R Minibus and Coach, held a standard international public service vehicle operator's licence (reference PF1110327) from 10 July 2012. The licence authorised the use of five vehicles. In what follows we will refer to that licence simply as the "**licence**".

OTC's letter of 10 February 2022

8. On 10 February 2022 the Office of the Traffic Commissioner ("**OTC**") wrote to the appellant (in her capacity as licence-holder) saying that the TC had been informed that the appellant had been "operating as a limited company", P&R Travel Ltd, until that company was dissolved in November 2021, when the appellant "reverted to a sole trader". The letter said that, in view of this, the TC was considering making a direction under s17(2) to revoke the licence "on the following grounds". The letter then cited
 - a) sub-section 17(3)(b), commenting that "the holder has contravened any condition attached to the licence, namely, the requirement of good repute and professional competence";
 - b) sub-section 17(3)(a), commenting that "the following statements [the appellant] made when applying for the licence were either false or have not been fulfilled: [the appellant] would abide by any conditions which may be imposed on the licence"; and
 - c) sub-section 17(3)(e), commenting that "there has been, since the licence was issued or varied, 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 there has been a change of entity in that [the appellant] has been operating as a limited company".
9. The letter then cited s17(1), and stated: "In view of the evidence the [TC] considers that you no longer satisfy the requirements to be of good repute, financial standing and professionally competent."
10. The letter then said that in accordance with regulation 9 Public Service Vehicles (Operators' Licences) Regulations 1995, the TC was serving notice on the appellant that he was considering making a direction to revoke the licence "on the grounds detailed above" – and to offer her the opportunity to make written representations, to be received by 3 March 2022.
11. The letter said that the TC also, in accordance with s17(4) and regulation 9(2), offered the appellant the opportunity to request a public inquiry "in order to offer further evidence as to why the licence should not be revoked" – again, by 3 March 2022. The letter said that if no request for an inquiry was received by that date, the

licence would be revoked and the appellant would be required to return the licence to the OTC by 10 March 2022.

12. The letter said that a separate letter had been sent to the appellant concerning the potential implications for her repute as transport manager.

Ms Bell's letter of 24 February 2022

13. On 24 February 2022, Ms Bell of Beverley Bell Consulting Ltd responded on the appellant's behalf to the TC's letter of 10 February. The letter said

- a) that the appellant had unfortunately not fully understood "the impact of changes of entity upon an operator's licence";
- b) that an "early application" was being made for a new PSV operator licence by the entity P&R Mini-bus and Coach Travel Ltd seeking authority for five vehicles, with the appellant as the nominated transport manager; and
- c) that Ms Bell had advised the appellant that the licence would have to be revoked and she wished to make representations that "any order for revocation is made only on the grounds of s17(3)(a) and that the [TC] does not make any findings pursuant to s17(3)(b) or s17(1)". The letter continued as follows:

"If the [TC] is content to make those findings, we would not request a public inquiry to be convened.

If, on the other hand, the [TC] does intend to consider making directions, regarding repute and professional competence for [the appellant] as an operator and as a transport manager, then please treat this letter as a formal request for the [TC] to convene a public inquiry to enable her to give evidence and for legal submissions to be made"

The appellant's letter of the following day

14. In an undated letter to the OTC, referring to Ms Bell's letter to the OTC of "yesterday", as well as to the OTC's letters to the appellant, the appellant apologised for her "oversight" in not informing the TC of changes in entity and said there had been no intention to mislead or withhold material facts from the TC; and that she had now "reverted to trading as P&R Travel".

OTC's letter of 24 March 2022

15. The OTC again wrote to the appellant (as licence-holder) on 24 March 2022, referring to the three prior letters just summarised. The letter said that the TC had revoked the licence from 24 March 2022 (the date of the letter) "in accordance with the grounds stated in our letter" (i.e. the 10 February letter). The letter then said:

"With regards to the repute and professional competence of your repute and professional competence, the [TC] has determined that your repute is severely tarnished and will have an impact on the future application that you have submitted in the name of P&R Travel Ltd under our reference PF2053893."

Other documents showing TC's perspective on his revocation decision

16. We had before us certain other documents indicating how the TC viewed his revocation decision of 24 March 2022:

- a) *Internal OTC documents* (disclosed in the course of this appeal): one of these, an internal note from the TC of 15 March 2022, stated:

“The transport consultant accepts that the [licence] must be revoked but seeks to dissuade me against making a finding of lost repute. I note that Mrs Hibberd will be submitting a new application in the name of P&R Minibus & Coach Hire Travel Ltd. Irrespective repute of that applicant will need to be scrutinised as the fitness of the director is clearly at issue. I therefore adopt the recommendation to revoke as a material change”.

Another, an internal note from the TC of 31 March 2022 (i.e. subsequent to the revocation decision), stated:

“I refer to the content of the consultant's letter of 24 February 2022. The [licence] was revoked as per that acceptance and there was no formal finding removing repute; consequently there was no request for an [inquiry]. My previous decision cautioned against any perception that a disposal was a matter for negotiation.”

- b) *The TC's stay refusal decision of 12 April 2022* (which also, obviously, post-dates the revocation decision): at three pages, this document was considerably longer than the revocation decision letter itself; at paragraphs 2-5, it gave background factual information about a check of the licence that had been carried out by the OTC (spurred by a new application by a connected entity) and a DVSA maintenance investigation into the appellant's business in June 2021. At paragraph 7, the TC said this:

“In my decision of 15 March 2022, I noted that the appellant's representative had accepted that this licence must be revoked but sought to dissuade me against making a finding of lost repute. I expressed concern at any suggestion that there would be a negotiated disposal. I noted that the appellant would be submitting a new application in the name of P&R Minibus & Coach Hire Travel Ltd and therefore the repute of the applicant would be scrutinised, as the fitness of a director is an essential element of determining repute. I had in mind the Upper Tribunal decision in 2013/082 Arnold Transport Ltd. I therefore allowed the licence to be revoked on the basis of a material change but warned the appellant that I considered repute to be severely tarnished so that she might be prepared when pursuing the application in the name of the corporate entity.”

Grounds of appeal

17. In his skeleton argument and oral submissions at the hearing, Mr Sasse reduced the grounds of appeal to three:

- a) First, that the TC had unlawfully exceeded his powers by proceeding to revoke the licence when the appellant had requested an inquiry; in particular, the TC revoked the licence on all the “grounds” set out in his 10 February letter, including those in respect of which Ms Bell had said that the appellant wanted an inquiry if the TC was considering revoking using such powers.
- b) Second, it was procedurally unfair, and therefore unlawful, for the TC to have made the revocation take effect immediately, rather than giving the appellant a reasonable period, in order to bring the business to an orderly close, before revocation took effect.
- c) Thirdly, it was procedurally unfair, and therefore unlawful, for the TC to have taken into account, in making the revocation decision, the appellant’s alleged association with certain third parties, as well as certain investigations into the appellant previously carried out by the OTC, without disclosing that allegation and those facts to the appellant when notifying her that the TC was considering revocation: this unfairly deprived her the chance to make representations about the allegations (and could have affected her decision whether and how to request an inquiry).

Jurisdiction of the Upper Tribunal

18. The holder of a PSV operator’s licence may appeal to the Upper Tribunal against any decision of a TC to revoke the licence: s50(4)(c). The Upper Tribunal has jurisdiction to hear and determine all matters whether of fact or law for the purpose of the exercise of its functions under an enactment relating to transport. It has the power to make such order as it thinks fit or, in a case where it considers it appropriate, to remit the matter to a TC for rehearing and determination. The Upper Tribunal may not take into consideration any circumstances which did not exist at the time of the determination which is the subject of the appeal. The task for the Upper Tribunal on an appeal is to conclude whether or not, on objective grounds, a different view from that taken by the TC is the right one or (meaning the same thing) whether reason and the law impel the Upper Tribunal to take a different view (*Bradley Fold Travel and anor v Secretary of State for Transport* [2010] EWCA Civ 695 at [40]).

Discussion

The first ground

19. The first ground of appeal is essentially that the appellant, by Ms Bell’s letter of 24 February, requested that an inquiry be held; and so the TC exceeded his statutory powers by taking action under s17(1) or (2) to revoke the licence without first holding an inquiry.
20. We do not have a reasoned decision of the TC, explaining why he proceeded to revoke the licence without first holding an inquiry. However, it seems from the evidence before us (in particular at [16] above) that his reason for so doing was that

he did not consider that an inquiry had been requested, and so, under s17(4), he was entitled to take action without first holding an inquiry.

21. In the light of our jurisdiction, the question for us is whether that decision – to take action to revoke the licence without first holding an inquiry – was plainly wrong.
22. The starting point must be that it is clear from Ms Bell’s 24 February letter that the appellant *did* request that an inquiry be held *in certain circumstances* (see the “please treat this letter as a formal request” language at [13c]) above). How, then, did the TC come to the view that there had been no request that an inquiry be held? The evidence before us suggests two themes in the TC’s thinking on this:
 - (a) first, the TC appears to have thought that the circumstances in which the appellant said she wanted an inquiry, were not present;
 - (b) second, the TC appears to have thought there was something inappropriate about the approach the appellant took, in that she accepted that the licence would have to be revoked, but was seeking to “negotiate” the grounds on which it was revoked.
23. On the first theme, the evidence before us suggests two bases for the TC’s view that the circumstances linked to the appellant’s request for an inquiry were not satisfied:
 - (a) the TC appeared to think that the licence would be (and was) revoked on the basis of “material change” i.e. under sub-section 17(3)(e) (only): see [16(a)] above – “*I therefore adopt the recommendation to revoke as a material change*” and [16(b)] above – “*I therefore allowed the licence to be revoked on the basis of a material change ...*”; and
 - (b) the TC had not made a formal finding that the appellant was no longer of good repute: see [16(a)] above – “*The [licence] was revoked as per that acceptance and there was no formal finding removing repute; consequently there was no request for an [inquiry]*”.
24. In our view, the TC’s first basis (for thinking that the circumstances to which the request was linked, were not present) is not tenable, in light of the evidence. The TC’s letter of 24 March plainly revoked the licence “in accordance with” the grounds – all of them – cited in the TC’s 10 February letter. In this regard there appears to be a stark inconsistency between how the TC *thought* the revocation would be (and was) effected and the terms of the revocation letter as sent to the appellant. However, in the absence of any communication from the OTC to the appellant clarifying that the revocation was made only on the grounds of s17(3)(e), it is clearly the letter of 24 March that stands as the terms on which the revocation was made.
25. The TC’s other basis (for thinking that the circumstances to which the request was linked, were not present) goes to what exactly those circumstances were. In our view it is plain enough from Ms Bell’s 24 February letter,

- (a) read in the context of the TC’s 10 February letter, to which it was responding, which set out four separate grounds of revocation, each tied to specific statutory provisions (see [8-10] above), and
- (b) reading the important passages (as summarised at [13(c) above] together and in context,

that the circumstances in which the appellant requested that an inquiry be held were where the TC continued to consider as valid those of the four grounds for revocation specified in the TC’s 10 February letter that referred to the appellant failing requirements of good repute and professional competence – those grounds being revocation under s17(1) or s17(3)(b).

The fact that the TC revoked the licence “in accordance with” the grounds in the 10 February letter (see [15] above) – plainly, all of them – is enough to show that those circumstances were present. The fact that the TC did not make a formal finding that the appellant was no longer of good repute, does not change that outcome.

- 26. It follows that, in our view, both bases for the TC’s view that the circumstances in which the appellant requested that an inquiry be held were not present, were incorrect; the first emphatically so, and the second on any fair and reasonable reading of Ms Bell’s 24 February letter. In our view, in the round, the TC’s view on this crossed the threshold in the sense of being plainly wrong.
- 27. We now turn to the second theme in the TC’s thinking, as far as we can see it from the evidence before us – namely, that the TC thought that there was something inappropriate about the request as made, in that it was an attempt to negotiate the grounds on which the licence was revoked (given that the appellant had accepted that the licence would have to be revoked).
- 28. Stepping back and considering the statutory purpose of s17(4), it is clearly a statutory mechanism to ensure procedural fairness: revoking a licence is a serious and significant action for a TC to take – the licence holder must have the right, if she wishes to take it, to an inquiry, so that her side of the story can be fairly told.
- 29. The mechanism adopted in s17(4) is simple and seemingly ‘generous’ to the licenceholder in the sense that, seemingly, “all you have to do is ask”: there is no requirement for licence holders to explain why they want an inquiry (and so, no evaluation of the *motivation* for requesting that a hearing be held). Such a scheme makes administrative sense, in that the inquiry itself is the forum to test the reasonableness of revocation i.e. it would be inefficient and duplicative to require “reasons” of any particular standard at the stage of requesting an inquiry.
- 30. Looking realistically at the facts of this case, the appellant, having received professional advice from Ms Bell, was resigned to having her licence revoked, but, having seen the grounds for doing so being considered by the TC as spelled out in his 10 February letter, wished to avoid revocation where the TC’s grounds expressly referred to her failing requirements of good repute and professional competence. This is because she thought that revocation on such grounds would disadvantage the new application being made in the name of her connected company.

31. To achieve the goals set out above, the appellant told the TC that she requested that an inquiry be held only if he was minded to revoke on one of the grounds that mentioned her failing requirements of good repute and professional competence.
32. Did the fact that the request was framed in this way, mean that it fell outside the purpose of the statute? In our view it did not, in part because of the “generosity” (to licence-holders) of the statutory scheme as we describe it above (with its implication that a licence-holder’s *motivation* for requesting an inquiry, as set out at [30] above, is of no import); and in part because, the practical purpose of the “complexity” in Ms Bell’s request was actually to achieve administrative efficiency: in other words, the appellant could have “played safe” (from the point of view of her own perceived self-interest), not “accepted” revocation of her licence, and made a “simple” request for an inquiry, irrespective of which grounds for revocation the TC considered that he had; instead, the appellant, responding to the menu of grounds under consideration set out in the TC’s 10 February letter, herself gave a different response on the question of holding an inquiry, depending on which ground was thought to be available. Viewed realistically, this approach was an attempt to avoid the time and expense of an inquiry in a way that did not harm the appellant’s interests (as she perceived them). This does not seem to us an abusive approach to a request to hold an inquiry, or one outside the statutory scheme or its purpose.
33. We conclude that the appellant’s request that an inquiry be held did not fall outside the statutory scheme by reason of its being inappropriate or abusive. It follows that the first ground of appeal is made out: in the language of the case law, reason and the law do here impel a different view from that taken by the TC, namely they impel the view that the appellant requested that an inquiry be held; and so the TC exceeded his statutory powers by taking action to revoke the licence without first holding an inquiry.

The other grounds

34. Given that we are allowing the appeal on the first ground, it is not strictly necessary for us to determine the other two grounds. In summary, however, had we not allowed the appeal on the first ground (because, hypothetically, we had found that no request for an inquiry had been made), we would not have allowed the appeal on the other grounds, because:
 - a) as to the second ground: on the hypothetical assumption that the appellant did not request an inquiry, then, in practice, the appellant had a month (between the date of the TC’s 10 February letter and its deadline for surrendering the licence (if no inquiry was requested), 10 March) to make arrangements in anticipation of the licence being revoked. This period of time seems to us within the bounds of reasonableness;
 - b) as to the third ground; in our view the TC’s 10 February letter provided a plausible and adequate factual reason – the appellant’s having traded through a different legal entity to the one with the licence – for his considering revocation of the licence on the grounds specified – and it was expressly on those grounds that the licence was revoked on 24 March. The fact that the

TC was aware of additional alleged facts that would point in the same direction does not mean that the licence was revoked on other, “hidden” grounds (and so unfairly to the appellant). It would indeed have been unfair for the TC to have revoked the licence on grounds other than those he said he was considering in his 10 February letter; but, on the evidence before us, it was on those very grounds that he revoked the licence.

Conclusion

35. Having found that the TC’s decision to revoke the licence without first holding an inquiry was, in the circumstances, beyond the TC’s statutory powers, we are bound to order that the decision be set aside.
36. Depending on all the up-to-date circumstances, the TC may or may not now want to make decisions afresh about the licence – but more than that we do not say, as that is his prerogative (within his statutory powers), not ours.

Zachary Citron
Judge of the Upper Tribunal

Stuart James
Member of the Upper Tribunal

David Rawsthorn
Member of the Upper Tribunal

Authorised for issue on 29 September 2022